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HISTORY AND ROLE OF BLACK LAW SCHOOLS

HAROLD R. WASHINGTON*

This article is an extension and refinement of an address delivered to the Law School Section of the National Bar Association convention, August 3, 1972. The problems that the four existing Black law schools faced at that time have not abated in the interim. There is some indication that the problems may have increased by at least one factor; A.B.A. inspection teams visited Howard, North Carolina Central, Southern and Texas Southern Law Schools during the 1972-73 school year and indicated that each of the schools failed to meet some "standard."

A Black law school, in the context of this article, is one that has a predominantly Black student enrollment. It is fairly easy to discern which schools are Black, since of a national Black student enrollment of 4400, at least 1200 are enrolled at the four schools mentioned. This means that of the other 177 law schools in the nation (150 of which are "approved" by the American Bar Association) each has an average of 18 Black students enrolled.¹ The "average" enrollment figure is misleading, since there are a few eastern and midwestern law schools that enroll 100 or more Black students and several eastern, southern and western law schools which are still pure (i.e., no niggers allowed).²

At one time or another, there have been 13 Black law schools in the country. In addition to the four schools still in existence, law schools at one time operated at: Shaw University, Raleigh, N.C.; Lincoln University (law school located in West Chester, Pa.); Straight University, New Orleans, La.; Lincoln University (law school located in St. Louis, Mo.); South Carolina State College, Orangeburg, S.C.; Florida A & M University, Tallahassee, Fla.; Allen University, Columbia, S.C.; Walden

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¹ See *Report of the Committee on Minority Groups*, PROCEEDINGS, ASSOCIATION OF AMERICAN LAW SCHOOLS, 1972. The 1972 report covers enrollment for 1971-72, places Black student enrollment at 3700 and gives the breakdown of schools having a "predominantly Black student body" and sets the figure at 800. Millard H. Rudd indicates that Black student enrollment rose during the 1972-73 school year to 4400. Rudd gives no breakdown for Black law schools. M. H. Rudd, *That Burgeoning Law School Enrollment Slows*, 59 A.B.A.J. 150 (1973). The author's personal survey puts the enrollment of Black students at these schools at 1200 plus.

² See generally, LAW STUDENT DIVISION, A.B.A., EQUAL RIGHTS PROJECT REPORT (1972) [hereinafter EQUAL RIGHTS]. During an interview on May 11, 1973 with Mr. Robert Baldwin, Assistant Dean, T. C. Williams Law School, University of Richmond, Mr. Baldwin stated that there were no Blacks at the T. C. Williams Law School, that the school "wanted some," but did not know where to find them.

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University, Nashville, Tenn.; and Terrell Law School, Washington, D.C.

Other predominantly Black institutions such as New Orleans College, Atlanta University and Wilberforce University proposed developing law departments or law schools, but due to lack of funds or student interest the plans never came to fruition.³

Booker T. Washington's rather forthright observation concerning professional education is as valid today as it was almost 70 years ago, when he wrote:

No one understanding the real needs of the race would advocate that industrial education should be given to every Negro to the exclusion of the professions and other branches of learning. It is evident that a race so largely segregated as the Negro is, must have an increasing number of its own professional men and women.⁴

Black law schools have always trained the bulk of Black law graduates and continue to train the majority of Black practitioners in the south.⁵ There is a segment of the Black population that must be continually served by Black law schools, because in the farcial context of "integration" their needs are not being met. That segment, of course, comprises graduates of predominantly Black undergraduate institutions, especially those students who are not considered the *creme de la creme*. Black students from Black colleges are finding it increasingly difficult to enter white law schools. With the increase in enrollment of minority group students at white universities, white law schools can now draw their minority students from an expanding contingent of Blacks at the white undergraduate schools. A particular case in point is Harvard Law School, which sarcastically lays claim to having more Black law students than most of the Black law schools. In 1967, when Harvard's minority recruiting program went into effect, 21 of the 25 Black students entering the first year class were from Black undergraduate schools. Harvard has since got more selective in recruiting its "disadvantaged" students. In 1970, less than 10% of its entering Black students came from Black undergraduate schools. The 1972 entering class of over 100 Blacks had five to eight students who had attended Black under-

³ DUBOIS, *THE COLLEGE-BRED NEGRO* 70 (1910).

⁴ B. T. WASHINGTON, *TUSKEGEE AND ITS PEOPLE* 9 (1905). Since we live in a charismatically oriented culture, I have permitted myself the extravagance of hero worship. Of the four heroes I have canonized in my personal *Muntu*, three have devoted their lives to Black education: W. E. B. DuBois, B. T. Washington and W. R. Coleman; the fourth, Charlie Parker, after a fashion was also engaged in Black education. As Harold Cruse points out, Washington has been maligned and misrepresented primarily by Blacks who know nothing of his achievements and have not read their history and whites, particularly Aptheker, who have deliberately distorted his role in society. See CRUSE, *REBELLION OR REVOLUTION*, (1969).

⁵ Shuman, *A Black Lawyers Study* 16 HOWARD L. J. 225 (1971). At Table 6, read Black law schools for "Nonaccredited."

graduate schools.⁶

To echo Dr. Washington, Blacks need their own professionals and, unfortunately, there is a demonstrable pattern of Blacks educated in white undergraduate and professional schools failing to service minority communities.⁷

The continuing role of Black law schools has a two-pronged basis. The first is the fact that unless the present trend abates, students from Black undergraduate schools will have no place to turn other than Black law schools if they're interested in attaining a legal education; the second, and equally as important, is the point that the Black law schools serve as a conduit for Black professionals who service minority communities.⁸ The minority students who get on the prep school—Ivy League—"prestige" law school train, do not get off to go service minority communities. They are more often than not snapped up by Texaco, I.B.M., Wall Street law firms or some equivalent organization seeking a token.

Professor Harry Edwards has pointed up the necessity of placing more Black lawyers in corporate superstructures.⁹ This writer is not opposed to placing Black lawyers in corporate superstructures as long as it isn't assumed that by placing a few elitists in "responsible" positions anything will change for Black folks in this country. The Black lawyer who sits in the executive suite or on the board of directors for some supercorporation may well feel that he has accomplished something for "his people." But the truth is that Black folks really don't need any more "leaders" who can bend elbows with the "best" at cocktail parties. Black folks need practitioners who can do the unglamorous trench duty in the criminal courts, the landlord-tenant courts and the other "scut" chores that "respectable" lawyers too often eschew. And it's from the Black law schools that these trench fighters come.

There have been several recent articles concerning the problems of minority group law students and lawyers. Unfortunately, only one of these articles concerns itself with Black law schools and this only as apologia.¹⁰

The following represents an attempt to set forth positive aspects and contributions of the several Black law schools.

EARLY EXPERIENCES

Schools for the professional training of lawyers are relatively recent phenomena on the American educational scene. While legal training in

⁶ The information concerning the years 1967 through 1970 comes from personal knowledge. The information concerning 1972 was furnished by students at Harvard Law School. Attempts were unsuccessfully made to get the information from official sources.

⁷ Notable exceptions to this pattern include Haywood Burns, Executive Director of the National Conference of Black Lawyers; Judge Robert Carter, past General Counsel, NAACP; and Napoleon Williams, past Executive Director, National Clearinghouse for Poverty Law; and Howard Moore, Jr.

⁸ See note 4, *supra*.

⁹ Edwards, *A New Role For The Black Law Graduate*, 2 BLACK L.J. 21 (1972).

¹⁰ Agnihotri, *Negro Legal Education and 'Black' Law Schools*, 17 LOYOLA L.R. 245 (1971).

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England and on the European continent was highly structured, there were no criteria for "reading the law" in the United States until the latter half of the 19th century.¹¹ Among the first Blacks to "read the law" and be admitted to practice in the United States were Macon B. Allen in Maine in 1844 and Robert Morris in Massachusetts in 1850.¹² Blacks at that time, as now, had a great deal of difficulty securing legal training. The problems of the day included finding law books or attorneys with whom they could "read the law." Allen and Morris were both obviously exceptional persons who had received exceptionally fortuitous opportunities. Booker T. Washington reported that the difficulty he encountered in finding some one with whom to read the law channelled him into other pursuits.¹³

Law school education for preparation of practice was the exception rather than the rule, until the Harvard "model" of legal education was devised. Harvard's Christopher Columbus Langdell put his enduring stamp on legal education in this country and changed the nature and character of the preparation of lawyers.¹⁴ With no reason to do otherwise, the law schools established for Blacks followed the Harvard model rather closely.

Howard University:

While it may be debatable as to whether or not Howard University is the "capstone of Negro education," it cannot be denied that Howard has been in the forefront of innovation in Black education. Howard University has probably contributed more to the field of Black legal education and advocacy of the rights of Black people than any other educational institution in this country.

Prominent persons who have been affiliated with Howard Law School, be they as teachers or students, are legion. Associate Supreme Court Justice Thurgood Marshall, Judge Spottswood W. Robinson, III, Charles H. Houston, George E.C. Hayes, Judge William H. Hastie, Frank Reeves, James Nabrit, Jr., Conrad Pearson, Elwood (Chick) Chisolm, Herb Reid, William R. Ming, the list goes on at length.

The first effort directly related to the training of Black lawyers was the Howard University Law Department, which was opened in January,

¹¹ P. Stolz, *Training for the Public Professions of the Law: 1971*, PROCEEDINGS, 1971 A.B.A. CONVENTION 142 (1971).

¹² THE NEGRO HANDBOOK 318 (1971); BOWLES & DECOSTA, BETWEEN TWO WORLDS 120 (1971).

¹³ B. T. WASHINGTON, THE STORY OF MY LIFE 70, (1900).

