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Finding the Oscar

W. BURLETTE CARTER*

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INTRODUCTION

On February 29, 1940, the Academy of Motion Picture Arts and Sciences (the “Academy”) made history when it awarded an Oscar to a Negro—Hattie McDaniel.¹ Her winning and controversial role was that of Scarlett O’Hara’s loyal black slave caretaker known only as Mammy in the epic film *Gone With the Wind* (“*Gone*”).² Later, a seriously ill McDaniel would execute her will. In it, she would ask that her Oscar be sent to Howard University (“Howard”) after her demise.³ Today, more than seventy years after her historic win and some sixty years after her death, no one seems to know where Hattie McDaniel’s famous Oscar is.⁴ The Academy has declined to replace it.⁵ One collector has estimated the McDaniel Oscar to be worth more than half a million dollars.⁶

This article investigates what happened to Hattie McDaniel’s Oscar and what the story of the Oscar reveals about the interrelationship between race discrimination, on the one hand, and wealth generation,

1. Edwin Schallert, *Cocoanut Grove Throws Give Stars Gay Ovation*, L.A. TIMES, May 1, 1940, at A; *Hattie McDaniel Wins Academy Award*, BALT. AFRO-AMERICAN, Mar. 9, 1940, at 14; *Hollywood Applauds Hattie McDaniel as She Receives Award*, CAL. EAGLE, Mar. 7, 1940, at 2B. Note that the author uses the term “Negro” or “black” to refer to blacks in Hattie McDaniel’s time, and in particular, the descendants of the survivors of American slavery. The author does not consider “Negro” to be disparaging. To accommodate some modern ears, she uses herein the term “black” or African American to reference such descendants in a modern era and, when the context suggests, to reference immigrant blacks as well.

2. *GONE WITH THE WIND* (Selznick International Pictures, Metro-Goldwyn Mayer 1939).

3. See discussion *infra* p. 130.

4. Letter from Joe Selmon to Bd. of Governors, Acad. of Motion Picture Arts and Scis. (Dec. 20, 2005) (on file with author) (describing Oscar as unfortunately “lost” and asking that the Academy replace it).

5. Letter from Bruce Davis, Exec. Dir. for the Acad. of Motion Picture Arts and Scis., to Joe Selmon, Chair, Howard Univ. Dep’t of Theater Arts (Jan. 17, 2006) (on file with author) (expressing concern over precedent of replacing for a non-winner holder and asking Howard not to give up hope of finding it).

6. Memorabilia Collector Tom Gregory has estimated the Oscar’s value at \$550,000. See J. Freedom du Lac, *And Hattie McDaniel’s Oscar Went To . . .? 1940 Prize, Howard U., Plays Role in Mystery*, WASH. POST, May 26, 2010, at A1. For more on Gregory’s connection to the story, however, see discussion *infra* pp. 161-63.

wealth protection, and intergenerational transfers of wealth by the descendants of slaves on the other. Regarding the Oscar, this article concludes that, the Oscar arrived at Howard University, but not directly from the McDaniel estate, and that after being displayed in Howard's Drama Department for a decade, it was returned to the Channing Pollack Theater Collection ("Pollack Collection") in the Founders Library at Howard University between 1971-1972. Whether the Oscar remains there today is a question that only Howard University can answer.⁷

McDaniel did not receive the familiar, tall statuette commonly known as "Oscar." Instead, she received a plaque, approximately 5 1/2 inches by 6 inches mounted on a small base, bearing a description of the award and a molded image of a miniature Oscar.⁸ An Oscar nevertheless, it was the type given to all best supporting actor or actress winners at that time.⁹

Until now, it has been assumed that the McDaniel Oscar came directly to Howard University from her estate,¹⁰ and that it disappeared from a display case in Howard University's Drama Department in the 1960s during a nationwide explosion of campus unrest.¹¹ Beyond these points, however, there has been broad disagreement. No one knew exactly when the Oscar arrived at Howard, when it disappeared, or how;¹² Howard could find no official records of receipt.¹³

7. Shortly before this article went to press, the author shared with Howard University some key facts she had uncovered in order to aid in any future search for the Oscar.

8. The website of the Academy of Motion Picture Arts and Sciences has a picture of Hattie McDaniel with presenter and actress Fay Bainter handing her the tall Oscar with the caption "Best Supporting Actress Hattie McDaniel ("Gone With The Wind") accepts her award from Faye Bainter." THE ACAD. OF MOTION PICTURE ARTS & SCI., <http://www.oscars.org/awards/academyawards/legacy/ceremony/12th-winners.html>. That picture was an official portrait taken after the awards, one that every actor Oscar winner was allowed, regardless of the type of Oscar received. Interview with Barbara Hall, in Hollywood, Cal. (July 26, 2011). The Academy's database also confirms that she received a plaque and never exchanged it for a statuette. *The Official Academy Awards Database*, THE ACAD. OF MOTION PICTURE ARTS & SCI., http://awardsdatabase.oscars.org/ampas_awards/BasicSearchInput.jsp. For a picture of McDaniel with her Oscar, see *Best Supporting Actress*, BALT. AFRO-AMERICAN, Mar. 9, 1940, at 14.

9. According to the Academy's online database, the Best Supporting Actor and Actress categories were first recognized in 1936 (the 9th Awards), and plaques were awarded up to 1942. *The Official Academy Awards Database*, *supra* note 8; see also Email from Libby Wertin, Acad. Librarian, to W. Burlette Carter (May 13, 2011, 7:59pm EST) (on file with author) (database is source for award type and other such information).

10. E.g., *Howard University Can't Find McDaniel Oscar*, JET MAGAZINE, May 4, 1992, at 24 (stating that McDaniel left the school the statuette and implying that that is how Howard got it); J. Freedom du Lac, *supra* note 6 (to same effect).

11. See, e.g., J. Freedom du Lac, *supra* note 6.

12. *Id.*

Various theories have emerged to explain the Oscar's disappearance. Some argue that former Howard Professor Owen Dodson, the Oscar's caretaker in the Drama Department, must have taken it when he left.¹⁴ Unidentified persons have named another professor, Mike Malone, as the culprit.¹⁵ Another claimed that Howard students removed it during the so-called "black power" protests of the 1960s. In 1990, McDaniel's biographer, Carlton Jackson, was told unofficially by Howard sources that the Oscar turned up "missing" during those civil rights demonstrations.¹⁶ In 1992, *Jet Magazine* reported that Howard "officials speculated that during the campus unrest in the 1960s, the Oscar may have been stolen, removed for safekeeping, or misplaced."¹⁷ By the time the story took on a sense of urgency, many of those who had been in a position to know more about the whereabouts of the Oscar were dead, and those still alive struggled against a horizon of fading memories.

The "angry protesting students took it" story developed new energy in 2007 when memorabilia collector and media personality Tom Gregory reported in the *Huffington Post* that "[f]urious, frustrated black Americans are rumored to have heaved the Oscar into the Potomac River in effigy of racial stereotyping."¹⁸ Gregory would rerun the same story verbatim in January 2009.¹⁹ In April, 2010, responding to a

13. *Id.* Apart from its Art Gallery, Howard has two other primary collections that hold artifacts. Telephone Interview with Michael Winston, Dir. of Moorland-Spingarn Research Ctr., 1973-83 (June 6, 2011) [hereinafter Winston Interview]; see also Telephone Interview with Thomas C. Battle, former Dir., Moorland-Spingarn Research Ctr. (July 11, 2011) [hereinafter Battle Interview]. Most are under the jurisdiction of the Moorland-Spingarn Research Center. *Id.* A separate collection, the Channing Pollack Collection, houses many theater-related items. *Id.* That Collection is under the jurisdiction of Founders' Library. *Id.* In 1973, Moorland did a general physical inventory of all of its holdings. No Oscar was found in that inventory. After *JET Magazine* reported a "missing" Oscar in 1990, see discussion *supra*, n.10, Battle reviewed Moorland's records specifically for evidence that Moorland received the Oscar, and he found none. *Id.* As for the Pollack Collection, according to Founders Library, various curators have also conducted prior searches for the Oscar, without success. Discussion with Dr. Arthuree Wright, Interim Dir., Founders' Library, Howard Univ. (Sept. 15, 2011) [hereinafter Wright Discussion].

14. J. Freedom du Lac, *supra* note 6.

15. *Id.* It is easy, of course, to blame the dead. For more on Malone's contributions to theater, see Yvonne Shinoster Lamb, *Director and Teacher Mike Malone Nurtured DC Black Theater Scene*, WASH. POST, Dec. 6, 2006.

16. CARLTON JACKSON, *THE LIFE OF HATTIE MCDANIEL* 54 (1990).

17. *Howard University Can't Find McDaniel Oscar*, *supra* note 10; see also J. Freedom du Lac, *supra* note 6 (referencing Howard Professor in the Department of Theater Arts, Joseph Selmon's belief that the Oscar is safe but no one knows today where it was placed).

18. See *Oscar Time for Hattie McDaniel*, HUFF POST, Aug. 13, 2007.

19. Tom Gregory, *Hattie McDaniel, Equality 41 Years in the Mud*, HUFFINGTON POST (Jan. 19, 2009) http://www.huffingtonpost.com/tom-gregory/hattie-mcdaniel-racism-41_b_159169.

Washington Post investigation by J. Freedom DuLac, he would be more specific: “I spoke to a guy who told me it was heaved into the river—he was there.”²⁰ Generic rumor had morphed into a live witness, but still, Gregory said he could not recall his informant’s name.²¹ Since the matter has become one of public discussion, Howard University has faced a barrage of negative press charging that it negligently “lost” the Oscar or, alternatively, allowed it to be stolen.²²

This article seeks to turn the page on the story of Hattie McDaniel’s Oscar. It concludes that the Oscar did not come to Howard directly from McDaniel’s estate. Instead, it argues that it likely came as a gift from actor Leigh Whipper, from the Howard University class of 1895, along with a pair of bronzed Bill “Bojangles” Robinson’s shoes (“Bojangles shoes”). It further theorizes that the Oscar was not stolen by irate students, upset that Howard would honor McDaniel, but rather was returned to Howard’s Channing Pollack Theater Collection, most likely between the spring of 1971 and the summer of 1972 as Howard faculty and administrators tried to make room for new voices in black theater.

Part I of this piece explains why McDaniel and her Oscar were so controversial and remain so today. Part II offers, for the first time, an examination of Hattie McDaniel’s probate records. Part III discusses evidence that the Oscar came to Howard, not from the estate, but via actor Leigh Whipper, years after the estate had closed. Part IV dismisses the theory that students took the Oscar and, offers the theory of its removal and return to the Pollack collection. Part V considers and rejects the “Potomac River” theory propounded by Gregory. Finally, Part VI discusses how the story of the McDaniel Oscar demonstrates the effect of race discrimination upon African-American wealth building, wealth preservation, and intergenerational transfers of wealth. That section also argues that we need not agree on McDaniel’s legacy in order to care about the fate of the McDaniel Oscar. The true value of that Oscar lies not in the person who won it but in the

20. J. Freedom du Lac, *supra* note 6.

21. *Id.*

22. See, e.g., *Hattie McDaniel’s Academy Award is Lost*, JET MAGAZINE, Apr. 13, 1998, at 33; *Howard University Mislplaced Hattie McDaniel’s Oscar*, ESSENCE (May 27, 2010), <http://www.essence.com/2010/05/27/howard-university-cant-find-hattie-mcdaniels-oscar/>. The subject has also been covered on radio and television. See *Disappearance of Historic Oscar Explored in Hattie’s Lost Legacy* (WDCW TV Local Black History Month Special Feb. 11, 2011), available at <http://corporate.tribune.com/pressroom/?p=2791> (“Was it tossed in the Potomac River by students in the late 1960’s who were angered that the role of a slave received such an honor?”); Carla Eckels, *The Curious Case of a Missing Academy Award*, NPR, Feb. 22, 2009.

struggles between supporters and opponents of black civil rights, that framed her victory on that historic night.

I. THE LEGACY OF HATTIE MCDANIEL²³

Identifying Hattie McDaniel's place in history is a complex undertaking. Although she was the first Negro to win an Oscar, one is not compelled to view her victory as an unequivocal source of pride.²⁴ Those who dismiss criticisms of that award decision ignore a long-established and troublesome Hollywood practice of rewarding talented Negroes for playing roles meant to be subservient and demeaning and punishing those who protested against such roles. And yet, those who dismiss her as an accomplice in blatant racism ignore the amazing talent that she displayed and her own victimization and triumph over both racism and sexism. Hattie McDaniel's desire to be simply a successful entertainer—when racism insisted that she was far less and yet required that she be much more—will arguably forever place her near the center of debates over one of our country's most significant human rights struggles.

McDaniel was one of seven surviving children of two former slaves.²⁵ She began her entertainment career as a blues singer/comedian.²⁶ When she turned her focus to acting in the 1930s and 1940s,²⁷ Hollywood's leading writers, directors, producers, and movie houses offered blacks roles that primarily presented them as caricatures, shaped by whites' imaginations. Virtually any actor who played a Negro (including white actors who played one) spoke in a contrived "Negro dialect," which they had to learn if it was unfamiliar.²⁸ Some roles required blacks to roll their eyes widely and act as if they were unin-

23. For the facts—but not my analysis—of McDaniel's life, I rely substantially upon the biography by Jill Watts and to a lesser extent, the one by Carlton Jackson. See generally JILL WATTS, *HATTIE MCDANIEL: BLACK AMBITION, WHITE HOLLYWOOD* (2005) (describing the life of Hattie McDaniel); JACKSON, *supra* note 16. These two offer very different takes on her life. I offer a third here and in some cases have found some additional facts that will confirm or contradict facts presented by these two authors.

24. *Hattie McDaniel Negro Star Dies: Only Actress of Her Race to Win Academy Award Passes at Motion Picture Home; Ill a Year*, L.A. TIMES, Oct. 27, 1952, at A1.

25. WATTS, *supra* note 23, at 2-5. Her mother, Susan, bore thirteen children of which six died at birth or an early age. Susan brought three, as a widow, to her marriage to Hattie's father, Henry McDaniel. *Id.* at 13, 17.

26. *Id.* at 56-74.

27. *Id.* at 83.

28. *Id.* at 83, 161 (explaining that blacks, including McDaniel, were required to speak in dialect); *id.* at 79, 257 (describing white actors using alleged Negro dialect while playing Negroes); *id.* at 248 (explaining the incorporation of dialect into animals in the Disney movie *Song of the South*); see also E.B. Rea, *Does Radio Give Our Performers A Square Deal, They Say*

telligent.²⁹ Their skin color was often darkened and made to appear glossy.³⁰ “Respectable” black males were usually slightly built devoted servants, soft spoken, and often appeared childlike in nature.³¹ Meanwhile, “aggressive” black males had to be put down violently.³² “Respectable” black women had to serve white families loyally as domestics, with little reference to their own families, and were often cast as asexual, unattractive, and plump.³³ In addition to limited roles, black actors faced disparate work conditions when compared to whites.³⁴ McDaniel’s biographer, Watts, has noted that McDaniel’s “generous figure and dark skin” matched a Hollywood stereotype for the casting of black women in the thirties and early forties.³⁵

McDaniel’s early career was sprinkled with washroom attendant and laundress jobs as she struggled to make a career in entertainment.³⁶ A big break came when she was considered for the part of a black, female slave referred to only as “Mammy” in the film adaptation of Margaret Mitchell’s book, *Gone With the Wind*.³⁷ The book won the 1937 Pulitzer Prize.³⁸ It told the story of a fictional white

We’re Out To Make An Honest Dollar, Critics Contend Dialect Offends Colored People, BALT. AFRO-AMERICAN, Jan. 7, 1948, at M11.

29. WATTS, *supra* note 23, at 217 (discussing NAACP’s Walter White’s objections to these images).

30. *Id.* at 83.

31. *Id.*

32. See DONALD BOGLE, TOMS, COONS, MULATTOES, MAMMIES & BUCKS, AN INTERPRETIVE HISTORY OF BLACKS IN AMERICAN FILM 3-18 (2003) (discussing various black stereotypes); see also WATTS, *supra* note 23, at 46 (discussing the use of blackface), *id.* at 81-83 (discussing maid roles, stereotypes of hypersexuality, desire for contrived black dialect, and avoidance of miscegenation), *id.* at 112-113 (explaining that childlike behavior and humor was required and that blacks were excluded from creative ranks).

33. WATTS, *supra* note 23, at 83, 101 (explaining that large black women were cast as maids); see MARGARET MITCHELL, GONE WITH THE WIND 40 (Scribner 75th Anniversary ed. 2011) (1936) (referring to Mammy’s “lumbering tread shaking the floor”); *id.* (describing Mammy as “a huge old woman”). For more on stereotypes, see generally BOGLE, *supra* note 32; DONALD BOGLE, BRIGHT BOULEVARDS, BOLD DREAMS: THE STORY OF BLACK HOLLYWOOD (2006) (describing the lives of some black Hollywood stars and their struggles); see also James V. Hatch, *A White Folks Guide to 200 Years of Black & White Drama*, DRAMA REVIEW, Dec. 1972, at 5-24.

34. Jonathan Dewberry provides essential research on the discrimination facing black actors in this time in his 1988 Ph.D. dissertation. See generally Jonathan Dewberry, *Black Actors Unite: The Negro Actors Guild of America, 1937-1982* (1988) (unpublished Ph.D. dissertation, New York University) (on file with Elmer Holmes Bobst Library, New York University).

35. WATTS, *supra* note 23, at 83.

36. *Id.* at 74, 80; see also E.B. Rea, *Natural Talent Made Her a Star; Hattie McDaniel Enjoyed Full Life of Pearl Diving, Table Waiting on her Way to Radio-TV Fame*, BALT. AFRO-AMERICAN, Nov. 22, 1952, at A3.

37. WATTS, *supra* note 23, at 151-52; see also MITCHELL, *supra* note 33.

38. *Pulitzer Prize for Novel Won by Gone With The Wind . . .*, N.Y. TIMES, May 4, 1937, at 1.

family of slaveholders in Atlanta during the Civil War.³⁹ It presented the “respectable” black slaves as unswervingly loyal to the white family that they served.⁴⁰ It criticized the Civil War and the opponents of slavery, blaming them for disrupting a society that was operating smoothly and cast the Ku Klux Klan as saviors of a downtrodden white race.⁴¹

The book’s success led producer David O. Selznick to purchase the movie rights to *Gone*.⁴² Under pressure from the NAACP and others, Selznick reluctantly omitted some of the most racially offensive content in the book.⁴³ However, despite these changes, the essential message about black life, about slavery, and about the Civil War remained the same. Many blacks viewed the movie as part of a larger trend of mischaracterizing their history.⁴⁴

The majority of white media commentators would celebrate *Gone* as a cinematic masterpiece.⁴⁵ In Margaret Mitchell’s book,

39. See *The Golden Anniversary of Scarlett [sic] and Rhett*, WASH. POST, June 29, 1986, at 3.

40. MITCHELL, *supra* note 33, at 602 (discussing her Mammy character saying that, though free, she stays at Scarlett’s side and doesn’t go back to Tara because she wants to stay with Scarlett). Overwhelmingly, former slaves had no property, no education, no family or community with assets and no one to hire them for decent wages. While Mitchell says Mammy loved Scarlett as if she was “her baby,” she offers a character who would never want any babies of her own (or has forgotten the ones she did have) and who doesn’t long for a romantic partner or her own household. *Id.* at 600-01; see also *id.* at 779-89 (showing Sam offering to be Scarlett’s driver to protect her from mean “niggers” and the hollering of “trashy black wenches.”). Mitchell fairly points out the hierarchy between house slaves/servants and blacks who were not, and the distinctions of class in white society. *Id.* at 883. But, she also slyly plants the notion that slaves before and immediately after slavery felt they were not just better but also better off than poor whites (the latter of which had always had their freedom). *Id.* at 837-38 (black character references to “white trash”). The notion of the disdain for “white trash” runs throughout the book among blacks and white characters. See, e.g., *id.* at 454, 504, 540, 698, 718.

41. *Id.* at 564-65 (quoting character “Pitty” stating that Rhett Butler has been accused of killing a “negro”; that the Yankees are “upset because so many uppity darkies have been killed recently”; that “it doesn’t seem to bother the Yankees whether [white] folks are guilty or not, so long as they can hang somebody”; and referencing the Ku Klux Klan as rising to whites’ defense against Yankee abuses of them and against “uppity negroes”).

42. WATTS, *supra* 23, at 148.

43. *Id.* at 152-161 (battle over racism in the film); see also discussion *infra* p. 120.

44. BOGLE, *supra* note 32, at 10; WATTS, *supra* note 23, at 46-47 (discussing the film *Birth of a Nation*).

45. See Frank S. Nugent, *The Screen in Review, David Selznick’s “Gone With the Wind” Has Its Long Awaited Premier at Astor and Capitol, Recalling Civil War and Plantation Days of the South; Seen as Treating Book with Great Fidelity*, N.Y. TIMES, Dec. 30, 1939, at 31. Ironically, the communist papers did criticize *Gone* and were criticized for doing so by the *Washington Post*. *New Masses Pans ‘Wind’*, WASH. POST, Dec. 28, 1939, at 9 (rejecting a review in the communist magazine *New Masses* that called *Gone* “racist” and also a negative review by Ben Davis, Jr., “a colored member” of the editorial board of the *Communist Daily Worker*); *Coming with the Wind*, WASH. POST, Dec. 29, 1939, at 8 (attacking the negative review of *Gone* appearing in the *Daily Worker* as ignoring all of the progress made in race matters and satirically suggesting

Mammy is feisty and strides through the household after Scarlett.⁴⁶ McDaniel brought these features to life.⁴⁷ Perhaps sensing some negative reactions to Mammy's forwardness toward a white person, a *New York Times* movie reviewer suggested that McDaniel's Mammy must be "personally absolved" of the "unfittin" scene in which she scolds Scarlett.⁴⁸ He added "She played even that one right, however wrong it was."⁴⁹ Although they wondered whether *Gone* was "art," the British were impressed too.⁵⁰ One writer proclaimed, "McDaniel almost acts everybody else off the screen when she is allowed to appear in the foreground."⁵¹ The Academy too would praise *Gone*. It would receive fifteen nominations, winning ten, including Best Picture and Best Supporting Actress—the latter for the performance of Hattie McDaniel.⁵²

The 12th Academy Awards was held in the Cocoanut Grove of the Ambassador Hotel on February 29, 1940.⁵³ Dressed to the nines, McDaniel and her escort, Ferdinand Yober, entered the room to applause.⁵⁴ They then walked to a small round table at a far, back end

that *Worker* has revealed *Gone* as an attempt to reverse all progress including the Thirteenth and Fourteenth amendments).

46. E.g., MITCHELL, *supra* note 33, at 40-41 ("Mammy felt that she owned the O'Haras, body and soul, and their secrets were her secrets.").

