VIRGIL HAWKINS HISTORICAL SOCIETY INC.

Preserving The History Of The Man Whose Nine-Year Legal Battle And Agreement To Give Up His Right To An Education Opened The Doors Of Florida's Universities To Students Of All Races

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Dean Erin O'Hara O'Connor
FSU College of Law
425 W. Jefferson St.
Tallahassee, FL 32306-1601

RE: Welcome and Request for Dialogue about removal of B. K. Roberts name from B K Roberts Hall

Dear Dean O'Connor:

As a member of the Florida Bar, a former Chair of the Florida Bar's Student Education and Admission to the Bar Committee and the Equal Opportunities Law Section and as the Immediate Past President of the Plant City Bar Association, let me begin by congratulating you as you begin to serve as Dean of the FSU College of Law. I welcome your addition to the Florida legal community. Over the years, I had the pleasure of working with your predecessor Dean Weidner, in my role on Bar Committees and Sections and in two projects: The identification and preservation of the Virgil Hawkins Collection (the law books from the original FAMU College of Law) and in our efforts with the law schools of Florida, during the Florida Supreme Court's proceeding to determine whether to raise the passing score on the Florida Bar exam (when FSU law grad Daryl Parks and I were two of four attorneys to present oral arguments to the Court on this issue). I gained a great deal of respect for the FSU College of Law during those efforts and know the College will be well served by your tenure as Dean. I was almost an alumnus of the FSU College of Law, having been accepted for admission prior to my admission to UF. As I've come to know the faculty and efforts of the FSU College of Law, it has remained one of my "can't change the past, but wonder what would have happened" moments in my legal career.

The letter is sent first with the recognition that as you begin your work at the FSU College of Law, there are many pressing matters that will have a much higher priority than the issue presented herein. Second, it comes with an apology for its length, but the subject matter is complex and defies a short explanation. This clearly isn't a matter that I would request or recommend be part of your initial efforts at FSU. It is, however, my hope that this letter can be the start of a dialogue with the Hawkins Historical Society, African-American and other alumni of the FSU College of Law and others for whom the issue of the name of the building where the FSU College of Law is located remains a concern.

Almost thirty years ago, when I began my efforts to restore the reputation Virgil Hawkins, the class action plaintiff whose case desegregated Florida's universities, at the cost of his right to attend the UF College of Law, (see my law review article *Anatomy of a Bar Resignation* 2 Fl. Coastal L. J. 77 and *In Re Virgil Darnell Hawkins* 532 So.2d 669 [Fla. 1988]) I began to hear from FSU graduates and students for whom attending law school in a building named for Roberts has remained a lingering concern. In

recent years I have discussed the issue with prominent FSU law graduates, including current National Bar Association President Benjamin Crump, former National Bar Association President Daryl Parks, and retired Fifth DCA Judge Emerson Thompson, one of the FSU College of Law's first African-American graduates and his wife, State Senator Geraldine Thompson. It remains my hope that at some time during your tenure, this controversy can emerge from the shadows and be appropriately dealt with.

I have largely confined my efforts concerning the history of the integration of Florida's universities to assuring proper historical recognition at the University I attended. As a member of the Florida Bar for almost four decades, however, I have remained concerned about the message sent to our future generation of lawyers, by honoring B. K. Roberts with his name on the building where these future lawyers are educated. Despite his other efforts during his legal career Roberts is the author of the 1955 and 1957 opinions of Florida's highest court that directly and repeatedly violated the direct orders of the United States Supreme Court. As a companion case to the 1954 *Brown* decision, the U. S. Supreme Court ruled that Florida's segregation laws and constitution could not be used to deny the admission of Virgil Hawkins to the UF College of Law (by then Hawkins had spent a half a decade after his 1949 application to UF was denied, litigating this issue, despite the clear precedent of the 1950 U.S. Supreme Court decision in *Sweatt v Painter.)* After Justice Roberts' 1955 opinion refusing to implement the mandate of the higher court, the U. S. Supreme Court issued a second, more direct mandate, stating:

> "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 candidates" *Florida ex rel. Hawkins v Board of Control, 350 U.S. 413, 414 (1956).*

Despite that clear and unequivocal language, Justice Roberts, writing for the majority again defied the U.S. Supreme Court and refused to admit Mr. Hawkins to the University of Florida. After first acknowledging that the U.S. Supreme Court had rejected Roberts' 1955 attempt to deny Hawkins' admission:

> "There can be no doubt that, by revising its May 1954 mandate directed to our 1952 decision in the manner above noted, the Supreme Court of the United States neatly, albeit laconically, cut off the federal prop that supported, in part, our 1955 decision." *State ex rel Hawkins v. Board of Control 93 S,2d 354, 356*

Roberts then sought to justify his decision by stating:

