

**The University of North Carolina at Chapel Hill
University of North Carolina School of Law
UNC Center for Civil Rights**

Report in Response to

**Questions from the
Education Planning, Policies and Programs Committee
of the UNC Board of Governors**

Questions from Individual Members of the Board of Governors

May 1, 2017

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**The University of North Carolina at Chapel Hill
UNC Center for Civil Rights**

Responses to

**Questions from the
Educational Planning, Policies & Programs Committee
of the UNC Board of Governors
May 1, 2017**

EXECUTIVE SUMMARY

After its meeting on March 3, 2017, the Committee on Education Policies, Planning and Programs (the “Education Committee”) of the University of North Carolina Board of Governors (the “BOG”) posed a series of questions to the University of North Carolina at Chapel Hill (“UNC-Chapel Hill”) regarding the Center for Civil Rights (the “Center”) at the UNC School of Law (the “Law School”). The Education Committee asked that these questions be answered so that the Committee could be in a position to review issues regarding the Center at its meeting in July. In response to that request, UNC-Chapel Hill Chancellor Carol Folt appointed a committee (the “UNC-CH Committee”) to gather information responsive to the questions. The UNC-CH Committee consists of Provost James W. Dean, Jr.; Vice Chancellor and General Counsel Mark W. Merritt; Dean Martin H. Brinkley of the School of Law; Professor Theodore M. Shaw of the School of Law and Director of the Center; and former North Carolina Supreme Court Associate Justice Robert H. Edmunds.

The UNC-Chapel Hill Committee, with the assistance of the Law School and the Center, has compiled information responsive to all of the questions raised by the Education Committee, with the exception of the questions that ask for possible options for organizational changes and alternatives to the current structure of the Center. The UNC-Chapel Hill Committee is continuing to review and assimilate the information it has compiled in response to the Education Committee’s questions thus far in order to assess possible alternatives. The UNC-Chapel Hill Committee has also received additional questions from individual members of the BOG; those questions are answered in the report that follows.

The UNC-Chapel Hill Committee believes it important to share the information and answers it has compiled thus far prior to the May 11, 2017 public forum scheduled to discuss the Center, so that an informed discussion can take place. The UNC-Chapel Hill Committee believes that early dissemination of this information will assist the Education Committee and the BOG in reviewing the Center.

The attached report addresses the Education Committee's questions in the order in which they were posed. After repeating the question, each response opens with a brief summary answer, followed by a section titled "Further Discussion" in which fuller relevant detail is supplied. Responses to questions posed by individual members of the BOG are set forth in separate ancillary documents which have been appended to the principal report.

The following are key highlights of the report:

1. As extensive student testimony shows, law students have played an indispensable role in the work of the Center since its founding in 2001. Students overwhelmingly state that their work experience with the Center was critical to their development as lawyers. More than 600 law students have been involved in the Center's work over time. Students have planned conferences; edited academic papers for publication; planned and carried out empirical research on social, demographic and legal conditions in North Carolina; and accompanied Center attorneys to hundreds of community meetings, taking part in consultation and negotiation activities with local governmental leaders in education, health care, housing and related fields. Students have also drafted court papers, prepared witnesses for court hearings and accompanied Center attorneys to court.

2. The work of the Center, as conceived by its founder, the great North Carolina civil rights lawyer Julius Chambers, consists of three primary areas of activity: legal and empirical research; public outreach and community service; and legal advocacy. Each of these activities is one prong of an integrated whole. Each supports the other. For example, the Center's advocacy work – to the extent that leads to the filing of formal court papers on behalf of Center clients – takes place only as a last resort, after the Center's staff attorneys and law students have worked to empower North Carolina citizens to correct injustices on their own, as part of the Center's public outreach and community service work. The Center's legal and empirical research activities provide analytical and factual grounding for its public outreach/ community service and legal advocacy activities.

3. The Center's placement in the heart of the University of North Carolina at Chapel Hill – one of the nation's leading public research universities – has always been and remains critical to implementing the vision of its founder, Julius Chambers. The Center draws on and contributes to the scholarly resources and public service missions of many other UNC-Chapel Hill schools, departments, centers and programs. The Center's tripartite agenda would be far less effective if carried on outside UNC-Chapel Hill.

4. With respect to its legal advocacy work, the Center has counterparts in centers, projects, law clinics and other initiatives based at many private and public law schools around the country. These include public university peers of the Law School and of UNC-Chapel Hill, such as the University of Texas, the University of Wisconsin, and the University of California at Berkeley, among others. Different public university law

schools house litigation activity in centers, projects or clinics, as their particular circumstances require.

The UNC-Chapel Hill Committee would like to thank the faculty of the Law School and the staff of the Center for their meticulous work in compiling and presenting the information contained in this report. We look forward to continued dialogue with the BOG on issues related to the Center.

INTRODUCTION

The Committee on Education Policies, Planning and Programs (the “Committee”) of the Board of Governors of the University of North Carolina (the “BOG”) has asked the University of North Carolina at Chapel Hill (the “University”) to respond to a series of questions about the UNC Center for Civil Rights (the “Center”), which is a program within the University of North Carolina School of Law (the “Law School”).

The present review was initiated at the request of a member of the BOG, Steven Long, who posed questions to the Committee about the propriety of litigation activities brought by the Center against North Carolina state or local governmental entities. At a meeting of the Committee held in Chapel Hill on March 2, 2017, Mr. Long presented a formal proposal to ban all litigation activities by all University of North Carolina centers or institutes against “any individual, entity or government.” Mr. Long’s proposal would also eliminate all these centers’ and institutes’ ability to “employ or engage directly or indirectly any individual to serve as legal counsel or representative.” (See **Appendix A.**) Mr. Long made a presentation and submitted a memorandum to the Committee dated February 14, 2017 in support of his proposal, which Committee member Joe Knott put forward as a formal motion.

After consideration, the Committee decided to postpone action on the proposal in order to obtain additional information. Toward that end, the Committee has submitted to the University a series of nine questions. (See **Appendix B.**) Mr. Long has submitted ten additional questions to which he asks the University to respond. (See **Appendix C.**) Board of Governors member William Webb has also submitted three additional questions. (See **Appendix D.**)

The University tenders this report to the Committee in response to those three series of questions. In Part I, we answer the questions posed by the Committee. In Part II, we respond to the questions raised by Messrs. Long and Webb. To facilitate the Committee’s review, the University’s answers to each of the Committee questions begin with a summary. A comprehensive discussion follows. Supporting materials are set forth in Appendices.¹

¹ Much of the information provided in this Report was gathered in response to the Committee’s questions. We draw to your attention, however, that, where appropriate, we have relied on information tendered in response to the BOG’s 2014-15 investigation of all centers and institutes of the 16 constituent UNC institutions. In that year, the BOG required each of the 16 campuses to forward a summary descriptive report on every center or institute under its supervision. Employing a three-part analysis, the BOG Committee on Education Planning, Policies, and Programs then refined its initial review of more than 240 centers identified by the campuses, focusing special attention on 16 centers. The Committee requested significant additional information about each of the 16. After hearing oral presentations, the Committee recommended to the full BOG further review at the campus level for eight centers (including the Center for Civil Rights) and the elimination of three centers.

The Center was previously reviewed by the Committee in 2014-15. As part of that review, the Center initially submitted a brief description of its nature and activities. (See **Appendix E.**) After the Committee designated the Center as one among 16 centers in the UNC system warranting more intensive review, the Center's director made an oral presentation to the Committee at its regular meeting on December 11, 2014. On January 13, 2015, the Center, acting at the request of UNC counsel, submitted written answers to questions about its litigation activities. (See **Appendix F.**)

The Committee then asked the Chancellor of the University to carry out her own campus-level review of the Center pursuant to the University's Policies and Procedures Governing Centers and Institutes, as revised on December 4, 2015. (See **Appendix G.**) In compliance with that request, the University conducted a review, which included the solicitation of an extensive report from the Center. That report, submitted on December 30, 2015, covered the Center's design; its research, teaching and service missions; its activities; its relation to other University schools and departments; its governance and staffing; and its finances. (See **Appendix H.**) After considering the Center's report, on February 8, 2016 the University's Committee on Centers and Institutes recommended to the Provost that the Center be retained:

This center has come to be acknowledged as not only among the primary civil rights centers in the South, but also a national leader in civil rights research, engagement, and advocacy. It exemplifies the type of focused interdisciplinary work that one would expect of a center or institute at a top-tier university. The Centers and Institutes Review Committee fully endorses the findings of the review team and believes that the CCR is a great asset to the University, the state, and the nation. The committee commends Prof. Shaw for his fine leadership and recommends continuation of this center, with its next periodic review in five years. We ask that you forward the report and recommendations to the Chancellor for her endorsement, and then to the Board of Trustees for their information, as directed by the Board of Governors.

(See **Appendix I.**) The University's Provost and Chancellor accepted that recommendation. Because there have been no intervening circumstances in the work of the Center that bear on the information provided in the December 30, 2015 report, it remains a reliable source of information about the Center's mission and activities.

PART I: QUESTIONS POSED BY THE COMMITTEE

Question 1. What does the Center do, and whom does it represent?

Summary: The Center has a threefold mission of research, teaching, and service. This mission fits squarely within the mission of the University. The Center's distinction lies, firstly, in its focus on civil rights issues and, secondly, in its presence within a professional school, the Law School, which is dedicated (like its cognate professional schools of medicine, dentistry, social work, and education) to teaching not only *about* law but also *how to practice* law.

The Center engages in and sponsors empirical and policy research on civil rights issues such as school segregation. It teaches students professional skills by regularly involving them in its ongoing work. The Center's community outreach serves principally non-white and lower income communities in North Carolina, many of which still wrestle with the legacy of centuries of chattel slavery, Jim Crow segregation, political and economic subordination, and exclusion. Much as the University's School of Medicine teaches medical students to become doctors in part by clinically serving the sick, many of them poor, so also the Center teaches law students how to use civil rights law to redress the visible and invisible injuries suffered by the many North Carolinians still affected by legal discrimination and segregation.

Further Discussion:

A. The Origins of the Center – In 1999, the Law School began exploring opportunities to strengthen its mission by broadening its clinical offerings, creating an externship program² and establishing two or more centers of legal focus. A faculty committee eventually recommended that two centers be established, one devoted to

² The Law School's Externship Program began placing students with judges, corporate counsel, nonprofit organizations and government agencies in the spring of 1999. The program's site partners include the North Carolina State Legislature; the District Attorney's Offices in ten North Carolina counties; United States Attorney offices in Raleigh and Greensboro; the Criminal Appeals and Capital Litigation Offices of the North Carolina Attorney General; the North Carolina National Guard; City and County Attorneys in Cary, Durham and Charlotte; more than 30 judges at the federal and state levels; and corporate counsel including Quintiles, SAS and GlaxoSmithKine. A complete list of externship sites is attached. (See **Appendix R.**)

private law issues³ and a second to public law issues.⁴ The public law initiative became the Center for Civil Rights, which began its existence in 2001.

To lead the Center, the Law School turned to one of its most distinguished graduates, Julius L. Chambers (J.D. 1962). Chambers had graduated first in his class, having served as the first African-American editor-in-chief of any Southern law review. Even while Chambers blazed his distinguished path through the Law School, he felt the sting of racial discrimination and segregation at UNC. As editor-in-chief of the *North Carolina Law Review*, Chambers was not permitted to attend its end-of-year soiree, which was held at a segregated country club. Despite his stellar credentials, he received virtually no faculty support in his search for a law firm position. Not one law firm in North Carolina would even grant him an interview. Although Chambers almost never spoke about it during or after his law school years, his experience was not a happy one. In time, UNC would come to claim Julius Chambers, but it was the establishment of the Center for Civil Rights that finally reconciled Chambers and UNC.

