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ANATOMY OF A BAR RESIGNATION: THE VIRGIL HAWKINS' STORY

AN IDEALIST FACES THE PRAGMATIC CHALLENGES OF THE PRACTICE OF LAW

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The goal of Virgil Hawkins' six-decade quest to be an attorney for the poor and unrepresented was realized on February 9, 1977, when he took his oath of office, and became a member of the Florida Bar. "This is the proudest day of my life," the seventy-year-old Hawkins declared at the conclusion of the ceremony.[(2)] Speaking to the press, Hawkins stated that he wanted to offer services to "people, just barely making a living who don't qualify for legal aid, but still can't afford to hire an attorney."[(3)]

Eight years later, the Bar accepted the resignation from a worn, weary and disgraced Hawkins. Although his low and no fee services had aided over a thousand clients, the inadvertent or inept mistakes of his practice would snowball from minor and insignificant, to serious. His efforts to cover up and recover from his errors culminated in the final act of financial desperation which, rather than curing prior simpler errors, made his resignation the only course to save him from disbarment. On April 17, 1985, Hawkins closed his office in Leesburg, Florida.

Two years earlier, in response to his first Bar grievance proceeding, Hawkins told the Florida Supreme Court: "When I get to heaven, I want to be a member of the Florida Bar."[(4)] That wish would have to be granted posthumously eight months after his February 11, 1988 death.[(5)]

While Hawkins' brief legal career remains a unique but unsuccessful Bar experiment, the publicity that surrounded his career provides a window from which to view many common ethical and practical dilemmas faced by new and inexperienced attorneys.[(6)] After reviewing the historical context for the Hawkins experiment, this article will examine the elements of Hawkins' career which illustrate these common problems, and the manner in which the Bar can and does provide mentoring options to prevent attorneys from repeating Hawkins' mistakes.

VIRGIL HAWKINS AND THE FLORIDA SUPREME COURT

Virgil Hawkins became a lawyer through a special admission granted by a 1976 Florida Supreme Court decision.[(7)] The decision epitomized a quarter of a century of intersections between Hawkins' life, the Florida Supreme Court, and the lives and reputations of its justices.[(8)] Though it was reluctantly granted, the 1976 decision represented a form of reparations to offset Florida's thwarting of Hawkins' legal career. These reparations were awarded by the same Court that defied the mandates of the United States Supreme Court, in a desperate attempt to prevent the desegregation of Florida's universities, and Hawkins' admission to law school.

THE BEGINNING OF VIRGIL'S DREAM

Hawkins' late-in-life legal career was the product of over a half century of hopes and plans that hatched when he was six years old. Wandering through a Central Florida courthouse while his father tended to business, Hawkins saw a group of black defendants brought before the court in

chains. Charged with gambling offenses for a game of penny-ante poker, Hawkins quickly perceived the limitations imposed upon those who appeared in court without the assistance of counsel, in pre-Gideon America. None understood the nature of the charges or the meaning of their plea to those charges. Each received a six-month chain-gang sentence, which insured an ample labor force for the local sheriff. Hawkins left that courthouse, with the burning desire to be the voice to deliver his people from similar scenes of injustice.[(9)]

Virgil's goal was pure folly for an African-American child growing up at the turn of the century in Central Florida. "Separate-but-equal" education did not include Negro high schools.[(10)] The separate schools that did exist closed during critical times in the agricultural seasons, to insure that children could work beside their parents in the fields. Negro students whose parents raised funds to send their children to major cities for a private high school education faced another barrier upon graduation. Florida's public universities were segregated, and the separate facilities at Florida A & M College[(11)] did not include degrees in law and similar professions. Faced with these barriers, Hawkins pursued the road traveled by others of his generation: he became a teacher. However, unlike others who abandoned their dreams, Hawkins merely deferred instead of abandoning his desire for a career in law.

At the close of World War II, a new door opened for Hawkins. Veterans returning from a war to end injustice were transformed into a new wave of civil rights fighters. As an employee of Bethune Cookman College, a private historic black college, Hawkins' nights were filled with discussions of plans for breaking Florida's color barrier. Armed with successes in Southern border states, Thurgood Marshall and the NAACP Legal Defense Fund chose Florida for the NAACP's first assault on a Deep-South state. Hawkins joined a group of five other recruits who applied to professional schools at the University of Florida. Rather than a direct attack on the concept of separate but equal education, Marshall had Hawkins and the other test case plaintiffs seek admission to the graduate programs at the University of Florida which were not offered at Florida A & M College. Each application for admission was denied on the basis of race.[(12)] On May 25, 1949 Hawkins and four of the original applicants filed suit against the Florida Board of Control (the predecessor to the Florida Board of Regents).[(13)] Rather than a direct attack on the concept of "separate-but-equal" Hawkins and the other applicants sought a writ of mandamus from the Florida Supreme Court based on the Fourteenth amendment right of equal protection under the law. The thrust of the petitions was the contention that in the absence of separate facilities, Florida was obligated to admit Negro students to its only source for these graduate programs: the all-white University of Florida. This premise was soon bolstered by the United States Supreme Court decision in *Sweat vs. Painter*,[(14)] which rejected Texas' attempt to quickly create a separate law school at one of its historic black colleges and then claim that the new school provided an education equal to the education provided at its all-white universities. As Florida filed an amicus brief in the Texas case, any arguments Florida could have presented in opposition to applying the mandate of *Sweat* to the Hawkins case had already been rejected by the United States Supreme Court. Because of controlling precedent, Hawkins' admission to the University of Florida should have been a proforma event. As a man in his mid-forties, Hawkins' dream of a legal career would have been a foreseeable reality.

Instead, Hawkins and the NAACP encountered what one of Hawkins' attorneys would later describe as: "our first brush with massive resistance."[(15)] Acting as if the *Sweat* decision had never been entered, the Board of Control offered Hawkins two alternatives: (1) Attend an out-of-state law school at state expense; or (2) Attend a newly authorized school of law at Florida A & M.[(16)] Rather than grant Hawkins' request for a writ of mandamus, the Florida Supreme Court held that the state's plan to create a law school at Florida A & M satisfied the equal protection

provisions of the Fourteenth amendment.[17] This initial act of defiance pales in comparison to the Florida Supreme Court's response to a clear and unequivocal 1956 United States Supreme Court directive. In remanding the case back to the Florida Supreme Court, the United States Supreme Court made its intent clear:

As this case involves the admission of a Negro to a graduate professional school, there is no reason for delay. He is entitled to prompt admission under the rules and regulations applicable to other qualified applicants.[18] Writing for the majority, Florida Supreme Court Justice B. K. Roberts invoked the doctrine of states rights and a belief that, like the public response to prohibition, resistance to the United States Supreme Court's desegregation decisions would ultimately result in a populist mandate in favor of segregation.[19] Similarly, in a concurring opinion that defied the United States Supreme Court's first ruling in the Hawkins case[20] Florida Supreme Court Chief Justice Terrell claimed divine insight in his concurring opinion when he wrote:

. . . when God created man, he allotted each race to his own continent according to color, Europe to the white man, Asia to the yellow man, Africa to the black man, and America to the red man, but we are now advised that God's plan was in error and must be reversed despite the fact that gregariousness has been the law of the various species of the animal kingdom.[21]When faced with the second mandate that Hawkins was entitled to prompt admission, an equally defiant justice Terrell declared:

Some anthropologists and historians much better informed than I point out the segregation is as old as the hills. The Egyptians practiced it on the Israelites; the Greeks did likewise for the barbarians; . . . segregation is said to have produced the caste system in India and Hitler practiced it in his Germany, but no one ever discovered that it was a violation of due process until recently and to do so some of the same historians point out that the Supreme Court abandoned the Constitution, precedent and common sense and fortified its decision solely with the writings of Gunner Myrdal, a Scandinavian sociologist. What he knew about constitutional law we are not told nor have we been able to learn.[22] What began as a reasonable avenue for Hawkins to fulfill his dream of becoming a lawyer had turned into a decade-long nightmare. By 1958, when Florida was finally forced to admit black law students to the University of Florida, Hawkins was in his fifties. Threats against each litigant, their employers and family members had forced the others to withdraw from the suit.[23] Only Hawkins remained defiant, despite the great personal costs of being a lone visible target for law enforcement, the Governor, the legislature, and the judiciary of the State of Florida. It remains a final irony of Hawkins' suit that the State of Florida exacted one final price from Hawkins: the withdrawal of his application for admission in exchange for a blanket order that admitted other qualified Negro applicants to the University of Florida.[24] In September of 1958, George H. Starke, Jr., the son of a prominent doctor from Sanford, Florida, became the first black student of the University of Florida. The State of Florida took one last jab at Hawkins, by hailing Starke as a serious student with a true interest in obtaining a law degree. Three semesters later, Starke would withdraw from the University of Florida.

In contrast, Hawkins waited on tables, drove a taxi cab, worked at Boston Red Sox games, and cleaned restrooms at the all-white Harvard club to finance a law degree in 1964 from the New England School of Law, in Boston, Massachusetts.[25] This milestone soon became another exercise in futility when Florida refused to allow Hawkins to take the Florida Bar exam because his law school was not accredited by the American Bar Association until several years after Hawkins graduated.

