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BLACK BUSINESSES AND THEIR LAWYERS

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The purpose of this article is to report the results of a study which we conducted to determine the ethnicity of lawyers representing the largest black businesses in the country, and secondly, to make some observations about the future of the black attorney and his relationship with both black and white businesses.

There has never been any systematic attempt to determine what proportion of black businesses utilize the services of black lawyers, or the criteria which are used by these businesses in selecting legal counsel.¹ The most obvious reason for the absence of this inquiry has been that both the demand for legal services on the part of black businesses has been relatively small,² and the supply of black lawyers to fulfill this demand has been even smaller.³ And, for a variety of reasons, even the limited supply of black attorneys which was available was not utilized by black businesses.⁴

However, because of the dramatic increase in recent years in the number of black lawyers and the number and size of black businesses, we feel that such an inquiry is appropriate. There is currently more aggregate demand for legal services by black businesses because they have not only increased numerically in the past ten to fifteen years, but also because some have grown to a

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1. A study has been made of the legal needs of selected black businesses in Los Angeles. See Note, *The Legal Needs of Black Owned Business in Los Angeles*, 20 U.C.L.A. L. REV. 827, 844 (1973).

2. Historically, black business has not operated on a large scale and it follows that their legal needs would not be great. See S. MARCUS and E.J. CHAMBERS, *HOW SMALL BUSINESS FIRMS IN THE STATE OF WASHINGTON COPE WITH THEIR LEGAL PROBLEMS* (1963) [hereinafter cited as MARCUS and CHAMBERS] which concludes that small businesses make infrequent use of lawyers. The limited size and scope of black businesses in America is discussed in the following: Pierce, *Black Business Enterprise: Reflections on its History and Future Development*, in BLACK BUSINESS ENTERPRISE 3-25 (R. Bailey ed. 1971); R.H. KINZER & E. SAGARIN, *THE NEGRO IN AMERICAN BUSINESSES* 91-134 (1950); A. HARRIS, *THE NEGRO AS CAPITALIST* (1936); J.H. HARMON, JR., A. LINDSAY, & C. WOODSON, *THE NEGRO AS A BUSINESS MAN* (1929).

3. See, e.g., C. WOODSON, *THE NEGRO PROFESSIONAL MAN AND THE COMMUNITY* 184 (1934); Shuman, *Black Lawyers Study*, 16 HOW. L.J. 225 (1971); Gelhorn, *The Law Schools and the Negro*, DUKE L.J. 1069 (1968); Pinderhughes, *Increasing Minority Group Students in Law Schools: The Rationale and the Critical Issues*, 20 BUFFALO L. REV. 447 (1971); Toles, *Report of Black Lawyers and Judges in the United States, 1969-70*, reprinted in 116 CONG. REC. 30786 (1970); Tollett, *Black Lawyers, Their Education, and the Black Community*, 17 HOW. L.J. 326 (1972).

4. "The nature of the work of most lawyers requires them to have rather extensive contacts with persons and organizations outside their own communities. Most blacks with business and commercial problems believed that the black lawyer could not obtain as favorable a result as a white lawyer could." Baker, *Black Lawyers and Corporate and Commercial Practice: Some Unfinished Business of the Civil Rights Movement*, 18 HOW. L.J. 696 (1975). See G. MYRDAL, *AN AMERICAN DILEMMA* 309, 325-26 (1944). G. EDWARDS, *THE NEGRO PROFESSIONAL CLASS* 135

level where frequent legal advise is indispensable to their operations.⁵ Correlatively, the number of black attorneys has also increased during this same time period, and some of these attorneys have already chosen or will choose careers as business and commercial law specialists.⁶

Finally, we recognize that relative to businesses which are predominantly owned and controlled by whites, there are few black businesses of significant size,⁷ and that the era of the black corporate attorney is, at best, in its nascent stage. Nevertheless we believe that it is worthwhile to ascertain the extent of the existing relationship between the two and to use this information as a basis upon which to speculate about the future. We will suggest that while some black businesses will continue to grow and others will be established, thus creating the need for more legal assistance, the market for legal services created by these businesses will be relatively small. If we are correct, the consequence is that the majority of black attorneys desiring to practice business and commercial law will not be able to tie their hopes exclusively to these businesses.

I. THE STUDY***

During the months of August and September, 1974, questionnaires concerning legal needs and ethnicity of attorneys utilized were mailed to 221 of

(1959). Some blacks also believed that the black lawyer was not competent, *see* D. THOMPSON, *THE NEGRO LEADERSHIP CLASS* 126 (1963); C. WOODSON, *supra* note 3, at 222, 226.

5. Large businesses normally have more legal needs than smaller ones. *See, e.g.,* MARCUS and CHAMBERS, *supra* note 2, at 23, 51. (A Study conducted at the Business School at the University of Washington showed that 72 of 676 businesses had attorneys on retainer, and 107 said that they consulted AN ATTORNEY periodically). There are now more black businesses in the larger business category. It follows that more of them would probably use attorneys. For relative ranking by size of large black business, *see The Nation's Leading Black Business in BLACK ENTERPRISE* (June 1974) at 35-41. *See* Study, Table 1. *See also* Brimmer, *The Future of Black Business; Short-Run Problems will not Halt an Upward Trend*, in *BLACK ENTERPRISE* (June 1975).

6. It has been estimated that the number of black lawyers in the U.S. prior to 1960 was approximately 1,500. As of 1970 the number of black lawyers in the U.S. was approximately 3,406. U.S. Dept. of Commerce, 1970 Census: Occupational Characteristics, Table 2. In addition to this figure, one must take into account the number of black law students currently enrolled in law school; *see*, Rudd & White, *Legal Educational and Profession Statistics 1973-74*, 26 J.L. Ed. 342, 344 (1974).

