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## Mission Accomplished: The Unfinished Relationship between Black Law Schools and Their Historical Constituencies

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## ARTICLES

### MISSION ACCOMPLISHED? THE UNFINISHED RELATIONSHIP BETWEEN BLACK LAW SCHOOLS AND THEIR HISTORICAL CONSTITUENCIES

MARY WRIGHT\*

#### INTRODUCTION

Today, there are six historically Black law schools operating in the United States. These are all that remain of the twenty-two Black law schools that were in existence at some point beginning in 1869.<sup>1</sup> With the exception of Howard University School of Law, established as Howard University Law Department in 1869,<sup>2</sup> and Miles Law School, established more than one hundred years later in 1974,<sup>3</sup> the other four law schools that remain open today were established over a ten-year span between 1940 and 1950. North Carolina Central University (then North Carolina College for Negroes) received authorization from the North Carolina General Assembly to open a law school in 1939.<sup>4</sup> However, due to lack of enrollment, the law school opened the following year in 1940.<sup>5</sup> The Thurgood Marshall School of Law at Texas Southern University (then Texas State University for Ne-

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\* Professor of Law, North Carolina Central University School of Law; asante sana (many thanks) to Barry Doughty, Theodore Enenmoh, and Charlene Raiford for their invaluable assistance and insight in the preparation of this article.

1. *History*, HOWARD UNIV. SCH. OF LAW, <http://www.law.howard.edu/19> ("Howard University School of Law started as Howard University Law Department on January 6, 1869 . . .") (last updated Apr. 18, 2016).

2. *Id.*

3. *About Miles Law School*, MILES LAW SCH., <http://www.mlaw.edu/about-miles/item/1-about-miles-law-school> (last visited July 22, 2016).

4. An Act to Provide Graduate and Professional Courses for the Negroes of North Carolina, 1939 N.C. Sess. Laws 88 (repealed 1957) ("The Board of Trustees of the North Carolina College for Negroes is authorized and empowered to establish Departments of Law, Pharmacy and Library Science at the above-named institution whenever there are applicants desirous of such courses.").

5. *History*, N.C. CENT. UNIV. SCH. OF LAW, <http://law.nccu.edu/about/history/> (stating that the opening of the law school, scheduled for 1939, was delayed until the following year due to insufficient enrollment of students) (last visited July 22, 2016).

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groes) was established in 1947,<sup>6</sup> the same year Southern University Law Center (then Southern University Law School) officially opened.<sup>7</sup> Florida A&M University (then Florida A&M College) established a division of law in 1949.<sup>8</sup>

Part I of this article will explore the historical circumstances that led to the establishment of Black law schools, the stated and unstated historical missions of the law schools, and the relationship between the missions of those law schools and the constituencies they were created to serve. Part II focuses on developments and circumstances giving rise to the continuing need for the historical missions of Black law schools. Part III of the article will examine the present-day missions of the law schools that remain open, factors that impact the content of their mission statements, and the extent to which these mission statements address the law schools' historical constituencies. Insofar as the law schools' present-day missions purport to address their historical constituencies, the article will further assess the extent to which the schools' curricula and programs are structured to effectuate these objectives. The article will further examine the continuing impact of racial, political, and socio-economic factors on the ability of the law schools to effectuate their historical missions. Relying upon the missions, curricula, and programs of the Antioch School of Law and its successor, the University of the District of Columbia David A. Clarke School of Law, as well as City University of New York School of Law and Northeastern University School of Law as examples, Part IV of the article will suggest how Black law schools can more effectively structure their curricula and programs to serve their historical constituencies.

## I. THE EMERGENCE OF BLACK LAW SCHOOLS

### A. *From 1869 to 1974*

Prior to the establishment of Howard University School of Law and the other Black law schools that followed, persons of African descent were

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6. *History*, TEX. S. UNIV., <http://www.tsu.edu/about/history.php> (“[T]he Texas Legislature passed Senate Bill 140 on March 3, 1947, providing for the establishment of a Negro law school in Houston and the creation of a university to surround it. . . . Thus, a new law school for Negroes of Texas and Texas State University for Negroes was born.”) (last visited July 22, 2016).

7. *A History of the Law Center*, S. UNIV. LAW CTR., <http://www.sulc.edu/about-sulc/> (“[I]n response to a lawsuit by . . . African-American[s] . . . seeking to attend law school at a state institution, the Louisiana State Board of Education took ‘positive steps to establish a Law School for Negroes at Southern University . . . to be in operation for the 1947-1948 session.’ Plans for the law school were approved by the State Board of Education at its January 10, 1947, meeting . . . [and] [t]he Southern University Law School was officially opened in September 1947 . . . .”) (last visited July 22, 2016).

8. *History of FAMU College of Law*, FLA. A&M UNIV. COLL. OF LAW, <http://www.law.famu.edu/about-us/> (“The FAMU College of Law was founded in 1949 . . . .”) (last visited July 22, 2016).

excluded from the legal profession.<sup>9</sup> Black law schools were therefore created to provide a legal education for African descendants who had heretofore been excluded from the legal profession.<sup>10</sup> Howard University School of Law (“Howard”), the oldest of the Black law schools, opened in 1869, just four years after the adoption of the Thirteenth Amendment to the United States Constitution in 1865 abolishing slavery.<sup>11</sup> The following year, Straight University College of Law opened in Louisiana, and a law department was established at Lincoln University in Pennsylvania.<sup>12</sup> Two years later, in 1872, Wilberforce Law Department was established in Ohio<sup>13</sup> followed by Harper Law School in Louisville, Kentucky in 1875.<sup>14</sup> In 1878, Shaw University (now Rust College)<sup>15</sup> in Holly Springs, Mississippi, established a law department.<sup>16</sup> The next year Central Tennessee College (which was succeeded by Walden University) established a law department.<sup>17</sup> Allen University in South Carolina and Shaw University in North Carolina established law departments in 1881 and 1888, respectively.<sup>18</sup> Shaw University’s law school graduated fifty-seven students before closing in 1916.<sup>19</sup> The two remaining law schools established in the nineteenth century were Simmons University Law Department in Louisville, Kentucky in 1890 and Morris Brown Law Department in Atlanta, Georgia in 1896.<sup>20</sup>

From 1915 through 1974, eleven additional Black law schools opened. In 1915, the John Mercer Langston School of Law was established in the

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9. There are a few instances of African descendants who entered the legal profession prior to the establishment of the first Black law school, either through “reading the law” under the tutelage of a lawyer, or through admission to one of the White law schools. See J. Clay Smith, Jr. *Emancipation: The Making of the Black Lawyer 1844 – 1944* 33 (Univ. of Pa. Press Phila. ed., 1993) (stating that Macon Bolling Allen, who was admitted to the Maine bar in 1844 by “reading the law,” is widely recognized as the first African descendant to enter the legal profession in the United States; Smith goes on to state that “[t]here is no evidence that any black lawyer was trained in a university prior to 1868, the year in which George Lewis Ruffin enrolled in the Harvard University School of Law.”); see also, Kenneth S. Tollett, *Black Lawyers, Their Education, and the Black Community*, 17 *HOW. L.J.* 326, 328–29 (1972) (discussing other Blacks who were admitted to the bar in the mid 1800’s following apprenticeship training).

10. Smith, *supra* note 10, at 41.

11. See *id.* at 42.

12. *Id.* at 56 (noting that Straight University College of Law opened as an interracial law school).

13. *Id.*

14. *Id.* at 59.

15. *About Rust College*, RUST. COLL., [http://www.rustcollege.edu/about\\_rust.html#historical](http://www.rustcollege.edu/about_rust.html#historical) (stating that in 1892, the name of the institution was changed from Shaw University to Rust University; later, in 1915 the name was again changed from Rust University to Rust College.) (last visited July 14, 2016).

16. Smith, *supra* note 10, at 57.

17. *Id.*

18. *Id.* at 58–59.

19. *Id.* at 59.

20. *Id.* at 59–60.

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District of Columbia by a Howard University graduate,<sup>21</sup> and in 1922, Virginia Union University established an evening law school.<sup>22</sup> In 1931, the same year that Virginia Union University's law school closed, seven faculty members from John Mercer Langston School of Law opened Terrell Law School in the District of Columbia.<sup>23</sup> The following year, Kent College of Law opened in Nashville, Tennessee, and Keyston College of Technology School of Law opened in Memphis, Tennessee.<sup>24</sup>

1939 marked the beginning of the establishment of publicly-supported Black law schools when Lincoln University Law School opened in Missouri.<sup>25</sup> Lincoln was followed by the establishment of four additional state-supported law schools. North Carolina Central University School of Law ("NCCU") admitted its first class the next year,<sup>26</sup> followed by Thurgood Marshall School of Law at Texas Southern University ("TMSL")<sup>27</sup> and Southern University School of Law ("Southern").<sup>28</sup> Florida A&M School of Law ("FAMU"), which opened in 1949, was closed by the Florida Legislature in 1967, and later re-established in 2000.<sup>29</sup>

All of the six law schools that remain open, with the exception of Howard and Miles, were established either as a result of legislation enacted in response to the Supreme Court decision in *Missouri ex rel. Gaines v. Canada*,<sup>30</sup> or in response to, or in anticipation of similar lawsuits in the other jurisdictions. In *Gaines*, the United States Supreme Court held that where Missouri operated a law school exclusively for Whites, paying the tuition for Blacks to attend law school in other states was not sufficient to withstand a challenge of discrimination raised by Gaines, a Black applicant who had been denied admission to the University of Missouri's law school solely on the basis of his race.<sup>31</sup> While Missouri argued that it had plans to establish a law school for Blacks,<sup>32</sup> the Court concluded that in the absence of such a law school, the case turned on whether the provision for a legal education in other states satisfied the constitutional requirement for equal protection, and held that it did not.<sup>33</sup> Hence, in a move to avoid having to admit

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21. *Id.* at 60.

22. *Id.* at 61.

23. *Id.*

24. *Id.* at 62.

25. *Id.* at 63.

26. N.C. CENT. UNIV. SCH. OF LAW, *supra* note 6.

27. TEX. S. UNIV., *supra* note 7.

28. S. UNIV. LAW CTR., *supra* note 8.

29. FLA. A&M UNIV. COLL. OF LAW, *supra* note 9.

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

31. *Id.* at 350-51.

32. *Id.* at 346; Smith, *supra* note 10, at 62-63 (The law school at Lincoln University in Missouri was established in 1939 – one year after the *Gaines* decision.).

33. *Gaines*, 305 U.S. at 349-51.