Although this latest blow appeared to be the end of the road for Hawkins' dream of a legal career, his path once again crossed with the lives of the opponents of desegregation. As Attorney General of Florida, Richard Ervin served as the lawyer for Florida's opposition to the Hawkins suits. By January of 1974, Ervin was a justice of the Florida Supreme Court, and the brother of Ben Ervin, an unsuccessful Bar applicant. Ben Ervin, a graduate of the University of Miami law school, had taken and failed the Florida Bar exam four times.[(26)] As a means of overcoming his bar exam disability, Ervin petitioned his brother's court to grant him a law license under the diploma privilege.[(27)] Over the objections of the Florida Bar, three justices of the court (two of whom soon became the subject of impeachment proceedings on charges of influence peddling) and a visiting judge (who was a former president of the Florida senate)[(28)], granted Ervin the requested waiver of the requirement that an applicant pass the bar exam as a condition for admission to the Florida Bar. The court's ruling accorded Ervin this privilege based on a finding that he intended to go to a law school at a time when the diploma privilege was in effect.[(29)] To support its finding of intent the court cited to three "sworn statements" by Senator Claude Pepper, and two of his employees.[(30)]

When the opinion was rendered, it was doubtful that anyone expected a sixty-seven year-old Virgil Hawkins to be spending his spare time looking for a legal option to make the dream of his youth come true. However, as much as he tried to move on in his life, Hawkins' dream would not die. Instead of a letter from a local politician, Hawkins had thousands of pages of documents filed in and opinions rendered by five Florida Supreme Court cases, two United States Supreme Court cases, and his Federal District Court and Federal Circuit Court cases as evidence of his intent to go to law school while the diploma privilege was in effect. The court struggled through three drafts of the decision, and initially sought to waive the requirements of graduation from an ABA accredited school, but require that Hawkins take and pass the bar exam. Each effort to enter that ruling brought strongly worded dissents from Justice Joseph Hatchett, the court's first African-American Justice. Hatchett did not confine his dissent to an argument for Hawkins' admission under the diploma privilege. His dissenting opinions took aim at and fired both barrels at what he described as: "yesterday's lawless defiance of the mandates of a superior tribunal."[(31)] Included in the lawless group of justices, was a fellow justice still on the bench: B. K. Roberts. Rather than gloss over the history, as the final opinion did, Hatchett stated: "It is necessary to understand the injustice members of this Court once willfully wrought in order to appreciate the significance of a decision further compounding that injustice."[(32)] Hatchett then proceeded to recite twelve pages of the details of this history, describing the court's 1957 opinion as a choice by the justices to "respond unlawfully and in open defiance of the Supreme Court of the United States",[(33)] and describing Justice Roberts' majority opinion as "implausible and insufficient reasons for the majority's illegal refusal to follow the mandate of the Supreme Court of the United States."[(34)] Hatchett described the United States Supreme Court's reaction to the Florida Court by stating: "In the face of lawlessness on the part of men sworn to uphold the law, the Supreme Court of the United States decided against wasting additional judicial effort on this Court. . . ."[(35)] Hatchett concluded his dissent by noting: "If the law does not allow this Court to salvage even the remaining fragment of a career truncated by the illegal actions of its own members, then the law must nevertheless be followed. . . . (W)e can never restore to Hawkins the opportunity to serve as a lawyer during the important period of Florida's history."[(36)] With Hatchett as the lone dissenter, the Court had a clear majority supporting a ruling that would have required Hawkins to take and pass the bar exam. To proceed, however, would have meant that Hatchett's dissent would become part of the permanent public records of Florida jurisprudence. Instead, it chose to grant Hatchett's plea for awarding Hawkins the Ervin diploma privilege. In exchange, the ruling contained a sanitized version of both Hatchett's and the original majority opinion.[(37)] While news articles have often stated that the Florida Supreme Court admitted Hawkins because it found he had a

claim on its conscience, the Court only stated that the Florida Bar: "commendably concedes [Hawkins'] claim on this Court's conscience."[(38)]

Rather than explain the factors that might have given the Court a reason to be swayed by its conscience, the Court simply provided a footnote list of cases at the conclusion to this declaration: "It is unnecessary to recite in detail the historical chronology of Mr. Hawkins' attempts to obtain admission to the practice of law in Florida. The entire episode is fully set out in the official reports of this Court and the United States Supreme Court."[(39)] As opposed to the detailed explanation of how the Ervin affidavits supported a granting of the diploma privilege, the Court's Hawkins opinion spoke of a "so-called diploma privilege",[(40)] and summarily stated: "We have carefully reviewed Mr. Hawkins' petition, the record of prior proceedings in this Court in which he was a party, the totality of circumstances affecting his prior application for law school admission, and his current application for bar admission, and all relevant decisions of the United States Supreme Court. Based on these materials, and under the power conferred on us in Article V, Section 15 of the Florida Constitution, we hold that the bar examination and the law school graduation requirements of our bar admission rules are waived for Mr. Hawkins."[(41)] A reader of this opinion with no knowledge of Mr. Hawkins' history, would never surmise why the court chose to waive its rules.

By contrast, the text of Justice England's prior draft of an opinion requiring Hawkins to take the exam, concludes that the history of the Hawkins case: "constitutes a regrettable chapter in the history of this Court."[(42)] The draft opinion then quotes from the Florida Bar brief, including the following references to the courts continual denial of relief for Hawkins: "the court would allow [Hawkins] to leave the matter open until he agreed to go to Florida Agricultural and Mechanical College or, in the alternative, turned white."[(43)] And after the Florida Supreme Court once again denied Hawkins' writ without prejudice, the Florida Bar brief noted "[h]e no longer had to turn white. He merely had to prove that the Ku Klux Klan and other assorted Yahoos would not burn down Gainesville in order to obtain the benefit of the U.S. Supreme Court order and equal protection of the law."[(44)]

The draft opinion also contained a series of concerns about Hawkins' ability to practice law. These concerns could have guided those who would cheer Hawkins on as he opened practice, and later stood frozen in disbelief as his career crumbled:

There is no controversy between Mr. Hawkins and the Bar as to the magnitude of the injustice caused Mr. Hawkins by acts of this court. No one triumphs in the fact that we are now given the opportunity to rectify that injustice, to some degree. The Bar aptly reminds us, however, that any enthusiasm we may have to right this wrong must be considered in light of our ongoing responsibility to the public. . . . The Bar suggests that it would compound earlier errors to accommodate Mr. Hawkins without proper concern for his present fitness to provide legal services to the populace. The record before us shows that Mr. Hawkins is 69 years of age, and that he graduated from the New England School of Law in 1964. It does not show that Mr. Hawkins has ever practiced law or endeavored to retain his legal acumen. In fact, his petition indicates, by reference to his continued residency in Florida since graduation, that he has never pursued a legal career. We cannot overlook these facts in considering his request for immediate admission to the practice of law.[(45)]The Court continued:

We are left, then, in the difficult position of having before us an injustice of our own making, having the exclusive power to rectify it, having no prescribed method or precedent to do so, and having a competing public concern which militates against individual relief. Rarely has there

been such a classic confrontation between the Constitution and fundamental law. On the one hand, the courts shall be open to every person for redress of injury. On the other hand, two wrongs don't make a right.[46]

THE HISTORICAL RATIONAL FOR THE ERVIN AND HAWKINS ADMISSIONS

A quarter of a century after the Ervin and Hawkins admissions, legal scholars may gaze in astonishment at the Florida Supreme Court, and wonder how the justices could have ever granted the relief each petitioner requested. However, the requirement of a mandatory Bar exam for all applicants to the Florida Bar had only been in effect for approximately twenty years prior to the Ervin petition.[47] Prior to that, graduating law students from Florida schools became part of the Florida Bar through the diploma privilege.[48] Thus, significant numbers of Florida lawyers in practice when Ervin filed his petition, had never taken the Florida Bar Exam.

