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The "Old" Black Corporate Bar: Durham's Wall Street, 1898-1971

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THE “OLD” BLACK CORPORATE BAR: DURHAM’S WALL STREET, 1898–1971*

AMOS N. JONES**

Over the last twenty years, eminent scholars such as David Wilkins have paid considerable attention to the “new black corporate bar” as a phenomenon worthy of treatment. This Article builds on that work by introducing a fascinating law-practice reality that developed in a unique setting in the early 1900s American South. What if Wall Street had been black? What if its elite feeder institutions had been black? What if the black bar were, in a corporate economy of scale, relatively sizable? These questions might make for fascinating counterfactuals, if not for the concrete reality that such a community—albeit small—actually existed, expanded, and prospered in midcentury Durham, North Carolina. Coining the term “old black corporate bar” to stand in distinction to the “new black corporate bar,” the Article analyzes the world in which that exceptional and heretofore unexamined black bar germinated and influenced a relatively sophisticated legal landscape in a moderate, midsized southern city backdropped by a laissez-faire white leadership class that proved progressive for racial relations.

Part I briefly sets forth the economic and social landscape during America’s Jim Crow era, identifying the three most prominent historical examples where observable black economies of scale rose and fell with the whims of white commercial insecurities.

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** Assistant Professor of Law, Campbell University. J.D., Harvard Law School. M.S., Columbia University Graduate School of Journalism. I thank the scholar-discussants who engaged this four-year-old research project in its infancy, as a lecture titled “The Black Law Firm in Business: From Bottom of the Barrel to Viable Enterprise” and presented at the 95th Annual Meeting of the Association for the Study of African American Life and History on Oct. 1, 2010, in Raleigh, North Carolina. Special gratitude goes to Devone Punter, J.D., for contributing primary-source research assistance from the field of Durham and to Walker Douglas, J.D., for furnishing thoughtful treatment of the relevant history of North Carolina Central University School of Law. Further appreciation goes to Professors Randall K. Johnson and Julia Littleton for their critical feedback on drafts and to André D. Vann, Coordinator of University Archives at North Carolina Central, for his indefatigable work with Research Assistant Jeffrey Cox on recalling, locating, and making available the most powerful primary sources.

Part II presents the exceptional history of the African American community in Durham, North Carolina, including the founding of its “Black Wall Street.” Part III chronicles a watershed event in the histories of Durham and North Carolina: the establishment and rise of the North Carolina Central University School of Law, the first public institution to offer formal training for black lawyers in North Carolina. Part IV uncovers and analyzes the achievements of and challenges to the African American legal community in the “Black Wall Street” of Durham and discusses the establishment of African American lawyers’ professional associations nationally during this time. Part V, relying on historical examples of advocacy in the courts of North Carolina, establishes the old black corporate bar within the social-engineering frameworks envisioned by legendary legal theorist and litigator Charles Hamilton Houston and others. Finally, a brief conclusion places this study’s examination in the contemporary discourse on blacks in the legal profession, joining the subjects of this Article to the group of newly empowered so-called “social engineers” treated in the recent scholarship in this area.

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INTRODUCTION

The black corporate bar is commonly studied as a newly emergent phenomenon in American legal history.¹ As reported by Professor David Wilkins of Harvard—who is widely regarded as the foremost authority on the growth of the black corporate bar²—in 1960, the year before the world’s most famous black lawyer, President Barack Obama, was born, there were 2,180 black lawyers in the entire United States of America (fewer than two percent of all lawyers in a country approximately fourteen percent black)³—only 880 more than in 1930, the year that Thurgood Marshall, arguably the most famous black lawyer before Obama, graduated from historically black

1. See generally David B. Wilkins, *From “Separate Is Inherently Unequal” to “Diversity Is Good for Business”: The Rise of Market-Based Diversity Arguments and the Fate of the Black Corporate Bar*, 117 HARV. L. REV. 1548 (2004) (positing social-justice movements as a structural support to the development of a black corporate bar).

2. See *Faculty*, HARV. L. SCH. EXECUTIVE EDUC., http://www.law.harvard.edu/execed/elp_faculty.html (last visited May 3, 2014) (“His current scholarly projects on the profession include After the J.D., a ten-year nationwide longitudinal study of lawyers’ careers, a quantitative and qualitative examination of how corporations purchase legal services, an empirical project on the development of ‘ethical infrastructure’ in large law firms based on a series of focus groups with leading practitioners and regulators, and over 200 in-depth interviews in connection with a forthcoming Oxford University Press book on the development of the black corporate bar.”).

3. See MARC GALANTER & THOMAS PALAY, *TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM* 39 n.17 (1991).

Howard University School of Law.⁴ With a few notable exceptions, according to Wilkins, the black lawyers who would have greeted the future President's birth were almost indistinguishable from those practicing when Marshall first hung out his shingle in Baltimore: "Most, like Marshall, were graduates of one of the nation's [handful of] historically black law schools, most notably Howard."⁵ Moreover, Wilkins observes, "regardless of where they went to law school, nearly all of the nation's mid-twentieth-century black lawyers practiced law in the same way that their predecessors in the black bar had practiced it since John Mercer Langston became the first black lawyer in the United States in 1843": scraping together an income through representing black individuals and small black businesses, that is, if they were fortunate enough to be able to make a living practicing law at all.⁶ There were virtually no black attorneys in large law firms, corporate legal departments, or other elite sectors of

4. David B. Wilkins, *The New Social Engineers in the Age of Obama: Black Corporate Lawyers and the Making of the First Black President*, 53 HOW. L.J. 557, 559 (2010).

5. *Id.*; *accord History*, HOW. U. SCH. L., <http://www.law.howard.edu/19> (last visited May 3, 2014).

6. Wilkins, *supra* note 4, at 559–60 (citing GERALDINE R. SEGAL, *BLACKS IN THE LAW: PHILADELPHIA AND THE NATION* 4 (1983); Ernest Gellhorn, *The Law Schools and the Negro*, 1968 DUKE. L.J. 1069, 1078; David B. Wilkins, "If You Can't Join 'Em, Beat 'Em!" *The Rise and Fall of the Black Corporate Law Firm*, 60 STAN. L. REV. 1733, 1740–42 (2008)).

In 1844, Macon Bolling Allen became the American legal profession's first licensed black lawyer. J. CLAY SMITH, JR., *EMANCIPATION: THE MAKING OF THE BLACK LAWYER 1844–1944*, at 2 (1993). Following Allen's admission in Maine was a slow and gradual increase in the number of black men, and eventually women, who were admitted to the practice of law in the United States. By 1890, there were a total of 440 black lawyers in the United States compared to the more than 89,000 white lawyers in the United States. *Id.* at 623. By 1900, the number of black lawyers had increased to 718 according to census records. *Id.* at 624–25. The number of black lawyers in the United States did not exceed 1,000 until the 1930s. *Id.* at 631–33.

By 1935, the legendary scholar-practitioner Charles Hamilton Houston asserted that "experience has proved that the average white lawyer, especially in the South, cannot be relied upon to wage an uncompromising fight for equal rights for Negroes." Charles H. Houston, *The Need for Negro Lawyers*, 4 J. NEGRO EDUC. 49, 49 (1935). He noted that the statistics of African American lawyers in the 1930 census had "show[n] that Negro lawyers today are not sufficiently numerous or widely enough distributed to render the service desired" and that "there are not more than 100 Negro lawyers in the South devoting full time to practice: 100 Negro lawyers to care for the rights and interests of 9,000,000 Southern Negroes or approximately one Negro lawyer to every 90,000 Negroes." *Id.* Calling for an infusion of advocates in the region including North Carolina, he concluded, "The great work of the Negro lawyer in the next generation must be in the South and the law schools must send their graduates there and stand squarely behind them as they wage their fight for true equality before the law." *Id.* at 52.

practice.⁷ “Wall Street, like both ends of Pennsylvania Avenue, remained the near exclusive domain of the White Anglo-Saxon Protestant men of Means who had controlled every important avenue of legal, political, and economic power since the founding of the Republic,” Wilkins concludes.⁸ To be sure:

[T]his underrepresentation was the result of a deliberate and concerted effort by the profession’s elite in both the North and the South to restrict entry to white, Anglo-Saxon, Protestant men of means. Blacks—regardless of their qualifications—were overtly discriminated against by educators and employers alike. The few blacks who managed to become lawyers during this period worked in solo practice or small minority firms, barely eking out a living serving an almost exclusively minority clientele. As late as 1964, Erwin Smigel reported in his study of Wall Street lawyers that “in the year and a half that was spent interviewing, I heard of only three Negroes who had been hired by large law firms. Two of these were women who did not meet the client.”⁹

In light of the historically segregated state of the corporate bar in the early 1900s and a sluggish integration that gained traction only after the 1960s, a new body of exciting scholarship has arisen to treat the “new black corporate bar.”¹⁰

7. See generally SEGAL, *supra* note 6 (documenting a near-total absence of black lawyers within major law firms and other elite sectors of the bar).

8. Wilkins, *supra* note 4, at 560.

9. David B. Wilkins, *A Systematic Response to Systemic Disadvantage: A Response to Sander*, 57 STAN. L. REV. 1915, 1920–21 (2005) (citations omitted). Wilkins went on: “Just to hit a few of the highlights: no black received a legal education prior to the Civil War; the [American Bar Association] did not admit black members until 1943; and in 1947, William Coleman could not get a job in his native Philadelphia notwithstanding graduating number one in his class at Harvard Law School, being an editor on the *Harvard Law Review*, and clerking for Justice Felix Frankfurter.” *Id.* at 1920 n.18 (citing RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION AND BLACK AMERICA’S STRUGGLE FOR EQUALITY* 292–93 (1975) (detailing Coleman’s legal career); SMITH, *supra* note 6, at 541–45 (describing the exclusion of black lawyers from the ABA until 1943); J. Clay Smith, Jr., *In Freedom’s Birthplace: The Making of George Lewis Ruffin, the First Black Law Graduate of Harvard University*, 39 HOW. L.J. 201, 214–16 (1995) (stating that, in 1869, George Lewis Ruffin was the first black person to graduate from law school in the United States)).

10. See, e.g., Jenée Desmond-Harris, “Public Interest Drift” Revisited: *Tracing the Sources of Social Change Commitment Among Black Harvard Law Students*, 4 HASTINGS RACE & POVERTY L.J. 335, 354 (2007) (contextualizing new black corporate-firm aspirants as possible exemplars of “public interest drift”); H. Timothy Lovelace, Jr., *Revisiting “The Need for Negro Lawyers”: Are Today’s Black Corporate Lawyers Houstonian Social Engineers?*, 9 J. GENDER RACE & JUST. 637, 638 (2006) (reporting that “[t]oday’s black corporate bar, which is still relatively small, continues to grow steadily,

But what about an *old* black corporate bar? What if Wall Street had been black? What if its elite feeder institutions had been black? What if the black bar were, in a corporate economy of scale, relatively sizable? These questions might make for fascinating counterfactuals, if not for the concrete reality that such a community—albeit small—actually existed, expanded, and prospered in midcentury Durham, North Carolina. This Article examines the world in which that exceptional and largely unnoticed black bar germinated and influenced a relatively sophisticated legal landscape in a moderate, medium-sized southern city, facilitated by a laissez-faire white leadership class in the middle of the twentieth century who stood in contradistinction to the general state policies designed to preclude black political and economic advancement.

While blacks lagged far behind whites economically and socially during the era of Jim Crow segregation, a black middle class emerged in Durham as a self-sustaining, burgeoning community that expanded. As will be shown, the ethic of Durham's black community by the mid-twentieth century had become nationally exemplified by the remarkable and extant economic achievements of the North Carolina Mutual and Provident Association and the Mechanics and Farmers Bank, among other black-owned businesses.¹¹ However, the professional-services community of black lawyers as they practiced on or around Durham's "Black Wall Street" remains unexamined. Yet, the class heritage and workaday activities of this group offers a profound insight into the sociology of business lawyering in the segregated South.

Durham's lawyers on and around its "Black Wall Street" faced many of the same challenges that confronted all southern blacks at the time but also had to overcome barriers specific to the legal profession, such as exclusion from established bar associations, including the American Bar Association.¹² Ironically, institutionalized racial discrimination, indigence among the general public, and conflict coupled with ambition among Durham's black elite served as a potent

largely due to elite black law students joining large corporate firms"); David B. Wilkins, *Doing Well by Doing Good? The Role of Public Service in the Careers of Black Corporate Lawyers*, 41 HOUS. L. REV. 1, 65 (2004) (noting that "notwithstanding the many limitations of, and tensions within, these organizations, some in the new black corporate bar have found ways to use their participation in black bar organizations to their advantage").

11. See generally W. E. Burghardt Du Bois, *The Upbuilding of Black Durham: The Success of the Negroes and Their Value to a Tolerant and Helpful Southern City*, 23 WORLD'S WORK 334 (1912) (describing the economic success of "black Durham").

12. See SMITH, *supra* note 6, at 541–45.

fertilizer for financial independence among the African American legal community in Durham. These lawyers served clients of means, won major victories, and significantly influenced the legal profession on the local, state, and national levels. This Article analyzes the experiences of African American corporate lawyers in the context of the thriving black middle and upper-middle classes in Durham during the early half of the twentieth century and contextualizes them according to the social factors that made such a black corporate bar possible.

Part I generally sets forth the economic and social landscape during America's Jim Crow era, identifying the three dramatic historical examples where observable black economies of scale rose and fell with the whims of massive white commercial insecurities. Part II presents the exceptional history of the black community in Durham, North Carolina, including the origins and growth of the "Black Wall Street." Part III chronicles a watershed event in the history of Durham and of North Carolina: the establishment and rise of the North Carolina Central University School of Law, the first public institution to offer formal training for black lawyers in North Carolina. Part IV analyzes the achievements of and challenges to the African American legal community in the "Black Wall Street" of Durham and examines the establishment of African American lawyers and bar associations nationally during this time. Relying on historical examples of advocacy in the courts of North Carolina, Part V establishes the old black corporate bar within the social-engineering frameworks envisioned by legendary legal theorist Charles Hamilton Houston, a leading lawyer with the National Association for the Advance of Colored Persons ("NAACP"). Finally, a brief conclusion places this study's findings in the contemporary discourse on blacks in the legal profession, joining the subjects of this Article to the group commonly referred to as the "new black corporate bar," especially those recently empowered social engineers treated in David Wilkins's latest work.

I. POSTBELLUM BLACKS ON THE AMERICAN COMMERCIAL LANDSCAPE AND THE RISE AND FALL OF DURHAM'S EXCEPTIONAL CONTEMPORARIES

According to sociologists Melvin L. Oliver and Thomas M. Shapiro, throughout—and, to a far lesser extent, following—the pre-Civil Rights Movement decades of American History, "[r]acist state policy, Jim Crow segregation, discrimination, and violence [had] punctuated black entrepreneurial efforts of all kinds. Blacks [had]

faced levels of hardship in their pursuit of self-employment that [had] never been experienced as fully by or applied as consistently to other ethnic groups, even other nonwhite ethnics.”¹³ For example, in the *Red Record*, the legendary black journalist of her era, Ida B. Wells Barnett, chronicled how, in a traditional tactic of white terrorism deployed throughout black commercial sections in the South, blacks were lynched after they opened a general goods store across the street from a white store.¹⁴ Nevertheless, “African Americans were able to succeed in competing on the open market, carving out economic niches by ‘do[ing] business within their own group.’”¹⁵ “They could penetrate as much of a market as their economic capacity and tolerance for risk could accommodate,” and “[t]hey thus carved comfortable economic niches and were able to succeed, albeit on a moderate scale.”¹⁶

These moderate and comfortable niches materialized in many locales. In fact, according to Butler, “[b]etween 1867 and 1917 the

13. MELVIN L. OLIVER & THOMAS M. SHAPIRO, *BLACK WEALTH/WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY* 45 (1995).

