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# AN ANTI-RACIST LAW SCHOOL LEADER'S PERSPECTIVE ON WHY HISTORICALLY BLACK COLLEGE AND UNIVERSITY LAW SCHOOLS ARE NEEDED IN THE 21<sup>ST</sup> CENTURY

*An Essay by John K. Pierre\**

We must rally to the defense of our schools. We must repudiate this unbearable assumption of the right to kill institutions unless they conform to one narrow standard.<sup>1</sup> It would be ironic, to say the least, if the institutions that sustained blacks during segregation were themselves destroyed in an effort to combat its vestiges.<sup>2</sup>

## I. INTRODUCTION

There are currently more than one hundred Historically Black Colleges and Universities (HBCUs) in the United States.<sup>3</sup> Approximately half of the HBCUs are publicly funded and half are privately funded. Of those more than one hundred HBCU institutions, only six have ABA accredited law schools. HBCU law schools comprise only three percent of the nation's ABA accredited law schools, but they produce approximately twenty-five percent of law degrees earned by African Americans.

## II. CHALLENGES FACED BY HBCU INSTITUTIONS

Despite the overwhelmingly laudable accomplishments of HBCU institutions and HBCU law schools, historically and in a contemporary sense, they have sometimes been a source of bewilderment for many policy makers, higher education leaders, and decision makers in the public sector. In the twenty-first century, HBCU institutions and HBCU law schools have faced and are facing many challenges, threats, and opportunities. Budgetary pressures resulting from the great recession in 2008, and the ever-changing political landscape caused many to question the relevancy, role, and need for HBCU institutions and HBCU law schools.

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\* Chancellor and Vane B. Lacour, Law Professor at the Southern University Law Center. The Vane B. Lacour Endowed Professorship is made available through the State of Louisiana Board of Regents Support Fund.

1. W.E.B. Du Bois, *Schools*, 13 THE CRISIS 111, 112 (1917).  
2. *United States v. Fordice*, 505 U.S. 717, 749 (1992) (Thomas, J., concurring).  
3. *What is an HBCU?*, U.S. DEP'T OF EDUC., <https://sites.ed.gov/whhbcu/one-hundred-and-five-historically-black-colleges-and-universities> (last visited Aug. 27, 2021).

### A. HBCUs in the Twenty-first Century

HBCU institutions have been forced to deal with the pain from the challenges posed by the great recession, the COVID-19 pandemic, and other institutional challenges. In Louisiana, the stakes are even greater because budgetary challenges with respect to state appropriations have led to actions that have included consolidations, realignments, and even discussions related to the viability of the Southern University system, the only HBCU system in the United States. The continued viability and necessity of HBCUs have been openly questioned in the twenty-first century.<sup>4</sup> Notwithstanding criticism and questions about their relevance in the twenty-first century, HBCU institutions and HBCU law schools have been and continue to be at the forefront of critical issues confronting higher education in America related to diversity, inclusion, and equity.

## III. THE VALUE OF HBCU INSTITUTIONS

The value of HBCU institutions and HBCU law schools in U.S. higher education, the nation, and the world is irrefutable, particularly in light of the recent turmoil caused by the events surrounding the recent deaths of George Floyd, Breanna Taylor, Eric Garner, Alton Sterling, Michael Brown, Sandra Bland, Philando Castille, and others too numerous to name as examples. HBCU institutions and HBCU law schools have been leaders in providing higher education access to low-income students, have functioned as economic engines, have enhanced racial and ethnic diversity in higher education, and have prepared students for careers in education, business, politics, science, technology, medicine, and law. The lessons from America's past illuminate the value of HBCU institutions and HBCU Law Schools in fighting racism and segregation through the work of HBCU alumni luminaries such as Thurgood Marshall, A. P. Tureaud, Louis A. Berry, Martin Luther King, Jr., Diane Nash, and Dave Dennis.

