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ON THE HILL

THE DAWN OF DUNBARTON

By Larry D. Coleman

In the beginning we were slaves by law. After the Civil War we became free by law—later to be segregated by law. Being today equal by law, we still remain victims of law.

Blacks and the law need no introduction.

Having produced several generations of lawyers who figured indispensably in the surge toward equality, the forces of history and need are crying out once more to Howard University for a new breed of legal tacticians...post-Watergate lawyers of the highest caliber. The dawn of Dunbarton can be Howard’s rising to answer those forces.

With the acquisition of the former Dunbarton College campus, it is certain that those who have long been objects of the law are seriously seeking to become makers, interpreters and wielders of the law. Not so long ago on July 3, 1844, the first Black lawyer, Macon B. Allen, was admitted to the bar in the State of Maine. That was 120 years ago and already visions of a national Black law center have crept into the minds of key people in positions to actualize these visions.

Before Dr. John S. Rock, a lawyer, physician and dentist, was admitted to practice law at the U.S. Supreme Court in 1865, Blacks were not so privileged. Before Jonathan Jasper Wright was elected to serve a full six-year term as an Associate Justice of the Supreme Court of South Carolina in 1870, Blacks were not so privileged; it may further be stated that Justice Wright’s presence precipitated no such avalanche in other states and his term, enmeshed in the web of Reconstruction politics, was short-lived.

On the morning of January 6, 1869, a significant event transpired. The Howard University School of Law flung open its doors. Though not heralded by a 21-gun salute, nor acclaimed by blasts from mighty bugles, a part-time faculty under the direction of Professor John Mercer Langston, who later became University...
vice president, set about the task of preparing Black men for the bar. Graduating its first class on February 3, 1871—law studies then requiring only two years—8 of its 10 graduates were admitted to the District of Columbia Bar the following day. Not to be outdone, Charlotte E. Ray, daughter of Charles B. Ray, a Black Congressional minister and according to Historian Rayford Logan, author of Howard University: The First Hundred Years, "one of the ablest abolitionists," was graduated in 1872 as the first women graduate. She became, Dr. Logan wrote, "the first women in the United States to graduate from a regular non-profit law school and also the first woman admitted to practice before the Superior Court of the District of Columbia."

Though still young, the fledgling School of Law wasted no time in establishing its presence. Of the 20 Black Congressmen and 2 Senators elected to serve on Capitol Hill between 1870-1901, the following six Congressmen were lawyers: Robert B. Elliott, South Carolina (1871-1875); Thomas E. Miller, North Carolina (1883-1887); George H. White, North Carolina (1897-1901); John R. Lynch, Mississippi (1873-1877); John Mercer Langston, Virginia (1889-1891); James E. O'Hara, North Carolina (1883-1887).

Congressman O'Hara was a graduate of the Howard University School of Law. Congressman Langston was a former dean of the School of Law and University vice-president (1869-1876). Congressman White, the last Black Congressman to serve during the post-Reconstruction period, received his undergraduate degree from Howard and returned to North Carolina to read law on his own—becoming one of the premiere advocates in his state. Albert Gallatin Riddle, one of the three part-time faculty members assisting Professor John Mercer Langston when the School first opened its doors, had been a member of the House of Representatives from Ohio (1861-1864), in addition to being "among the first to advocate the abolition of slavery in the District of Columbia and the enlistment of Negro troops," according to accounts in Dr. Logan's book.

From its inception, bent on a rendezvous with destiny, the School of Law entered 1974 laden with laurels, yet accosted from some quarters as being a School on a steep decline. This tempestuous assault from within and without may have driven it to an untimely demise, but for the fact that the School's foundation rested on solid rock. Too many had faith; too many held on; too many believed. Gone are the days of self-doubt and self-pity. The Watergate scandal, the Viet Nam War, the assassinations of Dr. Martin Luther King, Jr., John F. Kennedy, Robert F. Kennedy and Malcolm X have lent credence to suspicions that all was not well in the nation.

It is not clear what affect the relocation of the School of Law to Dunbarton will have on the hilltop campus. Certainly the vacated space will be put to good use. Beyond this, a vacuum of some sort is bound to be created—the School having been a long-standing institution. The move west of Rock Creek Park, nestled in the heart of a predominantly white, upper-income residential area, promises to bring a lasting reorganization to that part of the city.

But, beyond the educational and socio-economic impact on the area, the move will give the School of Law room to breathe, room to stretch and sun itself, and room to grow. The 19.4-acre Dunbarton site is a far cry from the cramped, single building standing on Sixth Street and Howard Place, N.W. Nationally, the move to Dunbarton may be viewed as the inauguration of a viable Black institution. The rolling hills and manicured grounds provide an aesthetic backdrop for the panorama that unfolded in the fall. Calm, serene and lovely—an unduly burdened student has but to take his or her books under the arm, stroll a few yards down a hill, and be surrounded by the still of Rock Creek Park. The uprooting and the re-institution of the School of Law is such a significant and far-reaching event in so many ways that only history can tell what shall come of it all.