Blacks into the White law schools in their states, the legislatures in North Carolina and Florida passed legislation providing for the establishment of a law school for Blacks.<sup>34</sup>

It took another impending Supreme Court decision to propel the State of Texas to establish a law school as part of the "Texas State University for Negroes."<sup>35</sup> Heman Sweatt, an African descendant, applied for and was denied admission to the University of Texas School of Law in 1946.<sup>36</sup> At that time, the state constitution of Texas restricted admission to the University of Texas School of Law to White students only.<sup>37</sup> Sweatt brought suit against the university to compel his admission.<sup>38</sup> At the time of Sweatt's exclusion from the White law school, there were no law schools established in the state of Texas for Blacks. Thus, while Sweatt's case was on appeal, in an effort to avoid a judicial mandate to admit Black students to its White law school, the Texas Legislature enacted legislation in 1947 to establish what is now the Thurgood Marshall School of Law at Texas Southern University.<sup>39</sup>

Sweatt's counterpart, Charles J. Hatfield, paved the way for Blacks to study law in Louisiana. In 1946, the same year Sweatt was denied admission to the University of Texas School of Law, Hatfield, a World War II veteran, applied for and was denied admission to the law school at Louisiana State University.<sup>40</sup> Hatfield's letter to the registrar seeking admission was answered by the law school's dean who advised him "colored students were not admitted."<sup>41</sup> Approximately two weeks after Hatfield sought a writ of mandamus to compel admission to Louisiana State University's law

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34. *Epps v. Carmichael*, 93 F. Supp. 327, 331 (M.D.N.C. 1950) ("The undertaking on the part of the State of North Carolina to provide legal education for its White citizens makes it mandatory for the state to admit Negroes to these institutions or to provide equal facilities in a separate school for Negroes. This has been undertaken by the state in the establishment of the Law School at North Carolina College."); *State ex rel. Hawkins v. Bd. of Control of Fla.*, 47 So. 2d 608, 615 (Fla. 1950) ("[I]n making provision for public education for its citizens, the State . . . may establish separate schools for Whites and Negroes—indeed should and must do so where the state constitution and statutes so require—without being thought guilty of any infraction of the Federal law solely by reason of that fact; the only proper inquiry . . . being whether . . . the separate facilities provided each of the races affords [sic] substantially equal accommodations and opportunities to both races alike.").

35. *History of Thurgood Marshall School of Law*, TEX. SO. UNIV. THURGOOD MARSHALL SCH. OF LAW, <http://www.tsulaw.edu/welcome/history.html> (last visited July 22, 2016).

36. *Sweatt v. Painter*, 210 S.W.2d 442, 443 (Tex. Civ. App. 1948).

37. TEX. CONST. art. 7, § 7 (repealed 1969).

38. *Painter*, 210 S.W.2d at 443.

39. *Id.* at 447 (concluding that the establishment of what is now Thurgood Marshall School of Law was a sufficient effort on the part of the state of Texas to justify the continued exclusion of Blacks from the University of Texas School of Law, the appellate court affirmed the trial court's denial of the writ of mandamus sought by Sweatt.).

40. *Charles J. Hatfield, 87, Who Paved the Way for Blacks to Study Law in Louisiana, Dies*, JET, July 15, 2002, at 17.

41. *Id.*

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school, the Louisiana State Board of Education voted to establish a law school at Southern University for Blacks.<sup>42</sup> The defendants thereafter responded to Hatfield's lawsuit by stating that the Louisiana State Board of Education had "taken positive steps to establish a law school for negroes at Southern University."<sup>43</sup> This was sufficient to satisfy the presiding judge who then dismissed Hatfield's lawsuit.<sup>44</sup>

The University of the District of Columbia David A. Clarke School of Law (UDC), unlike five of the remaining Black law schools, was not created for Black students who were barred outright from attending White law schools.<sup>45</sup> Thus, while UDC is designated as a Historically Black College or University (HBCU) law school by virtue of its association with the University of the District of Columbia, which is an HBCU,<sup>46</sup> UDC is not included in this article as a Black law school. Prior to its merger with the University of the District of Columbia in 1996,<sup>47</sup> UDC, then the District of Columbia School of Law, operated for ten years as an independent law school.<sup>48</sup> Its predecessor, the Antioch School of Law, likewise, was not a Black law school.<sup>49</sup> Although UDC, unlike the six predominantly Black law schools, did not have its origins as such, the exceptionality of this law school is that neither it nor its predecessors, the District of Columbia School of Law and the Antioch School of Law, were established to operate as exclusive or predominantly White institutions.<sup>50</sup>

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42. Evelyn L. Wilson, *Louis Berry – A Man Among Men*, 20 S.U. L. REV. 149, 164 (1993).

43. *Id.*

44. *Id.* at 164-65.

45. See *School of Law History*, UDC, <http://www.law.udc.edu/?page=History> (stating that the school's predecessor was created to champion the rights of low-income people and minorities.) (last visited Nov. 6, 2016).

46. *UDC's History*, UDC, [http://www.udc.edu/about\\_udc/history\\_university\\_district\\_columbia](http://www.udc.edu/about_udc/history_university_district_columbia) (stating that the University of the District of Columbia began as the Miner Normal School for Black girls in 1851 and subsequently became Miner Teachers College, a four-year school. Miner Teachers College was renamed The District of Columbia Teachers College which merged with Federal City College and Washington Technical Institute in 1977 to become the University of the District of Columbia.).

47. UDC, *supra* note 46.

48. *Id.*

49. ANTIOCH SCH. OF LAW, ANTIOCH SCHOOL OF LAW 5 (1972) ("The Antioch School of Law is a direct result of the . . . affiliation of the Urban Law Institute of Washington, D.C. with Antioch College."); ANTIOCH SCH. OF LAW, ANTIOCH SCHOOL OF LAW CATALOG 1974-1975 39 (1974-75) ("Minority students (Black, Latino, American Indian and Asian) comprise about 30 percent of the . . . student body.").

50. ANTIOCH SCHOOL OF LAW, *supra* note 50, at 7. ("The commitments of the School of Law – to community service, to relevant legal scholarship, and to substantial enrollment from minority . . . backgrounds – have generated a wide spectrum of support and broad based involvement in the planning of the School . . .").

B. *A Two-Prong Mission*

The historical mission of Black law schools can generally be characterized as two-fold. The first prong of the mission is to provide a legal education for Blacks who otherwise would be excluded from law school, while the second prong of the mission is to produce lawyers to advocate on behalf of and advance the causes of the Black community. With respect to the first prong, the schools' articulated missions and their unstated missions were complementary in that both provided an opportunity for a legal education for Blacks who were barred from attending the White law schools.

With respect to the second prong, however, there is often a divergence between the schools' articulated missions and their unstated missions. In those instances where Whites played a role in the establishment of Black law schools, it was neither the intent of the Whites, nor was it in their interest to produce lawyers who would advocate for the reformation or eradication of laws and political systems the Whites themselves had created for the subordination of African descendants.<sup>51</sup> Consequently, the mission of Black law schools as articulated or condoned by Whites who, in some measure, exerted influence and control over the schools, was a more benign one of producing lawyers who would provide legal representation for Blacks in day-to-day legal matters. On the other hand, the mostly *unstated* missions of Black law schools, as evidenced by their outcomes, focused on training lawyers to advocate for and advance the political, social and economic causes of Black individuals and communities. As a result, early alumni of Black law schools are known for their contributions to movements within the Black community that focused on political, social, educational, and economic justice.

Kenneth S. Tollett writes that "Black lawyers were the leading attorneys and outstanding advocates in the signal victories of the 1940s and 1950s which outlawed the 'White primary,' made unenforceable racially restrictive housing covenants, and overturned the separate-but-equal doctrine in education."<sup>52</sup> Alumni of Howard who advanced the causes of the Black community include such notables as Charles Hamilton Houston,<sup>53</sup> Louis

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51. See SMITH, *supra* note 10, at 46 (noting that during the tenure of Richard Greener, an early dean at Howard University School of Law, the predominantly White board of trustees voted to close the law school. Smith further notes it is speculated that this was done to get rid of Greener who established a reputation as a spokesperson for African descendants when he advocated their migration to western states to avoid oppression.).

52. Tollett, *supra* note 10, at 347.

53. Kenneth W. Mack, *Rethinking Civil Rights Lawyering and Politics in the Era Before Brown*, 115 YALE L.J. 256, 267-69 (2005) (noting that Charles Houston inspired students and colleagues to engage in reform. Houston later became the Vice-Dean of Howard's law school and played a pivotal role in the journey to *Brown v. Board of Education*.).



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Berry,<sup>54</sup>

Conrad Pearson,<sup>55</sup> and Thurgood Marshall.<sup>56</sup>

Southern points to several of its alumni, including Jesse N. Stone, Jr., Alvin Basile Jones, Leroy White, Ellyson Fredrick Dyson, and Alex Louis Pitcher, as trailblazers securing the rights of others.<sup>57</sup> NCCU's early alumni who contributed to the civil rights movement include Robert Bond, the first graduate of the law school.<sup>58</sup> Bond, a staunch civil rights advocate, was instrumental in representing jailed protestors and desegregating schools and medical facilities in New Hanover County where he established his law practice.<sup>59</sup> Sammie Chess, Michael ("Mickey") Michaux, Clifton Johnson, and Robert Glass broke racial barriers in the legislature and the judiciary,<sup>60</sup> while James Lassiter and Floyd McKissick were lead plaintiffs in a lawsuit to desegregate the University of North Carolina at Chapel Hill School of Law.<sup>61</sup> McKissick went on to become the national executive director of the Congress of Racial Equality (CORE) and founder of Soul City, North Carolina.<sup>62</sup> Moreover, prominent alumni of FAMU who advocated for justice for African descendants include Alcee Hastings<sup>63</sup> and Arthenia Joyner.<sup>64</sup>

54. Wilson, *supra* note 43, at 153-54, 164 (stating that the civil rights pioneers Louis Berry met in law school convinced him he had made the right decision in targeting his life towards effecting change. Among other civil rights cases, Berry worked with Thurgood Marshall and other attorneys on the lawsuit brought by Charles Hatfield to desegregate the law school at Louisiana State University.).

55. Harold R. Washington, Comment, *History and Role of Black Law Schools*, 18 HOW. L.J. 385, 413 (1974) (Washington writes that Conrad Pearson, a native of North Carolina, was "very active in civil rights litigation."). (Among his many clients was a student of African descent who attempted to enroll in the University of North Carolina to study pharmacy, and the NAACP in an action against the North Carolina Secretary of State.).

56. See THURGOOD MARSHALL, <http://thurgoodmarshall.com/> (stating that Thurgood Marshall graduated from Howard University Law School in 1933 after being denied admission to the University of Maryland Law School. Marshall later went on to become one of the most influential civil rights lawyers of his time. He successfully argued *Brown v. Board of Education of Topeka* in front of the Supreme Court; he would later become the first African American to be appointed to the Supreme Court.) (last visited August 5, 2016).

57. S. UNIV. LAW CTR., *supra* note 8 (last visited July 22, 2016).

58. Michele Bond Hill, *ROBERT BOND '43: The Genesis of North Carolina Central University School of Law*, SO FAR, 70<sup>TH</sup> ANNIVERSARY ED. (N.C. Cent. Univ. Sch. of Law), 2009, at 6, <http://law.nccu.edu/about/history>.

59. *Id.*

60. *Id.* at 40.

61. *Id.* at 17; McKissick v. Carmichael, 187 F.2d 949 (4th Cir. 1951).

62. Hill, *supra* note 59, at 40.

63. *Biography*, U.S. CONGRESSMAN ALCEE L. HASTINGS, <http://alceehastings.house.gov/biography/> (Nov. 9, 2016) ("Known to many as 'Judge,' Alcee Hastings has distinguished himself as an attorney, civil rights activist, judge, and . . . Member of Congress.").

64. Steve Bousquet, *Tampa Sen. Arthenia Joyner takes over Senate Democratic Caucus*, TAMPA BAY TIMES (Nov. 17, 2014), <http://www.tampabay.com/news/politics/stateroundup/bousquet-column-tampa-sen-arthenia-joyner-takes-over-senate-democratic/2206867> (stating Arthenia Joyner was the first black woman to practice law in Hillsborough County, Florida. She was also a rare female president of the male-dominated National Bar Association. As the first African-American woman to lead the Florida Senate Democratic caucus, Joyner has championed such causes as "[a]ffordable health care, easing

Hank Johnson<sup>65</sup> and Senfronia Thompson<sup>66</sup> exemplify Thurgood Marshall alumni who have made notable contributions to the advancement of the civil rights for African descendants.