¹⁴ Christopher Columbus Langdell was the founder, first teacher, etc. of the first law school (Harvard). (Although William and Mary College created a "professorship of law" in 1779, Langdell's efforts were the first directed toward a continuing school of law.) Langdell disliked people intensely, felt that law was an exact science and, although he had never practiced law himself, believed that all there was to know about law was contained in books. He was so obviously wrong on all points that the best that can be said for him is that he must go down in American history as one of the most influential neurotics (along with Anthony Comstock) this country has ever known.

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1869. As General Charles Howard put it, “. . . colored lawyers were needed to defend the newly acquired rights of Negroes.”¹⁵ Howard University, named for General Oliver O. Howard, head of the Freedmen’s Bureau and first president of the University, was founded in 1866 as an institution for the education of freedmen in the District of Columbia. The school was supported by the Freedmen’s Bureau until 1873 and in 1879 the federal government instituted an annual subsidy which exists until now.¹⁶

The Law Department of Howard University opened in 1869 with John Mercer Langston, an ex-slave, as its first professor in charge. Mr. Langston had attended Oberlin College, had “read” the law and been admitted to practice in the District of Columbia. Howard graduated its first class of lawyers in 1871, the law program at the time being only two years. Among the first graduates of 1871 was D. Augusta Straker, who later became Dean and professor of law at Allen University Law School.¹⁷

The Law Department closed during the school year 1876-1877 and reopened in 1878 without a regular faculty. In 1878 Richard T. Greener became Dean of the Law School and it has continued in existence since that time.¹⁸ While in continued existence since 1878, the Law School operated on a curtailed basis, training law students only in the evenings for several years during the period 1900-1923.

In 1938, James Nabrit, Jr., while teaching at Howard Law School, initiated the first Civil Rights course in the nation. Howard also instituted the practice of having “dry runs” for important cases. The faculty and local attorneys served as an appellate court panel which then queried the attorney who was to argue the case. The purposes of the “dry run” were to discover any weaknesses in the argument and permit the attorney an opportunity to present his argument before a critical panel.

One of the earliest civil rights cases handled by the Howard Law School faculty involved the conviction of one of its faculty members, William H. Hart for his refusal to ride in a Jim Crow railroad car. Professor Hart’s conviction was reversed by the Maryland Court of Appeals on the ground that Maryland’s railway segregation statute was an unconstitutional interference with interstate commerce. (*Hart v. Maryland*, 100 Md. 595, 60 A. 457 (1905).)

Lincoln University (in Pennsylvania):

Many of the early schools and universities founded primarily for Blacks were set up by churchmen with an eye toward training ministers for the

¹⁵ R. LOGAN, *HOWARD UNIVERSITY, THE FIRST HUNDRED YEARS* 48, (1968). [hereinafter, LOGAN].

¹⁶ BUREAU OF EDUCATION, DEPT. OF INT., *SURVEY OF NEGRO COLLEGES AND UNIVERSITIES* 180 (Bulletin no. 7 1929). [hereinafter, SURVEY].

¹⁷ LOGAN at 49.

¹⁸ *Id.* at 86, 120. Greener was the second Black to graduate from the University of South Carolina Law School at which he taught for one year before becoming Dean at Howard.

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particular faith. The pattern is not disparate with the history of the establishment of white schools in the nation.¹⁹

Lincoln University followed a pattern similar to that of churchmen establishing schools for whites. Ashmun Institute was organized by a Presbyterian minister in 1854 in Pennsylvania with its primary purpose being the education of "Negro youths."²⁰ The school was reorganized in 1866 as Lincoln University.

Lincoln's Law Department was organized in 1869 pursuant to an 1868 resolution of the Board of Trustees. Six attorneys and a judge were appointed to serve on the law faculty. Graduates of, "the Collegiate Department, and from other collegiate institutions and those also who on examination may be found to profit by the course of instruction, will be admitted to this department." The annual tuition for the Law Department was set at \$46.²¹

The course of instruction was set at two years, but students were advised, "to spend an additional year in private reading and in attendance upon the lectures of the course." This third year was referred to as a "post-graduate" course.²² Listed in the studies at Lincoln were: Contracts, Real Estate, Admiralty, Equity, Commercial Law, International Law, Domestic Relations and Constitutional Law. Students were required to read Blackstone, Kent, Parsons, Greenleaf and Washburn.

In 1872, the Law Department was moved to West Chester, Pennsylvania and designated a Law School. The purpose of the move was to take advantage of the opportunities afforded by, "proximity to the County Court, and the ready access to all the trials and processes conducted in the court."²³ The 1871-1872 catalogue listed six faculty members and four students at the Law School.

The 1873-1874 Lincoln University Catalogue listed among its financial "Wants" \$1,000 to develop the Law Department (sic) at West Chester.²⁴ It appears that the school's "wants" were not satisfied, because the Law School was discontinued in June, 1873.²⁵

Among the six graduates of the Law School are listed two of the Grimkes from Charleston, South Carolina.

Walden University:

One of the most interesting experiments in Black professional education began in the basement of Clark Memorial Methodist Church in Nashville,

¹⁹ R. MCKINNEY, RELIGION IN HIGHER EDUCATION AMONG NEGROES 5 (1945).

²⁰ SURVEY at 642.

²¹ 1869-1870 Lincoln Univ. Catalogue, at 20.

²² 1870-1871 Lincoln Univ. Catalogue, at 31.

²³ 1871-1872 Lincoln Univ. Catalogue, at 34.

²⁴ 1873-1874 Lincoln Univ. Catalogue, at 30.

²⁵ Letter from Mrs. Sophy H. Cornwell, Special Collections Librarian, Lincoln University, Lincoln, Pa., dated May 25, 1973.

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Tennessee in 1865. The school, originally established as Central Tennessee College, was given great assistance by John M. Walden, secretary of the Freedmen's Aid Society, who secured a building for the continuance of the school outside of the Clark Memorial basement. The building, purchased in 1867, had been erected for the manufacture of munitions, but had never been used because of the Union Army occupation of Nashville.²⁶ The school moved to its new location in 1867 and its name was changed to Walden University in recognition of its benefactor.

In 1876, a Medical Department was added to the school.²⁷ In 1879 a Law Department, a Pharmacy Department and a Dental Department were also added. The Medical, Pharmacy and Dental Departments were moved to a separate location before 1903 and renamed Meharry College.

In 1903, a fire broke out in one of the buildings at Walden University and 12 lives were lost. Several law suits were brought in which survivors and the deceaseds' parents recovered approximately \$120,000 in damages. These judgments ruined the school financially and it never quite recovered its prior stability.²⁷

Walden struggled along until 1917 when it went out of operation for two years during which time the facilities served as a U.S. Army training center. The school reopened in 1919 as Walden College funded by the Methodist Episcopal Church. The Law Department was not listed in the school's catalogue at that time.²⁸

One of the best known graduates of Walden School of Law was George L. Vaughn, a midwest practitioner, who served as counsel on the landmark decision of *Shelly v. Kraemer*, 334 U.S. 1 (1947).

Straight University:

Leading Black politicians Oscar Dunn and P. B. S. Pinchback sponsored the chartering of a "school for colored youth" in New Orleans funded by the American Missionary Association of the Congregational Church. The school, Straight University, established the first law school in the state of Louisiana in 1879.²⁹

Although the rest of the school was entirely Black, the Law School operated on an interracial basis until 1886 when Tulane University opened its law school. Ironically, Tulane refused to admit Blacks to any of its schools pursuant to state law. The Straight Law School was closed in 1887 without explanation, although conjecture on the point need not be strained.

²⁶ J. S. STOWELL, *METHODIST ADVENTURES IN NEGRO EDUCATION* 169 (1922).

²⁷ *Id.*

²⁸ *SURVEY* at 746.

²⁹ H. M. BOND, *THE NEGRO SCHOLAR AND PROFESSIONAL IN AMERICA* 562 (1966).

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Shaw University:

For whatever reason, Blacks during and after slavery, gravitated toward the Baptist Church in greater numbers than to any other Christian denomination.³⁰ By far the most interesting phenomenon concerning the establishment of learning institutions for Blacks following the Civil War involved the Baptist Church, specifically the American Baptist Home Missionary Society. The Baptist Church established over 80 high schools and 18 institutions that offered some form of college education.³¹ Many of these institutions of higher education have proved quite durable. Among the more viable institutions are Virginia Union University, Benedict College, Morehouse College, Jackson College (now Jackson State University), Bishop College and Shaw University.

Shaw University was established in Raleigh, North Carolina in 1865 as Raleigh Institute. It was the first institution of higher education established in the south for freed Blacks. The founder of the school, Rev. Henry M. Tupper, was a Baptist minister who had served in the Union Army and was given the task by the American Baptist Home Missionary Society to, "select talented freedmen for instruction in the Bible, that they might become leaders and establish churches to perpetuate the work of the denomination."³² The Institute was renamed in 1870 in honor of a New England manufacturer who contributed \$9,000 for the purchase of the present school site.

In 1881, Rev. Tupper petitioned the Board of the Home Missionary Society for funds to open a medical school to train "colored physicians." The Board granted the funds and the Leonard Medical School was opened in November, 1881. The Medical School graduated 134 persons who actually practiced medicine before it was closed in 1918. The school also survived the Flexner-Carnegie Corporation report on medical education in America which closed over half of the medical schools in the country in 1910.³³

Tupper also saw a need to train legal minds to give "good legal help to colored people who . . . were taken advantage of."³⁴ In his request to the Board of the Home Missionary Society, Tupper stated:

From the circumstances in which the colored people are placed they are compelled to act upon the defensive, and it is highly im-

³⁰ Herskovits attributes the proclivity to the similarity between the African river cults and the Baptist immersion doctrine. *HERSKOVITS, MYTH OF THE NEGRO PAST* (1941).