## IV. THE HBCU MISSION

While it is clear that HBCUs are now one of many higher education choices for African American students, HBCUs are not just race-based institutions in higher education. The reality is that HBCUs are mission-based institutions in higher education. Founded before 1964, HBCUs are legislatively designated by Congress through the Higher Education Act of 1965 (as amended in 1986) as institutions "whose principal mission was, and is, the education of African

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4. See, e.g., Jason L. Riley, *Black Colleges Need a New Mission: Once an Essential Response to Racism, They Are Now Academically Inferior*, WALL ST. J. (Sept. 28, 2010, 12:01 AM), <https://www.wsj.com/articles/SB10001424052748704654004575517822124077834>; Richard Vedder, *Why Do We have HBCU's?*, CHRON. HIGHER EDUC. (Oct. 15, 2010), <http://chronicle.com/blogs/innovations/why-do-we-have-hbcus/27506>. Those opinions drew a vociferous response from HBCU leaders and other ardent supporters. See, e.g., *HBCU Leaders Respond!*, NAFEO, <http://www.nafeonation.org/hbcu-leaders-respond> (last visited Aug. 29, 2021).

Americans.”<sup>5</sup> HBCUs, unlike most higher education institutions, have been open to all persons who meet their multi-faceted admissions criteria without regard to race, ethnicity, socio-economic strata, religion, gender (except in the case of three gender-specific HBCUs), or some other non bona fide considerations. In fact, four HBCUs—West Virginia State University, Bluefield State University in West Virginia, Lincoln University of Missouri, and Saint Phillips College in San Antonio, Texas—do not have a majority African American enrollment, and Kentucky State University is almost evenly divided between African Americans and students of other races. HBCUs are clearly not homogeneous and are the most diverse group of higher education institutions in the United States.<sup>6</sup> HBCUs, as a universe of two- and four-year colleges, universities, and graduate and professional schools, have on average thirty percent student diversity and in excess of forty percent faculty diversity.<sup>7</sup> Student diversity is also reflected among the six HBCU law schools accredited by the American Bar Association (ABA), which are annually ranked as some of the America’s most diverse law schools.<sup>8</sup>

Other-race students at the six ABA-accredited HBCU law schools account for forty percent of the student population.<sup>9</sup>

## V. HBCU LAW SCHOOL NARRATIVES

As previously discussed, there are six ABA-accredited law schools at Historically Black College and University (HBCU) institutions. Although they comprise less than three percent of all ABA accredited law schools, they produce more than twenty-five percent of African American attorneys in the United States and are among the most racially diverse law schools in the United States. The six ABA-accredited law schools are: (1) Howard University School of Law; (2) North Carolina Central University Law School; (3) Thurgood Marshall School of Law at Texas Southern University; (4) Florida A & M College of Law; (5) Southern University Law Center; and (6) David A. Clarke School of Law at the University of the District of Columbia.

### A. Howard University School of Law

Howard University School of Law opened its doors in 1869 during the tumultuous post-U.S. Civil War Reconstruction period.<sup>10</sup> There was a great need to train attorneys who would have a strong commitment to help the newly

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5. 20 U.S.C. § 1061(2) (2021). See also Lezli Baskerville, *President & CEO, Nat’l Ass’n for Equal Opportunity in Higher Educ. (NAFEO), Responds to Richard Vedder’s, October 18, 2010 Opinion in The Chron. of Higher Educ. “Why Do We Have HBCUs?”* NAFEO, <http://www.nafeonation.org/hbcu-leaders-respond> (last visited Aug. 29, 2021).

6. *Id.*

7. *Id.*

8. LAW SCHOOL ADMISSIONS COUNCIL, ABA-LSAC OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS (2020 ed.).

9. *Id.*

10. *Our History*, HOWARD UNIV. SCH. OF L., <http://law.howard.edu/node/193> (last visited Aug. 29, 2021).

emancipated African American citizens secure and protect their new established rights under the Thirteenth, Fourteenth, and Fifteenth Amendments of the United States Constitution.<sup>11</sup>

For more than 150 years, the Howard University School of Law has served as an advocate for social justice and as an architect of social change in the United States.<sup>12</sup> The school of law was created to provide legal education for Americans traditionally excluded from the legal profession, especially African Americans. In the twentieth century, the law school produced an army of “social engineers” and became the embodiment of legal activism, emerging as a “legal clinic” on justice, producing alumni who became agents for social change. The law school has produced more than 4,000 attorney “social engineers,” including the first African American United States Supreme Court Justice, noted legislators, civil rights attorneys, mayors, and public officials across the United States.