7. The most comprehensive data on black businesses to date was compiled by the U.S. Bureau of the Census in 1969. It showed that there was a total of 163,000 black owned businesses in the U.S. with total receipts of 4.5 billion. *See* U.S. Dept. of Commerce, Bureau of the Census, *Minority-Owned Business* (1971). An analysis of tax returns filed with the Internal Revenue Service in 1968 showed that 39% of these black owned businesses reported *gross* receipts under \$10,000 a year, and only 2% reported *gross* receipts of more than a million dollars. *See* A. REISS, *MINORITY ENTREPRENEURSHIP* 732 (1969), reprinted in Hearings Before the Senate Select Comm. on Small Business, Review of Small Business Administration's Programs and Policies, 91st Cong., 1st Sess., App. IV (1969).

*** Although eleven of the companies used in the study have either gone out of business or suspended operations (See *Settling Down After Rapid Growth*, *Black Enterprise* (June 1976), p. 37), we nevertheless feel that the study retains validity insofar as it sheds some light on the process by which black businesspersons select legal counsel and their opinion of black lawyers. It is impossible to tell whether any of the now defunct businesses responded to our questionnaire because all questionnaires were returned unsigned.

the nation's largest black businesses. The list of businesses, as well as their relative size, was obtained from the June, 1974 issue of *Black Enterprise Magazine*.⁸ The businesses were classified as "Industrial and Commercial" and "Financial."⁹ *Black Enterprise* listed the top 100 "industrials" and all of the commercial banks, savings and loan associations and insurance companies.¹⁰ The number of businesses in each of the categories was as follows:¹¹

1. Industrial and Commercial	
a. Manufacturing	24
b. Auto Dealerships	17
c. Const. & Contracting	13
d. Retailing	10
e. Publishing	8
f. Entertainment	6
g. Real Estate	6
h. Distributorships	6
i. Other	12
	Total
	102
2. Financials	
a. Commercial Banks	37
b. Insurance Company	41
c. Savings & Loan Assoc.	43
	Total
	121

The potential responses by size were:¹²

1. Industrial and Commercial	
<i>Sales</i>	<i>Number</i>
Greater than \$20 million	5
\$10-\$20 million	9
\$5-\$10 million	20
\$1-\$5 million	66
	Total
	100

8. *Supra* note 5, at 35-37.

9. *Id.* at 35.

10. *Id.* at 35, 57.

11. *Id.*

12. *Id.* at 35-57.

2. Financials

<i>Assets</i>	<i>Banks</i>	<i>Insurance Companies</i>	<i>Savings & Loan</i>
Greater than \$20 million	10	7	5
\$10-\$20 million	13	3	9
\$5-\$10 million	12	3	11
\$1-\$5 million	2	15	13
Less than \$1 million	0	13	5
	Total	37	41
		41	43

The total number of response was 141, or 66% of the sample.

Responses to all of the questions, together with the most meaningful correlations, are contained in tables at Appendix A. Individual industrial responses are set out in Table I.¹³

A. *Characteristics of firms responding*

Apart from the travel industry, where only one questionnaire reached a business and was returned, the largest percentage of responses came from the commercial banks (89%)¹⁴, followed by publishing (88%),¹⁵ and 'entertainment' companies (80%).¹⁶ The largest raw number of responses was received from banks (33),¹⁷ savings and loans (28),¹⁸ and insurance companies (24).¹⁹

The largest percentage of businesses which responded represented firms with average incomes over the past three years of between \$1,000,000 and \$5,000,000 (39.7%),²⁰ followed by firms with income of between \$500,000 and \$1,000,000 (34%),²¹ and firms with income of between \$5,000,000 and \$10,000,000 (12.7%).²² Those with incomes between \$10-\$20,000,000 represented 7% of the firms in the sample;²³ and the smallest percentage of responses (3.5%) came from firms with income in excess of \$20,000,000.²⁴

There was a rather sharp division between the length of operation of financial as opposed to industrial and commercial businesses which responded. Sixty-four percent²⁵ of the financial institutions which responded

13. App. A at Table I.

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. App. A at Table II.

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. App. A at Table III.

reported that they had been in operation for fifteen years or longer, whereas only 26.8%²⁶ of the industrial and commercial firms had been in operation that long. Thirty-five percent of the industrial and commercials reported that they had been in business from 2 to 5 years;²⁷ 28.6% reported the length of operation from 5 to 10 years.²⁸ Only 8.9% reported that length of operation was from ten to fifteen years.²⁹

Two aspects of the age of the businesses which responded to the questionnaire are relevant to whatever conclusions may be drawn about the nature of the legal representation of the businesses. First, almost half of the businesses which responded (49.6%)³⁰ had been in operation for fifteen years or longer. Second, 78.5%³¹ of the businesses in this category were financial institutions.

Almost fifty-three percent (52.9%)³² of the businesses reported that from 90 to 100% of their customers were black. Again, however, the financial-industrial distinction is important, because 75% of these businesses were financials.³³ However, 76.8%³⁴ of all of the businesses responding reported that their black clientele was in excess of 70%. While only 12.3% of the businesses reported that the percentage of their black customers was under 50%,³⁵ it is significant that 58.8% of these businesses were manufacturers, and the remaining 41.2% were all industrial and commercial.³⁶

Approximately eighty-six percent (86.7%)³⁷ of all of the businesses responding used either law firms (52.2%)³⁸ or individual practitioners (34.5%)³⁹ to help with the organizational formalities. All but one of the businesses were operating in the corporate form.⁴⁰

The majority of those responding to the particular question⁴¹ which sought to identify the ethnicity of the lawyer or law firm which was responsible for the legal work involved in organizing the business reported that they had used a black lawyer or law firms (42.5%).⁴² Forty percent of the businesses reported that they used white firms in the organizational process.⁴³ Slightly

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. App. A at Table IV.