Frazier notes the local autonomy of the Baptist church as the prime motive for most slaves joining the sect, since the slave preacher had more freedom to "exercise his gifts" and direct his congregation. *FRAZIER, THE NEGRO CHURCH IN AMERICA* (1963).

Dubois reports that the early attempts of the Baptists to oppose slavery combined with opening positions of leadership to slaves as early as 1773 attracted Blacks to the religion. *THE NEGRO CHURCH*, (DuBois ed. 1908).

³¹ *THE NEGRO CHURCH* 120 (DuBois ed. 1908).

³² W. A. CARTER, *SHAW'S UNIVERSE* 5 (1973).

³³ *Id.* at 42.

³⁴ *Id.*

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portant that they not only in legal affairs, but in all matters, social and political, that they have trained minds. The South will be much more secure to have such a class of men as leaders.³⁵

A timely and astute observation which is as true today as it was in 1887. The Law School was opened in 1888 under the supervision of John S. Leary, a Black lawyer who had also served in the State Legislature. The school graduated its first student in 1893, Edward A. Johnson, who was immediately placed on faculty.

The three year course of study that led to the law degree included Introduction to American Law, Evidence, Real Property, Contracts, Pleadings, Equity, Torts, Executors, Code of Civil Procedure, Moot Court Practice, Constitutional Law, Short-hand and Typing. These last two courses offerings were justified,

. . . Because the young lawyer who can write short-hand or operate a typewriter can find many openings (since) many legal firms will employ a young lawyer who (has these skills) as an office assistant in preference to one who does not.³⁶

The Moot Court practice was utilized as an integral part of the student's training since, ". . . the ability to represent a client's case before a jury comes by practice."³⁷

The Law School graduated 54 students between 1893 and 1914. It was not a vast number of students, but its graduates represented the majority of Black lawyers in North and South Carolina until the mid-1930's. In February, 1914, the Trustees of the University voted to close the Law School at the end of the school year. No reason was given for closing the school. The unstated history is that law students were in the forefront of a 1913 student strike against the rather strict rules of the University. University rules required that all students, including those in the professional schools and those who roomed off-campus, observe early curfews and eat all meals in the campus cafeteria. The law students (evidently influenced by tracts on liberty) led a student strike objecting to these rules during the first semester of the 1913 school year and, as indicated, the Board voted to close the Law School in 1914.³⁸

Allen University:

The African Methodist Episcopal Church had its greatest following in South Carolina after the Civil War. Bishop Richard Harvey Cain, one of the most dynamic leaders of the A.M.E. Church, was primarily responsible for proselytizing among the ex-slaves. Bishop Cain was able to build one of

³⁵ *Id.* at 43.

³⁶ *Id.* at 44.

³⁷ *Id.*

³⁸ Interview with Dr. Archie Hargraves, President of Shaw University on May 11, 1973. See also CARTER, note 32 *supra* at 45.

the few, new churches in lower South Carolina during an austerity period following the War and was also the editor of the *Missionary Record*, the influential church organ.³⁹ Cain was also instrumental in setting up Payne Institute in Newberry, South Carolina in 1870 to combat illiteracy among the Blacks of the state. In 1880, the school was moved to Columbia, expanded and renamed Allen University in honor of Bishop Richard Allen, the Church's founder. As part of the expansion, a Law Department was included in the curriculum. The first Dean and Law Professor of the Law Department was D. Augusta Straker, the first graduate of Howard University Law School.⁴⁰

The Allen Law Department was in operation from 1882 until 1900. Although the number of graduates was never high, the Law Department produced the only academically trained Black lawyers in the state between 1882 and 1947, when South Carolina State College School of Law was opened.⁴¹ The Board of Trustees of the University voted to close the Law Department in 1899. The reasons given were lack of funds and a dearth of interested students.⁴² Underlying these factors may have been an anti-pathetic attitude toward any political efforts on the part of Blacks in the state. The Law Department, functioning as a training ground for potential advocates, was probably viewed by many as a threat to the maintenance of racial "stability."

Terrell Law School:

Robert H. Terrell received his Bachelor of Arts degree from Harvard College in 1884. He then attended Howard School of Law, receiving his LL.B. in 1889 and the LL.M. in 1890. He was admitted to the bar of the District of Columbia and practiced law until 1909 when he was appointed a municipal judge of the District of Columbia. He served in this last capacity until 1925.⁴³

Judge Terrell was extremely active in Washington politics until the time of his death. He is probably most widely known as the husband of Mary Church Terrell, however, his activist role often overshadowed hers in many areas concerning problems of Blacks in the District.⁴⁴

Terrell Law School was named in honor of Judge Terrell and established as an evening law school in Washington, primarily serving governmental

³⁹ J. WILLIAMSON, *AFTER SLAVERY* 190 (1965).

⁴⁰ LOGAN at 49; *See also* STRAKER, *FIRST ANNUAL ADDRESS OF THE LAW GRADUATES OF ALLEN UNIVERSITY* (1885).

⁴¹ The information concerning Allen Law School was graciously furnished by Rev. J. W. Witherspoon, an alumnus and former Allen Faculty member who is in the process of writing a history of Allen University, which he expects to publish in 1974.

⁴² *Id.*

⁴³ LOGAN at 231.

⁴⁴ For general background concerning Judge Terrell's civic activities, *see* GREEN, *THE SECRET CITY* (1967).

employees who were interested in pursuing a legal education. The Law School never had a full-time faculty, much of the instruction being given on a volunteer basis. The school operated until 1957 when more stringent operating standards were adopted for District of Columbia law schools. Terrell was one of many schools closed because of inadequate faculty and library facilities. During its years of operation, a high proportion of Terrell's graduates passed bar examinations throughout the nation. Among the more well known graduates of the Law School are: Judge Barrington D. Parker, Federal District Court of the District of Columbia; Judge Margaret H. Haywood, District of Columbia Superior Court; and Mrs. Wilhemina Jackson, prominent Washington attorney.⁴⁵

GAINES' GAIN AND OTHER ENIGMATIC PLOYS

Harry S. Cumming graduated from the University of Maryland School of Law in 1889. Cumming, a Black resident of Baltimore, became a successful lawyer and politician in that city. In 1934, Donald G. Murray, another Black citizen of Baltimore was denied admission to the University of Maryland School of Law on the basis of his race. Murray brought a mandamus proceeding to compel the Board of Regents to admit him to the law school. His writ of mandamus was granted and affirmed by the State Court of Appeals which held that since the state of Maryland had made no provisions for legal education for "colored students," nor had the legislature authorized separate facilities, Murray had to be admitted to the existing law school.⁴⁶

Following the decision in *Pearson v. Murray*, Lloyd Gaines decided to apply for admission to the School of Law of the University of Missouri. His application for admission was rejected and he was advised to seek out-of-state tuition assistance under section 9622 of the Missouri Statutes, which permitted the Board of Curators of the State University to pay expenses of Negro residents who had to go out of state to pursue courses of study not offered at Lincoln University, the then state supported Black school.

Gaines lost his fight at the state court level, but prevailed in the United States Supreme Court.⁴⁷ Chief Justice Hughes, for the majority, held that the underlying question was whether the state provided equality of opportunity within its borders and in the absence of other provisions for legal training, Gaines had to be admitted to the previously all-white law school.

⁴⁵ Much of the information concerning Terrell Law School was gained during telephone conversations with Mrs. Wilhemina Jackson, a graduate of the Law School, who in turn got much of her information from Mr. Louis Mellinger, who served on the Trustee Board of the Law School.

⁴⁶ *Pearson v. Murray*, 182 A. 590 (1936).

⁴⁷ *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337 (1938).

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Although the Supreme Court had decided that Missouri's out-of-state tuition grants to Negroes for graduate study was a denial of equal protection, most border and southern states chose to ignore the holding. Aside from Missouri, which was directly affected by the decision, only North Carolina and Kentucky deigned to do anything at all about Black legal education within state borders. It was not so much massive resistance as uniform disregard. Of 16 border and Southern states, eight made no provision for any professional or graduate study for Blacks (Georgia recommended that "Negroes seek admission to regional institutions rather than have the State of Georgia establish professional schools."). Six, including Maryland (!) continued the out-of-state grants which the Supreme Court had found unconstitutional. Only Kentucky permitted all "qualified" students to attend the University of Kentucky Law School based on the Gaines decision.⁴⁸ North Carolina's reaction was to establish a separate school for Blacks seeking legal education. (See *infra*.) Missouri's reaction was to establish "other and proper provisions" for the legal training of Black persons.⁴⁹

Lincoln University of Missouri:

Lincoln University was founded in 1866 by the officers of the 62nd U.S. Colored Infantry, who had decided, while serving in Texas, to make a contribution to Negro education. The school was established in Jefferson, Mo. with funds raised by the officers and was partially supported by the Freedmen's Bureau. In 1879, it was transferred to the state which maintained it as a university for the "higher education of Negroes." The state prided itself on maintaining the undergraduate division on a par with the University of Missouri. The decision in *Gaines* galvanized the state into action in implementing the legislative declaration to establish a law school at Lincoln University. The Lincoln University Law School was opened in St. Louis and operated until 1955 when the State Legislature closed it on the basis of "full admission" of Blacks to the University of Missouri School of Law. Scovel Richardson, a Howard Law School graduate, served as Dean of Lincoln Law School from 1944 to 1953. Dean Richardson was later appointed Judge of the United States Customs Court. In 1972, the University of Missouri School of Law, Kansas City branch had 10 Blacks out of 587 students enrolled and the Columbia branch of the School of Law had *one* (who the assistant dean referred to as "colored") out of 420.⁵⁰

North Carolina Central University:

The National Religious Training School and Chautauqua was founded by Dr. James E. Shepard in Durham in 1909. The school was sold in 1915

⁴⁸ F. McCuiston, *Graduate Instruction For Negroes in The United States* 61-63 (1939).