Among its alums are legal luminaries in the federal judiciary, such as U.S. Supreme Court Justice Thurgood Marshall, Judge Damon Keith, Judge Spottswood Robinson, Judge William Hastie, and Judge Robert Carter, to name a few. The law school has produced nationally recognized leaders such as Vernon Jordan, Douglas Wilder, Sharon Pratt Kelly, Walter Washington, Adrian Fenty, and Kasem Reed.

Howard Law School was the first law school in the U.S. to have a nondiscriminatory admissions policy, admitting white male and female students along with African American students from its opening in 1869.<sup>13</sup> It is noteworthy that the nondiscriminatory policy of admitting women was extremely progressive in 1869. The nation’s first African American female attorney, Charlotte Ray, was admitted to Howard’s law school in 1869, and she graduated in 1872. Female alumnae of the law school have included federal judges such as Loretta Copeland Beggs, Lashann Motique Dearcy Hall, Consuello Bland Marshall, Vicki Miles Lagrange, Gabrielle Kirk McDonald, Tanya Walton Pratt, and Ann Elise Thompson. Other females who have also been historic trailblazers include Mary Ann Shad Cary, the first African American woman to cast a vote in a national election; Emma Gilbert, co-founder of American University’s Washington College of Law and the first woman appointed notary public by the President of the United States; and Letitia James, New York City Public Advocate and the first African American woman to hold citywide office in New York City.

### *B. North Carolina Central School of Law*

The North Carolina Central School of Law was established in 1939 as “a separate-but-equal option” for blacks who wanted to become lawyers, without

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11. *Id.*

12. *Id.*

13. *Howard University School of Law*, WIKIPEDIA, [https://en.wikipedia.org/w/index.php?title=Howard\\_University\\_School\\_of\\_Law](https://en.wikipedia.org/w/index.php?title=Howard_University_School_of_Law) (last visited Aug. 29, 2021).

integrating the law school at the University of North Carolina at Chapel Hill. It is one of the four “*Gaines*” law schools established after 1938.<sup>14</sup>

Since its opening in 1940, the North Carolina Central University (NCCU) School of Law has been a flagship law school, generating over 4,000 graduates who have left its halls equipped to serve as public defenders, practitioners, law school professors, scholars, district attorneys, judges, and governmental officials. Over one hundred alumni currently serve as judges on the state and federal level.

While championing for justice, a number of alumni have become the first in many areas and have joined the ranks of some prestigious groups. For example, since its establishment nearly 200 years ago, the N.C. Supreme Court has only had six African American members to sit on the high bench, including two NCCU School of Law graduates, Representative G.K. Butterfield and Justice Michael Morgan.

Robert Glass, ‘51, became the first African American assistant U.S. attorney in Connecticut. In 1987, he became the first NCCU alumnus to sit on a state supreme court, and the first African American justice to sit on the Connecticut Supreme Court. Sammie Chess Jr., ‘58, became the first African American Special Superior Court Judge in North Carolina.

In 1969, Clifton E. Johnson, ‘67, became the first African American Assistant State Prosecutor for North Carolina since the nineteenth century; the first African American District Court Judge in North Carolina; the first African American Chief District Court judge; and the first African American Resident Superior Court Judge for North Carolina. He also became the first African American to be appointed to the North Carolina Court of Appeals. While serving on the appellate court he rose to the rank of Senior Associate judge and served as the state’s first African American chairman of the North Carolina Judicial Standards Commission.<sup>15</sup>

NCCU Law School has produced outstanding female alumnae such as:

- Wanda G. Bryant, ‘82, the first woman and African American assistant district attorney in the thirteenth prosecutorial district of North Carolina.<sup>16</sup>
- Ola Lewis, ‘90, the first African American and youngest woman appointed to a position of Superior Court judge east of Greensboro, North Carolina.
- Carol A. Jones, ‘94, the first woman to be elected as a District Court Judge for the Fourth District in North Carolina.
- Brenda G. Branch, ‘01, the first African American woman to be appointed to Chief District Judge in Halifax County, North Carolina in 2003.