After graduation and an internship with the NAACP Legal Defense & Educational Fund, Inc., Chambers returned to North Carolina to build a two-decade career as North Carolina's preeminent civil rights lawyer, using legal tools to desegregate scores of formerly racially segregated public schools, public and private hospitals, and places of employment. At least four of Chambers' cases became watershed civil rights decisions of the Supreme Court of the United States, ranging across the areas of school integration, employment discrimination, and voting rights. Together these cases profoundly shaped late-20th and early 21st century American life. In 1984, Chambers was tapped to succeed Thurgood Marshall and Jack Greenberg as the third Director-Counsel of the NAACP Legal Defense & Educational Fund, Inc., the nation's leading legal organization devoted to advancing civil rights. Chambers was recruited back to his native North Carolina in 1993 by then-UNC President C.D. Spangler, Jr. to become Chancellor at his undergraduate alma mater, North Carolina Central University. He held this position from 1993 through early 2001.

In the summer of 2001, Chambers agreed to return to the Law School as the inaugural Director of the Center for Civil Rights, serving until his retirement in 2010. The Law School subsequently was able to recruit as Chambers' successor Theodore M. Shaw, a nationally preeminent civil rights lawyer of 26 years' standing, who had held positions in the United States Department of Justice and served four years (2004-2008) as

³ The private law initiative became the Center on Banking and Finance, which has been led from its inception in 2000 by Wells Fargo Professor of Law Lissa Lamkin Broome. This center has worked closely not only with students and faculty, but also with leading banks, financial institutions, banking lawyers, and related entities both in North Carolina and throughout the nation. It boasts a distinguished board of advisors consisting of leaders in national banking and legal circles. It regularly hosts conferences in Chapel Hill and Charlotte that attract the nation's financial leaders to discuss critical banking and finance issues; it trains directors of banking institutions; and it publishes an annual *North Carolina Banking Institute Journal*, which often recommends changes in banking law and regulations.

⁴ The Law School has two other centers: The Center for Climate, Energy, Environment and Economics ("CE3") and the Center for Media Law and Policy.

Director-Counsel of the NAACP Legal Defense Fund. Shaw was also a seasoned legal academic who had previously taught at both the University of Michigan and Columbia Law School. Shaw is currently the Julius L. Chambers Distinguished Professor of Law and Director of the Center.

B. The Design of the Center – From its inception, the Center has been committed to a three-fold mission: (1) training future generations of attorneys, working either full-time or on a pro bono basis, to continue the ongoing campaign to secure fair and equal opportunities for minority and lower-income people; (2) conducting and encouraging cutting-edge research on contemporary civil rights issues; and (3) reaching out to lower-income and minority residents of North Carolina and the Southeast to offer legal and policy assistance designed to overcome the legacy of four centuries of slavery, Jim Crow segregation, and legally enforced subordination.

The Center was created as a place for research and education, affording students a unique opportunity to learn outside the classroom, not only through legal or empirical research but also by working directly with clients and engaging in public outreach, community education, and legal advocacy. The Center participates in and influences legal and academic discussions of developing civil rights issues and then advocates for individuals and communities whose civil rights have yet to be fully realized. It occasionally initiates legal actions in state or federal courts when more informal tools of advocacy have failed.

1. The Role of Students – Perhaps the most indispensable aspect of the Center’s mission is to train law students who seek first-hand exposure to the most vexing contemporary civil rights issues: equal treatment in housing, education, health care, community infrastructure, and political participation. The Center estimates that more than 600 students have taken part in Center activities over the past fifteen years. Many have volunteered either during the fall or spring semesters to undertake specific research projects under the direction of Center staff and interested faculty members. Others have served more formally as Center interns or externs during the school year.

Along with school-year work, the Center has regularly employed six or more law students as interns each summer. These interns learn, under the careful supervision of Center attorneys, to investigate problems in various communities, carry out empirical research on local conditions, work directly with community members, meet with local elected and unelected officials, and otherwise provide technical assistance to communities. During the fall and spring semesters every year since 2005, the Center has also hosted one or more externs, who receive academic credit from the Law School for 10-20 hours per week spent under the supervision of Center lawyers and faculty. Finally, the Center has offered one or two post-JD fellowships, each for two years, to Law School graduates who seek intensive practical training in civil rights law.

In sum, students can become involved with the Center as episodic volunteers, as semester-long or summer interns, as for-credit, semester-long externs, or as two-year fellows following their graduation from law school. Increasingly, such experiential

learning -- including exposure to litigation – constitutes the heart of 21st century legal training.

2. The Role of Research – In 2001, the then-new Center collaborated with the Harvard University Civil Rights Project to solicit scholarly and policy research articles on the resegregation of Southern schools, a phenomenon that appeared to be undermining the prior three decades’ success in primary and secondary school desegregation – a success in which Director Chambers had played a central role. The collaboration led to a two-day conference in Chapel Hill in late August of 2002 that drew more than 500 participants. The dozen major articles that were solicited for the conference were published first in a special Symposium Issue of the *North Carolina Law Review* and later, in elaborated form, in a University of North Carolina Press book titled *School Resegregation: Must the South Turn Back?* (2005).

The 2002 conference became a model for the Center’s promotion of research. Nearly a dozen subsequent conferences have featured presentations and papers from leading scholars and policy makers. Some have been devoted to education issues, including: *High Poverty Schooling in America: Lessons in Second-Class Citizenship* (2010), which became another special Symposium Issue of the *North Carolina Law Review*; and a conference on new initiatives for integration in the Obama era, which became a second UNC Press book, *Integrating Schools in a Changing Society: New Policies and Legal Options for a Multiracial Generation* (2011). Other conferences have addressed racial inequities in the delivery of health care and the phenomenon of “municipal underbonding” (city boundary policies that often exclude African American communities from the formal city limits and hence, from the municipal services and voting participation, of the towns in which they live). Still other conferences have explored new rulings of the Supreme Court in civil rights areas and community-based lawyering. A sampling of brochures from these conferences, together with cover pages from the published books and symposium Issues of the *North Carolina Law Review*, is attached. (See **Appendix J**.)

The Center has at least three times served as the convening host for gatherings of the national leadership of civil rights and social justice organizations, assembled to contemplate the latest changes in the legal landscape. One of the reasons for the Center’s highly regarded status among these national civil rights organizations (many of which are decades older and better established) is the credibility the Center has developed through its academic consideration of civil rights issues, *plus* its first-hand experience gained through regular encounters with communities and individuals experiencing the effects of continuing racial and socioeconomic disadvantage. In short, the Center’s litigation and related advocacy has deepened its research insights and its national prestige – even as its training simultaneously has provided law students with otherwise unattainable tutelage in how to be conscientious advocates.

The Center has also produced a series of white papers and other analyses of various contemporary issues, including an ambitious statewide inventory of the continuing impact of prior segregation and subordination in North Carolina on minority

and lower-income communities. This series includes a statewide overview report, titled *The State of Exclusion: An Empirical Analysis of the Legacy of Segregated Communities in North Carolina* (2013), as well as detailed analyses of more than a dozen individual counties. Cover pages to these analyses and white papers are attached in **Appendix K**.

3. The Role of Advocacy – Many North Carolina localities the Center has studied have invited Center staffers to come to their communities, learn about their problems, use civil rights expertise to imagine possible solutions, and join with them in advocating changes that will resolve the problems. Students, especially those who serve as summer interns, externs, and fellows, regularly take part in such activity under the direction of the Center’s legal staff. They help draft legal pleadings, motions, briefs and other legal documents, conduct discovery under pertinent court rules, meet with community groups, interview clients, and prepare Center lawyers and other local counsel for oral arguments or in-court proceedings.

Most of the Center’s advocacy, though, does not lead to the filing of court documents, much less to full-blown trials or appeals. Often, it takes no more than a thorough investigation of circumstances, followed by consultation with local governmental officials, for the Center to attain the positive changes sought by client communities. Yet as is true in every other legal setting – such as banking, corporation and business affairs, criminal law, estate practice, intellectual property, real estate, or taxation – parties cannot always agree on what the pertinent facts might be and just how the law might apply in their particular settings. Courts of law are the traditional setting in which such disagreements have been resolved when they remain unsettled after consultation, negotiation and other means.

Dean Martin H. Brinkley of the Law School has addressed this point with eloquence:

The primary objection lodged by those advancing the current proposal is that the University – itself a state actor – should not impress other state actors into lengthy and sometimes costly litigation. This ignores the reality that different branches of government must often resort to the courts for resolution of their disputes. The various lawsuits currently underway between the executive and legislative branches of North Carolina’s government are but the most recent examples. Civil rights are individual rights that the state protects from infringement by its own actors. When those rights are ignored or taken away, the ultimately responsible party is often a governmental unit of one kind or another. Vindicating promised rights in court is what lawyers do. If our law school is to train the next generation of lawyers to preserve the freedom of all Americans, we must, as a last resort, be able to present claims to an impartial decision-maker, the court: the “one human institution that makes the pauper the equal of a Rockefeller, the stupid man the equal of an Einstein, and the ignorant man the equal of any college president” as Harper Lee’s Atticus Finch told us all.

(See **Appendix L** for the March 25, 2017 Statement of Martin H. Brinkley, Dean, UNC School of Law).

In short, the Center trains students to be advocates. In this respect, its function is not to “tell both sides of the story,” any more than any other experiential legal training is duty-bound to do. Lawyers are not expected to represent the interests of their clients’ adversaries. Instead, it is their duty to represent their own clients zealously; it would be unethical to do anything less. To be sure, any good lawyer must know her adversaries’ arguments well to be able to respond to them. Any suggestion that Center-trained students are not educated on “both sides of the arguments” is wholly without merit and is inconsistent with the most basic premises of legal education and lawyering

4. Relationships with Others Across the University and Beyond –

From the outset, the Center’s work has drawn students and faculty members from many other schools and departments at UNC and beyond. The Center’s first conference on school resegregation, for example, featured Professor James Johnson from the UNC Kenan-Flagler School of Business as a panel moderator, while Professor Rosyln Michelson from the School of Education at the University of North Carolina at Charlotte joined Professors Helen Ladd and Charles Clotfelter of the Sanford Public Policy Institute at Duke University and faculty members from Harvard, Columbia, Vanderbilt, Virginia and other schools, all of whom made substantive presentations. Many of them later submitted scholarly works that were thoroughly edited by UNC Law students for inclusion in a special symposium issue of the *North Carolina Law Review* and eventually, in a UNC Press volume.

The following year, the Center’s health care disparities conference featured presentations from Drs. Timothy Carey and Jonathan Oberlander of the UNC School of Medicine, Pam Silberman from the Cecil G. Sheps Center for Health Services Research at UNC, Thomas Ricketts III of the North Carolina Rural Research Center at UNC, as well as Drs. Thomas Irons and Julius Mallette from the Brody School of Medicine at East Carolina University, and other scholars from George Washington University, St. Louis University, Seattle University and Temple. The fall 2004 conference once again featured Kenan-Flagler scholar Professor James Johnson along with his UNC Business School colleague Michael Stegman and other scholars from Bucknell, Columbia, DePaul, and the University of Tennessee. A review of the brochures for these regular national conferences (see **Appendix J**) will show a continuing interchange of ideas from faculty members from across the UNC campuses and well beyond.

Faculty members and students from UNC’s Schools of Education, Government, Media & Journalism, Public Health, and Social Work, in addition to individual faculty members from various departments within the College of Arts & Sciences, including African American studies, anthropology, city and regional planning, economics, geography, history political science, public policy, and sociology, have worked at various times with the Center’s staff and students.

In some of its community outreach and client representation work, furthermore, University faculty have served useful roles as experts and advisors on particular matters requiring specialized knowledge and expertise.

Question 2. What are the needs of the Center's clients?

Summary: The Center embraces the nation's long-declared, but only partially implemented, commitment to afford full civil rights to all African-Americans and other individuals who are disadvantaged by race and socioeconomic status. The Center focuses on American aspirations reflected in nearly 150 years of unfolding constitutional provisions and statutes: the Thirteenth, Fourteenth, and Fifteenth Amendments to the federal Constitution; civil rights laws enacted by Congress in the years 1866, 1870, 1871, 1957, 1964, and 1989; the Voting Rights Act of 1965 and its amendments; the Fair Housing Act of 1968; related federal executive agency regulations; and additional state and local civil rights acts, all intended to guarantee certain basic rights. This web of constitutional, statutory, and regulatory requirements and prohibitions is complex. Implementing it has proven difficult and contentious even for the nation's finest scholars, policy makers, and advocates.