Thus, the importance of the first prong of the historical mission of Black law schools resides in the fact that these law schools historically produced the overwhelming majority of lawyers of African descent.<sup>67</sup> Moreover, the graduates of these law schools went on to play key roles in carrying out the second prong of the schools' mission of providing legal representation to persons of African descent and serving as legal advocates in the forefront of the Black community's fight for political, educational, and economic justice.

## II. THE CONTINUING NEED

### A. *Educating Lawyers of African Descent*

Taking a page from the "Black Lives Matter" movement, Black students in the 2016 graduating class at North Carolina Central University School of Law had photos taken wearing tee shirts that read, "Black Lawyers Matter."<sup>68</sup> The slogan serves as a cogent reminder of the continuing need for the first prong of the Black law schools' historical mission of educating Black lawyers. As of 2010, more than 170 years after Macon Bolling Allen became the first person of African descent to practice law in the United States,<sup>69</sup> Black lawyers made up less than five percent of the legal profes-

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barriers to civil rights for ex-felons, reducing mandatory prison terms for nonviolent offenders, and raising the minimum wage for the working poor.").

65. *Full Biography*, REP. HANK JOHNSON, <https://hankjohnson.house.gov/about/full-biography> (last visited July 22, 2016) (stating Rep. Hank Johnson advocated for the demilitarization of local law enforcement after police donned tactical gear and climbed aboard armored vehicles following the shooting death of a Black youngster in Ferguson, Missouri. Rep. Johnson also filed the Police Accountability Act and the Grand Jury Reform Act in the wake of police shooting deaths of unarmed Black men around the country.).

66. *Texas House Member*, TEXAS HOUSE OF REPRESENTATIVES, <http://www.house.state.tx.us/members/member-page/?district=141#member-biography> (Nov. 9, 2016) (stating Rep. Senfronia Thompson authored "laws banning racial profiling, the state's . . . minimum wage law, . . . and scores of other reforms benefiting women, children and the elderly. . . . [I]n 1977, Rep. Thompson used her own personal fund to convince the United States Justice Department to successfully sue Texas for discrimination in financing, hiring and admissions at Texas' traditionally Black universities, leading the way in creating a fund to improve facilities, libraries and faculty at Prairie View A & M and Texas Southern University.").

67. Tollett, *supra* note 10 at 330, 335.

68. Stephanie Caudle, *NCCU Grads Show You Just Why #Black Lawyers Matter*, HUFFINGTON POST (May 17, 2016, 12:02 PM), [http://www.huffingtonpost.com/stephanie-r-caudle/nccu-grads-show-you-just\\_b\\_9990076.html](http://www.huffingtonpost.com/stephanie-r-caudle/nccu-grads-show-you-just_b_9990076.html).

69. SMITH, *supra* note 10, at 8.

sion.<sup>70</sup> Given that Blacks accounted for thirteen percent of the population as of 2010,<sup>71</sup> this translates into one Black lawyer for every 686 Blacks who need legal assistance.<sup>72</sup> In contrast, there is one White lawyer for every 282 Whites who need legal assistance.<sup>73</sup> Moreover, studies have shown that the race of the lawyer matters regarding the decision of the lawyer to accept the case;<sup>74</sup> the manner in which the lawyer represents the client;<sup>75</sup> and the extent to which a Black client may raise racial issues with the lawyer, as well as how the lawyer responds to those issues.<sup>76</sup> Given the many special and unique roles that Black attorneys continue to fill in the Black community, their underrepresentation in the legal profession is keenly felt.

Although there is evidence of one person of African descent attending a White law school in 1868, the year before Howard University's law school was established,<sup>77</sup> Black law schools historically produced the majority of Black lawyers.<sup>78</sup> Even after White law schools were forced to admit Black law students, as one author put it, "Equal access [was] not equivalent to equal opportunity."<sup>79</sup> Early on, the majority of White law schools only admitted Black students in response to legislative enactments or court orders mandating desegregation, and as such, often devised ways to avoid or severely limit the admission of Black students.<sup>80</sup> This resistance is illustrated by a lawsuit brought by Black students enrolled at NCCU to desegregate the University of North Carolina at Chapel Hill School of Law.<sup>81</sup> When the sixties ushered in an era of affirmative action programs for African de-

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70. ABA LAW. DEMOGRAPHICS, [http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/lawyer\\_demographics\\_2012\\_revised.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/lawyer_demographics_2012_revised.authcheckdam.pdf). (according to the 2010 Census data, Black lawyers made up 4.8% of the licensed attorneys as compared to 88.1% for White lawyers.) (Nov. 9, 2016).

71. Sonya Rastogi, et al., *The Black Population: 2010*, U.S. CENSUS BUREAU 3 (Sept. 2011), <https://www.census.gov/prod/cen2010/briefs/c2010br-06.pdf>.

72. Yolanda Young, *Why the US needs black lawyers even more than it needs black police*, THE GUARDIAN (May 11, 2015), <https://www.theguardian.com/world/2015/may/11/why-the-us-needs-black-lawyers>.

73. *Id.*

74. *Id.* (stating White lawyers who participated in one study admitted that "in deciding to reject a case, they considered clients' ability to pay, as well as their perceived 'demeanor and mannerisms', [sic] which is often coded language for racial characteristics.").

75. *Id.* (stating that a study exploring race and attorney influence in bankruptcy cases confirmed that attorneys were twice as likely to recommend the more onerous and costly Chapter 13 to Black clients than White clients.).

76. Russell G. Pearce, *White Lawyering, Rethinking Race, Lawyer Identity, and Rule of Law*, 73 FORDHAM L. REV. 2081, 2090-93 (2005).

77. SMITH, *supra* note 10, at 33.

78. Tollett, *supra* note 10 at 330, 335.

79. Denise Wallace-Haymore, *Black Law Schools: The Continuing Need*, 16 S.U. L. REV. 249, 253 (1989).

80. Don Corbett, *Stunted Growth: Assessing the Stagnant Enrollment of African-American Students at the Nation's Law Schools*, 18 TEMP. POL. & CIV. RTS. L. REV. 177, 181 (2008).

81. *McKissick*, 187 F.2d at 950.

scendants, many White universities established race-based admissions criteria for the purpose of meeting stated or unstated enrollment quotas or goals set for Black students in their undergraduate and professional programs.<sup>82</sup> The enrollment of Blacks increased in the White law schools during the sixties and seventies as a result of race-conscious admissions programs, but peaked in 1994-95.<sup>83</sup>

The decline in the enrollment of Black law students at White law schools is due to several factors.<sup>84</sup> One contributing factor is the series of lawsuits in which unsuccessful White applicants challenged affirmative action admissions programs at the White law schools, alleging reverse discrimination. In *Grutter v. Bollinger*, for instance, a White applicant who was denied admission to the University of Michigan Law School, challenged the legality of the law school's race-conscious admissions program.<sup>85</sup> The United States Supreme Court, relying on portions of its divided opinion in *Regents of the University of California v. Bakke*,<sup>86</sup> upheld the law school's admissions program.<sup>87</sup> Shortly after *Grutter* was decided, however, Michigan voters amended the state constitution to prohibit the use of race-based preferences as part of the admissions process for state-supported universities.<sup>88</sup> The amendment subsequently survived a challenge to its constitutionality that reached the United States Supreme Court in *Schuetz v. Coalition to Defend Affirmative Action, Integration and Immigrant Rights and Fight for Equality by Any Means Necessary (BAMN)*.<sup>89</sup>

In general, admissions policies and programs intended to increase the enrollment of Black students remain under assault. In November of 2014, a lawsuit was filed against the University of North Carolina at Chapel Hill by Students for Fair Admissions, Incorporated, challenging the university's

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82. Corbett, *supra* note 81, at 182-83.

83. *Id.* at 183. ("[I]n AY 1994-1995, African-American enrollment at the nation's law schools peaked at 9681 students . . . [S]ince that zenith year, black enrollment at the nation's law schools has stagnated. . . .").

84. *Id.* at 194-98.

85. *Grutter v. Bollinger*, 539 U.S. 306, 306-07 (2003).

86. *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 269-70 (1978). (regarding a White male applicant who was denied admission to medical school, challenged the legality of the medical school's set-aside admissions program.).

87. *Grutter*, 539 U.S. at 309-10.

88. M.I. CONST. art. I, § 26(2) ("The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.").

89. *Schuetz v. Coal. to Defend Affirmative Action, Integration & Immigrant Rights & Fight for Equal. By Any Means Necessary (BAMN)*, 134 S. Ct. 1623, 1638 (2014) ("The electorate's instruction to governmental entities not to embark upon the course of race-defined and race-based preferences was adopted . . . because the voters deemed a preference system to be unwise. . . . [T]here is no authority in the Constitution of the United States or in this Court's precedents for the Judiciary to set aside Michigan laws that commit this policy determination to voters.").

undergraduate admissions policies.<sup>90</sup> The lawsuit alleged that the university's admissions practice of "[o]nly using race or ethnicity as a dominant factor in admissions decisions could . . . account for the disparate treatment of high-achieving Asian-American and White applicants and underrepresented minority applicants with inferior academic credentials."<sup>91</sup> A year earlier, in *Fisher v. University of Texas at Austin*, the United States Supreme Court severely criticized the Fifth Circuit Court of Appeals' decision to uphold that university's race-conscious admissions policy.<sup>92</sup>

As anticipated, universities responded to the adverse court rulings,<sup>93</sup> voter initiatives,<sup>94</sup> and executive orders against affirmative action and race-conscious admissions programs<sup>95</sup> by dismantling such programs as they related to the enrollment of Black students.<sup>96</sup> The negative impact of the elimination of affirmative action admissions policies on the enrollment of Black law students has been the focus of studies by legal scholars.<sup>97</sup> One

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90. *Project on Fair Representation Announces Lawsuits Challenging Admissions Policies at Harvard Univ. and Univ. of North Carolina – Chapel Hill*, STUDENTS FOR FAIR ADMISSIONS, <https://studentsforfairadmissions.org/project-on-fair-representation-announces-lawsuits-challenging-admissions-policies-at-harvard-univ-and-univ-of-north-carolina-chapel-hill/> (last visited July 22, 2016).

91. Complaint at 4, *Students for Fair Admissions, Inc. v. Univ. N.C.*, No. 1:14-CV-00954 (M.D.N.C. Nov. 17, 2014), <http://samv91khoyt2i553a2t1s05i-wpengine.netdna-ssl.com/wp-content/uploads/2014/11/SFFA-v.-UNC-Complaint.pdf>.

92. *Fisher v. Univ. of Tex. at Austin*, 133 S. Ct. 2411, 2413-14 (2013).

93. See, e.g., *Hopwood v. Texas*, 78 F.3d 932, 934-35 (5th Cir. 1996) (finding no compelling justification under the Fourteenth Amendment for an admissions program that gave preference to Black applicants and holding that the University of Texas School of Law could not use race as a factor in admissions).