The first mandatory requirement that potential lawyers study law before practicing law was not imposed in Florida until January 1, 1938.[49] This requirement was imposed as a means of rejecting a 1936 proposal by the Florida State Bar Association to abolish the diploma privilege, and require applicants to the bar to complete three years of law school.[50] In establishing this requirement, the Florida Supreme Court did not require an applicant to attend or graduate law school, or college. It merely required that an applicant who did not graduate from law school:

(S)hould, in addition to a high school education or its equivalent, furnish satisfactory proof that they have pursued diligently for a period of not less than three years in a lawyer's office or under the guidance of a private tutor or both the courses of study approved by this court for all law schools . . . Before admission to the examination, the Board of Law Examiners may require written abstracts of the courses pursued and a certificate from the tutor or lawyer in whose office the preparation was made, or both, that the prescribed work was done, and that the applicant has assisted in the performance of such other matters as arise in a general practice.[51]

The Bar Association's proposal was considered an evolutionary step from the series of historic regulatory schemes governing the practice of law that differ substantially from modern regulation. For over a century prior to the 1936 proposal, regulation of attorneys practicing in Florida was primarily controlled and administered through the legislature, rather than the judiciary.[52] The first regulatory act was approved on August 12, 1822, by the first session of the legislative council of the territory of Florida. On November 20, 1829, an act was passed to admit lawyers from Georgia and Alabama to practice in Florida, and Article VI, Section 21, of Florida's 1868 Constitution provided for the admission of foreign attorneys.[53]

Florida would wait until almost the turn of the century before attempting to establish a formal board to enact and enforce rules for admission to the bar. The 1897 Florida legislature adopted chapter 4539, which created a board of legal examiners and empowered them with this responsibility. Unfortunately, this act was challenged in court and held to be invalid.[54] Further efforts to regulate admissions would wait until 1907, when Chapter 5650 was enacted by the Florida Legislature, and provided for admissions to the Bar to be handled by the Florida Supreme Court.[55] Two decades later the Florida legislature would reclaim its regulatory role by enacting chapter 10125, which created the State Board of Law Examiners, and gave them the power to create and enforce rules for admission to the bar.[56]

While the court's 1938 opinion adopted the requirement that applicants demonstrate some study of the law, the Florida Supreme Court's opinion related at length its view about the limits of legal

education and the value of the practical education obtained by being engaged in the practice of law. In noting the advantages of a law school education, the court states:

But is the law school the only source from which legal lore may be acquired? Its advantage certainly cannot be questioned, but Dr. Flexner tells us that the law schools do not produce lawyers; their part is largely limited, said he, to training in method, technique and inspiration. . . . (T)he student who completes it comes to the bar with a working knowledge of the various branches of the law. His legal knowledge is classified or systematized so that he applies it with ease and facility. It gives him a degree of efficiency difficult to acquire otherwise. In this lies the distinct advantage the law student acquires.[(57)] That acknowledgment is followed by an assessment of the value that practical knowledge acquired in a law office provides:

But notwithstanding these apparent handicaps, there are too many living examples of great lawyers who learned their lesson by personal application in a law office or by the aid of a private tutor to assert that it cannot be done again. In fact, this method of acquiring it has its distinct advantages and he who has the ingenuity to convert his handicaps into stepping stones has the stuff that great lawyers are made of. College and legal education are desirable, but in a world of practical realities where our successes and failures are measured by tangible results, it is rather remarkable how success has veered from "I.Q." rating . . . In our judgment, the evils which petitioners seek to remedy arise from a lack of a correct standard of moral discipline rather than a lack of formal schooling.[(58)]

The Florida State Bar Association would wait an additional four years before the Florida Supreme Court would agree to require Bar applicants to attend law school. In its December 9, 1941 ruling, the Florida Supreme Court amended Rule 1, Section (b) to require that all applicants seeking to take the Florida Bar exam after January 1, 1942 be "required to furnish . . . evidence of graduation from a full time accredited law school, or evidence of graduation from a part time accredited law school."[(59)] As advanced as this requirement may seem, the bar still only required proof of graduation from high school, because law schools did not require a Bachelor's degree or substantial undergraduate education as a prerequisite for entering law school.[(60)] Schools such as the University of Miami did not require law students to hold "a four-year bachelor's degree" until the mid-1950's.[(61)]

A TALE OF TWO ATTORNEYS: BEN ERVIN ENTERS THE TALLAHASSEE BAR, AND VIRGIL HAWKINS ENTERS THE LAKE COUNTY BAR

Viewed from the Bar's long tradition of successful Florida lawyers trained in law offices, rather than law schools, the Ervin decision would not have been perceived as posing a threat to the legal profession. Born into a family of lawyers, Ervin spent most of his life exposed to the practice of law. Upon entry into the profession, he could rely on the reputation of his brothers' firms, and their mentoring, to guide him through legal minefields. The revenue generated from those reputations would provide the necessary revenue to cover Ervin's overhead while he honed his skills. The firms' reputations and location in Florida's capital city guaranteed an ample supply of qualified and trained applicants. His brothers' mentoring would minimize the prospect that Ervin would walk alone in a matter requiring greater expertise than he possessed. In the shelter of this environment, Ervin would, at worst, serve his firm in roles requiring minimal competency, and, at best, would acquire sufficient proficiency over the years to eventually be regarded as a respected member of the Tallahassee Bar.

By contrast, Hawkins would walk alone along a path which would lead to his ruin. Hawkins opened his own practice in Leesburg, a town with a population of 15,000. In a community with less than twenty-five attorneys, none of whom had supported his application for admission to the Bar, Hawkins was Leesburg's second African-American attorney. Leesburg had few trained legal secretaries with the knowledge and experience to guide a new attorney. The nearest community with an abundance of qualified assistants was fifty miles away in Orlando. Commuting time made recruitment from this pool of applicants impossible. Mentoring resources were minimal at best, and required arrangements far more complicated than the walk-across-the-hall type of advice that Ben Ervin received at his brother's firm.

PAVING THE ROAD TO DISASTER

Predictions of impending doom are found in the 1976 decision that admitted Hawkins, when the court stated: "Moreover, we cannot ignore the interests of the public insofar as they may be affected by Mr. Hawkins' absence from the practice of law or law-related activities."[(62)]

In an effort to see that "the public is protected should Mr. Hawkins elect to engage in the active practice of law"[(63)] the court imposed two preconditions not imposed on other Bar applicants. First, they required Hawkins to attend a Florida Bar "Bridging the Gap" seminar.[(64)] At the time this seminar was an optional one-day educational program that attempted to provide a nuts and bolts approach to cases such as routine traffic offenses, simple divorces, and other types of representation that a new lawyer might encounter in his or her initial years of a general practice.

Second, an old training technique from the days when individuals were admitted to the Bar without being required to attend law school, was brought out of its mothball status. The court required Hawkins to complete an "internship" consisting of six months supervision by an active member of the Florida Bar, "devoting not less than twenty hours per week to the study of Florida law and procedure. . . ."[(65)] While this requirement was helpful, it did not provide a mechanism for Hawkins to actually practice law under the supervision of a Florida lawyer, but rather, allowed Hawkins to view another in the practice of law. At the time of Hawkins' admission, this type of supervised training was authorized by the Florida Supreme Court for third-year law students attending Florida law schools. Thus, the Court's efforts to bridge the gap in Hawkins' legal skills, which resulted from decades of delayed entry into the legal profession, are comparable to a driving school that allows students to sit in the passenger seat and observe a licensed driver, but never provides them with any time behind the wheel.[(66)]

HAWKINS' ROAD-TRIP DOWN THE HIGHWAY TO PROFESSIONAL FAILURE

Once he fulfilled these preconditions, the decisions made by Hawkins illustrate the types of judgment errors made by new lawyers. Hawkins' initial mistake was the failure to accurately assess his personal abilities and limitations. During the decades that Hawkins fought for his right to an education to become a lawyer, his perseverance, and refusal to accept the impossibility of his goals, allowed him to succeed when others would have given up. However, this same characteristic would be a disservice to Hawkins as he made his initial decisions about how to begin his practice. His youthful goal of helping people in his hometown might have been attainable if he had become a lawyer in his mid-forties when clients were more likely to resolve disputes with their lawyers in a neighborly manner, rather than through grievance proceedings and malpractice suits and the practice of law had not reached the rapidly- changing fast-paced level of modern practice. In poor health at the time of his admission,[(67)] a retirement-aged

Hawkins failed to make a realistic assessment of what he could safely accomplish without jeopardizing his clients or himself.

Evidence of his lack of planning and personal assessment is found in news articles about his practice which were published before his professional troubles turned into bar grievances. A 1981 article described the day Hawkins opened his office and expected to wait weeks or months for his first client. Instead, by the end of his first day Hawkins had been retained by six clients.[(68)] Unfortunately, Hawkins had failed to consider the following fundamental issues: (1) What areas of law am I competent to handle for clients; (2) Should I initially limit my practice to a few types of cases, until I gain more expertise, (3) What fee structure for each type of service will I need to charge to be able to meet overhead; (4) How do I arrange payment of these fees, to assure that I am paid for the majority of services I perform; and (5) if I accept any client who walks in the door and wants to hire me, will I be able to manage my caseload?

If Hawkins had made a realistic personal assessment of his strengths and weaknesses at age seventy, he would have concluded that he should not attempt to start practicing law as a sole practitioner, and probably should not have considered operating his own office. While the scope of areas of practice may be greater in a multi-attorney firm, the attorney who operates a one-man firm must master virtually every task performed by members of a law firm. In addition to the practice of law, the sole practitioner must also be skilled in business management, which will consume a considerable portion of time which might otherwise be devoted to the actual practice of law. Additional issues such as financial planning for overhead and operational expenses, site and equipment selection, case management records retention, marketing, advertising, and personnel recruitment, hiring, training and retention must not only be addressed prior to opening an office, but also be managed and revised on a regular basis. Many attorneys who are masters of their legal skills lack the training, experience, aptitude or interest in these business details of law office operation. They rise to the top of their profession because they are free to concentrate on the law and leave the business management issues to other members of the firm and administrative staff.