Towards that end, the Center aspires to serve a wider community than just those it might formally represent as counsel in court proceedings. The needs of these North Carolinians, who are overwhelmingly poor and black, are many and varied. They need good schools for their children; genuine job opportunities for themselves; safe and affordable housing; access to adequate health care and competent public services; protection against environmental hazards that affect them disproportionately; and meaningful opportunity for civic and political participation. They are especially vulnerable to governmental action or inaction. Their children are likely educated in public schools. They are disproportionately housed in public or subsidized housing. Lacking substantial resources to protect themselves, they are more likely to be affected by municipal decision-making, such as zoning practices or toxic waste siting. Simply put, poor people are much more likely than others to feel the effects of governmental actions. Middle class and wealthy individuals live much more of their lives in the private sector. When they need legal representation, they retain private lawyers.

Therefore, the Center's staff and students are engaged in real North Carolina communities in dozens of counties across the State, as they have been for the past 15 years. Some Center clients, like those in Moore County, originally sought political inclusion in the residential communities of which they had long been an integral part. Others, like clients in Pitt County, sought enforcement of still active federal court orders that obligated the school board to remedy the effects of intentional school segregation. Still others, like those in Brunswick County, sought help fending off the imposition of yet another unwanted and burdensome land use in their low-income African American community. The discussion below provides a portrait of these clients and their needs.

Further Discussion:

The Center's work involves in-person, telephonic, email, and other interaction with literally hundreds of minority and lower-income communities, families and

individuals across North Carolina and beyond every year. Center attorneys and the students who work with them travel to community meetings that take place in the evenings and on weekends to accommodate the clients' work schedules. Those meetings are often held in churches, funeral parlors, and living rooms –the same spaces where Julius Chambers and his law partners met with clients more than forty years ago.

Center clients need research and technical support so that their engagement with elected officials—from school board members to town councilors to members of boards of adjustment and county commissioners – is effective, building relationships and avoiding litigation if at all possible. Because of its strong reputation for high-quality legal judgment and conscientious representation – the hallmark of Julius Chambers' own civil rights practice – many communities with unmet needs who are otherwise without representation turn to the Center for help. Unlike a private law firm, the Center does not charge any fee and therefore stands ready, as its slender resources permit, to give aid and counsel to many.

The Center's clients themselves offer the most compelling description of their needs and the lack of alternatives for legal support and assistance. Their complete comments are attached in **Appendix M**. The following are representative excerpts:

- *Habitat for Humanity of the NC Sandhills, which I served as executive director of for 14 years, operated on a shoe-string budget, using resources to build affordable houses and repair houses owned by those living at or below poverty level. Without the assistance of the UNC Center for Civil Rights, we would not have been able to stand for the rights of those who were being discriminated against, as a town decided that they did not want this group of people living beside them.*
- *The Halifax County Branch of the NAACP has no real options to obtain legal representation in a case such as Silver v. Halifax County Commissioners in which our Branch is a plaintiff other than to rely on the attorneys from the UNC Center for Civil Rights. Our Branch has insufficient resources of its own to retain legal counsel.... The idea that we could independently mount a legal challenge to a unit of local government violating state or federal law is preposterous. In order to use the courts to confront local civil rights abuses we depend on the UNC Center for Civil Rights. Without it, we have no access to the courts and no access to justice. Without it, we have no hope of justice.*
- *To take away the authority of legal pursuits by the UNC Civil Rights Center would grossly affect socially disadvantaged citizens who for various reasons are unable to engage in legal matters or else afford the services of an attorney. Undoubtedly, the former civil rights attorney, Julius Chambers, also considered the plight of disenfranchised low wealth individuals when he founded the Center for Civil Rights. Moreover, the Center has managed to remain afloat due to the many contributions of others who share*

similar beliefs of need regarding citizens and their communities. As it stands, we need the services of the university's Center of Civil Rights community outreach and engagement to help low wealth disadvantaged rural communities.

- *Our group doesn't have the experience or the expertise to challenge the school board. Guidance from the Center is crucial. Our group doesn't have a treasury to hire lawyers. Both the school board and the board of county commissioners have attorneys on staff and the financial wherewithal to bring in additional attorneys specializing in civil rights and public school law to defend them. For us to find legal experts in this field who will represent us pro bono would be impossible.*
- *We are a community that bore the weight and responsibility of a landfill in our neighborhood for many years due to promises made by our local government that had not been fulfilled. Until we became involved with the Center, we had no idea how to begin to fight for ourselves. Through them we have been educated in everything from power points to research. From documentation to presentation. We have taken what we have learned from them to other communities around the state that like us have no idea how to start their fight or even understand what is happening to them.*
- *Several members of our organization, including this writer have been closely associated with the Center for over 10 years. Our association began around 2001 . . . We sought the Center's assistance with seeking remedies and redress for decades of major problems with the Wayne County School System and the long-lasting effects it was having upon thousands of children residing in the City of Goldsboro, commonly referred to as the Central Attendance Area. The UNC School of Law, Center for Civil Rights started working with several concern community advocates, in/around 2005, culminating with a filed complaint with the U.S. Department of Education; Civil Rights Division and U.S. Department of Justice; Civil Rights Division, December 2009. This complaint required an enormous amount of time, research, data gathering, documentation, strategic community meetings, individual parental intake sessions, and multiple group meetings requiring travel between Chapel Hill and Goldsboro, to include over-night trips. The UNC School of Law's Center for Center Rights took on an herculean task, coupled with garnering community trust and support. We do not know of any advocacy organization that would have had the time, resources, and the sincerity of heart to effectively help the thousands of children of Wayne County. In addition, help lift, educate and motivate hundreds of parents and community members, and still find time to monitor our gains and continue needs. Wayne County is better because of the UNC Center, and its citizens are eternally grateful.*

In sum, many potential clients contact the Center precisely because there are so few skilled attorneys with the expertise, patience, interest and willingness to invest

themselves in vindicating important civil rights of communities that cannot afford to repay those investments. A list summarizing all matters in which the Center has served as legal counsel between 2001 and 2016 is attached. (**See Appendix N.**)

Question 3. Do other public universities have similar centers, or do they handle this type of work in other ways?

Summary: Centers play a vital role in the life of American law schools. While centers at other public law schools may not replicate every activity of the UNC Center for Civil Rights, they typically engage in some combination of teaching, research, service, and advocacy, sometimes providing live-client representation to individuals and organizations. Examples of peer public universities with Centers similar to the UNC Civil Rights Center include the Capital Punishment Center at the University of Texas Law School and the Frank J. Remington Center at the University of Wisconsin Law School. The Capital Punishment Center hosts academic conferences, engages in research projects, and serves as legal counsel to individual men and women facing the death penalty in Texas. The Remington Center conducts empirical research projects and provides individual representation to criminal defendants and prison inmates. The Remington Center houses seven law clinics and two externship projects. Both the Texas and Wisconsin centers have been counsel in litigation against state or local governmental entities.

Further Discussion:

For years, practitioners and scholars alike have criticized law schools' traditional emphasis on teaching legal analysis at the expense of affording students ethical grounding and training in the skills of actually serving clients. Practicing lawyers across the spectrum have decried the absence of preparation of students, by law schools, for the actual practice of law. One of the most thorough and authoritative critiques has come from The Carnegie Foundation for the Advancement of Teaching, an organization with over a century of providing guidance to American higher education. In its 2007 volume, *Educating Lawyers: Preparation for the Profession of Law*, the Carnegie Foundation lamented, "legal education typically pays relatively little attention to direct training in professional practice. The result is to prolong and reinforce the habits of thinking like a student rather than an apprentice practitioner."⁵

In response to these critiques, law schools have slowly have begun to incorporate experiential education into their curriculum. Experiential education is an "active method of teaching that integrates theory and practice by combining academic inquiry with actual experience."⁶ Experiential education gives students the opportunity to obtain the

⁵ *Educating Lawyers*, at 188 (William M. Sullivan, Anne Colby, Judith Welch Wegner, et al., co-authors). The book singled out for praise "[a] community lawyers course at the University of New Mexico" in which "[e]ach establishes a placement with an organization that serves low-income people. For some students, the clients are the low-income individuals served by that organization; for other students, the clients are the organizations themselves." *Id.* at 121.

⁶ Roy Stuckey et al., *Best Practices in Legal Education: A Vision and a Roadmap* 165 (Clinical Legal Education Ass'n, 2007).

practical, hands-on experience they will need in order to assume the roles lawyers play in society.

The American Bar Association (the “ABA”), the accrediting body for law schools in the United States, recognizes the importance of experiential education. Indeed, the ABA’s new accreditation standards now require law schools to offer experiential learning as part of the curriculum, including opportunities that allow students to participate in pro bono legal services and law-related public service activities. (See **ABA Standard 303 Curriculum, Appendix O.**)

Law schools across the country have implemented changes reflecting the new emphasis on experiential education. At the University of Maryland’s Francis King Carey School of Law, for example, students are required to provide legal services to people who are poor or otherwise lack access to justice as a prerequisite to graduation. As part of fulfilling their experiential education requirement, students have obtained a Baltimore man's release from a life sentence, filed a class action lawsuit against a City of Baltimore District Court Commissioner supporting defendants' rights to counsel at preliminary bail hearings, and eased restrictions on access to treatment for drug-addicted individuals. Students have also led successful efforts to ban smoking in bars and restaurants across the state and supported enforcement of Maryland's environmental protection laws.

At public university law schools across the country, centers are key mechanisms for providing experiential education. These centers typically replicate some or all of the components of the UNC Civil Rights Center – research, teaching, and advocacy, including litigation. Several illustrative examples of the many that could be cited are listed below.

- The Capital Punishment Center at the University of Texas Law School hosts academic conferences and engages in research projects. Center faculty members teach courses on a variety of topics pertaining to capital punishment, including mental health issues in capital litigation; right-to-counsel issues in the administration of the death penalty; and the capital punishment clinic. Students also work with faculty members as counsel to individual men and women facing the death penalty in Texas at the trial, appellate, Supreme Court, and post-conviction levels, litigating in every case against either local district attorneys, the wardens of Texas penitentiaries, and/or the Texas Attorney General’s Office.
- The Frank J. Remington Center at the University of Wisconsin Law School conducts empirical research projects and provides individual representation to a host of individual low-income persons, including but not limited to criminal defendants and prison inmates. Various State office and authorities are opposing parties in virtually all of these cases. The Remington Center incorporates clinics (where students directly represent real clients under faculty or staff supervision, or assist faculty or staff representing clients) as well as externship opportunities (where students assist attorneys working

outside the Law School). Along with litigation, faculty and students at the Remington Center engage in collaborative research and advocacy projects with a variety of actors in the criminal justice system, including public defender offices and correctional agencies.

- The Human Rights Center at the University of California at Berkeley (“UC-Berkeley”) School of Law aims to promote human rights and international justice worldwide and to train the next generation of human rights advocates. The center investigates war crimes and other serious violations of human rights. Based on findings, it recommends specific policy measures to protect vulnerable populations and hold perpetrators accountable. It also trains advocates around the world and provides them with the skills and tools necessary to document human rights abuses and turn this information into effective action.
- The Center for Urban Environmental Law is a social justice initiative of the City University of New York School of Law. It provides resources to community groups seeking to participate in environmental decision-making and conducts research designed to influence urban planning.

Question 4. How do other state institutions with law schools provide clinical experiences for their students? Do they provide these experiences through what UNC would consider a center or institute? Do other public law schools engage in litigation? For how long have other public law school clinics or centers been in operation?

Summary: Public law schools began provided experiential education to students through clinics and centers beginning in the 1960s. Those opportunities expanded in the 1980s and 1990s. Growth in the kinds and number of clinics and centers continues into the present. Experiential education is offered through a variety of mechanisms, including but not limited to clinics, projects, externships, and centers. UNC Law’s designated peer public law schools include Illinois, Iowa, Maryland, Ohio State, Texas, Virginia, UC-Berkeley, the University of California at Davis, the University of California at Los Angeles (“UCLA”), Washington, and Wisconsin. All have at least one clinic, project, or center that engages in litigation. Public law schools typically sponsor clinics that engage in types of cases (and represent clients) that place them in opposition to decisions or positions taken by governmental agencies – for example, capital defense, disability law, environmental law, governmental benefits, innocence claims, post-conviction criminal proceedings, or special education.