94. William C. Kidder, *The Struggle for Access from Sweatt to Grutter: A History of African American, Latino, and American Indian Law School Admissions, 1950-2000*, 19 HARVARD BLACK LETTER L.J. 1, 29-30 (2003) (following a vote by the University of California Board of Regents in 1997 to end race conscious admission in graduate and professional schools, California voters adopted Proposition 209. This initiative provides that "[t]he State shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public . . . education. . . ."; In 1998, the same year in which Proposition 209 took effect, Washington voters passed Initiative 200, a ballot initiative identical to Proposition 209).

95. *Id.* at 30 (In November 1999, Jeb Bush, then governor of Florida, signed Executive Order 99-281, commonly referred to as "One Florida," which discontinued race-conscious affirmative action in the Florida public university system.)

96. David R. Colburn, Charles E. Young & Victor M. Yellen, *Admissions and Public Higher Education in California, Texas and Florida: The Post-Affirmative Action Era*, INTERACTIONS: UCLA J. OF EDUC. & INFO. STUD., 4(1) 4 (2008), <http://escholarship.org/uc/item/35n755gf> (discussing a study on the impact of the termination of affirmative action programs on freshmen enrollment patterns at selected state-supported universities in California, Texas and Florida over a fifteen-year period.) (last visited July 23, 2016).

97. *Id.* (study confirming the decline in the enrollment of freshmen of African descent in the state-supported universities in all three states.); see also, Kidder, *supra* note 95, at 29-31; Nadra Kareem Nittle, *Affirmative Action Bans in Universities: Who Gains?* ABOUT NEWS, <http://racelrelations.about.com/od/thelegalsystem/a/WhoBenefitsfromAffirmativeActionBaninUniversities.htm> (last updated Jan. 8, 2016) (discussing a report on the impact of dismantling affirmative action programs on Black student enrollment at public universities in California, Texas and Florida; Nittle

such study focuses on the impact of voter initiatives in California and Washington, as well as an adverse court decision in Texas on the enrollment of Black students in selective law schools in those states.<sup>98</sup> The data in the study confirm a drop in the enrollment of Blacks in the affected law schools in those states following the termination of the affirmative action policies.<sup>99</sup> This declining enrollment of Blacks at White law schools contributes to the trend of continuing underrepresentation of Blacks in the legal profession.

In addition to adverse rulings on affirmative action policies and voter initiatives banning consideration of race by public educational institutions in admissions decisions, practices of the American Bar Association (“ABA”)<sup>100</sup> have contributed to the declining enrollment of Black law students. An in-depth study of twenty law schools with a 25<sup>th</sup> percentile LSAT score of 151 or less that were inspected by the ABA Accreditation Committee between 2002 and 2004 revealed that 100% of the schools raised their 25<sup>th</sup> percentile LSAT scores during the period they were under review by the ABA, and 95% of those schools suffered a concomitant decline in the percentage of Black students enrolled during the same period.<sup>101</sup> The correlation between the increase in the LSAT scores and the decrease in the enrollment of Black students is directly attributable to a longstanding ten-point gap in the LSAT scores of Black applicants and White applicants.<sup>102</sup> Notwithstanding having come under scrutiny for its cultural bias and its questionable utility as a predictor of law school success,<sup>103</sup> the

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notes that the expected decrease in the enrollment of Black students following the affirmative action bans was accompanied by an increase in the enrollment of Asian students.).

98. Kidder, *supra* note 95, at 29-31.

99. *Id.* at 31 (noting that the enrollment of Black students at the five law schools in the study, UC Berkeley (Boalt Hall), UCLA, UC Davis, University of Texas, and University of Washington, fell from 6.65% when affirmative action programs were in place, to 2.25% when the affirmative action programs were eliminated).

100. ABA Standards and Rules of Procedure for Approval of Law Schools 2016-2017 (AM. BAR ASS’N), [hereinafter ABA STANDARDS], (Aug. 2016), at 31-32, [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2016\\_2017\\_aba\\_standards\\_and\\_rules\\_of\\_procedure.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2016_2017_aba_standards_and_rules_of_procedure.authcheckdam.pdf) (stating the Council and the Accreditation Committee of the ABA Section of Legal Education and Admissions to the Bar are recognized by the United States Department of Education (DOE) as the accrediting agency for programs that lead to the J.D. degree. Law schools accredited by the ABA are subject to periodic reviews. One component of the law school’s program that is reviewed by the ABA for purposes of deciding whether the law school will retain its accreditation is the law school’s admissions criteria and data.).

101. John Nussbaumer, *The Disturbing Correlation Between ABA Accreditation Review and Declining African-American Law School Enrollment*, 80 ST. JOHN’S L. REV. 991, 993-94 (2006).

102. Corbett, *supra* note 81, at 198-99.

103. *DeFunis v. Odegaard*, 416 U.S. 312, 328-29 (1974) (Douglas, J., dissenting) (“[T]he [LSAT] purports to predict how successful the applicant will be during his first year of law school . . . [b]ut the answers the student can give to a multiple-choice question are limited by the creativity and intelligence of the test-maker; the student with a better or more original understanding of the problem than the test-maker may realize that none of the alternative answers are good, but there is no way for him to demon-

LSAT continues to be one of the primary tools used by law schools to assess law school applicants.<sup>104</sup> Thus, in reaction to threats to their accreditation by the ABA, law schools are likely to seek to increase their LSAT scores in an effort to address ABA criticisms. Since Black students tend to fall into the group of students having the lower LSAT predictors, it follows that the increase in the predictors would come at the expense of Black students, thus resulting in a decline in their enrollment.

Another ABA directive that adversely impacts the enrollment of Black students is the requirement that law schools achieve a specified bar passage rate in order to maintain their accreditation.<sup>105</sup> Given these ongoing challenges that work against enrollment of Blacks in White law schools in meaningful numbers, the mission of providing a legal education for Blacks who would otherwise be deprived of the opportunity for a legal education remains a priority at Black law schools.

#### B. *Producing Lawyers to Represent Underserved Populations*

As with the first prong of their mission, there is also an ongoing need for the second prong of Black law schools' historical mission of producing lawyers who will represent underrepresented and underserved persons and communities. Statistics from the 2014 census data show that 26.2 percent of the Black population remains below the poverty line.<sup>106</sup> Moreover, Blacks continue to make up a disproportionate percentage of the low wealth population.<sup>107</sup> Given the ongoing wealth disparity between Blacks and Whites, Blacks will continue to have a disproportionately higher need for low or no-cost legal services.<sup>108</sup> Additionally, rights gained by the Black community as a result of hard fought legal battles of civil rights attorneys from prior generations, including voting rights and anti-discrimination legislation, are continuously under attack.<sup>109</sup> Moreover, organizations that became the

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strate his understanding. . . . [T]here are many relevant factors such as motivation, cultural backgrounds of specific minorities that the test cannot measure, and they must inevitably impair its value as a predictor.").

104. ABA STANDARDS, *supra* note 101, at 33 ("A law school shall require each applicant for admission as a first-year J.D. degree student to take a valid and reliable admission test. . . . [A] law school that uses an admission test other than the Law School Admission Test sponsored by the Law School Admission Council shall establish that such other test is a valid and reliable test. . . .").

105. *See id.* at 24-25 (the ABA's recently revised bar passage requirements for law schools place a more onerous burden on the Black law schools given their commitment to providing educational opportunities for students whose predictors are generally lower.).

106. *People in Poverty by Selected Characteristics: 2013 and 2014*, [http://www2.census.gov/programs-surveys/demo/tables/p60/252/pov\\_table3.pdf](http://www2.census.gov/programs-surveys/demo/tables/p60/252/pov_table3.pdf) (last visited July 23, 2016).

107. *Id.* (by comparison, only 12.7 per cent of the White population was below the poverty line.).

108. *Id.*

109. *See, e.g.*, N.C. GEN. STAT. § 163-166.13 (2016) (a Republican-dominated legislature enacted a voter identification requirement that was held unconstitutional by the Fourth Circuit Court of Appeals

safety net for low wealth individuals and communities with respect to providing legal representation have themselves experienced a decrease in financial support.<sup>110</sup> It is therefore more important than ever to educate lawyers who are committed to providing legal representation to underserved persons and communities. Consequently, as the data suggest, the responsibilities of Black law schools to their historical constituencies remain.

### III. PRESENT-DAY MISSIONS AND HISTORICAL CONSTITUENCIES – IS THERE A FIT?

#### A. *The Mission Statement and the Mission*

The unfinished relationship between Black law schools and their historical constituencies is not always evident from the present-day mission statements of these schools. Although there is a continuing need for the schools' historical two-prong mission of providing a legal education for Blacks who would otherwise be excluded from a legal education and educating lawyers who will provide legal representation for underserved communities, this mission is generally not the focal point of the law schools' present-day mission statements.<sup>111</sup> One development that has had a substantial impact on the content of the mission statements is the judicial mandates intended to dismantle dual systems of higher education.<sup>112</sup> Although

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shortly after it went into effect in 2016); *NAACP v. McCrory*, No. 16-1468, 2016 WL 4053033, at 2 (4th Cir. July 29, 2016) (“[W]e can only conclude that the North Carolina General Assembly enacted the challenged provisions of the law with discriminatory intent. Accordingly, we reverse the judgment of the district court to the contrary and remand with instructions to enjoin the challenged provisions of the law.”); see also Henry L. Chambers, Jr., *The Supreme Court Chipping Away at Title VII: Strengthening It or Killing It?*, 74 LA. L. REV. 1161, 1161-63 (2014) (“Though the meaning of the basic provisions of a statute that has been law for 50 years should be settled, Title VII’s meaning is not settled. Indeed, over the past few years, the Supreme Court has destabilized the meaning of Title VII by rethinking doctrines that many thought established . . . Rather than broadening Title VII’s protections through doctrinal evolution in the same manner that some earlier Courts have, the current Court is chipping away at Title VII’s protections . . . .”); G. Nelson Smith, II & Rodney P. Ruffin, *Title VII Litigation Before the Rehnquist Court: Attempting to Change a Judicial Leopard’s Spots*, 2 GEO. MASON U. CR. L.J. 45, 66 (1991) (“[W]ith the Supreme Court now pushing cases further to the right, Title VII advocates must take some action to stop the onslaught of successive losses, or decisions such as *McDonnell Douglas* for that matter, or the Act itself, could become a thing of the past.”).

110. *Funding Cuts Expected to Result in Nearly 750 Fewer Staff Positions at LSC-funded Programs*, LEGAL SERVS. CORP., [www.lsc.gov/media/press-releases/funding-cuts-expected-result-nearly-750-fewer-staff-positions-lsc-funded](http://www.lsc.gov/media/press-releases/funding-cuts-expected-result-nearly-750-fewer-staff-positions-lsc-funded) (last visited July 23, 2016) (“Of the programs reporting decreases in their total funding from 2011 to 2012, 91 per cent (87 programs) expect to serve fewer clients and accept fewer cases. . . .”).

112. See, e.g., *Sanders v. Ellington*, 288 F. Supp. 937, 940-42 (M.D. Tenn. 1968) (“[T]he dual education . . . heretofore established by law in Tennessee has not been dismantled. . . . [T]he historically White institutions still have overwhelmingly White enrollments, and the Tennessee A & I State University still has an overwhelmingly Negro enrollment. . . . [T]herefore, the court will enter an order requir-



Black colleges and universities had no record of having excluded White students, judicial decisions and legislative enactments mandating that White schools admit Black students were equally applicable to the Black schools, with Black institutions sometimes carrying a heavier burden than the White institutions.<sup>113</sup> One outgrowth of the judicial mandates was the construction of carefully worded, broad-based, race-neutral mission statements by the Black institutions that emphasize diversity.<sup>114</sup> As a result, the present-day mission statements of Black law schools bear little, if any, resemblance to their historical two-prong missions.