⁴⁹ *Missouri ex rel. Gaines v. Canada*, 305 U.S. at 352.

⁵⁰ See EQUAL RIGHTS at 31-32.

because of financial difficulties and reorganized as the National Training School, receiving most of its operating funds from the Russell Sage Foundation. In 1923, the State of North Carolina purchased the school and renamed it Durham State Normal School. In 1925, the school's charter was revised to reflect its status as a liberal arts college and its name again changed, this time to the North Carolina College for Negroes.

In 1938, in direct response to the decision in *Gaines*, the state commission to study Public Schools and Colleges for Colored People in North Carolina urged,

. . . the great desirability of reducing consciously and definitely the differentials which now exist in the colored schools and colleges as compared with the standards which the State has established in public education. . . .⁵¹

The Commission recommended courses leading to graduate and professional degrees in law, library science, medicine and pharmacy.

In 1939, the State Legislature amended the charter of the North Carolina College for Negroes to authorize establishment of departments of law, pharmacy and library science.⁵² The Law School was opened in 1939 but closed shortly after it opened because of a lack of students. It was reopened in 1940 operating with part-time faculty from the University of North Carolina. The Dean M. T. VanHecke, Dean of the School of Law of the University of North Carolina, also served as the Dean of N.C.C.U. until 1942. In 1941, three full-time Black faculty members were added to the staff and the school grew until the 1972 enrollment reached 270 full-time students, but only five full-time faculty members.

In 1968, the then Democratic Governor of the State suggested, and the Board of Higher Education of the state recommended, that the N.C.C.U. Law School be phased out. The Board observed that too few of the "better qualified Negro Students" opted to study law. The faculty, led by the then Dean Daniel G. Sampson, put up a spirited fight with the aid of political opponents of the Governor and squelched the phasing out attempts. Unfortunately, the stifling of the phase out attempt did not yield a concomitant positive commitment until 1973, when the Republican state Governor made a public pronouncement that he would do all in his power to assure the continued existence of the Law School.⁵³ The "benign neglect" bestowed on the Law School has resulted in a per student expenditure of \$520 annually.

N.C.C.U. Law School has graduated over 350 students since its establishment. Among the more well known graduates are: Floyd McKissick,

⁵¹ REPORT AND RECOMMENDATIONS OF THE COMMISSION TO STUDY PUBLIC SCHOOLS AND COLLEGES FOR COLORED PEOPLE IN NORTH CAROLINA (1938).

As a footnote to the above footnote, I would recommend Dr. DuBois' response to the query, *Does the Negro Need Separate Schools?* J. NEGRO EDUCATION (July 1935).

⁵² N.C. GEN. STAT. § 116-100 (2) (1939) (repealed 1957).

⁵³ *Governor Visits NCCU Law School*, Durham Sun, April 27, 1973, at 1, col. 6.

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founder of "Soul City"; Maynard Jackson, Mayor of Atlanta; Sammie Chess, First Black Superior Court Judge in North Carolina; Leroy Johnson, first Black state legislator in the South since Reconstruction; and several well-known practitioners and businessmen.

THE HOUSES THAT SWEATT BUILT

As noted, the southern states did not gallop off with anything akin to "deliberate speed" to comply with the Supreme Court's position in *Gaines v. Canada*.⁵⁴ A series of law suits was started in several southern states attempting to implement the *Gaines* decision and "integrate" the various state supported law schools. The prime case involved the efforts of Heman Sweatt in his attempts to gain access to the University of Texas Law School. Herein lies the irony of struggle. Window dressing schools that were conceived in sin to protect the bastions of white supremacy became viable institutions of the Black struggle and thence became the targets of concerted efforts to end their existence.

Texas Southern University:

Heman Sweatt was a postal worker who decided that he wanted to go to law school. A laudable enough aspiration, except that Heman Sweatt was Black and the year was 1946. He filed application for admission to the University of Texas Law School for the February, 1946 term. He was turned down on the ground that the state supported school was prohibited from accepting Black students. Sweatt filed a law suit to compel the state to allow him to enroll in the University of Texas. The law suit finally wound its way to the United States Supreme Court, where Chief Justice Vinson, writing for the Court, held that Sweatt had been denied the equal protection of the state law and should be admitted to the University's Law School.⁵⁵

In the interim between Sweatt's initial suit in state court and the U.S. Supreme Court's final decision, the Texas State Legislature authorized purchase of Houston College, renamed it The Texas State University for Negroes and included authorization for a school of law.⁵⁶ The state trial court continued the original suit for six months to allow the state to provide the law school for Blacks. The court later dismissed the suit theorizing that the establishment of the law school at The Texas State University for Negroes constituted a good faith showing by the state to provide equal facilities.⁵⁷ The trial court's decision was upheld by the Texas Court of Civil Appeals and The Texas Supreme Court. Upon granting *certiorari*,

⁵⁴ *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337.

⁵⁵ *Sweatt v. Painter*, 339 U.S. 629 (1950).

⁵⁶ See generally, Petition to the Coordinating Board, Texas Board, College and University System to Rescind the Phase-out order of Texas Southern University Law School, (unpublished history of the Texas Southern Law School). [hereinafter, Petition.]

⁵⁷ *Id.*

the U.S. Supreme Court found that the law school opened for Negroes, initially in Austin and then moved to Houston, comprised a "few" volumes, and no independent faculty at the time of the trial. Subsequent to the trial, the school had grown to 16,000 volumes and five full-time faculty members. The Court found that even this increase did not approximate equality in view of the fact that the University of Texas Law School had a library containing 65,000 volumes and 19 faculty members. The Court reiterated the *Gaines* holding that the state was bound to furnish, "within its borders facilities for legal education substantially equal to those which the state there afforded for persons of the white race. . . ."⁵⁸

Since its inception, Texas Southern School of Law has produced seventy per cent of the Black lawyers practicing in the state of Texas. Notwithstanding the fulfillment of the mandate to train minority lawyers practicing in the state of Texas, the Coordinating Board of the Texas College and University System recommended in 1966 that Texas Southern School of Law be phased out by August, 1973. The stated purpose for the phase-out was to eliminate "costly duplication in program offerings, faculties and physical plants"; the University of Houston College of Law had been set up by the Coordinating Board in 1966.⁵⁹ No greater example of racist arrogance could ever be documented. The all-white Houston College of Law was given the most modern of facilities within a stone's-throw of T.S.U. The Houston College of Law was recently designated one of the host sites for the 1973 Council on Legal Education Opportunity (CLEO) Regional Summer Institutes. The reported 1972 school year enrollment of Black students for the College of Law was 15 out of 750 students.⁶⁰ The University of Texas Law School, 26 years after Heman Sweatt filed his application, "guesses" that they have 15 Blacks out of an enrollment of 1,600 plus.⁶¹

The argument was made, and sustained, on behalf of T.S.U. that the phasing out of the School of Law was, "not in the best interest of all the people of Texas in the light of the critical shortage of Negro lawyers."⁶² A grant from the Ford Foundation has helped to keep the School of Law on keel. Its present projection is that of an urban law school serving a predominantly, but not exclusively, Black student body.

South Carolina State College:

The Colored Normal, Industrial, Agricultural and Mechanical College

⁵⁸ *Sweatt v. Painter*, 339 U.S. 629.

⁵⁹ Petition.

⁶⁰ See EQUAL RIGHTS at 46.

⁶¹ *Id.* at 47. The nonwhite population of the State of Texas is approximately 13% of the total population. Black students make up 2% of the enrollment of the Houston College of Law and .00833% of the student enrollment at the University of Texas School of Law.

⁶² Petition.

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of South Carolina was established in 1896 in Orangeburg. The name was not changed until 1954.

In May, 1947, John H. Wrighten graduated from the Colored Normal, Industrial, Agricultural and Mechanical College. Before graduation, Wrighten filed an application for admission to the University of South Carolina Law School. His application was rejected two days after filing on the strength of the 1895 South Carolina statute which provided for separation of the races in public schools.⁶³ The irony of the situation was pointed up by the fact that T. McCants Stewart and Richard T. Greener, both Black, had received their LL.B.'s from the University of South Carolina in 1875 and 1876 respectively. Greener had taught at the University for one year before becoming Dean of Howard's Law School.⁶⁴

After denial by the Board of Trustees of his application, Wrighten sued for admission to the University of South Carolina.⁶⁵ Citing *Gaines*, Judge J. Waties Waring of the District Court held that Wrighten was entitled to the same opportunity and facilities afforded whites in the state. However, Judge Waring hedged on the remedy. The Board of Trustees of the Colored, Normal, Industrial, Agricultural and Mechanical College planned, pending the decision, to establish a Law School as authorized by the State Legislature. Wrighten argued that the proposed Law School at the "Colored College" was nothing more than a proposal and that he had a right to be admitted to the only law school extant in the state. Judge Waring found that the "responsible state officials" had made definite assurances that the law school would be in operation within a short time and "ready for the giving of instruction on a complete parity with the University Law School."⁶⁶

The Colored Normal, Industrial, Agricultural and Mechanical College of South Carolina Law School opened for operation in September, 1947. A \$200,000 building was erected to house the Law School in 1949. The building contained four classrooms, offices for the entire faculty, seminar rooms, a moot court room and library stacks to accommodate 50,000 volumes. The Law School was phased out of existence in 1967 by the Board of Trustees of the renamed South Carolina State College. The ostensible reason given by the Board was the prohibitive cost of educating the small number of Black law students. Wrighten would have been deeply chagrined if he had remained in South Carolina until 1972, when the University Law School had two Black students in the spring term. There would probably be several questions that he could put to the state of South Carolina concerning "duplication of efforts."

The South Carolina State College Law School had two direct impacts

⁶³ S.C. CODE OF LAWS, § 5377 (1895).