Further Discussion:

American law schools began establishing clinical programs in the 1960s because of increased national attention on the unmet legal needs of the poor and the dearth of professional skills training for law students.⁷ The exact time in which individual law schools established clinics varies widely amongst institutions. While the date of establishment for clinics varies widely, and while most of the programs were initially very small, as the demand for experiential learning has increased, the number of clinical offerings at almost every law school has grown.

UCLA, for example, began adding clinics to its curriculum in the early 1970s. Throughout the years, UCLA has added additional clinics as the need for students to obtain training in certain legal areas became apparent. Most recently, UCLA added a Real Estate Law Clinic and Civil Rights and Police Accountability Clinic in 2014. Similarly, UC Berkeley founded the East Bay Community Law Center in 1988 to offer clinical opportunities to their students. UC Berkeley has continued to add new clinical offerings, including a Law Technology and Public Policy Clinic in 2001, a Death Penalty Clinic in 2001, and an Environmental Law Clinic in 2015.

As noted above, the ABA now formally recognizes the importance of experiential education. New accreditation standards require law schools to offer experiential opportunities as part of their curricula, including opportunities that allow students to

⁷ See George S. Grossman, *Clinical Legal Education: History and Diagnosis*, 26 J. LEGAL EDUC. 162, 172-73 (1974).

participate in pro bono legal services and law-related public service activities. As described in the paragraphs that follow, various public law schools now afford students experiential learning opportunities through a wide variety of mechanisms including clinics, externships, projects, and/or centers – beyond the centers described in the answer to Question 3 above. Further, almost every public law school in the country engages in some form of litigation as part of providing students with experiential learning opportunities.

Notably, UNC Law School students routinely receive academic credit for working on litigation matters in which the State of North Carolina and the federal government are adverse parties. Students who extern with Disability Rights North Carolina, the American Civil Liberties Union, the Southern Environmental Law Center, the Center for Death Penalty Litigation, Prisoner Legal Services, and the Southern Coalition for Social Justice, among other sites, can and do participate in active litigation matters and projects supporting litigation against government entities.

1. Public Law Schools Provide Experiential Opportunities Through a Variety of Mechanisms, Including Centers, Clinics, and Projects

Public law schools considered peer institutions to the UNC School of Law include Illinois, Iowa, Maryland, Ohio State, Texas, Virginia, UC-Berkeley, UC-Davis, UCLA, Washington, and Wisconsin. These law schools offer a variety of experiential learning opportunities. For example:

- The law schools at UC-Berkeley, (education, health and welfare, housing, and immigration), the University of Texas (capital defense) and the University of Wisconsin (criminal defense and prisoners' rights) offer experiential opportunities through clinics housed in centers that engage in direct representation of clients against state government entities.
- Law schools at the University of Illinois (Innocence) and the University of Georgia (Innocence) place students with existing government agencies (e.g., Georgia Post-Conviction Office) or with legal aid organizations (e.g., the Illinois Innocence Project) that represent clients against other arms of the state.
- Law schools at Illinois, Iowa, Maryland, Ohio State, Texas, Virginia, UC-Berkeley, UC-Davis, UCLA, Washington, and Wisconsin provide experiential opportunities through a wide range of in-house clinics in which students represent clients under the supervision of full-time faculty members.

2. Public Law Schools Engage in Litigation

Litigation is a distinctive and vital part of the legal profession. Enabling students to obtain hands-on litigation experience is a significant part of many public law schools' experiential curricula. The types of litigation in which public law schools engage is varied. Public law school students serve as counsel not only in smaller cases involving public benefits, special education, or misdemeanor criminal defense but also in large and complex, multi-party civil rights impact litigation. Governmental entities are adverse parties in nearly all of these matters. Examples of litigation in which public law schools are involved include the following:

- A civil rights clinic at Wayne State University has brought suit in federal court against the state's Department of Health and Human Services challenging the state's Medicaid's coverage of Speech Generating Devices (SGDs) for children under age 21 with developmental disabilities. The lawsuit alleges that the state's Medicaid policies violate the Medicaid Act, Section 504 of the Rehabilitation Act, and Title II of the Americans with Disabilities Act.
- A civil rights clinic at the University of Texas serves as co-counsel in a class action lawsuit representing plaintiffs who are challenging a Municipal Court's policies and practices of failing to determine defendants' ability to pay, and jailing without appointment of counsel, among other claims. The clinic alleges that those policies violate the Sixth and Fourteenth Amendments to the United States Constitution. They are simultaneously working with advocates on statewide strategies to reduce and eliminate debtors' prison practices elsewhere in throughout the state.
- An environment law clinic at the University of Maryland has represented a civic association challenging the construction of a new concrete batching plant in a historic African-American community that has already been adversely impacted by numerous industrial facilities. The clinic continues to work with the community to monitor compliance of other industrial facilities that affect the community.
- An environmental law clinic UC Berkeley sued the state's Department of Health ("DHS"), after DHS refused to release guidelines on the risk that cell phone radiation poses to individuals and ways to mitigate exposure. The court sided with the clinic and ordered the state DHS to release the guidelines.
- A First Amendment Clinic at the University of Virginia sued Attorney General Eric Holder and the United States Department of Justice after the DOJ failed to comply with a Freedom of Information Act ("FOIA") request filed by the clinic. The clinic was successful in its suit to force the DOJ to comply with its FOIA request. The clinic received copies of settlement deals

the DOJ made with several multi-national banks accused of criminal and fraudulent activity.

- A Prison Law Clinic at UC Davis represented a Rastafarian life-term prisoner who refused to cut his long hair for religious reasons. The prisoner, who otherwise had a record of good behavior, was punished for violating the prison grooming standards, which forbade hair longer than three inches. The clinic sued the State Department of Corrections, contending that the prisoner's refusal to cut his hair was protected under the Religious Land Use and Institutionalized Persons Act. The case was resolved in early 2006 by a rule change that eliminated the policy restricting prisoners' hair length and the punishments suffered by the named prisoner.

3. Students Do Not Always Serve as Lead Counsel in Clinic Cases

Not all clinics operate under a model in which students act as lead counsel. The extent of student involvement and responsibility often varies depending upon the size of the case. In larger and more complex cases, it is common for students to assume supporting roles as part of a larger team of experienced faculty members and/or staff attorneys. Students may be asked to do smaller pieces of the litigation (e.g., to assist with interviewing clients/witnesses, to draft a complaint or discovery documents), while more experienced licensed attorneys or faculty members take on larger roles by arguing motions or trying the case before a jury. Examples of clinics in which students have assumed supporting roles include appellate clinics, such as those at the University of Texas, the University of Utah, and UCLA, where students work in supporting roles on cases sometimes heard by the Supreme Court of the United States. They also include the following:

- A capital defense clinic at the University of Texas represented a man convicted of killing his girlfriend and two sons. The client maintained that he was innocent. On behalf of their client, the clinic sued the County District Attorney in order to have DNA evidence tested. The case went to the United States Supreme Court, where it was argued by the co-director of the clinic to a favorable decision.
- A death penalty clinic at UC Berkeley filed a request under the state Public Records Act (PRA) for decades worth of capital charging documents that were in the possession of a county district attorney's office. The purpose of the request was to obtain information necessary to support its allegation that the district attorney had sought the death penalty in a racially discriminatory manner. The office refused to turn over the records. The clinic sued alleging that the PRA was being violated. The clinic's supervising faculty tried the case while students assisted with various pieces of the trial preparation. The clinic lost at the trial level, but the supervising faculty filed a petition for

mandamus relief in the state court of appeals and prevailed in a published opinion.

Moreover, a number of law schools, including Stanford, Texas, and UCLA, host Supreme Court clinics in which students work with faculty to file petitions for certiorari, briefs of *amici curiae*, and occasionally, briefs on the merits in the Supreme Court of the United States. In all of those clinics, faculty members serve as lead counsel. Students learn a great deal about appellate advocacy, but in supporting roles. A substantial (though incomplete) roster of clinical programs at public and private American law schools is attached. (See **Appendix P.**)

Question 5. What are other ways the Center’s clients could obtain representation for these matters?

A. Summary: Historically, in North Carolina and elsewhere, the provision of legal services to African-American and other lower income communities has been infrequent and episodic. Most lawyers in private practice support themselves through fees charged to clients. Since many African-American and other minority families and communities, especially those most in need of legal assistance, have modest financial means at best, few private lawyers have traditionally engaged in civil rights practice. Federal and state governments offer only occasional support, and when they do weigh in, usually represent the interest of the government in civil rights enforcement. That interest may coincide with the interests of poor people of color, but the two are not necessarily or always identical.

Although the United States Office of Economic Opportunity created a Legal Services Corporation (“LSC”) in the late 1960s that funded legal aid offices in North Carolina and other states, thereby expanding the number of attorneys available to assist underserved communities, subsequent Congressional restraints restricted the kinds of cases that LSC grantee programs could pursue. Both Congress and North Carolina have cut back substantially on funding for these programs, largely eliminating them from playing a meaningful role in civil rights cases.

A few privately supported organizations offer civil rights representation in North Carolina. They include the North Carolina Justice Center and the Southern Coalition for Social Justice. The legal staffs and resources of these organizations are limited, and their foci include issues beyond the Center’s civil rights mission. National civil rights legal organizations rarely become involved in state or local matters without the presence of experienced local co-counsel like the attorneys associated with the Center.

Private attorneys, even if willing to take on civil rights cases, typically are unable to assume the financial or opportunity costs of litigation. In sum, many potential clients contact the Center precisely because there are so few skilled attorneys with the financial capacity, expertise and/or willingness to invest themselves in vindicating the civil rights of communities that cannot afford financially to repay those investments.

B. Further Discussion:

As late as the 1960s, the NAACP Legal Defense Fund, Inc. could identify no more than 30 lawyers anywhere in the South willing to take on cases raising civil rights claims. Julius Chambers was himself tapped as the first fellow in an LDF-funded program for recent law graduates with the understanding that, after a year of training, he would return to his native North Carolina to begin full-time civil rights work. The paucity of private attorneys and organizations handling civil rights matters continues to the present day, although the need for such representation continues.

Nationally, on average, only one legal aid attorney is available to serve 6,415 low-income people. In comparison, one private attorney provides personal legal services for every 429 individuals in the general population. The North Carolina Equal Access to Justice Commission reports that 80% of the civil legal needs of the poor people in North Carolina are unmet. Additionally, there is only one legal aid attorney for every 13,170 *eligible* North Carolinians.

Federally funded legal services programs, both as a regulatory matter and as a budgetary matter, are not viable options for Center clients seeking other opportunities for representation. Over the course of the last 34 years, legal services programs have suffered significant funding cuts from the LSC and have closed many offices that formerly served individuals in their communities. In addition, federal and state funding restrictions have sharply restricted the types of cases legal services lawyers are permitted to undertake. Since the 1980s, federally funded programs have been prohibited from using federal dollars to provide representation in certain kinds of matters, including school desegregation cases. In the early 1980s, federal funds for legal services programs were reduced by twenty-five percent. In 1996, programs received an additional one-third reduction in funding. Additional restrictions further encumbered the use, by these programs, even of other funding received from other sources than the federal government; moreover, additional substantive and procedural prohibitions were added.

Programs receiving any amount of federal funds – irrespective of the source of other funds – can no longer represent individuals in school desegregation cases, bring class actions, seek or receive attorney fees, and are prohibited from representing certain categories of claimants including certain public housing residents. Legal services lawyers have been barred from soliciting clients to protect their rights by obtaining counsel. The 1996 LSC appropriations deemed that federal funds should go only to those legal services programs that provided individual representation with regard to “day-to-day legal problems.” Civil rights issues and other legal challenges directed at systemic poverty are no longer considered appropriate cases for legal services programs to handle.

North Carolina currently provides no funding at all for legal services programs. Faced with funding cuts, Legal Aid of North Carolina (“LANC”), the largest legal services provider in the State, has drastically reduced the number of its programs and staff attorneys. The effect of these cuts falls hardest on individuals who lack the financial resources to hire their own lawyer. In 2011 alone, three LANC offices in Boone, Smithfield and Henderson were closed due to budget cuts, resulting in the loss of about 30 positions. Most of the legal assistance LANC lawyers currently provide is in the form of advice and counseling. Litigation of any sort is limited and infrequent. For example, approximately only 14% of legal services cases nationwide involved court litigation. Again, cumulative reductions in budgets, resources, staff and statutory restrictions impede low-income and disadvantaged persons from obtaining access to legal representation.