For example, Southern's mission statement reads as follows:

The mission and tradition of the Law Center is to provide access and opportunity to a diverse group of students from underrepresented racial, ethnic, and socio-economic groups to obtain a high quality legal education with special emphasis on the Louisiana civil law. Additionally, our mission is to train a cadre of lawyers equipped with the skills necessary for the practice of law and for positions of leadership in society.

The mission of the Law Center is consistent with the rich heritage of the Southern University System. The Law Center stresses legal education of high quality for qualified students from diverse backgrounds.

The Southern University Law Center is proud of the tradition established by the original School of Law – to provide quality legal education commensurate with high professional standards.<sup>115</sup>

While Southern's mission statement refers to the law school's "original tradition," it describes the tradition in overly broad terms, making no specific reference to the school's inception that resulted from the lawsuit by African descendant, Charles Hatfield, to gain access to the Louisiana's White law school to obtain a legal education.<sup>116</sup>

Although the mission statement of TMSL, unlike that of Southern, does pay homage to TMSL's tradition as a historically Black law school, the mission statement otherwise reads much the same as Southern's, with a heavy emphasis on neutrality and diversity:

The mission of Thurgood Marshall School of Law ("Law School") is to prepare a diverse group of students for leadership roles in the legal profes-

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ing the defendants to submit to the court a plan designed to effect such desegregation of the higher educational institutions of Tennessee, *with particular attention to Tennessee A & I State University*, as to indicate the dismantling of the dual system now existing. . . .") (emphasis added); *See also*, *United States v. Louisiana*, 692 F. Supp. 642 (E.D. La. 1988), *vacated* 751 F. Supp. 606 (E.D. La. 1990).

113. *See Sanders*, 288 F. Supp. at 942.

114. *Id.*

115. *Course Catalog*, S. UNIV. LAW CTR., <http://www.sulc.edu/wp-content/uploads/2016/10/Full-Catalog-2016-17.pdf> (last visited July 23, 2016).

116. *Jet Magazine*, *supra* note 41, at 17.

sion, business and government. In keeping with its rich tradition as an HBCU, the Law School continues to train and educate large numbers of African-American and Hispanic lawyers. At the same time the Law School has opened its doors to students from all backgrounds, gaining recognition as one of the most diverse law schools in the country. As part of the special-purpose institution for urban programming, the Law School is also committed to making an impact on urban communities.

Texas Southern University is a comprehensive metropolitan university. Building on its legacy as a historically black institution, the University provides academic and research programs that address critical urban issues and prepares an ethnically diverse student population to become a force for positive change in a global society.<sup>117</sup>

NCCU's mission statement reads as follows:

Keeping with the motto of "*Truth and Service*," the mission of the North Carolina Central University School of Law is to provide a challenging and broad-based educational program designed to stimulate intellectual inquiry of the highest order, and to foster in each student a deep sense of professional responsibility and personal integrity so as to produce competent and socially responsible members of the legal profession. . . .

North Carolina Central University School of Law was founded to provide opportunities for African Americans to become lawyers. Embracing our heritage, our mission is to provide a high quality, personalized, practice-oriented and affordable legal education to historically underrepresented students from diverse backgrounds in order to help diversify the legal profession. We empower all of our graduates to become highly competent and socially responsible lawyers and leaders committed to public service and meeting the needs of underserved communities. In fulfilling our mission, we will help create a more just society.

In achieving this mission, the Law School subscribes to the following joint statement of the American Bar Association, the Association of American Law Schools, and the Law School Admissions Council:

[A] student body that is diverse with respect to sex, ethnicity and race, and economic, educational and experiential backgrounds is essential to a quality legal education. Ours is a diverse society, and thus law students, before entering the legal profession, must obtain both a wide range of perspectives concerning the impact of law on various segments of our population, and a deeper understanding of law and justice in this increasingly complex society.

This statement is particularly poignant for a law school founded to educate African-Americans. In keeping with its historical role, an important aspect of the Law School mission is to attract capable persons from diverse

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117. *About Us*, THURGOOD MARSHALL SCH. OF LAW, <http://www.tsulaw.edu/about/index.html>. (last visited July 23, 2016).

backgrounds who are committed to public service and to meeting the needs of people and communities that are under-served by or that are under-represented in the legal profession.<sup>118</sup>

Prior to the adoption of the revised mission statement that now appears on NCCU's website, a brief reference to the law school's historical mission was relegated to the final two sentences of an exhaustive and detailed race-neutral mission statement.<sup>119</sup> The revised mission statement, while still heavily emphasizing diversity and neutrality, speaks more specifically to the law school's historical mission.<sup>120</sup>

Howard's mission statement reads as follows:

Consistent with providing the professional leadership necessary to advocate and defend the rights of all, but particularly of African-Americans and other minorities, it is the Law School's mission to:

1. Educate and enable students to develop their highest capabilities and skills as lawyers;
2. Engage as an institution in the active pursuit of solutions to domestic and international legal, social, economic and political problems that are of particular concern to minority groups; and
3. Imbue its students with dedication to excellence and commitment to the solutions to those problems.<sup>121</sup>

Although Howard's mission statement does not speak to the first prong of its historical mission of educating Black lawyers, it speaks to addressing legal issues of particular concern to African descendants.<sup>122</sup> Moreover, Howard begins, rather than ends, its mission statement with a reference to its historical mission. This is perhaps attributable to the more deeply-rooted manner in which Howard has, since its inception, espoused its mission. Early in its history, Howard was described as "[n]ot only a school, but also the embodiment of legal activism . . . [and] . . . a 'clinic' on justice and injustice in America, as well as a clearinghouse for information on the civil rights struggle. . . ."<sup>123</sup> Moreover, the law school continues to subscribe to the often-quoted view of one of its most well-known graduates, Charles

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118. *About NCCU School of Law*, NCCU SCH. OF LAW, <http://law.nccu.edu/about/> (last visited July 23, 2016).

119. *Id.*

120. E-mail from Page Potter to NCCU School of Law faculty (May 12, 2015, 10:01 a.m. EST) (on file with author) (the revised mission statement adopted by the faculty on March 21, 2012).

121. *About the School of Law*, HOWARD UNIV. SCH. OF LAW, <http://www.law.howard.edu/774> (last visited July 23, 2016).

122. *Id.*

123. *History*, HOWARD UNIV. SCH. OF LAW, <http://www.law.howard.edu/19> ("[T]here was a great need to train lawyers who would have a strong commitment to helping black Americans secure and protect their newly established rights. . . .").

Hamilton Houston, that “[a] lawyer’s either a social engineer or . . . a parasite on society. . . .”<sup>124</sup>

FAMU states its mission as follows:

The reestablished Florida A&M University College of Law reaffirms our historical legacy of excellence and responsibility to serve as a transformative force for the public good. Our mission is to serve as a beacon of hope and catalyst for change by providing access to excellent educational training and opportunities to generations of students seeking to serve the needs of traditionally underserved people and communities locally, nationally and internationally. While we continue our historic mission of educating African-Americans, we embrace persons of all racial, ethnic and national groups as members of the university community. We are dedicated to developing legal professionals and community leaders committed to equitable justice and the rule of law.<sup>125</sup>

The anomaly of FAMU’s mission statement stems from the legislation providing for the re-establishment of the law school in 2000. The Florida legislature mandated that the law school have as its mission the representation of traditionally underserved persons and communities.<sup>126</sup> Thus, FAMU’s mission statement specifically references both prongs of its historical mission as a focal point of its present-day mission.<sup>127</sup> Likewise, Miles’ description of its service model closely aligns with Black law schools’ historical missions:

Troubled by the dearth of minority lawyers in an impoverished state with a sizeable black population, . . . bold-thinking visionaries recognized the need for a law school that would produce lawyers committed to public service and social justice . . . The law school’s motto of “Striving to Balance” directly relates to the imbalance, disparity and disproportionality of black lawyers and of the underserved minority populace that existed in this state . . . .<sup>128</sup>

Even though the present-day mission statements of Black law schools continue to pay homage to their historical missions, the emphasis of their mission statements, both with respect to the students the schools seek to attract as well as the type of attorneys they aspire to produce, is generally race-neutral with a focus on diversity that one would expect to find associated with any law school.

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124. *Id.*

125. *About Us*, FLA. A&M UNIV. COLL. OF LAW, <http://law.famu.edu/about-us/mission/> (last visited July 23, 2016).

126. FLA. STAT. tit. XVI § 240.7105 (2000).

127. *Id.*; *About Us*, *supra* note 126.

128. *About Miles Law School*, MILES LAW SCH., <http://mlaw.edu/about-miles/item/1-about-miles-law-school> (last visited July 23, 2016).

While it is said to be axiomatic that an institution's curriculum and programs are driven by its mission, given the derivation of the race-neutral mission statements of Black law schools, the curricula and programs of these schools, as well as their outcomes, must be evaluated to determine whether the schools remain committed to their historical constituencies despite the generic race-neutral language of their current mission statements.

### B. *Producing Black Lawyers – the Commitment and the Challenge*

While only the mission statements of Miles and FAMU speak directly to the first prong of Black law schools' historical mission of producing Black lawyers,<sup>129</sup> all of these schools enroll proportionately more African descendants than their White counterparts.<sup>130</sup> Thus, despite the absence of language in their present-day mission statements that speaks directly to the first prong of their historical mission, Black law schools continue to offer opportunities for a legal education for African descendants who would otherwise be excluded from the legal profession.

Carrying out their commitment to the constituents of the first prong of their mission, however, does not come without its challenges for Black law schools. The ongoing deprivation of equal educational opportunities for African descendants has its roots in laws dating back to the captivity and enslavement of Africans that made it unlawful for African descendants to learn to read and write.<sup>131</sup> This deprivation, which began with the outright exclusion of African descendants from the American educational system,<sup>132</sup> has continued to manifest itself to the present day. Through a variety of machinations, including funding inequities, economic disparities, Euro-centric curricula, and a staff of teachers and administrators that is overwhelmingly White, African descendant students continue to be marginal-

129. *Id.*; *About Us*, *supra* note 126.

130. According to their 2015 enrollment data, Howard, FAMU, Southern, NCCU and TMSL all had enrollments of Black students that ranged from 44.3% (FAMU) to 79.7% (Howard). See *ABA Standard 509 Disclosures*, NCCU SCH. OF LAW, <http://law.nccu.edu/wordpress/wp-content/uploads/2013/12/509Standard2013.pdf>. (49.3%); *ABA Standard 509 Disclosures*, S. UNIV. LAW CTR., <http://www.sulc.edu/wp-content/uploads/2016/05/Enrollment-Data-and-Attrition.pdf>. (55%); *ABA Standard 509 Disclosures*, THURGOOD MARSHALL SCH. OF LAW, [http://www.tsulaw.edu/life/Std509InfoReport-146-146-11-06-2015\\_12-30-10.pdf](http://www.tsulaw.edu/life/Std509InfoReport-146-146-11-06-2015_12-30-10.pdf). (48.6%); *ABA Standard 509 Disclosures*, HOWARD UNIV. SCH. OF LAW, [http://www.law.howard.edu/dictator/media/1661/509Report\\_2015.pdf](http://www.law.howard.edu/dictator/media/1661/509Report_2015.pdf). (79.7%); *ABA Standard 509 Disclosures*, FAMU SCH. OF LAW, <http://law.famu.edu/wp-content/uploads/2015/12/2015-Std509InfoReport.pdf>.