47. Some have suggested that McDaniel's "Mammy" is somehow different from Mitchell's. BOGLE, *supra* note 32, at 88-89; WATTS, *supra* note 23, at 166. This writer does not see the differences suggested between the character in the book and that in the film. While she is but a child to Mammy, Scarlett speaks to her in a way that would never be acceptable if Mammy were white. In neither the book nor the film does Mammy ever cross the white woman who heads that household, Mrs. O'Hara. And, Mammy is enslaved in a Greek chorus of one that constantly comments upon and yet affirms white people's lives, no thought given to her own life or that of any other family. Even the most dedicated house slave had to have self-interest at heart. The observation does not diminish the difficulty of bringing a character from page to life. More compelling is the argument that McDaniel later transformed later maid roles by "talking back" to whites, but she was the only one who could get away with doing so. STEPHEN BOURNE, BUTTERFLY MCQUEEN REMEMBERED 52 (2007).

48. Nugent, *supra* note 45.

49. *Id.*

50. *British Hail Negro Player in G.W.T.W.*, L.A. TIMES, Apr. 19, 1940, at 17 (quoting the *London Times*); see also *Entertainments, Gone With the Wind, Film Version of the Novel*, THE TIMES (LONDON), Apr. 18, 1940, at 4.

51. *Id.*

52. For a list of *Gone*'s victories, see the Academy Website, THE ACAD. OF MOTION PICTURE ARTS & SCI., http://awardsdatabase.oscars.org/ampas_awards/DisplayMain.jsp;jsessionid=D884E0309714E6DFEBA083F5DCDC2196?curTime=1305316060708 (last visited Oct. 18, 2011).

53. Schallert, *supra* note 1, at A.

54. Lillian Johnson, *The Social Whirl*, CAL. EAGLE, Mar. 7, 1940, at 5A (reporting that her escort was Ferdinand Yober); Schallert, *supra* note 1, at A (noting crowd approval of stars and the actors' applause for McDaniel as she entered room).

of the large banquet room, separated from all of the white guests.⁵⁵ On the very night in 1940 that she would become the first Negro to win an Oscar, McDaniel and her escort would be segregated because of their race; they were not allowed to sit with the rest of the *Gone* cast and not welcomed among the rest of McDaniel's white Hollywood colleagues.⁵⁶

The Oscar that McDaniel won that night made her a star. But, as the Academy's seating arrangements for its Awards demonstrated, the Oscar did not lift the racial discrimination that lay like a soaked blanket on her shoulders or on the shoulders of Negroes across America. Weeks earlier, the Atlanta *Gone* premier had offered yet another reminder of that burden. Under pressure from white Southern leaders, Selznick agreed to omit the faces of all the Negro *Gone* actors from advertising throughout the South.⁵⁷ Moreover, under that same pressure, he agreed that none of the black actors in *Gone*—including McDaniel—would be invited to attend the racially-segregated Atlanta premier.⁵⁸

Ironically, after the Atlanta premier, the book's author, Margaret Mitchell, who had been in attendance, sent McDaniel a congratulatory telegram.⁵⁹ Reportedly, it read, "The Premier Audience Loved You and So Did I. The Mayor of Atlanta called for a hand for Our Hattie McDaniel and I wish you could have heard the cheers."⁶⁰ But of course, McDaniel could not have heard the cheers. Being a Negro, she was not allowed to sit in the theater, among her own entertainment colleagues, to watch her own movie. Nevertheless, as biographer Watts reports, afterward she sent a letter to Selznick thanking him for the opportunity "to play "Mammy" in [the] epochal drama of the Old South" and expressing the hope that her characterization was "the exact replica of what Ms. Mitchell intended her to be."⁶¹

Most white writers simply summarized McDaniel's success as the first "colored" or "Negro" to win, if they mentioned her at all.⁶² Ed

55. Photograph of Guests at 12th Academy of Motion Picture Arts & Sciences Awards Banquet (1939) in Margaret Herrick Library, Special Collections.

56. Andrea Lewis, *Celebrating Hattie McDaniel, First African-American to Win Oscar*, PROGRESSIVE MAG., Feb. 24, 2004, http://www.progressive.org/media_883mplewis.

57. WATTS, *supra* note 23, at 168.

58. *Id.*

59. *Cuff Notes*, CHARLESTON DAILY MAIL, Jan. 19, 1940, at 6.

60. *Id.*

61. WATTS, *supra* note 23, at 169.

62. E.g., Schallert, *supra* note 1, at A; *Gone With the Wind Sweeps Awards of Movie Academy*, WASH. POST, Mar. 1, 1940, at 1 (listing her as "Hattie McDaniel, Negro mammy, as the best

Sullivan wanted to read more into the Academy's actions.⁶³ He wrote in his *New York Daily News* column that, "when the Academicians, for the first time in history gave the second-highest award to a colored actress, buxom Hattie McDaniel, they underscored a necessity at this time of a completely tolerant attitude toward all races, creeds and colors."⁶⁴ He added that the motion picture industry had served notice that it was not narrow or bigoted and that by the power of their "suggestion," the world would gain.⁶⁵ But, Sullivan's observations of the industry's complete abandonment of prejudice were clearly aspirational. There is little evidence that McDaniel's Oscar or her high visibility increased opportunities for black actors in Hollywood.⁶⁶ Indeed, some of her contemporaries claimed that McDaniel's choices contributed to white resistance to affording Negro actors fair opportunities.⁶⁷ It would be twenty-five years before Hollywood would award another non-honorary Oscar to an African-American—Sidney Poitier.⁶⁸ It would be fifty-one years before another black woman would win Best Supporting Actress and sixty-one years before a black wo-

actress in a supporting role"). *But see 'Gone With Wind' Academy Winner*, N.Y. TIMES, Mar. 1, 1940, at 23 (describing McDaniel's win as the first time a member of her race has been honored).

63. *Tolerance*, BALT. AFRO-AMERICAN, Mar. 9, 1940, at 13 (quoting Sullivan and the *Daily News*).

64. *Id.* Black newspapers seemed to take Sullivan's comments in a positive light. *Id.*

65. *Id.*

66. *See* WATTS, *supra* 23, at 276 (explaining that opportunities are still limited in decades after McDaniel's win).

67. *No Hope For The Negro In Films, Says Writer, As Long As Hattie McDaniel 'Toms'*, CLEVELAND GAZETTE, Feb. 17, 1945, at 9.

68. Sidney Poitier won Best Actor in 1964 for the low budget *Lilies of the Field*, thus becoming the first black to win a Best Actor statuette and the second black man to be awarded any type of Oscar. *See* THE ACAD. OF MOTION PICTURE ARTS & SCI., <http://www.oscars.org/awards/academyawards/legacy/ceremony/36th.html> (last visited Oct. 5, 2011). In 1946, the Academy awarded James Baskette an honorary Oscar for his portrayal of Uncle Remus in the Disney movie *Song of the South*. THE ACAD. OF MOTION PICTURE ARTS & SCI., <http://www.oscars.org/awards/academyawards/legacy/ceremony/20th.html> (last visited on Oct. 5, 2011). McDaniel had a role in that film too and defended the production against criticism. WATTS, *supra* note 23, at 247-49. Early in his career, Poitier was praised for not speaking of race. Ruben Salazar, *Humans, Not Race Important, Films on Conflict 'Sheer Exploitation, Winner of Academy Award Believes*, Apr. 15, 1964; *see also* Hedda Hopper, *Entertainment, Curious Situation of Lilies of the Field, Producer Nelson Reports No Acknowledgement From Negroes*, L.A. TIMES, Sept. 21, 1964, at C17. Notably, Poitier's family immigrated from the Bahamas. *Sidney Poitier*, HOLLYWOOD'S GOLDEN AGE, http://www.hollywoodgoldenage.com/actors/sidney_poitier.html (last visited Nov. 15, 2011). One wonders the extent to which his lack of family ties to the American slavery experience in particular affected both the casting of him—or even, whether his black immigrant status fit a different Hollywood stereotype deemed suitable. As a successful and established actor, Poitier would criticize Hollywood quite forcefully. *See* Clifford Terry, *Sidney Poitier Blasts Hollywood Casting Bias*, CHI. TRIB., July 23, 1967, at F11 (discussing Poitier's blasting of the film industry for bias despite his own success).

man would win Best Actress.⁶⁹ Further, the stereotyping of blacks by Hollywood and the discrimination against black actors would continue.⁷⁰

As McDaniel's biographer Watts observes, "[McDaniel's] association with *Gone With the Wind* finally sealed her public image as a key agent in the perpetuation of Hollywood racism."⁷¹ After *Gone*, she became a "go to" girl for mammy and maid roles, in a segregated competition that largely involved other black female actresses.⁷²

While much of white America celebrated *Gone*, the black community was divided over the meaning of McDaniel's success. For example, Harry Weber of the *Afro American* said the movie displayed the wreckage that slavery wrought in the South and also expressed appreciation that Selznick altered the more offensive parts of the story.⁷³ Lillian Johnson wrote that McDaniel's role demonstrated that sometimes, one conquers by stooping and succeeds by yielding.⁷⁴ Dean Gordon Hancock of Virginia Union University argued that Negroes cannot select their roles and that the objection to Mammy roles in film was borne of an unjustified embarrassment.⁷⁵ On the other

69. In 1991, Whoopi Goldberg won a Best Supporting Actress Statue for *Ghost*. *The Oscar Winners*, N.Y. TIMES, Mar. 26, 1991, at 14. In 2002, Halle Berry won Best Actress for *Monster's Ball*. *See Beautiful Mind Wins, Best Actress Goes to Halle Berry*, N.Y. TIMES, Mar. 25, 2002, at 1. That same evening, Denzel Washington won Best Actor, and Sidney Poitier was honored with an Honorary Oscar. *Id.* There have been others. *See generally* EDWARD MAPP, *AFRICAN AMERICANS AND THE OSCAR, DECADES OF STRUGGLE AND ACHIEVEMENT* 5 (2008) (illustrating the presence of African Americans in Hollywood).

70. Vernon Scott, *Being Black in Hollywood*, BALT. AFRO-AMERICAN, Feb. 1, 1986, at 11; Hollie I. West, *For 60 Years, Blacks Were Anything But "Super"*, WASH. POST, Oct. 15, 1972 (discussing stereotyping faced by the actors including McDaniel and others); Ted Yates, *1942 Marked Many Changes in Entertainment World*, BALT. AFRO-AMERICAN, Jan. 2, 1942, at 10 (noting progress and Republic Pictures' decision to give as much publicity to blacks as to white stars); *Progress Noted in Radio-TV*, BALT. AFRO-AMERICAN, Dec. 30, 1950, at 9 (noting the prior stereotypes prohibiting black actors but that there are hopeful signs); *see also supra* note 68 (discussing Sidney Poitier's criticism of Hollywood). Actors union also played a major role in advancing the cause welcoming black actors to their ranks and trying to negotiate better terms with studios. *See discussion infra* p. 123.

71. WATTS, *supra* note 23, at 156-57 (noting that as celebrity grew, so did reputation as an apologist for the film industry).

72. Phillip K. Scheuer, *Cagney's Next Feature Has Western Locale*, L.A. TIMES, Jan. 24, 1940, at 13 (discussing column on various Hollywood incidents and noting that McDaniel, now riding the crest of a wave of popularity, was now being sought out by the Samuel Goldwyn Organization for a "similar portrayal" in *Little Foxes*).

73. Harry E. Weber, *"Gone With the Wind" Has Some Good Points*, BALT. AFRO-AMERICAN, Jan. 20, 1940, at 13.

74. Lillian Johnson, *A Woman Talks*, BALT. AFRO-AMERICAN, Mar. 9, 1940, at 4.

75. Dean Gordon B. Hancock, *Between the Lines, Mammy Comes Back*, PLAINDEALER, May 17, 1940, at 7. Hancock was a professor and founder of the Department of Social Science at Virginia Union University and a writer for the Associated Negro Press. CHI. DEFENDER, June 14, 1952, at 2 (showing photo of and caption regarding Hancock).

hand, the majority of black commentators were more critical.⁷⁶ McDaniel's friend and fellow actor Clarence Muse, who himself had been labeled an "Uncle Tom" for his roles, discouraged blacks from seeing *Gone*.⁷⁷ While praising McDaniel's performance, he called the proponents of the movie mere opportunists, who were anxious to satisfy whites in the hope of economic gain. He also accused them of "committing a great crime against the race."⁷⁸

Members of the Howard University community also strongly objected to *Gone*. Howard Law students picketed the film at theaters and expressed their reasons for displeasure in *The Hilltop*, the student newspaper.⁷⁹ In a speech at Northwestern University, Howard University English Professor Sterling Brown said the book celebrated the slave system and mischaracterized history.⁸⁰ Professor Carter G. Woodson called it "subtle propaganda" that "glorified slavery as a benevolent institution with which its victims were perfectly satisfied, and brands as cruel and inhumane the forces which destroyed that system."⁸¹ Howard Thurman offered similar views. Of the decision to adapt the book into a movie, he warned:

The book is a part of an almost endless stream of propaganda direct and indirect which has as its purpose the defining and categorizing of at least one minority in American life. The basic meaning of this propaganda ought to be clearly understood and analyzed without emotionalism, so that ways and means may be found to circumvent it. Before anything constructive may be projected, this must be done. Such is the obligation of every Negro.⁸²

Many of the black commentators who opposed *Gone* still tried to praise McDaniel's work. On June 3, 1940, the Howard Players, Howard University's student thespian organization, hosted McDaniel at an on-campus luncheon.⁸³ The NAACP's magazine, *The Crisis*, ran a piece attacking *Gone* in a March, 1940 issue, but featured McDaniel

76. WATTS, *supra* note 23, at 174 ("Overwhelmingly, the vast majority of African-Americans objected to *Gone With the Wind* as a whole.").

77. Clarence Muse, *What's Going on In Hollywood*, CHI. DEFENDER, Jan. 27, 1940, at 21.

78. *Id.* (alteration in original).

79. *Law Students Present Reasons for Picketing "Gone With The Wind"*, HILLTOP, Mar. 26, 1940, at 3. Among other concerns, the students stated that the book contained a "crafty condemnation of the destruction of the slave system." *Id.*

80. Hollis Woods, *Professor Attacks 'Gone With The Wind': G.W.T.W. Novel is Attacked By Howard Prof.*, CHI. DEFENDER, Mar. 2, 1940, at 9.

81. HILLTOP, Mar. 26, 1940, at 3.

82. *Id.*

83. HOWARD UNIV. BULLETIN, July 1, 1940, at 19.

on the cover of an April issue.⁸⁴ In a 1943 issue, *The Crisis* featured McDaniel among several other women in a series on “First Ladies of Colored America.”⁸⁵

While *Gone* gave McDaniel national attention, it did not swing Hollywood’s doors wide open for her. Her long-term contract with Selznick Pictures, common in the industry, stripped her of creative control of her own career.⁸⁶ Narrow-minded audiences and film-makers embraced her as their Mammy and held on tightly, pointing stubbornly only toward more domestic servant roles.⁸⁷ Negro patrons proved cool when she presented her *Gone* character “Mammy” in a road show.⁸⁸

Her career took an upward turn in 1947 when she took over the lead role in the radio program, *The Beulah Show*, a voice role previously played by a white male actor pretending to be a black woman.⁸⁹ With *The Beulah Show*, McDaniel became the first black woman with her own radio show.⁹⁰ Later, McDaniel would play the character Beulah on television.⁹¹ But critics again charged her with offering up a host of stereotypical portrayals.⁹² The United States Army ceased broadcasting *The Beulah Show* in Asia as a result of black troops complaining that the show perpetuated stereotypes of black men that undercut their ability to conduct their mission.⁹³

Some modern commentators have wanted to say that McDaniel was more than a great actress; they have wanted to clothe her in the accoutrements of a civil rights leader, both in the acting profession

84. CRISIS, Apr. 1940 (depicting McDaniel on the cover, in a fur coat).

85. *First Ladies of Colored America*, CRISIS, Sept. 1943, at 337.

86. JACKSON, *supra* note 16, at 65, 70; WATTS, *supra* note 23, at 183-84, 195.

87. *Id.*

88. JACKSON, *supra* note 16, at 65, 70 (noting small Negro audiences for these shows); WATTS, *supra* note 23, at 188-90. Watts argues that McDaniel was attempting to present a broader picture of Mammy than *Gone* had allowed. WATTS, *supra* note 23, at 186-89.

89. WATTS, *supra* note 23, at 253.

90. Rea, *supra* note 28.

91. WATTS, *supra* note 23, at 267. Ethel Waters was initially chosen but later withdrew. *Id.* at 266.

92. The show involved a black maid, cook, babysitter for a well to do white family. *See generally The Beulah Show* (ABC television 1950-1952) (depicting McDaniel as Beulah). The white wife wore nice dresses and pearls in the show. The white husband wore a suit and tie. *Id.* Their young son looked on. *Id.* Beulah’s boyfriend could never hold a job and after nine years had still not proposed. *Id.* True to stereotype, she was required to roll her eyes and grin widely. *Id.*

93. Milton A. Smith, *Offensive to GI’s, Banned: Army Drops ‘Beulah’ Show Taken Off Air After Fighters Complain*, BALT. AFRO-AMERICAN, Feb. 17 1951, at 1.

and beyond.⁹⁴ Certainly, she had to overcome both racism and sexism. It remained true throughout her life that, because she was a Negro, she could not live anywhere she wanted,⁹⁵ stay in any hotel she wished, be served in any restaurant or store, or sit or perform in any theater.⁹⁶ She could not assume that her nieces and nephews could attend any school they desired,⁹⁷ nor could she marry outside of her race.⁹⁸ In addition to racism, Hollywood sexism limited her to the roles that that women were allowed to play and specifically black women. She had to stand in the shadows while white women were offered the leading or favored parts in those limited roles.⁹⁹ The medical profession would give little attention to her health care needs as a woman.¹⁰⁰ Even after she became successful, her vast talents would have to share the stage with comments about her weight, race, and breast size.¹⁰¹ From salary, to movie roles, to accolades, to seating at the Academy Awards, black actors of either gender could not expect to be treated the same as whites.¹⁰²

94. See, e.g., Sean Michael O'Donnell, (mis)Understanding Mammy: The Hattie McDaniel Story, SHOW BUS. MAG. (Nov. 25, 2007), [http://showbusinessweekly.com/article-289-\(mis\)understanding-mammy-the-hattie-mcdaniel-story.html](http://showbusinessweekly.com/article-289-(mis)understanding-mammy-the-hattie-mcdaniel-story.html) (criticizing a play that does not characterize McDaniel as a civil rights icon).

95. When she and other blacks moved into their new neighborhood in the Sugar Hill ("West Adams") section of Los Angeles, a group of whites banded together to kick them out through enforcement of restrictive covenants banning the sales of the properties to blacks. WATTS, *supra* note 23, at 237-39, 259; see also *Coast Whites Move to Oust Movie Stars*, BALTIMORE AFRO-AMERICAN, Mar. 27, 1943, at 24. While it appears McDaniel's white neighbors gave up the fight, others did not. The California Supreme Court continued to uphold racially restrictive covenants as valid contracts. See, e.g., *Cumings v. Hokr*, 193 P.2d 742 (Cal. 1948). The U.S. Supreme Court finally outlawed courts' enforcement of restrictive covenants as valid contracts in *Shelley v. Kraemer*, 334 U.S. 1 (1948).

96. See, e.g., *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241 (1964) (defining businesses as public accommodations and finding Congress has the power to enforce Civil Rights laws against them).

97. See *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

98. For most of McDaniel's life, interracial marriage was a felony in the overwhelming majority of the states in the United States. California barred interracial marriage by law until 1948. See generally *Perez v. Sharp*, 32 P.2d 17 (Cal. 1948) (overturning California statute barring interracial marriage). Virginia and some other states kept such bans in force until 1967 when the U.S. Supreme Court finally declared them unconstitutional. *Loving v. Virginia*, 388 U.S. 1 (1967).

99. Lewis, *supra* note 56.

100. McDaniel developed breast cancer, an illness that disproportionately affects black women. WATTS, *supra* note 23, at 270; see also, e.g., Maya Jackson Randall, *Women's Health Research Improves but Not Enough*, WALL ST. J., Sept. 23, 2010, at 1 (discussing lagging research on women's health issues and higher incidents of breast cancer in black women).

101. Don Ryan, *God First, My Work Next and a Man Last! That's Hattie McDaniel Who's Free, Forty and Famous; A Personality Study*, L.A. TIMES, Feb. 11, 1940, at I3, I8 (calling her "200 odd pounds of buxom colored girl" and "the best 200 pound catch on Central Avenue.").

102. See discussion *supra* at p. 128. The Screen Actors Guild ("SAG") played an important role in improving the lot of black actors. WATTS, *supra* note 23, at 113-14 (discussing black

However, if one desires a more stringent test for a civil rights leader, then McDaniel might well fail. She only nibbled at the edges of the discrimination that she and others encountered daily. She distanced herself from the black community's efforts to build a base of independent black films.¹⁰³ While she remained socially active in the black community and hosted legendary parties,¹⁰⁴ she generally did not publicly participate in or lend her name to civil rights struggles.¹⁰⁵ A notable exception occurred when she was a defendant in a lawsuit attempting to remove her from the mansion she had purchased in a white neighborhood.¹⁰⁶ In that case, however, her own financial interest was directly affected. She was regularly involved in charity work and the War effort;¹⁰⁷ but so were many others. She steered clear of involvements that would negatively affect her career or her purse.¹⁰⁸ When appointed to head a "Negro subcommittee" to entertain troops during World War II, she pleaded to have the opportunity to appear before white troops as well since "all of the boys" needed entertainment.¹⁰⁹ But, while she asked not to be subjected to segregation her-

actors joining SAG); *id.* at 270-71 (explaining that SAG formed the Negro Employment Committee, whose members were subsequently accused of communism).

103. WATTS, *supra* note 23, at 141 (absence from independent black films); *id.* at 185 (turning down opportunities to promote film in black film houses seeking to perform in white houses first).

104. See, e.g., JACKSON, *supra* note 16, at 148; WATTS, *supra* note 23, at 258.

105. WATTS, *supra* note 23, at 139 (discussing McDaniel's consideration of film as a career not about activism); *id.* at 141 (discussing McDaniel being conspicuously absent from Black films); *id.* at 156-57 (explaining that participating in *Gone* sealed image as participant in racism); *id.* at 160 (indicating that McDaniel helped to perpetuate racism by refusing to directly challenge the bigotry she faced); *id.* at 163 (discussing contemporary and *Gone* co-star Butterfly McQueen labeling McDaniel a sellout for not challenging racism); *but compare id.* at 281 (claiming that in private life McDaniel was a "militant and outspoken" proponent of civil rights but offering no evidence of public participation).

106. See *supra* text accompanying note 95; WATTS, *supra* note 23, at 144. While she has been at times attributed with changing offensive language in scripts, there is little evidence to back up the claim. *Id.* at 160-61. According to Watts, near the end of her life, McDaniel insisted that studios soften the dialect on *The Beulah Show*, but again, this objection related directly to how she would be perceived; other aspects of the show remained objectionable. *Id.* at 254, 257. McDaniel did apparently try to open opportunities for those close to her once she became established. For example, she arranged to have her secretary, Ruby Goodwin, hired as a writer of *The Beulah Show*. *Id.* at 254.