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14. See *State of Missouri ex rel. Gaines v. Canada*, 305 U.S. 337 (1938) (holding that a citizen had a personal right to a legal education within the state, which could be satisfied by a separate but equal law school).

15. See North Carolina Central University School of Law, *The Starting Point*, SO FAR, 2009; *North Carolina Central University School of Law* [hereinafter NCCU]; WIKIPEDIA, [https://en.wikipedia.org/w/index.php?title=North\\_Carolina\\_Central\\_University\\_School\\_of\\_Law](https://en.wikipedia.org/w/index.php?title=North_Carolina_Central_University_School_of_Law) (last visited Aug. 29, 2021).

16. NCCU, *supra* note 15, at 41.

NCCU Law School has produced outstanding male alumni such as:

- Henry W. Oxendine, '73, the first Native American to graduate from law school in the state of North Carolina. He was sworn in as the eighth judge of the Supreme Court of the Lumbee Tribe in 2006.
- Alumnus Larry Brown, Jr., '08, the first African American sworn in as Alamance County District Court Judge in 2017.
- Michael F. Easley '76, the first alumnus to serve as attorney general for the State of North Carolina. He went on to become the seventy-second governor of North Carolina from 2001 to 2009.<sup>17</sup>
- Leroy R. Johnson, '57, the first African American member of the Georgia Senate since Reconstruction. He also became the first African American lawyer in the Southeast to be employed on the U.S. Attorney's staff in Atlanta, Georgia; the first African American to head a legislative delegation; and the first African American to be named chairman of a standing committee in the Georgia General Assembly.<sup>18</sup>
- H.M. "Mickey" Michaux, Jr., '64, the first African American in the twentieth century to serve as a U. S. Attorney in the South.<sup>19</sup>
- Frank S. Turner, '73, the first African American judge to serve on the Orphan's Court or any other court in Howard County, Maryland.
- Maynard Jackson, the first African American mayor of Atlanta in 1974 at the age of thirty-five, becoming the youngest mayor ever elected in the city of Atlanta.<sup>20</sup>

NCCU School of law alumni have gone on to be stellar litigators. Willie Gary, a member of the Class of '74, opened the first black law firm in Martin County, Florida, in 1975. In 1995, he won a verdict of \$500 million, one of the largest jury verdicts in U.S. history.

### C. *Thurgood Marshall School of Law*

The history of the Thurgood Marshall School of Law ("TMSL") traces back to the 1946 lawsuit *Sweatt v. Painter*, brought by Heman Sweatt and filed and tried by Thurgood Marshall to challenge the Texas Constitution's mandate of "separate but equal" facilities.<sup>21</sup> Sweatt was denied admission to the University of Texas Law School because he was African American.<sup>22</sup> To avoid having to admit Sweatt under the Supreme Court's requirement that states practicing segregation must actually have separate facilities for African Americans, the Texas legislature created the

17. *Id.*

18. *Id.* at 40.

19. *Id.*

20. *Id.*

21. *Thurgood Marshall School of Law*, WIKIPEDIA, [https://en.wikipedia.org/w/index.php?title=Thurgood\\_Marshall\\_School\\_of\\_Law](https://en.wikipedia.org/w/index.php?title=Thurgood_Marshall_School_of_Law) (last visited Aug. 29, 2021).

22. *Id.*

law school as a school for African Americans and a component of the Texas State University for Negroes, which in 1951 was renamed Texas Southern University.<sup>23</sup>

In 1950, the Supreme Court held that the new law school hurriedly created to defeat Sweatt's lawsuit was not substantially equal to the University of Texas School of Law as required by the Fourteenth Amendment, and it required Texas to admit African Americans to the University of Texas School of Law. The Court's ruling was based not only on the fact that the law school's facilities were not comparable to those of the University of Texas but on intangible inequalities, such as the greater prestige of the University of Texas' School of Law and the contacts within the profession that one attains in attending such a school.<sup>24</sup> This facet of the Sweatt case presaged the end of separate-but-equal four years later in *Brown v. Board of Education* on the ground that in the context of the country's racist history separate is inherently unequal.

