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Recommended Citation

Brown, Kevin D., "Benefiting From Breaking the Color Barrier: Tribute to Professor Richardson for Being the Pioneer at Indiana University Maurer School of Law" (2017). *Articles by Maurer Faculty*. 2591.

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**BENEFITING FROM BREAKING THE COLOR BARRIER:
TRIBUTE TO PROFESSOR RICHARDSON FOR BEING
THE PIONEER AT INDIANA UNIVERSITY
MAURER SCHOOL OF LAW**

Kevin Brown *

I don't know Professor Henry Richardson III well. He wasn't a professor of mine. We have never been on the same faculty together and I can only recall a couple of conferences where we both participated. So I don't count him as an important mentor of mine. His areas of research are different from mine. So, I can't say that his scholarship has influenced my thinking very much. Even though we both grew up in Indianapolis, he is about fifteen years my senior. That puts him in a different generation, so our paths didn't cross socially. Thus, my praise for Professor Richardson is not for him as a teacher, a mentor, a scholar, or a friend, but as a trailblazer.

Professor Richardson has had a tremendous influence on my life because he suffered the racism that would have otherwise befallen me. He was the first person of color hired as a tenure-track faculty member at my law school, Indiana University Maurer School of Law. I joined the faculty about a dozen years after he last taught there. From my personal experience in virtually all white institutions, Blacks who break the color barrier often pay a terrible price. And the reward for their bruised and battered egos and shattered dreams is often nothing more than creating the space or a clearing in the wilderness for the Blacks who follow behind them. Thus, in the best tradition of sacrifice in the African-American community, these pioneers pay it forward by becoming a sort of human hatchet that is cutting down the thickest underbrush of the worst racial obstacles in the path of all Blacks who would one day labor in that organization.

It is in the spirit of recognizing that Professor Henry Richardson is the single most important personal path-breaker in my life that I am writing this piece. Had it not been for him, I would not have enjoyed both the success and joy that has come from being a professor at Maurer School of Law for the past thirty years. So, I write this tribute to let him know that the suffering and disappointment that he experienced at the Maurer School of Law did not go unnoticed nor unappreciated. I want to take this opportunity to publicly thank him for making my life at Maurer School of Law so much easier than it was for him. I both know and greatly appreciate the suffering you endured, because I benefited from it tremendously.

In January 1987, I joined the faculty of Indiana University Maurer School of Law as the third African-American (just as accurately, person of color) in the 145-

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year history of the law school. There had been two other Black professors who preceded me: Professor Henry Richardson and the late Dean John Baker (former Dean of Howard University School of Law and Albany Law School). Before joining my law school faculty, I had worked as a professional in two other organizations in corporate America. After graduating with distinction from Indiana University with a Bachelor of Science degree in Accounting in 1978, I joined the Indianapolis office of a national accounting firm.¹ I was only the second Black person to work as a professional in that office of forty accounting professionals, following by twelve months Ed Henry—the first Black professional. When I graduated from Yale Law School in 1982, I joined the most prestigious law firm in the State of Indiana, Faegre Baker Daniels LLP (Baker & Daniels at that time).² Two years earlier, Harvard Law School graduate John Polly broke the color barrier there. I would leave Faegre for the faculty of the Maurer School of Law. Both of my experiences after law school allowed me to witness first-hand the horrendous racial treatment the first Black people at an all-white institution endured.

At the Maurer School of Law, my path benefited from the clearing that Professor Richardson had begun. He came to the faculty of the law school in 1973. Professor Richardson was very well-qualified for the position. He had joined the faculty after graduating from Yale Law School with an LL.B.³ in 1966, serving as an international legal adviser to the government of Malawi for more than two years shortly after its independence. He then spent nearly three years as the Faculty Africanist in Law at the African Studies Center at University of California Los Angeles (UCLA), where he also earned an LL.M. from the UCLA School of Law.⁴ But Professor Richardson was more than an incredibly intelligent and well-accomplished person. He came from one of the most well respected Black families in the state of Indiana. His father, Henry J. Richardson II, graduated from law school in Indianapolis in 1928. He was the first Black to judge cases on the bench in the state of Indiana when he was appointed as a temporary judge in Marion County in 1930. He was then elected to the Indiana House of Representatives in 1932.⁵ Professor Richardson's brother, Rodney, graduated from the Maurer School of Law before I joined the faculty. He is a prominent attorney in Indianapolis. Despite all of his accomplishments and connections, Professor Richardson was unable to successfully scale the tenure barrier. When he left the Maurer School of Law, he was a visiting law professor at Northwestern University School of Law the