The United States Department of Justice has a Civil Rights Division, but it does not represent individual citizens. Instead, its charge is to enforce the law in the name of the United States, not to protect individual clients one by one. Moreover, its limited staff has many competing priorities. The Civil Rights Division must combat discrimination on grounds of sex, disability, religion, family status, national origin and other protected areas and groups. The Division typically becomes involved only in high-profile cases or after extensive investigation by local actors such as Center legal staffers.

National civil rights organizations such as the NAACP Legal Defense Fund, the Lawyers Committee for Civil Rights under Law, and the Advancement Project will occasionally take a case involving North Carolina residents or communities. While they can bring sophisticated legal skills and knowledge to bear, these organizations normally commit those resources only when some North Carolina attorneys are available to work as partners, especially those with capacity to work intensively in local communities to build trust and understanding. The Center has leveraged its position and networks on several occasions to secure the participation of national civil rights groups to meet community needs, and has co-counseled with national organizations, along with pro bono law firms, on many of its cases.

Statewide, some non-profit organizations provide various forms of advocacy, outreach and litigation. The North Carolina Justice Center works through seven projects that provide in-depth expertise in the major policy areas affecting poor and working North Carolinians. The organization's areas of focus are budget & tax, workers' rights, education and law, consumer protection & housing, and immigrant & refugee rights, among others. The Southern Coalition for Social Justice specializes in voting rights, environmental justice, criminal justice, immigrants' rights and human rights. Although they are also involved in litigation, outreach and advocacy, the Southern Coalition excels at policy work. The American Civil Liberties Union of North Carolina (the "ACLU") pursues violations of constitutional rights and civil liberties including death penalty, due process, equal protection, free speech, human rights, LGBTQ rights, privacy, racial justice, religious liberty, reproductive rights, student and youth rights, and voting rights. The ACLU receives hundreds of requests for assistance each month. Because of the organization's limited resources, however, it is able to investigate only a small percentage of the potentially meritorious requests for assistance it receives. As a result, it turns down the overwhelming majority of those requests for assistance. The Center often networks and communicates with these organizations. However, each organization varies in its area of focus, depth and breadth of services, number of clients served, and target groups. None would be an adequate alternative provider of legal assistance for the Center's client communities.

Legal service providers were long supported through funds distributed by the North Carolina State Bar's Interest on Lawyers Trust Accounts ("IOLTA") program. Those providers have experienced dramatic funding declines over the past decade due to bank interest rates hovering near zero. The precipitous decline in this funding source has undermined these organizations' ability to undertake complex litigation for poor people. Legal developments have hampered private attorneys from undertaking civil rights cases

on a contingency fee basis. Until 2001, plaintiffs in civil rights cases could receive court-awarded attorney's fees under the "catalyst theory" if their lawsuit achieved the desired result, even if the defendant remedied the complained-of violation without the necessity for a court order. Since that time, plaintiffs must litigate the case completely and obtain a favorable court order. Winning a favorable settlement from a defendant, even after lengthy litigation, does not result in an award of any attorney fees. Empirical studies have demonstrated that this change has significantly curtailed the willingness and/or ability of private firms to undertake civil rights cases without advance payment of fees from the client.

The adverse effect on poor and minority communities that need legal help has been severe. There is now a substantial body of research demonstrating that only a fraction of the legal problems experienced by low-income individuals are addressed with the help of an attorney. In addition to financial considerations that discourage attorneys from taking civil rights cases, private attorneys are often reluctant to take potentially unpopular cases. Moreover, civil rights cases are difficult to win, making success rates substantially lower than in other types of civil cases. These factors combine to lessen the opportunities for Center clients to obtain representation from private attorneys.

The Center works regularly with private attorneys who are willing to volunteer their services. However, the rate of pro bono activity is lackluster. Approximately 10% of North Carolina attorneys report providing pro bono legal services each year. Because of the uncompensated time demands and the intricacies of civil rights law, they will normally participate only as co-counsel in close coordination with experienced civil rights lawyers like those of the Center.

In sum, the federal and state organizations as well as private and pro bono attorneys outlined above present the only viable representation options for the Center's clients. However, upon closer investigation, there is little overlap in the focus areas and scope of services offered by the Center and by similarly situated North Carolina organizations. National groups strongly prefer to partner and coordinate with local organizations like the Center. Additionally, the history of civil rights litigation and the current statutory and financial landscape have reduced the number of legal services and available private attorney options. No other organization or attorney group provides civil rights outreach, advocacy, technical support and litigation that the Center offers its client communities.

Question 6. Are there any unique characteristics of the Center for Civil Rights that should be considered?

The University has never forgotten that legally mandated racial discrimination was deeply interwoven into the fabric of public and private life in the South and the nation from for more than three centuries. Prior to 1861, the University's buildings and grounds were constructed with slave labor. Well into the 1950s, even the most talented minority graduates of secondary schools in North Carolina were categorically denied admission to the University. Even after the University began admitting black students, their numbers remained modest. Julius Chambers, the Center's founding director, was among the very first generation of African American students admitted to the Law School in the late 1950s. While the University may no longer be under an enforceable legal obligation to make formal amends for those past transgressions, it has found it more than fitting to host, within the Law School, a center designed by former Chancellor Julius Chambers as a training ground for lawyers who would press toward a future free of racial and socioeconomic discrimination.

Although North Carolina's long history of slavery, segregation, and racial discrimination has left a legacy reaching into the present, the State also has had a tradition of moderation that fostered a considerable measure of progress, distinguishing the Tar Heel State from other Southern states that sanctioned racial subordination by law. Julius Chambers and other lawyers who used the Constitution and laws to change our State made the economic progress of the late twentieth and the early 21st centuries possible. It is hard to imagine the thriving banking industry in Charlotte or the robust technology-based economy of the Research Triangle region if North Carolina were still enmeshed in the deep segregation and racial backwardness that Julius Chambers played a crucial a role in ending. It is no coincidence that UNC Law School's Center on Banking and Finance and the Center for Civil Rights were created simultaneously. If North Carolina does not get pressing issues of civil rights right, it will not get business development right. It is in this context that the unique characteristics of the Center should be considered. The University at Chapel Hill believes its role in addressing continuing racial discrimination also fosters economic progress. Even when North Carolina has faced tense internecine battles over matters of race, we have come out the better for the struggle.

There is much legal and policy work left to achieve real equality in North Carolina. Law students who hope to participate in that work must first learn to wield the right tools. Because of the Center's threefold mission, they are able to do so, training under expert supervision. Yet the Center's work does more than further the students' professional training. It stands within the broad tradition of public service to the people of North Carolina that has long earned the University the people's admiration.

It has been suggested that, even as it seeks to fulfill this mission, it is inappropriate for the Center, as a State entity, to bring legal actions against other State or local government entities. This report shows elsewhere that such litigation is

commonplace, not only across the State itself (as North Carolina's 24-year-old school finance lawsuit, *Leandro v. State*, brought by five local school boards who sued the State of North Carolina and state educational officials, illustrates), but also in leading American law schools throughout the nation. Such work makes particular sense in the civil rights realm, since traditionally, it was state and local governmental entities that enforced, through statutes and custom, the regimes of segregation and exclusion. Patterns set in earlier times persist into the present day, even when malign intent has long disappeared. The Center's experience is that state actors may be unaware of the residual unfairness in practices they have long pursued, even though those who bear their adverse weight keenly feel their continued effects. For this reason, the Center always offers its research and insight not only to its clients but also to local governments and other actors long before engaging in litigation on their clients' behalf. Both litigation and further harm to the Center's clients are avoided whenever those offers are accepted.

If the Center were part of a department of sociology or economics, it would doubtless suffice to teach new generations the finest research methods: how to gather empirical data, conduct survey research, engage in quantitative and qualitative analysis, and perfect their writing skills. Yet lawyers have a distinctive role in our society; they deploy the fruits of social science and other disciplines to advocate in public and private arenas for changes on behalf of their clients. Lawyers use their advocacy skills informally wherever possible, hoping to prevail through consultation, persuasion, negotiation, but ready to work, if persuasion fails, through the courts as well – the forums charged by our system with hearing contended issues that cannot otherwise be resolved. What is “unique” about the Center's role in a University setting is that it is charged with the professional training of lawyers, many of whom must move competently, as licensed attorneys, into local, state, and federal courts, on behalf of their clients, in search of justice. It is hardly inappropriate or untoward, given the heavy responsibilities that will very soon face law students professionally, to expose them to the legal tools and the judicial settings in which they will soon be expected carry out their professional responsibilities.

There is no *US News & World Report* ranking of civil rights centers or clinics in American universities. Yet the nation's leading civil rights organizations have a clear sense of the contributions different law schools make in providing civil rights experiential learning opportunities. No program appears to be more highly respected around the country than the Center. This is shown by the continued willingness of those organizations to turn to the Center for collaboration.

As the Center was beginning to plan its first conference in 2002, on school desegregation, The Civil Rights Project at Harvard University reached out to propose a jointly sponsored conference with the UNC Center, to be held in Chapel Hill. The Harvard Project, then co-directed by Professor Gary Orfield of the Harvard School of Education and Professor Christopher Edley of the Harvard Law School, was then the preeminent such center in America until Edley and Orfield were recruited to join the

faculties of UC-Berkeley and UCLA, respectively in 2004 and 2006.⁸ The August 2002 conference, as noted earlier, drew more than 500 attendees and led to a special issue of the *North Carolina Law Review* and a UNC Press book co-edited by Orfield and the UNC Center's deputy director.

That same year, UNC Center personnel were invited to take part in a conference call among national civil rights lawyers and lawyers for the University of Michigan, who were gathering to discuss possible *amici curiae* briefs to be filed in support of Michigan's positions in two affirmative action challenges to policies at the University of Michigan Law School and undergraduate college. The Center proposed submitting an *amicus* brief on a new theme – stressing the important role of public universities in supplying a diverse core of leaders for their home states.

The Center's staff worked with UNC Law faculty members to prepare this brief. The Table of Contents of the brief included two principal argument headings: "Public universities have a special mission to prepare the future leaders of their respective states," and "Allowing public law schools to consider race as one factor in selecting students has proven the least restrictive and fairest means of assuring that states can provide higher education to their most promising future leaders." Several other *amici curiae* briefs, including one from the Association of American Law Schools, took up a similar theme. A group of Ivy League universities (plus a few other prominent private universities such as Duke and Stanford) submitted a joint brief, as did prestigious private liberal arts colleges such as Amherst, Bates and Bowdoin. Those two briefs were authored by leading practitioners from major national law firms. The UNC *amicus curiae* brief was one of the very few submitted by a university's own faculty, and the only one submitted by any Southern university.

When the Supreme Court decided the Michigan Law School case, *Grutter v. Bollinger*, 539 U.S. 307 (2003), the author of the majority opinion was Justice Sandra Day O'Connor, who had never previously joined a majority in support of affirmative action. Her opinion embraced the principal doctrines of Justice Lewis Powell's 1978 opinion in *Bakke*, but added one new doctrinal element. As Justice O'Connor wrote on pages 332-33 of the *Grutter* opinion: "[U]niversities, and in particular, law schools, represent the training ground for a large number of our Nation's leaders. . . . In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity." She then elaborated on the very theme to which UNC Law had devoted its brief. The Center modestly believes that its argument played a supporting role in retaining affirmative action nationwide in 2003 and thereafter.

⁸ Gary Orfield's Project has commissioned more than 400 studies and 15 books on race justice issues. Orfield himself has been the author of at least 11 books over nearly 50 years, including his seminal *The Reconstruction of Southern Education: The Schools and the Civil Rights Act of 1964* (1969), *Dismantling Desegregation: The Quiet Reversal of Brown v. Board of Education* (1997), and many others. Christopher Edley, who had served in the Carter and Clinton Administrations in the Office of Budget and Management, became UC-Berkeley's law dean in 2004, where he served for nine years.