107. *Id.* at 126-27, 209-10.

108. Watts struggles admirably to offer evidence to rebut the interpretation that McDaniel and others were willing to be a vehicle for racism so long as it advanced their careers. See WATTS, *supra* note 23, at 223-24.

109. Letter from Hattie McDaniel to Mr. Arch Reeve (Apr. 22, 1942) (on file with author).

self, she never publicly criticized the segregated military and grossly unequal treatment of black troops at that time.¹¹⁰

Nor was McDaniel an obvious leader among those who sought more rights for actors generally or even for black actors specifically. Studio control would be the common denominator that would bind actors of all backgrounds into unions.¹¹¹ McDaniel joined the Screen Actors Guild (“SAG”) in 1934, a year after its formation, at the urging of Clarence Muse, a founding member.¹¹² But, unlike Muse, she took no public role in SAG’s battles against studios or against segregationist policies outside of Hollywood.¹¹³ There is no evidence that she joined Actors Equity, the union which brought the National Theater in Washington D.C. to its knees through a year and a half boycott, protesting its ban on black patrons.¹¹⁴ She did not join the Negro Actors Guild (“NAG”) until 1947, very late in her career.¹¹⁵ NAG assisted black actors and their families financially when they struggled financially, and paid for their funerals when they could not afford it.¹¹⁶ Indeed, it seems that McDaniel steered clear of what could be deemed on any level to be “political” involvement that could be detrimental to her career.

Perhaps the best indicator of her approach was McDaniel’s response when columnist Hedda Hopper asked her to distribute Richard Nixon placards.¹¹⁷ McDaniel returned them saying that she did not endorse candidates. She continued, “I have always felt that people expect for me to entertain them but not to try to influence them as

110. Washington would finally agree to begin to desegregate all military units in 1951. *U.S. Army to Stop Segregation, End All Negro Regiment*, *BALT. AFRO-AMERICAN*, July 19, 1951, at 1; John W. Finney, *Segregated Units Ended By The Services*, *WASH. POST*, Oct. 31, 1954, at M6.

111. See Ken Orsatti, *How SAG Was Formed: The Actor’s Road to Empowerment*, *SCREEN ACTORS GUILD*, <http://www.sag.org/node/22> (last visited on Oct. 27, 2011).

112. WATTS, *supra* note 23, 113-14.

113. Muse was a charter and active member of SAG.

114. *Legitimate Theater Returns to Capital*, *N.Y. TIMES*, Mar. 7, 1950, at 23. The National Theater had closed rather than admit Negroes. *Id.*

115. NAG’s newsletter would regularly list renewing and new members, but McDaniel does not appear on earlier lists. See, e.g., *NAG NEWSLETTER* (Negro Actors Guild), Feb. 1946, at 8 (listing members, but McDaniel not on list); Dewberry, *supra* note 34, at 150-51 (listing NAG members printed in the NAG Imperial Theater Souvenir Book of 1951, which showed Hattie McDaniel).

116. *Over 125 Performers Aided During the Year*, *BALT. AFRO-AMERICAN*, Dec. 30, 1950, at 8. But, the Guild would provide her with financial assistance when she was in need.

117. Letter from Hattie McDaniel, to Hedda Hopper, Columnist, *L.A. Times* (Sept. 13, 1950) (on file with Academy of Motion Picture Arts and Sciences, Hedda Hopper Papers, Special Collections, Margaret Herrick Library) (indicating McDaniel’s refusal to endorse Nixon’s congressional candidacy).

a political authority.”¹¹⁸ Noting that she adopted that approach in her current role as Beulah, she said, Beulah is “everybody’s friend.”¹¹⁹ Whether she was following the advice of her agent or simply going her own way,¹²⁰ staying away from politics included for McDaniel, staying away from civil rights issues.

But even as she professed universal friendship, McDaniel put the gloves on when she perceived a threat to her career. To everyone’s surprise, in 1944, she used the term “nigger” when making remarks about Lena Horne’s success in a principal address at the First Annual Awards of the Committee for Unity in Motion Pictures.¹²¹ McDaniel immediately corrected her statement with the term “Negro.”¹²² But columnist and *Los Angeles Sentinel* managing editor, J. Robert Smith called her out in print,¹²³ resulting in a public battle in the newspapers.¹²⁴

She challenged Walter White, executive director of the NAACP who was on the warpath against Hollywood’s portrayal of Negroes.¹²⁵ Perhaps unhappy with White’s staunch support of upstart Lena Horne, she claimed that he had addressed her in a tone that a Southern colonel would use with a slave and that he was prejudiced against darker-skinned blacks.¹²⁶ (Walter White, though proudly claiming his

118. *Id.*

119. *Id.*

120. McDaniel signed with white agent William Meiklejohn; he was one of the few white agents who would agree to represent black talent. WATTS, *supra* note 23, at 129.

121. J. Robert Smith, *Miss McDaniel Accused of Using Offensive Epithet*, BALT. AFRO-AMERICAN, Apr. 29, 1944, at 6.

122. *Id.*

123. *Id.*

124. Smith claimed that he confronted her about the word afterward and allegedly received only a smile and, “I have no statement to make.” *Id.* McDaniel responded through the *California Eagle*. In a long defensive letter, she attacked Smith for alleged mistakes in his columns and stated that she had made an “error of speech.” J. Robert Smith, *Hattie McDaniel Speaks Mind on ‘Slip of Lip’*, CAL. EAGLE, May 4, 1944, at 6 [hereinafter *McDaniel Speaks Mind*]. She further claimed that she had apologized to those who deserved an apology. *If Slipped So What Says Hattie*, CAL. EAGLE, May 4, 1944, at 1. The exact statement in which the slip occurred was apparently disputed. The *Eagle* reprinted a copy of McDaniel’s written speech (likely provided by McDaniel). It says, “Lena Horne glorified Negro womanhood.” *McDaniel Speaks Mind*, *supra* at 6. However, columnist Smith reported her as referring to Lena Horne as “a representative of the new type of “nigger womanhood” and states that after, marked silence by the 3000 people present, McDaniel corrected herself and added, “I said Negro womanhood.” Smith, *supra* note 121. For further discussion of the incident and McDaniel’s angry response see WATTS, *supra* note 23, at 231-32. Like Smith, based on her review of the period, this writer doubts the notorious word would have been accidentally used by a black person in her time – unless the speaker was simply regularly accustomed to saying it.

125. See WATTS, *supra* note 23, at 241-44.

126. *Id.* at 242. Watts pointed out her lack of evidence given White’s determined fight on behalf of all Negroes. *Id.* On the other hand, if gender is considered, one does find evidence

black ancestry, was himself blond with blue eyes.)¹²⁷ She wrote the War Department and other branches of the U.S. government, suggesting that White's attacks on Hollywood were harming national interests, thus indirectly offering up the NAACP's larger civil rights efforts in exchange for her economic security.¹²⁸ Fearing their roles would dry up, she and a group of black actors insisted to SAG that Walter White's meetings with studios on black stereotyping were usurping the union's role.¹²⁹ SAG responded that the conflict was not a union matter.¹³⁰

When under attack from black critics, McDaniel also turned to questionable allies to defend her cause. She asked state senator Jack B. Tenney, a leading figure in "communist" investigations, for help in advancing her film career, noting that she was without steady work despite her Oscar success.¹³¹ She even posed for a photograph with him.¹³² She sought the aid of Hollywood columnist Hedda Hopper, no friend of Negro equality.¹³³ After talking with McDaniel, Hopper wrote that she had "discovered" that McDaniel "had not been victimized by the whites."¹³⁴ Instead, said Hopper, McDaniel "had been attacked by certain members of her own race" simply because she had tried to earn an honest dollar by playing roles those critics thought degrading to Negroes.¹³⁵ McDaniel carried on a long correspondence with Hopper, and stood aside as Hopper blamed blacks both for McDaniel's problems and their own problems.¹³⁶ Moreover, she never took Hopper to task in those letters or otherwise for Hopper's treatment of blacks or civil rights in her columns.¹³⁷

that lighter-skinned *women*, like Lena Horne, were considered to be more beautiful and were emerging as Hollywood favorites. Whereas in McDaniel's earlier days, while Hollywood did not cast black women as beautiful, it preferred darker-skinned black women in roles. See discussion *supra* p. 113; see also WATTS, *supra* note 23, at 82-83, 133. Just as significant for women may have been the issue of weight. As Watts notes, Horne was light skinned *and* thin. *Id.* at 218. McDaniel was dark-skinned and close to or more than 200 pounds. *Id.* at 249.

127. WALTER WHITE, *A MAN CALLED WHITE* 3 (1995).

128. WATTS, *supra* note 23, at 235.

129. *Id.* at 227.

130. *Id.*

131. *Id.* at 249.

132. *Id.* at 252.

133. Hopper regularly justified film roles that demeaned blacks and attacked those who criticized them. See generally Jennifer Frost, *Hedda Hopper, Hollywood Gossip and the Politics of Racial Representation in Film, 1946-48*, *J. OF AFRICAN-AM. HISTORY*, Winter 2008, at 36-59.

134. Hedda Hopper, *Screen and Stage: Own People Slow Hattie McDaniel Up*, *L.A. TIMES*, Dec. 14, 1947, at H3.

135. *Id.*

136. See *id.*

137. *Id.*

The idea expressed by Howard Thurman—that blacks had an obligation to reject participation in events that demeaned other blacks no matter what the economic gain¹³⁸—caused McDaniel and other black actors of that time great difficulty. Hollywood offered but one sure path to achieving wealth and fame for a black actor. McDaniel argued that if she and other actors rose through taking such roles, the race would too.¹³⁹ She publicly characterized black criticisms of her work in terms of “class,” as if her critics were simply embarrassed by “mammies” and maids.¹⁴⁰ Under this theory, she was the proud defender of the legacy of black mothers, daughters, and sisters.¹⁴¹ White commentators trumpeted one response she gave to critics—that she would rather play a maid for \$700 a week than be one for \$7 a week.¹⁴²

Near the end of her life, Hattie McDaniel sold her Sugar Hill mansion and moved into a smaller home on Country Club Drive.¹⁴³ She explained that with growing health problems, she needed a home “all on one floor.”¹⁴⁴ Thereafter her health continued to fail.¹⁴⁵ In August 1951, she suffered a stroke and thereafter was belatedly diagnosed with advanced heart trouble and diabetes.¹⁴⁶ Thereafter, her breast cancer was discovered in its advanced stages.¹⁴⁷ She sought to borrow money from friends and finance companies.¹⁴⁸ In December 1951, she executed her last will and testament.¹⁴⁹ Within months of that, she was forced to move into the Motion Picture Country House, a nursing home/hospital complex supported by the movie industry and offering both free acute and long term care to those who could not afford it.¹⁵⁰ According to biographer Watts, she was the first black to

138. See discussion *supra* p. 119.

139. WATTS, *supra* note 23, at 242.

140. *Id.* at 176-77 (describing roles as opportunity to celebrate working class women and to glorify “Negro womanhood”).

141. *Id.*

142. *Id.* at 139 (citing a variant of this quote in BOGLE, *supra* note 32, at 82).

143. Harry Levette, *Hollywood Shy About Jo's Salary*, BALT. AFRO-AMERICAN, Apr. 21, 1951, at 8 (reporting on McDaniel's move).

144. WATTS, *supra* note 23, at 265.

145. *Id.* at 263-64, 268-72.

146. *Id.* at 268.

147. *Id.* at 270.

148. JACKSON, *supra* note 16, at 149; WATTS, *supra* note 23, at 271.

149. Last Will and Testament of Hattie McDaniel, December 16, 1951 [hereinafter McDaniel Will] in *In the Matter of the Estate of McDaniel*, Probate Record, on file at the Los Angeles County Records Center, Los Angeles, CA [hereinafter McDaniel Probate Records].

150. Joseph N. Bell, *Down Memory Lane at the Movie Country House*, L.A. TIMES, Feb. 26, 1967, at A29.

be admitted.¹⁵¹ Ten months later, on October 26, 1952, McDaniel died there.¹⁵²

Even her last wish was denied by racism. In her will, she asked that she be buried in the Hollywood Cemetery.¹⁵³ At the time, its governing association did not allow blacks to be buried there, and McDaniel was no exception.¹⁵⁴ She was buried in her second choice, Rosedale Cemetery.¹⁵⁵

Despite the tensions, in the end, black Hollywood and the black community showed up for McDaniel's funeral.¹⁵⁶ Few of her white Hollywood colleagues actually attended, instead sending beautiful flowers and nice cards as their proxies.¹⁵⁷ Two notable exceptions were Edward Arnold, President of SAG, who was invited to speak and James Cagney, who apparently came on his own.¹⁵⁸

McDaniel appeared in more than one hundred films.¹⁵⁹ She would achieve fame and income that allowed her to purchase the accoutrements of wealth: fur coats, a Packard,¹⁶⁰ and a mansion in a white neighborhood.¹⁶¹ But, she would fall to the depths of loneliness and despair that would lead her to attempt suicide.¹⁶² She would suffer an early widowhood and three failed marriages.¹⁶³

151. WATTS, *supra* note 23, at 271.

152. *Hattie McDaniel, Beulah of Radio*, N.Y. TIMES, Oct. 27, 1952, at 27.

153. McDaniel Will, *supra* note 149.

154. *Id.*; see also WATTS, *supra* note 23, at 274-75.

155. WATTS, *supra* note 23, at 275. Watts states that just by requesting to be buried in the Hollywood Cemetery, McDaniel had made a point. *Id.* at 274. True enough, yet, it is not clear at all that she intended to make a point. She may simply have desired to finally be accepted among her Hollywood peers, if not in life, then in death. In 1999, new owners at Hollywood Cemetery would atone for previous actions and offer her a final resting place. *Oscar Winner Hattie McDaniel Memorialized at Hollywood Cemetery Which had Refused to Bury Her*, JET MAGAZINE, NOV. 15, 1999. When the family declined the opportunity to move her body, she was honored with a pink granite memorial instead. *Id.*

156. WATTS, *supra* note 23, at 273-75.

157. *Id.* at 272 (flowers from Gable). *Thousands Crowd Church at Hattie McDaniel Rites*, L.A. TIMES, Nov. 2, 1952, at A5 (noting flowers from "all branches of the motion picture industry and Clark Gable's "special tribute of flowers")

158. See *This is Hollywood*, CHI. DEFENDER, Nov. 15, 1952, at 23 (noting Cagney's presence); *Thousands Attend Last Rites for Hattie McDaniel*, JET MAGAZINE, Nov. 13, 1952, at 59. White Councilman Kenneth Hahn was also present. *Id.*

159. Estimates as to the number of films in which McDaniel appeared have varied widely. Watts documents approximately 90 films but also notes that McDaniel appeared in hundreds of others as an extra. WATTS, *supra* note 23, at 283-86. Jackson states that the actual figure is close to 300. JACKSON, *supra* note 16, at 171-74.

160. See BOGLE *supra* note 32 (displaying a photograph of McDaniel with her Packard).

161. WATTS, *supra* note 23, at 210-12.

162. JACKSON, *supra* note 16, at 146-47.

163. WATTS, *supra* note 23, at 45, 55, 200-04, 259-65.

One cannot seriously doubt that class prejudice has led some to criticize her roles. This writer thinks that apart from McDaniel's acting talent, her self-promotion skills have also been vastly underappreciated. And, it is likely that some of those who criticize her today might not measure up against the stiff moral yardstick they apply to her life when faced with choices that involve economic risk. But, the evidence is compelling that the criticisms against her were not all rooted in class bias; her critics were not requiring that she commit to a life of poverty in the name of "the cause." Hattie McDaniel had every right to make a dollar on her own terms in a racist society. But, those who saw her as consistently facilitating racism for the sake of her own purse, understandably refrained from a full embrace when she returned back home to show them her new fur coat and Packard. *They* had loved ones and purses that were affected by her choices too.

Despite her success, to many in white America, their beloved "Hattie," was beloved because she did not rock the Hollywood racial boat. In their minds, she remained not primarily "an actress," but rather their black, female, house servant. On the occasion of her death, an article in the *Los Angeles Times* summarized her life thusly: "To millions of film, radio and television fans, Hattie McDaniel was the personification of all that is good, wise and lovable in the Negro woman."¹⁶⁴ It should surprise no one that her legacy was controversial back then or that it remains controversial today.

II. THE WILL AND THE PROBATE RECORDS

Upon the death of an individual, living persons must take up the mantle of escorting the decedent's property to its new place. Those who write wills, as McDaniel did about a year before she died,¹⁶⁵ normally designate in the will an "executor" to perform this task. McDaniel named two: John Charles Gross and the California Trust Company.¹⁶⁶ She chose a well-known Hollywood law firm, Zagon, Aaron & Sandler, to assist the executors in closing out her estate.¹⁶⁷

164. *Hattie McDaniel Negro Star Dies: Only Actress of Her Race to Win Academy Award Passes at Motion Picture Home; Ill a Year*, L.A. TIMES, Oct. 27, 1952, at A1.

165. McDaniel Will, *supra* note 149.

166. *Id.* at 11 ¶ 12. The California Trust Company had long been a wholly owned subsidiary of the California Bank organized for this purpose. See *Bank's Most Important Subsidiary: Backed By An Ideal Its Founders Dreams Have Been Justified*, L.A. TIMES, Sept. 24, 1923, at I 10 (noting that its work includes acting as executor and managing trusts). For more on executor John Charles Gross and the Zagon Firm see *infra*, note 449 and 452.

167. McDaniel Will, *supra* note 149, at 12 ¶ 13.

Barring a will contest or other controversy, the process of “probating a will” is relatively straightforward. It begins with one being appointed as an executor to represent the estate. The executor then makes sure that the will is filed; takes control of the decedent’s property; notifies beneficiaries, potential beneficiaries, and creditors; pays the decedent’s debts and taxes; and then distributes the remaining property to beneficiaries or heirs. McDaniel’s estate was complicated by three factors. First, she had intellectual property interests that had to be negotiated and settled.¹⁶⁸ Second, she apparently owed both federal and state back taxes.¹⁶⁹ Finally, as would later become obvious, she was insolvent.¹⁷⁰

Despite the fact that McDaniel had named two executors, John Gross was appointed the sole executor of the McDaniel estate on December 1, 1952.¹⁷¹ The reason the California Trust Company backed out is clear from Gross’ filing which estimated the McDaniel estate at a mere \$10,000.¹⁷²

A. The Will

McDaniel’s will is thirteen pages long and indicates that she gave her legacy a great deal of thought.¹⁷³ She asked that her executor, after taking control of her assets, allow her trusted secretary, Ruby Goodwin, access to her papers for the purpose of finishing a book the two were planning about her life pursuant to a written agreement.¹⁷⁴ The executor would allow Goodwin the access, but he and the lawyers did not treat the papers as an asset or account for them in their filings.¹⁷⁵ The book was never published.

168. The executor would end up having to review the contracts of her agent, MCA Artists, who claimed a 10% commission on her royalties, negotiate a second agreement with MCA to represent it in putting her Beulah interests on the market, and then approve contracts regarding the sale of her Beulah Interests. See McDaniel Probate Records, *supra* note 149 at 5-6 (Second Account Current and Report of Executors, Petition for Allowance of Commissions and Fees on Account of Extraordinary Services of Executor and His Attorneys, and for Reduction of Executor’s Bond, Oct. 30, 1954, 2-3 (“Second Accounting”).

169. See discussion *infra* Parts II. A-C.

170. See *id.*

171. WATTS, *supra* note 23, at 325 n.26.

172. *Id.*

173. McDaniel Will, *supra* note 149.

174. *Id.*

175. Goodwin did, however, spur the establishment of a scholarship fund in McDaniel’s name. *Hattie McDaniel Memorial Scholarship Available*, CHI. DEFENDER, Feb. 26, 1955, at 15. And ironically, she published her own book, *It’s Good to Be Black*, which whites embraced as a positive turn on the experience of being black. *San Dimas Clubwomen to Hear ‘Best Book’*

Her estate plan set up a testamentary trust¹⁷⁶ for her brother Sam, her closest heir, and his wife Lulu hoping to give them \$75 a week for the rest of their lives. But after the creditors, the executor and the lawyers were paid, there was nothing to put into the trust.¹⁷⁷

In the fourth paragraph of her will, she set out sixteen groups of specific bequests to friends and family.¹⁷⁸ In the last of these, she stated: “*TO HOWARD UNIVERSITY of Washington, D.C., my ‘Oscar,’ which was awarded to me by the Academy of Motion Picture Arts and Sciences, for my acting in ‘GONE WITH THE WIND.’*”¹⁷⁹ Sixty years after her death, no one knows where the famous Oscar is.¹⁸⁰

B. Notices and the Creditors

The executor gave the required public notice to the sixteen beneficiaries named in her will, including Howard University. He immediately began to take control of McDaniel’s assets.¹⁸¹ Of all the beneficiaries, only Sam and Lulu McDaniel by their attorney Hugh Culler, formally appeared.¹⁸² The failure of the others to appear was not unusual or negligent. The probate of an uncontested will is not an adversary proceeding. Her debts, by law, had to be paid, and appearing would probably have required Howard University to hire local counsel.¹⁸³

Author, L.A. TIMES, Feb. 19, 1956, at F11 (noting book wins best nonfiction book by a California writer and describing it as a “bright panorama” of her life).

176. A testamentary trust is a trust established by the terms of a will.

177. McDaniel Will, *supra* note 149, at 8 ¶ 6(a).

178. *Id.* at 2-7 ¶ 4(a)-(p).

179. *Id.* at 7 ¶ 4(p) (emphasis added).

180. See discussion *supra* pp. 108-09.

181. McDaniel Probate Records, *supra* note 149 (First Account, Petition for Authority to Pay Debts and for Allowance on Account of Executor’s Commissions and Attorneys’ for Ordinary and Extraordinary Services, Sept. 21, 1953, at 4 (“First Accounting”).

182. Parties who filed an “appearance” with the court were entitled to “special notice,” e.g., being served with all of the papers generated by the proceeding. CAL. PROB. CODE § 1202 (West 1931). Those who did not appear did not receive such service. *Id.*

183. Howard University also had its hands full on the East Coast. Members of Congress, supported by the American Legion and some states had accused several Howard faculty members of being communists and were threatening to cut off its federal funding—for Howard, these investigations ranged over a decade. See *Federal Agents Again Investigating Howard University*, BALT. AFRO-AMERICAN, Sept. 7, 1935, at 4; *Commies on H.U. Campus Says, FBI Agent: Labels Student Club, Professor Red Members*, BALT. AFRO-AMERICAN, July 14, 1951, at 3; *Wants End to Teacher Inquiries: Congressmen Hits ‘Witch Hunters’ at HU Meeting*, BALT. AFRO-AMERICAN, Mar. 21, 1953, at 19. In addition, Howard’s then general counsel George E.C. Hayes was working with Howard law professor James Nabrit, Jr. (who would become the President of Howard during the tumultuous ‘60s) and Thurgood Marshall (a Howard law alumnus and later U.S. Supreme Court Justice) on the seminal companion cases of *Bolling v. Sharp*, 347 U.S. 497 (1954) and *Brown v. Board of Education*, 347 U.S. 483 (1954). There was little time to be concerned about Hattie McDaniel’s Oscar.

