

L. Statement of Martin H. Brinkley, Dean, UNC School of Law

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**Proposal To Terminate the Ability of
The UNC Center for Civil Rights To Bring Litigation**

**Statement of Martin H. Brinkley
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I am deeply troubled to learn of a proposal now pending before a committee of the University of North Carolina Board of Governors, the effect of which will be to prevent the UNC Center for Civil Rights from seeking redress in court on behalf of North Carolinians who believe they have been deprived of civil rights either by the government of their state, county or municipality, or by private citizens or corporations. I urge the Board to reject this proposal in the interest of our students, in the interest of the freedom of a great University, in the interest of our fellow citizens who look to that University for hope, and in the interest of the rule of law.

My views on this matter are founded on the unique history of the institution I serve, together with that of North Carolina and of our country. They are grounded in the obligation my colleagues of the law faculty and I have to prepare our students to become lawyers who will competently and courageously represent victims of discrimination and injustice. They are also premised on my conviction that this proposal interferes with and diminishes the quality of the intellectual environment, not just at the law school, but in the University as a whole – in ways from which the institution will not soon recover. The proposal will do great damage to one of North Carolina's most treasured assets: a great state University.

History

Founded in 1845, the University of North Carolina School of Law is the second oldest part of the University of North Carolina. It is one of the dozen oldest law schools in the country and the oldest graduate and professional school in the state. For generations, students destined for lives of service and public leadership have passed through its classrooms. Yet the history of the law school, like that of the University at Chapel Hill itself, is intertwined with North Carolina's dark catalogue of racial oppression.

Consider this from the perspective of the state's highest office. Of the 25 governors who have served North Carolina since 1900, ten have been graduates of UNC and the law school. Among them were chief executives from the first third of the 20th century who presided over the adoption of Jim Crow laws that privileged some citizens (to their own ultimate degradation) and degraded others on the basis of the color of their skin. Also among them were later governors such as Terry Sanford, Jim Holshouser and Jim Hunt, who fought to eliminate the vestiges of segregation and ameliorate the poverty and lack of opportunity they fostered.

For the first 106 years of its existence, the law school at Chapel Hill, like the University as a whole, did not admit black students. In 1951, as the result of a successful civil rights suit that sprang from a recent U.S. Supreme Court ruling, five African-American law students enrolled. This made the law school responsible for the integration of the entire University at Chapel Hill. Histories of the period reveal that the five students encountered hostility from students and faculty alike. One of the five, Floyd McKissick of Durham, went on to become a major national civil rights figure and – according to the law school’s official history – “a signal player in the civil rights struggles during the 1950s and 1960s in Durham, in North Carolina, and throughout the nation.”

Eight years later, in August 1959, Julius LeVonne Chambers, a native of Mount Gilead, North Carolina, the valedictorian of his class at what is now North Carolina Central University and the holder of a master’s degree in history from the University of Michigan, enrolled in the law school’s first-year class. Chambers quickly claimed the top academic rank in the school, going on to become the first African-American editor-in-chief of the prestigious *North Carolina Law Review*. His recent biographers Richard Rosen and Joseph Mosnier have observed: “Undaunted by the dynamiting of his home and the arson that destroyed the offices of his small integrated law practice,” Chambers pushed federal civil rights law to its high-water mark in the 1970s, winning landmark school and employment desegregation cases at the high court. He went on to serve as president and director-counsel of the NAACP Legal Defense & Educational Fund – by common consent the most important civil rights legal position in the country. As lead counsel before the U.S. Supreme Court in *Swann v. Charlotte –Mecklenburg Board of Education*, Chambers’ advocacy led to fuller integration of the Charlotte-Mecklenburg School System, a milestone for the future prosperity of our state’s largest city and for public schools across the nation.

The law, more than any other profession, is a calling rooted in the history of humankind. We urge our students to live greatly in the law by taking as models the great lawyers of the past, those who defended what John Adams called “a government of laws, not of men.” It is impossible to overstate the importance of Julius Chambers’ life and legacy to the UNC Law School. The nation’s preeminent civil rights lawyer in the years after Thurgood Marshall joined the federal bench, Chambers may well be the most important graduate in the school’s history. His spirit dwells in our halls, a shining source of pride in the difference one person’s dedication to the law can make in the lives of countless others. Wherever their professional walk takes them, UNC Law School’s students, faculty and alumni are aware of his presence, which asks each of us the endless question: “What responsibilities does the privilege of membership in the world’s noblest profession lay on *your* shoulders?”

Julius Chambers founded the UNC Center for Civil Rights in 2002. For nearly fifteen years since, the Center has carried out a successful, multi-disciplinary mission of research, professional training, and public service. Today it is led by Theodore M. Shaw, the Julius L. Chambers Distinguished Professor of Law at the School, who in 2014 came to UNC from Columbia University Law School after distinguished service as Julius Chambers’ successor in the role of director-counsel of the NAACP Legal Defense & Educational Fund, Inc. The law school and the Center are extremely fortunate to have secured the commitment of Professor Shaw to carry on the ideals of the Center’s founding director.

Common Ground: The Overlapping Missions of the Center and the University

The Center's three-fold mission is:

- The creation and sponsorship of cutting-edge research and scholarship on contemporary issues of civil rights;
- The education and training of law students who aspire to become a new generation of civil rights attorneys, advocates, and scholars; and
- The provision of outreach and direct assistance to racially disadvantaged and lower-income individuals and communities within both the State of North Carolina and the Southeast, not only as a public service to these communities — to build their capacity to remove unjust racial and economic barriers — but also as a clinical training ground for aspiring civil rights lawyers and as a prism through which to examine and develop, in the field, effective new and sustainable programs to reduce racial and economic inequality.