14. Reginald Leamon Robinson, *Poverty, the Underclass, and the Role of Race Consciousness: A New Age Critique of Black Wealth/White Wealth and American Apartheid*, 34 *IND. L. REV.* 1377, 1399–1400 (2001) (book review). Robinson summarizes Oliver and Shapiro’s exposition of this phenomenon as follows:

Within no time, they prospered, and rather than compete more efficiently, whites used trumped charges and a charged moment to gun down the three black male owners. This postbellum era tale typified how black self-employment faced hurdles well into the 1900s. In recent years, scholars have expressed renewed [sic] interest in the Tulsa, Oklahoma’s Black Wall Street, the Greenwood residential and commercial district that whites destroyed based on the flimsiest tale that a black man had attacked a white woman. Given the Jim Crow era in which these ugly tales of white racial violence took place, it must be understood that official state policies created hostile business environments for black self-employment. They had to serve black markets. By restricting access to mainstream markets, a denial that the state did not foist on whites and other ethnic groups, black entrepreneurs had to settle for minorities markets that [were] limited by size and resources. By restricting the degree to which black businesses could expand and by constricting the financial stream into these businesses, the state effectively limited “the wealth-accumulating ability of African Americans.”

Id. (citations omitted) (reviewing OLIVER & SHAPIRO, *supra* note 13).

15. JOHN SIBLEY BUTLER, *ENTREPRENEURSHIP AND SELF-HELP AMONG BLACK AMERICANS* 190 (2005) (explaining that a number of African American Durham businesses were able to maintain a white clientele); *see also id.* at 180, 184–86 (detailing the successes of African American businesses in Durham); OLIVER & SHAPIRO, *supra* note 13, at 47–49 (explaining that African Americans were able to “create[] their own opportunities for capital formation and business development”). *But see id.* (“The inability of blacks to compete in an open market has ensured low levels of black business development and has kept black businesses relatively small.”).

16. OLIVER & SHAPIRO, *supra* note 13, at 49.

number of [African] American enterprises increased from four thousand to fifty thousand.”¹⁷ The most noteworthy examples of black corporate and commercial strides were in the three striking examples of the earlier so-called “Black Wall Streets” in other parts of the South, bastions that rose and fell while Durham’s seemed only to rise.¹⁸

In Durham, the black business section, known as “Hayti,” went onward and upward.¹⁹ W. E. B. Du Bois, in an article written in 1912, credited the stability of Durham’s black commercial success as much to the local whites, with their relatively progressive approach to racial relations, as he did to the blacks, who brought brains and drive to the equation.²⁰ Du Bois astutely studied and concluded of white Durham:

But never forget that Durham is in the South and that around these 5,000 Negroes are twice as many whites who own most of the property, dominate the political life exclusively, and form the main current of social life. What now has been the attitude of these people toward the Negroes? In the case of a notable few it has been sincerely sympathetic and helpful, and in the case of a majority of the whites it has not been hostile. Of the two attitudes, great as has undoubtedly been the value of the active friendship of the Duke family, General Julian S. Carr, and others, I consider the greatest factor in Durham’s development to have been the disposition of the mass of ordinary white citizens of Durham to say: “Hands off—give them a chance—don’t interfere.”²¹

17. BUTLER, *supra* note 15, at 156.

18. See Tuneen E. Chisolm, Comment, *Sweep Around Your Own Front Door: Examining the Argument for Legislative African American Reparations*, 147 U. PA. L. REV. 677, 695–97 (1999) (exploring the link between political empowerment and economic empowerment in capitalistic societies and treating the history of white renegades’ intentional physical destruction of black entrepreneurial enterprises in predecessor “Black Wall Streets” of Tulsa, Oklahoma, Rosewood, Florida, and Wilmington, North Carolina).

19. By 1949, blacks in Durham had established an enclave of more than 300 businesses that served both African American and white markets, and although 1960s urban renewal destroyed one-third of the businesses and 600 homes, the district still exists today. See OLIVER & SHAPIRO, *supra* note 13, at 48–49 (1995) (contrasting the survival of Hayti to the formerly similar sections of Wilmington and Tulsa, which were destroyed by organized, state-endorsed white violence).

20. See Du Bois, *supra* note 11, at 336.

21. *Id.*

II. EXCEPTIONAL DURHAM:
THE SOLE SURVIVING “BLACK WALL STREET”

In his perceptive 1912 article entitled *The Upbuilding of Black Durham: The Success of the Negroes and Their Value to a Tolerant and Helpful Southern City*, Du Bois mentioned every aspect of commercial intercourse except that of the legal industry.²² Yet, a contemporary reader aware of the demand for legal services in any market economy can infer that the region under study must have been pregnant with opportunities to serve the legal needs of the Negro commerce class growing in central Durham. After all, as Du Bois wrote, black Durham was churning its commercial interrelations to remarkable effect:

[T]here is a singular group in Durham where a black man may get up in the morning from a mattress made by black men, in a house which a black man built out of lumber which black men cut and planed; he may put on a suit which he bought at a colored haberdashery and socks knit at a colored mill; he may cook victuals from a colored grocery on a stove which black men fashioned; he may earn his living working for colored men, be sick in a colored hospital and buried from a colored church; and the Negro insurance society will pay his widow enough to keep his children in a colored school. This is surely progress.²³

Embracing the self-sufficiency evident in the commercial reality as summarized by Du Bois, including its “tolerant” white community, the African American community in Durham coalesced and grew at a time when hardships elsewhere coincided with new economic opportunities in a growing tobacco town.²⁴ Accompanying the transition was a transformation of the legal status of blacks from slave to free to segregated.

Upon their emancipation from slavery, black southerners were left with almost no capital and with little immediate protection against racial hostility.²⁵ Some took the advice of the Freedmen’s Bureau and made contracts with landowners, often their former masters, for either annual wages or shelter and a percentage of the crop.²⁶ Under this crop lien system, most black sharecroppers became

22. *See id.* at 338.

23. *Id.*

24. *Id.* at 334–35.

25. *See* LESLIE BROWN, UPBUILDING BLACK DURHAM: GENDER, CLASS, AND BLACK COMMUNITY DEVELOPMENT IN THE JIM CROW SOUTH 28–29 (2008).

26. JEAN BRADLEY ANDERSON, DURHAM COUNTY: A HISTORY OF DURHAM COUNTY, NORTH CAROLINA 153 (1990).

ensnared in a system of debt whereby they had to work for the rest of their lives in order to repay outstanding credit charges with interest rates as high as sixty percent.²⁷ Other former slaves became blacksmiths, coopers, carpenters, and shoemakers.²⁸ In North Carolina, however, many African Americans chose to leave their former plantations and towns and settled in Durham's Station, where they could be autonomous.²⁹

A. *Autonomy Yields Uplift*

Gradually, Durham expanded from a small railroad depot to a thriving town in Orange County where tobacco and textile tycoons built factories.³⁰ The rapidly growing tobacco industry in Durham was largely responsible for the influx of unskilled black laborers.³¹ African Americans gathered in southeast Durham "in the settlement of colored people near the South East end of the Corporation . . . called Hayti" in 1877.³² The name "Hayti" was meant to evoke "the image of the independent black state Haiti" and reflected the principles of "race pride, self-help, and autonomy" to which the residents of the section aspired.³³ Over time, Hayti grew through mutual support from free and freed black people and "benign neglect" from white civic leaders.³⁴

Racial tensions in Durham were tempered by the ideal of the "New South."³⁵ There was a stronger emphasis on work ethic, which became "the proper and honorable business of daily life," and, consequently, whites became more tolerant of black progress.³⁶ Other factors contributing to peaceful racial coexistence were Christian charity, advocated by white Methodists and Baptists, and white paternalism—hallmarks of the Protestant work ethic that characterized this era.³⁷ Moreover, "[r]etreating from the direct

27. *Id.* at 153–54.

28. *Id.* at 154.

29. BROWN, *supra* note 25, at 30; OLIVER & SHAPIRO, *supra* note 13, at 49 (noting that by the 1940s, blacks had determined to prosper commercially and financially in Durham).

30. *See* BROWN, *supra* note 25, at 41, 44.

31. *See id.* at 31.

32. *Id.*

33. *Id.*

34. *Id.*

35. *See* ANDERSON, *supra* note 26, at 163.

36. *Id.*

37. *See id.* at 163–64. *See generally* E. DIGBY BALTZELL, THE PROTESTANT ESTABLISHMENT REVISITED (Howard G. Schneiderman ed., 1991) (reaffirming, through the example of the contributions of W. E. B. Du Bois, his social-stratification claim that an

supervision of whites, most blacks preferred to live among one another, for the sake of their comfort rather than racial custom.”³⁸ This racial autonomy made segregation laws, which were not passed in Durham until the twentieth century, unnecessary.³⁹

By the end of the nineteenth century, Durham was the richest municipality in North Carolina.⁴⁰ The tobacco manufacturing industry, which “linked traditional agrarian economies to a modern industrialized world,” attracted blacks migrating from rural to urban areas in the South.⁴¹ Black entrepreneurs served as the core leadership during the expansionist Reconstruction era and became role models for the black freedman community during the 1880s, setting the stage for an emergent black middle class in Durham.⁴² The epicenter of this activity took form over the next decades in the community of Hayti.

Hayti ran from Pettigrew Street to parts of Fayetteville and Roxboro Streets.⁴³ It was a business and residential district of over 600 homes and over 100 businesses.⁴⁴

Many of the laborers living in Hayti resided in the north and west reaches of the neighborhood, within walking distance of the factories, while the majority of those buying or building their own houses in the next suburbs beyond Hayti’s southern boundary worked in nearby Hayti’s business district.⁴⁵

The neighborhoods surrounding Hayti were so prominent during the 1950s that some whites took Sunday drives down Fayetteville Street just to marvel at the African American homes and lifestyles.⁴⁶

Nevertheless, Hayti and other large communities, such as East End, also had conclaves of poor blacks.⁴⁷ Poorer communities, such as

open and authoritative establishment is a necessary and desirable part of the process of securing responsible leaders in a democratic society and is the product of upper-class institutions that are open to talented individuals of varying ethnic and social backgrounds).

38. BROWN, *supra* note 25, at 39.

39. *Id.*

40. *Id.* at 32.

41. *Id.*

42. *Id.* at 36.

43. *See id.* at 14.

44. *See id.*

45. Claudia Roberts Brown, *Durham’s Early Twentieth-Century Suburban Neighborhoods*, in *EARLY TWENTIETH-CENTURY SUBURBS IN NORTH CAROLINA: ESSAYS ON HISTORY, ARCHITECTURE, AND PLANNING* 39, 43 (Catherine W. Bishir & Lawrence S. Earley eds., 1985).

46. *See* BROWN, *supra* note 26, at 32, 252–54.

47. *Id.* at 13.

Buggy Bottom and Hickstown, were mainly composed of migrant and factory workers and were collectively referred to as “The Bottoms.”⁴⁸ The Urban League described “The Bottoms” as “overcrowded and unsanitary” and “filled with crime and immorality.”⁴⁹ Additionally, in 1936, the North Carolina State Board of Health conducted a study on “The Bottoms” and concluded that the conditions there were deplorable.⁵⁰ Thus, in many ways, the black success story in Durham is “a tale of two cities.”⁵¹

B. *Middle Class Emerges*

Both Tulsa, Oklahoma, and Durham, North Carolina, were called “Black Wall Street.”⁵² In 1920, W. E. B. Du Bois “referred to Durham, specifically the Hayti area, as the ‘Negro business mecca of the [S]outh.’”⁵³ In these prosperous conditions, several men of business stood out among the rest, building some of the city’s predominant African American-owned establishments. Durham’s three most notable black businessmen were John Merrick, Dr. Aaron M. Moore, and Charles C. Spaulding.⁵⁴ Merrick was a barber,⁵⁵ Moore was Durham’s first black physician,⁵⁶ and Spaulding was a business leader.⁵⁷ Merrick and six of Durham’s leading black business and professional men organized the North Carolina Mutual Life

48. *Id.* at 13–14.

49. WALTER B. WEARE, *BLACK BUSINESS IN THE NEW SOUTH: A SOCIAL HISTORY OF THE NORTH CAROLINA MUTUAL LIFE INSURANCE COMPANY* 258 (1993).

50. *Id.*

51. See BROWN, *supra* note 25, at 16 (“Rather than examine the extremes of accomplishment or oppression, I have elected to look at the space between the two, to see black Durham as a bas-relief, a more complex account than a tale of two cities . . .”).

52. See BUTLER, *supra* note 15, at 215 (calling the Greenwood section of Tulsa “Negro Wall Street”); ANDRE D. VANN & BEVERLY WASHINGTON JONES, *DURHAM’S HAYTI* 7 (1999) (calling Parrish Street in Durham “Black Wall Street”).

53. VANN & JONES, *supra* note 52, at 7.

54. See WILLIAM J. KENNEDY, JR., *THE NORTH CAROLINA MUTUAL LIFE STORY: A SYMBOL OF PROGRESS 1898–1970*, at 6 (1970) (“So close was the association between John Merrick, Aaron Moore, and the latter’s nephew, Charles Clinton Spaulding, that the three men became known throughout North Carolina as the ‘Negro business triangle.’”).

55. *Id.* at 3 (stating that Merrick learned the trade and later “was the owner of five barber shops, three for white patrons and two for Negroes”).

56. *Id.* at 5 (“When Dr. Moore selected Durham as the location for his practice, he became the first physician of the Negro race to practice in the city.”).

57. *Id.* at 19–20 (“In recognition of his outstanding ability in the management and direction of business activities, the ‘Harmon Foundation Award for Achievement in Business’ was presented to [Spaulding] in 1926.”); see also BROWN, *supra* note 25, at 35–36.