At least 160 of the law school's graduates have served as judges, including two as U.S. district court judges (Hon. Kenneth Hoyt, S.D. Tex.; and Hon. Brian C. Wimes, E.D. & W.D. Mo.), four as U.S. district court magistrate judges, five as federal administrative judges, two as state supreme court judges (Hon. Leslie D. King, Associate Justice, Mississippi Supreme Court; and Hon. Morris Overstreet, Texas Court of Criminal Appeals), and five as state court appellate judges. Several of the law school's graduates have been elected to the U.S. House of Representatives.

A number of TMSL's graduates have been among the first to serve in positions historically foreclosed to minorities, including:

- Doris Henderson Causey, first African American President of the Virginia State Bar.
- Sylvia Garcia, first woman and first Latina elected in her own right to the Harris County Commissioners Court.<sup>25</sup>
- Kenneth Hoyt, second African American federal judge in Texas.<sup>26</sup>
- Faith Johnson, first African American female District Attorney for Dallas County, Texas.
- Leslie King, fourth African American judge on the Mississippi Supreme Court.<sup>27</sup>
- Morris Overstreet, first African American judge on the Texas Court of Criminal Appeals and first African American elected to statewide office in Texas.<sup>28</sup>
- Linda Reyna Yañez, first Latina Court of Appeals judge in Texas.

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23. *Id.*

24. *Sweatt v. Painter*, 339 U.S. 629, 634-36 (1950).

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

*D. Florida A & M University College of Law*

The unique history of the establishment of the Florida A&M University (“FAMU”) College of Law is directly related to the legacy of Virgil D. Hawkins. In April 1949, Virgil D. Hawkins, the director of public relations of Bethune Cookman College, applied for admission to the University of Florida College of Law. The University of Florida denied admission to Hawkins and five other African American applicants in May of 1949 solely based on race. Hawkins appealed the denial challenging Florida’s segregated school system to the Florida Supreme Court based on the Equal Protection Clause of the United States Constitution. The Florida Supreme Court took over a year to hear the appeal, which gave the state time to authorize a law division at FAMU, Florida’s only African American public institution of higher learning. The court denied Hawkins’s appeal, ordering him to apply to FAMU.<sup>29</sup>

On December 21, 1949, the FAMU College of Law was established, and the first class was admitted in 1951.<sup>30</sup> The school’s enrollment was limited to African American students and was Florida’s “separate but equal” state-supported law school.<sup>31</sup> The FAMU law school was very active from its inception in social justice activities. The law school’s activism in support of desegregation was a factor that motivated the Florida legislature to vote to close the FAMU law school in 1965, with the funds transferred to a new law school at formerly all-white Florida State University.<sup>32</sup> In 1966, the law school lost the right to admit law students after a decision by the Florida Board of Control and in 1968, the last law students graduated.<sup>33</sup> Between 1954 and 1968, fifty-seven law students graduated from the law school.<sup>34</sup>

The vindictive action taken against the law school at FAMU did not stop supporters of the law school from seeking its reestablishment. The law school was re-established in 2000 when the Florida legislature unanimously passed legislation establishing a College of Law for FAMU to be located in Orlando, Florida. On June 14, 2000, Governor Jeb Bush signed the legislation into law. The legislation required that the school serve “historically underrepresented communities.”<sup>35</sup>

In 2002, the Florida A&M College of Law opened in downtown Orlando, Florida, as the only publicly funded law school in Central Florida. The College of Law has consistently received national recognition as one of the most racially diverse law schools in the United States. From 2007 to 2010, the College of Law

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29. *State ex rel. Hawkins v. Bd. of Control of Fla.*, 47 So. 2d 608 (Fla. 1950).

30. *Florida A&M University College of Law*, WIKIPEDIA, [https://en.wikipedia.org/w/index.php?title=Florida\\_A%26M\\_University\\_College\\_of\\_Law](https://en.wikipedia.org/w/index.php?title=Florida_A%26M_University_College_of_Law) (last visited Aug. 29, 2021).