The Center's mission tracks the mission of the University of North Carolina. That mission, approved by the UNC Board of Governors, is:

[T]o serve as a center for research, scholarship, and creativity and to *teach a diverse community of undergraduate, graduate, and professional students* to become the next generation of leaders. Through the efforts of our exceptional faculty and staff, and with generous support from North Carolina's citizens, we invest our knowledge and resources to *enhance access to learning* and to *foster the success and prosperity of each rising generation*. We also extend knowledge-based services and other resources of the University to the citizens of North Carolina and their institutions to *enhance the quality of life for all people in the State*. With *lux, libertas* — light and liberty — as its founding principles, the University has charted a *bold course of leading change to improve society* and to help solve the world's greatest problems.”¹

Within its sphere of civil rights, the Center, like the University at Chapel Hill as a whole, serves as “a center for research, scholarship and creativity,” through the sponsorship of national scholarly and policy conferences, the publication of reports, and the fostering of special law review issues and scholarly books, and by a stream of ongoing scholarship regularly undertaken by its law faculty participants. The Center also embraces the task of “foster[ing] the success and prosperity of each rising generation,” especially (but not exclusively) those law students who hope to receive hands-on training in civil rights litigation, client advocacy, and community service – much like the clinical training afforded future attorneys by the law school's clinical programs or like the clinical training extended to future physicians, pharmacists, nurses, social

¹ Mission Statement approved by UNC Board of Governors, Nov. 2009 and Feb. 2014 (emphasizing italics added); see <http://www.unc.edu/about/mission/>.

workers and teachers by the “field placements” arranged through other professional schools at UNC-Chapel Hill. Finally, the Center participates in a deservedly celebrated University that has long set Chapel Hill apart from many of its public and private peers: “extend[ing] knowledge-based services and other resources . . . to enhance the quality of life for all people in the State.”

When and Why the Center Goes to Court

The Center files formal legal papers to vindicate the civil rights of North Carolina citizens, but it does this only after trying to resolve their problems in other ways. The Center’s staff of three attorneys, assisted by law school students, works to educate citizens in how to present their own grievances before state and local government bodies, in hopes that a resolution can be achieved before litigation is considered.

But when self-help methods are unavailing, having the ability to represent clients in court is essential to the Center’s effectiveness. The Center’s current clients — for the most part, impoverished African-American citizens — have often been deprived of basic human needs or the equal treatment promised by law. They include the schoolchildren of Halifax, one of the state’s poorest counties and home to three of its worst performing school systems — schools into which, nearly a decade ago, a trial judge ordered the state to intervene. They include victims of North Carolina’s state-mandated eugenics sterilization program, in effect from 1929 to 1973. They include persons whose homes lack adequate water and sewer because a neighboring municipality refuses to provide them.

As the Center represents clients in court, it simultaneously provides aspiring lawyers, some of whom choose UNC Law in part because the Center is here, with meaningful real-world litigation experience. That experience introduces students to the challenges, ethical responsibilities, and satisfactions of vindicating at first hand the rights of lower-income, typically non-white communities and families who struggle to obtain shelter, adequate health care, a sound basic education for their children, and meaningful employment. Depriving law students of the chance to work on real proceedings would be like training surgeons with only textbooks and charts — with never a scalpel in sight.

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. The state’s long-running school finance reform lawsuit, *Leandro v. State*, was brought in 1994 by students and five local school boards from ‘low-wealth’ counties against the State of North Carolina as defendant. Six other wealthier school systems intervened in the litigation, which continues to this day. Civil rights are individual rights which 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.

The Freedom of the University

UNC- Chapel Hill Chancellor William B. Aycock was a legendary and beloved member of the UNC Law School faculty for 40 years. Speaking in 1976, the year of the nation’s Bicentennial, he said:

The crown jewel of this University is not its physical size, but rather, it is the freedom to discover and to learn and the freedom to speak and to teach unfettered by what some person or group deems to be appropriate. This University, fathered by rebellion against oppression and mothered by a vision of freedom, has become an instrument of our representative democracy. . . There is no effective way to cope with surprise attacks on freedom within a University.

Is it not right to ask that the “University of the People” — the University that for too long belonged only to *some* of the people — be allowed to teach the future guardians of the rule of law how to vindicate the rights of forgotten North Carolinians of our own time? That law students for whom Julius Chambers is living presence should be trained in the full range of skills that he employed to the betterment of all Americans?

The current proposal runs contrary to the very purpose of a university, well stated by the Nobel Prize-winning economist George Stigler:

The university is by design and effect the institution in society which creates discontent with the existing moral, social, and political institutions and proposes new institutions to replace them. . . . Invited to be learned in the institutions of other times and places, incited to new understandings of the social and physical world, the university is inherently a disruptive force.

Those who love our law school and this University — those who remember its historic role in leading the fight against the scourges of tenant farming and child labor, of inadequate medical care and substandard public education, and those who believe that free speech and open inquiry remain indispensable tools in addressing our world’s greatest problems — cannot help but see the current proposal as diminishing the University’s past achievements and its future promise. We fervently hope that the Board of Governors — charged as it is by law with doing “all such things . . . as may be necessary for the promotion of learning and virtue”² — will reject this proposal and empower the University to arise and once again take its stand for freedom.

Dean Brinkley does not purport to speak for the University.

² N.C. Gen. Stat. § 116-3.