Some have questioned the Center’s involvement in one litigation activity, the Pitt County school desegregation case. Yet in that case, the Center attracted the participation of the national Lawyers Committee for Civil Rights as co-counsel for a very good reason: the case raised important issues about the continuing obligations of school districts, still under court-ordered school desegregation decrees, to abide by those decrees until (1) they had sought and obtained from a federal court a determination that they had sufficiently purged their prior discriminatory conduct and its vestiges and (2) received a court declaration that they were now operating a ‘unitary’ school system. The Center and the Lawyers Committee believed that Pitt County’s school board was wrong to depart from its court-ordered remedial obligations without having first received a ‘unitary status’ finding from a federal court. In one of the most decisive opinions on this point rendered during the past decade, the United States Court of Appeals for the Fourth Circuit agreed with the Center in 2012, faulted the school board and the federal district judge, and remanded the case for further proceedings. *Everett v. Pitt County Board of Education*, 678 F.3d 381 (4th Cir. 2012). On remand, the district court did eventually make a ‘unitary status’ finding allowing Pitt County school board to move forward. Establishing the board’s obligation legally to seek ‘unitary status’ before doing so was an important contribution to school desegregation law nationwide, one that the Lawyers Committee and the UNC Center accomplished as a legal team.

Another measure of the UNC Center’s standing in the national civil rights community has been the willingness of that community on at least three occasions – in 2010, 2013, and 2016 – to hold nationwide gatherings – in Chapel Hill – to discuss the way forward for civil rights research and litigation. The first came in 2010 and was in part a tribute to Julius Chambers, who was stepping down as the Center’s first Director. (See 2010 brochure in **Appendix J**). The second came in a year when the civil rights community expected key Supreme Court decisions in three areas – affirmative action, Voting Rights, and Title VIII housing discrimination – and wanted a forum in which to evaluate the significance of whatever the Supreme Court decided and chart a way forward. The third came in December 2016, when the national civil rights community wanted a place to talk about whatever lay ahead after the national elections the previous November. Again, Chapel Hill proved to be the venue where scores of leading scholars, advocates, and lawyers gathered to consider those issues.

Harvard Law School now sponsors a Charles Hamilton Houston Institute devoted to civil rights; its contributions are many. The current director, David Harris, recently wrote a summary of the Center’s role in its own work:

The Charles Hamilton Houston Institute for Race and Justice here at Harvard Law School is one of the few organizations that combines rigorous social science research, grass roots advocacy and impact litigation to extend the work of the founder of modern civil rights law. We have found the UNC Center for Civil Rights to be one of our most reliable and effective partners in this work. The UNC center shares our determination to ensure our society meets its promise of inclusion. We are especially pleased to work with the center on projects that give

voice to the underserved and excluded. We have come to rely on the efforts of the center in framing and formulating our approach to civil rights law.

Some have questioned whether other national law schools have a program identical to that of the Law School. The answer, we say candidly, is ‘No, not on all fronts.’ The Center is unique. And that uniqueness is a *good and worthy* thing. Just as the University at Chapel Hill’s preeminent departments of chemistry and medicine and other outstanding schools have no peers in many respects, our Center, founded by Julius Chambers, is a mark of positive distinction to a proud University that embraces both its mission and its many accomplishments.

Question 7. What is the role of law students in the Center for Civil Rights? Are there academic freedom issues that should be taken into account with respect to the Center?

Summary (7a): What is the role of law students in the Center for Civil Rights?

As the responses to Questions 1, 2, 3, 4 and 6 show, law students have been involved in the Center's activities from its inception in 2001. They have helped recruit speakers and plan conferences, edited academic papers for publication, planned and carried out empirical research on economic, social, demographic and legal conditions in North Carolina.

They have also accompanied Center attorneys to hundreds of community meetings across the State, taking part in consultation and negotiation activities with local governmental leaders in education, health care, housing and related fields. Students have also helped to draft legal documents, prepare witnesses for hearings and appeared with Center lawyers to see first-hand how in-court trial and appellate litigation is conducted. Some have provided immediate legal advice on how to write wills or how to protect real property against inadvertent loss.

Further Discussion:

The following excerpts from student comments on their experience working with the Center illustrate the unique training they received:

- *When I started working at Legal Aid, I was much more confident because of my time at the Center. I remember being very nervous the first time I had to interview a client by myself as a law student. But because I had interviewed several clients while externing at the Center, I was much more comfortable interviewing clients when I started at Legal Aid. I am grateful for the skills I gained at the Center for Civil Rights and would recommend that students interested in civil litigation get involved in the Center's work through an internship, externship, or a pro bono project.*
- *After completing my fellowship, I served as the first Diversity Program Coordinator at Conservation Trust for North Carolina, a nonprofit organization. In this position, I used practical skills I gained at the Center to provide legal and technical assistance to minority and marginalized families across our State, enabling them to retain land assets and make them profitable. Moreover, I engaged in legislative advocacy and policy research in these areas. Based on the model used by the Center, I spearheaded a statewide diversity internship program, with a goal of creating an employment pathway for future leaders.*

Using the grant-writing skills I gained at the Center, I successfully wrote grants to help fund these internships and managed grant programs to fund diversity initiatives at more than two dozen organizations across North Carolina. In short, but for the practical skills I gained at the Center, I would not have been able to plan, coordinate, and implement a multifaceted, statewide, and innovative diversity program – a program that is continuing to dismantle systemic inequality in the conservation sector.

- *I have continued my work in public service in North Carolina, as I currently serve as a Senior Attorney for the Social Security Administration’s Office of Disability Adjudication and Review (ODAR) in Fayetteville. We process appealed disability decisions, hold hearings, and issue decisions. My position encompasses many responsibilities, which have included adjudicatory authority for fully favorable, on-the-record disability decisions, researching and developing cases for and rendering legal advice to Administrative Law Judges, and writing decisions after hearings. Because I was mentored by extraordinary mentors at the Center, I serve as a successful mentor to junior attorneys and paralegal specialists. Due to my experiences interacting with clients during my time at the Center, I successfully conduct prehearing conferences with disability claimants. Without the extensive written and oral advocacy training I received at the Center, I would not be successful in performing the multiple and intensive tasks required to ensure that individuals – many of whom are minority and/or low-income – receive fair opportunities to receive disability benefits.*
- *As a doctoral student from the UNC School of Education working at the Center for Civil Rights, I sat at the nexus of academia and public service—both pillars of the UNC system’s mission—and I was able to connect my educational research experience with legal research to help shift and raise public consciousness concerning issues such as school diversity and economic resource allocation, among many others. I learned how to analyze state and local school district policy and gained practical experience in writing memos for multiple stakeholder groups. While traveling with Center attorneys to visit clients and sitting in on court hearings, I learned how to organize and engage communities in productive ways and how to communicate their voices to policymakers and the judiciary. Overall, through the Center’s advocacy and litigation work, I learned how to move from theory and passion to action.*
- *The Center for Civil Rights was my first real practical experience as a litigator. I learned everything. How to draft a brief, how to interview clients, how to decide what to include and what to leave out of a complaint, how petitions for certiorari work, how to build cooperation among stakeholders to avoid litigation (we were working a lot with Charlotte-Meck Schools and trying to convince actors to change policy for the benefit of students without lawsuits). I also learned an enormous amount about professionalism. My sense is there are sometimes problems with the perception that non-profit or public interest law outfits are not as professional as their private practice counterparts. But this was not my*

experience at the CCR. From Julius Chambers--who embodied the term professional as well as any lawyer I ever got to work with--to Jack Boger, who even decades after his white shoe firm experience as a young lawyer brought a rigor and sense of professionalism that would make many big law partners blush, to Ashley Osment, who looked and talked a lot like a country lawyer, but more than held her own in any courtroom or conference room she entered, engaging with other attorneys and with clients in an amazing professional manner that never for all that lost its warmth or charm. Actually, working at the CCR maybe more than anything made me realize how much I had to learn. And it was a good thing I had such great role models.

- *My experiences at the UNC Center for Civil Rights gave me a unique lens and skill set that I bring to my current full-time position at IBM. Not only was this an exceptional educational experience for me, but I was able to see firsthand the impact that UNC Center for Civil Rights' representation of North Carolina communities made. Because of my personal experience witnessing this influence, I feel strongly that the UNC Center for Civil Rights has a unique and incomparable positive impact on North Carolina communities. I am proud to have graduated from UNC School of Law. One of the reasons that I feel lucky to have graduated from the law school is the school's direct involvement with communities, and pro bono opportunities, many of which are provided by the UNC Center for Civil Rights. The work of the UNC Center for Civil Rights is in line with the UNC systems' mission of service to the state, and the pursuit of public service at UNC School of Law.*
- *I cannot overemphasize the educational benefits of my time at the Center. I was an intern at the Center when I first wrote sections of legal briefs. These were not the graded writing exercises designed to teach me how to craft a legal argument, but advocacy that would end up before a court. I was an intern at the Center when I conducted my first hours of document review. This was not a Civil Procedure class explaining the discovery process to me, but time spent mining documents. I was an intern at the Center when I had my first interactions with clients. This is a skill that no professor can teach in a classroom and is far more complex in reality than any course could cover. As important as in-classroom legal learning is, it can never offer the same benefits as hands-on training. As described in Steven B. Long's February 14, 2017 memorandum, the work of a law school, and particularly that of a truly public institution such as UNC, is to produce practice-ready attorneys. Clinic work, internships, and externships all serve the important purpose of bolstering classroom learning. The Center does this exceptionally well.*
- *I had the privilege of interning at the Center for Civil Rights following my second year of law school. Under the supervision of the Center's attorneys, I gained invaluable practical legal experience, which included interviewing clients, drafting public records requests, and researching potential legal claims on behalf of Center clients seeking to protect their communities from environmentally*

hazardous land uses. Beyond the tangible legal skills I developed as a Center intern, my experience at the Center fostered my interest in fair housing law, which influenced my selection of subsequent coursework and internships as a law student and led me to my first job upon graduating from Carolina Law. As a fair housing attorney at the U.S. Department of Housing and Urban Development, I continue to hold this job today (however, the opinions expressed in this letter are solely my own).

- *I also set out after law school, initially by clerking for a federal district court judge, and then by serving as the Center's Education Fellow, to receive the legal training to become a part of the next generation of civil rights attorneys. I sought then as I do now to receive the advocacy training that is necessary to have a career like Julius Chambers and all of the lawyers that are associated with this Center – careers focused on the democracy-perfecting work that he and other lawyers vigilantly pursued. As a Fellow, I have been profoundly influenced by the mentors that I gained in Chambers and all of the Center's other leadership like Dean Boger, former Center Deputy Director and UNC Professor Charles Daye, the late civil rights lawyer Ashley Osment, current Center Managing Attorney and Adjunct Professor Mark Dorosin, and other Center staff. As a Center Fellow, I gained first-hand experience in the nuts and bolts of litigation practice. For example, I helped to reopen one of Chambers' school desegregation cases in Pitt County on behalf of families of color to further integrate and bring high equality resources to that County's schools. In addition to learning how to engage clients, develop a factual record, and participate in motion practice and settlement proceedings, I also learned the importance of developing, nurturing, and maintaining respect from your clients. That latter lesson was gleaned from having met an original client of Chambers, who, many decades later, expressed great respect and appreciation for the representation that Chambers had provided his family.*
- *Since the Center is uniquely situated within the UNC School of Law and larger university setting, as a Fellow, I assisted with organizing a national conference and policy briefing on Capitol Hill, which produced a law review and book on school integration strategies following a U.S. Supreme Court decision that limited, but did not end, opportunities for the consideration of race in school assignments. I learned through the Center's nurturing and production of scholarship of its role in supporting the larger advocacy for racial inclusion.*
- *During my tenure, I engaged in a wide variety of legal strategies that would not have been possible elsewhere. I spearheaded the Center's legislative advocacy efforts to allow for certain low-income communities to be annexed by neighboring municipalities to gain access to vital public health services. I also worked with minority and low-income neighborhoods to build relationships with local governments to secure federal funding to build necessary infrastructure within these communities, mainly water and sewer service. In the rare instance that we pursued a litigation strategy, I assisted with all aspects of the casework – drafting*

legal documents, legal research, depositions and court hearings, mediation, and working closely with the clients to ensure we provided accurate representation of their needs and desired resolutions. All law students graduate having read thousands of pages of case law and poured over Blue Book citations. But few, if any of us, are truly prepared for the actual practice of law. The Center provides an invaluable and unique opportunity for recent graduates to practice under the guidance and tutelage of seasoned attorneys in a supportive, yet challenging, environment.