131. A. LEON HIGGINBOTHAM, JR., IN THE MATTER OF COLOR 258 (Oxford Univ. Press ed., 2d ed. 1978) ("[P]articularly revealing was the prohibition against teaching a slave to read or write – an act that elicited a penalty of fifteen pounds sterling. . . [T]he financial penalty for teaching a slave was 50 percent greater than that for willfully castrating or cutting off the limb of a slave.").

132. *Id.*

ized in a White-controlled educational system from pre-school through high school.<sup>133</sup> These dynamics combine to negatively impact the performance of African descendants during early matriculation at the pre-school, elementary, and secondary levels.<sup>134</sup> The failures of the educational systems to address the needs of African descendants continue to impact their performance on standardized tests for admission to undergraduate institutions, and later on tests for admission to professional schools such as the LSAT for law schools.<sup>135</sup> Recognition of the educational inequities and disparities endured by African descendant students has historically played a role in admissions decisions and programs at Black colleges and universities in general,<sup>136</sup> and at Black law schools in particular.<sup>137</sup>

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133. Solomon Comissiong, *Public Education in America: A Pillar of Racism*, BILL QUIGLEY'S BLOG (July 21, 2009 01:24 AM); BLACK AGENDA REPORT (July 21, 2009), <http://www.blackagenda.com/content/public-education-america-pillar-institutional-racism>.

134. Lauren Camera, *Achievement Gap Between Black and White Students Still Gaping*, U.S. NEWS & WORLD REP. (Jan. 13, 2016 4:21 PM), <http://www.usnews.com/news/blogs/damine/2016/01/13/achievement-gap-between-white-and-black-students-still-gaping> ("The Report . . . mandated by the Civil Rights Act of 1964, which tasked the Department of Education with examining the inequality of educational opportunities in elementary and secondary education . . . found . . . that in both math and reading the average black student in grade 12 placed in the 13<sup>th</sup> percentile . . . meaning that 87 percent of the White students in grade 12 scored ahead of the average black 12<sup>th</sup> grader. . . . 50 years later that gap has barely narrowed. . . ."); *Achievement Gap*, EDUC. WEEK (Aug. 3, 2004), <http://www.edweek.org/ew/issues/achievement-gap/> (last updated July 7, 2011); see also, *The Widening Racial Scoring Gap on the SAT College Admissions Test*, J. OF BLACKS IN HIGHER EDUC., [http://www.jbhe.com/features/49\\_college\\_admissions-test.html](http://www.jbhe.com/features/49_college_admissions-test.html) (last visited July 23, 2016).

135. *The Widening Racial Scoring Gap on Standardized Tests for Admission to Graduate School*, J. OF BLACKS IN HIGHER EDUC., [http://www.jbhe.com/news\\_views/51\\_graduate\\_admissions\\_test.html](http://www.jbhe.com/news_views/51_graduate_admissions_test.html) ("On all of the standardized tests for admission to graduate and professional schools, the racial scoring gap is large and in many cases wider than the gap between blacks and Whites on the ACT and SAT standardized tests for undergraduate admissions. In all cases the gap in these graduate admissions tests has remained unchanged or widened in recent years. . . . [I]n 1998 the mean score of White students taking the Law School Admission Test (LSAT) was 151.96. . . . [T]he mean score for black students taking the test that year was 141.80, about 17 percent lower than the mean score of Whites. . . . [I]n 2004 the mean score for Whites on the LSAT was 152.47. For blacks, the mean score was 142.43. The 10 point, or 17 percent, scoring gap has remained constant throughout the period with only very minor fluctuations. . . .") (last visited July 29, 2016).

136. BRUCE A. JONES, BLACK COLLEGES: NEW PERSPECTIVES ON POLICY AND PRACTICE 9 (M. Christopher Brown, II & Kassie Freeman, eds. 2004) ("[O]ffering academic programs for students who possessed minimal skills or who were underprepared for college presented black colleges with a way of manufacturing a niche for their advanced curricula. Rather than expecting students to come to school already prepared to learn advanced material, HBCUs accepted them as they were and taught them as much as they could before letting them depart.").

137. SMITH, *supra*, note 10, at 49 (stating that at Howard University's School of Law "[s]tudents were admitted under four classifications: regular students, regular students with advanced standing, special students, and . . . unclassified students. . . . [A] regular student was one who had completed at least two years of college. Students with advanced standing were those who, in addition to the completion of two years of college, had a year of law at another approved law school. Special students were . . . students who could not meet the educational requirements of the regular students and were required to attend law school for three years. [The law school's matriculation term at the time was two years.] Unclassified students were placed in the afternoon/evening program and were required to take a reduced load of courses; they remained in the law school for up to six years. . . .").

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Factoring in the inadequate educational preparation of African descendants in their admissions processes, however, has continually subjected Black law schools to unwarranted scrutiny by the ABA under the auspices of its accreditation process, thus hindering the schools' ability to effectuate this prong of their mission.<sup>138</sup> In addition to educating proportionately more Black students than White law schools,<sup>139</sup> Black law schools have always admitted and educated students who, based on their LSAT scores and undergraduate grades, would, in all likelihood, have been denied an opportunity for a legal education but for the admissions outreach that has historically characterized Black law schools. A review of the 2015 ABA Standard 509 Information Report for the 2015 entering classes at five North Carolina law schools illustrates the disparities in the GPA and LSAT scores for these schools. The median GPA and LSAT for the four historically White law schools are as follows: University of North Carolina at Chapel Hill School of Law – 3.49/161;<sup>140</sup> Wake Forest University School of Law – 3.60/161;<sup>141</sup> Campbell School of Law – 3.20/152;<sup>142</sup> and Elon Law School – 3.13/147.<sup>143</sup> By comparison, the median GPA/LSAT scores for North Carolina Central University School of Law, the only historically Black law school in the state, are 3.24/145.<sup>144</sup> Thus, Black law schools must continue to address

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138. JONES, *supra* note 137, at 9.

139. For example, according to the 2015 ABA Standard 509 Information Report for five North Carolina law schools, the combined enrollment of Black students at all of the state's historically White law schools – The University of North Carolina at Chapel Hill School of Law, Campbell University Law School, Elon University Law School and Wake Forest University School of Law, was 40.2% as compared to 56.4% at North Carolina Central University School of Law, the state's only historically Black law school. *Univ. of North Carolina – 2015 Standard 509 Information Report*, UNC LAW 1, <http://www.law.unc.edu/documents/about/abaaccreditationreport.pdf> (last visited July 29, 2016); *Campbell University – 2015 Standard 509 Information Report*, CAMPBELL LAW SCH. 1, <http://law.campbell.edu/assets/uploads/news/2015-509.pdf> (last visited July 29, 2016); *Elon University School of Law – 2015 Standard 509 Information Report*, ELON LAW SCH. 1 (Dec. 15, 2015), <https://www.elon.edu/e/CmsFile/GetFile?FileID=244>; *Wake Forest University School of Law 2015 Standard 509 Information Report*, WAKE FOREST UNIVERSITY SCH. OF LAW 1, <http://about.law.wfu.edu/files/2013/02/ABA-standard-509-report.pdf> (last visited July 29, 2016); *North Carolina Central University – 2015 Standard 509 Information Report*, NCCU LAW SCH. 1, <http://law.nccu.edu/wordpress/wp-content/uploads/2016/03/Std509InfoReport.pdf> (last visited July 29, 2016).

140. *Univ. of North Carolina – 2015 Standard 509 Information Report*, UNC LAW 1, <http://www.law.unc.edu/documents/about/abaaccreditationreport.pdf> (last visited July 29, 2016).

141. *2015 Standard 509 Information Report*, WAKE FOREST UNIVERSITY SCH. OF LAW 1, <http://about.law.wfu.edu/files/2013/02/ABA-standard-509-report.pdf> (last visited July 29, 2016).

142. *Campbell University – 2015 Standard 509 Information Report*, CAMPBELL LAW SCH. 1, <http://law.campbell.edu/assets/uploads/news/2015-509.pdf> (last visited July 2016).

143. *Elon University School of Law – 2015 Standard 509 Information Report*, ELON LAW SCH. 1 (Dec. 15, 2015), <https://www.elon.edu/e/CmsFile/GetFile?FileID=244>.

144. *North Carolina Central University – 2015 Standard 509 Information Report*, NCCU LAW SCH. 1, <http://law.nccu.edu/wordpress/wp-content/uploads/2016/03/Std509InfoReport.pdf> (last visited July 29, 2016).

obstacles that stymie their ability to effectuate the first prong of their historical missions.

*C. The Challenge of Producing Lawyers Committed to Underserved Communities*

The second prong of the historical mission of Black law schools is that of producing lawyers committed to providing legal representation to underserved persons and communities. The mission statements of four of the six Black law schools speak to the law schools' commitment to training lawyers who will serve underrepresented communities.<sup>145</sup> However, the schools' curricula and programs are the best measure of the extent to which they are accomplishing their stated objective.

Traditionally, the first-year law school curriculum is largely a generic one that focuses primarily on the "core" subjects of Contracts, Torts, Criminal Law, Property, Research and Civil Procedure.<sup>146</sup> In the second and third years, classes consist of some variation of Family Law, Constitutional Law, Evidence, Wills and Trusts, Appellate Advocacy and Business Law.<sup>147</sup> The offshoot of this generic curriculum is that students at all law schools, without regard to the schools' specific missions, are immersed in certain basic legal doctrines. Beyond these "core" courses, however, students can take classes that cover a wide array of topics. Thus, today's law school curricula have evolved to include highly specialized courses and certificate programs that run the gamut from international law to civil rights.<sup>148</sup>

Given the wide variety of course offerings, inasmuch as a law school's curriculum and programs are driven by its mission, the reach and effectiveness of the mission should be readily apparent from the school's course offerings and programs. While the majority of Black law schools have some type of institute or certificate program that is directly or tangentially

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145. *About Miles Law Sch.*, *supra* note 129; *About NCCU Sch. of Law*, *supra* note 119; *History*, *supra* note 124; *About Us*, *supra* note 126.

146. *What to Expect in Your First Year of Law School*, THE PRINCETON REV., <http://www.princetonreview.com/law-school-advice/first-year-curriculum> (last visited July 29, 2016).

147. *See, e.g., Student Affairs*, THURGOOD MARSHALL SCH. OF LAW, <http://www.tsulaw.edu/academics/index.html> (last visited Oct. 24, 2016); *Required Upper Level Courses*, NCCU SCH. OF LAW, <http://law.nccu.edu/academics/curriculum-description/required-upper-level-courses/> (last visited Oct. 24, 2016).