McDaniel's creditors, however, did not miss the party. The IRS claimed tax liability back to 1949, seeking \$11,677.15 in taxes and penalties.¹⁸⁴ It would inform the executor that it had attached liens to all of her property on June 13, 1952; June 14, 1952; August 8, 1952; and November 6, 1952.¹⁸⁵ The State of California would claim that she owed \$2,100 in back taxes.¹⁸⁶ The Motion Picture Relief Fund, which had subsidized her care at the Country House, sought \$904.05 in delinquent monthly payments.¹⁸⁷ There was a doctor's bill for \$10.¹⁸⁸ She owed a finance company approximately \$300 for items purchased for her Country Club Home.¹⁸⁹ The funeral home had to be paid for, and there is no evidence that she had any life insurance to pay it.¹⁹⁰

When she moved into her Country Club Drive home, McDaniel told everyone that the move was because her health required a single-level house.¹⁹¹ One would have expected the new house to be in her estate. It wasn't. The true owner showed up to say that McDaniel was three months behind in rent payments when she died.¹⁹²

C. The Assets

Hattie McDaniel's assets at death were modest. Her file reflects no real estate, no Packard, and no cash.¹⁹³ The most valuable tangible

184. McDaniel Probate Records, *supra* note 149 (December 1952 statement for claim of taxes due to the United States in the amount of \$8,712.86).

185. *Id.*

186. *Id.* (Allowance and Approval by Executor of Amended Claim of California Franchise Tax Board (\$2108.81), June 6, 1955).

187. *Id.* (Creditors' Claim of the Motion Picture Relief Fund, Inc., Dec. 3, 1952).

188. *Id.* (Creditors' Claim, E.W. Stratten, Jr. MD, Nov. 3, 1952).

189. *Id.* (Letter from City Financial Plan to Zagon, Aaron, & Sandler law firm (Feb. 4, 1953)).

190. The funeral home was eventually paid \$ 1,150.87. *Id.* (Receipt of Payment by Angelus Funeral Home and Withdrawal of Its Request for Special Notice, Oct. 24, 1953). Life insurance passes outside of probate, but in McDaniel's time, it was normally purchased at least in part to pay for one's funeral. Even though it is not a part of the probate estate, the executor is usually also required to report it as an asset for tax purposes.

191. *See* Bell, *supra* note 150.

192. McDaniel Probate Records, *supra* note 149 (Creditor's Claim, Lillie Hart, Nov. 6, 1952). The home was put up for sale less than a month after her death, but the seller was not the executor. *Hattie McDaniel's Mansion for Sale*, BALT. AFRO-AMERICAN, Dec. 6, 1952 (describing an 8 room ranch style house with two baths, a pool, barbecue pit and a guest house). Friends told her biographer Jackson that she directed that, after she died, the house be sold. JACKSON, *supra* note 16, at 151. But any such property would be reflected in the file and the sale recorded in the executor's accountings.

193. An executor who handles an estate usually creates an inventory of all items of property within it. In 1952, California's statutes required that an appraiser appointed by the county appraise the items. CAL. PROB. CODE §§ 600, 605 (West 1931). As new property was found, a supplemental inventory or inventory and appraisal would have been filed. Today, California allows the executor to appraise in many instances. CAL. PROB. CODE § 8900 (West 2011). While

property in her estate was her right to royalties from *The Beulah Show*. The radio rights were appraised at \$2,500¹⁹⁴ and television rights at another \$1,200.¹⁹⁵ During the probate process, the estate would receive an additional \$7,338.38. More than \$7,000 of it was income in royalties from *The Beulah Show*.¹⁹⁶

One item among her assets is of particular interest. In all filings, the executor would reference it simply as item number “35.” In column one of a document appearing to be from the first inventory, he described it as a “metal statute [sic] (commonly known as ‘Oscar’) awarded by the Academy of Motion Picture Arts and Sciences.”¹⁹⁷ Column two indicated that the item was “[b]equeathed to Howard University.”¹⁹⁸ In column three was the handwritten value assessed by the state appraiser: “no value.”¹⁹⁹

D. Oscar On Sale

With the estate’s debts exceeding its liquid assets and the IRS at the door, the executor did the only thing he could do. He began selling off her assets, starting with unbequeathed depreciating items

the record reflects that an inventory and accounting was filed on July 13, 1953, the first inventory does not appear as a complete document in the file. See First Accounting, *supra* note 181, at 2. Various pages with the appraiser’s notations or typed appraisal amounts are scattered throughout the file. See McDaniel Probate Records, *supra* note 149 (listing items 5-35 of the undated Inventory and Statement of Assets). Two supplemental inventories do appear in the file. See *id.* (Supplemental Inventory and Appraisal of Assets (Television Beulah Rights \$1200), March 25, 1954); *id.* (Second Supplemental Inventory and Appraisal (Additional Personal Items \$300), Oct. 18, 1954). The file also contains other documents indicating her property such as the three accountings, the returns of sale and petitions for approval of sales, and the list of what the auctioneer sold when her depreciating residual bequests went on sale at public auction. For the public auction list, see *id.* (Letter from Marvin H. Newman to Executor John Gross, (Feb. 20, 1953)).

194. Second Accounting, *supra* note 168, at 2-3.

195. *Id.*

196. Between Oct. 20, 1952 and July 23, 1953, the estate received \$7095.56 in royalties. First Accounting, *supra* note 181, Sched. A. Presumably she would have drawn about the same amount in a nine month period had she been living, a little under \$800 per month.

197. McDaniel Probate Records, *supra* note 149 (undated Inventory and Statement of Assets).

198. *Id.*

199. *Id.* As to the appraisal, admittedly, “Oscar” was not then, the man he is today. In 1950, a *Los Angeles Times* writer described the Academy Awards as “a Southern California event and attraction.” Edwin Schallert, *Unique Oscar Event Seems Here to Stay*, L.A. TIMES, Feb. 8, 1950, at A4. Eastern film houses would not commit to supporting the awards financially. See *Film Academy Awards May Get TV Sponsor*, L.A. TIMES, Feb. 5, 1953 at A1 (discussing negotiations and hope that television would resolve the Academy’s financial problems). But, a year earlier, showman Sid Grauman’s Honorary Oscar (of Grauman’s Chinese theater fame) was purchased at public auction for between \$425 and \$450 dollars. The winning bidder was the Academy itself. Alice Mosby, *Sid Grauman “Museum” in Auction Sale*, CEDAR RAPIDS GAZETTE, Dec. 21, 1950, at 16; *Highlights and Sidelights*, INDEPENDENT, Feb. 20, 1951, at 26.

first.²⁰⁰ On February 9th through February 12th of 1953, hundreds of McDaniel's items went up for sale at a public auction.²⁰¹ Through another auction and a series of private sales the executor would get rid of the remainder of the residue.²⁰² He would employ her agent, William Mieklejohn, to negotiate the sale of her radio and television rights from *The Beulah Show*.²⁰³ Initially appraised collectively at \$3,700, these TV and radio rights would fetch only \$2,500 on April 20, 1954, resulting in a loss of \$1,200.²⁰⁴

On November 3, 1954, the executor asked for an order to sell the remainder of the property which consisted of all specific bequests.²⁰⁵ The list attached to his petition included item number "35," the Oscar "bequeathed to Howard University" and again listed at "no value."²⁰⁶ On December 1, 1954, the court not only authorized, but "instructed" the executor to sell these items.²⁰⁷ At this point the executor was required to put the Oscar up for sale.²⁰⁸

Two days later, on December 3, 1954, the executor sold numerous personal items to a Lucille Hamilton of South Central Avenue in Los Angeles through a private sale.²⁰⁹ Exhibit A of his return indicates her purchase of items 6-14 and 16-34 (appraised at \$124.50) described generally as miscellaneous household and personal items including four ladies dresses that were appraised at "no value."²¹⁰ Exhibit B is missing but the return states that she also purchased certain miscella-

200. Unbequeathed assets are what are left after the testator gives out specific gifts. Such assets usually pass all to one or more persons as a group. They are also called the "residue" or "residuary assets." The residue is normally sold first on the theory that the testator gave specific thought to the other gifts. But, the rule is often criticized because the residue is also reserved for the person who is closest to the testator. Such was the case here – the items that would have formed the basis for Sam McDaniel's trust went first.

201. McDaniel Probate Records, *supra* note 149 (Letter from Marvin H. Newman to Ex'r John Gross (Feb. 20, 1953)); *see also* First Accounting, *supra* note 181, at Exhibit B (referencing other auctions).

202. McDaniel Probate Records, *supra* note 149 (Notice of Hearing Return and Petition for Order Approving Sale of Depreciating Personal Property, Apr. 28, 1954).

203. Second Accounting, *supra* note 168, at 5; *see also* WATTS, *supra* note 23, at 129.

204. Second Accounting, *supra* note 168, at 2-3.

205. McDaniel Probate Records, *supra* note 149 (undated Petition of Executor for Instructions and For Authority to Sell All Specifically Bequeathed Property of Estate In Order to Pay Debts and Expenses of Administration). Specific bequests are specific items designated for specific persons.

206. *Id.* at Ex. B (listing Oscar among other items to be sold).

207. *Id.* at (Order, Dec. 1, 1954).

208. The executor may have requested that the court "require" him to sell the Oscar so that his actions in selling the items could not later be questioned.

209. McDaniel Probate Records, *supra* note 149 (Return and Petition for Order Approving Sale, Dec. 4, 1954, 1-2 ("First Hamilton Return")).

210. *Id.* at Ex. A (list); *id.* at 1 (appraisal).

neous items listed on the second supplemental inventory valued at \$250.²¹¹ She paid \$375 collectively for all of these items.²¹² Item 35, the Oscar, appraised at no value, is missing from the list.²¹³

After Hamilton's purchase, only a few items were left in the estate. On the very same day that Hamilton purchased the personal items, the executor sent letters to McDaniel's family and friends informing them that the remainder of the specifically bequeathed property was going up for sale and inviting them to bid.²¹⁴ The family made no offers.²¹⁵ Between March and April of 1955, the executor sold fur items and jewelry.²¹⁶ On May 11, 1955, Lucille Hamilton returned to buy a fur choker for \$75.²¹⁷ Then, around December 9, 1955, McDaniel's secretary, Ruby Goodwin appeared and offered to purchase six unpublished musical compositions McDaniel had written more than twenty-five years earlier along with the renewal copyrights.²¹⁸ The executor sold the compositions to Goodwin.²¹⁹ In seeking the court's approval, the executor told the court, "[o]ther than cash, those compositions constitute the sole remaining assets of the estate."²²⁰ He also stated that he had attempted to interest music publishing houses and songwriters in the items but received no offers.²²¹

In June of 1956, the executor's filed his third and final accounting, covering the period of November 1, 1954 to June 22, 1956.²²² It stated that "all assets of said estate have been reduced to cash as aforesaid,"

211. *Id.* The copy of the Second Supplemental Inventory has no description page and thus may be missing a page. It bears only a final sum of \$300.00. McDaniel Probate Records, *supra* note 149 (Second Supplemental Inventory, Oct. 18, 1954). However, the executor described the items, in the Second Accounting, as "clothing, personal effects and miscellaneous household goods" and two of McDaniel's musical compositions. Second Accounting, *supra* note 168.

212. Second Accounting, *supra* note 168, at 2.

213. First Hamilton Return, *supra* note 209.

214. McDaniel Probate Records, *supra* note 149, at 2 (undated Return of Sale of Personal Property and Petition for Confirmation ("Second Hamilton Return")).

215. *Id.*

216. McDaniel Probate Records, *supra* note 149 (Order Confirming Sale of Personal Property, Apr. 14, 1955); Goodwin did, however, spur the establishment of a scholarship fund in McDaniel's name. *Hattie McDaniel Memorial Scholarship Available*, CHI. DEFENDER, Feb. 26, 1955, at 15.

217. Second Hamilton Return, *supra* note 214.

218. McDaniel Probate Records, *supra* note 149, at 2 (Return of Private Sale of Renewal Copyrights and All Rights of Estate in Musical Compositions Written by Deceased and Petition for Confirmation Thereof, Dec. 3, 1955 ("Goodwin Return")).

219. *Id.*

220. *Id.*

221. *Id.*

222. McDaniel Probate Records, *supra* note 149 (Third Accounting).

and, the estate is now in condition to be finally settled.²²³ The accounting included a list of items sold in that period, including Hamilton's items. Missing in these lists was item 35, the Oscar that he earlier had been instructed to sell in his November 3, 1954 petition.²²⁴ On July 17, 1956, the court declared that the only thing left in the estate was money and ordered that the attorneys receive a final installment payment, with the remaining balance going to the IRS.²²⁵ On September 26, 1956, the court further ordered McDaniel's estate closed.²²⁶

The court file contains no further indication of what happened to the Oscar.²²⁷ We can speculate about two possibilities. Either the executor lost control of the Oscar, or Hamilton bought it and her purchase was not properly recorded. The second scenario seems the most credible. There is no evidence in the record or any other sources I have reviewed that either the lawyers or the executor thought the Oscar was financially valuable. Moreover, as they were quite well heeled; they had no need to steal it.²²⁸ The types of items that Hamilton bought clearly indicate that she, or her principal, had a personal relationship with McDaniel. The person who listed the items Hamilton had purchased, listed "a metal *statute* [sic] commonly known as an Oscar" as item number 35.²²⁹ Not finding the Oscar's taller alter ego, the list maker may have assumed that the "plaque" was one of the unspecified miscellaneous personal items that Hamilton also purchased from the second supplemental inventory list.²³⁰

However, who was this Lucille Hamilton? One possibility stands out. There was a Lucille Hamilton, who was a prominent member of the First African Episcopal Methodist ("AME") Church, the oldest

223. *Id.*

224. *Id.*

225. *Id.* (Order Settling Final Account and Report of Executor, July 17, 1956).

226. *Id.*

227. The law firm handling McDaniel's estate has dissolved and this writer has not located any files.

228. There is no evidence of this need.

229. See discussion *supra* p. 139 (emphasis added).

230. If he discovered the error, the executor could have informed the court and parties at a hearing. No transcripts survive. But, if he did not, the executor still correctly represented that the Oscar was sold, and the right person did indeed receive the items she paid for.

African American congregation in Los Angeles.²³¹ Hattie McDaniel was raised in the AME church.²³²

III. OSCAR MOVES FROM SCREEN TO STAGE AT HOWARD UNIVERSITY

A. "Send It To Howard"

It made perfect sense that McDaniel would have wanted her Oscar to go to Howard University. The Howard Players had honored her with a luncheon in 1940.²³³ She had met some members of Howard's faculty, including E. Franklin Frazier and James Nabrit.²³⁴ By the time she drafted her will in 1951, McDaniel was probably aware of the Howard Players' 1949 Scandinavian tour as the first U.S. undergraduate group to perform abroad at a country's invitation, or of their performance before U.S. troops in Germany.²³⁵ Maybe she also knew that three faculty advisors in that trip had just formed a Department of Drama at Howard in 1950.²³⁶

There was another likely reason McDaniel chose Howard. With institutions led by whites affording little or no value to preserving black history, black educational institutions had become central depositories for its preservation, and Howard University was playing a leading role. A network of blacks across the U.S., Africa, the Caribbean, would direct items to Howard and to other historically black institutions.²³⁷ A challenged staff with limited financial resources

231. See, e.g., *First AME Women's Fashion Show Due Next Sunday*, L.A. TRIBUNE, Apr. 4, 1958, at 15 (identifying Lucille Hamilton as Co-chair of Women's Day); *FASHION CAPERS*, Apr. 11, 1958, at 10 (picture of First AME's Lucille Hamilton with other participants in Women's Day Fashion Show).

232. See, e.g., WATTS, *supra* note 23, at 53 (mother's funeral); *id.* at 202 (returning to worship at AME church in Denver). Note however, that in her later life, McDaniel adhered to the principles of Christian Scientists. *Id.* at 270.

233. See discussion *supra* note 83, at 16.

234. E. Franklin Frazier had attended one of her parties while he was visiting Los Angeles. *Id.* at 258. James Nabrit, then on the Howard University School of Law faculty, was among those who attended the 1940 luncheon. See HOWARD UNIV. BULLETIN, *supra* note 83.

235. See, e.g., Richard Coe, *An Award Awaits Howard Travelers*, WASH. POST NOV. 21, 1949 (noting American Public Relations Association to give award to Howard for trip and accounting trip details); Richard Coe, *Howard U. Players Report on Europe*, WASH. POST, Nov. 29, 1949, at 14.

236. See The Howard Players and the Drama Department (on file with Howard University Moorland-Spangarn Center; see JAMES HATCH, *SORROW IS THE ONLY FAITHFUL ONE* 151-164 (1995) (giving Owen Dodson's account of the tour) [hereinafter *SORROW*].

237. E.g., Thomas C. Battle, *Resources for Scholars, Four Major Collections of Afro-Americana: Part 2 Two University Library Collections*, 58 LIBRARY Q. 143, 145-151 (1988); Avril J. Madison & Dorothy Porter Wesley, *Dorothy Burnette Porter Wesley: Enterprising Steward of Black Culture*, 17 PUBLIC HISTORIAN, Winter 1995 at 15, 29-50, 37.

bore the weight of a growing collection of book and non-book items.²³⁸ The historical value and range of the materials on black life, history, and culture that came to Howard as reflected in annual reports, inventories, intake lists, and card catalogs is both remarkable and breathtaking.²³⁹

B. Two Collections

In the 1950s and 1960s, the main Howard University library, "Founders," housed and had authority over two relevant special collections that would eventually have separate destinies. First, there was the "Moorland Foundation," also then called the "Negro Collection."²⁴⁰ In 1973, it spun off from Founders into the separately-run Moorland-Spingarn Research Center.²⁴¹ This Collection was anchored by Reverend Jesse Moorland's 1914 gift of his sizeable private library and later supplemented by the purchase of Arthur Spingarn's private library in 1946.²⁴² Dorothy Porter was its "Supervisor."²⁴³ Through her numerous contacts and tireless energy, Porter and her husband, Howard Art Department Chairman James

238. In her 1960-61 report, then Acting Director, Dorothy Porter would lament the libraries space and staffing concerns, which she said were exacerbated by the school's inability to compete salary-wise with other institutions, budgetary problems, and the use of "precious" library space for other ongoing operations. ANNUAL REPORT OF THE ACTING DIRECTOR OF UNIVERSITY LIBRARIES TO THE PRESIDENT OF HOWARD UNIVERSITY 1 (1960-61) [hereinafter LIBRARIES ANN. RPT.].

239. My knowledge of the collection is based upon reviewing the various documents cited in this article, some internal documents that record the collections, and conversations with former and present staff at Moorland-Spingarn and Founders' Library about the collections. There are also several publications that discuss Moorland-Spingarn's holdings. See, e.g., Madison & Wesley, *supra* note 237.

240. The initial collection established through the Moorland gift was called the "Moorland Foundation. The Library of Negro Life and History." Apparently, outside entities assumed "Moorland Foundation," was a charity and submitted numerous funding requests. The collection thus began to be co-referenced as "the Negro Collection." In 1930, the collection was separately designated from Founders' library though it remained then under its jurisdiction. LIBRARIES ANNUAL REPORT, *supra* note 238, at 24, n*.

241. In 1973, Moorland was given expanded space and became the official place for the storage of University archival materials. *Id.* Though not a separate 501(c)(3), it can separately fundraise under the charitable/educational status of Howard University. See *id.* Winston Interview, *supra* note 13.

242. LIBRARIES ANN. RPT., *supra* note 238, at 6-8. Spingarn was a civil rights attorney, President of the NAACP from 1940-1965, and its Vice President from 1911-1940. *Id.*

243. Porter had the title "Supervisor" of the Negro or Moorland Collection up until 1969-70. She then was called "Librarian/Curator" or Librarian. Compare ANNUAL REPORT OF THE NEGRO COLLECTION (1969-70) ("Supervisor"), with LIBRARIES ANN. RPT., *supra* note 238, at 250 ("Librarian"). She is believed to be the first person of African descent to graduate from Columbia University's Library School, earning her Master's in Library Science there. See Madison & Wesley, *supra* note 237 at 2. Early on, Moorland made sure that Africa was prominently featured in its collection items. See Madison & Wesley, *supra* note 237, at 22-37.

Porter, would secure items from across the United States and throughout Africa and the Caribbean.²⁴⁴ Moorland holds rare books, artwork, artifacts, photographs, music, rare personal papers, and other items relating primarily to the black American and African experience.²⁴⁵

The second key collection, one that remains under Founders Library's jurisdiction today, is the Channing Pollack Collection. Channing Pollack's daughter, Helen, with strong support from Drama professor Owen Dodson, brought the basic collection to Howard in 1952.²⁴⁶ Founders would later expand the Pollack Collection to include other drama items.²⁴⁷ The Pollack collection holds more than ten thousand books on English and American drama (including but not limited to drama on the black experience), plus a sizeable amount of news clippings, playbills, photographs, memorabilia, music, and artifacts.²⁴⁸

C. A Gift from Leigh Whipper Arrives

In 1956, when the executor closed McDaniel's estate, Howard University's Drama Department operated out of a makeshift theater in Spaulding Hall.²⁴⁹ There, students attended classes and mingled

244. See, e.g., Battle, *supra* note 237, at 143-151; Madison & Wesley, *supra* note 237, at 29-30, 36-37. There are also numerous references in the Annual Libraries Reports. See generally *supra* note 243 (acquisitions from and about Africa). In the early 1960s, Porter went to Lagos to serve as a consultant to the National Library of Nigeria in Lagos. *Id.* at 35.

245. *Id.* at 24-26.

246. Pollack visited Dodson both on the campus and at his apartment to discuss bringing the Collection to Howard, and the two of them met together with President Mordecai Johnson. Letter from Owen Dodson, Chair, Drama Dep't, Howard University, to Carl Von Vechten, Arts Patron (June 14, 1950) (on file in the Owen V. Dodson Papers at Emory University Robert C. Woodruff Manuscripts, Archives and Rare Books Library [hereinafter Emory Dodson Papers]); see also *Howard to Get Theater Data*, WASH. POST, May 4, 1952, at L2 (noting that Howard was to be presented with the Collection). Although technically she was responsible for just Moorland, Dorothy Porter played a key role in working with Owen Dodson to secure the Channing Pollack Collection, assessing it for Howard and handing the acquisition. Letter from Dorothy Porter to Owen Dodson (Aug. 1, 1950) (in possession of Prof. Joe Selmon, Drama Dep't, Howard Univ.) [hereinafter Selmon Papers].

247. See discussion *infra* part III.C. (discussing the addition of Whipper donations).

248. I understand Channing's holdings largely from the wealth of information in the card catalog and the various Founders Annual Reports. See generally ANNUAL REPORT OF THE NEGRO COLLECTION, *supra* note 243. While acquisition lists exist for books, it is my understanding that no such lists have been located for artifacts. I have not yet been afforded the opportunity to review any administrative files from these earlier periods although that subject is now under discussion. Wright Discussion, *supra* note 13.