⁶⁴ BOWLES & DECOSTA, note 12 *supra* at 121.

⁶⁵ *Wrighten v. Board of Trustees*, 72 F. Supp. 948 (E.D.S.C. 1947).

⁶⁶ 72 F. Supp. at 952.

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on the state of South Carolina. Between its inception in 1947 and its phasing out 20 years later, the number of Black lawyers in the state increased from six to 36. In 1973, there were approximately 30 black lawyers in South Carolina. The second impact involved the role played by affiliates of South Carolina State College in *Brown v. Board of Education*, 347 U.S. 483 (1954). (See "Civil Rights Cadre," *infra*.)

Southern University:

Southern University was chartered in 1880 by the Louisiana State Legislature as an institution for the "education of persons of color." The school was designated a federal Land-Grant College in 1890 under the Morrill-Nelson Act. The School, established initially in New Orleans, was moved to Baton Rouge in 1914. Today, with campuses at Baton Rouge, New Orleans and Shreveport, Southern University is the largest predominantly Black institution of higher education in the country.

Anticipating the Supreme Court's ruling in *Sweatt*, the State Board of Education approved a special committee report to establish a School of Law at Southern University. The School of Law admitted its first class in September, 1947. The Law School has operated on a continuing basis since its opening. During a five year period from 1955 through 1960, enrollment fell to approximately 15 students per year. It was during this period that the State Board of Education "suggested" closing the Law School because of a duplication of the function of Louisiana State University and an exorbitant per student expenditure. The State Legislature did not move on the suggestion to abolish the Law School; the Legislature's inaction appeared to be based more on keeping the facility at L.S.U. "pure," than on any altruism directed toward Southern University.

During the 1972-73 school year, enrollment at Southern University School of Law rose to 215 students. The expenditure argument seems to have been vitiated with the rise in enrollment. The duplication of function point has similarly evaporated, if in fact it ever legitimately existed. Of a student enrollment of 650, Louisiana State University in Baton Rouge has one Black student. In response to an A.B.A. questionnaire concerning minority recruitment, the Dean of the Law School replied that the school's program was being funded by the Law Students' Civil Rights Research Council. (!)⁶⁷ It is obvious that Southern University is not duplicating L.S.U.'s efforts in educating Louisiana's non-white population which exceeds 33% on a state-wide basis.

Florida A & M University:

Florida Normal School for Negroes was established in 1887 as a teacher

⁶⁷ See EQUAL RIGHTS at 44.

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training school for Negroes in Northern Florida. In 1909 the state received a federal grant under the Morrill Act and the Smith-Hughes Act for vocational education. The name was changed to Florida Agricultural and Mechanical College for Negroes. The school was first accredited in 1923 as a four year college.⁶⁸ It was never a very large or well known school until it became a Black football power in the late 1940's. The name was again changed in 1953 to Florida A. & M. University.

When the state legislature of Florida decided that the U.S. Supreme Court was in earnest in reiterating its position in *Gaines* through *Sweatt*, it authorized the establishment at F.A.M.U. of a law school for Negro students.

F.A.M.U. Law School operated until closed by the state legislature in September, 1967. The reasons given were duplication of functions of the University of Florida Law Center at Gainesville and the exorbitant cost of training per student. The F.A.M.U. Law School never had over 16 students at any one time during its period of existence and its last year of operation only 12 students were enrolled.

In 1966, Florida State University opened a College of Law in Tallahassee; the state legislature obviously did not feel that the white law school was duplicative of efforts at the University of Florida. The "Minority Admissions Directors" at both the University of Florida Law Center and Florida State University College of Law reported "projected black (sic) enrollment increases." At the time of the statements (1972), Florida State had an enrollment of 20 Black students out of a total enrollment of 389. The Florida University Law Center reported five Blacks out of 945 law students.⁶⁹

NEW DEVELOPMENT

Miles College Law School:

Miles College Law School was opened in September, 1973 as an evening law school to accommodate persons who could not afford to attend a fulltime day law school. The acknowledged thrust of the school is to increase the number of Black practitioners in Alabama.

Miles College was founded in 1905 by the Colored Methodist Episcopal Church in Birmingham, Alabama. The College, while still predominantly Black, is now non-denominational.

The Law School has been given authorization concerning its graduates' eligibility for the Alabama Bar Examination. Full approval by the American Bar Association will not come until the school has graduated its first class.

⁶⁸ SURVEY at 213.

⁶⁹ Much of the information concerning F.A.M.U. School of Law was gained through telephone interviews with Delano A. Stewart, Esq., a prominent Florida Attorney. See also EQUAL RIGHTS at 20-21.

All students are required to complete a total of 90 hours for graduation. Courses are taken at a maximum of nine hours per fall and spring semester and six hours during the summer. It is expected that a minimum of four years of study will be necessary for completion of degree requirements. There are approximately 100 students enrolled at the Law School.

THE CONTINUING NEED

In a fairly well publicized issue of an American Bar Association publication, Dean Robert Boden of Marquette University stated that there would be a "vast oversupply of lawyers" by 1980.⁷⁰ This author is not quite certain how many lawyers constitute a "vast oversupply," but even putting *Argersinger v. Hamlin*, — U.S. —, 92 S. Ct. 2006 (1972) aside, most Black criminal defendants in this country are either not represented or inadequately represented; most Black indigents faced with eviction are not represented; most Black entrepreneurs do not have legal counsel; of approximately 4,500 lawyers in the state of North Carolina, only seventy are Black and this represents the greatest number of Black lawyers in any southern state.⁷¹

While white counsel will often represent the very limited monied class of Blacks, it has always been the Black practitioner who has represented the majority of Black people in the lower economic strata. When this author was introduced to an elderly Black lawyer as the "first Black in poverty law in New York City," his response was, "Hell, I've always been a poverty lawyer."⁷² It is, then, the masses of Blacks who are serviced by Black lawyers and whose plight will not be dealt with (not solved, mind you, merely dealt with) unless there are adequate numbers of interested Black lawyers to deal with them.⁷³

The author is not unmindful of the assistance that a few white lawyers have rendered to the Black community. As an O.E.O. Legal Services attorney, this author worked with and observed many of the white lawyers who were generally practicing on the poor for a couple of years preparatory to "real" practice (i.e., for remuneration).

The job of training lawyers to close the gap between the proportionate numbers of Black lawyers and white lawyers continues to fall to the Black law schools, especially so as it relates to the south.⁷⁴ With the halt of Black migration toward the north and west, over 50% of the nation's Black population resides in the South. The shortage of Black lawyers in the South is axiomatic.⁷⁵

⁷⁰ R. F. Boden, *Legal Education at the Crossroads*, ALI-ABA CLE REV. 5, (Mar. 9, 1973).

⁷¹ Shuman, *supra* note 5, at Table I.

⁷² *Id.* at Tables 11, 16, 21, 23, 33 and 34.

⁷³ *Id.* at Table 40. Of all attorneys responding to Professor Shuman's questionnaire, 94% said that there are additional opportunities for Black lawyers in their communities.

⁷⁴ *Id.* See generally EQUAL RIGHTS.

⁷⁵ Edwards, *supra* note 9, at Appendix A.

While the number of Black law students has increased dramatically from 2,100 in 1969-70 to 4,400 in 1972-73, the number of Black law graduates has not kept pace with the first category and the proportion of Black practitioners in the nation has made the gigantic leap from 1.2% to 1.32% in the same period that the number of law students increased so greatly. The reasons for the discrepancy between the numbers of Black students entering white law schools and those graduating are many (overt and covert discrimination, negligible social intercourse in a highly social profession, pressure to "represent the race" are a few of them); the static discrepancy between the numbers of white practitioners is due to several related factors (see OF "LSAT'S, PREDICTIVE INDEXES, BAR EXAMS AND OTHER INDICIA OF BULLSHIT," *infra*).

Two factors stand out as recurring in the problem concerning the statistical discrepancy between Blacks entering and those graduating from white law schools. The first is the prohibitive cost of attendance at white law schools in relation to the wherewithal available to the average Black student. While some white law schools have made some financial arrangements for Blacks entering first year classes, the pattern appears to be that financial aid is generally withdrawn either fully or partially in the second or third year, placing financial pressure on a Black student of modest means so great that he has but one choice open to him—dropping out. The other factor that comes into play quite often is that white schools will permit Blacks to enter as "marginal" students, offering tutoring at a very low level in order to assist the student in keeping apace of the class. The assistance is either oversold or non-existent. The marginal student is then held to some fictitious level of competency that other students may not be held to and if that level is not maintained, notwithstanding the fact that the institution has not lived up to its commitment, the student is dropped for "poor scholarship." Blatant examples of this latter practice that the author is aware of occurred at the University of North Carolina, Temple Law School, the University of Illinois, and the University of South Carolina (where 13 of 17 Black students were flunked out during the 1972-73 school year). Of the four remaining students at the University of South Carolina, three are being "recycled" and made to take several courses over.

As pointed out *supra*, there is a whole cadre of potential Black professionals who have no place to turn unless they can be serviced by Black professional schools. This segment of college trained Blacks is very substantial. While more Blacks are attending previously all-white colleges, the number of Blacks in predominantly Black *four year* institutions of higher education exceeds the number of Blacks at white four year schools.⁷⁶

⁷⁶ See *Colleges Fear Lag in Black Enrollments*, N.Y. Times, May 14, 1973, at 1, col. 1. After indicating that "many colleges and universities may be content to level off (at 5 per cent) or even let the minority percentage decline," the article reports that of the estimated 700,000 Black undergraduates in the country, 25 per cent are in Black private and public colleges and 40 per cent are in two year community colleges.