The Bar Examination

Then, there is the bar. In recent years, Howard graduates have been failing bar examinations in various states at alarming rates. Black candidates in general have been failing the bar at a steadily spiralling rate, but this factor, in and of itself, does not explain the sudden—post 1969—mysterious decline of the graduates of a School who once passed at the rate of 90% and above. Many claim that the onus of discrimination is the culprit. This certainly should not be dismissed without at least a cursory examination. Black lawyers in the early Sixties represented no numerical threat. Howard graduated 21 law students in 1961. When it is considered that this was the highest total of Black potential lawyers to graduate from any one place that year, it may easily be understood how that noble 21 could be regarded as an innocuous drop in the bucket and allowed to filter through. On the other hand, in 1973 Howard graduated 104—this in light of the fact that Blacks in increasing numbers were also graduated from law schools all over the country that year. Increased numbers of Blacks petitioning to take the bar is one of the reasons asserted by some people why passing bar examinations is based on a discretionary and arbitrary trip-wire which springs shut when it chooses. Yes, only when it chooses, merit to the wind.

Others have shunned the charges of racism and asserted instead, as did Washington Post Columnist William Raspberry, that the problem was either Howard or the students themselves. Raspberry, in his column, argued that Howard was getting an inferior brand of student, joining in the process a chorus of detractors who further asserted that the quality of instruction at Howard University has eroded badly; all of whom invariably traced this allegation to be one of the by-products of the student-unrest years of the Sixties. This same chorus further alleged that
many of the students were not law school material in the first place, and that when they got to the bar, the Great Reckoner, their latent incapacity to handle law surfaced and caused them to fail.

"Racism how?" they asked. "The bar examinations are taken by numbers. The examiners can't tell Black from white," they asserted. This very same argument is handed annually to law students; nevertheless, the professors manage to know who you are without much effort.

Finally, from at least one quarter has come the comparison of Black law student failures on bar examinations to the concomitant rise of Richard M. Nixon and the institution of "the plumbers." At first glance, the possibility certainly becomes intriguing, and indeed it is true that Black students have failed at the bar in increa-
ing numbers after Mr. Nixon became President, but so many other variables would necessarily be involved in this type of relationship as to make America a very frightening place in which to live were one to subscribe to this point of view.

The DeFunis Controversy

Entering this swirling mire of confusion is the case of a white student, Marco DeFunis. DeFunis, a 1971 Phi Beta Kappa graduate from the University of Washington, filed suit against Charles Odegaard, president of the University of Washington and others after he was denied admission to the Law School. DeFunis argued that he was wrongfully denied admission in that no preference was given to residents of the State of Washington and that persons [Blacks and other minorities] were admitted to the Law School with lesser qualifications than his.

He contended that although his Projected First Year Average (PFYA), 76.23, fell short of the required 77.0 for admission of non-minority students, the fact that such a standard existed and operated to admit 36 persons out of 275 invited to enroll with lower PFYA than his own, effectively denied him equal protection of law as mandated by the 14th Amendment to the U. S. Constitution.

The Superior Court of the State of Washington held for DeFunis and compelled the University of Washington Law School to admit him, but further held that the Law School was under no obligation to give priority to state residents.

The Supreme Court of the State of Washington reversed the lower court.
finding that DeFunis was denied equal protection of law, and held that a compelling state interest justified the institution of affirmative action programs such as the one at the Law School which sought to increase the disproportionately low number of minority members of the state and national bar associations.

In 1971, Supreme Court Justice William Douglass, sitting as Circuit judge, ordered that DeFunis be admitted to the Law School pending resolution of the issues surrounding his litigation.

By the time the U.S. Supreme Court heard the case in January 1974, DeFunis was a third-year student preparing for his finals.

Having been assured by officials at the University of Washington that he would be allowed to graduate regardless of the outcome of the Supreme Court review, DeFunis was immune to any findings of the High Court. For this reason, the Supreme Court in April handed down a per curiam finding to the effect that the DeFunis case presented a moot issue.

A curious aspect of the DeFunis case is that 29 non-minorities with higher PFYAs than DeFunis' were also denied admission, their applications being, in the opinion of the Board of Admissions, less impressive than others whose composite applications reflected a more compatible similarity with its view of what a first-year student should be.

Of the 36 minorities invited to enter the University of Washington Law School, only 18 actually appeared.

The question presented by the DeFunis controversy was whether the state university could, in consonance with equal protection provisions of state and federal constitutions, consider the racial or ethnic background of applicants as one factor in the selection of students? The United States Supreme Court, by its finding of a moot issue, said it could.