> "Indeed, it is unthinkable that the Supreme Court of the United States would attempt to convert into a writ of right that which has for centuries at common law and in this state been considered a discretionary writ; nor can we conceive that that court would hold that the highest court of a sovereign state does not have the right to control the effective date of its own discretionary process. . . . It is a "consummation devoutly to be wished" that the concept of "states' rights" will not come to be of interest only to writers and students of history. Such concept is vital to the preservation of human liberties *now.* And whatever one's ideology may be — whether one is a strong defender of state sovereignty or an equally fervent advocate of centralized government — we think the great majority of persons would agree that if the death knell of

this fundamental principle of Jeffersonian democracy is to be tolled, the bell should be rung by the people themselves as the Constitution contemplates." *Id. at 357.*

In its brief to the Florida Supreme Court in response to Mr. Hawkins' 1974 petition for admission to the bar, the Florida Bar summarized the impact of Florida Supreme Court's initial decisions to deny Hawkins admission and Justice Roberts' decisions in defiance of the orders of the U.S. Supreme Court as follows:

"In other words, the Court would allow him to leave the matter open until he agreed to go to Florida Agricultural and Mechanical College or, in the alternative, turned white.

Mr. Hawkins then petitioned the United States Supreme Court . . .

He no longer had to turn white. He merely had to prove 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.

Having held all the high cards in the game and losing, Mr. Hawkins gave up. He went north and graduated from the New England School of Law in June of 1964. . . ."

While not noted in the Bar's brief, Hawkins' Florida attorney, Horace Hill, confirmed in his recorded oral history that when he presented oral arguments to the Florida Supreme Court, the Justices turned their chairs around, so that he was arguing to their backs.

It is important to recognize that the statement of the Florida Bar in 1975, Justice Hatchett in 1976 and Florida Supreme Chief Justice Harding during the court's 1999 Ceremonial Session honoring Mr. Hawkins, (where Harding described the Court's 1950 decisions in the Hawkins cases as "regrettable" and providing the lesson that: "hatred and discrimination will not triumph in the end") are not simply reflections made decades after the time when segregation had ceased to be a popular cause in this state. A total of three Justices of the Florida Supreme Court, (two in each post-Brown decisions of the Florida Supreme Court), elected by pro-segregation voters of Florida noted Roberts' violation of the rule of law in their dissenting opinions in the 1955 and 1957 Hawkins decisions. Justice Sebring's dissent clearly states the ethical and legal obligations that were violated by Justice Roberts' majority opinions:

"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, 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 not withstanding." 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 a binding obligation imposed by our oath of office to apply to this issue at hand the Federal Constitution as presently interpreted by the Supreme Court of the United States and its application to recognize and give force and effect to this new principal enunciated to Brown V. Board of Education supra, that the doctrine of "separate but equal" facilities, upon which the original decision of this Court was based and upon which the respondents now bottom their defense to the amended petition of the relator, has no place in the field

of public education in Florida, even though our own Constitution and statutes contain provisions that require the separation of the races." 83 So.2d 20 at 31.

Justice Sebring's dissent is noteworthy for several reasons, including his "personal views". Sebring had written the initial 1950 decisions upholding Florida's policy of segregation (which many, including Justice Hatchett contend was a violation of the U.S. Supreme Court's ruling in *Sweatt v. Painter*). During Sebring's tenure as the Dean of Stetson's College of Law (after retiring from the Court), Sebring failed to admit a single African-American student to its law school. Sebring was, however, one of the few American jurists to serve on the Nuremberg tribunals. Most likely his service at Nuremberg led him to realize the perilous path of a court that fails to uphold the rule of law. It is also noteworthy that Sebring chose to retire from the Florida Supreme Court shortly after issuing that dissenting opinion.

Justices Thomas and Drew were equally clear about the Court's obligations in their dissents when they stated:

"In view of the decision of the Supreme Court of the United States cited in the mandate that court issued in this case, I think this court has no alternative but to grant the motion for preemptory writ. . . " 83 So.2d 20 at 34

"Courts are the mere instruments of the law and can will nothing. Judicial discretion is a legal discretion. It is a discretion to be exercised in discerning the course prescribed by law. When, as here, that course has been discerned and a determination has been reached that relator is being denied his constitutional right, it is the clear duty of this Court to enforce the right. The power vested in the judiciary [illegible] should never be exercised for the sole purpose of giving effect to the will of the judge " 93 So.2d 354, 367.

Even Justice Roberts as he violated the 1956 ruling of the U.S. Supreme Court, acknowledged in his 1957 decision, that his oath of office required him to comply with the direct orders of the U.S. Supreme Court:

"In the interest of both races, that is to say the common weal, the writ of mandamus should, in the exercise of sound judicial discretion, be withheld until the Supreme Court of the United States . . . unequivocally directs that relator be admitted to the College of Law at the University of Florida. . And since I am bound by the paramount federal law, if such ruling should be made by a fully informed Supreme Court, I could not fail to comply without stultifying my oath of office." 93 So. 2d 354 at (emphasis added)

How much more unequivocal and direct could the United States Supreme Court be than its 1956 ruling which stated:

"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 candidates" *Florida ex rel. Hawkins v Board of Control, 350 U.S. 413, 414 (1956). (Emphasis added.)*

Sadly, when the legal career that Virgil Hawkins began at age 70 in 1976 ended tragically in 1985, the 1957 observation of dissenting Justice Drew became prophetic:

> "It is a fundamental truth that justice delayed is justice denied. This case has now reached the point where further delay will be tantamount to a denial of a constitutional right of relator" 93 So.2d 354, 367.