1. The accounting firm was Peat, Marwick, Mitchell & Co. In 1987, Peat Marwick merged with KMG and formed the firm called KPMG in the U.S. See *History of KPMG*, KPMG, <http://kpmgcampus.com/kpmg-family/kpmg-history.shtml> (last visited Feb. 13, 2017) (narrating the founding history of KPMG).

2. FAEGRE BAKER DANIELS, <http://www.faegrebd.com/> (last visited Feb. 15, 2017).

3. See Lesley Schoenfeld, *Q. What is the difference between the LL.B. degree and the J.D. degree?*, HARVARD LAW SCHOOL LIBRARY (Jan. 8, 2016), <http://asklib.law.harvard.edu/faq/115308> (explaining the evolution from the LL.B. degree to J.D. degree).

4. *About Henry*, TEMP. UNIV. BEASLEY SCH. OF LAW, <https://www2.law.temple.edu/events/richardson/about-henry/> (last visited Feb. 15, 2017).

5. Rebecca Berfanger, *School Commemorates Pioneer: Portrait of Judge-Legislator-Activist Unveiled*, IND. LAWYER, Sept. 20–Oct. 3, 2006, at 3, 28.

following year. Then, he went on to work for the National Security Council in President Carter's Administration under Zbigniew Brzezinski. Professor Richardson was in charge of African policy and United Nations issues.⁶ He had established his expertise to such an extent that he accompanied President Jimmy Carter when he went to Nigeria in April 1978. This was the first state visit to sub-Saharan Africa by a sitting U.S. President in the history of our country.⁷

According to the records of the Maurer School of Law, when I joined the faculty, at least ten professors, a third of the faculty, were still faculty members when Professor Richardson last taught there. So, I began looking for my path as a legal academic in a clearing created by a man who had been denied tenure, yet was a graduate of the most prestigious law school in the nation; who had an accomplished record as a scholar and such an established reputation that he was well-respected enough to advise the President of the United States on African policy; and who came from one of the most accomplished Black families in the history of the state of Indiana! Frankly, what more could he have done to warrant tenure? Surely he did more than I would do. But, in light of the cold reflection on my experience of the faculty at Maurer School of Law and the knowledge of those who were no longer on the faculty but were there when Professor Richardson was there, I must confess I am not surprised.

We must recall the academic environment at these exclusively white law school faculties around the nation where pioneering Black legal academics like Professor Richardson found themselves. When it came to African-Americans, legal academics of this time had grown up in this period of school desegregation, the beginnings of affirmative action, and forced interracial contact. The rationale that structured these race-based programs thought to only benefit African-Americans came directly from Chief Justice Warren's unanimous opinion for the Supreme Court in *Brown v. Board of Education*.⁸ Thus, the white legal academics of this time period would have read and re-read Warren's opinion, drinking deeply from the well of what was considered the most progressive racial attitudes of the day. "*To separate [African-American youth] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.*"⁹ Warren went on to approvingly quote language from the lower court opinion:

"Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when

6. *Carter's Black African Aide Lost in Political Shuffle*, JET, Nov. 23, 1978, at 9.

7. Anchi Hoh, *Africana Treasures in the Library of Congress: African Political Ephemera*, LIBRARY OF CONGRESS (Nov. 15, 2016), <https://blogs.loc.gov/international-collections/2016/11/africana-treasures-in-the-library-of-congress-african-political-ephemera/>.

8. 347 U.S. 483 (1954).

9. *Id.* at 494 (emphasis added). The social science evidence cited by the Court was specifically intended to prove that segregation produced a psychological harm to African-Americans. *Id.* at 494 n.11.

it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. *A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of negro children. . . .*¹⁰

Supporters of affirmative action measures in law school hiring at this time would have known about President Lyndon Johnson's justifications for such programs, which he laid out in his speech to the graduating class at Howard University in June 1965.