The DeFunis case, needless to say, had an unsavory affect on Black students. They, in fact, were the ones on trial. Had the Supreme Court held for DeFunis, all the affirmative action programs would have had judicial license to close down. Had the Supreme Court held for the State of Washington, or Charles Odegaard, the "reverse discrimination" of which DeFunis complained would have been adopted as the national precedent and no doubt raised the ire of many sympathetic to DeFunis and others in his predicament. So the Supreme Court chose to straddle the fence and leave the issue in abeyance for the various schools to proceed as they deemed proper.

Howard students would catch natural hell this year, as though they had not already caught it.

While at the "Ivy League" law schools of the Northeastern United States and other places, freshmen students took 10-12 courses; freshmen at Howard took 15. While in other law schools, a week to two-week reading period was set aside to prepare for final examinations, Howard students had only three days. While in other law schools, examinations were spread over a three-week period, first-year students at Howard had examinations back-to-back, with the only break in between being the week-end. It was hell last year. But if "Teacher of the Year" T. C. Richardson says it will be hell this year, then undoubtedly, it will be pure hell.

The selection of Charles T. Duncan as dean of the School of Law should do little to diminish the hell. His credentials are impeccable. In 1947, he graduated from Dartmouth College, cum laude and Phi Beta Kappa. He was graduated from Harvard Law School in 1950. He has served the District of Columbia Bar Association as president, and has been corporation counsel for the District of Columbia, just to mention a few of the numerous positions he has held.

Dean Duncan joins a long fraternity of distinguished deans, most notably a fellow alumnus of Harvard Law School, the late Charles Hamilton Houston, the man universally acclaimed as being primarily responsible for the accreditation of the Howard School of Law.

Dean Houston is listed in Historical Negro Biographies as "the architect and dominant force" of the legal program of the National Association for the Advancement of Colored People. He is credited for devising the legal strategy for the landmark (1954) Brown v. Board of Education case, even though he died four years before it came to trial.

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Law School—later to become the first Black federal judge in the U.S.—was brought on board to teach, later serving as dean from 1939 to 1946. Judge Hastie was also to serve as the first Black governor of the Virgin Islands, being appointed in 1944 by President Franklin Delano Roosevelt. During Hastie's early years at Howard, Thurgood Marshall was a student, and graduated at the top of his class in 1933. In 1961, Marshall was appointed a federal judge to the Second Circuit Court. He was appointed Solicitor General of the United States in 1965, and named to the Supreme Court in 1967.

Both Dean Hastie and Justice Marshall have paid homage to the brilliance of Dean Houston. Dean Hastie wrote: "In those few years (1929-1935) he carried the institution from the status of an unaccredited and little known—though undoubtedly useful—institution to a fully accredited nationally known and respected law school taking its place with the ranking law schools of the nation." Justice Marshall termed Houston the "First Mr. Civil Rights Lawyer."

Other great lawyers were to follow Dean Houston, men like William B. Bryant who was appointed by President Lyndon B. Johnson to the United States District Court for the District of Columbia in 1964; Scovel Richardson, a member of the Board of Trustees and a judge in the United States Customs Court at New York City; Judge Joseph C. Waddy of the Superior Court for the District of Columbia; Spottswood W. Robinson III, who served as dean from 1960-1962, and who in 1963 was appointed to serve on the United States District Court for the District of Columbia, later to be named by President Lyndon B. Johnson to a seat on the District Court of Appeals for the District of Columbia; and Judge Herman Emmons Moore, of the U.S. District Court in the Virgin Islands.

As may be apparent, Howard graduates make up a substantial share of Black judgeships in this country; however, often men equally qualified were not so honored. One of them was the late Frank
Reeves, who sat on the Board of Trustees from 1961-1965, and a member of the law faculty until his death in 1972. Another great man whom fate ignored was George E. C. Hayes, University counsel for a number of years and a veritable legend in the School of Law. The Howard chapter of Delta Theta Phi Legal Fraternity named its Senate in his honor. The list runs on and on.

Our past, though a glorious monument to our mettle, does little to ameliorate the troubled days in which we find ourselves. We have come under fire. And it has not abated. But having come thus far and smelled the clear waters, our parched souls allow us no rest. One thing is certain. None of our graduates engineered the Watergate break-in and none sought to conceal its occurrence.

The days ahead will be treacherous and, yes, the road will be rough. But if the spirit of Charles Hamilton Houston and John Mercer Langston keep watch, and with the guidance of Dean Charles Duncan, we shall witness the evolution of a new renaissance.

As for the nation, suffer no more. America could use a few good lawyers—post-Watergate lawyers of the highest caliber. Her heart grows weary of crime. The moon has set, the darkness recedes, the dawn of Dunbarton draws nigh.

The writer is a second-year student at the Howard University School of Law.