31. *Id.*

32. *Id.*

33. *The Board of Regents Prohibits the College*, FAMU COLL. OF L., <https://law.famu.edu/timeline/the-board-of-regents-prohibits-the-college/> (last visited Aug. 29, 2021); *Final Commencement of Original College of Law*, FAMU COLLEGE OF LAW, <https://law.famu.edu/timeline/final-commencement-of-original-college-of-law/> (last visited Aug. 29, 2021).

34. *Florida A&M University College of Law*, WIKIPEDIA, [https://en.wikipedia.org/w/index.php?title=Florida\\_A%26M\\_University\\_College\\_of\\_Law](https://en.wikipedia.org/w/index.php?title=Florida_A%26M_University_College_of_Law) (last visited Aug. 29, 2021).

35. *Id.*

was ranked number one for diversity in the United States by U.S. News and World Report.

Since reopening its doors in 2002, the FAMU College of Law has graduated approximately 1,500 individuals who have become professionals and leaders in the legal industry, the corporate world, the public sector, and in governmental agencies. More than eighty percent of its graduates are members of the Florida Bar.<sup>36</sup>

Notable alumni of the FAMU College of Law include Alcee Hastings, a 1963 graduate, who was appointed the first African American federal judge in Florida in 1979. Hastings became a member of the United States House of Representatives. Other FAMU College of Law graduates who have served as judges include Edward Rodgers, a 1963 graduate, who became the first black judge in Palm Beach County and served 22 years on the bench; Ralph Flowers, a 1968 graduate, who was appointed City Judge in Fort Pierce in 1973; Perker Meeks, a 1968 graduate, who served as a Superior Court Judge in California; and Kelly McCormack Ingram, a 2008 graduate, who was elected Brevard County Judge in 2016. Arthenia Joyner, a 1968 graduate, served nearly two decades in the Florida Senate and Florida House of Representatives representing the Tampa Area as a strong supporter of human rights, women's rights, and criminal justice reform. She served as Florida Senate Democratic Leader from 2014 to 2016.

#### *E. Southern University Law Center*

The Southern University Law Center opened its doors to provide legal education opportunities on September 1, 1947, in response to an audacious and courageous act of Charles J. Hatfield, a 1946 African American graduate of Xavier University of Louisiana, who sought admission to the Louisiana State University ("LSU") School of Law in 1946. After being denied admission to law school solely because of his race, Hatfield filed a lawsuit on October 10, 1946, challenging the state's Jim Crow laws and the "separate but equal" doctrine that was rooted in the infamous 1896 *Plessy v. Ferguson* decision.<sup>37</sup> Although he did not gain entry into the law school at LSU, his actions paved the way for African Americans and others to obtain a legal education at the Southern University Law Center. Although the history of the Law Center began as a result of the exclusion of Charles Hatfield from admission into the LSU Law School, seventy-three years later, the Southern University Law Center is a model of inclusion and diversity that produces lawyer leaders in the twenty-first century.

Since its inception in 1947, the Law Center has produced nearly 4,000 alumni who have become leaders on the local, state, and national levels, serving as judges, legal scholars, private practitioners, and governmental, corporate, and educational leaders. Nearly one hundred alumni currently serve as judges on the state and

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36. *FAMU Law by the Numbers*, FAMU COLL. OF L., <https://law.famu.edu/> (last visited Aug. 30, 2021).

37. RACHAEL L. EMANUEL & CARLA BALL, SOUTHERN UNIVERSITY LAW CENTER 15 (2018).

federal level, including 71 of the 214 Louisiana district judges and 10 of the 53 intermediate appellate court judges.<sup>38</sup>

Jesse N. Stone, Jr., a 1950 alumnus, was the first African American to be appointed to the Louisiana Supreme Court, serving as associate justice pro tempore.<sup>39</sup> Revius O. Ortigue, Jr., a 1956 alumnus, became the first African American elected to serve as a justice on the Louisiana Supreme Court. Janice Clark, a 1976 alumna, was the lead plaintiff in *Clark v. Roemer*, a landmark lawsuit filed in 1986 challenging how judges were elected in the state of Louisiana.<sup>40</sup> As a result of her lawsuit, the system of electing judges was changed, leading to an expansion of opportunities for African American attorneys to become Louisiana state judges. Louisiana now has the highest number of African American state judges per capita in the United States.