249. Telephone Interview with Oscar Criner, Professor of Computer Sci. & Physics, Tex. S. Univ. (Apr., 2010) [hereinafter Criner Interview].

among boxes of costumes and pieces from old theater sets.²⁵⁰ But, in December of 1960, the Drama Department moved into the newly erected LuLu Vere Childers Hall along with the Music and Art Department, thus, forming the College of Fine Arts.²⁵¹ By the fall of 1961, Owen Dodson had become the Chair of the Drama Department.²⁵²

In April of 1961, the university librarian, Joseph Reason, took a two-year leave to advise the University of Rangoon in Burma.²⁵³ From April 24 to July 1, 1961, Dorothy Porter, who was the librarian for the Negro Collection, temporarily served as head librarian.²⁵⁴ The task of filing the Director's 1960-1961 annual report fell to her.²⁵⁵ This writer believes that in her June 23, 1961 report, Mrs. Porter provides the link as to when the Oscar arrived at Howard. On page 9, she noted gifts to the Pollack Collection: Arthur Spingarn's gift of "his entire collection of Negro music," and additional gifts by Channing Pollack's daughter Helen.²⁵⁶ Then, there is this notation: "*Leigh Whipper donated the bronze shoes of the late Bill "Bojangles" Robinson, a plaque, and about 200 music scores.*"²⁵⁷ In the very next academic year, the pair of "Bojangles" shoes and McDaniel's Oscar "plaque" would show up together in a glass case in the Drama Department with Professor Owen Dodson as its chief caretaker.²⁵⁸

250. *Id.* Criner was a 16-year-old freshman when he ventured over to the theater to participate in the Howard Players Orientation. His heart never left, and under Professor Owen Dodson's "very kind" and "gracious" direction," he became an actor. Criner says he distinctly remembers talk one evening among persons in the theater of some members of the McDaniel family not wanting Howard to have the Oscar, but had it already been in Spaulding he, an excited 16-year-old, would have seen it. *Id.* He entered Howard in 1956 – the year that the McDaniel estate was finally settled. *Id.*

251. The official celebration was in June of 1961. *Rites Slated for Howard's Fine Arts Hall*, WASH. POST, June 4, 1961, at G4. However, the building was in use before then. *E.g.*, Richard L. Coe, *A Boon To Us All*, WASH. POST, Feb. 23, 1961, at B4.

252. Letter from Owen Dodson to Edith Dodson (Oct. 29, 1961) (on file with Emory Dodson Papers).

253. ANNUAL REPORT OF THE NEGRO COLLECTION, *supra* note 243, at 1.

254. *Id.* at 48.

255. *Id.*

256. *Id.*

257. *Id.* at 9. In earlier times, people bronzed shoes to commemorate important events or people, such as to commemorate a child's birth. Deborah Hofmann, *Bronzing Memories Happily*, N.Y. TIMES, Mar. 18, 1993, at C2. The usually thorough Porter omits the Whipper gifts – the shoes and the plaque and the music – from a list of all gifts received appearing at the end of the 1960-61 report. ANNUAL REPORT OF THE NEGRO COLLECTION, *supra* note 243, at 30-41.

258. One can only speculate as to the reason behind the terse description of the plaque. In the world of Howard University Collections, that Oscar was not a showstopper. And by this time, McDaniel had been dead almost a decade. There also may have been a need for secrecy. In March of 1961, the Capitol Theater in Washington kicked off a "Centennial" Civil War showing of *Gone With the Wind*. Article 5, WASH. POST, Mar. 26, 1961, at G1. From April until June of 1961, notices for showings spread like wildfire at area theaters and notices ran virtually every

D. A “Shrine” in the Drama Department

Theodis “Ted” Shine joined the Howard Drama faculty in the fall of 1961.²⁵⁹ Shine is certain that the Oscar was not there when he first arrived in the fall. However, one day, “shortly after [he] got there,” Dodson invited him into the “green room” in Childers Hall.²⁶⁰ Shine stated, “I think the head of the Department, Owen said something like ‘Chile come in here; we got Hattie McDaniel’s Oscar’ and he took me in and showed it to me. When I saw it, it was already in the little glass enclosure. . . . He didn’t indicate where it had come from.”²⁶¹ Shine continued:

It was in the Green Room in the theater department when I was teaching there. . . . They said it was a ‘Wartime Oscar.’ It was about 6 inches tall and looked like a plaque. About 5 or 6 inches wide. Gold-Plated. My reaction was that I was disappointed in how it looked. There was also one bronze shoe from Bill Bojangles Robinson. The thing that threw me was when they said Oscar, I thought of the tall Oscar. But I was so amazed that it was a little plaque. I was very proud of it and I was happy to see an Oscar that close up.²⁶²

Donal Leace, a student at Howard in 1961, remembers that same little plaque—and two shoes.²⁶³ He was thinking about leaving Howard when Professor Owen Dodson suggested that his unhappiness sprang from being an artist trapped in the wrong major.²⁶⁴ As a new drama major, Leace saw the glass case recessed into the wall. As you walked into the Green Room, it was on the right. If you turned and faced the direction that you came in, you would see it by the door, then on your left. It had several shelves, he remembers, and a long lock like a slide rule. The top shelf was memorabilia about Langston Hughes. The Oscar was on the second shelf, and, Leace seems to remember, some type of letter or statement with a signature. On the

day in the Washington Post. *E.g.*, *Show Times for Saturday*, WASH. POST, Apr. 1, 1961, at C18 (subsequent daily showings under Capital Theater); *Neighborhood Movie Attractions*, WASH. POST, May 21, 1961, at G3 (showings at VA theaters).

259. Telephone Interview with Professor Ted Shine, Retired Professor, Prairie View A&M Univ.; retired Professor, Drama Dep’t, Howard Univ. (Apr. 21, 2010) [hereinafter Shine Interview].

260. *Id.*

261. *Id.*

262. *Id.*

263. Telephone Interview with Donal Leace, Student in the Class of ‘66; Singer/Songwriter/Musician (Apr. 11, 2010) [hereinafter Leace Interview]; see also DONAL LEACE, <http://www.donalleace.com/> (last visited Oct. 17, 2011).

264. Leace Interview, *supra* note 263.

shelf below, he recalls seeing the bronzed-colored “Bojangles” shoes.²⁶⁵ Some have also referred to a pair of “black” dancing shoes being in the case as well.²⁶⁶ Leace remembers that the introduction to the Oscar and the other artifacts in the department became a rite of passage for theater students.²⁶⁷

The 1960-1961 Founders Annual Report also indicates that the Library received another important item the same fiscal year: a rosewood piano converted to a desk, once owned by Howard’s founder, General Oliver Howard.²⁶⁸ Leace also remembers a piano being in the Green Room.²⁶⁹ The 1962-1963 Annual Report for the University Libraries confirms that it was General Howard’s piano.²⁷⁰ Noting limited library space for storing artifacts, as well as a desire to ensure that such items can be seen, Acting Director Stevens writes that the library has often “stored” such three dimensional historical items in other parts of the campus.²⁷¹ He adds, “General Howard’s desk and piano, for example, have been lent to the Green Room of the Fine Arts-Auditorium Building until a more permanent facility can be provided.”²⁷²

Charles “Buddy” Butler of the Howard class of 1969, also first saw the Oscar in the Green Room.²⁷³ According to Butler, Dodson would hold classes in that room and students were able to see the glass case with the Oscar, the shoes, and other items. Butler remembers

265. *Id.* That Shine saw only one shoe at first and Leace saw two suggests that Shine was among the first to see the display, perhaps even as Dodson was putting it together.

266. Discussion with Professor Joseph Selmon, Howard Univ. (Sept. 15, 2011) (regarding comment made to him over the years about the shoes). Shoes can be “antiqued” and made to look black by spraying them after bronzing or adding a oil to the bronzing mixture. See *How Bronzing Works*, AM. BRONZING COMPANY, <http://www.americanbronzing.com/howbronzing.html> (last visited Oct. 17, 2011).

267. Leace Interview, *supra* note 263 (explaining that he “held it in his hands”). *Cf.* Telephone Interview with Lynda Gravátt, Student in Class of ‘71, Howard Univ.; Actor and Director (July 2010) [hereinafter Gravátt Interview] (noting that she thought she saw it during orientation). This rite is probably why Richard Wesley saw the shoes but missed the Oscar. He arrived on campus in the wee hours of the morning and the next day did his own “self tour” of the department. Telephone Interview with Richard Wesley, Student in Class of ‘67, Howard Univ., Chair, Dep’t of Dramatic Writing, New York U. Tisch Sch. of the Arts (June 9, 2011) [hereinafter Wesley Interview]. He remembers seeing the recessed glass cases in the Green Room and the “Bojangles” shoes but no Oscar. *Id.* He acknowledges today that as a freshman he probably would have disregarded a plaque only 6 inches high. *Id.*

268. ANNUAL REPORT OF THE NEGRO COLLECTION., *supra* note 243, at 7.

269. Leace Interview, *supra* note 263.

270. ANNUAL REPORT OF THE NEGRO COLLECTION, *supra* note 243, at 7.

271. *Id.*

272. *Id.* (emphasis added).

273. Telephone Interview with Charles Butler, Student in Class of ‘69, Howard Univ.; Theater Professor, San Jose State Univ. (May 20, 2011) [hereinafter Butler Interview].

three shelves: one with items relating to Langston Hughes; the second, with McDaniel's Oscar; and the third devoted to Bill "Bojangles" Robinson. There were photographs as well. Butler also remembers the Green Room because he was a member of the Howard Players, and they regularly met there.²⁷⁴

About a year after Dodson erected his encased "shrine" in the Green Room, he set up a second room across the hall, which he personally dubbed the "Ira Aldridge Room."²⁷⁵ He installed drapes and special lighting. He placed furniture from Howard's founders in it.²⁷⁶ There, Dodson also kept numerous drama artifacts. In January of 1962, a "wives" group visited Howard and was taken on a Theater and auditorium tour by Art Professor James Porter. Thanking the university, one of the visitors would write, "My only regret is that we could not see more, and that we had to cut short our stay in the museum. Mr. Porter received us so graciously, and the exhibits were so beautiful."²⁷⁷ Geoffrey Newman insists that Ira Aldridge is where *he*, as a student, first saw the Oscar.²⁷⁸ Indeed, it appears that Dodson regularly moved his artifacts and the furniture in his rooms around.²⁷⁹ Lynda Gravatt, of the Howard class of 1971, also remembers that whenever guests visited, Dodson would take them into the Ira Aldridge room.²⁸⁰

Dodson did more to build the Department of Drama. He invited speakers to Howard to inspire his students. Leace and Richard Wesley remember a visit in 1966 by Sir John Gielgud and Vivien Leigh, the very same "Scarlett" who played opposite Hattie McDaniel in *Gone with the Wind* in 1940.²⁸¹ The two were in town to appear in *Ivanov*, which was on a two-week pre-Broadway run at the National Theater.²⁸² Dodson had simply written to them, inviting them to come to speak to his students during their time in Washington. They

274. *Id.*

275. Telephone Interview with Geoffrey Newman, Student in Class of '68, Howard Univ., Dean Coll. of the Arts, Montclair State Univ. (May 11, 2011) [hereinafter Newman Interview].

276. Gravatt Interview, *supra* note 267.

277. *Compare* Letter from Elizabeth F. Hitchcock, to James E. Nebrit, Jr. (Jan. 24, 1962) (on file with Howard University Moorland-Spingarn Research Center), with SORROW, *supra* note 236, at 208 (explaining that one of Dodson's first acts after moving into Childers was to turn the Green Room into "a museum" with glass cases on either side).

278. Newman Interview, *supra* note 275.

279. Wesley Interview, *supra* note 267; Email from William Brown to W. Burlette Carter (July 20, 2011) (on file with the author).

280. Gravatt Interview, *supra* note 267.

281. Leace Interview, *supra* note 263; Newman Interview, *supra* note 275.

282. *The Marquees of Broadway*, WASH. POST, Apr. 17, 1966, at G2.

came and talked to the students for two hours.²⁸³ It was likely that Dodson showed them the Oscar and that students asked their visitors about McDaniel.

But who was Leigh Whipper and how would he have gotten the Oscar? Born in South Carolina to free parents, Whipper, attended Howard University School of Law and was admitted to the South Carolina Bar.²⁸⁴ However, one day, he did what some law students dream of doing; he left the practice of law and became an actor. Indeed, he was one of the best-known black actors of his time, and ultimately a leader in the New York artistic community.²⁸⁵ In 1913, he became the first black member of Actors Equity (although he later said that they did not know that he was black when they admitted him).²⁸⁶ In New York, he was a founding member of the NAG,²⁸⁷ and served as its president from 1957-1960.²⁸⁸ On several occasions, he headed the Guild's Welfare Committee that gave aid to sick and financially struggling actors and their families. He was active in SAG²⁸⁹ and also active in New York politics.²⁹⁰ He caused controversy when he challenged Samuel Goldwyn in the latter's film production of *Porgy and Bess*.²⁹¹ Whipper was one of the few blacks who had been able to

283. Letter from Owen Dodson to Rosey Pool (July 6, 1967) (on file with Emory Dodson Papers). He even visited Leigh in her dressing room at the National Theater beforehand. *Id.*

284. Whipper's father was Brigadier General William J. Whipper who "reverse migrated" to South Carolina from Pennsylvania during reconstruction. See *All We Ask Is Equal Rights*, U. OF S. CAROLINA SCH. OF L., http://law.sc.edu/equal_rights/5w-whipper.shtml (last visited Oct. 19, 2011). He became a circuit judge and served as a member of two Constitutional Conventions. *Id.* His mother was a physician. *Id.*

285. *Leigh Whipper, 98, Character Actor; First Black in Equity, Dead – 65 Years on the Stage* N.Y. TIMES, July 27, 1975, at 35; see also *Louis Calta, Character Actor, 91, Is Honored at the St. Regis; Leigh Whipper Blazed Trails for Negro Performers Law Graduate's Career on Stage Spanned 65 Years*, N.Y. TIMES, Jan. 8, 1968, at 31; *First Black Actor to Join Stage Union*, WASH. POST, July 21, 1975, at C4 [hereinafter *First Black Actor to Join Stage Union*].

286. *First Black Actor to Join Stage Union*, *supra* note 285; see also Meeting Notices from Committee to Examine the Constitution and Bylaws of Actor's Equity (1952) (on file with Howard University Moorland-Spingarn Research Center).

287. Certificate of Incorporation of the Negro Actors Guild of America 2 (Oct. 1, 1936) (listing Whipper among founders).

288. Twenty Fifth Anniversary Program of the Negro Actors Guild of America 9 (listing Whipper as President from 1957-1960).

289. *E.g.*, Letter from Florence Marston, E. Representative, Screen Actors Guild (Jan. 28, 1953) (on file with Howard University Moorland-Spingarn Research Center) (explaining that she served on the SAG Advisory Counsel for three years).

290. *A Salute*, N.Y. TIMES, Oct. 31, 1962, at 26 (listing Leigh Whipper as a member of the Arts and Entertainment Committee for Rockefeller along with sixty others).

291. *Leigh Whipper Resigns "Porgy" Role in Protest*, L.A. TIMES, Aug. 7, 1958, at B30 [hereinafter *Leigh Whipper Resigns*]; Thomas Pryor, *Actor Quits Role in Film of Porgy, Negro Guild Head Scores Mamoulian Ouster, and Preminger Hiring*, N.Y. TIMES, Aug. 7, 1958, at 21 (detailing Whipper resigning as a "matter of conscience"). Whipper objected to the firing of Rouben Mamoulian and the substitution of Otto Preminger saying that Preminger was insensitive to race

break the chains of consistently stereotypical roles.²⁹² Along with others, he established a black-run theater in Newark, The Orpheum²⁹³ and helped to establish an Ira Aldridge Chair at the Shakespeare Memorial Theater at Stratford-on-Avon.²⁹⁴

Whipper was also passionate about preserving the history of Negroes in theater. He would write to institutions inquiring about their interest in historical items.²⁹⁵ Because of his efforts, a bronzed pair of “Bojangles” shoes sits in The Museum of the City of New York.²⁹⁶ He also made sure that black colleges, including his beloved Howard University, had Negro theater items represented within their collections.²⁹⁷ Whipper would stay active in

issues, and he would not participate in a project that would be derogatory to his race. Goldwyn arranged statements supportive of his position from other cast members, black leaders and the Hollywood community. *E.g.*, Thomas Pryor, *Porgy Producer Backed on Ouster*, N.Y. TIMES, Aug. 8, 1958, at 11. In the end, Goldwyn produced *Porgy* without Whipper. It is worth noting that Whipper was older and consequently probably more established than the other actors in the film who backed Goldwyn.

292. Whipper portrayed Halle Selassie in *Mission to Moscow* (1943) and had roles in *The Oxbow Incident* (1943) and *Of Mice and Men* (1939). *E.g.*, *Leigh Whipper Resigns*, *supra* note 291. But, he also had his share of stereotypical roles. *Id.* The website for the Internet Movie Database purports to give a list of at least some of Whipper’s films. *See Biography for Leigh Whipper*, IMDB, <http://www.imdb.com/name/nm0924181/bio> (last visited Nov. 18, 2011). Whipper would become the longest living Howard alumnus, dying in 1975 at the age of 98. *Leigh Whipper Resigns*, *supra* at 291; *see also* Calta, *supra* note 285, at 31; *First Black Actor to Join Stage Union*, *supra* note 285, at C4.

293. *Leigh Whipper Defies the T.O.B.A., Fighting Manager of the Orpheum in Newark Says Booking Agents Can’t Bulldoze Him*, BALT. AFRO-AMERICAN, Dec. 5, 1925, at 5.

294. *\$1000 Fund for Aldridge Chair Contributed*, BALT. AFRO AMERICAN, Aug. 3, 1929, at 7. The list which has more than 100 names is a virtual “Who’s Who” in entertainment and black history. Hattie McDaniel would have been thirty-four, not yet in California and still a struggling performer. JACKSON, *supra* note 16, at 16 (noting McDaniel’s role in *Showboat* in Chicago in 1929, the company’s bankruptcy in October, subsequent to the gift, and McDaniel’s picking up work as a washroom maid).

295. *E.g.*, Correspondence (1950-58) (on file with Schomburg Center for Research in Black Culture); Letter from Mendel L. Peterson to Leigh Whipper (June 20, 1951) (on file with Howard University Moorland-Spingarn Research Center) (responding to Whipper’s letter and the Smithsonian indicating it has no theater collection and recommending the Museum of the City of New York).

296. The shoes were presented to the Museum by Robinson’s widow and New York City Mayor Vincent R. Impellitteri at the December 9, 1950 NAG Annual Charity Banquet. The Museum’s Annual Report expresses “our thanks [to]. . . Leigh Whipper, the famous actor, who arranged the presentation.” ANNUAL REPORT OF THE MUSEUM OF THE CITY OF NEW YORK 6-7 (1960).

297. The Moorland files include numerous letters from black institutions thanking Whipper for his theater-related gifts. *See, e.g.*, Letter from Jessie P. Guzman, Dir. Dep’t of Records and Research, Tuskegee Inst., to Leigh Whipper (Dec. 12, 1951) (on file with Howard University Moorland-Spingarn Research Center). In 1949, Whipper was honored at Howard University’s Charter Day Ceremonies for his contributions to drama. *Civil Rights Program Can’t Be Blocked Insists Senator*, BALT. AFRO AMERICAN, Mar. 12, 1949 at C3A.

alumni activities all his life, posing in a November 1967 photograph with Howard's homecoming queen at the age of ninety-one.²⁹⁸

Leigh Whipper knew the key players in this Oscar drama. He visited McDaniel's home many, many times.²⁹⁹ He had roles in two episodes of *The Beulah Show*.³⁰⁰ He was present when she made her notorious epithet gaffe.³⁰¹ When McDaniel was sick, he made sure NAG sent her flowers and later a check for \$25.00.³⁰² When she died, Whipper called McDaniel's Secretary Goodwin to offer his condolences. Goodwin acknowledged the flowers he sent to McDaniel's funeral stating "[r]emembering the beautiful floral arrangement Hattie received some time ago from the Guild, I am sure she was aware of your love for her."³⁰³ He also knew the university librarian Joseph

298. *Age and Beauty*, BALT. AFRO-AMERICAN, Nov. 11, 1967, at 14 (depicting a photo of Whipper with Frank Avant Homecoming Queen Anita James). Whipper died in 1975 at the age of 98. *Leigh Whipper, 98, Character Actor*, N.Y. TIMES, July 27, 1975, at 35.

299. E.g., WATTS, *supra* note 23, at 209 (noting McDaniel selected Whipper for her Negro War Victory Committee which met at her home); *Count Basie Feted on Coast; First Navy Film Planned; Hattie McDaniel is Host*, CHI. DEFENDER, Aug. 15, 1942, at 22 (noting Whipper as guest at McDaniel Count Basie Party).

300. Letter from Erline Wallace to Leigh Whipper (Dec. 15, 1950) (on file with Howard University Moorland-Spingarn Research Center) (regarding payment for Whipper roles as Jay Watkins in 1950 and Mr. Wiley in 1951 on *The Beulah Show*).

301. See discussion *supra* p. 124.

302. Letter from Ruby Goodwin to Leigh Whipper (Nov. 3, 1952) (on file with Howard University Moorland-Spingarn Research Center) (referencing earlier flowers from NAG and a check for \$25.00 sent by Whipper, but arriving too late for McDaniel to cash). Biographer Carlton Jackson reports that Whipper sent McDaniel a letter enclosing money for flowers and said that McDaniel would receive a similar check each week. JACKSON, *supra* note 16. A NAG-approved continuing gift seems unlikely; it would have been considered an extravagance given how desperately other NAG members needed assistance. NAG did approve a disbursement of \$7.50 for flowers in February of 1952. Cash Receipts and Disbursements (Feb. 1952) (in Negro Actors Guild Papers, Schomburg Center for Research in Black Culture). It also strikes this author as unusual to give a sick person money to buy flowers (rather than the flowers themselves). The gesture and the money may have been Whipper's himself, his way of giving McDaniel money when she was too proud to say that she needed it. For more on Whipper contacts with McDaniel, see also NAG Minutes from December 9, 1952, in NAG Papers, where Whipper explains why he sent flowers to McDaniel's funeral in his own name instead of NAG's name.

303. Letter from Ruby Goodwin to Leigh Whipper (Nov. 3, 1952) (on file with Howard University Moorland-Spingarn Research Center).

Reason,³⁰⁴ Negro Collection supervisor Dorothy Porter,³⁰⁵ and Professor Owen Dodson.³⁰⁶

But how did Whipper get the Oscar if Lucille Hamilton had it in her possession? That I cannot say. Given his status and the church's reputation, the likelihood is that Whipper would have known members from the First AME Church in Los Angeles.³⁰⁷ Whipper did know McDaniel's brother, Sam³⁰⁸ and her secretary Ruby Goodwin. Goodwin died in San Francisco in 1960,³⁰⁹ while Sam McDaniel passed away in 1962.³¹⁰ Did Leigh Whipper suggest that Sam McDaniel try to fulfill his sister's last wish before Sam passed away himself?