Hawkins lacked the experience to manage a sole practice. He had never run a small business prior to opening his law office. Review of the volumes of expensive books in his library confirmed that his office overhead was needlessly inflated possibly because Hawkins was a senior-citizen who became a victim of far too many salesmen. Undoubtedly, the sales techniques included expression of admiration for Hawkins' historical struggle. The meetings which may have begun with stories of Hawkins' past, ended with a signed contract obligating Hawkins to pay thousands of dollars for books and equipment he didn't need.

An additional need to master numerous areas of legal skills plagues many sole practitioners. A properly managed large law firm allows attorneys to work in those areas best suited to their talents and abilities. In addition to enabling attorneys to specialize in areas of law, large firms often have members who are adept at certain skills such as trial practice, document drafting, tax planning or research. A firm can handle a general array of client needs, while the associates gain expertise by specialization. By comparison, the sole practitioner must not only be a jack of most legal trades, he or she must be the master of all the skills required to handle the needs of his or her clients. Absent for more than a decade from the classroom training of his law school education, and with no training in Florida law, Hawkins was faced with the need to quickly master not only many diverse areas of substantive law, but acquire the skills to handle both office and trial practice.

Another major difference between the sole practitioner and a member of a firm is the lack of opportunities for relief from the physical and psychological demands of practice. Issues of medical and personal emergencies, routine illnesses, and vacation breaks provide sole practitioners with legal and managerial problems with few solutions. In the short run, even partners in smaller firms have the ability to temporarily cover for each other. As for a sole practitioner, when illness or emergencies shut the attorney down, his office is essentially shut down. If these problems occur on the day of a deadline, the attorney must either find some way of functioning, or face professional and financial consequences. These pressures make the recuperative powers of vacation time virtually nonexistent.

For an aging Hawkins, whose bouts with serious illness were evident even while he applied for admission to the bar,[(69)] a legal practice that penalized him for illness was not a path to success. Interviewed six months after he started his practice, Hawkins described how he worked afternoons, evenings and weekends. "They could have retired me at 65, but here I am, in the courts every day, running up and down stairs, staying up as late as I want to. That doesn't worry me."[(70)]

A decade after that article, and two years after his resignation from the bar, Hawkins told a reporter: "I couldn't turn anyone away, I was busy, busy, busy. I got so tired and didn't even know it."[(71)]

TURNING A SIMPLE MISTAKE INTO A MAJOR VIOLATION - TWO CASES DESTROY HAWKINS' CAREER

Despite a practice that germinated seeds for professional calamities, Hawkins survived the first few years of his practice without having his professional reputation called into question. Two cases from his final years of practice illustrate another common form of attorney miscalculation: The inclination to attempt to cover up minor mistakes with actions that transform these errors into matters requiring serious bar disciplinary action. The first arose in the context of a criminal case.[(72)] In a manner typical of Hawkins' inability to assess his limitations, Hawkins agreed to represent a client charged with a felony offense that carried a minimum mandatory sentence of three years,[(73)] for a minimal fee of $550 that was never paid.[(74)] This act of pro bono service would begin a process that ultimately cost Hawkins his reputation and the law license he had spent decades fighting for. Hawkins was about to learn a painful lesson: In the arena of felony criminal defense, you can't offer a hitchhiker a ride, unless you are able to deliver the equivalent of a chauffeur-driven limousine.

Hawkins had never handled a felony case prior to accepting this client. After his client was convicted, a grievance was filed which alleged that Hawkins had represented his client incompetently, had failed to perform discovery, or convey plea bargain offers, and that Hawkins had concealed the identity of a witness. The court-appointed referee who conducted the evidentiary hearing concluded that with the exception of the allegation of failing to communicate offers, Hawkins committed the other violations of Bar Disciplinary Rules. The referee also concluded that Hawkins' actions were not undertaken "with the intent to deceive the Court, but resulted from a lack of experience."[(75)]

Hawkins clearly underestimated the degree of work and skills required for a felony defense. His long held desire to help the fellow members of his community led Hawkins to attempt to provide legal services in a case where more experienced attorneys were readily available without cost to his client. In the end, Hawkins' efforts failed to benefit either his client or himself. Given the

availability of the public defender's office (which handled the case after his client was convicted), Hawkins' best option would have been to turn the case over to the public defender, either initially, or as soon as it became clear he did not have adequate experience for this case. Handling this case either through the public defender's office or court-appointed counsel would have also provided the financial resources necessary for use of discovery procedures that Hawkins claimed his client was unable to afford.[(76)] The state attorney was also more likely to offer a better plea agreement to experienced counsel than to an attorney such as Hawkins, who had never tried a felony case.[(77)]

Hawkins entered this pit of quicksand, when one of his divorce clients was arrested after an incident involving the client's wife and a male friend.[(78)] Ultimately, Hawkins' failure to engage in expensive and time-consuming discovery, despite the lack of compensation for these services, would form the primary basis for the trial judge's decision to grant a new trial.[(79)] While noting the history of Mr. Hawkins' struggle to become an attorney, its impact on his ability to provide adequate representation, and his desire to "help his client and do what he thought was right",[(80)] the trial judge cited the following excerpt from *Martin v. State*,[(81)] where in a manner similar to Hawkins' defense of Williams, counsel for the defense took no depositions, and interviewed no witnesses:

In order for a person accused of a crime to receive effective assistance of counsel, there must be adequate preparation for trial, not just representation at trial.[(82)]

The lack of discovery clearly impacted Hawkins' erroneous conclusion that "Clarence Darrow couldn't have defended [Williams] better than I."[(83)] At first glance, the case appears to be seriously stacked against Mr. Williams. Despite his contention of innocence, Williams admitted, after being Mirandized, that he had fired his gun in the direction of the victim. The state's eyewitnesses included Williams' wife, her mother, and the victim. Although Williams initially told Hawkins that he could produce witnesses to back his story, he later admitted that he had no witnesses.[(84)]

Williams' rebuttal to this prima facie case consisted primarily of two contentions: (1) Williams claimed in his statement to the arresting officer that he fired into the air, and not at the victim's truck[(85)] (2) Williams also claimed that his wife's boyfriend shot out his own back window after the incident, in an effort to frame him. Despite the lack of witnesses or evidence to support these defenses, Hawkins' claim that Williams was unwilling to accept a plea, is credible. A year after the initial trial, Williams still maintained his innocence, as evidenced by his 1981 statement: proclaiming: "I didn't do it" during his testimony before the Bar grievance committee.[(86)]

It is doubtful that in the face of Williams' statement to the deputies who arrested him, and the testimony of eyewitnesses, Hawkins or another attorney could have convinced a predominantly white jury to acquit a black male accused of an act of violence. Williams' ultimate decision to accept a plea bargain after being granted a retrial strongly indicates that even the public defender had no stomach for submitting this case to a jury. The trial testimony, however, produced numerous inconsistencies, that would have motivated a sweeter plea bargain, if Hawkins had deposed the witnesses prior to trial.

The arresting officer testified that the investigating officer never investigated the scene of the crime. The excuse given was that the deputy received bad directions and couldn't find the location of the incident.[(87)] Okahumpka is a small unincorporated town. Its historic African-American community consists of an area of approximately three square blocks, with a circular set of three

roads. The deputy's unwillingness to travel into this section of town at night left the prosecution with no evidence from the scene of the alleged crime.

Each "eye-witness" also had credibility problems. Daniel Blackman, the alleged victim, was a law enforcement officer working at Lake Correctional Institution.[(88)] Blackman initially attempted to portray the meeting between him and Williams' wife as coincidental.[(89)] On cross examination he admitted that he had met Mrs. Williams several times before.[(90)] Mrs. Williams' testimony established that she and Blackman would meet at her job while Blackman was supervising prison laborers. According to her testimony, "we used to go outside and talk."[(91)]

Blackman's account of the travel to the sight of the incident is also problematic. Initially Blackman testifies that he followed Williams' wife's car to protect her.[(92)] Although he claimed Williams was chasing after his wife's car, he also contended that Williams drove off in the opposite direction of the his wife.[(93)] He then testified that Williams was in front of his wife's vehicle and Blackman pulled behind him. Then he claimed that Williams turned off the main road, and both Blackman and Williams' wife followed him.[(94)] According to Blackman, when they reached the vicinity of Mrs. Williams' mother's home, Williams pulled off, took his shotgun out, and fired. Despite the obvious nature of that threat, Blackman testified that he drove right past Williams' car. Blackman explains his lack of injury from a blast that allegedly broke the back window of his pickup truck,[(95)] by claiming that he was leaning over the steering wheel, so that he could drive to the house of the mother of a woman he and Mrs. Williams claimed he had only met at work.[(96)]

The testimony of Mrs. Williams and her mother also raised credibility issues. In addition to her attempts to minimize her relationship with Mr. Blackman, Mrs. Williams testified that after her husband shot at Mr. Blackman's truck, she drove her car past her husband and his shotgun and into her mother's yard.[(97)] Williams' mother testified that she lied to Mr. Williams when he called her house that night and asked where his wife was.[(98)] She further testified that although the shooting occurred close enough to her porch that she could have thrown a stick and hit Williams,[(99)] she stood on her front porch while the incident was occurring, and witnessed the event.[(100)]

In the face of testimony portraying Williams as an angry black male, it is doubtful that all of these inconsistencies would have convinced a jury to acquit him. Pre-trial depositions of these witnesses would have raised sufficient doubts about their credibility to have motivated the State Attorney to offer a better plea agreement. The weight of their testimony would have also given experienced defense counsel a stronger basis for advising Williams of the wisdom of accepting a plea, rather than risking a mandatory jail sentence after trial.