Currently, 18 of the 140 members of the Louisiana state legislature are Southern University Law Center alumni. Southern University Law Center alumni include a former governor of the state of Louisiana and a former member of Congress.

The Law Center is also proud that it has produced great female lawyer leaders throughout its history. In addition to Judge Janice Clark, the Honorable Felicia Toney Williams, a 1980 alumna, was the first African American female to serve as an associate justice of the Louisiana Supreme Court, having been appointed to fill an interim vacancy in 1994. Bridget Dinvaux, a 2005 alumna, became the first African American female district attorney elected in Louisiana, and Stephanie Finley, a 1991 alumna, became the first African American female appointed as a United States Attorney in the state of Louisiana. Alumna Claire Babineaux Fontenot is the CEO of Feeding America and former corporate treasurer of the Walmart Corporation. Indeed, twenty-eight female alumnae serve as state district court and appellate court judges throughout Louisiana.

#### *F. University of the District of Columbia (UDC) David A. Clarke School of Law*

A clinician-oriented law school designed to be a training ground for producing legal services attorneys, the University of the District of Columbia David A. Clarke School of Law (UDC Law), was established after Antioch University decided to close its law school.<sup>41</sup> The Antioch School of Law was a Washington, D.C. law school established in 1972 by Edgar and Jean Camper Cahn, a married interracial couple dedicated to improving legal services for low-income people.<sup>42</sup> In 1964 they co-wrote a seminal law review article, “The War on Poverty:

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38. Gail S. Stephenson, *The Desegregation of Louisiana's Law Schools*, 69 LA. B.J. 220, 223 (2021).

39. EMANUEL & BALL, *supra* note 37, at 26.

40. *Id.* at 120.

41. *David A. Clarke School of Law*, WIKIPEDIA, [https://en.wikipedia.org/w/index.php?title=David\\_A\\_Clarke\\_School\\_of\\_Law](https://en.wikipedia.org/w/index.php?title=David_A_Clarke_School_of_Law) (last visited Aug. 30, 2021).

42. *Id.*

A Civilian Perspective,"<sup>43</sup> that is widely credited with helping lay the groundwork to inspire the creation of the federal legal services program. In 1986, Antioch School of Law students, alumni, and local and civic leaders created a grassroots campaign that successfully persuaded the District of Columbia Council to pass legislation that re-established the school as the District of Columbia School of Law (DCSL).<sup>44</sup> In 1996, the District of Columbia Council later enacted legislation merging the School of Law with the University of the District of Columbia.<sup>45</sup> In 1998, President Clinton signed legislation renaming the school after David A. Clarke, a civil rights leader, former chair of the District of Columbia Council, and a long-time advocate for the law school and its mission.<sup>46</sup>

Notable alumni include:

- Hon. Thomas Kilbride, Associate Justice, Supreme Court of Illinois.<sup>47</sup>
- Hon. Michael D. Wilson, Associate Justice, Supreme Court of Hawaii.
- Hon. Kevin Dougherty, Associate Justice, Supreme Court of Pennsylvania.
- Hon. Joan Lenard, U.S. District Court Judge; Southern District of Florida.
- Hon. Linda Christopher, Associate Justice, N.Y. State Supreme Court, Appellate Division.
- Hon. Anil Singh, Associate Justice, N.Y. Supreme Court, Appellate Division.
- Hon. Shana Frost Matini, D.C. Supreme Court.
- Hon. Tyrone DeWitt, D.C. Superior Court.
- Hon. Russell Canan, D.C. Superior Court.
- Hon. J. Ramsey Johnson, D.C. Superior Court.

#### VI. CONCERNS REGARDING ABA STANDARD 316 AND POTENTIAL DETRIMENTAL EFFECTS ON HBCU LAW SCHOOLS AND DIVERSITY IN THE PROFESSION

The leaders/deans of HBCU law schools have consistently since 2013 expressed concern and opposition to the current version of ABA standard 316 that requires at least 75% bar passage of a law school's graduates within two years of their graduation. This 75% uniform bar passage standard has always been seen as problematic to HBCU law school leaders/deans because the current standard could have serious consequences on the welfare and mission of HBCU law schools and on diversity in the legal profession. According to the 2016 Labor Force Statistics, only 4.4% of lawyers are African American and 5.6% are Hispanic. Diversity in the legal profession remains a challenge in that approximately 88% of licensed attorneys are Caucasian, making the legal profession less diverse than medicine

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43. Edgar S. Cahn & Jean C. Cahn, *The War on Poverty: A Civilian Perspective*, 73 YALE L.J. 1317 (1964).