IV. OSCAR LANDS A ROLE IN A 60s DRAMA

A. Act I: Protest

One of the theories of the Oscar's disappearance is that Howard students took it and threw it into the Potomac.³¹¹ This section explains why the claim does not hold water. While the sixties was a period of substantial campus unrest, the evidence discussed here strongly suggests that by the time the protests had calmed, the Oscar still rested in the glass case at Howard.

In the 1960s, Howard University was just one of the many universities across the nation where students were flexing their muscles.³¹²

304. Reason wrote Whipper in 1952 to thank him "for his many contributions of material to our Moorland Foundation and your suggestion that other people do likewise"—as well as to inform Whipper of the new theater collection's anticipated opening. Letter from Joseph Reason, Univ. Librarian, to Leigh Whipper (June 9, 1952) (on file with Howard University Moorland-Spingarn Research Center).

305. Whipper had allowed Dorothy Porter to go through the files of the NAG and collect contacts for Moorland Spingarn. Letter from Dorothy Porter to Leigh Whipper (May 29, 1951) (on file with Howard University Moorland-Spingarn Research Center).

306. Whipper joined other actors in doing a preview public read of Dodson's script, *A New World A-Comin*, written as a celebration of Negro Troops and Black Patriotism in New York. *Preview to "New World a-Coming"*, *BALT. AFRO-AMERICAN*, June 3, 1944, at 8 (showing a picture of Dodson, Whipper, and others at reading).

307. Founded in 1872, the Church is the oldest African American founded church in Los Angeles and claims some 19,000 members. See FAME—FIRST AFRICAN METHODIST EPISCOPAL CHURCH, <http://famechurch.org/about.html> (last visited Oct. 5, 2011).

308. See discussion *supra* notes 178-179.

309. See *Ruby Berkley Goodwin, Actress-Writer Dies*, *L.A. TIMES*, June 3, 1961, at A8.

310. *Comedian Brother of Late Hattie McDaniels Buried*, *AFRO-AMERICAN*, Oct. 13, 1962, at 11.

311. See discussion *supra* pp. 604-05.

312. In the sixties, everything was up for grabs. *E.g.*, *Columbia Squashes Renewed Protests, Wisconsin Protestors Firebomb Building*, *WASH. POST*, May 19, 1968, at A3 (explaining that Columbia students protested university expansion into nearby poor neighborhoods and Wisconsin investments in companies doing business in South Africa); *Protests Rock Campuses all Over U.S.*, *WASH. POST*, Apr. 26, 1968, at 3. Richard Wesley remembers watching Mario Fazio's fa-

Five primary concerns drove student protests at Howard. First, there was the ongoing struggle for civil rights.³¹³ Second, there was opposition to the Vietnam War and a belief that black men were being channeled into the War as fodder.³¹⁴ Third, students wanted social restrictions eased so they could more freely drink and socialize with the opposite sex on and off campus.³¹⁵ Fourth, the right to protest, taken for granted today, generally was not assured anywhere in the nation.³¹⁶ Fifth, students challenged a Eurocentric curriculum and Eurocentric values that they argued denigrated black culture while elevating European culture.³¹⁷

While the protests were dramatic, disruptive, and sometimes violent, this author has seen nothing that indicates that the Oscar—or any of its companion artifacts—were ever even threatened. One of the largest protests occurred in 1968 when students occupied the ad-

mous “machine” speech from Sproul Hall at Berkeley in 1964 on the television and being inspired. Wesley Interview, *supra* note 267. Indeed, students were protesting all over the world. E.g., *Japan’s Angry Students Battle Police Anew in Anti-War Protest; Japan Youth Clash Anew With Police*, WASH. POST, Oct. 22, 1968, at A1 (protesting U.S. military operations in Japan and discussing protests in other countries); *Madrid Students Out on Strike*, WASH. POST, Dec. 5, 1968, at A26; *Sit-Ins by Students Spread in Poland*, WASH. POST, Mar. 22, 1968, at A17.

313. Interview with Charles Franklin Jr., President, Howard Univ. Student Body, 1967 (July 2011) [hereinafter Franklin Interview].

314. Protestors shut down the speech of Selective Service Director, Lewis B. Hershey, forcing him off the stage. *Hershey Retreats After Attack, Apologies and Invitation Extended*, HOWARD HILLTOP, Apr. 7, 1967, at 3. See Wallace Turner, *Criticism and Evasion of Draft Grow with Unpopularity of the Vietnam War*, N.Y. TIMES, May 14, 1969, at 20; Ivan Brandon, *Vietnam War Denounced by Blacks*, WASH. POST, Nov. 12, 1969, at A7.

315. According to then student body president Charles Franklin, Howard’s students watched from the sidelines as white institutions relaxed intersex visitation dormitory rules, allowed alcohol in dorms, and dropped or extended campus curfews for women. Compare Franklin Interview, *supra* note 313, with *Liquor Now Permitted in GW Women’s Dorms*, WASH. POST, Feb. 5, 1967, at B11.

316. On February 16, 1968, the *Howard Hilltop* led with a story on the killings of several protesting students at a fellow historically black institution, South Carolina State College in Orangeburg, SC. *More Trouble Expected at SC, Three Students Murdered in Cold Blood in Peaceful Desegregation March*, HOWARD HILLTOP, Feb. 16, 1968; *Curfew Stills College Town: South Carolina School Still in Shock After Killing of Three Youths*, WASH. POST, Feb. 10, 1968, at A1, A4. The protesting students, some of whom allegedly threw rocks, were shot and killed by state police officers and about thirty-seven others were wounded.

317. Ivan Brandon & Robert Hinton, *Law Students End Lock-In at Howard*, WASH. POST, Feb. 10, 1968, at A1; Jack White & Ivan Brandon, *120 Walk Out on Nabrit at Howard Talk*, WASH. POST, Sept. 19, 1967, at 1.

ministrative building.³¹⁸ They held it for a day.³¹⁹ Faculty waited the students out.³²⁰

The protests also directly affected Fine Arts. In November of 1968, a group of protestors, students and outsiders, interrupted a performance of Langston Hughes' *Simply Heavenly* in the Ira Aldridge Theater.³²¹ One individual ordered "every white person" to get out.³²² In November of 1969, a group of students interrupted the Art show of a visiting West African artist, complaining that the African artist's exhibit was too westernized.³²³ Two pieces of that same artist's work were stolen from the gallery shortly thereafter.³²⁴ Howard filed a police report for the stolen art. It did not mention the Oscar.³²⁵

In March of 1969, students took over the Fine Arts Building for three days.³²⁶ Fine Arts Department Dean Warner Lawson responded with U.S. Marshalls and a temporary restraining order against the students.³²⁷ Again, none of the paperwork in this matter mentioned the Oscar.³²⁸

There was violent behavior and destruction of property as well. A Molotov cocktail was thrown through the windows of each of the homes of Howard University President James Nabrit and Liberal Arts Dean Frank Snowden.³²⁹ In May of 1969, students and other protesters took over six university buildings and forced a shutdown. All of

318. Jack White, Jr., *Picnic Mood Prevails At Beseiged Building*, WASH. POST, Mar. 21, 1968, at A8 (explaining that students were taking over operations, singing, directing traffic, acting as security, and emptying trashcans).

319. *Id.* *A Glimpse of History: Scenes from the Howard University 1968 Takeover*, PBS, <http://www.pbs.org/wgbh/pages/frontline/shows/race/etc/history.html> (last visited Nov. 18, 2011).

320. *Id.*

321. *Id.*

322. Then alumnus, Donal Leace, happened to be attending the performance that night. Leace Interview, *supra* note 263. Lynda Gravátt, then a student, was in the interrupted play. See Gravátt Interview, *supra*, note 267.

323. Charles Aikens, *Student Critics Hit Howard Art Exhibit*, AFRO-AMERICAN, Nov. 15, 1969, at 19.

324. *\$300 in Art Stolen from Howard U.*, WASH. POST, Dec. 4, 1969, at A30 (reporting police report filed).

325. *Id.*

326. *Id.*

327. *E.g.*, Complaint for Injunctive Relief, *Howard University v. Smith*, Civ. Act. No. 602-69 (D.D.C. Mar. 10, 1969). This writer's review indicates that none of the documents in the file—complaint, motion, affidavits, memoranda, orders etc.—indicate any destroyed or stolen property.

328. This author reviewed the entire file in *Howard University v. Smith*, Civ. Act. No. 602-69 (D.D.C. Mar. 10, 1969) as well as available civil case files involving Howard protest matters prior to 1969. These documents are stored at the National Archives.

329. *Firebomb Case Sent to Jury*, WASH. POST, Feb. 29, 1968, at F1 (explaining that the former student was tried but the Molotov cocktails did not cause a fire).

the streetlights were eventually smashed out. U.S. Marshalls were forced to saw and cut their way into buildings where students had barricaded themselves.³³⁰ Twenty students who refused, after negotiations, to obey a U.S. Marshal's request that they vacate were arrested, and several were prosecuted. Two stragglers were pulled out of Fine Arts.³³¹ The Reserved Officers Training Corps ("ROTC") building was set on fire.

There was a sharp backlash against the traditional formulations of black culture and history within the community. Hearing of a commotion in May of 1969, new dean, Michael Winston, also a professor of history, went over to see if Moorland-Spingarn was alright.³³² Its front doors had been chained. Some students told Winston that outsiders had come onto campus and had put gasoline in the stacks of the library.³³³ According to the students, an individual was reportedly saying that "[w]e are going to burn this place down" and that the library's books were about "Negros" and "we are black."³³⁴ These plans were ended when U.S. Marshalls took control of the building and cleared the campus.³³⁵

There is no doubt that the '60s was a chaotic time. Still, the available evidence rebuts the notion that students or even members of the community took the Oscar. None of the available depositions, affidavits, or other documents filed in the various civil cases that Howard instituted or that were instituted against Howard, mention a missing Oscar or any missing Fine Arts artifacts.³³⁶

There are no references to the Oscar's arrival or presence in the Howard University student newspaper, or the Howard University Yearbooks, black newspapers and magazines, or the majority white magazines.³³⁷ Howard University's histories do not even mention

330. C. Gerald Fraser, *20 Arrested as Campus Seizure Ends*, N.Y. TIMES, May 10, 1969, at 14.

331. *Id.*

332. Winston Interview, *supra* note 13.

333. *Id.*

334. *Id.*

335. *Id.*

336. *See supra* note 328.

337. This writer personally reviewed the microfilms of *The Hilltop* and the hard copies of the Howard Yearbooks; searched Proquest's Historical Databases for the *Baltimore Afro-American*, *The Chicago Defender*, *The New York Times*, *The Los Angeles Times*, *The Washington Post*, and Proquests Afro American Newspapers database. The result was not a single reference to the McDaniel Oscar being at Howard. She looked for a photograph of the Oscar in the Yearbooks, in the photograph collections at the Manuscripts Division of Moorland Spingarn Research Center and in Owen Dodson's Papers at Moorland Spingarn and elsewhere.

it.³³⁸ Ironically, today, some former Fine Arts faculty do not remember ever seeing it.³³⁹

Perhaps the most compelling evidence that the artifacts were not in jeopardy is the fact that Owen Dodson's many letters during that period show no concern for them, even when he is away. For example, when students occupied the Fine Arts building, he was on sabbatical in Arizona. He wrote to a friend from there:

The students are pounding away at the vital parts of Howard. Fine Arts is now a target. *They tell me it is funny and ironic* that all they have learned from the administration and the faculty, they are now turning against them. For instance, a quartet of unexcelled student voices serenade the Dean with *Joshua fit the battle of Jericho and the walls come tumblin down*. The art students have painted placards of the top artistic quality and the Drama students carry them. They all hung a wreath on the Dean's door saying, The Dean is DEAD.³⁴⁰

It would not have been "funny and ironic" had the Oscar been missing. Later, speaking of the violence in the May riots, he would say, "I'm glad I was not there. I would have had a stroke."³⁴¹

Some students shared Dodson's concerns about tactics. His secretary wrote him while he was away about the interruption of *Simply Heavenly*. She said that some students were complaining that the disruptions were interfering with their education, and they were thinking of transferring.³⁴²

Students did not get everything that they wanted,³⁴³ but they did accomplish change. First, they discovered themselves. "Jimmy" Christian remembers the impact upon him, coming out of segregated

338. See generally RAYFORD W. LOGAN, HOWARD UNIVERSITY: THE FIRST HUNDRED YEARS, 1867-1967 (1969) (detailing Howard's history from its inception as a theological seminary).

339. William Brown, Whitney LeBlanc, Former Professor of Music, Vada Butcher (incidentally, married to Drama Professor James Butcher) all say they did not remember seeing it. Email from William Brown to W. Burlette Carter (Apr. 21, 2010) (on file with the author). Telephone Interview with Whitney LeBlanc, Former Assistant Professor Howard Univ. (May 10, 2010); Telephone Interview with Vada Butcher, Former Professor of Music and Former Dean, Col. of Fine Arts, (Apr. 21, 2010).

340. Letter from Owen Dodson to Rosey Pool (Mar. 19, 1969) (on file with Emory Dodson papers) (emphasis added). At the time, Dodson was residing at the Ruth Stephan Poetry Center in Tucson. *Id.*

341. *Id.*

342. Letter from Marion Fontaine, Secretary, Drama Dep't, to Owen Dodson (Nov. 29, 1968) (one file with Emory Dodson papers).

343. *But see Student Joins Trustees of Howard U.*, BALTIMORE AFRO AMERICAN, May 9, 1970, at 7.

Louisiana.³⁴⁴ Christian had gone home after Howard students occupied the administration building in the spring of 1968.³⁴⁵ On his way back to Howard, he had to purchase a bus ticket.³⁴⁶ The bus station was in a restaurant that did not serve blacks; thus, those who wanted to buy a ticket had to go to a window and purchase tickets from outside.³⁴⁷ Under the watchful eyes of his parents, he walked into the restaurant and asked to buy his ticket.³⁴⁸ The clerk and restaurant crowd stared, but Christian got his ticket.³⁴⁹ Charles Franklin notes that the protest movements gave students a tremendous education in leadership and possibilities.³⁵⁰ Many went on to successful careers, some even joining Howard University's faculty or administration³⁵¹

The students also changed Howard and universities across the nation. The black studies movement took off in America's universities. In her 1968-1969 report on the Negro Collection, Dorothy Porter noted, "[e]very aspect of Negro Life and history, it would seem has been investigated by students here and elsewhere, as well as by faculty, visiting researchers, and the Washington community. It looks like 'black Awareness' is here to stay."³⁵² In 1969-1970 she wrote, "[b]lack studies continues to be 'big business.'"³⁵³ Moorland's use increased, but use of the Pollack Collection plummeted.³⁵⁴ The latter's

344. Telephone interview with James Christian, Attorney (June 20, 2011) [hereinafter Christian Interview].

345. *Id.*

346. *Id.*

347. *Id.*

348. *Id.*

349. *Id.*

350. Franklin Interview, *supra* note 313.

351. Franklin, head of the student government in 1967, is a doctor in Silver Spring. *Id.* His successor, Ewart Brown, who led the 1968 administration building occupation, became the Premier of Bermuda. (Through a representative he declined to speak with the writer.) A participant in the 1968 administration building occupation, Tritobia Benjamin is now a dean at Howard University. Interview with Tritobia Hayes Benjamin, Assoc. Dean, Division of Fine Arts, Howard Univ. College of Liberal Arts (July 20, 2011) [hereinafter Benjamin Interview]. Scott Baker served as a Freshman Student Representative in the meetings with the Fine Arts Faculty regarding the curriculum in 1968 and is now the Assistant Director of the Howard University Art Gallery. Interview with Scott Baker, Assistant Dir. of the Univ. Gallery of Art, Howard Univ., (May 20, 2011) [hereinafter Baker Interview]; *see also* Leace Interview, *supra* note 263; Butler Interview, *supra* note 273; Gravatt Interview, *supra* note 267; Wesley Interview, *supra* note 267; Christian Interview, *supra* note 344.

352. DOROTHY PORTER, ANNUAL REPORT OF THE NEGRO COLLECTION 1968-1969.

353. *Id.*

354. In 1968-69, 24,844 book and non-book items circulated through Moorland, reflecting an increase from 15,001 the prior year, with more than 20,000 of that reflecting student borrowing. *See* JOSEPH H. REASON, 1968-69 ANNUAL REPORT OF THE DIRECTOR OF UNIVERSITY LIBRARIES TO THE PRESIDENT OF HOWARD UNIVERSITY 22 (1969). By contrast, Channing's numbers reflected a circulation of 1,408 for books only (1,349 of them by students), down from 1,560 the

fate was likely due not only to a movement, which looked to a new “black” theater, but also to the opening of opportunities for blacks outside of the world of entertainment, and, later, the retirement of the collection’s chief cheerleader, Owen Dodson.

The university also witnessed a rapid turnover in administration and faculty. In May of 1968, liberal arts student protesters achieved the deanship resignation of Frank Snowden, Dean of the College of Liberal Arts. At Howard since 1940, he remained as a professor of classics.³⁵⁵ Medical students accomplished the removal of William Montague Cobb, as Chair of the Department of Anatomy, a post he had held some twenty-two years.³⁵⁶ Nabrit resigned as President of the University, and on July 1, 1969, James Cheek replaced him.³⁵⁷

Perhaps nowhere was the impact of faculty change more acutely felt than in fine arts. Professor Ted Shine left in the spring of 1967,³⁵⁸ while William Brown left in 1971.³⁵⁹ Professor Whitney LeBlanc left in the spring of 1967.³⁶⁰ Nature also played a role. Art Department Chairman James Porter died suddenly in early 1970,³⁶¹ and Dean Warner Lawson died in 1971; and, facing medical issues, Owen Dodson retired in 1970.³⁶²

In his 1968-1969 report on the Department of Drama, James Butcher provided his views on the impact of the protests on the faculty agenda.³⁶³ “The many student meetings to formulate demands and the many faculty meetings called to respond to these demands resulted in further damage in the area of teaching.”³⁶⁴ He mentions “[t]wo unfortunate incidents—the invasion of Ira Aldridge during in-

prior year. *Id.* In 1969-70, the Moorland circulation number for students and faculty rose to 25,717, while the Channing number for students and faculty use fell dramatically to 585. *Id.*

355. See Don Robinson, *Dean Quits at Howard, Was Under Student Fire*, WASH. POST TIMES HERALD, May 8, 1968, at B4.

356. See Bernadette Carey, *Howard Aide Ousts Target of Students*, WASH. POST TIMES HERALD, Feb. 14, 1969, at A1 (reporting on the decision by the Dean of Howard University College of Medical school to remove Cobb).

357. *Brief History of Howard University*, HOWARD U., <http://www.howard.edu/explore/history.htm> (last visited Nov. 16, 2011).

358. Shine Interview, *supra* note 259.

359. See E-mail from William Brown to W. Burlette Carter, *supra* note 279.

360. Telephone Interview with Whitney LeBlanc, Drama Dep’t Professor, Howard Univ. (May 10, 2010).

361. See *Headed Art Department at Howard, James A. Porter Dies at 64*, WASH. POST TIMES HERALD, Mar. 4, 1970, at C12.

362. See Ivan C. Brandon, *Warner Lawson, Howard Arts Dean*, WASH. POST TIMES HERALD, June 4, 1971, at C4.

363. See James Butcher, *Report of the Drama Department, in 1968-69 ANNUAL REPORT OF THE COLLEGE OF FINE ARTS 41-43* (1969).

364. *Id.*

termission by a group of black militants causing a cancellation of its final performance (*Simply Heavenly*) and the resignation early in the semester of a very competent instructor who felt unable to adjust to the demands of his students.”³⁶⁵ He added, “[t]he latter incident I believe suggests very strongly the need for careful evaluation of the validity of student demands for immediate relevance only and the complete rejection of universal standards in the arts and training for the arts.”³⁶⁶

B. Act II: Fade to Black

1. Dodson Drafts a Will

As a black artist in the early 60s and 70s, Dodson lacked the same opportunities as his white artistic counterparts. He was gay,³⁶⁷ and society suggested that he was, therefore, deviant and immoral. Moreover, racially discriminatory behavior was not limited to straight America. As the student protests waged on, Dodson was facing his own problems with debilitating arthritis and was also drinking heavily.³⁶⁸ In the spring of 1967, the administration finally intervened, forcing Dodson to get medical and psychological treatment and take a one-year leave of absence.³⁶⁹

In the spring of 1967, Dodson seemed to be making a transition; he drafted a handwritten will.³⁷⁰ In it, he left everything he owned relating to drama and the arts to the Pollack Collection, suggesting again how dear that collection was to him.³⁷¹ In July of 1967, he resigned the Chairmanship of the Drama Department.³⁷² And, he began transferring his personal papers to Moorland-Spingarn, sending some in 1967 and two large boxes the following year.³⁷³

365. *Id.* Butcher does not name the faculty member of whom he is speaking.

366. *Id.*

367. *See, e.g.,* HATCH, *supra* note 236, at 58-59, 220.

368. *Id.* at 227-28, 242.

369. *Id.* at 228.

370. *See* Last Will and Testament of Owen Vincent Dodson (March 18, 1967) (*in the Probate of Will of Owen V. Dodson*, No. 2938-83) [hereinafter *Dodson Probate Papers*].

371. *Id.*

372. Letter from Owen Dodson, Drama Dep't Chair, Howard Univ., to Rosie Pool, Anthropologist (July 6, 1967) (on file with Emory Dodson papers).

373. *See* ETHEL M. ELLIS, 1967-68 ANNUAL REPORT OF THE NEGRO COLLECTION 3 (1968); ETHEL M. ELLIS, 1968-69 ANNUAL REPORT OF THE NEGRO COLLECTION 7-8 (1969) (“Dodson placed with [Moorland] two large boxes of his personal papers.”). The finding aid prepared by Moorland-Spingarn reflects that the items Dodson gave were papers and photographs. *See* GRETA WILSON, FINDING AID (1980).