Hawkins' handling of the witness' identity illustrates how a lack of experience can lead an attorney to poor tactical decisions that fail to benefit a client. Hawkins' client was charged with shooting into an occupied vehicle. As noted by the referee, the charges arose out of "an incident involving two men who were in the process of divorcing and respectively marrying each other's wives."[(101)] By the time of trial, Hawkins' client had married the other man's wife. The referee concluded that Hawkins "fostered and permitted the Defendant's present wife, Annie Williams to testify under her previous name Annie Blackman."[(102)] Given the close personal relationship between the parties, did it really matter that Annie was William's wife, or simply the woman Williams intended to marry? In either event, her affection for Mr. Williams provided an adequate basis for the prosecution to question her credibility and motives for testifying in support of Mr. Williams. An attorney with more experience would have advised the client and Annie that even if the fact of marriage were concealed, the prosecution would challenge Annie's credibility based on her intent to marry the defendant. Under these circumstances, experienced counsel would have undoubtedly advised his witness to reveal the marriage, and present her testimony, rather than create doubts in the mind of the trier of fact by forcing this disclosure under cross examination.

Annie Blackman/Williams' testimony in court further demonstrated Hawkins' inexperience, and the futility of the decision to have her use the name "Blackman." When Hawkins attempted to present Annie's testimony, the prosecution objected on the grounds of relevancy. The judge excused the jury and provided Hawkins with an opportunity to proffer Annie's testimony. After hearing the proffer, the Judge sustained the prosecutor's objection. The jury never heard her testimony.[(103)] An experienced attorney would have recognized that Annie's testimony lacked probative value. In view of the limited value of her testimony, and the obvious issue of her bias towards the defendant, an experienced counsel probably would not have called her as a witness.

For Hawkins, the errors resulting from inexperience inflicted a fatal blow to his legal career. While this grievance was pending, a group of law students at Florida State University sought to honor Hawkins' civil rights struggle by placing his name on the university's new law library.[(104)] The legislative bill that would have authorized this honor was sponsored by State Senator, Carrie P. Meek, a former Bethune Cookman faculty member, who witnessed the acts of intimidation Hawkins faced during his civil rights suit. Within days of filing the bill, opponents of the honor leaked word of the pending grievance to the media. The resulting firestorm not only turned a minor grievance proceeding into a "trial-of-the-century" media circus, (that all but killed Hawkins' practice by publicly branding him as an incompetent attorney), but resulted in Meek agreeing to withdraw the proposal, in exchange for a scholarship named for Hawkins which would provide assistance to African-American law students.[(105)] Ironically, the effort to hide the history of Hawkins' struggle was so successful, that at the time of his death, many recipients of the Hawkins scholarship thought Hawkins was a wealthy man who wanted to help black law students.[(106)]

Although the second case, which became the final blow to Hawkins' career, involved an extremely serious ethical violation, it also resulted from a lack of legal knowledge and arose from a simple problem that was exacerbated by Hawkins' efforts to conceal his mistakes. The veteran's administration determined that Hawkins' nephew was entitled to VA benefits. At the time of this determination, the VA described the nephew as incompetent from organic brain syndrome due largely to alcoholism.[(107)] The VA requested that Hawkins establish a guardianship for his nephew. Until the guardianship was established, the nephew's benefits were to be sent to Hawkins and disbursed from an escrow account for his nephew's care. Hawkins attempted to prepare and file the guardianship documents required to begin a guardianship proceeding. They were rejected by the Clerk of Court for technical defects.[(108)] Funds from the VA were received by Hawkins, and, because he did not have a trust account, the funds were deposited and disbursed from his office account. No allegations have ever been made that Hawkins failed to provide for the needs of his nephew. The commingling of lump sum retroactive benefits with business funds created an accounting nightmare. As noted by the VA field examiner, Hawkins attempted to provide an accounting of the funds, but was highly disorganized and unable to do so. He also withdrew funds as attorney's fees for services rendered to his nephew, without VA or court authorization.

Had Hawkins sought assistance from other local attorneys, it is likely that the problems with the guardianship petition could have been resolved, and Hawkins would have been entitled to receive compensation from the nephew's VA benefits. The media circus surrounding the initial grievance, combined with illness, fatigue and advanced age had taken its toll. In an affidavit filed in one of his grievance proceedings, Hawkins acknowledged his practice was disrupted by his hospitalization and provided a list of medical problems that included the need for medication to control diabetes, his heart rate, and high blood pressure.[(109)] Hawkins' initial trust of his fellow Bar members turned to fear and mistrust of their motives. In an initial Interview in 1981, Hawkins said of his community and its attorneys:

They seem to have this image of Lake County filled with KKK members . . . but, of course, it's not that way at all. I haven't had a bit of trouble . . . I've gotten encouragement from all the lawyers in Lake County. . . . They not only help me, they let me know when I've done something wrong.[(110)]However, a few years later, Hawkins believed the members of the Bar wanted him to fail.[(111)]

Fearful of his fellow attorneys, Hawkins tried to find his own solution to his troubles. This flawed decision was characteristic of the decisions which led to his problems. Undoubtedly, Hawkins would have been disciplined for the manner in which he mishandled his nephew's guardianship and VA funds. However, Hawkins' attempt to resolve his problem only made matters worse.

At the time Hawkins was attempting to account to the VA, he was also negotiating a sale of a property he was handling for an estate. He received a payment of $11,500 toward the purchase

price of the property. Hawkins paid most of the funds to the VA to cover the funds he couldn't account for. He tried, but was never able to repay the buyer of the property. The court that created his entry ticket to the legal profession extended Hawkins the final courtesy of resigning from the Bar, instead of disbarring him. Lake County was less generous. Hawkins was arrested and ultimately pled guilty to theft charges. Though he spent the rest of his life paying restitution to the Florida Bar's client compensation fund, Hawkins was a felon on probation at the time of his death.

ARE WE OUR BROTHER'S KEEPER?

For decades, Florida has held to the traditional position that the practice of law is a privilege, and not a right.[(112)] An examination of alternative actions that the Florida Supreme Court and the Florida Bar could have taken in managing the "Hawkins experiment" provides insight into remedial measures that could not only improve the quality of an attorney's legal skills, but protect the public from the harm caused by the mistakes of inexperienced attorneys.

While Hawkins' decisions and judgment calls greatly contributed to his own demise, the Bar's dogmatic adherence to the "privilege concept" precluded early intervention as an alternative remedy to Hawkins' readily evident, and foreseeable disaster. Implicit in the rationale for Hawkins' admission decision was a notion that comes as close as possible to making the practice of law a right that Hawkins was uniquely entitled to (for at least the final years of his life). The Florida Supreme Court's defiance of the clear mandate of the United States Supreme Court derailed Hawkins' opportunity for a legal career in the prime of his life. Hawkins had more than a claim on the court's conscience. The Court and the Bar, to whom it delegates many regulatory functions, had an obligation to remediate the damage it caused. While the Florida Supreme Court often exercised leniency in imposing disciplinary sanctions against Hawkins, the Court never undertook the continuing obligation to monitor and remediate the potential harm it foresaw when it expressed concern for "the interests of the public insofar as they may be affected by Mr. Hawkins' absence from the practice of law or law-related activities."[(113)] Had the Court conveyed a desire for the Florida Bar and the University of Florida to assist in the initial mentoring required in the admission order, Hawkins could have benefited from the type of clinical training third-year law students like myself were receiving during the same time period. This training would have been far superior to the minimal attention that the sole practitioner who eventually agreed to mentor Hawkins was able to provide.

While age, illness, and inexperience demonstrated that Hawkins could not practice law by himself, Florida Bar rules authorize graduates of law school clinic programs to practice in Legal Services offices under the supervision of other attorneys. Having personally witnessed the impact that Hawkins' negotiating skills had on settlements between his clients and mine, I have no doubt

that with supervision, Hawkins could have made a valuable contribution to the legal needs of the poor during the remainder of his life.