THE CIVIL RIGHTS CADRE

Without disparaging the work of others, the harbingers of the civil rights movement were not named Greenburg, Kunstler or Rachlin, or even Brown or Carmichael; they were named Marshall, Pearson, Houston, Nabrit and Hayes. It was these last named men, all Black lawyers who, before this author was born, travelled the back roads of Mississippi, the Carolinas and Georgia to advocate the rights of Black people vis-a-vis the white state governments. All of these men were graduates of or affiliated with Black law schools.

*The Amistad*⁷⁷ was a landmark case in which a white lawyer (John Quincy Adams) successfully advocated the rights of Blacks *qua* Blacks vis-a-vis a white system. We had to wait quite some time before we could look upon another favorable landmark decision supporting the rights of Blacks in this nation. Following *The Amistad*, the two landmark decisions that had the most far-reaching effects on the Black population of this country were *Dred Scott v. Sanford*⁷⁸ and *Plessy v. Ferguson*.⁷⁹ No one quibbles over the iniquitous ramifications of both decisions on the Black experience. It was well into the Twentieth Century before another Supreme Court decision was to have broad favorable ramifications for Blacks.

Whatever the meaning of *Brown v. Board of Education*,⁸⁰ there is no doubt that Black lawyers, primarily those who had some affiliation with Black law schools, were responsible for its genesis, its development and its culmination. Brown's counsel list reads like a "Who's Who" of Black civil rights activists. The most bitter fight of the civil rights movement, given the tactics of "massive resistance" and "constitutional interposition," swirled around public school desegregation. Neither voting rights, employment opportunities, open housing nor public accommodations have generated the vitriolic attacks from public officials that school desegregation has.⁸¹

The school desegregation cases of the Nineteenth Century were quite

⁷⁷ *United States v. Libelants of the Schooner Amistad*, 40 U.S. (15 Pet.) 518 (1841).

⁷⁸ *Scott v. Sanford*, 60 U.S. (19 How.) 393 (1857).

⁷⁹ *Plessy v. Ferguson*, 163 U.S. 537 (1896).

⁸⁰ *Brown v. Board of Education*, 347 U.S. 483 (1954). I am not quite certain what *Brown* stands for. It appears to me to be the only time that the Supreme Court ever held that the enjoyment of *personal* and present rights could be deferred to a more propitious time.

⁸¹ The array of public officials that raged against school desegregation included the governors of the states of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, South Carolina, Tennessee and Virginia. All of the southern congressmen signed the "Southern Manifesto" introduced by Senator Walter and Representative Smith calling for the reversal of *Brown*. 102 CONG. REC. 3948, 4004, (1956). And a young Arkansas lawyer who was later appointed to the U.S. Supreme Court saw fit to opine that ending segregation for "this Minority would amount to asserting a claim for a special privilege." *Senate Committee Hearings on appointment of William H. Rehnquist to the U.S. Supreme Court*, N.Y. Times, Nov. 4, 1971, at 1, col. 1.

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naturally litigated by white attorneys.⁸² This, of course, was not the reason for failure of the efforts to desegregate schools at the time. Failure of efforts to advance *any* rights of Blacks in this country vis-a-vis whites can be attributed directly to Chief Justice Taney's shibboleth that, "... they (Negroes) had no rights which the white man was bound to respect."⁸³ After this unequivocal pronouncement by the U.S. Supreme Court, it was relatively easy to circumscribe the rights of "African descendants" who were an "inferior and subject class," even to the extent of sanctioning post-Thirteenth Amendment debilitating stigmata.⁸⁴

The concerted efforts against public school segregation in the Twentieth Century were led by Black lawyers—lawyers who had attended or taught at Black law schools. Out of these concerted efforts grew counter-efforts by white state officials to undermine and discredit the Black lawyers involved in the civil rights struggle. Black lawyers, and Black law schools, played an integral part on both fronts.

In 1932, a young, Black graduate of Wilberforce University and Howard Law School decided to return to his home in North Carolina to practice law for his people. In 1933, Conrad O. Pearson's attempts to assist Black folk in the state to gain equality turned toward efforts to desegregate the University of North Carolina.⁸⁵ Mr. Pearson, who the author has since come to refer to as the "Dean of the civil rights activists," brought suit to desegregate public institutions of education prior to the NAACP's initial efforts to do so.

Thomas R. Hocutt was a student at the North Carolina College for Negroes who wished to pursue a course of study in pharmacy. N.C.C. did not offer such a course of study, nor did any other Black university in the state. Hocutt decided to apply for admission to the only school that offered the courses, the white University of North Carolina. Hocutt's application was rejected and Mr. Pearson brought suit on his behalf. In the complaint, filed in March, 1933, Hocutt alleged that he was a "person of African descent" and was otherwise qualified for admission to the school of pharmacy and that such request had been denied by the registrar of the University of North Carolina based solely on race. In its answer, the University of North Carolina admitted that Hocutt had been denied admission because he was "colored" but explained that, "While it is true that pharmacy has not heretofore been taught as a separate subject in

⁸² The primary cases include *Roberts v. City of Boston*, 59 Mass. 198 (1850), *Cumming v. Richmond County Board of Education*, 175 U.S. 528 (1899) and *Gong Lum v. Rice*, 275 U.S. 78 (1927).

⁸³ *Scott v. Sanford*, 60 U.S. (19 How.) at 407.

⁸⁴ *Plessy v. Ferguson*, 163 U.S. 537 (public carriers); *Cumming v. Richmond County Board of Education*, 125 U.S. 528 (public schools); *Grovey v. Townsend*, 295 U.S. 45 (1925) (voting rights); *Civil Rights Cases*, 109 U.S. 3 (1883) (public accommodations).

⁸⁵ *Thomas R. Hocutt v. Thomas Wilson, Dean of Admissions and Registrar, and The University of North Carolina*, No. 6439 (Durham County Sup. Ct., 1933).

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any of the state's institutions of higher learning for the colored race, there has heretofore been no demand therefor (sic).''⁸⁶

In a decision singular in its ambiguity, the Superior Court granted the defendant's motion to dismiss the action. The court said, "The Court is of the opinion that as the plaintiff is seeking to enforce an alleged personal right, not of a public character, the writ of mandamus is not the proper remedy for the relief of his alleged grievances. . . .''⁸⁷ The court went on to disclaim that this judgment determined whether or not persons of African descent could attend the University of North Carolina; they just couldn't get there through mandamus.

Notice of appeal was filed in the matter and appeal bond was set at \$100. A property execution for court costs against the plaintiff indicated that he could not be found in the jurisdiction and the appeal was later abandoned, Hocutt probably going to other climes to pursue his education. An interesting sidelight to *Hocutt* was the fact that when the State Commission to Study Public Schools and Colleges for Colored People in North Carolina made recommendations for Negro higher education, it included a school of pharmacy.⁸⁸

Although unsuccessful at that juncture, Mr. Pearson kept active in the struggle and as a result of his activities, his life was threatened fairly often by die-hard racists. There was at least one occasion when he was just a short distance ahead of a lynch mob in the eastern part of North Carolina.

Mr. Pearson is still very active in civil rights litigation. Among the more recent cases in which he has served as counsel are: *Griggs v. Duke Power Company*, 401 U.S. 424 (1971); *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971); and *Moody v. Albermarle Paper Company*, 50 FRD 494 (DCNC, 1972).

In 1934, the Garland Fund gave a grant to the NAACP to research the issues of school desegregation and litigate those issues. Out of this concerted effort grew cases like *Gaines*, *Sweatt* and ultimately *Brown*. In 1950, as part of that campaign, Harold R. Bouleware, a South Carolina graduate of Howard Law School, brought an action on behalf of Black school children and their parents against the Clarendon County, South Carolina school board. The suit alleged that South Carolina provided decidedly inferior educational facilities for Black children as compared to facilities for white children. This action was a denial of equal protection of the laws under the U.S. Constitution. Mr. Bouleware's action further alleged that segregation of the schools was also a matter of denial of equal protection.⁸⁹

⁸⁶ See pleadings, *Hocutt v. Wilson* No. 6439 (Durham County Sup. Ct., 1933).

⁸⁷ Slip opinion, *id.*, (M. V. Barnhill, J.).

⁸⁸ N.C. GEN. STAT. § 116-100 (2) (1939) (repealed 1957).

⁸⁹ *Briggs v. Elliott*, 98 F. Supp. 529 (S.D.S.C., 1951).

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Bouleware, Thurgood Marshall and Robert Carter, who prepared the Clarendon County suit, did much of their work out of the South Carolina State Law School Library and tested their theories in consultation with the Law School faculty.⁹⁰

While *Briggs* was wending its way through the lower courts, other suits were being initiated by the national NAACP staff that finally reached the U.S. Supreme Court as part of *Brown v. Board of Education*. *Briggs* was certainly the most favorable to the plaintiffs. In a strongly worded dissent to the majority's position that school segregation was within the powers of the state legislature, Judge J. Waities Waring stated that, "Segregation is per se inequality."⁹¹ From those who were most intimately involved with *Brown*, one gets the impression that Judge Waring's dissent had an extraordinary impact on the Supreme Court's unanimous decision three years later.

Following the Supreme Court's decision in *Brown*, certain southern states initiated campaigns involving "massive resistance," "constitutional interposition," and harassment of the attorneys who were trying to get enforcement of the decision. Under particular attack at the time were the NAACP legal staff and all the local attorneys who had worked with them throughout the south.