A more complete set of student remarks is attached. (See Appendix Q).

Summary (7b) Are there academic freedom issues that should be taken into account with respect to the Center?

The American Bar Association is the accrediting agency for American law schools. It performs that function through its Section on Legal Education and Admission to the Bar. The ABA Section has a formal series of Standards prescribing programs and criteria bearing on law school reaccreditation. Standard 303 expressly addresses the law school curriculum, and it mandates that law schools provide substantial opportunities for non-credit, pro bono opportunities for all students, expressly naming participation in civil rights advocacy.

During the Law School's last accreditation in 2015-16, the ABA noted its concern about the closure of the School's Center on Poverty, Work & Opportunity. The Association of American Law Schools likewise expressed its concern, bearing on the Law School's 97-year membership in the AALS, over efforts to constrict the work of the Schools centers.

Further Discussion:

As noted elsewhere in this report, ABA Standard 303(a)(3) has been recently amended to require "one or more experiential course[s] totaling at least six credit hours." The requirement may be met by a simulation course, a law clinic, or a "field placement" such as the Center's externship program.

Standard 303(b) also makes it mandatory for every law school to provide "substantial opportunities to students for . . . participation in pro bono legal services, including law-related public service activities." Standard 303(b)(2). In clarifying this (b)(2) requirement, the ABA has promulgated two Interpretations, which provide:

Interpretation 303-3

Rule 6.1 of the ABA Model Rules of Professional Conduct encourages lawyers to provide pro bono legal services primarily to persons of limited means or to

organizations that serve such persons. In addition, lawyers are encouraged to provide pro bono law-related public service. In meeting the requirement of Standard 303(b)(2), law schools are encouraged to promote opportunities for law student pro bono service that incorporate the priorities established in Model Rule 6.1. In addition, law schools are encouraged to promote opportunities for law students to provide over their law school career at least 50 hours of pro bono service that complies with Standard 303(b)(2). Pro bono and public service opportunities need not be structured to accomplish any of the outcomes required by Standard 302. Standard 303(b)(2) does not preclude the inclusion of credit-granting activities within a law school's overall program of law-related pro bono opportunities so long as law-related non-credit bearing initiatives are also part of that program.

Interpretation 303-4

Law-related public service activities include (i) helping groups or organizations seeking to secure or protect civil rights, civil liberties, or public rights; (ii) helping charitable, religious, civic, community, governmental, and educational organizations not able to afford legal representation; (iii) participating in activities providing information about justice, the law or the legal system to those who might not otherwise have such information; and (iv) engaging in activities to enhance the capacity of the law and legal institutions to do justice.

In short, this ABA Standard requires American law schools, in addition to offering for-credit courses, to provide “substantial opportunities for participation in pro bono legal services” sufficient to assure that every graduating law student can ideally complete at least 50 hours of pro bono service activities. The very first example of the “law-related public service activities” that law schools should provide is “helping groups or organizations seeking to secure or protect civil rights” In the Law School’s professional judgment, the Center’s activities, including its opportunities to engage in civil rights litigation, is a direct example of compliance with ABA Standards.

Question 8: What are possible options for organizational changes and alternatives for the Civil Rights Center that the Committee could consider and approve that would allow the Civil Rights Center to perform its essential mission, without having the University participate in litigation?

The UNC-Chapel Hill Committee is continuing to review and assimilate the information it has compiled in response to the Committee's questions thus far in order to assess possible alternatives.

Question 9: A report on the possible impact of the policy on our law schools at UNC-Chapel Hill and North Carolina Central University, including law school clinics. This report should address whether and how other public law schools handle similar matters and for how long they have been doing so.

Answer:

The University views this ninth question as a summary of the individual requests expressed in the first seven questions. We trust we have satisfactorily addressed its concerns in our answers to those questions.

PART II: QUESTIONS POSED BY INDIVIDUAL BOARD OF GOVERNORS MEMBERS

**Questions Posed By Steven B. Long
Member, UNC Board of Governors**

1. **Please list those lawsuits or administrative agency complaints filed by the Center in the last 10 years and of those list the following:**
 - a. **Cases where the Center's clients won a judgment on the merits:**

None
 - b. **Cases where they Center's clients lost a judgment on the merits:**
 - o *Everett et al v. Pitt County Board of Education*-- In 2006, The Center began working with the Pitt County Coalition for the Education of Black Children, which includes local branches of the NAACP and the Southern Christian Leadership Conference. The Center worked with the Coalition to build grassroots demand for integrated schools and to prepare for anticipated future litigation. In 2008, a 1970s era desegregation order was re-opened following complaints by white parents that the federal-court-ordered assignment polices designed to further integration discriminated against their children. The Center intervened in the Pitt County school case in 2008, representing four families and the Pitt County Coalition for Educating Black Children, maintaining that a previously issued federal desegregation order was still necessary because of remaining vestiges of former segregation. The parties reached a settlement agreement in early 2009. In approving the settlement, the court held that the desegregation orders were still applicable and that Pitt County Schools still showed the vestiges of racial discrimination from a segregated, dual system. The settlement also required the school board fully to engage the community in ongoing discussion of student reassignment. This phase of the litigation was a success for the Center on the merits.

Then in 2010, the Board of Education approved a revised student reassignment plan that would have substantially resegreated several of the district's schools. The Center filed a motion seeking an injunction to stop the implementation of this reassignment plan. The court denied the injunction. The Center's clients appealed to the United States Court of Appeals for the Fourth Circuit, where the Center was successful once again. The Fourth Circuit vacated the district court's judgment and securing a landmark decision that held that the district was still subject to the original desegregation decree. The matter was remanded to the

district court for trial on the factual issues of whether the reassignment plan in fact furthered racial segregation of students in Pitt County. The Center, along with co-counsel from the Lawyers Committee for Civil Rights Under Law and the national private law firm Dechert LLP litigated the matter. The court ruled against the Coalition and the individual parents we represented, and released the district from court oversight. The Court of Appeals affirmed the lower court in a 2-1 decision. In a dissenting opinion, Judge Wynn echoed the plaintiffs' argument that the ruling contradicted both the Fourth Circuit's earlier opinion in the case and prior Supreme Court desegregation jurisprudence, noting that the majority opinion affirms "a district court decision that utterly fails to analyze the facts in the case in compliance with this Court's instructions and established Supreme Court precedent."

- *Garlock et al v. Wake County Board of Ed*—in 2010 the Center, along with several other private lawyers and non-profit groups filed suit on behalf of a dozen Wake County residents challenging the conduct of a series of meetings of the Wake County Board of Education under the North Carolina Open Meetings Act. The trial court ruled in favor of the Board although it did find that Board had in fact committed two clear violations of the Open Meetings Act. The decision, including the finding of the two violations, was affirmed by the North Carolina Court of Appeals, (Center lawyers were lead counsel on the appeal, but not during the lower court litigation).
- c. **Cases that settled where the party sued by the Center admitted liability:**
None. A primary incentive for any party to settle is to avoid a determination of liability.
- d. **Cases that settled where the party sued by the Center denied liability:**
 - *Johnson v. Fleming*— Long-standing community client organizations fighting against discrimination in Moore County referred this matter to the Center. Representing the Johnson family, the Center filed a fair housing lawsuit against a landlord, a real estate agent, and the real estate company for refusing to rent a house to the Johnson's because of their race. The case settled favorably for our clients.
 - *Habitat for Humanity v. Upchurch et al*— The Center and the Winston-Salem office of Kilpatrick Stockton filed a lawsuit on behalf of Habitat for Humanity of the North Carolina Sandhills alleging racial discrimination in violation of federal fair housing laws and interference with contract related to Habitat's purchase of land and proposed affordable housing development in Pine Bluff. The case settled favorably for Habitat.

- *ROCCA et al v. Brunswick County*--The Center for Civil Rights and the law firm of K&L Gates, LLP represented The Royal Oaks Concerned Citizens Association and community residents in rural Brunswick County in a civil rights action suit filed June 3, 2011. The lawsuit challenged the county's decision to rezone land in the Royal Oak community from rural residential to industrial general in preparation for the siting of an additional waste dump in the community. The Royal Oaks Community is a historic, African American, low-income rural community located in the unincorporated town of Supply. The community already hosted most of the other environmental hazards in the county, including a waste transfer station, a sewage treatment facility, an animal shelter, a hog farm, a fish farm and numerous sand mines. All the uses adversely affect water quality in the community, which lacks public water and sewer, even though county water and sewer lines stop just short of the community's borders. The Center worked with the Cedar Grove Institute for Sustainable Communities and the North Carolina Environmental Justice Network to document the extent of the existing environmental and public health hazards. The County ultimately settled the lawsuit, agreeing not only to stop the waste dump but instead to build an elementary school on the property for neighborhood children.

- *Concerned Citizens for Successful Schools v. Johnston County Bd. of Ed.*—After the school district refused to provide complete responses to public records requests from a community education coalition (that include parents, local elected officials, business leaders, and engaged residents), the Center and a private attorney in Smithfield filed a lawsuit under the North Carolina Public Records Act. The case was settled favorably, with the records provided.

- *Gary et al v. Halifax County* -- Roanoke Rapids, a predominantly white city in majority-minority Halifax County, annexed the Brandy Creek/Wallace Fork Road neighborhood (a working class African American community) as part of its new “entertainment district.” The town annexed the community without any notice to the residents. The neighborhood was rezoned commercial, and the city levied additional property tax on the residents' properties even though it refused to extend to them sewer or other basic services. The residents believed that the city's intent was to displace this community to make way for commercial development. As a result of these changes, land values and consequent property taxes in the community went up an average of over 800%, and as high as 1400%, an intense hardship which decimated the neighborhood, forcing some residents to leave the community. The Center assisted the community, first with seeking de-annexation from Roanoke Rapids. When the county refused to refund the illegal and excessive property taxes, the Center filed suit on behalf of 20 property

owners. The Center settled the case, and tens of thousands of dollars were returned to the residents of this racially excluded community.

e. **Cases that settled where the settlement involved no admission or denial of liability:**

None.

f. **Cases that were dismissed on a procedural issue:**

- o *Silver et al v. Halifax County Bd. of Commissioners*—Following five years of research and general legal support to community-based education advocacy groups, in August 2015, the Center (with the Lawyers Committee for Civil Rights and the national law firm Latham & Watkins) filed suit on behalf of two community organizations and three parents against the Halifax County Board of Commissioners. The lawsuit seeks to vindicate right of all Halifax County’s schoolchildren under the North Carolina Constitution a sound basic education by urging the consolidation of the three, small racially segregated school districts within Halifax County. For years, these have been some of the state’s lowest academically performing districts. The case was dismissed on a 12(b)(6) motion, and is currently pending before the North Carolina Court of Appeals.

2. **Whom did the Center’s managing attorney (Mr. Dorosin) envision would litigate to further the agenda he described in the video link below when he told a political protest rally that they must ‘Educate, investigate, advocate, agitate and then litigate’? Was he intending that the UNC Center for Civil Rights assist in that litigation strategy? If so, how?**

See comments made at the 3:55 mark of the attached video of a speech to political protest rally:

<https://m.youtube.com/watch?v=EQE9prT7Xo>

The 2013 event referred to in this question was not a “political protest rally” but the opening of a grassroots “legislative advocacy day” in Raleigh, following which community members in attendance were going to visit their legislators and discuss important issues under consideration by the legislature at that time. The Center’s managing attorney Mark Dorosin was invited because of his expertise to make a presentation on significant North Carolina education issues and summarize pending education bills. That is the subject he discussed in the referenced video, which should be viewed in its entirety.