If Hawkins' first disciplinary proceeding was not a clear sign that the grand experiment was failing, his suspension for lacking funds to pay his bar dues should have set off alarm bells from 650 Apalachee Parkway,[(114)] to 500 South Duval Street[(115)] in Tallahassee. In hindsight, one solution was obvious. Having appropriated in Hawkins' name, $100,000 a year for future lawyers attending law school, Florida was long overdue to compensate the man it kept out of law school, through a fund that could have created a special means for Hawkins to assist the local Legal Services program. Special claims bills are regularly awarded to individuals from prisoners who are wrongfully convicted, to car passengers in accidents caused by the negligence of drivers of state vehicles. At the time of Hawkins' admission, he earned $10,000 a year as an employee of a local social services program. Had Florida paid this salary to fund a position at a Legal Services office for the decade Hawkins lived after leaving his social services position to practice law, Florida's total expenditure would have roughly equaled the amount of money spent in one year on the Hawkins scholarships.

Instead, the lack of initial assistance, and the imposition of sanctions to discipline Hawkins' mistakes conveyed what can best be described as a: "You've been admitted to the Bar, now you figure out how to retain this privilege" attitude. This *laissez- faire* approach did more than result in a destroyed career and dishonor for the man who hoped to make one more contribution to his country before he died. It caused the very harm to "the interests of the public" that the court was concerned about when it admitted Hawkins.

Until recent years, little has been done to protect the interests of the public from unprepared recent law school graduates. Though most schools offer clinical education, these courses are optional. Similarly most courses in law office management are electives that are rarely offered and sparsely attended. Although only a small percentage of cases proceed beyond the trial stage of litigation, many students graduate law school after only studying and passing exams confined to the case law product of appellate practice. Most Bar exams test a graduate's text book knowledge of law, but never determine if a potential lawyer can draft a simple will, contract or pleading, or prepare an effective set of cross examination questions. While doctors are not allowed to practice medicine without an internship, we have traditionally allowed newly admitted lawyers to enter a trial court's operating room without any prior training, and then revoke the privilege of practicing law, when these ventures into the unknown fail. As the Hawkins case demonstrates, the damage caused before Bar disciplinary proceedings can shut the barn door, does more than harm the offending attorney and the public. It damages the image of the profession. Individuals harmed by the actions of attorneys rarely believe that the lawyers who harmed them are rouge exceptions. They are more likely to believe the actions of the errant attorney represents how most lawyers practice law. Sadly some disciplined attorneys reach that

stage when they come to believe they are acting the way attorneys must act to survive in the practice of law.

Recent trends in Bar programs demonstrate an understanding of the need to protect the public, the profession and its members by providing an alternative to walking in Virgil Hawkins' shoes. During the past decade, the Florida Bar established two programs which help young lawyers navigate the minefields of legal practice. LOMAS (Law Office Management Assistance Service) provides lawyers with guides and information on many areas of law office administration. Its library includes "how to" guides, office manuals, and evaluations of office equipment. It "reviews, writes, and disseminates information about law firm administration, automation, marketing and planning to help attorneys more effectively manage their practices." In addition, it offers a low cost one-day in-office consultation for more personalized advice.[(116)]

SCOPE (Seek Counsel of Professional Experience) is a program sponsored by the Young Lawyers Division of the Florida Bar. It provides a panel "of volunteer attorneys with at least five years' experience in designated areas of practice, who agree to provide general counsel and advice to attorneys confronted with problems in areas of the law unfamiliar to them." These consultations are intended to assist the requesting attorney to help him or her (a) determine if he or she is capable of undertaking the legal services required for a client's legal matter; and (b) to determine the best approach to resolving the client's legal problem.[(117)]

These indirect approaches to assistance began an evolutionary change that had led to recent plans to provide more direct assistance. In 1999, the Florida Supreme Court has launched a pilot mentoring program in three parts of Florida: Dade County, Hillsborough County, and the First Judicial Circuit in the Pensacola region of Florida. A similar program is also being implemented in the State of Georgia. As described in the program's mission statement, the goal of the program is:

To provide guidance to new Florida Bar admittees that will instill the importance of professionalism. Additionally by harnessing the experience of high principled, successful practitioners, new members of The Bar will be offered a resource that will spare them from experiencing many of the glitches (pitfalls) that are a by-product of a lack of familiarity with the practice of law in Florida.[(118)] Mentors are required to be in practice for at least nine years before participating in the program, must have "a history of practicing with dedication to the principles of professionalism, i.e. character, competence and commitment," and "record free of reprimands, suspensions, or expulsions from any Bar Association." They are selected by a seven-member screening panel that includes one judge, and is established by the Circuit Professionalism Committee. The mentor is expected to serve for three years, and earn CLE credit for their service.[(119)] The mentor will not ordinarily supervise or participate in the mentee's practice of law. Duties of the mentor include:

1. Arranging for the mentee to observe the mentor in court and other practice settings, negotiations, transactional events and the like;

2. Sharing sample pleadings and forms;

3. Providing career counseling;

4. Inviting the mentee to professional social events and introducing the mentee to judiciary, court officials, and other lawyers.[(120)]Attorneys are eligible to enroll in the Mentor Program within three years of their admission to the Florida Bar. They participate in the program for a three-year period, and earn 30 hours of CLE credit upon completion. The mentee is required to keep a daily calendar, and make a monthly report of his or her activities. This information is shared with the mentor, without disclosing confidential information. The beginning and ending entries include a self-assessment of why the mentee decided to become an attorney.

The mentor and mentee file a quarterly report with the professionalism committee to provide feedback on the effectiveness of the program. The three-circuit pilot program will run for a three year period to monitor effectiveness, and determine the need for modifications.[(121)] Assuming the program demonstrates both effective results and a sufficient supply of interested mentors and mentees, this program will help promote the "brother's keeper" mentality that has existed informally in the legal communities of small cities and towns.

EPILOGUE

A repentant Hawkins, who acknowledged his mistakes, ended his last interview with the same strength of purpose that guided him through decades of travails:

"I know what I did. I integrated schools in Florida. No one can take that away from me."[(122)]A few months afterwards, Hawkins suffered a stroke which minimized his ability to speak. He never fully recovered, and died nine months later.

Hawkins' spirit and determination inspired an effort that would restore Hawkins' place in Florida history. On October 20, 1988, the Florida Supreme Court posthumously reinstated Virgil Hawkins as a member of the Florida Bar.[123] In doing so, both the court and the bar accepted the central contention of the petition: The loss of Bar membership for the remainder of his life was adequate punishment for Hawkins' errors as a lawyer. Upon his death, Florida's contribution to his failures justified restoring the privilege he was denied most of his life. To date only one other former lawyer's bar membership has been restored after death: Mahatma Gandhi.

The court's decision opened the way to two significant and lasting honors for Hawkins. In November of 1999, the FSU law school named the law books it acquired from FAMU: "The Virgil D. Hawkins Collection." A plaque explaining Hawkins' suit and its connection to these books hangs outside FSU's law library.

In June of 1988, Governor Bob Martinez signed into law a bill naming the University of Florida program where third-year law students represent indigent clients: "The Virgil Darnell Hawkins Civil Legal Clinic." From heaven, Virgil looks down on the students who carry on his work in his name and smiles. He knows his dream will live on.

1. J.D. University of Florida 1977, B.A. Business Admin., University of South Florida, Tampa, 1975. Harley Herman was the sole petitioner for the Hawkins' reinstatement petition (The Florida Bar, in re Virgil Darnell Hawkins, 532 So.2d 669 (Fla. 1988)), and served as the Executive Director of the Virgil Hawkins Civil Rights Foundation.

2. Ramsey Campbell, *Hawkins Before the Bar After All the Bars Removed,* Orlando Sentinel, Feb. 9, 1977, at 1.

3. Campbell, *Hawkins Before the Bar After All the Bars Removed,* Orlando Sentinel, Feb. 9, 1977, at 1.

4. Joe Bizarro, *Readmit Hawkins, court is urged*, Fla. B. News, May 1, 1988, at 1.

5. *See* Florida Bar *In re* Hawkins, 532 So. 2d 669 (Fla. 1988).

6. The author recognizes, and has previously argued, that Hawkins' career was also impacted by the following three factors not encountered by most new attorneys: (1) advanced age; (2) lingering prejudicial attitudes that hinder the ability of many African-American lawyers to obtain both black and white clients; and, (3) greater public scrutiny and review of Hawkins' efforts resulting from his legacy as the man who ended Florida's system of segregated higher education, and as the man who obtained a special admission to the Florida Bar. See discussion of these factors in Barbara Stewart, *The Law and Virgil Hawkins*, Orlando Sentinel Fla. Mag., Mar. 8, 1977, at 14 and Harley Herman, *Tribute to an Invincible Civil Rights Pioneer*, The Crisis 101 No. 5, July 1994, at 42 and 101 No. 6, Aug.-Sept. 1994, at 22. Because this article is written to

illustrate problems common to inexperienced attorneys, it will not present an in-depth discussion of these other factors.

7. *See In re* Florida Bd. of Bar Exam'rs *In re* Hawkins, 339 So. 2d 637 (Fla. 1976).