Insurance Company in 1898.⁵⁸ Together with Moore and Spaulding, Merrick also established the Mechanics and Farmers Bank in 1907⁵⁹ and the Merrick-Moore-Spaulding Real Estate Company in 1912.⁶⁰ Moore founded the Lincoln Hospital in 1901⁶¹ and the Stanford L. Warren Library in 1913 with Merrick.⁶² For Durham's black elite, Jim Crow obstructed access to mainstream America, but simultaneously and ironically created a "captive clientele of customers."⁶³ Black citizens of Durham were prohibited from even entering certain white businesses, so they had no other option than to patronize businesses owned by the black business class.⁶⁴ Black women, in particular, "facilitated the development of . . . beauty salons, dress and hat shops, shoe stores, meat and fish markets, movie theaters, cafes and restaurants."⁶⁵

Eventually, the Mechanics and Farmers Bank (known today as "M&F Bank") reportedly became the "largest bank in the world operated by Negroes"⁶⁶ while North Carolina Mutual and Provident Association had become the largest and most successful African American-owned business in the country, with approximately \$1.6

58. Harry McKown, *This Month in North Carolina History: April 1899—North Carolina Mutual Insurance Company*, UNC U. LIBR. (Apr. 2006), <http://www2.lib.unc.edu/ncc/ref/nchistory/apr2006/> (citing WEARE, *supra* note 49) ("The idea of an insurance company, moreover, fit in naturally with a tradition among African Americans of self-help, mutual aid societies or fraternities. John Merrick, born into slavery in 1859, had become by the late 1890s a business success in Durham. Owner of half a dozen barber shops and a real estate business, Merrick was also a member of the Grand United Order of True Reformers, a mutual benefit society organized in Richmond in 1881 which had expanded into insurance and banking. In 1898 Merrick brought together six of Durham's leading black business and professional men and organized North Carolina Mutual. Guided by the 'triumvirate' of John Merrick, Dr. Aaron M. Moore, and Charles Clinton Spaulding, 'The Company with a Soul and a Service' survived the hardship of its first years to achieve success and help make Durham's reputation as a center of African American economic life.").

59. WEARE, *supra* note 49, at 81 ("As early as 1906, Merrick, Moore, and Spaulding, along with several other black professionals, formed a temporary organizing committee to begin a Negro bank in Durham. . . . [T]he Mechanics and Farmers Bank received its charter in 1907 and opened its offices on the first floor of the North Carolina Mutual Building in 1908.").

60. KENNEDY, *supra* note 54, at 6 ("The three men even joined to form the Merrick-Moore-Spaulding Real Estate Company in 1912.").

61. *Id.* at 5 ("In 1901 Dr. Moore founded Lincoln Hospital . . .").

62. *Id.*

63. BROWN, *supra* note 25, at 19.

64. *See id.*

65. *Id.* at 18.

66. *Thousands Attend Opening of Branch of Durham Bank*, CAROLINA TIMES (Durham), Jan. 23, 1954, at 1.

million in revenue, before co-founder John Merrick's death in 1919.⁶⁷ Durham also had five black manufacturing companies that produced mattresses, hosiery, brick, iron articles, and dressed lumber.⁶⁸ But it was North Carolina Mutual and Mechanics and Farmers Bank that stood as the most ambitious commercial undertakings of the time.

Anchoring what would become Durham's black Wall Street was the North Carolina Mutual Provident Association, which was founded in 1898 and in which both John Merrick and Aaron McDuffie Moore were involved.⁶⁹ North Carolina Mutual Life Insurance Company, as it is known today, is one of the largest companies founded by African Americans.⁷⁰ John Merrick was the first president of North Carolina Mutual Provident Association, followed by Dr. Aaron Moore.⁷¹ Both John Merrick and Charles Clinton Spaulding waged an uphill battle in chartering an insurance company for blacks, given that blacks had relatively short life expectancies.⁷² The fledgling North Carolina Mutual Life Insurance Company was paid a visit by Booker T. Washington, the champion of thrift and self-help, in 1910 while Washington was on a tour through North Carolina.⁷³ Booker T. Washington "hailed [Durham] as a national model for the black middle class."⁷⁴

67. R. MCCANTS ANDREWS, JOHN MERRICK: A BIOGRAPHICAL SKETCH 259 (1920).

68. Du Bois, *supra* note 11, at 335.

69. See KENNEDY, *supra* note 54, at 4 ("On October 20, 1898, the North Carolina Mutual and Providence Association was organized by a group of seven Negroes, who met in Durham in the office of Dr. A. M. Moore."). John Merrick was one of the seven involved in the organization. *Id.*

70. VANN & JONES, *supra* note 52, at 87 ("Durham's North Carolina Mutual Life Insurance Company, formed in 1898, became the largest black-owned business in the United States and was a major employer of black professionals.").

71. *About Us*, N.C. MUTUAL LIFE INS. COMPANY, <http://www.ncmutuallife.com/newsite/pages/about.html> (last visited May 4, 2014).

72. WEARE, *supra* note 49, at 125–27 (citations omitted) (stating that "Negroes during the 1920's had a life expectancy of 47 years, while whites could count statistically on living until age 59").

73. VANN & JONES, *supra* note 52, at 84. To the consternation of Du Bois, who preferred classical education to the manual-school model promoted by Washington, Washington was "universally recognized as the leader of black America" in this era, Amos N. Jones, *The Leader of the Race: A Biography of Booker T. Washington Defends His Life and Legacy*, BOOKS & CULTURE (Feb. 2009), <http://www.booksandculture.com/articles/webexclusives/2009/february/090223b.html> (book review), but both leaders lifted black Durham as a model for the nation.

74. Sylvia Pfeiffenberger, *Durham's 'Black Wall Street': Joint Duke-NCCU Course Looks at the History and People of Parrish Street*, DUKE TODAY (Jan. 25, 2007), <https://today.duke.edu/2007/01/parrish.html>. Louis Ernst Austin (1898–1971) "worked as an insurance agent for the North Carolina Mutual Life Insurance Company until 1926." VANN & JONES, *supra* note 52, at 82. After leaving North Carolina Mutual Life Insurance, Austin founded the *Carolina Times* newspaper in Durham. *Id.* Austin "was the driving

One of the most transformative contributions of the North Carolina Mutual Provident Association was its multidimensional effort to further empower its client base through support for the desegregation of a divided Durham.⁷⁵ Not only did the insurance company provide job opportunities to Durham's black community, but it also gave African Americans of Durham and elsewhere that special security of knowing that they, along with their family, would be taken care of in an inevitable time of need.⁷⁶ Moreover, "[d]espite the segregation and discrimination faced by so many in the early 1900s, blacks in Durham enjoyed the highest per capita income, and the highest rate of home ownership, in the country among blacks."⁷⁷ North Carolina Mutual Life Insurance Company today is a multi-million dollar company, proving successful to African Americans, Durham, and America.⁷⁸

Another black-owned company, Mechanics and Farmers Bank, soon joined North Carolina Mutual Provident Association in Durham on February 25, 1907.⁷⁹ Mechanics and Farmers Bank provided the African American community of Durham an opportunity to finance their home purchases or various business ventures under the authority of black loan officers and relationship bankers.⁸⁰ Mechanics

force behind Raymond Hocutt's legal challenge of the University of North Carolina at Chapel Hill's segregation policy." *Id.* Austin was also influential in the fight to hire African American firemen, policemen, and bus drivers, while advocating for the equal pay for African American teachers. *Id.* Austin was also awarded an honorary LL.D. degree from National Training School and Chautauqua. *Id.* Austin stands as the personifying example of the life and work of many who positioned Durham's black corporate bar to self-actualize and thrive, and the bookends of his life—coincident, in 1898, with the founding of North Carolina Mutual Life Insurance and, in 1971, the massive opening of the white corporate bar to blacks following their 1971 graduations—provide the basis for selecting the time period examined in this Article. See Charles E. Daye, *African-American and Other Minority Students and Alumni*, 73 N.C. L. REV. 675, 681, 686–87 (1995) (explaining that the University of North Carolina School of Law became integrated in the summer of 1951 and describing the law school's efforts to attract minority students in the late 1960s and early 1970s); *About Us*, *supra* note 71 (stating the date North Carolina Mutual Life Insurance was founded).

75. See BROWN, *supra* note 25, at 120–21.

76. *Id.* at 117–18.

77. Mark Roberts, *Durham Home to Original 'Black Wall Street'*, WRAL (Feb. 25, 1999), <http://www.wral.com/news/local/story/139037/>.

78. See *Management's Discussion and Analysis for the Year Ended December 31, 2011*, N.C. MUTUAL LIFE INS. COMPANY 2 (2011), http://www.ncmutualife.com/pdfs/MD&A_2011.pdf.

79. *A Brief History*, MECHANICS & FARMERS BANK, <https://www.mfbonline.com/centennial/history.html> (last visited May 4, 2014).

80. *Id.*

and Farmers Bank also allowed blacks a safe and reliable place in which to deposit and earn interest on their money.⁸¹

Mechanics and Farmers Bank was principally founded by a group of nine African Americans, including Richard B. Fitzgerald, James E. Shepard, William G. Pearson, Jesse A. Dodson, James R. Hawkins, John Merrick, Aaron M. Moore, G. W. Stephens, and Stanford L. Warren.⁸² The leaders among the bank's founding group included Richard B. Fitzgerald, James E. Shepard, and William G. Pearson.⁸³ Richard B. Fitzgerald "was the leader of the Bank's originators, investing the first \$1,500 towards the total required."⁸⁴ Fitzgerald was a Union Army veteran and jointly owned a brickyard with his brother.⁸⁵ Surprisingly, many of these bricks were used in the construction of many of Durham's historic buildings.⁸⁶ James E. Shepard was a preacher, a politician, and a pharmacist.⁸⁷ "Shepard is credited with writing what became the charter proposal that led to the incorporation of [Mechanics and Farmers] Bank."⁸⁸ William G. Pearson was a teacher who later became a principal and supervisor in the Durham City Schools.⁸⁹ Jesse A. Dodson was a graduate of Shaw University, where he remained to teach for two years after his graduation.⁹⁰ He later became a pharmacist and an elementary school principal before founding the Mechanics and Farmers Bank.⁹¹ James R. Hawkins was the youngest of the nine incorporators of the bank.⁹² Hawkins financed his education at Leonard Medical College at Shaw University by working in hotels and steamboats during the summers.⁹³ Hawkins, after becoming a licensed physician, set up private practice in Greensboro, North Carolina.⁹⁴ John Merrick, a native of Clinton, North Carolina, was a "major influence in the building and

81. *Id.*

82. *The Founders*, MECHANICS & FARMERS BANK, <https://www.mfbonline.com/centennial/founders.html> (last visited May 4, 2014).

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. *The Core Group*, MECHANICS & FARMERS BANK, https://www.mfbonline.com/centennial/other_founders.html (last visited May 4, 2014).

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

development of Black Wall Street.”⁹⁵ Aaron M. Moore was Durham’s first African American physician.⁹⁶ Moore also earned a law degree before pursuing his medical career.⁹⁷ Moore was a partner in Merrick-Moore-Spaulling Real Estate and “was instrumental in the founding of Lincoln Hospital.”⁹⁸ Stanford L. Warren was a graduate of Leonard Medical College at Shaw University and “was the grandfather of J. W. Taylor, [Mechanics and Farmers] Bank’s eighth president.”⁹⁹ Lastly, W. G. Stevens was the ninth founder of the Mechanics and Farmers Bank.¹⁰⁰ The founders of Mechanics and Farmers Bank funded the initial \$10,000 in capital.¹⁰¹ Today, Mechanics and Farmers Bank is a multi-million dollar company and “has been a profitable institution every year since opening its doors.”¹⁰² On February 25, 2007, Mechanics and Farmers Bank celebrated its 100th anniversary since its initial founding in 1907.¹⁰³

In addition to businesses, blacks in Durham established schools, libraries, and churches. In 1910, Dr. James Edward Shepard, a black pharmacist, founded the National Religious Training School and Chautauqua, which is now North Carolina Central University.¹⁰⁴ The Durham Colored Library, now Stanford L. Warren Branch Library, became the second black library in North Carolina in 1916.¹⁰⁵ Meanwhile, in 1866,¹⁰⁶ Margaret Faucette, “a widow with thirteen children,” founded White Rock Baptist Church and “gave the first dollar for its building.”¹⁰⁷ “Missionaries Molly and Edian Markham founded Union Bethel African Methodist Episcopal (AME) Zion Church,” which was later renamed St. Joseph AME Zion Church, in

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *The Founders*, *supra* note 82.

102. *A Brief History*, *supra* note 79.

103. *Id.*

104. *The Founders*, *supra* note 82.

105. *About Stanford L. Warren Branch*, DURHAM COUNTY LIBR., <http://durhamcountylibrary.org/location/warren/> (last visited May 4, 2014).

106. MILES MARK FISHER, *FRIENDS: PICTORIAL REPORT OF TEN YEARS PASTORATE* (1933–1943), at 10 (1943) (“This cornerstone has been found among [White Rock Church’s] front yard hedges: FIRST BAPTIST CHURCH Organized 1866. This inscription can not refer to the local white Baptist church which was begun in 1845.”).

107. BROWN, *supra* note 25, at 33.

1869.¹⁰⁸ St. Joseph and White Rock Baptist Church became the centers for black political leadership in Durham.¹⁰⁹

Meanwhile, beyond leaving the blacks unmolested, the white community in Durham even actively supported the black middle class in some ways. For example, Washington Duke, a white philanthropist, donated \$85,550 toward the construction of Lincoln Hospital, which was the first black hospital in Durham.¹¹⁰ A 1921 article published in the *Atlanta Independent* described the progress of African Americans in Durham with the statement, “There is more grace, grit, and greenback among the Negroes in Durham and more harmony between the races than in any city in America.”¹¹¹ In sum, according to Du Bois, “the greatest factor in Durham’s development [was] the disposition of the mass of ordinary white citizens of Durham,”¹¹² and this dynamic would foster the emergence of a black legal establishment over the first half of the 1900s.

C. *Political Influence as a Function of Economic Success*

Affluence also helped the black middle class assume some political power in Durham. The first black political organization in Durham, the Durham Committee on Negro Affairs (“DCNA”), was established in 1935, and C. C. Spaulding and James E. Shepard were two of the organization’s first leaders.¹¹³ The DCNA fought for social and economic rights for blacks and helped get several of its candidates elected to political office.¹¹⁴ One member of the DCNA, Rencher N. Harris, was the first African American to be elected to the Durham City Council in 1953 and served on the Durham City Board of Education.¹¹⁵ This political achievement was likely due to the fact that “[t]he black middle class in Raleigh, Durham, Greensboro, Charlotte, and Winston-Salem . . . comprised most of the black voters in the state.”¹¹⁶

108. *Id.*

109. *See* WEARE, *supra* note 49, at 86–87, 189.

110. Charles D. Watts & Frank W. Scott, *Lincoln Hospital in Durham, North Carolina: A Short History*, 57 J. NAT’L MED. ASS’N 177, 177–78 (1965).

111. WEARE, *supra* note 49, at 4 (quoting Editorial, *The North Carolina Mutual*, ATLANTA INDEPENDENT, Dec. 22, 1921, at 4).

112. Du Bois, *supra* note 11, at 336.

113. WEARE, *supra* note 49, at 240–41.

114. *See id.* at 240–45. “The [DCNA] became, according to political scientist Everett Carl Ladd, Jr., the South’s most effective ‘peak organization’ . . .” *Id.* at 240.

115. *Id.* at 244 n.89.