Although he was on leave from teaching in 1967-1968, Dodson produced three one-act plays in that fall.³⁷⁴ He had planned to produce an Opera, *'Till Victory is Won'* with Dean Warner Lawson and Associate Dean Mark Fax in the spring of '68, but, as he would complain in a letter to a young Jessye Norman ('67), the performance was later cancelled due to "race riots and legitimate student sit-ins."³⁷⁵ He requested another leave for the years of 1968-1969, which was granted. In the fall of 1968, he traveled throughout England; he spent the spring as a poet in residence at a poetry center at the University of Arizona.³⁷⁶

In Dodson's absence, Howard's Drama Department attempted to adjust to the new environment. In July of 1968, Chair James Butcher announced that he was "reorganizing" Howard's Drama Department.³⁷⁷ The press release announced the appointment of four new full time replacements.³⁷⁸ In the fall of 1969, Vera Katz was hired,³⁷⁹ and the Department's plays began to reflect the new movement in black theater.³⁸⁰

374. See *Theater Promptbook; New Plays Given Hearing at Howard*, WASH. POST, Dec. 3, 1967, at H2 (announcing Dodson's direction of plays by Floyd Barrington Barbour); see also Letter from Owen Dodson, Drama Dep't Chair, Howard Univ., to Bill Reardon, Dir. of NDEA Inst. in Repertory Theatre, Dep't in Dramatic Arts, Univ. of Cal., Santa Barbara (Nov. 12, 1967) (on file with Howard University Moorland-Spingarn Research Center) (noting rehearsals for three one act plays); Letter from Owen Dodson, Drama Dep't Chair, Howard Univ., to Bill Reardon, Dir. of NDEA Inst. in Repertory Theatre, Dep't in Dramatic Arts, Univ. of Cal., Santa Barbara (Feb. 13, 1968) (on file with Howard University Moorland-Spingarn Research Center) (noting that he was working in the fall of 1967 and joking that he had had no "vacation" in the fall of 1967). The plays had only a short run when the playwright pulled his approval because he was unhappy with Dodson's resistance to changes he requested. See Richard Coe, *The Brookses Are in Action*, WASH. POST, Dec. 7, 1967, at B11.

375. Letter from Owen Dodson, Drama Dep't Chair, Howard Univ., to Jessye Norman, Performer (Apr. 30, 1968) (on file with Emory Dodson Papers).

376. Letter from Stanton L. Wormley, Academic Vice President, Howard Univ., to Owen Dodson, Drama Dep't Chair, Howard Univ. (June 26, 1968) (on file with Emory Dodson Papers) (approving research grant for sabbatical travel); Letter from Owen Dodson, Drama Dep't Chair, Howard Univ., to Rosey Pool, Anthropologist (Mar. 19, 1969) (on file with Emory Dodson Papers).

377. See Press Release, Howard Univ. Dep't of Drama, Howard University Department of Drama Reorganized and Expanded (July 26, 1968) (on file with Howard University Moorland-Spingarn Research Center); see also Wilde's *'Earnest' Will Open McLean Season*, WASH. POST TIMES HERALD, Sept. 22, 1968, at E10.

378. See Press Release, *supra* note 377.

379. Telephone Interview with Vera Katz-Korth, Former Drama Professor, Howard Univ. (July 14, 2011) [hereinafter Katz-Korth Interview].

380. See Richard Coe, *Over and Over, Say It Black*, WASH. POST, Mar. 8, 1969, at C1 (reviewing Paul Carter Harrison's play *Tabernacle*); Richard Coe, *Malcolm X Drama*, WASH. POST, Mar. 12, 1971, at B9 (reviewing the play *El Haj Malik*); Holly I. West, *Genet's The Blacks*, WASH. POST, Apr. 28, 1971, at B6 (reviewing the play).

Dodson observed the changes at Howard with both hope and unease. In the spring semester of 1968, he would write to a friend:

When I see you I will tell you about the more intimate developments at Howard, such as bombings, burnings, demonstrations, picketing, walkouts and such It is an exciting and miserable time to be alive, but there are rewards in seeing the emergence of new culture, and a new determination to make our world believable and hopeful.³⁸¹

But, Dodson would never become comfortable with a new approach to describing the black experience that he believed mischaracterized black life as primarily urban poverty with no middle class.³⁸² He found the foul language that characterized some of the new ghetto-centered drama's difficult to accept.³⁸³ After Langston Hughes' passing in the spring of 1968, he wrote to a friend, "[o]ur Negro world now is a new presence. Langston recorded the old. Now he is dead."³⁸⁴

Needing hip surgery, Dodson would request medical leave once again for the spring of 1970.³⁸⁵ The fall of 1969 would end up being his last on Howard's faculty.³⁸⁶ With so many changes, department

381. Letter from Owen Dodson, Drama Dep't Chair, Howard Univ., to Eve Lee, Former Student (Jan. 29, 1968) (on file with Howard University Moorland-Spingarn Research Center).

382. Letter from Owen Dodson, Drama Dep't Chair, Howard Univ., to Ted Shine, Professor, Prairie View A&M Univ. (Jan. 28, 1969) (referencing the Metropolitan Museum of Art Exhibit called "Harlem, Harlem, Harlem On My Mind" that showed no black artists, doctors, lawyers, professionals, and "Negro handicrafts," but had plenty on soul foods and words like "mother fuckin and shit"). He calls the exhibit "stunning and confusing." *Id.*

383. *Id.*

384. Letter from Owen Dodson, Drama Dep't Chair, Howard Univ., to Rosey Pool, Anthropologist (July 6, 1967) (on file with Emory Dodson papers).

385. Letter from Owen Dodson, Drama Dep't Chair, Howard Univ., to Mark Fax, Acting Dean, Howard Univ. (June 28, 1970) (on file with Emory Dodson papers) (requesting immediate retirement due to disability).

386. In the spring of 1970, Dodson sought retirement based upon full disability from Howard. See Letter from William Brown, Dep't Chair, Drama, Howard Univ. to Mark Fax, Acting Dean, Howard Univ. (June 25, 1970) (on file with Emory Dodson papers). Supported by William Brown, then Department Chair, and Mark Fax, Acting Dean of the College of Fine Arts, he asked for a unique arrangement that essentially would have given him an early pension in recognition of what he believed was his unusual contribution to Howard. *Id.* Dodson was still in his fifties. The board accepted his retirement, but did not grant the unusual pension arrangement. *Id.* (Indeed, it seems unlikely that they could not grant such an unusual arrangement to him without affording the opportunity to others.) Because they had accepted his retirement without giving him a chance to change his mind (even though he had said he was disabled and could not teach), Dodson then concluded that they were trying to force him out. See HATCH, *supra*, note 236, at 244. There is little doubt that Howard was concerned that Dodson had not handled his significant drinking problems, which the University believed was affecting his judgment. *Id.* at 259, 263-64. Of course, the University had already granted him the two consecutive years of leave. *Id.* Now retired with no steady stream of income and health problems, he subsequently faced significant financial distress as well as mounting health challenges. *Id.*

chair Butcher was pressed to find new faculty again for the fall of 1970. Responding to the Cheeks administration's directive that departments needed to recognize because of the new black studies movement, he brought on Sam Wright, Robert Wesley, and Glenda Dickerson.³⁸⁷

2. Oscar Exits, Stage Left (Or Was it Stage Right)?

Vera Katz joined Howard in August of 1969 as a young white female hired in the midst of an emerging "black studies" movement.³⁸⁸ She remembers that as one entered the door of the Green Room in the Drama Department, there were glass cases on either side. In one, she saw the pair of "Bojangles" shoes tied together with a shoestring.³⁸⁹ There were also photographs from the Howard Players' 1949 trip. She does not remember an Oscar. However, at the time, Katz was unaware that an Oscar could be a plaque just five inches wide and six inches tall, and she does remember that there were several plaques in the case.³⁹⁰

Linda Gravátt attended Howard from 1966 to 1971.³⁹¹ She believes that the Oscar was there her entire time at Howard. She was also a member of the Howard Players.³⁹²

Indeed, while the formal visits to the shrine might have ended, there is no indication that the Oscar was not there, along with its constant companion, the shoes. When did the Oscar disappear? A controversy over posters may well signal the time period.

St. Claire Christmas, a former Dodson apartment mate, kept Dodson apprised of events in their old neighborhood.³⁹³ He joined Howard's Drama Department as an instructor in the fall of 1970.³⁹⁴ An affiliate of the prior generation, Christmas was not happy with the approach of the new faculty.³⁹⁵ Still, the day before Thanksgiving, in

387. See HATCH, *supra* note 236.

388. Katz-Korth Interview, *supra* note 379.

389. *Id.*

390. *Id.*

391. See Gravátt Interview, *supra* note 267.

392. *Id.*

393. Letter from St. Clair Christmas, Dep't of Drama Instructor, Howard Univ., to Owen Dodson, Drama Dep't Chair, Howard Univ. (Feb. 24, 1970) (on file with Emory Dodson papers).

394. Letter from St. Clair Christmas, Dep't of Drama Instructor, Howard Univ., to Owen Dodson, Drama Dep't Chair, Howard Univ. (Nov. 25, 1970) (on file with Emory Dodson papers).

395. *Id.*

1970, Christmas wrote to Dodson that “everything is going well at Howard,” and he noted, “James Butcher is the head of the department.”³⁹⁶

By January 1971, Christmas’s tone had changed. As part of their effort to make the theater more “black,” Wright and West had tossed out theater posters that Dodson commissioned students and faculty to create and had used to decorate the department walls.³⁹⁷ Of course, Dodson was no longer the chair, and the old needed to make way for the new. But, the fact that they had not taken care to preserve the posters riled some. With some regrets, Lynda Gravátt (‘71) remembers the general mood of many students in the day. “We wanted to be ‘black,’ not ‘Negro,’” she says.³⁹⁸ However, Gravátt also remembers that when she and other drama students discovered some of the posters were in the trash cans in early 1971, they ran out and grabbed them as treasures.³⁹⁹

The news of the posters mishandlings spread like a fire among those affiliated with Howard’s older guard. Former Howard Professor Ted Shine heard about it all the way out at Prairie View.⁴⁰⁰ Former Drama Chair William Brown, then at the University of Maryland, heard about it when he called his old friend James Butcher for a chat.⁴⁰¹ Brown still calls the news “shocking”; however, he does not remember Butcher expressing any concern over an Oscar, the shoes, or the other items in the glass cases.⁴⁰² Indeed, none of those who remember the poster incident remembers the items in the glass cases being trashed or an Oscar being taken.⁴⁰³

396. *Id.*

397. See Letter from St. Clair Christmas, Dep’t of Drama Instructor, Howard Univ., to Owen Dodson, Drama Dep’t Chair, Howard Univ. (Jan. 29, 1971) (on file with Emory Dodson Papers) [hereinafter Letter from St. Clair Christmas on Jan. 29, 1971].

398. See Gravátt Interview, *supra* note 267.

399. *Id.*

400. See Shine Interview, *supra* note 259.

401. Brown learned of the poster incident when he called James Butcher around that time; Butcher told him that he was trying to recover them. E-mail from William Brown, Former Drama Chair, Univ. of Maryland, to W. Burlette Carter, Author (July 20, 2011, 06:10 EST) (on file with author). Similarly, Lynda Gravátt remembers the poster incident but is sure that the glass cases were not violated at that time. See Gravátt Interview, *supra* note 267.

402. E-mail from William Brown, Former Drama Chair, Univ. of Maryland, to W. Burlette Carter, Author (July 18, 2011, 13:42 EST) (on file with author). Brown remembers the glass cases and the artifacts, but, as previously mentioned, he does not specifically remember the Oscar. See *supra* text accompanying note 339.

403. Shine Interview, *supra* note 259.

Dodson heard about the incident in New York. In a January 29, 1971 letter, Christmas, clearly biased towards Dodson, expressed anger at the new regime.

The Drama Department posters and etc. still have not been replaced by Mr. Wright or Mr. West as ordered by Mr. Butcher so our halls that you made a showplace are vacant, dark . . . They seem to like it that way, but really the students complain daily about why the posters and etc . . . everything that said this was the Drama Department has not been replaced. They want to restore the halls to their previous glorious status.⁴⁰⁴

Christmas also mentions that Butcher has been absent, sick for three weeks (a fact that might explain how the posters were removed without his approval).⁴⁰⁵

But, the poster controversy was a harbinger of the changes that were to come. Gravátt graduated in the spring of 1971.⁴⁰⁶ She was asked to join the teaching faculty at Howard University the next semester, the fall of 1971. Oddly, she does not remember the Oscar or the shoes being there when she returned. She does not remember the Ira Aldridge room still being present.⁴⁰⁷

There is an interesting note in the Annual Report of Founders Library for 1971-1972 (covering fiscal year July 1, 1971 to June 30, 1972). It says: “[d]ue to the sabbatical leave of Mrs. Mahanand, curator. . . work in the department was limited to reorganizing the physical facilities, and processing of backlog. *Some additional Leigh Whipper artifacts were received and added to the collection.*”⁴⁰⁸ Here is a theory: James Butcher, the last of the triumvirate that originally formed the Department of Drama, returned to the Pollack Collection an Oscar and a pair of bronzed shoes, both donated by Leigh Whipper. Butcher left the Department in 1972-73 transferring to the Office of the President.⁴⁰⁹

404. See Letter from St. Clair Christmas on Jan. 29, 1971, *supra* note 397. There may in fact have been subsequent poster incidents triggered either by political or simply space concerns. Vera Katz reports she took posters out of trash cans behind the Drama Department in the 1980s, when unknowns discarded them not knowing their history and trying to make space in the department for ongoing operations. Katz-Korth Interview, *supra* note 379. This writer saw for herself throughout visits to the University during the summer of 2011 some of these early posters now stored in the Drama Department and in the Howard University Archives.

405. See Letter from St. Clair Christmas on Jan. 29, 1971, *supra* note 397.

406. Gravátt Interview, *supra* note 267.

407. *Id.*

408. WILLIAM D. CUNNINGHAM, 1971-1972 ANNUAL REPORT OF THE DIRECTOR OF LIBRARIES TO THE PRESIDENT OF HOWARD UNIVERSITY 25 (1972) (emphasis added).

409. Baker Interview, *supra* note 351.

But, what about Owen Dodson? Arguably, Dodson did have a motive to take the Oscar. He would bitterly conclude that the administration had not made sufficient efforts to keep him or honor him.⁴¹⁰ However, steadfast loyalty to Howard University Theater belies such intent. As noted, he had already placed much of his papers at Howard before he left.⁴¹¹ Until 1983, he would repeatedly reject offers to place his papers at other institutions.⁴¹² In November of 1974, he assured Dr. Michael Winston, then Director of the Moorland-Spingarn Research Center, that whatever he had left, including new work, would be sent to Howard University.⁴¹³ He specifically referenced the Pollack Collection for any theater items, which he said he would donate in the name of Dorothy Porter.⁴¹⁴

No one ever saw the Oscar in his home, and there is no evidence that it was ever there. In 1973, Michael Winston, then, the new Director of Moorland-Spingarn, visited Dodson in New York at Dodson's request to retrieve more papers.⁴¹⁵ They did not discuss the Oscar.⁴¹⁶ In 1973, Winston had not heard rumors that Dodson had taken the Oscar or that it had been stolen.⁴¹⁷

Dodson's 1967 will attempt, though invalid because it lacked the requisite number of witnesses, remained his wish for fifteen years after leaving Howard University. Finally, in 1983, working with his caretaker, a very ill Dodson would catalog all that he had in his New York apartment and where he wanted it to go in preparation for a new will. That list and his 1967 will would become the subject of litigation after his death, which is how we know what it said and what he might

410. Saying his disability prevented him from working, Dodson, in his fifties, sought to retire early. With his Department's support, he sought a unique pension arrangement that was probably not legally within the University's power to grant. Howard rejected the arrangement, but accepted the retirement offer. Afterward, he would face constant financial struggles and mounting medical costs—and he continued to drink. See HATCH, *supra* note 238, at 263.

411. See text *supra* accompanying notes 384-87.

412. See Letter from Bernard Kreissman, Chief Librarian, City College, to Owen Dodson, Drama Dep't Chair, Howard Univ. (Nov. 18, 1970) (on file with Emory University).

413. Letter from Dr. Michael Winston, Dir., Moorland-Spingarn Research Ctr., to Owen Dodson, Drama Dep't Chair, Howard Univ. (Nov. 22, 1974) (on file with Emory University).

414. *Id.*

415. *Id.*

416. *Id.*

417. See HATCH, *supra* note 236, at 290-91. Winston left empty handed, as the indecisive Dodson could not decide what he wished to give. Winston Interview, *supra* note 13.

have been intending.⁴¹⁸ He listed no Oscar.⁴¹⁹ He would die soon thereafter.⁴²⁰

Significantly, in that 1983 list, Dodson mentioned Howard University. He said that he wanted to leave to the Pollack Collection all theater posters and other posters *that are housed there*.⁴²¹ This reference is consistent with Butcher having put the posters in the Pollack Collection for safekeeping after the 1971 poster incident. If the new regime at Howard University was discarding the posters, then arguably they had been abandoned, and Dodson could claim them as his own. But, he did not want them for himself. He wanted to preserve them so that future generations of Howard Drama students would know more about the Department's history. If Butcher put the theater posters in the theater collection, would he not have also taken the time to take the Oscar—and the “Bojangles” shoes as well?⁴²²

Upon taking the helm of Moorland-Spingarn, Michael Winston would begin to rein in Howard University's various artifacts. In the first or second year, he would recover General Howard's piano from the Drama Department Green Room.⁴²³ If an Oscar had been in the Green Room then, or the “Bojangles” shoes, would Winston or his agents not have either seen or heard about them?

One final story may confirm that the Oscar left the stage of the Drama Department at Howard University in the 1971-1972 period. In 1973-1974, Scott Baker, a Master's program graduate in 1975, who is now Assistant Director of Howard's Art Gallery, was a graduate student, working in the Art Department. During that period, a package

418. Outline for the Last Will and Testament of Owen V. Dodson (on file with Dodson Probate Papers) *supra* note 370. The drafting, preservation, and validity of this will was the subject of the Depositions of Patrick Trujillo and Doris Jeffrey (Oct. 4, 1983) (on file with Dodson Probate Papers. Examination of Attending Witnesses, Patrick J. Trujillo and Doris Jeffrey, File No. 2938-83 (Surrogate's Court, NY Oct. 4, 1983).

419. Outline for the Last Will and Testament of Owen V. Dodson (on file with Dodson Probate Papers) *supra* note 238 (emphasis added).

420. See C. Gerald Fraser, *Owen Dodson is Dead at 68; Major Figure in Black Drama*, N.Y. TIMES, June 22, 1983, at A24.

421. Outline for the Last Will and Testament of Owen V. Dodson (on file with Dodson Probate Papers) (emphasis added) *supra* note 238.

422. There is another option. Butcher could have stored the Oscar and other items in the Drama Department instead of the Pollack Collection. But that approach would not make sense. He knew the Collection was where important items were stored. He remained on campus after leaving the department so he would have had plenty of time to get it to the Collection. And, as one of the original advisors on the Scandinavian tour, he would have known the significance of such artifacts (including the artifacts from the tour that had been in the case), and he knew of their importance to his colleague Owen Dodson.

423. See Winston Interview, *supra* note 13.

was delivered.⁴²⁴ Inside, the department chair found a bronzed pair of Bill “Bojangles” Robinson’s shoes.⁴²⁵

According to Baker, both the Art Department Chair and the Art Gallery curator were unimpressed with these Drama items from a by-gone era.⁴²⁶ They directed Baker to take them to the Pollack Collection.⁴²⁷ Young Baker did as he was told.⁴²⁸ He remembers the name of the donor of the shoes: Leigh Whipper. Whipper was then ninety years-old.⁴²⁹ This writer believes that this second pair of “Bojangles” shoes, which are stored with a metal plate with drill holes suggesting that they were once mounted, now rests in the Pollack Collection.⁴³⁰ The first pair—unmounted and bronzed⁴³¹—along with Hattie McDaniel’s Oscar, remain unaccounted for. Could it be that Whipper sent a second pair in 1973 because he had learned that the first pair was gone—and none of the new faces in the Drama Department knew where the items had been placed? Whipper could send a replacement pair of shoes. He could not send a replacement Oscar.

V. THE FINAL ACT

What about the story of the Oscar hurdling over the gleaming waters of the Potomac River?⁴³² It was a curious tale from the start. Why would a black person so angry over racism as to violate the shrine, and watch as the Oscar was hurled into the Potomac river confess this fact only to Tom Gregory who is, well, a “white” guy? Why couldn’t Gregory, who cares so much about McDaniel and her Oscar, provide more details about the culprit?

I contacted Gregory by email and posed a list of questions in the hope of tracking down the elusive informant.⁴³³ He responded by

424. See Baker Interview, *supra* note 351.

425. *Id.*

426. *Id.*

427. *Id.*

428. *Id.*

429. See *id.*; note 285 (regarding Whipper’s age). When this author first spoke with Baker, he was unaware of an earlier pair of shoes. *Id.*

430. This writer saw the shoes for herself on September 15, 2011.

431. There may have been, then, three pairs’ of dancing shoes: two bronzed and one black pair not bronzed. See *supra* note 266.

432. Gregory has stated, “Like Hattie herself, it too is buried in the wrong place, a victim of misunderstanding and hate.” Gregory, *supra* at note 19.

433. See E-mail from W. Burlette Carter, Author, to Tom Gregory, Columnist, Huffington Post (May 11, 2011, 03:02 EST) (on file with the author).

email on May 11, 2011 stating that he was “traveling” but that the story “has acquired a different end recently.”⁴³⁴ He continued:

In February I did a[n] interview for an independent producer who was taping a piece for a DC station. On it I asked—dared, whom-ever might have it to come forward. Lo and behold a person emailed me with the Oscar (plaque)! The base is long gone—with its identifying nameplate, but I highly suspect it belonged to [M]cDaniel! It’s an early plaque (it [i]s the first design) and seems to be spot-on. Obviously this new revelation means the earlier story I was told was inaccurate. At some point in the near future I will go public by offering this item back to Howard. Keep in mind I will never have HARD proof this is Hattie’s, but I’m personally satisfied by the circumstances, vintage, and patina of this Oscar-plaque.⁴³⁵

Gregory’s plans to “offer” the alleged Oscar plaque to Howard University said to me that he had control of, and indeed owned it. What good fortune.

I responded by email, again, posing the exact same questions about his informant. The lawyer in me led me to say the words “be careful.”⁴³⁶ He did not respond. I sent another message on May 30, again posing the exact same questions.⁴³⁷ Again, he did not respond. Then I decided to stop asking questions—and wait.

I was aware of two other facts at the time that I received Gregory’s email. First, I knew that on February 19th and 27th of 2011, the DC station WB50 had aired a special, *Hattie’s Lost Legacy*.⁴³⁸ Second, I knew from previous internet searches that a plaque matching

434. E-mail from Tom Gregory, Columnist, Huffington Post, to W. Burlette Carter, Author (May 11, 2011, 18:40 EST) (on file with the author).

435. *Id.*

436. E-mail from W. Burlette Carter, Author, to Tom Gregory, Columnist, Huffington Post (May 12, 2011 17:55 EST) (on file with the author). While I did not say it, apart from the obvious difficulties posed by any farce, if it were the McDaniel Oscar, it would have had to have been stolen. A thief does not have good title, and his disability affects everyone down the line of custody. Even an innocent purchaser who buys not knowing of the theft gets *nothing*. See *generally* *Brown Univ. v. Kaminski*, 1993 Mass. Super. LEXIS 23 (Mass. Super. Ct. Dec. 10, 1993) (stating that the thief could not legitimately auction an item stolen from Brown University, despite Brown not having called the police or filed an insurance claim); *Newman v. Stuart*, 597 So. 2d 609 (Miss. 1992) (holding that an innocent purchaser of a stolen pickup truck acquired no title); *Anderson Contracting v. Zurich*, 448 So. 2d 37 (Fla. Dist. Ct. App. 1984) (holding that an innocent purchaser of heavy equipment from thief acquires no title). And of course, knowingly buying or selling property one knows has been stolen is also illegal in every U.S. jurisdiction. See, e.g., 18 U.S.C. § 2315 (2006). *But see* *Snethen v. Okla. State Union of Farmers Educ. & Cop. Union of Am.*, 664 P.2d 377, 381-82 (Okla. 1983) (noting that despite general rule, an innocent purchaser for value may still have an insurable interest under an insurance contract).