8. *See* State *ex rel.* Hawkins v. Board of Control, 47 So. 2d 608 (Fla. 1950); State *ex rel*. Hawkins v. Board of Control, 53 So. 2d 116 (Fla. 1951), *cert. denied*, 342 U.S. 877 (1951); State *ex rel.* Hawkins v. Board of Control, 60 So. 2d 162 (Fla. 1952), *vacated by,* Florida *ex rel*. Hawkins v. Board of Control, 347 U.S. 971 (1954), *relief upon mandate withheld by*, State *ex rel*. Hawkins v. Board of Control, 83 So. 2d 20 (Fla. 1955), *mandate recalled and modified, cert. denied by,* Florida e*x rel*. Hawkins v. Board of Control, 350 U.S. 413 (1956), *relief upon mandate withheld by*, State *ex rel.* Hawkins v. Board of Control, 93 So. 2d 354 (Fla. 1957), *cert denied without prejudice by*, Florida *ex rel*. Hawkins v. Board of Control, 355 U.S. 839 (1957).

9. *See* Dudley Clendinen, *Is victory in sight for Virgil Hawkins?,* St. Petersburg Times Floridian, Mar. 21, 1976, at 23.

10. *Virgil Never Gave Up Dream of Being a Lawyer*, The Baytown Sun (Texas), Apr. 9, 1980.

11. Florida A & M College is a state college in Tallahassee where Florida offered college programs for its Negro citizens.

12. *See* State *ex rel.* Hawkins v. Board of Control, 47 So. 2d 608, 609 (Fla. 1950).

13. *See id.* at 609.

14. 339 U.S. 629 (1950).

15. Constance Baker Motley, Equal Justice Under the Law 112 (1998).

16. Because the school was created so hastily, it was not in existence at the time Hawkins would have been eligible to attend. In what might have been a case of the use of integration to preserve segregation, the Florida Supreme Court explained the plan for implementing Hawkins' admission by stating that Hawkins would attend the University of Florida as a Florida A&M student, until the law school at A&M opened its doors. Based on that time line, Hawkins would have received virtually all of his law school education at the University of Florida. This personal benefit would have come at a great cost to other black Floridians. If Hawkins accepted Florida's offer, his suit would have ended, and efforts to secure the rights of black Floridians to attend the University of Florida might have been delayed for a half a decade or longer.

17. *See* State *ex rel.* Hawkins v. Board of Control, 47 So. 2d 608 (Fla. 1950).

18. Florida *ex rel.* Hawkins v. Board of Control, 350 U.S. 413, 414 (1957).

19. *See* State *ex rel.* Hawkins v. Board of Control, 93 So. 2d 354, 357 (Fla. 1957). While it might be argued that Justice Roberts had adopted Gandhi's and Dr. King's philosophy of non-violent civil disobedience, such acts would have only been appropriate for a member of the judiciary, if he had resigned from the bench. Responding to Roberts' first defiance of a U.S. Supreme Court mandate to admit Hawkins to law school, a dissenting Justice Sebring declared: "That it is our

judicial duty to give effect to this new pronouncement cannot be seriously questioned. For the Federal Constitution, which all Florida judges have taken a solemn oath to 'support, protect and defend' Article XVI, Section 2, Constitution of Florida, F.S.A., specifically provides that 'This Constitution, and the Laws of the United States which shall be made in Pursuance thereof * * * shall be the supreme Law of the Land; and the Judges in every State *shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.*' Article VI, Constitution of the United States. (Emphasis supplied.) Therefore, whatever may be our personal views and desires in respect to the matter, we have the binding obligation imposed by our oath of office, to apply to the issue at hand the Federal Constitution, as presently interpreted by the Supreme Court of the United States, and in its application to recognize and give force and effect to this new principle enunciated in Brown v. Board of Education, supra, that the doctrine of 'separate but equal' . . . has no place in the field of public education. . . ." State *ex rel*. Hawkins v. Board of Control, 83 So. 2d 20, 31 (Fla. 1955).

20. *See* Florida *ex rel*. Hawkins v. Board of Control Fla., 347 U.S. 971 (1954).

21. State *ex rel.* Hawkins v. Board of Control, 83 So. 2d 20, 28 (Fla. 1955) (Terrell. J., concurring).

22. State *ex rel*. Hawkins v. Board of Control, 93 So. 2d 354, 361 (Fla. 1957).

23. For a detailed description of Florida's efforts to intimidate Hawkins see Lerone Bennett, *The South's Most Patient Man*, Ebony Mag., Oct. 1958, at 44, and Stewart, *The Law and Virgil Hawkins*, Orlando Sentinel Fla. Mag., Mar. 8, 1987, at 14.

24. *See* Samuel Seklow, *Hawkins, The United States Supreme Court, and Justice*, 31 J. Negro Educ. 97, 100 (1962).

25. For full discussion *see Virgil Never Gave Up Dream of Being a Lawyer*, The Baytown Sun (Texas), Apr. 9, 1980 and Kate Manley, *Gentle Warrior*, The Verdict, U. Fla., Feb. 1985, Vol. 1, No. 2, at 5.

26. *See* Clendinen, *Is victory in sight for Virgil Hawkins?*, St. Petersburg Times Floridian, Mar. 21, 1976, at 23.

27. The right of a graduate of Florida law schools to become a member of the Florida Bar without taking or passing a bar exam was known as "the diploma privilege." It was enacted into law by the Florida Legislature in 1925. *In re* Florida Bd. of Bar Exam'rs. *In re* Ervin, 290 So. 2d 9, 10 (Fla. 1974). Its primary purpose was to serve as an inducement for law students to attend Florida law schools. Wallace E. Sturgis, Jr., *Abolition of the Diploma Privilege*, 4 Fla. L. Rev. 370, 381 (1951). It was abolished in 1951, with a grandfathering clause for students enrolled in Florida law schools on or before July 25, 1951. Fla. Stat. ch. 454.031(3) (1951).

28. *See* Clendinen, *Is victory in sight for Virgil Hawkins?*, St. Petersburg Times Floridian, Mar. 21, 1976, at 23.

29. *See In re* Florida Bd. of Bar Exam'rs. *In re* Ervin, 290 So. 2d 9, 11 (Fla. 1974).

30. *Id.* at 11.

31. Unpublished draft of the opinion for Case No. 48,311, at 1 (J. Hatchett dissenting), located in the Florida State Archives, Department of State, R.A. Gray Building in Tallahassee, Fla.

32. *Id.*

33. *Id.* at 9.

34. *Id.*

35. *Id.* at 12.

36. *Id.*

37. *See* unpublished draft of the opinion for Case No. 48,311, located in the Florida State Archives, Department of State, R.A. Gray Building in Tallahassee, Fla.; *compare with In re* Florida Bd. of Bar Exam'rs. *In re* Hawkins, 339 So. 2d 637 (Fla. 1976).

38. *In re* Florida Bd. of Bar Exam'rs. *In re* Hawkins, 339 So. 2d 637, 638 (Fla. 1976).

39. *Id.*

40. *Id.*

41. *Id.*

42. Unpublished draft of the opinion for Case No. 48,311 at 2 (J. England writing opinion), located in the Florida State Archives, Department of State, R.A. Gray Building in Tallahassee, Fla.

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.* at 5.

47. For historical information, *see* Fla. Stat. ch. 454.031(3) (1951), which required a Bar examination for all applicants to the Florida Bar, except individuals who (a) enrolled in a Florida or Supreme Court approved law school on or before July 25, 1951, and (b) obtained their law degree within three years of enrollment or of the effective date of the statute.

48. *See* discussion, *supra* note 26.

49. *See In re* Petition of Florida State Bar Ass'n, 186 So. 280, 289 (Fla. 1938).

50. *See id.* at 281.

51. *Id.* at 289.

52. *See id.* at 286. Here, the court notes that while the judiciary held the inherent power to regulate the practice of law, it "acquiesced" and approved legislative efforts to regulate the admission and disbarment of attorneys in Florida.

53. *See id.*

54. *See* State *ex rel*. Clyatt v. Hocker, 22 So. 721 (Fla. 1897).

55. *See In re* Petition of Florida State Bar Ass'n, 186 So. 280, 286 (Fla. 1938).

56. *See id.*

57. *Id.* at 288.

58. *Id.*

59. *Ex parte* Florida State Bar Ass'n Comm. on Legal Educ. and Admis. to the Bar, 5 So. 2d 1, 3 (Fla. 1941).

60. For this reason, law degrees of that era were classified as Bachelors of Law, rather than Juris Doctorates.

61. *See UM Raises Barrier to Law Study*, Miami Herald, Dec. 16, 1953, at 8C.

62. *In re* Florida Bd. of Bar Exam'rs. *In re* Hawkins, 339 So. 2d 637, 638 (Fla. 1976).

63. *Id.* at 639.

64. *Id.*

65. *See id.* at 639.