In 1955, Thad Eure, the perennial Secretary of State of North Carolina, wrote to the national office of the NAACP advising that since the organization was doing business in North Carolina, it has to pay state taxes and register with the Secretary of State. The "doing business" that Eure referred to involved the business of attempting to enforce the *Brown* decision. The NAACP replied that in its opinion it was not doing business within the meaning of the state statute and was therefore not required to register. The State Attorney General responded that it was his opinion that the organization was subject to the registration statute. The NAACP decided to bring a declaratory judgment action on the issue to determine specific rights in the matter. Conrad Pearson served as chief counsel in the action. The matter was researched and coordinated out of the North Carolina Central University Law School Library.⁹² The court granted the Secretary of State's motion to dismiss on the ground that the NAACP could not test in a civil action whether or not it had criminal liability for avoiding the taxes and registration requirement. The court also held that it was within the Attorney General's discretion to enforce the statute and a declaratory judgment could not be used to test his discretion.⁹³

⁹⁰ When a well known Black attorney returned to North Carolina to engage in civil rights activities, he did not utilize the facilities of the predominantly white law school from which he graduated in the state. Instead he utilized the NCCU law library to do research on the various civil rights actions on which he was working.

⁹¹ 98 F. Supp. at 548.

⁹² NAACP v. Eure, 95 S.E. 2nd 893 (1957).

⁹³ *Id.*

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Circumstances, brought on by the Alabama Attorney General, forced the curtailment of the appeal in *NAACP v. Eare*. The fines and taxes involved in the North Carolina situation totalled approximately \$100. The Alabama situation started at \$100,000 and mounted toward \$1,000,000 in fines and taxes. So the NAACP paid North Carolina the \$100 and went off to do battle with the states of Alabama, Arkansas, Louisiana, and Virginia, armed with Conrad Pearson's pleadings and briefs.

In 1956, the Attorney General of Alabama sought to compel disclosure of the NAACP membership lists in that state. He then brought suit to enjoin the Association from doing business in the state. The NAACP refused to disclose the membership lists, disclaiming that they were "doing business." The Circuit Court of Montgomery County held the organization in contempt and fined it \$100,000. The United States Supreme Court reversed the contempt citation, holding that disclosure of the membership lists in no way related to the purpose for which the Alabama Attorney General claimed to have brought the suit; to determine whether the organization was "doing business."⁹⁴ On reversal and remand, the Alabama Supreme Court reaffirmed the contempt judgment stating that the U.S. Supreme Court's decision had rested on a "mistaken premise."⁹⁵ The U.S. Supreme Court reversed and remanded again.⁹⁶ The NAACP had still not had a hearing on the matter and had to sue in order to obtain the hearing. The U.S. Supreme Court directed that a hearing be held on the merits.⁹⁷

The Alabama courts granted the hearing and found that the NAACP was "doing business" in violation of state laws and permanently enjoined the organization or anyone affiliated with it from ever attempting to qualify to do business in the state. Specifically alleged in the complaint against the NAACP was furnishing legal counsel in school desegregation. The U.S. Supreme Court reversed on the merits finding Alabama's position patently untenable. The case did not involve the privileges of a corporation to do business in the state, "but rather the freedom of individuals to associate for the collective advocacy of ideas."⁹⁸

The fact of utilization of the resources of Black law schools in the civil rights struggle was not lost on the southern governors and legislators. These honorable gentlemen, while ignoring the use made of white law schools by business interests, attempted to close all of the state supported Black law schools ostensibly because these schools "duplicated efforts."

⁹⁴ *NAACP v. Alabama*, ex rel. Patterson, 357 U.S. 449 (1958).

⁹⁵ 105 So.2d 138 (1959).

⁹⁶ 360 U.S. 240 (1960).

⁹⁷ 368 U.S. 16 (1962).

⁹⁸ *NAACP v. Alabama*, ex rel. Flowers, 377 U.S. 288 (1964). For a full account of the problems faced by Black attorneys attempting to enforce *Brown*, see McKay, *Repression of Civil Rights as an Aftermath of the School Segregation Cases*, 4 HOWARD LAW J. 9 (1958).

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The arrogance of these gentlemen is underscored by the fact that in at least two situations (Florida State University and the University of Houston) the "duplicated efforts" were duplicated.

The utilization of ethnically oriented law schools has also not been lost on other segments of the community. Touro College in New York City will open a law school in 1974 that, "will emphasize the Jewish legal experience animate by the prophetic notions of justice."⁹⁹ The Touro Law School will address itself to the legal problems of Jews in America.

OF LSAT'S, PREDICTIVE INDEXES, BAR EXAMS AND OTHER INDICIA OF BULLSHIT

The Black lawyer has faced, and continues to face, a plethora of obstacles placed in his path. Becoming a lawyer embodies the task of overcoming deliberately placed obstacles, many of them clearly arbitrary and capricious in nature.¹⁰⁰ Becoming a lawyer who happens to be Black is tantamount to running a gantlet of faceless strangers, most of whom have the tolerance and wisdom of petty Olympian gods.

In early 1972, the NAACP Legal Defense and Education Fund, Inc. initiated a minority scholarship program to replace the Lehman Fund Program.¹⁰¹ The deans of two of the Black law schools wrote to the executive director of the program suggesting that a certain number of scholarships be set aside specifically for students who plan to attend Black law schools. The program's executive director replied that:

As concerned as we are about the disproportionate burden black (sic) institutions have carried in preparing so much of the nation's leadership with reluctant philanthropic support, The Earl Warren Legal Training Program is committed to the student and to the legal profession itself rather than the institution. Our obligation, therefore, is not only to increase the number of black lawyers in the nation, but to increase the number with the *highest quality*. We must give preference to students who, in the opinion of our Selections Committee, show the greatest promise in the practice of law.¹⁰²

There are two inherent pieces of bullshit in that one paragraph. First, the Black law schools weren't begging the "Inc. Fund" for financial assistance, they were merely attempting to ascertain whether the program was going to live up to its stated goal to, "... increase the population

⁹⁹ N.Y. Times, May 17, 1973, at 39, col. 1.

¹⁰⁰ Mr. Justice Douglas, concurring in *Johnson v. Avery*, 393 U.S. 483, 492 (1969), properly characterized the legal profession as a "closed shop" which is constantly attempting to keep laymen out at any cost.

¹⁰¹ See Brochure, The Earl Warren Legal Training Program, Inc., A Friend in Court, The Black Lawyer . . . A Key to an Advancing Society, 1972.

¹⁰² Letter from B. T. Henderson to Dean L. DeJarmon, N.C.C.U. Law School, dated May 30, 1972.

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of practicing Black lawyers. . . ,” and if so, indicated that equal consideration should be given to students entering Black law schools.

The paragraph’s second implication is that white law schools alone produce “quality” law graduates. This is part of the myth propagated by Reisman and Jencks six years ago when they wrote that many Black colleges could not meet accepted educational standards.¹⁰³ The fact is that many white schools don’t adequately meet “accepted educational standards.” On the law school level, schools such as Suffolk University Law School (which claims to have the largest student body in the nation pursuing studies leading to the first law degree), New York Law School and Brooklyn Law School (which claims that its graduates have a higher percentage of success on bar examinations than any other school in the country) are not accredited by the AALS. Yet no one questions their right to exist or that they don’t produce “quality” law graduates.

Of the Black law schools still in existence, only Howard has been accredited by the AALS. The others are approved by the American Bar Association. Ironically, accreditation of the other three law schools was blocked at the 1956 AALS convention on the ground that to grant accreditation would condone segregation.

Professor M. T. VanHecke, who had served as the first Dean of North Carolina Central’s Law School, in his presidential address to the AALS delegates called the “Negro law schools . . . expensive operations.” VanHecke pontificated that, “voluntary integration is being indirectly retarded by the continued operation of the separate state-supported Negro law schools.” To encourage Association member-schools who were discriminating to accept Negro students, VanHecke opposed withdrawing accreditation, but suggested that, “the Association continue to serve in the role of mediator, keeping the situation fluid . . . and making suggestions that will encourage the several schools to work out their own problems as conditions change.”¹⁰⁴

Criticism has been made of Black law schools for not fully utilizing the Law School Aptitude Test. The premise on which the LSATers stand is that “The Test”¹⁰⁵ does what it purports to do: predict performance during the first year of law school. The argument continues in the vein that “The Test” measures perception of certain sets of symbolic references which are directly related to the grasp of legal concepts. All of this would

¹⁰³ See JENCKS & RIESMAN, *THE ACADEMIC REVOLUTION* (1968). The authors call “Negro colleges” ill-staffed caricatures of white higher educational institutions (p. 425). Messrs. Jencks and Riesman go on to titillate their new found educational superiority by intoning that, “From the viewpoint of a law school dean, a Negro from San Francisco State, Temple, or Roosevelt will almost certainly seem less of a risk than a Negro from Alcorn A & M or even Fisk.” (p. 439).

¹⁰⁴ Van Hecke, *Racial Desegregation in the Law School*, 9 J. LEG. ED. 283 (1956).

¹⁰⁵ Supporters of the LSAT invariably speak of it as “The Test.” One can almost visualize the capital letters when the words are spoken with the reverence exhibited by too many.

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be quite relevant and acceptable, if there were any truth to the premise. The fact is that "The Test" excludes a group of persons who are merely not "test-wise" or who freeze at a crucial point during "The Test" and this exclusion becomes another minus factor in the "predictive index."¹⁰⁶

Until recently, the LSAT included a section on period furniture, architecture and abstract art. The thrust of the section was so blatantly biased that Educational Testing Service, "The Test's" progenitor, discontinued that particular section.

In a report concerning the validity of using the test as a predictor of performance for Black law students, W. Garrett Flickinger, Chairman of the Test Development and Research Committee of the Law School Admission Council stated that the LSAT could not be used to "generalize." In fact, Flickinger notes, the samples of Black students used were too small and grouped too closely (1968, 1969, 1970) to support statistical validity. However, Flickinger does find "implications" that, "The prediction quotient performs properly to rank the Black American students as against each other."¹⁰⁷ The report went on to state that the Black students performed lower as a group than predicted and the white students performed higher than predicted. (!!!) If that last "implication" doesn't damn the use of the LSAT as a device used to perpetuate racism, nothing will.