148. *See, e.g., The Earl Carl Institute for Legal and Social Policy, Inc.*, THURGOOD MARSHALL SCH. OF LAW, <http://www.tsulaw.edu/centers/ECL/index.html> (last visited Aug. 10, 2016); *Center for Law and International Justice*, FAMU SCH. OF LAW, <http://law.famu.edu/current-students/academic-programs/center-for-international-law-justice/> (last visited Aug. 10, 2016); *Civil Rights and Constitutional Law Concentration*, NCCU SCH. OF LAW, <http://law.nccu.edu/academics/certificates/crclc/> (last visited Aug. 10, 2016).



related to their missions,<sup>149</sup> students are not required to participate in these programs. Moreover, the overall curricula at Black law schools generally do not reflect the schools' historical mission of producing lawyers who are committed to and prepared to advocate on behalf of underserved communities. At NCCU, for example, students are not required to take any courses that specifically relate to the law school's historical mission.<sup>150</sup> Additionally, while the law school has a robust pro bono program and a nationally recognized clinical program,<sup>151</sup> students are not required to enroll in the pro bono program or complete credit hours in the clinical program.<sup>152</sup> The same is true for Southern and Texas Southern.<sup>153</sup> Only at Howard and FAMU are students required to complete any type of coursework that is related to the schools' missions. Howard lists a course titled "Legal Method/Civil Rights" among its first-year required courses.<sup>154</sup> The course is described as one designed to introduce students to legal methodology using civil rights cases.<sup>155</sup> A goal of the course is to "explain the special historical role of Howard University School of Law in the civil rights movement and in related efforts to use the law as a means of social change."<sup>156</sup> FAMU requires its students to complete one of two courses, "Public International Law" or "Race and the Law," which are described by the school as "mission related courses."<sup>157</sup>

While it is incumbent upon Black law schools to align their course requirements and programs with their missions, these schools, in doing so, must deal with issues that are generally not a hindrance at White law schools. For starters, given the additional academic support needed by many of their students, Black law schools must place greater emphasis on

149. See, e.g., THURGOOD MARSHALL SCH. OF LAW, *supra* note 149; FAMU SCH. OF LAW, *supra* note 149; NCCU SCH. OF LAW, *supra* note 149; *Education Rights Center*, HOWARD UNIV. SCH. OF LAW, <http://www.law.howard.edu/1228> (last visited Aug. 10, 2016).

150. *Curriculum Description*, NCCU SCH. OF LAW, <http://law.nccu.edu/academics/curriculum-description/> (list of first-year and upper level required courses) (last visited Oct. 25, 2016).

151. *Pro Bono Program*, NCCU SCH. OF LAW, <http://law.nccu.edu/clinics/resources/students/pro-bono-program/> (list of pro bono programs) (last visited Oct. 24, 2016); Michelle Weyenberg, *Top Law Schools for Clinical Opportunity*, NAT'L JURIST, Sept. 2011, at 24, <http://www.nxtbook.com/nxtbooks/cypress/nationaljurist0911/#/24/OnePage>.

152. NCCU SCH. OF LAW, *supra* note 151.

153. *Academic Curriculum*, S. UNIV. LAW CTR., <http://www.sulc.edu/current-students/academic-curriculum/jd-degree-curriculum/> (list of first-year and upper level required courses) (last visited July 29, 2016); *Student Affairs*, TEX. S. UNIV., <http://www.tsulaw.edu/academics/index.html> (list of first year and upper level required courses) (last visited July 29, 2016).

154. *Law School Required Curriculum*, HOWARD UNIV. SCH. OF LAW, [http://www.law.howard.edu/law\\_school\\_curriculum](http://www.law.howard.edu/law_school_curriculum) (last updated July 30, 2016).

155. *Id.* ("[T]he course is designed to introduce students to legal methodology using both constitutional and statutory civil rights cases . . . .").

156. *Id.*

157. *Required Courses*, FLA. A&M UNIV. C. OF LAW, <http://law.famu.edu/current-students/academic-programs/required-courses/> (last visited July 29, 2016).

academic support programs and courses. These additional requirements leave less room in the curricula of Black law schools to include required courses related to their missions. In order to ward off ongoing threats to their accreditation from the ABA without abandoning their commitment to producing Black lawyers, the schools must first ensure that their curricula and programs are focused on addressing the academic needs of their students.

In addition to threats to their accreditation from the ABA, the four publicly funded Black law schools remain under siege by the legislative bodies in their jurisdictions. In 1967, for example, the Florida legislature closed FAMU and used funds previously allocated for FAMU's law school for the law school at Florida State University, a White university located "less than ten miles away" in the same city.<sup>158</sup> Three years later, in 1968, there were attempts to close NCCU.<sup>159</sup> The threats to the law school's existence are ongoing, with one of the reasons frequently put forward being that of duplication of programs.<sup>160</sup> This argument is based on the close proximity of the University of North Carolina at Chapel Hill School of Law, a historically White state-supported law school, to NCCU.<sup>161</sup> These discussions notably have never included any suggestion of closing the University of North Carolina at Chapel Hill School of Law based upon its proximity to NCCU.<sup>162</sup> The same is true of Florida's historically White law schools, Florida State University and the University of Florida.<sup>163</sup>

During the same time frame that the legislatures in Florida and North Carolina were either acting to close or threatening to close those schools, in Texas, TMSL was also faced with phase out attempts between 1966-1973.<sup>164</sup> Similarly, the stated reasons were "the costly duplication in program offerings, facilities and physical plants."<sup>165</sup> However, as with the White law schools in Florida and North Carolina, no efforts were made to dismantle the University of Houston Law Center, a White law school in close proximity to TMSL.<sup>166</sup> Wallace-Haymore goes on to note that the same arguments about duplication of efforts have been cited as the justifica-

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158. Wallace-Haymore, *supra* note 80, at 259.

159. *Id.* at 260; Hill, *supra* note 59, at 22 ("[I]n the late 1960s, the North Carolina Board of Higher Education recommended phasing out the Law School by June 1974.").

160. U.S. COMM'N ON CIV. RTS., THE EDUCATIONAL EFFECTIVENESS OF HISTORICALLY BLACK COLLEGES AND UNIVERSITIES 40 (2010), [http://www.usccr.gov/pubs/HBCU\\_webversion2.pdf](http://www.usccr.gov/pubs/HBCU_webversion2.pdf).

161. Hill, *supra* note 59, at 22 ("The board argued it made economic sense to phase out the Law School if Black enrollment at UNC-CH Law School could be increased to match that at NCC Law School.") (UNC-CH is located approximately fifteen miles from NCCU.).

162. *See id.*

163. Wallace-Haymore, *supra* note 80, at 259.

164. *Id.* at 260.

165. *Id.*

166. *Id.*

tion for closing Southern.<sup>167</sup> As was the case with Black law schools in Florida, North Carolina and Texas, there was no talk of closing Louisiana State University, Southern's White counterpart.<sup>168</sup> It is beyond mere coincidence that the same scenario played out in Florida, Texas, North Carolina and Louisiana with the same outcome – either the closure or the threat to close Black law schools due to duplication of programs and physical proximity to the White law schools with no concomitant threat to close the White law schools based upon their duplication of services or their proximity to Black law schools. Thus, Black law schools, in implementing their missions, must deal with issues related to their very existence. This continuing threat sets them apart from their White counterparts and must be taken into account when comparing the programs and curricula at Black law schools to those of the White law schools.

#### IV. STRUCTURING MISSION-SUPPORTIVE CURRICULA AND PROGRAMS

##### A. *Antioch School of Law: A Case in Point*

The Black law schools, in spite of the obstacles with which they are faced, must remain determined and persistent in formulating curricula and programs that are the driving force in effectuating their missions. One of the most cogent examples of a curriculum tangibly driven by the school's mission is the curriculum of the now defunct Antioch School of Law.<sup>169</sup> The Antioch School of Law described its mission as follows:

It is the goal of the Antioch School of Law to provide a . . . program which will prepare law students professionally for the actual practice of law in any setting – private, public, governmental, corporate or poverty – while conscious of the role of law as an instrument of justice . . . . The primary objectives of the School of Law are to produce a “new breed” of lawyers . . . committed to the use of law as an instrument of justice.<sup>170</sup>

Antioch's curriculum was specifically targeted towards accomplishing its stated mission by focusing on the development of practice skills in each of the students' three years at the law school through clinical experiences.<sup>171</sup> Moreover, these practice skills were directly related to the school's stated

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167. *Id.* at 260-61.

168. *Id.* at 261.

169. Meryl Davids Landau, *I'll Get My Own Damn Law School!*, LIFE – LIBERTY- LAW SCHOOL, April 2001, at 43 (“Frustrated by other law schools' reluctance to get involved in controversial advocacy programs, Jean Camper Cahn and her husband, Edgar, started Antioch School of Law, which quickly became, in effect, the nation's largest public interest law firm. The school closed in 1987, but its legacy lives large in law schools and law offices across America.”).

170. ANTIOCH SCHOOL OF LAW 1972 (Antioch School of Law), 1972, at 3.

171. *Id.* at 11-12.

objective of producing lawyers committed to using the law “as an instrument of justice.”<sup>172</sup> The objectives, which were grounded in a mandatory three-year clinical experience, were described as follows:

The first year will introduce students to experiences . . . designed to remove perceptual “blindness” to injustice. Thus, for a six-week period, law students will live with families in the inner city. . . . [A]t a neighborhood law office of the Teaching Law Firm, students will learn to file housing complaints, interview clients and . . . work with individual problems . . . . [D]uring the second year [r]esearch and study will focus on the application of legal training to design strategies and modes of legal discourse by which the legal and political process can become more responsive to injustice . . . . Emphasis of the third year will shift inward to the lawyer, the legal profession and the legal system itself. Advanced courses and seminars will examine major policy decisions and their effect on society. . . .

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Thus, there existed an unmistakable symbiotic relationship between Antioch’s stated mission and its curriculum and programs.

After Antioch Law School closed in 1987,<sup>174</sup> its mission was continued by its successor, the District of Columbia School of Law, which was established as a stand-alone public school.<sup>175</sup> The statute that created the District of Columbia School of Law mandated that the law school recruit and enroll students from racial, ethnic and other population groups that in the past have been underrepresented at the bar, and train law students who would provide for the legal needs of low-income persons.<sup>176</sup> As such, the statutory mandate for the District of Columbia School of Law bore a strong resemblance to the two-prong mission of Black law schools. A more moderate version of the mandate is found in the mission statement of UDC, the successor to the District of Columbia School of Law:

As the nation’s only publicly-funded urban land-grant law school, we train our students to understand the role of lawyers in society and their responsibility to use their legal training to ensure justice and help resolve society’s most pressing issues. As an HBCU committed to opening up the legal profession to groups under represented at the bar, we train our students to value diversity and interact effectively with clients, colleagues and others from a range of social, economic and ethnic backgrounds.<sup>177</sup>

172. *Id.* at 3.

173. *Id.* at 11-12.

174. Sari Horwitz & Lawrence Feinberg, *Law School Graduates Last Class*, WASH. POST, May 23, 1988, <https://www.washingtonpost.com/archive/local/1988/05/23/law-school-graduates-last-class/5ff75469-0da2-46d8-885a-ba93ab5cd9d5/>.

175. Katherine S. Broderick, *The Nation’s Urban Land-Grant Law School: Ensuring Justice in the 21st Century*, 40 U. OF TOL. L. REV. 305, 305-06 (2009).

176. *Id.* at 306.

177. *Id.* at 306-07.