You do not wipe away the scars of centuries by saying: Now you are free to go where you want, and do as you desire, and choose the leaders you please. You do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say, "you are free to compete with all the others," and still justly believe that you have been completely fair.¹¹

When Professor Richardson joined the Maurer School of Law faculty, William Oliver, a law clerk for Chief Justice Warren when *Brown* was decided, was a faculty member. During Professor Richardson's time on the faculty there was no discussion of the benefits of diversity. There were no expressions of the belief that the inclusion of underrepresented minorities with a history of discrimination¹² could benefit everyone involved in the educational process because it promotes cross-racial understanding; helps to break down racial stereotypes; enables students to understand people of different races better; and makes classroom discussions livelier, more spirited, and simply more enlightening and interesting.¹³ Critical Race Theory would mount a systematic academic challenge to the embedded racism of this traditional view of the justifications for race-based programs.¹⁴ But, the first Critical Race Theory Workshop, which I

10. *Id.* at 494 (quoting *Brown v. Bd. of Educ.*, 98 F. Supp. 797 (D. Kan. 1951)) (alteration in original) (emphasis added).

11. Commencement Address at Howard University: "To Fulfill These Rights", 301 PUB. PAPERS 635, 636 (June 4, 1965). President Kennedy also expressed similar sentiments about the perception that African-Americans are somehow behind whites and need to catch up. See MEYER WEINBERG, *School Integration in American History*, in *LEARNING TOGETHER: A BOOK ON INTEGRATED EDUCATION* 3, 12 (Meyer Weinberg ed., 1964) ("In August 1963, President Kennedy stated he did not agree that Negroes were due some compensation for having been held back educationally.").

12. True, there was Justice Douglas' dissent in *DeFunis v. Odegaard* where he justified the consideration of race as a means to offset the built in cultural advantage that whites had because of the use of the culturally biased LSAT. But, his position was not one generally shared among legal academics. *DeFunis v. Odegaard*, 416 U.S. 312, 335 (1974) (Douglas, J., dissenting).

13. *Cf. id.* at 330-33 (indicating race was deciding factor in admission, not motivated by belief in general benefit to the class body); *Brown*, 347 U.S. at 483 (demonstrating thinking of the time that segregation was objectionable primarily because it was damaging to the psyche and self-worth of potentially talented minority youth).

14. See Kimberlé Williams Crenshaw, *The First Decade: Critical Reflections, or "A Foot in the Closing Door"*, 49 UCLA L. REV. 1343, 1347-48 (2002) (presenting a foundational analysis of Critical Race Theory and its objectives).

participated in, did not occur until 1989.¹⁵ Thus, Professor Richardson encountered a law school faculty where the Black experience and the existence of a separate Black point-of-view were simply viewed as unfortunate byproducts of an oppressed group with nothing of extrinsic value to add to the educational process or the academic discussion. Needless to say, to be the first Black person on a law school faculty at this time was immensely challenging.

In conclusion, while my time as a law professor at the Maurer School of Law has not been perfect, I have thoroughly enjoyed it. I know that it would not have been possible had Professor Richardson not taken the incredible abuse that was heaped upon him.

Professor Henry Richardson,

I want you to know that the sacrifices that you made as a faculty member of Indiana University Maurer School of Law did not go unrewarded or unappreciated. In the greatest tradition of our people, you paid it forward and I truly benefited from your contribution. From the bottom of my soul and with all of the heartfelt gratitude that I can muster, I want to express my sincerest appreciation, my deepest sense of gratitude, and my biggest thank you for helping to sensitize the faculty of Indiana University Maurer School of Law to the reality that African-American professors are not colored white professors. Your sacrifices were vital to my survival in this law school.

Once again, Professor Richardson, thank you very much!

15. The participants of the first workshop were Anita Allen, Taunya Banks, Derrick Bell, Kevin Brown, Paulette Caldwell, John Calmore, Kimberlé Crenshaw, Harlon Dalton, Richard Delgado, Neil Gotanda, Linda Greene, Trina Grillo, Isabelle Gunning, Angela Harris, Mari Matsuda, Teresa Miller, Philip T. Nash, Elizabeth Patterson, Stephanie Phillips, Benita Ramsey, Robert Suggs, Kendall Thomas, and Patricia Williams. *See id.* at 1361, 1361 n.19 (2002) (listing the participants in the 1989 workshop).