66. While Florida does not require a "supervised practice" requirement as a condition for admission to the Bar, the late-in-life delayed entry of Hawkins into the profession, and the concerns about the potential danger of admitting Hawkins to the Bar, justified additional safeguards. In light of the Ervin precedent, the Court's options were limited, unless it had been willing to explain the factual basis for giving Hawkins special consideration. That explanation would have necessitated admissions by the Court that its justices had refused to obey the 1954 and 1956 mandates of United States Supreme Court ordering Hawkins' admission, and that this violation of the Court's duties had harmed Hawkins and precluded him from entering the legal profession at an earlier time in his life with the education necessary to successfully practice law. When the 1976 admission opinion was entered, the Florida justice (B.K. Roberts) who had authored those earlier opinions that defied the U.S. Supreme Court was still a member of the Florida Supreme Court. He retired a few weeks later, with a resolution from the Court commending him for his "seasoned opinions." 339 So. 2d Unnumbered page at front of volume (Fla. 1976). This resolution of commendation would not have been possible, if the Hawkins opinion contained an acknowledgment of the illegality of the decisions rendered in the 1950's.

67. *See* Clendinen, *Is victory in sight for Virgil Hawkins?,* St. Petersburg Times Floridian, Mar. 21, 1976, at 23.

68. *See* Ramsey Campbell, *Attorney's not one to be judged by race*, Lake Little Sentinel (Lake County, Fla.), Mar. 3, 1981, at 3.

69. *See* Clendinen, *Is victory in sight for Virgil Hawkins?,* St. Petersburg Times Floridian, Mar. 21, 1976, at 23. The article notes, "Hawkins was ill and weak in bed in January, 1974."

70. Donna Eyring, *Second career at 70 and he's still going strong,* The Little Sentinel (Orlando), Sept. 18, 1977, at 3.

71. Stewart, *The Law and Virgil Hawkins*, Orlando Sentinel Fla. Mag., Mar. 8, 1987, at 14, 16.

72. *See* State v. Williams, No. 80-844-CF (Fla. 5th Cir. 1981).

73. *See* State v. Williams, No. 80-844-CF (Fla. 5th Cir.). Uniform Commitment to Custody of Division of Corrections, Sept. 15, 1982, Doc. No. 2909.

74. *See* State v. Williams, No. 80-844-CF (Fla. 5th Cir.). Letter of Feb. 9, 1981, from Virgil D. Hawkins to Judge C. Welborn Daniel, Doc. No. 2845.

75. Report of Referee, Florida Bar v. Hawkins, Case No. 05B81C15, at 2-3 (Fla. Feb. 18, 1983).

76. While the failure of the prosecution to provide discoverable information does not excuse the lack of additional efforts to secure discoverable evidence, the Bar disciplinary proceeding indicates that Hawkins submitted the standard form discovery request to the prosecution. The evidence which his client claimed would have been located through discovery should have been produced in response to that discovery request. No action was taken against the prosecutor, and the bar proceeding does not mention why this information could not have been provided with the standard blanket request for discoverable information.

77. After the court granted Williams the right to a new trial, on December 20, 1983, Williams accepted a plea and that dropped the charge of aggravated assault with a firearm, and placed Williams on three years probation, with credit for jail time served, but withheld adjudication on the charge of shooting into an occupied vehicle. *See* State v. Williams, No. 80-844-CF (Fla. 5th Cir.). Entry of Plea of Guilty, Doc. No. 3006, Order Withholding Adjudication of Guilt and Placing Defendant on Probation, Doc. No. 3016. The pleas allegedly offered to Hawkins provided for three years probation, but did not offer to withhold adjudication (which avoids the long-term effects of a felony conviction), and required a jail sentence of six months to one year. *See* State v. Williams, No. 80-844-CF (Fla. 5th Cir.). Paragraph 4, Nov. 23, 1983 Order Granting New Trial, Doc. No. 2999, at 3000.

78. *See* State v. Williams, No. 80-844-CF (Fla. 5th Cir.). Feb. 6, 1981 Letter of Virgil D. Hawkins to Mrs. Otis L. Williams, Doc. No. 2954.

79. *See* State v. Williams, No. 80-844-CF (Fla. 5th Cir.). Nov. 23, 1983, Order Granting New Trial, Doc. No. 2999, at 3001-3003.

80. State v. Williams, No. 80-844-CF (Fla. 5th Cir.). Nov. 23, 1983, Order Granting New Trial, Doc. No. 2999 at 3001.

81. 363 So. 2d 403 (Fla. 4th D.C.A., 1978),

82. State v. Williams, No. 80-844-CF (Fla. 5th Cir.). Nov. 23, 1983, Order Granting New Trial, Doc. No. 2999 at 3002.

83. Stewart, *The Law and Virgil Hawkins*, Orlando Sentinel Fla. Mag., Mar. 8, 1987, at 16.

84. *See* Transcript of Dec. 1, 1981 hearing of Grievance Committee "B" of the Fifth Judicial Circuit, State of Florida, at 17. Florida Bar v. Hawkins, Case No. 61941 (Fla.).

85. *See* Transcript of Jury Trial, State v. Williams, No. 80-844-CF at 82 (Fla. 5th Cir.).

86. Transcript of Dec. 1, 1981 hearing of Grievance Committee "B" of the Fifth Judicial Circuit, State of Florida, at 15. Florida Bar v. Hawkins, Case No. 61941 (Fla.).

87. *See* Transcript of Jury Trial, State v. Williams, No. 80-844-CF at 83 (Fla. 5th Cir.).

88. *See id*. at 16.

89. *See id*.

90. *See id*. at 34.

91. *Id*. at 56-57.

92. *See id*. at 18.

93. *See id*.

94. *See id*. at 32.

95. *See id*. at 36-37.

96. *See id*. at 38.

97. *See id*. at 65.

98. *See id*. at 71.

99. *See id*. at 73.

100. *See id*. at 72.

101. Report of Referee, Florida Bar v. Hawkins, Case No. 05B81C15, at 1 (Fla. Feb. 18, 1983).

102. *Id*.

103. *See* Transcript of Jury Trial, State v. Williams, No. 80-844-CF at 92-100 (Fla. 5th Cir.).

104. Although the students simply intended to honor Hawkins' role in the desegregation suit, and offset the dishonor associated with having B. K. Robert's (the Florida Supreme Court justice who authored the opinions that defied the U.S. Supreme Court's desegregation orders) name on the law school's main building, the Hawkins honor was far more appropriate than the students suspected. The FSU law school was established using the funding and books from the FAMU law school created as a defense to Hawkins' suit. Approximately 30% of FSU's law library's books consisted of volumes bought by the State of Florida to demonstrate that Hawkins could receive a law school education without eliminating Florida's system of segregated education.

105. *See The Session*, Orlando Sentinel, May 19, 1983, at 3B. The Hawkins' Scholarships remains one of the most tragic ironies of the Hawkins history. Similar to Florida's earlier willingness to admit any Negro to the University of Florida except Hawkins, to keep Hawkins name off the FSU law school, Florida began spending $100,000 a year to enable African-American students to obtain the education Hawkins was denied. By the time the scholarships were implemented, Hawkins had been suspended from the Bar because he didn't have $100 to pay his Bar dues. To date, Florida has spent over 1.5 million dollars on these scholarships. A small fraction of this outlay would have provided the funds necessary to employ Hawkins for his few remaining years of life, at the local legal services office, where he could have assisted poor clients with the support and assistance of co-counsel, without having to risk financial and professional ruin.

106. *See* Stewart, *The Law and Virgil Hawkins*, Orlando Sentinel Fla. Mag., Mar. 8, 1977, at 14, 17.

107. *See* Affidavit of Stanley D. Bossert, Florida Bar v. Hawkins, No. 65,410 (Fla.).

108. *See* June 1, 1984 letter from Deputy Clerk Yvette A. Young, Attachment "E", Florida Bar v. Hawkins, No. 65,410 (Fla.).

109. *See* Affidavit of Virgil D. Hawkins, May 24, 1983, Florida Bar v. Hawkins, No. 61941 (Fla.).

110. Campbell, *Attorney's not one to be judged by race*, Lake Little Sentinel (Lake County, Fla.), Mar. 3, 1981, at 3.

111. *See* Stewart, *The Law and Virgil Hawkins*, Orlando Sentinel Fla. Mag., Mar. 8, 1977, at 16.

112. *See In re* Petition of Florida State Bar Ass'n, 186 So. 280, 289 (Fla. 1938).

113. *In re* Florida Bd. of Bar Exam'rs. *In re* Hawkins, 339 So. 2d 637, 638 (Fla. 1976).

114. The location of the offices of the Florida Bar.

115. The location of the Florida Supreme Court.

116. *See* Volume LXXIV No. 8 Fla. B.J., at 26 (Sept. 2000).

117. *See* Volume LXXIV No. 8 Fla. B.J., at 22 (Sept. 2000).

118. Mentoring Attorney Professional Program Handbook 1.

119. *See id*. at 3 - 4.

120. *See id*. at 3.

121. *See id*. at 3 - 15.

122. Stewart, *The Law and Virgil Hawkins*, Orlando Sentinel Fla. Mag., Mar. 8, 1987, at 17.

123. *See* Florida Bar. *In re* Hawkins, 532 So. 2d 669 (Fla. 1988).