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. App. A at Table VA.

38. App. A at Table VA.

39. App. A at Table VA.

40. The one exception operated as a partnership.

41. Twenty-one of the respondents (14.9%) did not respond to the particular question. See Question 7 in App. B, *infra* at 31.

42. App. A at Table VB.

43. *Id.* Slightly more than fifty-six percent (56.3%) of the financials used white lawyers or law firms while only 44.7% of the industrials and commercials used them.

more than 17.5% of the businesses which responded to this question used integrated firms for the same purposes.

Approximately 94%⁴⁵ of the businesses reported that they had a retainer agreement with a lawyer or law firm. Close to 42% of these businesses retained a black lawyer or law firm;⁴⁶ 21.2% retained a white lawyer or law firm;⁴⁷ 21.9% indicated that they retained a lawyer or law firm but did not indicate the race of the lawyer or firm;⁴⁸ and 14.8% indicated that they retained an integrated law firm.⁴⁹

Approximately ten percent (9.92%)⁵⁰ of the businesses maintained internal legal departments. Seventy-eight percent of these firms reported that the entire internal legal department was black;⁵¹ 14% of those with internal legal departments did not specify the race of the attorneys in the department,⁵² and 7% reported that at least 50% of the attorneys in the legal department were black.⁵³

The correlation between the types of transactions for which the businesses in the sample used lawyers and the race of the lawyer used provides some insight into the experience of black business attorneys. The businesses were asked to rank six transactions in order of importance. A total of 346 rankings were made by the 141 businesses.⁵⁴ Real Estate transactions were ranked, in some order, more frequently than the other five.⁵⁵ Forty percent of the respondents who used lawyers in connection with real estate transactions used black lawyers.⁵⁶ The activity ranked least frequently was tax and those ranking this activity reported that of the lawyers used only 19% were black.⁵⁷ The most frequent uses of black lawyers were for contract negotiations (47.5%)⁵⁸ and debt collection (42%).⁵⁹ Twenty-seven percent of the lawyers used for litigation were black⁶⁰ and 21% of the lawyers used for local, state and federal regulatory matters were black.⁶¹

When those businesses which have lawyers on retainer were asked how they selected a lawyer or law firm, 74%⁶² of those responding stated that the

44. App. A at Table VB.

45. App. A at Table VI.

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. App. A at Table VII.

51. *Id.*

52. *Id.*

53. *Id.*

54. App. A at Table VIII.

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. App. A at Table IX.

most frequently used criterion was that the lawyer was personally known by an officer of the company; 8%⁶³ stated that the attorney was referred by a friend or business associate of the officer responsible for selecting the attorney; 7% reported that the attorney was referred by "another source"⁶⁴ other than a friend or business associate; and slightly more than 10% reported that there were criteria used other than the ones listed on the questionnaire.⁶⁵

However, when those businesses which do not have lawyers on retainer were asked how they selected an attorney when the occasion arose, only 20% reported that the criterion was a lawyer personally known to one of the company officials;⁶⁶ 50% reported that they chose a lawyer who had performed legal services for the company in the past.⁶⁷ This is not precisely the same as being known to an official of the company, because presumably an official or officials of the company not only knew the lawyer, but also was satisfied with his or her *past performance*.

The businesses were also asked to rank the quality of the lawyer or law firm which they considered most important when making a selection. Forty-three percent of the businesses reported that the reputation of the lawyer or firm was the most important quality.⁶⁸

Thirty-one percent of the businesses reported that reputation ranked, even if not the most important, as one of the important qualities.⁶⁹ While only 6.4% of the businesses reported that education was the most important quality,⁷⁰ 18.5% reported that education was an important quality.⁷¹ Only 4% of the businesses reported that race was the most important quality.⁷²

Approximately 60% of the businesses reported that there were enough qualified black attorneys to handle their business affairs.⁷³ 80% of all of the businesses responding to the question said that they believed that black lawyers were as competent⁷⁴ (experience plus ability) as white lawyers, while 20% said that they were not.⁷⁵ Of those who reported that blacks were not as competent, 55% said that white lawyers were more experienced;⁷⁶ 35% said

63. *Id.*

64. *Id.*

65. *Id.*

66. App. A at Table X.

67. *Id.*

68. App. A at Table XI.

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. App. A at Table XII. The two industries in which the number of businesses which reported that there were not enough qualified black attorneys exceeded those who did were manufacturing and publishing. Sixty-three percent of the financials said there were enough qualified black attorneys, while 52% of the industrials and commercials said there were enough qualified black lawyers.

74. App. A at Table XIII.

75. *Id.* In every industrial and commercial category there were more businesses reporting that blacks were as competent as whites.