116. JEFFREY J. CROW, PAUL D. ESCOTT & FLORA J. HATLEY, *A HISTORY OF AFRICAN AMERICANS IN NORTH CAROLINA* 145 (1992).

III. A COMPETITIVE LAW SCHOOL FOR AFRICAN AMERICANS IS BORN

As blacks gained economic and political clout, they turned their attention back to education and, with newly minted middle-class sensibilities, the establishment of more professional schools to serve them at home. The capstone outgrowth of this movement was the North Carolina Central University School of Law (“NCCU Law”), originally North Carolina College for Negroes Law School, which became the first public school in North Carolina to offer blacks the opportunity to obtain a formal legal education.¹¹⁷ Like many other historically black law schools, NCCU Law was opened by North Carolina in response to *Missouri ex rel. Gaines v. Canada*,¹¹⁸ a 1938 case that required states to offer blacks facilities for legal education that were “substantially equal” to those available to whites.¹¹⁹ The establishment of this school laid the groundwork for a black bar to develop in the unique black commercial orbit that was Hayti.

NCCU Law, which opened its doors in the fall of 1939, began with limited resources but has experienced growth over the years in both its size and its reputation.¹²⁰ Despite periods of uncertainty as to its continued viability in the era of integration, the school has grown, prospered, and graduated notable attorneys.¹²¹

A. *Authorizing a Law School for Blacks*

The North Carolina General Assembly (“NCGA”) enacted House Bill 18 on March 1, 1939, authorizing the North Carolina College for Negroes Board of Trustees to establish the North Carolina College for Negroes Law School,¹²² which today is NCCU

117. Wendy B. Scott, *McKissick v. Carmichael Revisited: Legal Education in North Carolina Through the Lens of Desegregation Jurisprudence*, 34 N.C. CENT. L. REV. 38, 58 (2011) (“In 1939, the North Carolina General Assembly authorized the North Carolina College for Negroes to provide African-Americans with an opportunity for a legal education. At the time, African-Americans had no in-state opportunities for a formal legal education.”).

118. 305 U.S. 337 (1938); see also Davison M. Douglas, *The Rhetoric of Moderation: Desegregating the South During the Decade After Brown*, 89 NW. U. L. REV. 92, 101 (1994).

119. See *Gaines*, 305 U.S. at 351.

120. See Scott, *supra* note 117, at 58 (citation omitted) (“North Carolina Central University School of Law, born to avoid admitting African-American students to UNC School of Law, has a rich and brilliant history of racial segregation, adversity, triumph, transition, growth, diversity and development.”).

121. See 2003 ALUMNI DIRECTORY (N.C. Cent. Univ. Sch. of Law, Durham, N.C.), 2003, at 81–97 (listing graduates from class years 1979 to 2003).

122. Act of Mar. 1, 1939, ch. 65, 1939 N.C. Sess. Laws 88.

Law. The North Carolina legislature did not decide to open NCCU Law simply because its members thought the state needed another law school. Impetus and strategy undergirded the decision.¹²³

Prior to the opening of NCCU Law, blacks in North Carolina had very few opportunities to obtain a formal legal education.¹²⁴ Shaw University School of Law was open from 1888 to 1914 and graduated 54 students during its existence.¹²⁵ Even though it was a private law school and, as such, primarily relied on tuition and private donations in order to operate,¹²⁶ the majority of black lawyers in North and South Carolina into the 1930s were Shaw graduates.¹²⁷ Due to problems with student discipline, however, the Shaw Board of Trustees voted to close the law school in February of 1914.¹²⁸ The University of North Carolina had the only public law school in North Carolina before the opening of NCCU Law, and it did not allow blacks to attend until the summer of 1951, when Floyd McKissick and five other black law students enrolled.¹²⁹ This was a problem because, according to *Missouri ex rel. Gaines v. Canada*, states had to offer blacks facilities for legal education that were “substantially equal” to those available to whites.¹³⁰

B. *Missouri ex rel. Gaines v. Canada (1938)*

Lloyd Gaines was a black citizen of Missouri.¹³¹ He graduated in 1935 with a bachelor’s degree from Lincoln University, a school run by the State of Missouri for the purpose of offering blacks higher

123. See Daye, *supra* note 74, at 678 (“[North Carolina College for Negroes] law school was created for black students in an unabashed attempt to avoid the admission of blacks to the law school at Chapel Hill.”).

124. Doris E. Terry & Floyd B. McKissick, *Black Lawyers in North Carolina—A History: 1865–1950*, in 1 CHRONICLE OF BLACK LAWYERS IN NORTH CAROLINA 20, 21 (Doris E. Terry ed., 1981); see Scott, *supra* note 117, at 58.

125. See Thomas Hunter, *The Institutionalization of Legal Education in North Carolina 1790–1920, 1998*, in 1 THE HISTORY OF LEGAL EDUCATION IN THE UNITED STATES 406, 454 (Steve Sheppard ed., 1999) (“Although no official reason was given, it appears as if the move was made not because of any pressure from the white community but, rather, because of problems of student discipline.”).

126. See JAMES D. ANDERSON, EDUCATION OF BLACKS IN THE SOUTH, 1860–1935, at 239–40 (1988) (stating that northern mission societies largely sustained leading black colleges and that a northern mission society administered Shaw University).

127. Hunter, *supra* note 125, at 454.

128. *Id.*

129. See Daye, *supra* note 74, at 680–81. See generally *McKissick v. Carmichael*, 187 F.2d 949 (4th Cir. 1951) (detailing McKissick’s suit for admission to the University of North Carolina School of Law).

130. *Mo. ex rel. Gaines v. Canada*, 305 U.S. 337, 351 (1938).

131. *Id.* at 342.

education.¹³² Lincoln University did not have a law school, however, so Gaines applied to the University of Missouri School of Law (“UM Law”).¹³³ Gaines was academically qualified to attend UM Law but was denied admission because it was “contrary to the constitution, laws, and public policy of the State to admit a negro as a student in the University of Missouri.”¹³⁴ The state thus offered to help him pay to attend law school in a neighboring state so that he would only pay the equivalent of in-state tuition.¹³⁵ Arguing that this violated his right to equal protection of the laws under the Fourteenth Amendment, Gaines brought this action for mandamus to compel UM Law to admit him.¹³⁶

The Supreme Court determined that the primary issue in this case was whether Missouri had violated the Equal Protection Clause of the Fourteenth Amendment by not affording blacks the same right as whites to attend law school within the state and instead forcing them to attend law schools in adjacent states.¹³⁷ The Court first looked at *Pearson v. Murray*,¹³⁸ a similar case decided by the Maryland Court of Appeals. The Maryland Court of Appeals decided that a provision for scholarships to enable blacks to attend colleges outside of the state was inadequate.¹³⁹ In *Gaines*, the Supreme Court noted that the Supreme Court of Missouri differentiated the case before it from the Maryland case on two grounds.¹⁴⁰ First, the Supreme Court of Missouri said that in Missouri, but not in Maryland, there was “a legislative declaration of a purpose to establish a law school for negroes at Lincoln University whenever necessary or practical.”¹⁴¹ Second, the court held that “pending the establishment of such a school, adequate provision has been made for the legal education of negro students in recognized schools outside of this State.”¹⁴²

The Supreme Court did not agree with the Missouri Supreme Court on these grounds. As for the first ground, the Court stated that

132. *Id.*

133. *Id.*

134. *Id.* at 343.

135. *See id.* at 342–43.

136. *Id.* at 342.

137. *Id.* at 345.

138. 182 A. 590 (Md. 1936).

139. *Id.* at 594.

140. *Gaines*, 305 U.S. at 346 (citing *State ex rel. Gaines v. Canada*, 113 S.W.2d 783, 791 (Mo. 1937)).

141. *State ex rel. Gaines v. Canada*, 113 S.W.2d 783, 791 (Mo. 1937).

142. *Id.*

“it appears that the policy of establishing a law school at Lincoln University has not yet ripened into an actual establishment, and it cannot be said that a mere declaration of purpose, still unfulfilled, is enough.”¹⁴³ As for the Missouri Supreme Court’s second argument, the Court said that the opportunities other states provided and whether those opportunities were as good as the ones offered in Missouri were irrelevant.¹⁴⁴ The real question was “what opportunities Missouri itself furnishe[d] to white students and denie[d] to negroes solely upon the ground of color.”¹⁴⁵ Missouri provided white residents a legal education within the state, but black residents, equally qualified, were refused an education inside the state and had to go to adjacent states to obtain one.¹⁴⁶ According to the Court, “[t]hat [was] a denial of the equality of legal right to the enjoyment of the privilege which the State has set up, and the provision for payment of tuition fees in another state does not remove the discrimination.”¹⁴⁷ Because Missouri did not afford *Gaines* equal protection under the law, the Court held that Missouri was in violation of the Fourteenth Amendment and that it must provide blacks facilities for legal education that were “substantially equal” to those available to whites.¹⁴⁸

C. *Political Maneuvering in a White State Legislature*

The *Gaines* decision had a major impact on North Carolina because the General Assembly knew that it would have to provide blacks with the opportunity to obtain a formal legal education within the state. The General Assembly basically had two choices. It could desegregate the University of North Carolina School of Law (“UNC”), which was the only public law school in the state at the time, or it could open a new law school specifically for the purpose of educating blacks.¹⁴⁹ The State ultimately decided to go the latter route and announced it would open North Carolina College for Negroes Law School, now NCCU Law, in 1939.¹⁵⁰

143. *Gaines*, 305 U.S. at 346.

144. *Id.* at 348.

145. *Id.* at 349.

146. *Id.*

147. *Id.* at 349–50.

148. *Id.* at 351.

149. See Gil Kujovich, *Equal Opportunity in Higher Education and the Black Public College: The Era of Separate but Equal*, 72 MINN. L. REV. 29, 118–19 (1987) (describing the reactions of Missouri and other segregationist states to the *Gaines* decision).

150. Douglas, *supra* note 118, at 101; Scott, *supra* note 117, at 54 (citations omitted) (“Following the 1938 Supreme Court ruling in *Gaines*, North Carolina established a law

Blacks were prominent in North Carolina politics during the Reconstruction Era and through the end of the nineteenth century.¹⁵¹ They served as school board members, sheriffs, and representatives to the General Assembly.¹⁵² This all began to change, however, when white Democrats began to take control of the North Carolina General Assembly in 1872.¹⁵³ White Democrats generally opposed equal rights for blacks and whites, so they worked hard to remove blacks from public office.¹⁵⁴ These racial tensions and a shift in political power led North Carolina to follow in the footsteps of other states in passing segregation laws.¹⁵⁵ These segregation laws continued to fuel racial tensions well into the twentieth century.¹⁵⁶

White Democrats continued to dominate the North Carolina General Assembly when the Supreme Court handed down its ruling in the *Gaines* case in 1938.¹⁵⁷ Because of this, there was not much legislative support for the desegregation of UNC,¹⁵⁸ and the General

school at the North Carolina College for Negroes (College Law School) in 1939. The legislature had responded to the Court's suggestion in *Gaines* that 'the absence of other and proper provisions for . . . legal training within the State' could be remedied by establishing a separate law school.").

151. See ERIC ANDERSON, RACE AND POLITICS IN NORTH CAROLINA, 1872-1901: THE BLACK SECOND, at ix-x (1981) ("One of the most remarkable centers of black political strength was the Second Congressional District of North Carolina, where four Negroes won election to the House between 1874 and 1898 and hundreds of other blacks held lesser positions.").

152. *Id.* at 5 ("Seven Republicans represented the [second] district in Congress, among them Negroes John A Hyman, James E. O'Hara, Henry P. Cheatham, and George H. White. During the same period numerous Republicans served as sheriffs, clerks of the superior court, registers of deeds, mayors, town commissioners, postmasters, and other officials. Scores of Republicans, including more than fifty blacks, represented the counties of the second district in the general assembly.").

153. *Id.* at 3 ("The Democratic members of the North Carolina General Assembly had not planned to please the Republicans as they redrew the boundaries of the state's congressional districts early in 1872. Like partisan legislators in any state, they hoped to increase the power of their own party. But in 1872 ordinary calculations and maneuvers seemed invested with unusual import. . . . The general assembly had been reapportioned, with the state gerrymandered in the Democrats' favor.").

154. *Id.* at 145 ("Democrats regained control of the legislature by repeating and intensifying the tactics of 1888 in the fiercely fought 1898 campaign, and after victory, as in 1889, they enacted new suffrage restrictions. This time the Democratic legislators were more thoroughgoing, producing a constitutional amendment to disenfranchise most Negroes. In 1900 the voters ratified the amendment and elected a Democratic governor.").

155. See *id.*

156. See TAYLOR BRANCH, PILLAR OF FIRE: AMERICA IN THE KING YEARS 1963-65, at 120 (1998) (summarizing Allard Lowenstein's involvement in a nationalized racial incident in Raleigh after he and the Liberian ambassador to the United Nations were denied service at the "the most prestigious hotel in North Carolina").

157. See Douglas, *supra* note 118, at 100-01.

158. See *id.*

Assembly passed House Bill 18, authorizing the Board of Trustees to establish the North Carolina College for Negroes Law School.¹⁵⁹

D. House Bill 18 (March 1, 1939)

The General Assembly passed House Bill 18 on March 1, 1939.¹⁶⁰ It authorized the opening of a law school at the North Carolina College for Negroes, the first public institution to offer blacks the opportunity to receive a formal legal education within the State of North Carolina.¹⁶¹ It was the first school, public or private, to offer blacks the opportunity to obtain a formal legal education in North Carolina, since the closing of Shaw University Law School in 1914.¹⁶² The trustees did not want to desegregate UNC, so NCCU Law was a way to create what was supposed to be a separate but equal law school for blacks.¹⁶³

E. Challenges at the Outset

NCCU Law opened its doors in the fall of 1939, but, due to the short amount of time the school had to hire faculty, prepare a curriculum, and advertise, only one student registered.¹⁶⁴ Because of this dearth of students, the school delayed its opening until September of 1940.¹⁶⁵ Maurice T. Van Hecke, the dean at UNC, served as the first dean of NCCU Law from 1939 to 1942.¹⁶⁶ Schools were still segregated during this time period, so it was unique to have

159. Act of Mar. 1, 1939, ch. 65, 1939 N.C. Sess. Laws 88.

160. 1939 N.C. Sess. Laws at 88–89.

161. See 1939 N.C. Sess. Laws at 88; Scott, *supra* note 117, at 58.

162. DAVISON M. DOUGLAS, *READING, WRITING & RACE: THE DESEGREGATION OF THE CHARLOTTE SCHOOLS* 16 (1995) (citation omitted) (“Moreover, in 1914, Shaw University in Raleigh closed its law school because of low enrollment. Shaw had educated over fifty African American lawyers during the previous quarter century and had been the primary source of black legal education in North Carolina.”); Terry & McKissick, *supra* note 124, at 21.

163. Daye, *supra* note 74, at 678; Davison, *supra* note 118, at 101.

164. See Beverly W. Jones, *James Edward Shepard, the Founder: An Educational and Community Leader and Fundraiser*, in *A HISTORY OF N.C. CENTRAL UNIVERSITY: A TOWN AND GOWN ANALYSIS* 11, 32 (George W. Reid ed., 1985); *N.C. College Law School Not to Begin Until '40*, *CAROLINA TIMES* (Durham), Oct. 7, 1939.

165. See Jones, *supra* note 164, at 32; Scott, *supra* note 117, at 58 (citation omitted) (“Although the school was scheduled to open in 1939, its opening was postponed until the following year due to initial insufficient enrollment. Nevertheless, the Law School formally opened for the study of law in 1940.”); *Negro Law School Will Open Tuesday*, *N.Y. TIMES*, Sept. 15, 1940, at 59.