The encouragement Dorosin offered those in attendance was to continue to engage in dialogue with political officials on these issues. The succession of steps Dorosin described are ones the Center and many other advocacy organizations

follow when trying to promote social change. The first step is self-education about whatever issue is pending. The second step is empirical investigation of the details of the issue – both factual and legal – and investigation of possible alternative solutions. Once an advocate clearly understands the issues and possible solutions, she or he will likely need to advocate for them to those who have authority to make changes. Normally, that advocacy will involve presenting the problem, explaining its factual and legal dimensions, and urging the adoption of the favored solution. If those in authority refuse to engage in dialogue, then an advocate might decide to draw broader public attention to the issue by engaging in one or more of the First Amendment-protected rights -- of speech, assembly, resort to the press, or petition “for a redress of grievances.” This is the ‘agitation’ stage. Finally, under the American system, advocates can sometimes pursue clients’ right of access to the civil court system if their rights continue to be ignored or disparaged after investigation, advocacy or ‘agitation.’ In sum, both direct engagement, and when necessary, litigation, are integral components of the Center’s mission of service. The remarks made that day by Dorosin were not promising its assistance in any specific litigation, though the Center has indeed involved itself in a number of North Carolina lawsuits to secure the right to a sound basic education and the right to a non-discriminatory education for all children.

3. **Did the Center represent the NC NAACP on a pro bono basis in the school voucher case? If so, why, given the resources available to that organization?**

Yes. CCR’s mission includes providing legal support and representation – in the areas of its legal expertise -- to individuals, groups or organizations that are working to address the continuing impacts of race discrimination and to protect civil rights and social justice. The North Carolina NAACP is an organization dedicated to those ends. Many of the non-profits that the Center represents, including the NAACP, have limited financial resources. Receiving legal services without charge enables these non-profits to conserve their limited resources. The Center has well-known experience and legal expertise on issues of educational equity, segregation, and the right to a sound basic education. Its expertise, and its concurrence with the view of the NC NAACP that school vouchers present serious challenges to many lower-income and minority students, made it an appropriate organization for receipt of legal representation in this matter.

4. **Name those Center lawsuits in which a student argued a motion or primary case to a judge or jury. Identify the students.**

Most students that work with the Center while in law school are in their first or second year. Law students in the first year, and second-year students still in their first semester, are not eligible for “practice certification” under the Administrative Rules of the North Carolina State Bar, Subchapter C, Section .0203(2) that allows them formally to appear in legal proceedings. Because of the limited amount of direct litigation in which the Center engages, the unpredictability of the timing of

formal steps in any litigation, and the extensive hands-on experiences the Center provides in pre-litigation training and advocacy outside of the courtroom, it has not sought certification for our other students. However, as UNC Law students have indicated in comments (attached), they gain direct experiential training counseling clients; investigating, researching and analyzing claims and evidence; drafting briefs and motions; conducting discovery; preparing and making public presentations; attending and participating in community and local government meetings; conducting client intake and case assessment; and developing legal and case management strategies; and observing Center attorneys engage in trial and appellate courtroom advocacy. Their experiences as students are more analogous to—and often more intensive and direct than—those of a new associate at a law firm.

Participants in our Attorney-Fellows program are recent JD degree recipients, most of whom have passed the North Carolina bar and are fully licensed to appear in court. These fellows -- who normally work with the Center for two years to develop their skills and experience as budding civil rights and public interest lawyers -- have drafted and filed motions and briefs, argued motions in court, conducted and defended depositions, participated in direct and cross examination of witnesses in trials and administrative proceedings, engaged in mediation and settlement negotiations, and led client and community meetings. For reasons of privacy, the Center will not provide their individual names without further demonstration of need.

5. **Please list all of the course taught at UNC-CH by the 3 attorneys at the Center (Shaw, Dorosin and Haddix) in each of the last 5 academic years.**

There are four attorneys connected with the Center, three of whom teach at the School of Law. (Jennifer Marsh, the Center's Director of Research, Community Services, and Student Programs, does not teach). The classes taught by Shaw, Dorosin and Haddix since 2013 are:

Shaw: Professor Shaw joined the Law School faculty in the fall of 2014.
Civil Procedure (fall semesters: 2014 & 2015)
Advanced Constitutional Law (spring semesters: 2015-17)

Dorosin: Political & Civil Rights (fall semesters: 2012-16)
Residential Segregation & Racial Exclusion (Geography 452)
Apples Service Learning course (spring 2015)

Haddix: Housing Law (spring semesters: 2016 & 2017)

6. **Are the 3 attorneys at the Center full-time employees of the State?**

Yes. However, the salaries, benefits and fringe benefits for Dorosin and Haddix are paid exclusively by money raised by the Center from outside private funding

sources. Shaw is a tenured member of the School of Law faculty with an endowed chair. He receives a stipend for serving as director of the Center. The Law School is reimbursed for this stipend from private funds contributed in support of the Center.

7. **Do any of the attorneys at the Center provide legal representation to third parties outside of their roles as UNC employees?**

Yes. Pursuant to the NC Rules of Professional Conduct (see below), staff attorneys have, on a very limited basis, provided legal representation on their own time, outside their role as employees of the University (Shaw) or of the Center (Dorosin and Haddix).

The North Carolina State Bar, in R.P.C. 6.1, states that:

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) Provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to:

- 1. Persons of limited means;*
- 2. Charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; or*
- 3. Individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate.*

(b) Provide any additional services through:

- 1. The delivery of legal services described in paragraph (a) at a substantially reduced fee; or*
- 2. Participation in activities for improving the law, the legal system, or the legal profession.*

8. **What percentage of time for each of the 3 attorneys at the Center is devoted to work on litigation?**

Although Executive Director Ted Shaw consults with the staff on all litigation, he is not admitted to the bar in North Carolina. That consultancy and strategic advice has involved approximately 5-10% of his time.

The time devoted by Center staff attorneys to litigation varies over time by the status, nature, and procedural status of each matter. Over the last 9 years, approximately 25% of staff time was devoted specifically to litigation.

9. **When the Center filed an amicus curiae brief on behalf of itself in the voter ID case in 2016, did it obtain approval from the Chancellor and did it notify the UNC president as required under BOG Policy 200.5?**

The Center did not secure approval from the Chancellor or notify the UNC President before filing the *amicus curiae* brief in the voting rights case in 2016. At the time the Center's attorneys began working on that brief, it anticipated that it would eventually be filed on behalf of another organization. That organization eventually decided to file its own brief. The primary value of the Center's brief was its recital of historical and demographic information within the Center's particular expertise concerning the cumulative impacts of the legacy of discrimination on African American communities. When no other organization appeared able to step forward, the Center and its Director decided it would be appropriate to submit the brief in its own name to provide this information to the court for its consideration. The Center's brief did not claim to represent either the School of Law, the University of North Carolina at Chapel Hill or the UNC system.

10. **Does the University believe it would be wise policy to let other stakeholders at UNC form academic centers that can pursue advocacy agendas and litigate on other causes, such as free enterprise, protection of life, equal rights for women, freedom of religion, etc? If so, should be the cause supported be decided solely by faculty?**

The University has not previously addressed these issues, and it would likely do so only in the specific context of considering a proposal for a new center or institute under its established guidelines. (See **Appendix G.**) A recommendation to go forward with any such center would rest initially with the University's Centers and Institutes Review Committee. That recommendation would be forwarded to the Executive Vice Chancellor and Provost, and eventually, to the Chancellor, for final approval. Faculty members are not authorized to begin a center or institute on their own initiative.

**Questions Posed By William Webb
Member, UNC Board of Governors**

1. What is a center?

The term ‘center’ has been used (and misused) by colleges and universities for many years. In general, it refers to an entity, sometimes housed within a university school or department (e.g., *the Parr Center on Ethics, housed within the UNC Department of Philosophy, see: <http://parrcenter.unc.edu/>*) and sometimes housed outside any specific school or department (e.g., *the Frank Porter Graham Child Study Institute -- formerly, Child Study Center, see: <http://fpg.unc.edu>, not housed within any school*). Usually centers have multiple purposes, including research, interdisciplinary collaboration, and outreach to other academic or research entities and/or to the public. Many centers were initially formed when special funding – from federal grants, from non-profit foundations, or from private philanthropy – became available to support special activities or research. Others reflect the initiative of particular faculty members. Centers usually have affiliated faculty members deeply invested in their activities, even as those faculty members retain their academic roles within schools or departments. Centers often employ administrative or research staffers as well whose sole responsibilities are to the center, not to a particular department chair or school dean. Some centers involve students integrally; in other centers, students are a peripheral emphasis.

At the University of North Carolina at Chapel Hill, the creation and maintenance of new centers or institutes is under the supervision of the Executive Vice Chancellor and Provost. University Centers and institutes are governed by a formal policy (see **Appendix G**) which is administered by a Centers & Institutes Review Committee. That policy provides:

Centers and institutes provide a vehicle for cross - disciplinary collaboration to maximize the capacity of the University to address complex problems, conduct research, educate students, and serve the needs of the state, the nation, and the world. They strengthen and enrich efforts to fulfill the University’s tripartite instructional, research, and service mission and provide enhanced opportunities for faculty, staff, and students. University centers and institutes are organized administrative units that

- provide support to faculty, staff, and students from different disciplines in research, instructional, and/or public service endeavors that benefit from coordination across multiple perspectives and units **and/or***
- ensure the professional curation of scientific, scholarly, natural, or cultural*

*resources and collections and provide these to organizations and individuals within the university and/or in the larger community for the purposes of research, education, and public service **and***

• result in strengthened and enriched programs in research, teaching, and/or service; enhanced opportunities for faculty, staff, students, and the public; and heightened economic impact in the state.

Such centers may be organized under the auspices of a dean or group of deans and based within a department, school or college, or group of schools; or they may be pan - university and under the auspices of the Executive Vice Chancellor and Provost or the Vice Chancellor for Research and Economic Development.

2. How is a law school center different from a law school clinic?

American law schools began in the 1960s to supplement their traditional classroom-based legal instruction with ‘clinics,’ modeled loosely after medical, nursing, and dental school clinics, in which live patients/clients seek and receive professional help with their problems.

Most law schools offer clinical training through for-credit courses in which students receive training from skilled clinical faculty members as they actively represent groups or individuals who need legal assistance. Some clinics focus, for example, on the criminal justice system, and students work as defense attorneys (or less frequently, as prosecutors) under the direct supervision of faculty members. Other clinics focus on civil matters, for example, landlord-tenant cases, consumer disputes, juvenile justice issues, or educational discipline cases where students might represent tenants, installment purchasers, or high school students facing expulsion for misbehavior. Veterans’ clinics represent former members of the military to assure they receive necessary benefits and services. Some clinics focus on assisting individuals to form business entities including small businesses and non-profit enterprises. Other clinics assist individuals, small businesses, and educational institutions with matters pertaining to the protection of intellectual property. Faculty members often accompany students to client interviews, oversee their filing of legal papers, and appear with them in appropriate courts. Clinics usually require classroom sessions as well, in which students and faculty members reflect on the legal steps students have just taken or the challenges they will soon be facing. A classroom session addresses ways to improve students’ technical performance on an interview with a client or the cross-examination of a witness; alternatively, it might explore how better to integrate client desires and professional ethical norms.

While some clinics engage in research or sponsor conferences, that emphasis is relatively rare. Their focus, as noted, is on student learning. By contrast, many centers place great emphasis on research and scholarly investigation. A center on public housing might study metropolitan-wide patterns of housing need, patterns of housing authority decisions on the placement of public housing, trends in tenant eviction, or the incidence

of crime within housing projects. A clinic, by contrast, might focus on the direct representation of individual tenants facing eviction. Some centers involve students in their work, depending upon their mission. Others do not. Virtually all law school clinics, by contrast, centrally involve students.

3. **How many law school centers and institutes are there? How many clinics?**

At the University of North Carolina at Chapel Hill School of Law, there are presently four centers:

- The Center on Banking and Finance
- The Center for Climate, Energy, the Environment & Economics
- The Center for Media Law and Policy
- The Civil for Civil Rights

The Law School supports eight clinical programs:

- The Civil Legal Assistance Clinic
- The Community Development Law Clinic
- The Consumer Financial Transactions Clinic
- The Domestic and Sexual Violence Clinic
- The Immigration Clinic
- The Intellectual Property Clinic
- The Veterans Legal Assistance Clinic
- The Youth Justice Clinic