76. App. A at Table XIV.

that whites had more contacts than blacks;⁷⁷ 5% said that whites were better educated⁷⁸ and 2.5% said that white lawyers were easier to work with.⁷⁹

When asked for their preference assuming absolute equality, among black, white and integrated law firms, 70% of the businesses stated⁸⁰ that they would prefer to use black firms, while the remaining 30%⁸¹ would prefer integrated firms. None of the businesses stated that they would prefer white firms.⁸²

Those businesses with income between \$500,000 and \$1,000,000 had the strongest preference for black lawyers⁸³ while those businesses with income of between \$1 and \$5 million dollars preferred integrated law firms.⁸⁴ Also, businesses with 90-100% black customers had the strongest preference for black lawyers or law firms.⁸⁵

B. Results of the study

The most dramatic aspect of our findings was that the largest black businesses in the country prefer to use either black or integrated law firms.⁸⁶ There is some evidence to suggest that this was not true twenty years ago.⁸⁷

A closer examination of these large businesses, however, shows that they fall into one of two categories. The first category, which is dominated by commercial banks, life insurance companies and savings and loan associations, contains businesses which have traditionally relied on blacks as their major clients or customers,⁸⁸ and are predominantly located in black communities.⁸⁹ The second category of businesses was established in the late 50s and early 60s.⁹⁰ They came into being during a time when many blacks both felt, and articulated, the need to establish political and economic power, and a sense of cohesiveness and identity. And, while it is certainly arguable that some of these businesses have transcended the need to rely upon an ethnic market or to utilize the ethnicity of the owners and officers to obtain contracts,

77. *Id.*

78. *Id.*

79. *Id.*

80. App. A at Table XV.

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. App. A at Table XVI.

86. *Supra*, note 80.

87. *Supra*, note 3.

88. See J.T. BOORMAN, NEW MINORITY-OWNED COMMERCIAL BANKS: A COMPARATIVE ANALYSIS 8 (1973). IRONS, *Black Banking Problems and Prospects*, 26 J. FINANCE 407, 408 (1971). BRIMMER, *Small Business and Economic Development in the Negro Community*, in BLACK BUSINESS ENTERPRISE 165 (ed. R. Bailey 1971). BRIMMER and TERRELL, *The Economic Potential of Black Capitalism*, 19 PUBLIC POLICY 289, 291-7 (Spring 1971). BRIMMER, *The Black Banks: An Assessment of Performance and Prospects*, 26 J. FINANCE 379, 397 (1971).

89. Brimmer and Terrell, *supra* note 88, at 293; Brimmer, *The Black Banks*, *supra* note 88, at 391.

90. See Boorman, *supra* note 88, at 48; Irons, *supra* note 88, at 407; Thompson, *Minority Savings and Loans*, FHLBB J. 13 (March 1974). Brimmer, *The Black Banks*, *supra* note 88, at 379.

bank loans or special favors, it can nevertheless be concluded that the principals of these businesses, along with other Americans, were deeply affected by the attempts made by blacks and some whites to establish for blacks a hegemony within their own communities and a new and more dignified way of relating to white America.

This conclusion does not suggest that this presumed "attitudinal" shift on the part of the officers of these black businesses was the primary reason for selecting black attorneys. The attorneys selected have presumably been competent and efficient. The importance of the 60s relates more to the fact that as attitudes of blacks towards other blacks changed, it became easier for black corporate officials to realize that there was no inconsistency between "profit-maximizing" and utilizing black attorneys for some purposes; indeed for many of the businesses in our sample, the latter contributed to the former; i.e., the use of black attorneys may be part of an overall profit-maximizing strategy.

Therefore, in evaluating the preference expressed by the respondents, we cannot overlook either economics or the determinative nature of historical context and social climate.⁹¹ While 70% of our respondents expressed a preference for black lawyers or law firms, our results show that as the nature of the legal transaction for which attorneys were used moved from the

91. We believe that the concept of "Black Power" had a profound effect upon most Black Americans, including Black American business people. Black power, though awkwardly articulated in monolithic terms, affected all blacks, whether they explicitly agreed with, tacitly approved of, or disapproved of what they understood it to be. The call for black power had its roots in the earlier struggle against segregation, an issue with obvious content, and one which could unify. The major political and economic problem was to discover exactly where the influence of blacks rested, especially in relation to the struggle for desegregation in which many elements of the white community figured. To be sure, the goal of integration involved an entire nation, but prior to the emergence of the "Black Power" era of the civil rights movement, the question of an individual's primary responsibility in terms of ideology to a certain constituency grew larger and more uncertain with each passing event on the national scene. The emergence of black power as an alternative ideology created more ambiguity around the race problem, and helped to point out the lack of a unifying approach in forming a structure to include all of the factors influencing the daily lives of black people. This effect, though not necessarily bad in itself, did retard the formation of a central cohesive framework which could be used by blacks as a basis for perceiving their role in and relationship to American society. Without a single frame of reference there could be little positive action; without positive action, there could be little agreement on the part of blacks as to general objectives, general approaches or even an indication of what type of ideology should be pursued. From the point of political philosophy and economic imperatives, black power muddied the water. However, "Black Power" did have the effect of stimulating the impulse toward psychological and economic independence on the part of some blacks. This independence can never be dissociated from the relationship to white society, however. As long as at least two ethnic groups exist in this country, a pluralism of separate societies, each having some influence on the other, will exist. The independence, therefore, will be the manifestation of a difference within the American experience, and more important, will be particularly American as well as having its root in its own heritage, whatever it may stem from. The formation of new black businesses, therefore, partly stemmed from a desire to be independent; but because the form adopted is American, their development will also be influenced and affected by many of the same factors which have and will influence and affect all American businesses.