166. N.C. Coll. at Durham. *The School of Law Announcements for the Session of 1968–69*, *BULLETIN*, Dec. 1967, at 4; *NCC Announces Opening of Law School September 25*, *CAROLINA TIMES* (Durham), Sept. 9, 1939, at 4.

a white dean at a black school, but because formal legal education for blacks in North Carolina was virtually non-existent before the opening of NCCU Law, there were very few black individuals who were qualified for the job.¹⁶⁷

The first class at the new school consisted of five students who were selected from a group of fifteen applicants.¹⁶⁸ These applicants were from states such as North Carolina, Texas, and Maryland.¹⁶⁹ Students from Texas applied because Texas did not have a law school for blacks to attend until the Texas State University for Negroes (Thurgood Marshall School of Law) opened in Austin, Texas, in 1946.¹⁷⁰ There were applicants from Maryland because, even though the Maryland Court of Appeals held in a 1935 decision that the University of Maryland School of Law had to begin admitting black students,¹⁷¹ many blacks were still denied admission to the school.¹⁷² Maryland also did not have an all-black law school at the time.¹⁷³ In-state tuition for the first semester at NCCU Law was \$50.00, and out-of-state tuition was \$62.50.¹⁷⁴ In-state tuition did not change until 1946, when it increased to \$75.00 per semester.¹⁷⁵ Students were charged \$20.00 per month for room and board, and textbooks cost around \$30.00 per year.¹⁷⁶

The first years of the law school's existence were challenging for students. NCCU Law only had a small amount of space on the top

167. *NCC Announces Opening of Law School September 25*, *supra* note 166 (stating that Van Hecke would serve as the dean “only until qualified Negroes [could] be recruited for the service”).

168. *New Law School Accepts Seven*, NEWS & OBSERVER (Raleigh), Aug. 20, 1940, at 14 (“The accepted law students were among 15 applicants ranging geographically from as far north as Maryland and as far south as Texas.”).

169. *Id.*

170. See Marguerite L. Butler, *The History of Texas Southern University, Thurgood Marshall School of Law: “The House that Sweatt Built,”* 23 T. MARSHALL L. REV. 45, 45 (1997) (citations omitted) (“The Fiftieth Texas Legislature, in 1947, passed Texas Senate Bill 140 to establish the Texas State University for Negroes. The legislature established this University for the sole purpose of creating a separate but equal school of law for Negroes and to effectively prevent Heman Sweatt’s admission to the University of Texas Law School.”).

171. *Pearson v. Murray*, 182 A. 590, 594 (Md. 1935).

172. See Kujovich, *supra* note 149, at 116–17, 117 n.313 (“[Murray’s] success did not lead to the general admission of black students into the programs of the University of Maryland.”).

173. *Pearson*, 182 A. at 593 (stating that “no separate law school is provided by this State for colored students”).

174. N.C. CENT. SCH. OF LAW, SO FAR: 70TH ANNIVERSARY 13, 15 (2009), available at <http://law.nccu.edu/wordpress/img/uploads/2010/09/so-far-2009.pdf>.

175. *Id.* at 14.

176. *Id.* at 15.

floor of the administration building on campus prior to moving to Avery Auditorium in 1950.¹⁷⁷ Courses were offered during the 1940 to 1941 school year in Civil Procedure, Agency, Contracts I, Personal Property, Torts, and Real Property I.¹⁷⁸ The entrance requirements and the standards for work were the same as at UNC.¹⁷⁹ NCCU Law also shared a librarian and numerous professors with the white students at UNC.¹⁸⁰ Professors from Duke University School of Law (“Duke”) also taught NCCU Law students during the school’s first years.¹⁸¹ The school added three full-time black professors to the faculty in 1941.¹⁸² Albert L. Turner, one of these professors, went on to serve as the second dean of NCCU Law from 1942 to 1965.¹⁸³

Enrollment remained low during World War II.¹⁸⁴ NCCU Law offered night classes, which were popular among local black businessmen.¹⁸⁵ John Wheeler and J. J. Sansom, Jr., took advantage of the night classes, and both men went on to “serve[] as president of [Durham’s] Mechanics and Farmers Bank, the largest black controlled bank in the South.”¹⁸⁶ Women were also admitted to NCCU Law during the World War II period.¹⁸⁷ Ruth Norman and Ruth Taylor, two white women, began attending the law school during the 1944 to 1945 school year, increasing the enrollment to seven students.¹⁸⁸ Enrollment grew to thirteen students during the 1945 to 1946 school year, and four of these students were women.¹⁸⁹

177. *See id.* at 13.

178. *NCC Announces Opening of Law School September 25*, *supra* note 166.

179. *Id.*

180. *Id.*

181. *Id.*

182. *Law Department at Durham Col. Augmented by Negro Professors*, *CAROLINA TIMES* (Durham), June 28, 1941, at 1.

183. *N.C. CENT. UNIV., A HISTORY OF UNITS AND PROGRAMS FROM 1910 TO 2010*, at 97 (2010).

184. Kenneth Lewis, *The History of Black Lawyers in North Carolina*, *BARNOTES*, Dec. 1987–Jan. 1988, at 12 (“During the World War II years, the law school witnessed a considerable depletion in the size of its student body. Rather than close the program, however, the school offered night classes that afforded local businessmen the opportunity to study law.”).

185. *Id.*

186. *Id.* at 12.

187. *N.C. CENT. UNIV.*, *supra* note 183, at 97 (“In 1944, the school admitted its first women.”).

188. *North Carolina Central University School of Law Faculty and Staff*, *AND JUST. FOR ALL: DURHAM COUNTY COURTHOUSE ART WALL*, http://andjusticeforall.dconc.gov/gallery_images/north-carolina-central-university-school-of-law-faculty-and-staff/ (last visited July 13, 2014).

189. *N.C. CENT. SCH. OF LAW*, *supra* note 174, at 15.

Three out of the four women graduated in 1948, and no other women attended the law school until 1952.¹⁹⁰

F. Milestones in Enrollment and Diversifying the Legal Profession

As NCCU Law achieved certain accomplishments, enrollment also continued to grow. The school had twenty-four students during the 1946 to 1947 school year, twenty-six students during the 1947 to 1948 year, and thirty students during the 1948 to 1949 year.¹⁹¹ Even though NCCU Law experienced growth in enrollment, it was plagued with financial troubles during its early years.¹⁹² Enrollment fluctuated from the 1940s through the 1960s, and the school graduated a small number of students each year.¹⁹³

The American Bar Association accredited NCCU Law in 1950.¹⁹⁴ Another important event occurred during the 1962 to 1963 school year when NCCU Law defeated UNC in a moot court competition.¹⁹⁵ NCCU Law also beat teams from Duke and the University of South Carolina School of Law before losing to the University of Virginia School of Law in the finals.¹⁹⁶

The first considerable aggregation of white students was admitted to NCCU Law in 1965.¹⁹⁷ Native Americans also began to attend the law school during this time period.¹⁹⁸ Enrollment reached 266 students during the 1971 to 1972 school year.¹⁹⁹ The student body

190. *Id.*

191. *Id.* at 20.

192. N.C. COLL. LAW SCH., APOCRISARIUS 10TH ANNIVERSARY 23 (June 1950) (“In 1939 the State Legislature authorized the establishment of a law school for the Negro citizens of the State. For reasons not entirely unknown to us we were given less than the minimum equipment necessary for the maintenance of a Law School. Demands were made yearly on behalf of the school by various individuals to increase the faculty, the budget, and the physical plant. Yearly, these demands were refused. For ten years our patience prevailed, but even patience has its limits. . . . No funds were available to us. We would get the old library when a new one was built, we were told. But no definite money had been allocated for the Law School itself.”); *see also* Terry & McKissick, *supra* note 124, at 21.

193. N.C. CENT. SCH. OF LAW, *supra* note 174, at 20 (“During the 1940’s, 50’s and 60’s, enrollment dipped and rebounded several times, with the law school graduating a handful of students every year.”).

194. N.C. CENT. UNIV., *supra* note 183, at 97; Terry & McKissick, *supra* note 124, at 21; *Official Guide to ABA-Approved Law Schools*, AM. BAR ASS’N, https://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools/official-guide-to-aba-approved-law-schools.html (last visited June 12, 2014).

195. N.C. CENT. SCH. OF LAW, *supra* note 174, at 18.

196. *Id.*

197. *See* N.C. CENT. UNIV., *supra* note 183, at 97.

198. *See id.* (“[B]y 1972, Native Americans were enrolled.”).

199. N.C. CENT. SCH. OF LAW, *supra* note 174, at 20.

included forty women, four Native Americans, two Africans, one Asian, and one West Indian, and the students came from twenty-one states, Washington, D.C., Liberia, the West Indies, China, and Sierra Leone.²⁰⁰ The diversity of the student body can be attributed to the fact that NCCU Law was attempting to grow during this period, so the school accepted applicants who may not have been accepted at more established law schools. NCCU Law also did not discriminate at all on the basis of race, ethnicity, or nationality.

G. Funding and the Fight to Remain Open

Despite the increasing enrollment, the North Carolina Board of Higher Education proposed that NCCU Law be phased out by June 1974, arguing that it made sense economically to phase out the school if black enrollment at UNC could be increased to equal that at NCCU Law.²⁰¹ Alumni and supporters of the school were infuriated by this proposal and campaigned to prevent the closure of the school.²⁰² Dean Daniel Sampson responded by issuing the "Sampson report," which discussed the negative impact that closing NCCU Law would have on the black community.²⁰³ Enrollment and the number of black graduates increased dramatically during the 1970s at NCCU, from eighteen in 1971 to 110 in 1976.²⁰⁴ In addition, "[t]he effect of the requirements of the Civil Rights Act (of 1964) as (the U.S. Department of Health, Education, and Welfare) interpret[ed] them, would make it difficult to explain the discontinuation of a long-standing program at a predominantly black school."²⁰⁵

Even though the odds of NCCU Law remaining open increased during the 1970s, the school's critics scolded it for not better preparing its graduates for the state bar exam.²⁰⁶ Less than one quarter of NCCU Law graduates passed the state bar exam on their

200. *Id.*

201. *Shortage of Lawyers Prompts Study*, NEW COURIER (Pittsburgh), Apr. 8, 1967, at 16 ("The report, released following news that the Advisory Budget Commission and Gov. Dan K. Moore recommended to the Legislature that the NCC facility be denied funds beginning in 1968, contains information which highlights NCC's role in the training of lawyers in the state during the past 26 years.").

202. *Id.*

203. *See id.* (stating that Dean Daniel Sampson issued a report on the historic role NCCU had played in training African American lawyers and containing statistical data on the shortage of African American lawyers in North Carolina).

204. Steve Adams, *NCCU Law School Fights to Upgrade Its Program*, NEWS & OBSERVER (Raleigh), Feb. 2, 1975, at 4-1.

205. *Id.*

206. *See* Henry Wefing, *Bar Exam Plagues NCCU Law School Blacks*, DURHAM MORNING HERALD, Feb. 17, 1974, at 2A.

first try.²⁰⁷ Supporters of the school blamed these poor bar passage rates on a lack of funding.²⁰⁸ NCCU Law had a higher student-faculty ratio, fewer facilities, fewer library books, lower faculty salaries, and a lower budget than UNC, Duke, and Wake Forest Law.²⁰⁹ Nevertheless, NCCU Law has continued to strengthen and grow over the years despite these early challenges.

IV. PRACTICING LAW IN THE “BLACK WALL STREET”

The lines are drawn however, and neither the law schools nor the lawyers can retreat. The great work of the Negro lawyer in the next generation must be in the South

—Charles Hamilton Houston²¹⁰

For African Americans seeking to practice law in the South during the late nineteenth and early twentieth centuries, educational and professional opportunities were scarce. After the Civil War, most blacks attended Howard University for law school.²¹¹ “Between 1871 and 1900, Howard graduated about 328 law students,” which included “practically all academically trained black lawyers during this post-Civil War period.”²¹² During Reconstruction, prominent black lawyers practiced in the South, where blacks found economic and political doors to have swung open.²¹³ However, by 1910, there still were only 361 black lawyers practicing in the South, despite the fact that eighty-nine percent of the black population lived in southern states.²¹⁴ This number decreased to 330 by 1930, and many black lawyers were forced to rely upon other jobs, such as positions in United States Post Offices, for a livelihood.²¹⁵

207. *Id.*

208. *Id.*

209. *Id.*

210. Houston, *supra* note 6, at 52.

211. Kenneth S. Tollett, *Black Lawyers, Their Education, and the Black Community*, 17 HOW. L.J. 326, 330 (1972).

212. *Id.* at 331.

213. See generally Eric W. Rise, *At Freedom's Door: African American Founding Fathers and Lawyers in Reconstruction South Carolina*, 85 GA. HIST. QUART. 321 (2001) (book review) (discussing the University of South Carolina Law School's acceptance of African Americans from 1873 to 1877 and African American graduates' pursuit of civil rights in their professional careers).

214. Tollett, *supra* note 211, at 332–33.

215. *Id.* at 333.

A. Exclusion and Lack of Opportunity

Black lawyers were also excluded from the American Bar Association (“ABA”) despite persistently obtaining law degrees.²¹⁶ In 1912, the ABA adopted a resolution requiring black lawyers to indicate their race on their membership applications, forcing a declaration that equipped ABA members to identify and veto black applicants.²¹⁷ The resolution was instigated by white ABA members when they discovered that three black lawyers—William Henry Lewis, Butler Roland Wilson, and William R. Morris—had been admitted into the Association.²¹⁸ “The color barrier was not broken until the sixty-sixth annual meeting of the ABA in 1943,” where the bylaws were amended to allow membership by black lawyers.²¹⁹

While there were many legal atrocities committed against blacks in the South, black lawyers had very little power in southern courts.²²⁰ Between 1900 and 1940, blacks only represented between 0.6% and 0.8% of the national bar, mainly due to “the diminution of black lawyers’ socioeconomic status and impact.”²²¹ Sociologist Gunnar Myrdal noted that “[p]rotection by a ‘respectable’ white person usually count[ed] more in the South for a Negro client than would even the best representation on the part of the Negro lawyer.”²²² Consequently, southern black lawyers primarily handled internal affairs within the black community, such as legal matters connected to the church or domestic relations.²²³

B. Prominent Black Lawyers in the South

Despite the lack of opportunities, there emerged a plethora of notable black lawyers throughout the South around the same period as that of African American economic advancement in Durham. In Georgia, James Garfield Lemon “became an attorney for the Southwestern Claim and Collection Company in Savannah” and was one of only two black lawyers in Savannah until 1932.²²⁴ Additionally, Austin T. Walden and A. W. Ricks represented a black dentist from

216. SMITH, *supra* note 6, at 541.

217. *See id.* at 543.

218. *Id.* at 541–42.

219. *Id.* at 545.

220. *See* Tollett, *supra* note 211, at 346.

221. *Id.* at 346–47.