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

and engineering, in which 72% and 81% of licensed doctors and engineers, respectively, are Caucasian.

The entire legal profession should be deeply concerned about the potential adverse impact that the current version of Standard 316 may have on HBCU law schools. The statistical data is clear that HBCU law schools are responsible for an increasingly significant and disproportionate percent of African American and other new lawyers of color added to the profession annually. Perhaps the most significant fact is that in jurisdictions where an HBCU law school is present, that HBCU law school typically produces more new lawyers of color than all the other law schools in the jurisdiction combined.

Standard 316, which might have an adverse impact of the mission of HBCU law schools in continuing their leadership role in diversifying the profession, needs to be reexamined and reevaluated. There still has not been a disparate-impact study conducted by the ABA Council to assess how Standard 316 may impact HBCU law schools and other “access and opportunity” law schools with large percentages of racial minority law students. History has shown that the emphasis on an arbitrary bar passage standard embodied in Standard 316 pressures law schools in general to raise LSAT scores, long, if not incorrectly, associated with bar passage success for entering classes. The consequential result for African Americans aspiring to attend law school is to decrease their chances to pursue legal education opportunities given the pernicious and long-term scoring gap between African Americans and Caucasians on the LSAT. Standard 316 will more than likely translate into less opportunity to pursue legal education for African Americans. Furthermore, national data suggests that there often is a scoring gap between African American and Caucasian graduates regarding bar examination passage.

This scoring gap exists for African American graduates of predominately white Law Schools as well as graduates of HBCU law schools. It therefore follows that law schools with a high concentration of African American law students and other students of color will be disproportionately affected by Standard 316. It appears that in enacting revised ABA Standard 316, the potential significant impact on aspiring African American lawyers and other lawyers of color and the HBCU law schools that disproportionately afford them opportunities to become licensed attorneys, the ABA failed to give deference to the very schools that produce significant number of many new lawyers of color who would not be licensed attorneys but for the opportunity afforded them by HBCU law schools. Given the current state of discourse related to race and diversity in America over the last several years, the adoption of revised Standard 316 sent the wrong message from a national organization that should be a leading voice on diversity and inclusion.

#### CONCLUSION

HBCU law schools have for more than 150 years provided access to legal education and to the legal profession for African American and other under-represented and marginalized groups. I invoke the memory of Thurgood Marshall because he, as an anti-racist attorney under the tutelage of Charles Hamilton

Houston, Dean of the Howard Law School and Houston's younger cousin Professor William H. Hastie, fought vigorously to diversify the legal profession.

Sadly, Marshall himself was almost a victim of the lack of access to legal education for African Americans. Marshall got his legal education at Howard University Law School—commuting daily from Baltimore to Washington by train—rather than at the University of Maryland Law School, the state school in his own hometown, because Maryland did not permit Africans to obtain a legal education in Maryland. Marshall also commuted each day to save on living expenses, because he could not afford housing at Howard and could barely afford tuition, in that his mother pawned her wedding and engagement rings to pay his tuition. At Howard, Marshall learned that access to a legal education and skills could make him an outstanding anti-racist lawyer and social engineer, and the preeminent social justice advocate of his time. Marshall litigated cases that opened doors to legal education for African Americans in Maryland, Missouri, Texas, Oklahoma, Arkansas, South Carolina, Louisiana, and Florida. Similarly, HBCU law schools at North Carolina Central University, Texas Southern University, Southern University Law Center, and Florida A & M University opened their doors to African Americans and other students of color, who owe their beginning to the efforts of Thurgood Marshall. As a leader of an HBCU law school, I can attest that HBCU law schools are a national treasure and are needed now more than ever in the twenty-first century.