relatively simple (Debt Collection) to the more complex (tax and governmental regulations), the percentage of the respondents who used black lawyers declined sharply. One explanation for this is that historically blacks have been willing to use black professionals for relatively simple transactions, but as the transaction became more complex or the stakes became higher, blacks almost inevitably turned to the white professional. This has been explained on the grounds that black professionals are not competent to handle complex legal problems (while they can be relied upon to handle traffic violations, they are not equipped to handle securities registrations); that the successful resolution of complex transactions involves not only a high degree of technical expertise but also the use of influence and contacts, neither of which is possessed by blacks to the same extent as by whites; and finally that whites will deal more fairly with white professionals than with black professionals.⁹²

We prefer a different, more positive view. In classical economic theory there is a close correlation between the competitive position of the firm in a particular industry and its ability to indulge in non-economic "social preferences."⁹³ The closer the firm reaches the position of possessing "monopoly" power, the more it is able to indulge its "social preferences." Most of the businesses in our sample possess little, if any, monopoly power and therefore have very little, if any, ability to indulge their "social preferences." Consequently, we believe that the relatively limited use of black lawyers for more complex legal transactions can be explained by the existence of a disequilibrium between the demand for lawyers who specialize in tax, administrative law, corporate finance and securities regulations, and the available supply of black lawyers who specialize in these areas.

Although our study supports the conclusion that if black lawyers with the requisite experience in the aforementioned areas were available, they would be utilized by our respondents, it also supports, albeit inferentially, the conclusion that market pressures will not permit most of our respondents to indulge their preference for black lawyers to handle these more complex legal transactions.

We nevertheless view the preference for black and integrated law firms as highly significant. It should be helpful for young black lawyers who are contemplating careers as corporate attorneys to know that there is a market for their services among black businesses, even though that market is limited and will probably not expand as rapidly as the supply of black corporate attorneys. Secondly, the preference for black attorneys expressed by the respondents is strengthened by their reports that they believed black lawyers were as competent as white lawyers. This response must be viewed, however, in the context of both the extant social climate during the period when many of the businesses were established and the economic constraints under which they

92. *Supra*, note 4.

93. *See, e.g.*, M. FRIEDMAN, CAPITALISM AND FREEDOM 120 (1962).

operate. Regardless of the age of a business in our sample, it is likely that it was affected by the civil rights and post civil rights turmoil. The respondents in our study witnessed and participated in a society in which both the objective as well as the subjective facts concerning black lawyers have changed rather dramatically during the past few years. The opportunities to practice business-related types of law have greatly expanded within the past decade; black lawyers have been accepted into all of the professional associations such as the American Bar Association; and they have greater options with respect to the law school which they will attend and the type of career which they will pursue. Equally important is the fact that the black professional is no longer as insecure as he once was about his competence and ability. This affects the way he relates to other professionals, both black and white, and therefore, the way in which he is perceived by others in the society.⁹⁴ While the assumption that the black professional is as competent as his white counterpart is not yet fully operational in all aspects of society, at least the harsh and often unjustified assumption of yesterday—made by both blacks and whites—that the black professional has the burden of proving that he is as competent as his white counterpart is less prevalent today.

Finally, while we can only speculate that the businesses which expressed a preference for black and integrated law firms would use them if they were available, we are confident that those businesses which reported that blacks were as competent as whites have a sound basis for their response, because they actually use black lawyers.

II. THE FUTURE

A mutually beneficial relationship between black businesses and black attorneys will depend upon the continued growth, competence and viability of black business lawyers; the willingness of them to represent these businesses; and the growth of some of these businesses. Historically, some black leaders have viewed business development by blacks as a mechanism by which they could obtain economic and social independence both within their own communities and in the larger society.⁹⁵

It is therefore necessary to make a limited examination of the prospects for the expansion and development of the black business sector. Statistics on black businesses in this country show that a black presence in the business sector of the American capitalist economy is minimal; this is unfortunate,

94. For a discussion of the effects of this former insecurity, see J. COMER, *BEYOND BLACK AND WHITE* 11 (1972); K. CLARK, *DARK GHETTO, DILEMMAS OF SOCIAL POWER* 17-18, 64 (1965); W. GRIER and P. COBBS, *BLACK RAGE* 140-41, 154, 160-167 (1968); G. MYRDAL, *AN AMERICAN DILEMMA* 205, 220, 573, 582, 606-637, 1011-12, 1021 (1944); C. SIBERMAN, *CRISIS IN BLACK AND WHITE* 10-11 (1964).

95. See W.E.B. DuBois, *DUSK OF DAWN* 119-122 (1940); A. HARRIS, *THE NEGRO AS CAPITALIST* 9-10 (1936); J.H. HARMON, JR., A.G. LINDSAY, C.G. WOODSON, *THE NEGRO AS A BUSINESS MAN* 7-8 (1929); B.T. WASHINGTON, *THE NEGRO IN BUSINESS* 16 (1929); J.A. PIERCE, *NEGRO BUSINESS AND BUSINESS EDUCATION* 15 (1947).

because there is little disagreement in this country over the importance of business ownership as a source of power and independence.⁹⁶

Black income in 1972 from dividends, interest, rents, royalties, estates and trusts was approximately \$295 million, or 1% of capital receipts for the entire nation,⁹⁷ a clear reflection of the small amount of business and personal equity held by blacks. Furthermore, as of 1969, the last year for which comprehensive data is available, blacks owned or controlled only 2.2% of the nation's 7.5 million non-farming proprietorships, partnerships, and corporations.⁹⁸ The relative size of this small number of firms is dramatically illustrated by the following statistics: only one quarter of the black owned businesses had any paid employees; black firms employed less than one employee per enterprise in addition to the owners: white firms averaged eight employees;⁹⁹ finally, black firms only received .3% of the receipts of all firms in 1969; they grossed an average of \$27,400 per firm or a tenth of the national average.¹⁰⁰ The status of many black businesses is described as follows:

Most black firms are very marginal enterprises. In the construction industry there were 16,000 black owned businesses in 1969, but only a quarter had any employees, and most consisted of an individual craftsman selling his labor on a contract basis. Of the less than 3,000 black owned manufacturing firms, 43 percent were logging operations typically comprised of one or two individuals contracting to cut and saw timber. Impressive sounding 'transportation and public utilities firms' were mostly single taxi cab drivers and truckers, averaging less than one employee for every two firms. Retail and service establishments which accounted for two of every three black owned firms, but averaged only one employee per firm, consisted mostly of mom and pop grocery stores, barber and beauty shops, and one-man building and maintenance firms.¹⁰¹

Even the largest black businesses, the ones which were the subject of this study, are relatively small if compared to the American business establishment in general or even to their white counterparts in the same industry.¹⁰² According to *Black Enterprise*, only 35% of the top 100 black corporations had 1975 sales of more than \$5 million.¹⁰³ If one hypothesized a consolidation

96. For a good summary discussion of the pursuit of liberty and plenty through business as an American characteristic, see Letwin, *The Past and Future of the American Businessman*, 98 DAEDALUS 1 (1969). See also, B.T. WASHINGTON, UP FROM SLAVERY 19-23 (1901) (citing business as a means to advance to one the rights and privileges which any class of citizens enjoy).

97. U.S. Bureau of the Census, Money Income in 1972 of Families and Persons in the United States, Series P-60 no. 90, December, 1973, table 65.

98. See U.S. Bureau of Census, Minority Owned Businesses 1969, Series MB-1, 1971, table 1.

99. S. LEVITAN, W. JOHNSTON & R. TAGGART, STILL A DREAM 176 (1975).

100. *Id.*

101. *Id.*

102. For a dramatic illustration of this condition, compare Motown's sales (\$46 million) with RCA's (over \$4 billion) and C.B.S. (over \$1 1/2 billion), H.G. Parks' (\$15 million) with National Beef Packing, the 474 in Fortune 500 (over \$250 million) or Johnson Publishing (\$28 million) with Time, Inc. (\$728 million).

103. *Supra* note 5, at 35-37.

of all of the top 100 black corporations, the total sales of this resulting entity would only have been \$601.1 million, and it would have been number 263 on the *Fortune* 500 list of the nation's top businesses.¹⁰⁴

This is not to deny that substantial progress has been made by blacks in the past ten years. A majority of the top 100 black businesses have been in operation for less than ten years. Further, it should be pointed out that both governmental and private programs directed toward increasing black ownership of business were greatly accelerated during the late 1960s and early 70s.¹⁰⁵

We will add only briefly to that vast body of literature which discusses the ideological and normative bases for the development of black businesses. Our major concern is to make satisfactory analysis of the prospects for the growth and long-term viability of major black businesses over the next two or three decades, realizing that the future state of the American, and indeed the world economy, will vitally affect any attempt to project business success or failure.¹⁰⁶

We believe that the social value of black business must be related to something more tangible than an elusive notion that its existence makes both blacks and whites feel better about racial progress in the latter half of the twentieth century. While there is obviously considerable social worth in the ownership of businesses by individuals coming from broad ethnic backgrounds, because such pluralism makes possible the ideals of this country, these businesses must stand or fall on their ability to function over the long run as viable, productive enterprises. It may be argued that the position which we take ignores the history of racial abuse, the denial of the advantage of the same beginning, the extant racist attitudes in this country, and therefore the positive socio-psychological effects, at least as beneficial as financial profitability, which black ownership of business would have on both blacks and whites.¹⁰⁷ We disagree and would argue that the most productive social function which

104. The Company which ranked 262nd on the *Fortune* 500 list for 1974 was Kaiser Steel with 1973 Sales of \$608,830,000. Airco was number 263 with 1973 Sales of \$553,811,000. The 500 Largest Industrials, *FORTUNE* MAGAZINE, May, 1975, at 242. The combined sales of the BLACK ENTERPRISE 100 were \$601.1 million. *Black Enterprise*, *supra* note 5, at 31.

105. The two largest governmental programs which came into being in the late 1960s and were related to minority business development were the Office of Minority Business Development, created by Executive Order (Exec. Order No. 11458, 3 C.F.R. 109 (Supp. 1969)), and the Special Impact Amendment to the Economic Opportunity Act of 1964 (Pub. L. No. 89-794, 80 Stat. 1451). On the private side, the National Urban Coalition and its affiliates all over the country give a high priority to business development. The Interracial Council for Business Opportunity, while not starting in the late 60s, certainly intensified its efforts to provide technical assistance to minority businesses throughout the country.

106. "It is not fanciful to link the plight of Negro teenagers in Harlem to the monetary whims of General de Gaulle." Tobin, *Improving the Economic Status of the Negro*, in *THE NEGRO AMERICAN* 459 (1966).

107. See, e.g., Tabb, *Viewing Minority Economic Development as a Problem in Political Economy*, 62 *AM. ECON. REV.* 33-34 (1972). McLaurin & Tyson, *The Ghedi Plan for Economic Development*, in *BLACK ECON. DEV.* 133-34 (G.D. Pugh and W.F. Haddard ed. 1969).

black businesses can serve is to be profitable, competitive and continue to expand. If these criteria are not met, the social utility of black businesses, if any, is slight, and their social value would appear to be mythical.¹⁰⁸ Finally, if there is no hope for the continued growth and viability of some black businesses, then there is little need to pursue the subject of a symbiotic structuring of relationships between black businesses and what we hope will be an increasingly large black business bar.