222. GUNNAR MYRDAL, AN AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY 325–26 (20th Ann. ed. 1962).

223. *Id.*

224. SMITH, *supra* note 6, at 198.

Atlanta who was beaten for refusing to give up his seat on a public streetcar in 1927.²²⁵ “Walden and Ricks . . . filed an unprecedented civil action for damages against the streetcar company” and won \$1,500 in damages.²²⁶ In South Carolina, “only a few black lawyers can be identified” as having been admitted to the bar after Reconstruction, but two prominent black lawyers, Jacob Moorner and John Adams, Jr., did emerge “in the early part of 1900.”²²⁷ These lawyers diligently defended a black man who was indicted by an all-white grand jury, accused of murdering a white man, and ultimately convicted of the murder.²²⁸ Like South Carolina, Virginia had an underrepresentation of black lawyers admitted to the bar during the early 1900s.²²⁹ One black lawyer, A. H. Collins, was eventually allowed to appear before the Corporation Court of Alexandria, Virginia, and successfully “defended two youths charged with assault and robbery in 1922.”²³⁰ Finally, in West Virginia during the 1920s, Thomas Gillis Nutter became a noted African American lawyer, practicing both criminal and commercial law and representing several commercial enterprises, including the only black-owned bank in the state, the Mutual Savings and Loan Company of Charleston.²³¹

C. *Black Law Practice in Durham*

Compared to other African American lawyers throughout the Southeast, African American lawyers in Durham enjoyed better political and economic opportunities.²³² One of the first successful black lawyers to practice in Durham in the early twentieth century was Robert McCants Andrews, who became a “successful civil and criminal lawyer practicing in both the state and federal courts.”²³³ Andrews had graduated from the law school of Howard University in 1918 and, thereafter, joined the North Carolina bar in 1921 and

225. *Id.* at 199 (mentioning that Walden and Ricks jointly represented the dentist and his wife for injuries “sustained when a streetcar conductor beat them during a dispute over a transfer”).

226. *Id.*

227. *Id.* at 223.

228. *Id.*

229. *Id.* at 234.

230. *Id.*

231. *Id.* at 239.

232. *Cf. id.* at 202–09 (noting that African American attorneys were admitted to practice law in North Carolina as early as the turn of the twentieth century). Nevertheless, many of these lawyers were criticized by the local black community in crucial civil rights cases concerning desegregation. *Id.* at 208–09.

233. *Id.* at 207.

settled in Durham.²³⁴ Andrews was a pioneer in several respects, such as becoming the “first black lawyer to represent a group of blacks in Chester, North Carolina,” and winning the largest verdict by a black lawyer in North Carolina during the 1920s.²³⁵ The verdict was for \$6,900 in a suit against an insurance company in which Andrews successfully tendered African American professionals as expert witnesses before an all-white jury.²³⁶

Following Robert McCants Andrews, several African American lawyers came to Durham during the 1920s, attracted to its burgeoning financial market. Meredith Hugh Thompson and his frequent collaborator, Caswell Jerry “C. J.” Gates, began practicing in Durham in 1923 and 1927, respectively.²³⁷ Thompson was admitted to the North Carolina Bar in 1923 and became the first civil rights lawyer to practice in Durham.²³⁸

Caswell Jerry Gates earned a law degree from Boston University and taught at public schools in Henderson, North Carolina, before establishing a law practice in Durham in 1927.²³⁹ In 1939, Gates successfully defended a black woman and her children in federal court against whites who attempted to seize a 111-acre farm located in Caswell County, North Carolina.²⁴⁰ Another of Gates’ achievements in civil law was winning a \$65,000 suit, one of the largest brought against a transportation company in Durham County, against Blue Bird Taxi Company in 1938.²⁴¹ Gates represented the plaintiffs, who sustained serious injuries when their car collided with a taxi owned by the taxi company.²⁴² Within the same court term, Gates was also victorious in one suit in which he defended the Shepard Funeral

234. *Id.*

235. *Id.* at 207–08.

236. *Id.* at 208.

237. See *Pioneer Civil Rights Attorney Caswell Jerry Gates Succumbs*, CAROLINA TIMES (Durham), Aug. 8, 1970, at 1A, 2A; *Veteran Lawyer in Durham, Former Bar President Dies*, DURHAM MORNING HERALD, Mar. 19, 1974.

238. See N.C. ASS’N OF BLACK LAWYERS, 1 CHRONICLE OF BLACK LAWYERS IN NORTH CAROLINA: THE PIONEERS: 1865–1950, at 17 (1981) (noting the basic details of Thompson’s life); *African-American Lawyers in Durham*, AND JUST. FOR ALL: DURHAM COUNTY COURTHOUSE ART WALL, http://andjusticeforall.dconc.gov/gallery_images/african-american-lawyers-in-durham/ (last visited July 13, 2014).

239. See *Pioneer Civil Rights Attorney Caswell Jerry Gates Succumbs*, *supra* note 237, at 1A.

240. *Fighting to Save Negroes Farm*, CAROLINA TIMES (Durham), Dec. 23, 1939, at 9.

241. *Blue Bird Taxi Loser in Large Damage Suit*, CAROLINA TIMES (Durham), Mar. 19, 1935, at 1.

242. *Id.*

Home and another in which he defended a grantee in a real estate transaction.²⁴³

After Thompson and Gates set up their law practices, Conrad Odelle Pearson, one of the most fervent civil rights attorneys in the state, began practicing in 1932.²⁴⁴ Pearson was among the younger generation of black professionals in Durham who called themselves the “Radical Young Negroes,” which included colleague Cecil McCoy and the owner and editor of the confrontational *Carolina Times*, Louis Austin.²⁴⁵ After arriving in Durham, Pearson quickly joined the Durham Chapter of the NAACP and “was one of the founders of the Citizens Committee on Negro Affairs.”²⁴⁶ A few years later, Cecil McCoy and Edward Richard Avant began practicing in Durham in 1931 and 1937, respectively.²⁴⁷

All five lawyers—Thompson, Gates, Pearson, McCoy, and Avant—were connected in some way, through either litigation or community associations.²⁴⁸ For example, Thompson and Gates both held managerial positions at St. Joseph AME Church, which Pearson also attended and where his uncle, William G. Pearson, was a prominent member.²⁴⁹ Additionally, Pearson and McCoy collaborated on various civil rights cases beginning in 1933 and, likewise, Gates partnered with Thompson and Avant on such cases beginning in 1934.²⁵⁰

D. Black Bar Associations

Along with distinguished lawyers, the “Black Wall Street” in Durham contained several black bar groups. African American lawyers in North Carolina had already established a black bar association, the Negro State Bar Association of North Carolina, in

243. *Id.*

244. N.C. ASS'N OF BLACK LAWYERS, *supra* note 238, at 19.

245. BROWN, *supra* note 25, at 250, 289.

246. Editorial, *Pearson*, DURHAM MORNING HERALD, June 27, 1984, at 1A.

247. N.C. ASS'N OF BLACK LAWYERS, *supra* note 238, at 22.

248. See *McKissick v. Durham City Bd. of Educ.*, 176 F. Supp. 3, 4 (M.D.N.C. 1959) (stating that Conrad O. Pearson and M. Hugh Thompson represented the plaintiffs in the case); *State v. Harris*, 213 N.C. 758, 759, 197 S.E. 194, 194 (1938) (stating that C. J. Gates and Edward R. Avant represented the defendant in the case); *State v. Bittings*, 206 N.C. 798, 800, 175 S.E. 299, 301 (1934) (stating that M. Hugh Thompson, C. J. Gates, and Cecil A. McCoy represented the defendant in the case).

249. See *Souvenir Programme from St. Joseph A.M.E. Church, Durham, N.C., Diamond Jubilee Celebration 1869–1944*, at 4, 14 (Dec. 10–17, 1944) (on file with the North Carolina Central University Archives) (noting that William G. Pearson was the oldest living member of the church).

250. See, e.g., *Bittings*, 206 N.C. at 800, 175 S.E. at 301.

1920 after they were systematically excluded from the ABA and voluntary bars within the state.²⁵¹ The Durham Negro Bar Association merged with the North Carolina Lawyers Association, which was founded by M. Hugh Thompson, Ed Avant, and others in 1954.²⁵² The Durham Negro Bar Association also helped establish the Old Negro State Bar Association, the successor to the Negro State Bar Association of North Carolina, in 1935.²⁵³ A lawyer from Durham, Franklin Walter Williams, served as the organization's first president.²⁵⁴

Durham also hosted the fourteenth annual meeting of the National Bar Association ("NBA"), the oldest African American bar association in the country, in 1938.²⁵⁵ During the meeting, NBA members were charged with opening "wide the gates of all schools and universities so that from the race will come intellectual achievement [that will] demand recognition of the world."²⁵⁶ Part of this mission was accomplished one year later when the North Carolina General Assembly amended the charter of the North Carolina College for Negroes ("N.C. College") to allow for the development of a law school.²⁵⁷ However, the law school did not become accredited until February 27, 1950, after protesters picketed around the State Capitol.²⁵⁸ The bar groups and law school were crowning achievements made possible by the support of an economically prosperous black middle class community, but what is even more remarkable is that these lawyers also placed themselves on the front line of the battle for civil rights.

251. See SMITH, *supra* note 6, at 580, 541–44 (noting that the American Bar Association's governing process allowed southern governors to vote against any black applicants, thereby barring blacks from membership). Unfortunately, "[n]o black women were admitted to the North Carolina bar until . . . 1933." *Id.* at 209.

252. N.C. ASS'N OF BLACK LAWYERS, *supra* note 238, at 17, 22.

253. SMITH, *supra* note 6, at 580.

254. *Id.*

255. *Id.* at 566.

256. *Id.* (quoting *Nation's Lawyers End Conference at Durham*, NORFOLK J. & GUIDE, Aug. 13, 1938) (internal quotation marks omitted).

257. N.C. ASS'N OF BLACK LAWYERS, *supra* note 238, at 21.

258. *Id.*

V. SOCIAL JUSTICE WORK WHILE CLIMBING THE ECONOMIC
LADDER: DURHAM'S BLACK CORPORATE LAWYERS FIGHT
BATTLES IN AND OUT OF THE COURTROOM

*When people get to the point that they are in control, they don't
like to share that control, even with a kinsman.*

—Conrad Odelle Pearson²⁵⁹

In 1928, historian Carter G. Woodson conducted a survey of approximately 25,000 black professionals, including 503 lawyers.²⁶⁰ The survey revealed that most southern black lawyers were confined to practicing in civil matters that did not require appearances before a court, except in large cities such as Atlanta, Chicago, or Durham.²⁶¹ Lawyers from Durham who were interviewed reported that they had access to the libraries of prominent lawyers and had cordial professional relationships.²⁶²

The advantages held by black lawyers in Durham may have been the result of minimal racial friction in the city.²⁶³ This lack of intense racial friction, combined with the fact that North Carolina was slightly more progressive than other “Deep South” states and in close proximity to Washington, D.C., where NAACP Legal Defense Fund trail-blazer Charles Hamilton Houston operated, would eventually make Durham an ideal platform to launch major attacks against segregation.²⁶⁴

A. *Poverty and Inequality Prevalent During the Era of Black Wall Street*

Before 1930, however, poverty within Durham's black community and the lack of power among its members in general made such progress difficult. Overall, “African Americans [in

259. BROWN, *supra* note 25, at 335 (quoting Conrad O. Pearson) (internal quotation marks omitted).

260. CARTER G. WOODSON, *THE NEGRO PROFESSIONAL MAN AND THE COMMUNITY*, at xiv, 193 (Negro Univ. Press 1969) (1934).

261. *See id.* at 191, 218 (noting that Atlanta and Durham had law libraries open to African American attorneys and that Chicago had more African American lawyers than any southern state).

262. *See id.* at 218 (the same was said of relationships between white and black attorneys in New Bern, North Carolina, and Rocky Mount, North Carolina).

263. *See* JAMES G. LEYBURN, *THE WAY WE LIVED: DURHAM, 1900–1920*, at 64 (1989).

264. *See* Mark V. TUSHNET, *THE NAACP'S LEGAL STRATEGY AGAINST SEGREGATED EDUCATION, 1925–1930*, at 43 (1987).

Durham] . . . were allowed enough latitude to create symbols of progress but insufficient flexibility or power to forge significant change.”²⁶⁵ The overwhelming majority of the black population in Durham lived in abject poverty and worked under appalling conditions.²⁶⁶ Accordingly, in contemplating the problem of segregation on a large scale, African American lawyers in Durham faced the implications of the fundamental inequality defining the local black circumstance.

In 1919, an official census of black schools showed that there were “forty-two illiterate young people among African Americans, aged twelve to twenty one,” within Durham County.²⁶⁷ In 1920, there were rumors that some black Durhamites had gone so far as to torch Whitted School, the city’s only black public high school, in order to force the city to rebuild a better school.²⁶⁸

There were also severe health issues afflicting the black community in Durham. Between 1910 and 1920, the death rate among blacks in the city increased from 26 to 29.9 deaths per thousand, while the death rate among whites decreased from 16.6 to 10 per thousand.²⁶⁹ Many blacks lived in unsanitary conditions created by muddy streets, poor drainage, and uncontrolled sewage, making them susceptible to contagious diseases.²⁷⁰ In addition, Lincoln Hospital, the city’s only black hospital, was extremely understaffed, with only three paid employees.²⁷¹ Given that poor blacks were the most vulnerable to these inequalities, “[i]t was the members of the black elite who were positioned to mount the most direct challenges to Jim Crow . . . and the least likely to do so.”²⁷²

B. *A New Activism*

The career of Conrad Odell Pearson “represented a turn away from the tradition of moderation that had brought his uncle [, William G. Pearson,] acclaim on both sides of the color line” to a new custom

265. BROWN *supra* note 25, at 71.

266. See OSHA GRAY DAVIDSON, *THE BEST OF ENEMIES: RACE AND REDEMPTION IN THE NEW SOUTH* 54 (2007) (noting that tobacco factories in Durham were segregated by race, with blacks doing the much tougher “preparation” work for lower pay).

267. Leslie Brown, *Common Spaces, Separate Lives: Gender and Racial Conflict in the “Capital of the Black Middle Class”* 312 (1997) (unpublished PhD dissertation, Duke University) (on file with the North Carolina Law Review).

268. *See id.* at 426.

269. *Id.* at 264.

270. *Id.* at 266.

271. *Id.* at 282.

272. BROWN, *supra* note 25, at 289.

of overt defiance against Jim Crow segregation.²⁷³ Pearson and the new generation of black lawyers rejected the aversion to mass social change shown by the old black aristocracy and immersed themselves in civil rights litigation, with or without the help of the NAACP.²⁷⁴ Additionally, unlike the NAACP, which focused on desegregating schools, Durham's black lawyers fought for equality in the criminal justice system from the 1930s to the 1960s.²⁷⁵

Pearson, M. Hugh Thompson, and C. J. Gates were among the first black lawyers in the state to take an active role in civil rights litigation and were among the first leaders of the new civil rights era in Durham.²⁷⁶ In the early years of the NAACP, a group of white lawyers represented the organization in legal matters.²⁷⁷ Walter White, a NAACP executive, felt that, until 1929, African American attorneys were not qualified to handle civil rights litigation.²⁷⁸ This

273. *Id.* at 288–89.