Continuing the rich legacy of the Antioch Law School, UDC begins acclimating students to its mission during its orientation by reinforcing the message that the law school's mission is that of training public interest, public-service, and public-policy lawyers who will address issues of injustice throughout their careers.<sup>178</sup> The students begin their law school career with a Law and Justice course that requires forty hours of community service and consists of a wide range of issues in underserved communities such as health care and juvenile justice.<sup>179</sup> During their first year, students receive an introduction to clinical legal education and the summer following their first year, the students are paid a stipend by the school to work in a public interest setting.<sup>180</sup> The school requires every student to take a seven-credit, 350-hour clinic in the second and third year.<sup>181</sup>

City University of New York School of Law and Northeastern University School of Law are also examples of law schools whose curricula and programs are structured to effectuate their declared missions. Consistent with its mission to educate public interest lawyers,<sup>182</sup> City University of New York School of Law requires its first-year law students to take a year-long lawyering class where the students acquire clinical experience through simulation exercises.<sup>183</sup> Furthermore, first-year students must take a required course titled, "Liberty, Equality and Due Process" which examines the law's impact on racial and gender equality and sexual orientation.<sup>184</sup> Second-year students must take an advanced lawyering class in a public interest area,<sup>185</sup> and third-year students must participate in one of six public interest clinics or one of three practice clinics.<sup>186</sup>

Northeastern University School of Law states its mission thusly:

Northeastern University School of Law's mission is to be a global leader in experiential legal education, providing students with the knowledge,

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178. *Id.* at 309.

179. *Id.* at 309-10.

180. *Id.* at 310, 312.

181. *Id.* at 313.

182. *About*, CUNY SCH. OF LAW, <http://www.law.cuny.edu/about/philosophy.html> ("CUNY School of Law brings together the very best in clinical training with traditional doctrinal legal education to create lawyers prepared to serve the public interest. As part of our mission, we prepare our students to practice, in the words of our motto, 'Law in the Service of Human Needs.'").

183. *Id.*

184. *First Year Curriculum & Course Descriptions*, CUNY SCH. OF LAW, <http://www.law.cuny.edu/academics/courses/first-year.html> ("The historical, social, political, and economic context – particularly the development of the Bill of Rights, slavery, the anti-slavery movement and Reconstruction, the rise and fall of White supremacy, the labor movement, and the emergence of gender equality – provides the backdrop against which students trace the development of the interpretation and application of the standards of equal protection and due process.").

185. *Second Year Curriculum & Course Descriptions*, CUNY SCH. OF LAW, <http://www.law.cuny.edu/academics/courses/second-year.html>.

186. *Clinical Programs*, CUNY SCH. OF LAW, <http://www.law.cuny.edu/academics/clinics.html>.

skills, and ethical and social values essential to serving clients and the public interest . . . . Through . . . public service we work to promote social justice and enhance understanding of law's impact on individuals, enterprises, and communities . . . .<sup>187</sup>

In keeping with its mission, Northeastern University School of Law requires its students to take a year-long, two-part course titled, "Legal Skills in Social Context," which is comprised of legal research/writing and social justice advocacy.<sup>188</sup> In addition, students must complete a public interest requirement consisting of a public interest co-op, a clinic, or thirty hours of legal work in a public interest setting.<sup>189</sup>

Similar to the two-prong missions of Black law schools, the missions of UDC, CUNY and Northeastern speak to training public interest lawyers who will work to promote justice. Additionally, the curricula and programs of the three schools are structured to effectuate their mission. More importantly, completion of coursework directly related to the schools' stated missions is a requirement for graduation.

It must be noted at the outset that law schools such as Northeastern and CUNY do not face the same challenges as Black law schools in implementing curricula that are supportive of their missions. In continuing their historical roles as schools of opportunity, Black law schools must structure their programs to address basic academic needs that are more prevalent among their students for reasons discussed earlier.<sup>190</sup> Moreover, to the extent that the LSAT is an indicator of a student's proficiency on standardized exams, law schools such as Northeastern and CUNY can expect their graduates to experience a higher success rate on the bar exam, given that the median LSAT scores for CUNY and Northeastern's 2015 entering classes were 152 and 161 respectively, compared to NCCU's median LSAT score of 145 for its 2015 entering class.<sup>191</sup> Consequently, preparing their students for the bar exam is generally not a priority for such schools, thus leaving room in their curricula for course requirements relating to preparing their

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187. *History and Mission*, NE. UNIV. SCH. OF LAW, <http://www.northeastern.edu/law/about/history.html>.

188. *First-Year Courses*, NE. UNIV. SCH. OF LAW, <https://www.northeastern.edu/law/academics/jd/first-year/index.html> (last visited July 30, 2016).

189. *Degree Requirements*, NE. UNIV. SCH. OF LAW, <https://www.northeastern.edu/law/academics/jd/degree-requirements/index.html> (last visited July 30, 2016).

190. Comissiong, *supra* note 135; Camera, *supra* note 135; *The Widening Racial Scoring Gap on Standardized Tests for Admission to Graduate School*, *supra* note 136.

191. *City University of New York – 2015 Standard 509 Information Report*, CUNY SCH. OF LAW, <http://www.law.cuny.edu/admissions/aba-disclosures/2015-Standard-509-Information-Report.pdf>, *Northeastern University – 2015 Standard 509 Information Report*, NE. UNIV. SCH. OF LAW, <https://www.northeastern.edu/law/pdfs/about/ABASStandard509-2015.pdf>, *North Carolina Central University – 2015 Standard 509 Information Report*, *supra* note 145.

students for the schools' public interest and public service missions. Black law schools, on the other hand, are compelled to focus their curricula and programs on approaches intended to remedy academic deficiencies and maximize the success rate of their graduates on the bar exam.

*B. NCCU – A Case in Point for Proposing a Mission-Supportive Program*

Despite obstacles with which Black law schools are faced with respect to instituting programs and curricula that speak directly to the effectuation of their missions, if they are to maintain their historical viability and relevancy, they must take steps to address this deficit. Using the curriculum of NCCU as an example, I would thus propose the following.

The required courses under NCCU's current first-year curriculum are Contracts I and II, Civil Procedure I and II, Property I and II, Torts I and II, Criminal Law, Legal Reasoning and Analysis, Legal Research and Persuasion, and Critical Thinking.<sup>192</sup> The Legal Reasoning and Analysis and the Legal Research and Persuasion classes consist of a series of assignments that culminate in an objective memorandum at the end of the fall semester, and a persuasive memorandum at the end of the spring semester.<sup>193</sup> While the students are not required to learn substantive law for these courses, actual cases are used for the assignments and the students are required to familiarize themselves with the various legal principles used as teaching tools for the courses.<sup>194</sup> Without detracting from the existing learning objectives for the two courses, I would propose that the courses be restructured to include a revised title and an additional learning outcome similar to the "Legal Method/Civil Rights" course taught at Howard<sup>195</sup> and the "Legal Skills in a Social Context" course taught at Northeastern.<sup>196</sup> The areas of law in the restructured courses would focus on mission-related topics such as housing, voting rights, environmental racism, and discrimination. These topics would be addressed through the memoranda and the writing assignments leading up to the memoranda.

Upper level students are currently required to complete a writing class as part of their graduation requirements.<sup>197</sup> I would propose that all courses

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192. *Academics*, NCCU SCH. OF LAW, <http://law.nccu.edu/academics/curriculum-description/first-year-courses/> (last visited July 30, 2016).

193. *Id.*

194. Legal Reasoning and Analysis Section 103 Fall 2015 Syllabus and Legal Research and Persuasion Section 103 Spring 2016 Syllabus (on file with author).

195. HOW. UNIV. SCH. OF LAW, *supra* note 155.

196. NE. UNIV. SCH. OF LAW, *supra* note 189.

197. *Required Upper Level Courses*, NCCU SCH. OF LAW, <http://law.nccu.edu/academics/curriculum-description/required-upper-level-courses/> ("Students must successfully complete one of the

offered to satisfy this requirement address topics that specifically relate to experiences of people of color and under-served communities (e.g. the specific impact of intellectual property law, business law, corporate law, taxation, etc. on low-wealth persons and communities).<sup>198</sup>

Undergraduate students enrolled at North Carolina Central University must complete fifteen hours of community service each semester through the university's Academic Community Service Learning Program.<sup>199</sup> Consistent with the university's motto of "Truth and Service,"<sup>200</sup> I would propose that law students complete the Public Interest Externship course as a prerequisite for graduation. This course is a three-credit hour externship that introduces upper-level students to public interest lawyering through a forty-five hour placement with a public interest law organization.<sup>201</sup> Additionally, NCCU has received national recognition for its clinical program.<sup>202</sup> However, while students can elect from a variety of clinics to gain practical experience and provide a service to the community, there is no requirement for clinic participation.<sup>203</sup> I would propose that students be required to enroll in clinic courses for a total of six hours of credit.

The restructuring of three writing courses that are already part of the students' graduation requirement to incorporate content relevant to the second prong of the law school's mission; the addition of one course requirement that immerses the students in learning about and engaging in public interest lawyering; and the addition of six credit hours that provide for a meaningful clinical experience consistent with the law school's mission can be achieved without negatively impacting the law school's focus on academic support and bar preparation.

An anticipated complaint from students is that the curriculum is already saturated with required courses and the additional required courses would further diminish their ability to take elective courses of their choosing. The

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following courses: Advanced Legal Writing; Judicial Opinion Writing; Legal Letters, Legal Writing and Technique or Pleadings and Practice.") (last visited July 30, 2016).

198. See, e.g., *Certificate for Justice in the Practice of Law*, NCCU SCH. OF LAW, <http://law.nccu.edu/academics/certificates/jipl/> (listing the following illustrative courses as part of the certificate program: "Legal Problems of the Poor"; "Public Health Law and Vulnerable Populations"; "Restorative Justice"; "Environmental Justice"; "Corporate Social Responsibility and Tax Policy"; and "Intellectual Property and the Equitable Distributive") (last visited July 30, 2016).

199. *About Community Engagement*, NCCU, <http://www.nccu.edu/communityengagement/about.cfm> (last visited July 30, 2016).

200. *About NCCU School of Law*, NCCU SCH. OF LAW, <http://law.nccu.edu/about/> (last visited July 30, 2016).

201. *Full Curriculum Listing*, NCCU SCH. OF LAW, <http://law.nccu.edu/academics/curriculum-description/full-listing/#p> (last visited July 30, 2016).

202. *NCCU Ranks in Top Four Law Schools for Clinical Opportunities*, NCCU SCH. OF LAW, <http://law.nccu.edu/clinical-opportunities/> (last visited July 30, 2016).

203. See, *Curriculum Description*, NCCU SCH. OF LAW, <http://law.nccu.edu/academics/curriculum-description/> (last visited Nov. 11, 2016).



proposed restructuring, however, would entail only nine hours of additional academic requirements. Moreover, the addition of the nine hours would still leave students with the ability to enroll in elective courses within the regular semester course load. Most importantly, ample publication by the school of the relationship of its course requirements to the effectuation of its mission would give prospective students adequate notice of the underlying purpose of the curriculum requirements should they decide to matriculate at the law school.

The restructuring of the three required first-year and upper-level writing and analysis classes and the additional nine hours of experiential learning through its public interest externship and clinics would represent significant first steps in moving the law school forward in the direction of restructuring its curriculum to support its mission without sacrificing its focus on academic support and bar preparation.

### CONCLUSION

The proposed restructuring of NCCU's curriculum is illustrative of revisions that can be incorporated into the curricula of all Black law schools. With some ingenuity and creativity, there is no doubt that the schools can sustain and fortify their historical vanguard position of providing educational opportunities for Blacks who would otherwise be excluded from the legal profession, and producing lawyers who are committed to providing legal representation to underserved and underrepresented communities without sacrificing their focus on academic support and bar passage. Restructuring their curricula will enable Black law schools to maintain their relevancy by continuing a tradition of enduring and flourishing against the odds in providing an opportunity for a legal education to persons who would otherwise be excluded from the profession, and producing lawyers who are committed to representing under-served persons and communities.