The unpublished draft dissenting opinion of Roberts' colleague, Justice Joseph Hatchett that I refer to in my law review article, eloquently and effectively cites the case for Roberts' removal from the Court and his disbarment. It is my understanding from information former St. Petersburg Times columnist Martin Dyckman obtained from former justices that Justices Hatchett and Roberts nearly came to blows in chambers when the Hawkins admission decision was being debated by the court.

FAMU College of Law graduates such as Florida's first African-American Secretary of State, Jesse McCrary, Jr. and Florida Senator Arthenia Joyner, and FSU graduates such as retired Second DCA Judge Emerson Thompson, Benjamin Crump and Daryl Parks, illustrate the potential of Florida's African-American residents who were barred from our state's law school while the Hawkins case was pending and as such never joined our legal profession. Virgil Hawkins remains the most public illustration of harm caused by the refusal of the Florida Supreme Court to comply with U.S. Supreme Court's 1950 *Sweatt* and 1954 and 1956 *Hawkins*' decision that compelled the admission of black Floridians to our law schools, during the 1950's when these men and women could have become productive and effective members of our legal profession.

My work on behalf of Mr. Hawkins and my continued work on Florida Bar committees and as a mentor to young lawyers arose from watching Virgil Hawkins often resemble an aging Mohamed Ali as he entered the ring to battle against my efforts on behalf of opposing clients. The raw potential to be one of Florida's greatest was often evident, but Justice Drew was correct: Justice delayed was justice denied.

Unlike Richard Ervin, who argued against the Hawkins cases as Florida's Attorney General but admitted in 1976 that Florida's defiance of the U. S. Supreme Court was wrong, and Governor Collins, who personally thanked me when the Hawkins reinstatement decision was entered, Justice Roberts remained unrepentant for the remainder of his life. (See enclosed article by Orlando Sentinel Columnist Ramsey Campbell, who interviewed Roberts a few years before Roberts' death.) Thus it comes as little surprise, that as noted by former Congresswoman Carrie Meek in the enclosed PBS Documentary about Mr. Hawkins (the 1999 Florida Supreme Court edit of that documentary can be found at the following You Tube site: https://youtu.be/UGIpTz6yx3o) the 1983 proposal to name the FSU law library after Virgil Hawkins created a fury in the Florida Legislature when she proposed it. The related effort to discredit Hawkins to preclude this honor, largely put the nails in the coffin of Mr. Hawkins legal career, as he was publicly branded as "incompetent", for a legal career that began far too late, with no assistance from the Florida law schools that existed during the productive years of his life. It remains a tragic irony that while Hawkins died in disgrace with no representatives of the State of Florida in attendance and just my wife, the Mayor of Leesburg and me as the only whites in attendance at Hawkins' overflow-capacity funeral, the flags of Florida's capital were lowered to half staff when Justice Roberts died.

In setting forth the reasons why the building where the FSU College of Law is located cannot remain named after a Justice from Florida's highest court who violated the law and his oath of office it is not my intent or desire to remove this history from the College of Law. That history should be publicly acknowledged, perhaps in a plaque inside the law school building, that both cites the history and the reason for the decision to remove Robert's name from the front of the building. Clearly, with Florida's policy against duplicating facilities after FSU and UF went coed and Gator alumni opposition to an additional law school, FSU would not have obtained a law school at that time, without the efforts of Justice Roberts to transfer to FSU, the funding for the FAMU College of Law. While I am certain that decades later, a law school would have been established at FSU, the head start provided by Roberts' efforts placed FSU decades ahead in its development, reputation and alumni that the Sweatt decision found to be vital to a credible law school. Correspondingly, the recreated FAMU College of Law now struggles to recover from the decades lost when the funding and books (but not the faculty) of the FAMU College of Law were transferred to FSU. Students and faculty attending FSU need to know that the credentials the FSU law school holds, and the quality of education it offers to its students is due in part to an effort that began with an improper motive. It will perhaps motivate both faculty and students to offset that beginning by works that improve the quality of justice in the legal communities they choose to become part of.

As I noted at the start of this letter, this is not a project that I would ask or expect to be part of your initial work at FSU. I am confident, however that you are the Dean who can remedy this long-standing injustice, so that FSU's College of Law can clearly convey its belief that our legal profession demands the highest level of ethics from all members of the bar and that no member of the profession is above the law. As such, it is my hope that this is the beginning of a dialogue between us and FSU Alumni. In the interim, please be assured that I am available to provide any assistance and support needed in your efforts as Dean, even though many of those efforts do not pertain to this issue. I close, as I began with my best wishes and hope for your success in your role as Dean of the FSU College of Law.

Respectfully,

Harley Herman
Attorney at Law
President, Virgil Hawkins Historical Society, Inc.

cc: FSU Alumni referenced above
Hawkins Family Members
Floridians who honor Mr. Hawkins legacy (often referred to as "Friends of Virgil")