274. *See* *Winborne v. Taylor*, 195 F.2d 649, 649 (4th Cir. 1952) (stating that M. Hugh Thompson represented the appellants in a case involving a race discrimination claim); *Bryant v. State Bd. of Assessment*, 293 F. Supp. 1379, 1379 (E.D.N.C. 1968) (stating that Conrad O. Pearson represented the plaintiffs in a case involving race discrimination in county property listings); *Buford v. Morganton City Bd. of Educ.*, 244 F. Supp. 437, 437 (W.D.N.C. 1965) (stating that Conrad O. Pearson represented the plaintiffs in a race discrimination case regarding teacher reemployment); *McKissick v. Durham City Bd. of Educ.*, 176 F. Supp. 3, 4 (M.D.N.C. 1959) (stating that Conrad O. Pearson and M. Hugh Thompson represented the plaintiffs in a case challenging racial segregation in schools); *State v. Avent*, 262 N.C. 425, 427, 137 S.E.2d 161, 162 (1964) (stating that Conrad O. Pearson and M. Hugh Thompson represented the appellants in a case involving a sit in at a lunch counter); *State v. Johnson*, 229 N.C. 701, 704, 51 S.E.2d 186, 189 (1949) (stating that C. J. Gates represented the defendants in a case involving a protest against racial segregation on buses); *State v. Speller*, 229 N.C. 67, 69, 47 S.E.2d 537, 538 (1948) (stating that C. J. Gates represented the defendant in a case challenging the exclusion of African Americans from the jury).

275. *See, e.g., Avent*, 262 N.C. at 427, 137 S.E.2d at 162 (1964) (stating that Conrad O. Pearson and M. Hugh Thompson represented the appellants in a case involving a sit in at a lunch counter); *State v. Graves*, 252 N.C. 779, 780, 114 S.E.2d 770, 771 (1960) (stating that M. Hugh Thompson represented the appellant in a case involving racial discrimination in a criminal trial); *State v. Clyburn*, 247 N.C. 455, 456, 101 S.E.2d 295, 296 (1958) (stating that M. Hugh Thompson and Conrad O. Pearson represented the appellants in a racial discrimination case).

276. *See* cases cited *supra* note 275.

277. GILBERT JONAS, *FREEDOM'S SWORD: THE NAACP AND THE STRUGGLE AGAINST RACISM IN AMERICA, 1909–1969*, at 28 (2005).

278. KENNETH ROBERT JANKEN, *WHITE: THE BIOGRAPHY OF WALTER WHITE, MR. NAACP 74* (2003); SMITH *supra* note 6, at 92 (labeling Walter White an executive director of the NAACP).

view changed when Charles Hamilton Houston inaugurated a rigorous law program at Howard University.²⁷⁹

1. *Hocutt v. Wilson*

The first major civil rights case that Durham's black lawyers introduced was *Hocutt v. Wilson*.²⁸⁰ In February 1933, Pearson and McCoy wrote to NAACP General Secretary Walter White regarding a case to desegregate the University of North Carolina school system.²⁸¹ Thomas Hocutt, an African American student at N.C. College, sought admission to the University of North Carolina Pharmacy School.²⁸² White ratified the case and offered to send a copy of the Margold Report²⁸³ on discrimination in public schools to support the attorneys.²⁸⁴ The NAACP even sent William Henry Hastie, an Amherst valedictorian and Harvard Law School graduate,²⁸⁵ to assist Pearson and McCoy.²⁸⁶ However, the black community in Durham had a mixed reaction to the *Hocutt* suit.²⁸⁷

279. See GENNA RAE MCNEIL, *GROUNDWORK: CHARLES HAMILTON HOUSTON AND THE STRUGGLE FOR CIVIL RIGHTS* 75 (1983) (discussing Howard Law School's accreditation with the Association of American Law Schools).

280. See *Hocutt v. Wilson*, N.C. Super. Ct. (1933) (unreported); *Ranks of Negro's Supporters Split*, DURHAM MORNING HERALD, Mar. 24, 1933, at 1 (describing the case to the public at the time it was occurring); see also Jerry Gershenhorn, *Hocutt v. Wilson and Race Relations in Durham, North Carolina, During the 1930s*, 78 N.C. HIST. REV. 275, 275 (2001) (“[*Hocutt v. Wilson*] laid the groundwork for later civil rights battles and helped shape the direction of subsequent desegregation cases.”).

281. Gershenhorn, *supra* note 280, at 286 (“Pearson and McCoy appealed to Walter White for support.”).

282. *Ranks of Negro's Supporters Split*, DURHAM MORNING HERALD, Mar. 24, 1933, at 1.

283. Nathan R. Margold, *Preliminary Report to the Joint Committee Supervising the Expenditure of the 1930 Appropriation by the American Fund for Public Service to the N.A.A.C.P.* (1931); see also Gershenhorn, *supra* note 338, at 287 (“Harvard attorney Nathan Margold prepared a report for the NAACP in 1930. He recommended that ‘we boldly challenge the constitutional validity of segregation’ instead of trying to force the states to provide equal funding.”).

284. See Letter from Walter F. White, Sec’y of the NAACP, to Conrad O. Pearson & Cecil A. McCoy (Feb. 8, 1933), (on file with the Manuscript Division, Library of Congress, NAACP Legal File: Cases Supported University of North Carolina Feb. to Mar. 1933).

285. KENNETH W. MACK, *REPRESENTING THE RACE: THE CREATION OF THE CIVIL RIGHTS LAWYER* 86–87 (2012).

286. See Letter from William H. Hastie, Lawyer, to Walter White, Sec’y of the NAACP (Oct. 20, 1933) (on file with the Manuscript Division, Library of Congress, NAACP Legal File: Cases Supported, Kelly Bullock) (discussing Hastie’s meeting with Gates regarding the case).

287. See Interview by Walter B. Weare with Conrad Pearson 16 (Apr. 18, 1979), available at <http://docsouth.unc.edu/sohp/H-0218/H-0218.html>.

The Durham Morning Herald echoed the opinion of the conservative black leadership when it warned, “To our way of thinking, [Pearson and McCoy] will find in the end that they have won not a victory but a costly defeat.”²⁸⁸ Additionally, Thompson and Gates recommended dropping the case and finding an alternative solution.²⁸⁹ The alternative solution was a bill sponsored by Durham State Representative S. C. Brawley that would obligate the state to fund graduate education for blacks at out-of-state institutions.²⁹⁰ With the support of the black working class and the NAACP, Pearson, McCoy, and Hastie pursued the litigation, to which *The Durham Morning Herald* responded, “[the] militant Negroes voted to demand a showdown on the case.”²⁹¹

The greatest opposition faced by Pearson, McCoy, and Hastie in the *Hocutt* case came from James E. Shepard, president of the N.C. College.²⁹² Shepard criticized integration as a remedy to educational deficiency and advocated for segregated in-state institutions for black graduates.²⁹³ Shepard wanted the state to fund graduate programs at N.C. College, so he refused to release Hocutt’s transcript.²⁹⁴ When Pearson and McCoy failed to present an official transcript, the case was dismissed due to lack of standing.²⁹⁵ McCoy left North Carolina at the conclusion of *Hocutt* and settled in the northern city of Chicago,²⁹⁶ to which southern blacks were migrating in droves as a kind of Promised Land of opportunity.

2. Thompson and Gates Take a Racially Biased Criminal Case

Despite Pearson, McCoy, and Hastie’s loss in *Hocutt*, the case inspired local civil rights action,²⁹⁷ and soon, Thompson and Gates

288. BROWN, *supra* note 25, at 310 (quoting *Playing with Fire*, DURHAM MORNING HERALD, Feb. 14, 1933, at 1).

289. See Interview by Walter B. Weare with Conrad Pearson, *supra* note 287, at 14.

290. *Id.*

291. BROWN, *supra* note 25, at 312 (quoting *Hocutt Hearing Continued Today*, DURHAM MORNING HERALD, Mar. 25, 1933, at 1).

292. Gershenhorn, *supra* note 280, at 296 (“Shepard assured Newbold that he would actively endeavor to put a stop to Hocutt’s attempt to enroll at UNC.”).

293. See Interview by Walter B. Weare with Conrad Pearson, *supra* note 287, at 4, 9 (stating that Shepard worked to hamper the work on the *Hocutt* case to support his efforts to get the state to create a school of pharmacy and a school of law).

294. See *id.* at 9.

295. See *id.* (stating that the court threw out the case based on this technicality).

296. See *id.* at 41 (stating that McCoy moved to Chicago during the Depression).

297. Gershenhorn, *supra* note 280, at 275 (“[*Hocutt v. Wilson*] laid the groundwork for later civil rights battles and helped shape the direction of subsequent desegregation cases.”).

were involved in a racially biased criminal trial.²⁹⁸ In August 1933, Thompson and Gates took on the defense of Beaufort Kelly, a sixteen-year-old black male from Vance County, North Carolina, who was accused of kidnapping and assaulting²⁹⁹ Mary Lena Vandyke, a sixteen-year-old white girl.³⁰⁰ There were no black lawyers in Vance County at the time, and the Kelly family retained Thompson and Gates after their two white lawyers withdrew from the case due to fear of white reprisal.³⁰¹

Upon taking the case, Gates contacted William Hastie and Raymond Pace Alexander, a prominent lawyer in Philadelphia, for assistance and also wrote to Walter White for financial support.³⁰² Answering for the NAACP, Assistant Secretary Roy Wilkins coldly responded that he did not recommend that Hastie or Alexander serve as co-counsel in the case.³⁰³ This was a predictable response, given the NAACP's emphasis on school integration at the time.

On the night of October 5, 1933, a white mob fired shots at Thompson and Gates and pursued their car as they were leaving the courthouse following a night session.³⁰⁴ The lawyers escaped safely and filed a motion for change of venue and motion for mistrial, arguing that the white jury would be influenced by the threat of violence.³⁰⁵ The lawyers presented evidence that actual shots were fired and called several witnesses who testified that they saw pistol fire and men attempting to grab Thompson and Gates.³⁰⁶ When asked if the defendant could receive a fair and impartial trial in light of the

298. See Letter from Caswell J. Gates, Lawyer, to Walter White, Sec'y, NAACP (Sept. 8, 1933) (on file with the Manuscript Division, Library of Congress, NAACP Legal File: Cases Supported, Kelly Bullock).

299. See Letter from Troy Kelly to Walter White, Sec'y, NAACP (Aug. 17, 1934) (on file with the Manuscript Division, Library of Congress, NAACP Legal File: Cases Supported, Kelly Bullock).

300. See Letter from Caswell J. Gates to Walter White, *supra* note 298.

301. See Letter from Troy Kelly to Walter White, *supra* note 299.

302. See Letter from Caswell J. Gates to Walter White, *supra* note 298 (asking Walter White for the "assistance" of White and the NAACP).

303. See Letter from Roy Wilkins, Assistant Sec'y, NAACP, to Caswell J. Gates, Lawyer (Sept. 12, 1933) (on file with the Manuscript Division, Library of Congress, NAACP Legal File: Cases Supported, Kelly Bullock).

304. See Letter from Caswell J. Gates, Lawyer, to Roy Wilkins, Assistant Sec'y, NAACP (Oct. 17, 1934), (on file with the Manuscript Division, Library of Congress, NAACP Legal File: Cases Supported, Kelly Bullock).

305. See *id.*

306. *Charge of Attack on Negro Lawyers Shows But Little*, DAILY DISPATCH (Henderson, N.C.), Oct. 6, 1933, at 1.

shooting, an all-white panel of witnesses answered in the affirmative.³⁰⁷

Thompson and Gates appealed to the North Carolina Supreme Court in the case *State v. Kelly*.³⁰⁸ The lawyers requested financial support from the NAACP for the appeal, and the NAACP sent them a check for fifty dollars.³⁰⁹ Additionally, Thompson and Gates received the assistance of William Hastie.³¹⁰ The North Carolina Supreme Court held that the trial judge improperly believed he had no discretion in sentencing the defendants under the statute and remanded the case for resentencing.³¹¹

C. *Resistance to Change Among the Older Generation of Black Leaders*

During the fall of 1933, the NAACP also focused on Durham in its campaign to equalize the salaries of black and white teachers.³¹² Assistant NAACP Secretary Roy Wilkins attempted to contact C. C. Spaulding for advice on how to implement the campaign in Durham, but Spaulding did not reply.³¹³ Spaulding, Shepard, and William Pearson believed that “their leadership, the welfare of their community, and the survival of their institutions depended on not vexing whites.”³¹⁴ They did not oppose equal teacher pay or an end to Jim Crow; rather, they preferred pragmatic approaches to these issues that would not incur the wrath of the dominating white community.³¹⁵ The old guard of black leadership was afraid that aggressive strategies of equalization would subject Durham blacks to the same repercussions inflicted upon progressive blacks in Wilmington, North Carolina.³¹⁶ Accordingly, none of these men paid dues to the local

307. *Id.*

308. 206 N.C. 660, 663, 175 S.E. 294, 295 (1934).

309. See Letter from Roy Wilkins, Assistant Sec’y of the NAACP, to Caswell J. Gates, Lawyer, (Oct. 4, 1933), (on file with the Manuscript Division, Library of Congress, NAACP Legal File: Cases Supported, Kelly Bullock).

310. See Letter from William Hastie to Walter White, *supra* note 286.

311. *Kelly*, 206 N.C. at 664, 175 S.E. at 296.

312. BROWN, *supra* note 25, at 312.

313. *Id.* at 313.

314. *Id.*

315. See *id.* at 321.

316. See *id.* at 319. In the Wilmington Riot of 1898, “a white mob [of Democrats] stormed . . . [the] *Daily Record* [newspaper building], destroyed the press, gutted the offices, burned the building, and then devastated business, housing, and life in the major black neighborhood.” *Id.* at 67.

chapter of the NAACP, and they often publicly opposed the organization.³¹⁷

The NAACP pushed forward with the salary-equalization campaign, even though Spaulding, Shepard, and the senior Pearson prevented it from holding either a planning meeting or rally in Durham.³¹⁸ The NAACP sent Daisy Lampkin, a NAACP organizer, to each major city in North Carolina to rally teachers and stimulate teacher interest for equal salaries.³¹⁹ When Lampkin arrived in Durham, she was appalled to discover that “someone [had] started a campaign to raise money from the community to cover the salary differential.”³²⁰ Additionally, to intimidate campaign supporters, Shepard held a closed-door meeting with state and local black leaders at the North Carolina Mutual building, from which the “radical young Negroes” were locked out.³²¹ At the meeting, Shepard proposed that the leaders organize an alternative to the NAACP that would embrace certain NAACP ideologies, such as black inclusion on juries, but would also appeal to local whites.³²²

Durham's blacks had divergent approaches to the salary-equalization campaign and to black resistance in general.³²³ “Teachers, virtually all women, supported the NAACP”; the old guard, all “male . . . publicly contested the NAACP; and the younger generation . . . also male, supported the NAACP but mostly declined to defy the leadership of the old guard.”³²⁴ While the younger generation was more radical, its members were also financially dependent on the black elite.³²⁵ *The Carolina Times* depended on advertising from North Carolina Mutual and Mechanics and Farmers Bank, and similarly, M. Hugh Thompson, Cecil McCoy, and Conrad Pearson “relied on [North Carolina] Mutual and its subsidiaries for a steady flow of work.”³²⁶ Nonetheless, Pearson and the other black lawyers continued to litigate civil rights matters and publicly support campaigns such as the unionization of Durham tobacco workers.³²⁷

317. *Id.* at 313.