We doubt that most businesses which are owned or controlled primarily by blacks will ever occupy more than the periphery of the American business sector. To be sure, we believe that blacks will be involved in some extremely successful business ventures in the future; however, their ethnicity will be irrelevant to the success of the business. In our opinion the following possibilities exist for blacks in the business sector:

- (1) Most black businesses will remain marginal;
- (2) Some black businesses will expand because there will be an increased demand on the part of both black and white consumers for the product or services;
- (3) Some black businesses will remain at their present level or expand slightly because the product is designed for and attractive to the black consumer;
- (4) Some black businesses will obtain 'major business' status because they will produce a new and innovative product or service; will engage in successful marketing techniques; make the right capital investment decisions; and have a modicum of luck. Some of the businesses in this category, as well as categories two and three, will also be bought by, merged into or consolidated with larger white businesses.

The first category is likely to be composed primarily of enterprises fitting the baseline definition of "black capitalism" i.e., black business ownership located in urban ghettos.¹⁰⁹ Many of these businesses were established in urban areas during the programmatic fallout from the urban crisis of the 60s and were expected (or so it was said) to be partners in the effort to restore blighted communities.¹¹⁰ Their future economic well-being

108. It appears to be firmly established that a healthy, growing economy makes all of the members of the society better off. *See, e.g.*, Tobin, *supra* note 106, at 459. If one of the objectives in establishing black businesses through some form of subsidy is to reduce income inequality between blacks and whites, those businesses must have the capacity to sustain themselves over the long run and become a part of the overall productivity of the American economy. Otherwise, the subsidy is an inefficient utilization of scarce and valuable resources. We also believe that the only legitimate, long-term function served by subsidizing black businesses is to help them become and remain profitable.

109. *See* Brimmer and Terrell, *supra* note 88, at 289, 290, which identifies black business ownership and the location of these businesses in urban ghettos as the essential elements to the concept of black capitalism.

110. *See, e.g.*, T. CROSS, BLACK CAPITALISM: STRATEGY FOR BUSINESS IN THE GHETTO 211 (1969); Booms and Ward, *The Cons of Black Capitalism*, 12 BUS. HORIZONS 19 (1969); Wright, *Black Capitalism and the Business Community*, in BLACK ECON. DEV. 79 (G.D. Pugh and W. Haddard ed. 1969); R. BAILEY, BLACK BUSINESS ENTERPRISE 8 (1971).

was intrinsically wedded to the projected future well-being of these ghetto communities; therein lay their greatest barrier to success. The drive for the development of urban ghetto communities is presently at a watershed, and strategies are being reexamined. Because strategies for community development are under evaluation, support for black capitalism has not grown at a rate which was originally anticipated. In part, this absence of support has affected the productivity of ghetto business, which has stagnated or dropped, not grown. Furthermore, in the face of deepening economic woes, many of those businesses have faltered.¹¹¹ Small businesses as a group are not successful, and small black businesses are affected to an even greater degree than their white counterpart by the endemic vicissitudes of business of this scale.¹¹² In summary, because of the economic condition of the ghetto, most of these urban ghetto businesses will remain marginal or fail; and to the extent that economic conditions change as a whole in the country, ghetto development is approached in a large-scale, systematic way, and the attack produces results, it may be that some of these businesses will prosper because of an improved economic climate.

A majority of the businesses in our study are subsumed primarily under categories two and three. Those businesses which come under our second and fourth categories, are the ones which we believe will prove to be the most successful black businesses in the future. The primary difficulty which these businesses will encounter will be competition from other businesses engaged in producing the same product or providing the same services. It is difficult to determine the role which race will play in the growth of these businesses. For example, it may well be that for political or other reasons a competent black construction firm may be awarded a major contract over an equally competent white construction firm or that a competent black real estate management firm will be selected to manage a major municipal housing project over an equally competent white real estate management firm. We suspect, however, that while race may occasionally enter into the decision-making calculus in ways which assist these businesses, most of them will continue to grow irrespective of racial considerations, because, they are well managed, highly competent enterprises.

The majority of the businesses which fall into our third category consists of the commercial banks, life insurance companies, savings and loan associations, cosmetics and publishing companies. In many instances, they have been the sole or one of the few sources from which the product (life insurance, beauty aids designed for blacks) or service (commercial bank loans) could be procured.¹¹³ Many of these businesses have provided efficient and reliable

111. Stewart, *Hard Times at Black Banks*, N.Y. TIMES, Feb. 23, 1975, at 1, col. 1. Lublin, *Black Firms' Blues*, WALL ST. J., April 1, 1975, at 1, col. 6.

112. *Id.*

113. See, e.g., Brimmer and Terrell, *supra* note 88, at 291-292; Brimmer, *The Black Banks*, *supra* note 88, at 379.

service and have built up a reservoir of good will among their black consumers which will assure them of the continued patronage and loyalty of a certain percentage of these customers. The growth potential for businesses in this category will depend upon several factors. Perhaps the most crucial factor is where the burgeoning black middle class¹¹⁴ will spend its dollar. In some instances, the expanding black middle class will continue to support some of these black businesses.