437. See E-mail from W. Burlette Carter, Author, to Tom Gregory, Columnist, Huffington Post (May 30, 2011, 14:11 EST) (on file with the author).

438. See *supra* p. 111 and text accompanying note 22.

Gregory's description—one with the original base and nameplate missing—was sold on Ebay on March 19, 2011 at a winning bid of \$7,656, only weeks after the WB50 airing.⁴³⁹ By the time I contacted Gregory, the eBay posting had been removed. However, with the help of the Archangel Google,⁴⁴⁰ I was able to find it again. The advertisement, while speculating that the item might be the McDaniel Oscar, had clearly stated that the seller had no evidence of that fact and the item had been obtained in London.⁴⁴¹ I contacted the seller to inquire further about its origins. Understandably, the seller declined to name the buyer. Nevertheless, I would wager that the Potomac River story—informant and all—is a fish tale.⁴⁴²

* * *

At press time, this writer cannot say where the McDaniel Oscar is *now*. She can only speak as to where it was as of 1972. It was not thrown into the Potomac River. Protesting students did not take it. Professor Owen Dodson did not slip it under his coat on his way out, nor did Professor Mike Malone take it. The story of its fate is a rather pedestrian one. In the midst of the dramatic changes wrought by the '60s, those in charge acted responsibly. They made room for the young to have their say, and they placed the Oscar, the shoes, and other artifacts back in the Pollack Collection.

VI. LESSONS AND LEGACY

The journey of McDaniel's Oscar reveals much about the effect of race discrimination upon African American wealth development, preservation, and intergenerational wealth transfers. I make a few observations here.

McDaniel was born into a life of state-sponsored racism. As a result, her early life was one of desperate poverty.⁴⁴³ Both her mother and father were former slaves.⁴⁴⁴ They had little or nothing of financial worth to pass on to her as an inheritance. She began with no financial springboard—no money, no parental education, no long-

439. See *Exceedingly Rare & Authentic Academy Award Oscar Statue*, eBay, <http://cgi.ebay.com.sg/Exceedingly-Rare-Authentic-ACADEMY-AWARD-OSCAR-STATUE-/250786969733> (last visited Oct. 26, 2011).

440. I mean, of course, I am referring to the internet search engine, Google.

441. See *supra* note 439.

442. Indeed, it is arguably a fishtale that traded on a stereotype of angry, crazy, young, black people.

443. See WATTS, *supra* note 23, at 18, 19.

444. See *id.* at 2, 6.

standing name, and not even decent health care or food.⁴⁴⁵ And she faced civil rights restrictions that benefitted her white counterparts. Her life was the exception, not the rule for blacks in America in her day.

The hand of racism would follow her throughout her career. It would restrict the amount of wealth she could acquire, irrespective of her talents.⁴⁴⁶ It would also restrict the amount of wealth she could

445. At age nine, her father, his eleven-year-old sister, and six-year-old brother were sold away as slaves from their parents in Virginia and taken to be slaves in Tennessee. *Id.* at 3. Her last name, “McDaniel,” comes from the surname of her father’s last slave holders. *Id.* at 3-4. Several writers have pointed out that one of the most valuable things that we pass on to our heirs is intangible. See, e.g., Walter J. Blum & Harry Kalven, Jr., *The Uneasy Case for Progressive Taxation*, 19 U. CHI. L. REV. 417, 504 (1952). They largely discuss these issues in terms of class discrimination, not in terms of state sponsored racial discrimination. *Id.* For example, Blum and Kalven stated (ironically, in the year of McDaniel’s death):

[T]he gravest source of inequality of *opportunity* in our society is not economic but rather what is called cultural inheritance for lack of a better term. Under modern conditions the opportunities for formal education, healthful diet and medical attention to some extent can be equalized by economic means without too greatly disrupting the family. However, it still remains true that even today much of the transmission of culture, in the narrow sense, occurs through the family, and no system of public education and training can completely neutralize this form of inheritance. Here it is the economic investment in the parents and the grandparents, irrevocably in the past, which produces differential opportunities for the children.

Id. (emphasis added). Racism circumscribed the economic investment that slaves and the descendants of slaves could make in their children’s future.

446. The reasons for McDaniel’s insolvency remain a mystery to this writer. Her tax liability at death—some \$11,000—was simply not large enough to be the sole explanation (unless there were earlier claims as well). Indeed, the size of the 1951 claim (more than \$6,000), see *supra* text accompanying note 184, suggests that she may have failed to pay capital gains on the sale of the home that she sold that year. But where did that money go? She does not have the amount of debt one would expect in an insolvent estate. Some say her ex-husband looted her. See, e.g., WATTS, *supra* note 23, at 264. The timing seems right, but there is no evidence. Others say that she was too cheerful a giver. See, e.g., Harry Levette, *Story of Dwindling Fortune: Hattie Loved to Live; Was Cheerful Giver*, BALT. AFRO-AMERICAN, Nov. 22, 1952, at 7. It seems unlikely McDaniel would have donated herself into poverty. Some blame medical expenses, see, e.g., JACKSON, *supra* note 16, at 150, but no significant medical bills are in the record, and McDaniel was an adherent to Christian Scientist approaches. WATTS, *supra* note 23, at 270. But, did she forgo medical care because of her financial situation? Clearly she had a habit of lavish spending that developed over the years. Among others, Jackson notes that she held lavish parties before she put her Sugar Hill Home up for sale in May 1950, including a party Jackson called a “party to end all parties.” JACKSON, *supra* note 16 at 147-48. She decorated her new rental home, with more than one hundred yards of draperies, some of which were custom made. See Letter from City Finance Corp. to Zagon Firm (Feb. 4, 1953) (on file with McDaniel Probate Documents) (detailing the conditional sales contract dated Oct. 8, 1951 and proposing a settlement of \$361.78). She may have considered these expenses investments in her career knowing that Hollywood does not suffer “broke” individuals. Yet, what emerged was a woman struggling to appear to be what she was not. In earlier years, she spoke of being frugal and saving for hard times. See Ryan, *supra* note 101. While an absence of racism would have given her a broader shoulder upon which to navigate her financial wrong turns, one sees a pattern that indicates she did not provide herself enough leeway for hard times. Her probable legal bills before her death for her divorce, the will drafting, and possibly IRS negotiations are also of interest. See *infra* note 453.

and would share with other members of her family; it would restrict the amount she could pass on to her heirs.

The impact of racism on the estates of blacks in McDaniel's time can be seen on at least four fronts. First, racism depressed the value of the property to be transferred. The market value of one's estate at death was inevitably tied to the value a larger society assigned one as a person, in this context, "white" or "black." Segregation and anti-miscegenation laws multiplied this effect by limiting the market of buyers for black-produced items and items associated with blacks. Thus, the McDaniel Oscar in McDaniel's day was worth less economically than a comparable Oscar awarded to a white person.

Second, racism narrowed the pool of persons in a family or in a community who would have the knowledge and resources to manage legacy property so that it could serve future generations. A knowledgeable person might die with assets, and the property could be lost or taken because those left behind would not know how to manage it or would not have the resources to protect it.

Third, racism restricted the availability of professional assistance from one's own community—persons knowledgeable about both money and culture—who could aid in the transfers at death. For cultures subject to discrimination, such persons are essential to wealth preservation, exploitation, and transmission. Indeed, the need for black lawyers to be trained in civil rights left fewer opportunities for training in business, tax, securities, corporations, intellectual property, wills and trusts, and other such legal areas.

Fourth, battling racism introduced inefficiencies into black life that whites did not face. Discrimination did not simply end full stop with a court decision.⁴⁴⁷ The constant fight for civil rights did not only take place in courtrooms among lawyers wearing suits and ties. The battles were waged in the everyday lives of black Americans. Those battles consumed tremendous amounts of time and energy that might have been devoted to other forms of planning, including wealth acquisition and planning. A viable estate plan had to consider not just what

447. Despite the Supreme Court's decision in *Brown v. Board of Education*, 347 U.S. 483 (1954), this author attended state sanctioned racially segregated elementary schools in South Carolina as late as 1970. Despite *Shelley v. Kraemer*, 334 U.S. 1 (1948), a 1967 Census Bureau study showed that more than half of the black families living in slum areas could afford better housing, but were kept out of such neighborhoods because of racially segregated housing patterns. See *Bias Not Poverty, Tied to Housing Segregation, More Than 50% of Negro Slum Families Can Afford Better Housing*, *U.S. Finds*, L.A. TIMES, Dec. 14, 1967, at A15.

would work for whites, but how racism or cultural considerations might change that calculus when the parties were black.

McDaniel's estate plan indicates that she was concerned about her brother's lack of financial knowledge. Her lawyers chose the vehicle of a testamentary trust to hold and distribute assets she hoped to leave for him and his wife. The trust vehicle is often used when one is concerned that an individual cannot providently handle assets or may be victimized by others. But, professional trustees, especially those the size of her co-designee, the California Trust Company, often apply a host of fees to trust transactions. Even if McDaniel had some money to pass on, the trust as designed would have been a costly way to leave a small to moderate legacy. Of course a plan with a testamentary trust is useless when an estate is insolvent as McDaniel's was. In a different world, Sam McDaniel might have had the opportunity to learn about money. He might have been able to receive an outright gift. If he needed a trust, perhaps a family member could have served as trustee. Perhaps, McDaniel would have had enough money that paying for professional management would simply not have been an issue and, indeed, professional management might have been *desirable*. Perhaps *intervivos* or nonprobate transfers would have been considered for her assets.⁴⁴⁸

McDaniel had access to professionals. She selected white celebrity lawyer Sam Zagon and his firm to write her will.⁴⁴⁹ Zagon had represented her in her divorce from fourth husband Larry Williams.⁴⁵⁰ Interestingly, having written the will, Zagon also expressly designated his firm in the will to handle her estate.⁴⁵¹ Her executor, John Charles

448. An *intervivos* gift is a transfer during one's life. A nonprobate transfer allows property to pass outside of the will directly to its new owners without going through a court process. The use of such nonprobate transfers was more rare in McDaniel's day than it is today. See John H. Langbein, *The Nonprobate Revolution and the Future of the Law of Succession*, 97 HARV. L. REV. 1108, 1108-09 (1984) (speaking of growth in use of nonprobate transfers that emerged in the twentieth century). Once the IRS lien attached, however, see *supra* text accompany notes 186-92, none of these options would have sufficed to protect any property.

449. Samuel Zagon had a long list of big name Hollywood clients. See, e.g., *Lawyers Ask \$290,000 of Lee Estate: Trio Helped Settle Tax Claims Against Radio Magnate*, L.A. TIMES, Dec. 21, 1953, at 21 (remarking on the fees for representation of radio magnate Thomas Lee, including defense against a tax claim of almost two million dollars against the estate). The original Zagon fee claim of more than \$290,000 was met with public disapproval. See *\$180,000 Fees Approved for Lee Estate Lawyers*, L.A. TIMES, Dec. 31, 1953, at 5.

450. See, e.g., Tomi Ayers, *West Coast Round-up*, CHI. DEFENDER, Oct. 28, 1950, at 9.

451. Such a designation is merely precatory. An executor has the power to hire whomever he or she pleases. Some might frown on this type of designation as the solicitation of business in violation of ethical precepts. See First Accounting, *supra* note 181, at 3 (requesting statutory fees).

Gross, is believed to have been the well-to-do socialite of the same name.⁴⁵² These professionals did a technically superb job of managing her estate, despite its small value. It is almost painful to see how the executor struggled to squeeze every dime for the creditors and how he documented every minute transaction that could have economic meaning. However, there was one item of “no value” that the executor and the lawyers neglected. Viewing that item in terms of market value, the omission, though regretful, was not commercially significant. But, considering the item’s cultural value, the omission was huge.⁴⁵³

In the world of Wills and Trusts, the dead can only protect their legacies through live persons. Interestingly, when showman Sid Grauman died and his family sought to sell off his assets, his friends camped out before the auction to try to purchase the items, desiring that the business be kept intact for the world to see.⁴⁵⁴ Somehow, someone at the Academy discovered that Sid Grauman’s Oscar was up for auction, and the Academy sent its secretary, Margaret Herrick, out to purchase it—at whatever price.⁴⁵⁵ No one from the Academy came to purchase McDaniel’s Oscar. Her Oscar did not go up for public auction; ultimately, it was probably tossed in among Hamilton’s purchases for free. If the Academy brass read only white newspapers,

452. Although the identity is not confirmed, her executor John Charles Gross, may have been the well off socialite of the same name who was active in California charitable circles and, in particular, a group called the “Party of the Month Club” that raised money for charities by holding parties. He mingled with Hollywood’s leaders and stars. See Maxine Bartlett, *Pan Americana Ball to Draw Film Leaders: Vallee Will Direct Floor Shows Slated as Highlight of Defense Fund Benefit*, L.A. TIMES, Feb. 2, 1941, at D9. McDaniel’s biographer, Jill Watts, knew of no special connection McDaniel had with a John Charles Gross. See E-mail from Jill Watts, Biographer of Hattie McDaniel, to W. Burlette Carter (Oct. 3, 2011, 12:00 EST) (on file with author).

453. The size of her estate suggests that these lawyers and Gross either did not know her real assets when the will was drafted or that substantial assets were somehow quickly dissipated in the months leading up to her death. The lawyers do not claim against the estate as creditors, despite the fact that they handled a divorce and the will drafting for her. Consequently, we know they were paid. When she wrote the will, the divorce, though granted, was not yet finalized, which is a bit odd. And, the payment must have come before the IRS attached its liens. If they represented her on any negotiations with the IRS, that would have required an additional payment. Both the lawyers and the executor received their statutory fees (capped at a percentage of the estate, which was itself small), plus some extraordinary expenses given the need to negotiate her intellectual property interests and other complexities. But, the total of all claims amounted to only a few thousand dollars as the IRS was the chief creditor and there simply was no money.

454. See Aline Mosby, *Sid Grauman “Museum” in Auction Sale*, CEDAR RAPIDS GAZETTE, Dec. 21, 1950, at 16.

455. Telephone Interview with Bruce Davis, Exec. Dir., Acad. of Motion Picture Arts & Scis. (Mar. 29, 2010).

they would not have known much about her estate after her death. And, indeed, if there were no market for McDaniel's Oscar in the 1950s—as there was in Grauman's case—the Academy would have had no incentive to buy it.⁴⁵⁶

As Hattie McDaniel was fighting for a career in show business, blacks also were fighting back privately and in the courts to obtain equal rights. They would seek to forge their own strong viable markets apart from the white markets that excluded them, establishing their own newspapers and independent black movie houses.⁴⁵⁷ In her career decisions, McDaniel faced a choice. If she participated in the market that blacks established, her income and opportunities would be limited because both her patrons and the segregated neighborhoods to which they were confined were burdened with racism. If she participated in the market whites controlled, she could make more money, but she would have to take roles that demeaned her people—and her opportunities would still be limited. Hattie McDaniel and other actors of her time were caught in the middle of these crossroads.

It seems that, for whatever reasons, McDaniel chose to package herself to sell just what the primary market of her time demanded. As she was heavily invested in a racist market, it is not surprising the value of her investment portfolio began to drop as the very civil rights struggles she had sought to avoid succeeded. With the emergence of a “new” black consciousness in the 1960s, that value plunged.

Her Oscar had a somewhat different fate. McDaniel could be placed into at least three categories—Negroes, women, and actors. As all three began to gain more rights and the class of buyers who would and could compete for her Oscar expanded, the market value of her Oscar began to rise as well.⁴⁵⁸ It is, in fact, somewhat ironic

456. Upon hearing from this author that Hattie McDaniel's Oscar was sold, former Academy Executive Director, Bruce Davis volunteered that had they known, the Academy would have purchased it. *Id.*

457. See, e.g., Dewberry, *supra* note 34. A website for the library of Congress gives a list of early black newspapers held there. See John Pluge, Jr., *Black Press Held By Library of Congress*, LOC.GOV, available at <http://www.loc.gov/rr/news/blackpr.html> (last visited Oct. 26, 2011). The Library also offers online access to some older newspapers including some black newspapers. See *Chronicling America: Historic American Newspapers*, LIB. OF CONGRESS, <http://chroniclingamerica.loc.gov/> (last visited Oct. 26, 2011).

458. Some would argue, still, the Oscar was not as valuable as if she had been white and male. Some academy members, like Steven Spielberg, have been active in purchasing earlier Oscars at auction with the goal of returning them to the Academy. See *Spielberg Buys Betty Davis Oscar at Auction*, ABCNEWS.COM (July 20, 2002), <http://abcnews.go.com/Entertainment/story?id=103555&page=1> (reporting that Spielberg purchased the Bette Davis Oscar for the 1938 performance in *Jezebel* for \$578,000 with the intention of returning “the award to the

that the Academy has declined to replace the McDaniel Oscar.⁴⁵⁹ Had it agreed to do so, it might then have been able to tie the original to its right of first refusal. That way, if it were ever found, the original would be worth only \$1.⁴⁶⁰ Today it is worth much more.⁴⁶¹

Although they lacked economic resources, slaves like McDaniel's own parents *did* pass on something that was of tremendous economic value to their descendants. They passed on the story of their struggle, of how to navigate and survive in a world that oozed racism and that passed unearned benefits and unfair detriments to subsequent generations long after slavery. That knowledge was their contribution to the financial success of their descendants. That culture and history would be passed on through generations, and the stories of those who still had to battle for civil rights long after slavery had ended would be added to it. These stories would also be captured in items of no large economic value—papers, artifacts, photographs, and music. Howard University and other historically black educational institutions across the country, and others, would step up to become, often at their own expense, the chief repositories for what I will call, this “cultural property.”

Wills and Trusts law provided little protection for such cultural property. First, the law is primarily concerned with items of economic value: property that can satisfy debts or property that can be passed on to support a family when a head of household dies. But, cultural property may lack economic value. Second, the law of wills and trusts focuses upon “intrafamily” relations. Intestacy statutes that distribute property in the event that there is no will, for example, do so accord-

Academy of Motion Picture Arts & Sciences, as he did when he bought Clark Gable's Oscar for *It Happened One Night* . . .”).

459. See *supra* text accompanying note 5.

460. Certainly, the Academy could have required that, in exchange for a replacement, Howard agree to bind the Oscar to the right. It could even have used its rules allowing it to issue Honorary Oscars to accomplish this task—or issued a “replica” instead that was not a reissue. Given the small number of plaque Oscars in public circulation (and “lost”), Howard is uniquely situated. But then, imagine a university owning an original Picasso that it cannot presently find, but likely has, and then agreeing to sign away the Picasso's value in exchange for a very fine poster of that same work—by a very fine Poster company! The original McDaniel Oscar is imminently more valuable financially and historically than any replica could ever be. It is not only the first ever to be awarded to an African American, it is also one of a small number of “plaque” Oscars in public circulation; and, in size and uniqueness, that “plaque” Oscar represents a time when all actors—and supporting and bit actors in particular—were struggling for respect. McDaniel also never exchanged her original “plaque” Oscar for the taller statuette, which she could have. See *The Official Academy Awards Database*, *supra* note 8. She may have realized that no replacement could ever measure up in value to the award that she tearfully and actually accepted into her hands on that historic night.

461. See *supra* text accompanying note 6.

ing to family relationships.⁴⁶² However, the oppression of slavery and its aftermath implicated “interfamily” relations. Trusts and estates law has no means of offsetting interfamily unfairness due to racism, no way of compensating when one family devastates another with the state’s active assistance and approval.⁴⁶³ These concepts are segregated to the area of civil rights. Occasionally such notions arise in talk of reparations.

When both family and law fail to protect cultural property, for whatever reasons, those within disfavored groups who recognize the importance of culture and history must develop strategies to ensure the safe passage of cultural property. I will here call such persons “cultural trustees.”⁴⁶⁴ In McDaniel’s case, I believe that Lucille Hamilton stepped up to rescue valuable cultural property—the Oscar. Leigh Whipper, stepped up to escort it to a destination where he believed it would be safe. Howard University stepped up to receive it and similar items. In 1972, Howard Drama Professor James Butcher, I believe, stepped up to return the Oscar to the Pollack Collection. The story of McDaniel’s Oscar calls us to consider not just that Oscar, but also the millions of artifacts of African American history languishing in storehouses in the United States today. It calls upon us to inquire whether the new cultural trustees of today who have possession of these items appreciate their worth, whether or not they are acting accordingly and whether or not these cultural trustees have sufficient resources to do the job that we expect of them. It calls upon us to consider the various legal questions of ownership, preservation and control that arise from the curious path that those items took to their present destination.

462. California had “homestead laws” that protected a certain amount of marital assets from creditors. See CAL. CIV. CODE §1260 (1947) (allowing a \$7500 homestead exemption) (repealed in 1983). Such laws largely were designed to keep widows and their children off of the streets.

463. Thus, the law evidences some minimal concern that a family not end up on the public rolls (and a burden to taxpayers) due to an improvident testator. Dower used to require a husband to leave a forced share of all lands owned to a wife, normally one third, so that the wife and any children did not remain behind destitute. Today, spousal forced shares in various states accomplish the same. Also, several states allow spouses to set aside certain property allowances that will be exempt from creditors. See UNIF. PROBATE CODE §§ 2-401-404 (amended 2006) (discussing allowances that have priority over unsecured creditors and are exempted from the spousal share).

464. Under traditional Trusts and Estates law, a “trustee” is one who holds legal title to an item and controls it for the benefit of another who has equitable title. See BLACK’S LAW DICTIONARY 1357 (5th ed. 1979). The definition does not neatly fit here, thus, we are speaking of *constructive trustees* who are treated as trustees for an equitable purpose.

No doubt, great debate will continue over the legacy of McDaniel. But in this writer's view, how one interprets her legacy is irrelevant to the question of whether her Oscar still matters. The value of the Oscar lies not in McDaniel, but in the struggles of a people and the controversies of a country that put it in her hands. **It** matters not because McDaniel deserved it, for given fair opportunities, many more blacks might have deserved one as well. **It** matters not because her victory meant that the Academy had crossed over to higher ground in race relations or because it meant that Hollywood was sending a stern admonition to black actors about how to succeed there. McDaniel's Oscar deserves a place in history simply because it was *the first*, and her victory did, as Ed Sullivan suggested, send a message.⁴⁶⁵ That message testified to both a soaring of the human spirit that reached beyond all racial groups and to a devastating continued embrace of racism. In the end, both yardsticks must be used to measure the length of the shadow that McDaniel and her famous Oscar still cast.

465. See *supra* text accompanying notes 63-65.