There is no correlation between the perception of symbolic references needed to handle the legal concepts in the first year of law school and the information quizzed by "The Test." The information dealt with in "The Test" reflects proper acculturation and nothing more. It is primarily an indication of how acceptable the individual will be to the profession with an eye toward whether or not he (or she) fits within the category of those who have assimilated dominant group cultural traits. In this same vein, the A.B.A.'s Special Committee on Law School Admission recommended pre-law school character checks. The purpose of these character checks is basically the same as the LSAT: to keep the "undesirables" (read minorities and dissidents) out of the profession.¹⁰⁸

Of all the first year law school courses, the only one that this author would categorize as outside the sphere of the average layman's basic grasp is Civil Procedure. It is the only first year law school experience that requires a wholly different set of symbols than those learned on the "out-

¹⁰⁶ Occupation of parents, income bracket, parents' educational background, etc. also go into making up the "predictive index" at a number of law schools.

¹⁰⁷ W. G. Flickinger, Report to Members of Law School Admission Council, Mar. 16, 1973.

¹⁰⁸ *Report of the Special Committee on the Feasibility of Establishing a Procedure for Reviewing the Character and Fitness of Candidates For Law School Admission Prior to their Acceptance as Students*. Approved, February, 1972 by Council of the Section on Legal Education; Tabled by the Board of Governors of the ABA, May, 1972; Presented at A.B.A. Board of Governors Meeting, August, 1973.

side." And it is not expected that students will successfully cope with the rigorous symbolic references of Civil Procedure until they have been given anywhere from four to nine months of intensive training. Yet ETS would have one believe that those persons who have had little or no exposure to certain sets of symbols should perform as well on "the Test" as they will perform after extensive training.

Symbolic references are, after all, nothing more than concrete moments bound together with their predecessors to form a life-history. Symbolic reference is not primarily the result of conceptual analysis and not subject to objective quantification.

Whenever the author has raised the argument concerning the invalidity of the LSAT, its supporters have always pointed to the statistics "proving" its basic premise.¹⁰⁹ Even its opponents have advised that the statistics have to be "dealt with." It is submitted that there is a trap for the unwary embedded in ETS's statistics; the more intelligent argument attacks the basic concept of prediction of performance as ludicrous. If there were any validity to such a premise, no one need ever prepare for any profession; merely buy a *Morning Telegram*, follow the "horse charts" and earn vast sums of money "predicting" race results.

There is obviously the need for measurement of some basic skills required for coping with concepts introduced in law school. North Carolina Central University Law School has initiated development of such a test which will hopefully be utilized by the other three Black law schools. The test attempts to measure communications skills: reading, analyzing and writing. If the developers of this new test were inclined to the same degree of cultural bias as the personnel at the Educational Testing Service, the test might have included the "Chitterling Test," but inherent in the desire to succeed as Black folk in this land is the concomitant desire to do so on the basis of fairness.¹¹⁰ (Black folk are also the greatest believers in the Easter Bunny, Santa Claus and the Good Witch.)

Bar examinations (and examiners) have been an additional obstacle to prospective Black lawyers. While there is some basic question as to the validity of the examinations themselves,¹¹¹ there is an even more crucial question of whether or not bar examiners discriminate on the basis of race against Black bar applicants and specifically Black bar applicants from Black law schools.

¹⁰⁹ Even ETS is cautious about "generalizing" about LSAT scores of Black students. We should all be too close to President Nixon's self-telegram campaign concerning the North Vietnamese bombings to be too trustful of self administered statistical studies.

¹¹⁰ Dr. Robert Jacques developed a "Culture Loaded Test" which popularly became known as the "Chitterling Test." One of the questions was: "If 4½ yards of uncut chitterlings cost 90¢ and smell for 8 blocks, how much will 3½ yards cost and how far will it be smelled?" The suggested answer was, "Too much and too far."

¹¹¹ J. M. Shamon, *Toward Abolishing Bar Examinations*, STUDENT LAWYER 18, (June, 1973); T. C. Clark, *Changing Times*, 1 HOFSTRA L. REV., 1 (1973).

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Twenty-three 1972 graduates of North Carolina Central University Law School took the North Carolina Bar Examination for that year. Five of the students were white. Each of the white students passed the Bar Examination, although two were near the bottom of their graduating class. Two of the 18 Black students passed the Bar Examination. Of the 16 who failed, three were near the top of their graduating class.

The unstated message appears to be that the sovereign state of North Carolina wants to limit the number of Black practitioners.

The State of Georgia, second only in recent years to the State of Mississippi in the harassment of Black folk, failed 51 out of 51 of the Black applicants for the 1972 bar examination. The author personally cannot believe that any group of Black people are as thoroughly stupid as the states of Georgia and North Carolina seem to believe. Where such a disproportionately high number of persons of a particular race are excluded or categorized by an arbitrary device, then there are vestiges of invidious discrimination.¹¹²

Black lawyers in Georgia, South Carolina, Virginia, North Carolina, California and Maryland have taken up the challenge of bar examination discrimination and have instituted law suits challenging the practices by the states.

CONCLUSION

And Old Lem said:

“They got the judges
 They got the lawyers
 They got the jury-rolls
 They got the law
 They don't come by ones
 They got the sheriffs
 They got the deputies
 They don't come by twos
 They got the shotguns
 They got the rope
 We git the justice
 In the end
 And they come by tens.

 They don't come by ones
 They don't come by twos
 *But they come by tens.”*¹¹³

¹¹² See *Griggs v. Duke Power Company*, 401 U.S. 424 (1971); *Larry P. v. Riles*, Civil No. 71-2270 (N.D. Cal. 1971).

¹¹³ S. A. BROWN, *THE NEGRO CARAVAN* (1941) (*Old Lem*).

Old Lem knew that the essence of the problem was that there is no law without lawyers. Laws, after all, are not divine dispensations from on high, but merely inventive devices for the perceived ordering of society. It is the trained specialist (the lawyer) who rationalizes the letter of the law. It is the lawyer who is in the position to "professionally" influence the shape and application of the law. Weber indicates that in the perpetuation of law, the mode of training practitioners of the law is more important than any other factor; the *honoratiores* (the specialized experts who enjoy prestige in society through manipulation of the legal system) are steeped in the doctrine of *stare decisis* and disciplined to ignore as much as possible the general economic and social conditions extant.¹¹⁴

While the author is not quite certain what makes a "good" law school, a legitimate argument cannot be made contradicting the position that the job of a law school is to train lawyers. Black law schools have trained the majority of Black lawyers in this country. Whether that is the basis for a full-scale argument that they train Black lawyers best is trying to count angels on the head of a pin; the fact remains that they have trained the most.

Opprobrium has been heaped upon Black law schools for so long that it just seems like second nature to do so. State legislatures, bar associations, "prestige" institutions, all raise, at various junctures, questions concerning the continued existence of these schools which provide "duplicative" services. Attacks from these quarters are to be expected and are generally anticipated. While it is terribly degrading to be the recipient of venomous attacks following attempts to perform almost miraculous functions with impecunious budgets, it is downright demoralizing to have your titular allies buffet you with even more scurrility than that of your acknowledged foes. That's what occurs when attacks upon Black law schools are made by university administrations, alumni and "liberal" organizations.

Unfortunately, one of the legitimate criticisms of Black law schools concerns the lack of autonomy from their "parent" institutions. With the exception of one of the schools, the problem of "plantation paternalism" often attributed to Black schools continues extant. Law school budgets are structured by university administrators without consultation with law school officials; faculty hiring and promotions must have university sanction; and as Nathan Hare has pointed out, university administrators often cultivate a cult of mediocrity in all schools associated with the university.¹¹⁵

Despite these obstacles from within and without, Black law schools have functioned admirably. Black law schools continue to be the primary source of Black practitioners in the south and as such, the fountainhead of professional legal assistance to the majority of Blacks in the nation. At this juncture no word of closing these schools should

¹¹⁴ M. WEBER, *LAW IN ECONOMY AND SOCIETY*, 97 (1954).

¹¹⁵ Nathan Hare, *Final Reflections on a 'Negro' College* NEGRO DIGEST 40 (March, 1968).

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be countenanced. The District of Columbia Court of Appeals recently modified the District Court's decision in *Adams v. Richardson*, 480 F.2d. 1159 (D.C. Cir., 1973), concerning immediate compliance with HEW desegregation orders. In relation to the desegregation of institutions of higher education, the Court of Appeals, in a *per curiam* opinion, referred to the brief submitted by *amicus curiae* as the basis for its decision. The *amicus* brief, filed by the National Association for Equal Opportunity in Higher Education, pointed out that, "Black institutions currently fulfill a crucial need and will continue to play an important role in Black higher education." The brief further pointed up the lack of state-wide planning for the training of minority group doctors, lawyers and other professionals.¹¹⁶ Counsel for *amicus curiae* was Herbert O. Reid, present Acting Dean of Howard Law School.

There has been some lip service given to expanding and "up-grading" Black law schools, but the more meaningful dialogue concerns the possible reestablishment of law schools at private Black universities. The present status of the existing law schools continues to depend on the largess of white-dominated state legislatures, which in all instances has been less than even-handed. The "duplicative functions" ploy is the usual concomitant of legislative appropriation. Black law schools have, so far, courageously and successfully resisted this insidious ploy.

In a societal setting where technical assistance has become almost a crucial factor in day-to-day existence, the dearth of Black lawyers is sorely felt by various segments of the Black community. The absence of legal counsel can mean the difference between losing property and retaining it, gaining governmental benefits, guilt or innocence. Without trained legal counsel, we're relegated to Old Lem's lament: "They got the law."

¹¹⁶ *Adams v. Richardson*, 480 F.2d. 1159 (D.C. Cir., 1973).