318. *Id.* at 316.

319. *Id.* at 317.

320. *Id.*

321. *Id.* at 318.

322. *See id.*

323. *Id.* at 313.

324. *Id.*

325. *Id.* at 319.

326. *Id.*

327. *See id.* at 319–20; Interview by Walter B. Weare with Conrad Pearson, *supra* note 287, at 28.

They made their mark in serving the business and commercial interests of Durham's black firms as well.³²⁸

D. Legal Milestones: Even with Socio-Political Priorities Taking Shape, a Corporate Bar Emerges

Following the *Kelly* trial, Gates represented Alfred McKinney, an African American who was injured when their car collided with a taxi owned by Durham's Blue Bird Taxi Company, a company owned and operated by whites.³²⁹ Gates successfully secured a \$65,000 award for damages for his African American client as a result of the injuries sustained, which was one of the largest settlements of its time.³³⁰ Thompson and Gates, together, also represented Mechanics and Farmers Bank, as Hayti was growing into a seventy acre business and residential district of 600 people and more than 100 black businesses.³³¹

Other forms of black lawyering complemented attorneys' corporate books of business and no doubt sharpened their legal acumen. More importantly, however, the black lawyers' continued success in the courtroom sketched for the North Carolinians they served—white and black—a vision for a changing tomorrow. Examples of creative advocacy abounded among the black lawyers of Durham.

In February 1938, C. J. Gates and Ed Avant elected to serve as defense counsel for Ellen Harris, a black woman who refused to give up her seat to a white man on a Durham public bus.³³² Harris was arrested and fined ten dollars for her actions.³³³ Gates and Avant brought the case before the Durham Superior Court and lost.³³⁴ The lawyers then appealed to the Supreme Court of North Carolina in *State v. Harris*,³³⁵ arguing that their motion for nonsuit was improperly denied.³³⁶ The court invoked the "separate but equal doctrine" and

328. See BROWN, *supra* note 25, at 320.

329. See *Blue Bird Taxi Loser in Large Damage Suit*, *supra* note 241, at 1.

330. *Id.*

331. Nathaniel B. White, Jr., *Editorial Questioning Hayti Development Was Incendiary*, DURHAM HERALD SUN, Apr. 15, 1989, A4.

332. See *High Court Says Miss Harris Did Not Violate Jim Crow Law on Bus*, CAROLINA TIMES (Durham), June 18, 1938, at 1.

333. *Id.*

334. *Id.*

335. 213 N.C. 758, 197 S.E. 594 (1938).

336. *Id.* at 759–60, 197 S.E. at 595.

held that Harris had not intended “to willfully violate the provisions of [the N.C. Admin. Code § 3536 (1935)].”³³⁷

One month after her criminal trial, Ellen Harris retained Gates, who had recently won the large verdict against the Blue Bird Taxi Company, and sued the Durham Public Service Company for \$15,000.³³⁸ Once again, C. J. Gates and Edward Richard Avant were successful in their endeavor, proving that black lawyers, particularly in Durham, could defeat their counterparts, the Caucasian lawyers.³³⁹ Gates settled the case for an unknown amount.³⁴⁰ During 1938, Gates also served as private prosecutor “in the case against Ossie McCullen, a [twenty-nine-year-old] white man, charged with the rape of Miss Agnes Williams, a [twenty-two-year-old] Negro woman of Mt. Olive.”³⁴¹ McCullen allegedly attacked Williams at night while she was working in the home of I. F. Wellington as a cook.³⁴²

Furthermore, Gates collaborated with M. Hugh Thompson, Conrad Pearson and Ed Avant to prosecute Alcoholic Beverage Control (“ABC”) Officer T. D. Wilkie for the murder of an innocent black man, James McNeil.³⁴³ Wilkie and two other officers brutally killed McNeil on May 27, 1938, after entering his home to allegedly search for whiskey.³⁴⁴ The prosecutors presented several witnesses, including four physicians, who testified that “they . . . found three wounds in McNeil’s abdomen . . . [and] multiple lacerations of the scalp.”³⁴⁵

Dabbling in more commercial work, C. J. Gates in 1939 was, yet again, successful in defending an African American female against whites, this time defeating a group who tried to seize the black

337. *Id.* at 762, 197 S.E. at 596.

338. *See Miss Ellen Harris to Ask Court for Damages for Arrest on Local Bus*, CAROLINA TIMES (Durham), July 30, 1938, at 1.

339. *Attorney*, CAROLINA TIMES (Durham), Mar. 19, 1938, at 1 (“C.J. Gates, prominent of this city who again was successful in the winning of several legal battles of important moment during the civil term of the Durham County Superior Court this week.”).

340. *Blue Bird Taxi Loser in Large Damage Suit*, *supra* note 241, at 1.

341. *C.J. Gates Is Employed in Attack Case*, CAROLINA TIMES (Durham), Apr. 30, 1938, at 1.

342. *Id.*

343. *Charge of Murder to Be Brought Against Officer T. D. Wilkie*, CAROLINA TIMES (Durham), June 11, 1938, at 1.

344. *Killer Cop Bound over Manslaughter Charge; Bond Is Set At \$1,000*, UNKNOWN NEWSPAPER, June 11, 1938 at 1 (on file with North Carolina Central University Archives Department).

345. *Id.*

woman's 111-acre farm in Caswell County, North Carolina.³⁴⁶ Gates was also successful in the representation of the Shepard Funeral Home in an alleged wrongful-burial suit, where a jury concluded that the Shepard Funeral Home did not breach its contract with the plaintiff, thus barring recovery.³⁴⁷

The next year, in 1939, Gates represented LeRoy Wilson in an assault case for \$5,000 in damages against William F. Adcock.³⁴⁸ Wilson, a black man, got in a fight with Adcock, a white man, after Adcock refused to take Wilson's order at a café.³⁴⁹ Adcock ferociously beat Wilson in the head until he completely knocked out Wilson's left eye.³⁵⁰ The case was highly criticized, in part inasmuch as the case was continued twenty-five times, causing the verdict to be delayed for six months.³⁵¹

Another case involving overt racism occurred in May 1939 when a white police officer verbally abused and assaulted a black teenager for sitting on the fender of the officer's car.³⁵² M. Hugh Thompson served as prosecution in the case.³⁵³ Three years later, in 1942, Pearson and Gates assisted the state in the prosecution of an ABC officer charged with beating an innocent black man using his fists and a blackjack.³⁵⁴ The judge for the Durham County Recorders Court dismissed the case based on lack of sufficient evidence.³⁵⁵

Between the 1930s and 1960s, Thompson, Gates and Pearson argued in a variety of civil rights cases, including the desegregation of North Carolina public schools, hospitals, recreational facilities, and the North Carolina Dental Association.³⁵⁶ They were also influential

346. *Fighting to Save Negroes Farm*, *supra* note 240, at 9.

347. *Blue Bird Taxi Loser in Large Damage Suit*, *supra* note 241, at 1.

348. *Hearing Set Again for July 18; Sues for \$5,000*, CAROLINA TIMES (Durham), July 15, 1939, at 1.

349. *Id.*

350. *Id.*

351. *Id.*

352. *Slaps Lad for Sitting on Fender*, CAROLINA TIMES (Durham), May 6, 1939, at 1.

353. *Id.*

354. *ABC Officer Freed on Charge of Brutal Assault on Innocent Negro Here*, CAROLINA TIMES (Durham), June 20, 1942, at 1.

355. *Id.*

356. See *Simkins v. Moses H. Cone Mem'l Hosp.*, 323 F.2d 959, 960 (4th Cir. 1963) (stating that Conrad O. Pearson represented the appellants); *Winborne v. Taylor*, 195 F.2d 649, 649 (4th Cir. 1952) (stating that M. Hugh Thompson represented the appellants); *Buford v. Morganton City Bd. of Educ.*, 244 F. Supp. 437, 437 (W.D.N.C. 1965) (stating that Conrad O. Pearson represented the plaintiffs); *Hawkins v. N.C. Dental Soc'y*, 230 F. Supp. 805, 806 (W.D.N.C. 1964), *rev'd*, 355 F.2d 718 (4th Cir. 1966) (stating that Conrad O. Pearson represented the plaintiff); *McKissick v. Durham City Bd. of Educ.*, 176 F. Supp. 3, 4 (M.D.N.C. 1959) (stating that Conrad O. Pearson and M. Hugh Thompson

in the composition of the Durham Manifesto in 1942, which demanded “voting rights, equalization of teacher salaries, desegregation of unions” and other rights that were denied to blacks.³⁵⁷ Thompson, Gates, and Pearson practiced law in some capacity until their deaths in 1974,³⁵⁸ 1970,³⁵⁹ and 1984,³⁶⁰ respectively.

E. The Future: An Era that Still Inspires

Unfortunately, the upward economic trajectory of Durham's particularized black community did not last forever. Between 1947 and 1959, industrial development had slowed, and Durham was in a state of economic stagnation.³⁶¹ The economy in Durham could only be partially stimulated by an allocation of state and federal funds.³⁶² Later, between 1962 and 1972, a campaign of urban renewal demolished the Hayti area,³⁶³ leaving St. Joseph AME Church as the only remnant of old Hayti.³⁶⁴ Business and housing areas were destroyed and replaced by “new streets, public utilities and a fifteen-acre shopping mall.”³⁶⁵ Today, the Mutual Building, located on West

represented the plaintiffs); *State v. Johnson*, 229 N.C. 701, 704, 51 S.E.2d 186, 189 (1949) (stating that C. J. Gates represented the defendant); *State v. Speller*, 229 N.C. 67, 69, 47 S.E.2d 537, 538 (1948) (stating that C. J. Gates represented the defendant).

357. BROWN, *supra* note 25, at 328.

358. *Attorney M. Hugh Thompson Succumbs*, CAROLINA TIMES (Durham), Mar. 23, 1974, at 1.

359. VANN & JONES, *supra* note 52, at 82.

360. *Id.* at 81.

361. WILLIAM FITZHUGH BRUNDAGE, *THE SOUTHERN PAST: A CLASH OF RACE AND MEMORY* 236 (2005) (“Not until local white elites awakened to Durham's apparent decline following World War II did Hayti become the focus of white concern. City leaders concluded that Durham's fortune was waning: industrial employment had fallen, wages were sagging, and the downtown was suffering from haphazard streets and deteriorating buildings. . . . By the mid-1950s Durham clearly had fallen from its perch as one of North Carolina's leading cities.”).

362. *Id.* at 236–47 (discussing the use of federal funds for urban renewal in Hayti in the 1960s, including a freeway and railroad right-of-way, and Hayti's residents' ultimate disappointment and anger about the urban renewal project).

363. *Id.* at 245–46 (“Even when families remained in condemned buildings, demolition crews used bulldozers to knock down structures in Hayti at a rate of five a day. Other buildings were set afire and used to train city firemen, giving the neighborhood the appearance of a war zone.”).

364. *See About Us*, ST. JOSEPH'S HIST. FOUND., <http://hayti.org/about-us/about-us-full/> (last visited Aug. 1, 2014) (“In the 1970's when the St. Joseph's AME Church congregation moved to a new church home, the original structure became the catalyst for the formation of the St. Joseph's Historic Foundation (SJHF). The Foundation was incorporated in 1975 with the intention of preserving the embellished old sanctuary and adapting it for cultural and civic events.”).

365. Mark Andrews, *Hayti Former Hub of Black Community*, DURHAM MORNING HERALD, Apr. 21, 1989, at A1.

Chapel Hill Street, still stands as a testament to the grandeur and prominence of the “Black Wall Street” years in Durham, though it is no longer owned by its most prominent tenant, North Carolina Mutual.³⁶⁶

Nevertheless, the black lawyers of that era paved the way for future prominent lawyers who practiced in Durham, such as Floyd B. McKissick and Charles Clinton Spaulding, Jr. McKissick became the first black man to attend UNC-Chapel Hill’s law school in 1952 and later served as the national director of the Congress of Racial Equality in 1966.³⁶⁷ Spaulding, Jr., entered into private practice with the law firm Pearson, Malone, Johnson, and DeJarmon, where he practiced until 1981, and was later appointed to the North Carolina Criminal Code Commission for a three-year term.³⁶⁸ Such gains would not have been possible without trailblazing black lawyers who were faithfully committed to racial justice, sometimes at risk to their own lives, regardless of the financial return or popularity of the case.

CONCLUSION

The early twentieth century in Durham marked a time of impressive economic growth within Durham’s African American community. The establishment of businesses and other institutions engendered an economic independence that in turn provided autonomy from whites.

At the same time, an ethic of interdependence fostered a sense of possibilities and destiny far better than the days of chattel slavery just decades earlier. A self-assured and authoritative black commercial class emerged and increasingly asserted a political, economic, and social program of uplift. A resulting elite served as a pivotal source of economic opportunity for Durham’s black lawyers. Meanwhile, certain black businesses boomed, providing a handful of blacks the opportunity to engage in the full-time practice of law where black lawyers elsewhere had struggled. As corporate lawyers with some security, these lawyers took on causes greater than themselves,

366. *NC Mutual Building (411 West Chapel Hill Street)*, OPEN DURHAM, <http://www.opendurham.org/buildings/nc-mutual-building-411-west-chapel-hill-street> (last visited May 11, 2014); *African-American Heritage Guide Durham: Where Great Things Happen*, DURHAM CONVENTION & VISITORS BUREAU 2–3, available at http://www.durham-nc.com/resources/pdf/tourmap_aah.pdf.

367. N. C. STATE UNIV., *PATHS TOWARD FREEDOM: A BIBLIOGRAPHICAL HISTORY OF BLACKS AND INDIANS IN NORTH CAROLINA BY BLACKS AND INDIANS* 173 (1976).

368. Obituary of Charles Clinton Spaulding, Jr. (on file with North Carolina Central University Archives Department).

uniquely equipped to actualize the aims of social justice that Charles Hamilton Houston had envisioned in his seminal work *The Need for Negro Lawyers*.³⁶⁹

With a unique understanding of the need to amass religious, commercial, political, and legal clout in order to rise above the badges of slavery and into an era of independence and freedom, the black business class of Durham created the conditions for a “Black Wall Street” to be born, to thrive, and to escape the wrath of the other similar districts around the country that disappeared by the mid-twentieth century. Visionary patrician citizens like Aaron M. Moore—who had earned a law degree before pursuing his medical career—refused to cede the legal ground that lay untapped among most black southerners, helping to lay the groundwork for the establishment in 1946 of a law school devoted to producing and empowering black lawyers.

The old black corporate bar in Durham thereby served as a catalyst for black economic independence and the destruction of *de jure* racial desegregation. An examination of this sophisticated black community reveals that this small, black, corporate-oriented legal establishment demonstrated that financial success could foster racial progress and uplift in ways both direct and indirect.

The obvious triumph of black enterprise that originated on the “Black Wall Street” of Durham, North Carolina, stands today as a powerful example of the symbiotic natures of economic success and social equality, particularly in a nation of laws, in which lawyers, to quote Houston, are singularly called upon to operate “the machinery of government.”³⁷⁰

369. See Houston, *supra* note 6, at 49–52.

370. *Id.* at 51.