The second factor is the extent to which much larger and more powerful white owned businesses will compete for the consumers who presently patronize these black businesses. This factor is particularly important in attempting to evaluate the future growth of black financial institutions. Most black banks and life insurance companies cannot offer the full range of services offered by their larger white competitors.¹¹⁵ Also, these competitors are more than a little interested in capturing as much of the "black" market as they can. As a result, these black businesses may lose the battle for what has previously been considered a sheltered market, and it may be that when the black family asks where will it be able to obtain the optimal amount of banking services—Freedom National Bank or Chemical Bank—the answer may often be the latter.

The third factor relates to the elusive concept of "group identity" or "racial cohesion." One catalyst which could cause black businesses producing a product or service used almost exclusively by blacks to remain viable and even expand significantly, is a commitment on the part of blacks to patronize black businesses which offer products or services equal or nearly equal to those offered by their white counterparts. While history does not give one reason to be optimistic, the trauma and turbulence which brought about a restructuring of race relations in this country over the past twenty years may have also created a new sense of awareness on the part of blacks of the need to support black institutions which are providing first rate goods and services.

The black businesses which fall into our fourth category have yet to be born. They will succeed in the same fashion that all highly successful businesses in the American economy have succeeded. They will utilize all of the creative and imaginative powers available to some people, all of the scientific and technological knowledge available to modern man and much of the luck which accompanies any highly successful venture. These businesses will create products and/or services which will have an almost universally high demand from all sectors of the economy. These may be the IBMs and Xeroxes of tomorrow.

The only quality which the businesses for which we project future growth have in common is that at least some of them, particularly those in our fourth

114. See Levitan, *supra* note 99, at 185-206.

115. See, e.g., Boorman, *supra* note 88, at 46; Brimmer, *The Black Banks*, *supra* note 88, at 380-387, 395-399; Irons, *supra* note 88, at 420-22. See also J.T. BOORMAN, *THE RECENT LOSS EXPERIENCE OF NEW MINORITY OWNED COMMERCIAL BANKS* 2 (1973).

category, may become sufficiently attractive to larger predominantly white businesses operating in the same industry that mergers, acquisitions and even consolidations may occur in the future. If this phenomenon should occur, some black businesses will become subsidiaries and divisions of larger, predominantly white businesses; some black businesses will be completely absorbed by larger, predominantly white businesses; and in some of these cases, the black owner-entrepreneur will become a division manager or president of a subsidiary or vice-president of a major corporation. Thus, while the business will no longer be a black business, an increased black presence will be added to the American business scene. There are obvious advantages in having businesses which are clearly and distinctively owned and operated by blacks. Concomitantly, there are also advantages in having blacks become part of major corporations via the route of mergers and acquisitions. We believe that both of these possibilities exist for the successful, profitable black businesses.

A summary analysis such as this cannot give one more than a brief glimpse into the future of black businesses. However, we are prepared to conclude, based upon the discussion which preceded, that except for those few businesses which have a well-established product designed exclusively or almost exclusively for blacks (such as Johnson Publishing), or those black businesses which prove to be competitive in the mainstream economy, most black businesses will not obtain major business status. Businesses which are owned or controlled by blacks which do achieve major business status will be identified to a far greater extent with the service or product than with the ethnic background of the owner or owners.

A. *More Lawyer than Black*

Because of the relatively small number of large black businesses, and the limited growth potential of these businesses, the hopeful (and we think probable) consequence will be that most black corporate attorneys will be forced to seek a clientel which is not exclusively black. While economic factors will play an important part in the decision of many of these black corporate attorneys, the social climate in which they will operate will also be a determinant. If, as we hope, the society continues to move toward more and more integration, it is clear to us that (a) there will be more black corporate attorneys in the future; and (b) most of them will elect to work in integrated law firms representing predominantly white corporations.

Thus far we have assumed an increased supply of black corporate attorneys. At one level, it is not difficult to justify this assumption, because of the almost total absence of black corporate attorneys until recently.¹¹⁶ However,

116. Recently, one of the authors received a telephone call from a partner in an executive search firm who explained that he had been employed by a Fortune 500 corporation to find a black corporate attorney for a position as its general counsel. He said that the attorney must have had a minimum of fifteen years experience in corporate practice. The author responded that he knew of

even in the absence of this all too true proposition, we feel that a rational argument can be made for a future increase in the supply of black corporate attorneys.

First, as blacks become more middle class in both an economic as well as a socio-psychological sense, we think that the same circumstances which influence some white law graduates in their decision to pursue careers as corporate practitioners will be applicable to some black law graduates. Unless law school admissions policies are altered to the point where the number of blacks admitted to law school is greatly diminished,¹¹⁷ we suspect that proportionately, at least the same number of blacks will pursue careers as corporate attorneys as their white counterparts.

Even if there is still substantial validity to the argument that the most prestigious corporate law firms throughout the country select only the "top" law graduates,¹¹⁸ we have every confidence that in years to come some of those "top" law graduates will be black, and some of them will choose to pursue careers as corporate practitioners. This trend will mean that, over time, the actual number of highly qualified, fully competent, black corporate lawyers possessing special expertise in tax, securities regulations, antitrust, or corporate finance, will increase at a greater rate than the demand for their services by black businesses.¹¹⁹

If the above comments are justifiable—i.e., that sufficient incentives exist for blacks to pursue careers as corporate lawyers, and that the barriers to entry are far less racially based than in the past—the existence of this black presence in the corporate law community could not help but have an indirect effect upon both the texture of the legal profession and upon the fabric of American

at least one black lawyer who qualified for the position, but he had just been confirmed as Secretary of Transportation.

117. Although the U.S. Supreme Court, in *DeFunis v. Odegaard*, 94 S. Ct. 1704 (1974), chose not to resolve the issue of whether preferential treatment of minorities in the law school admissions process is constitutionally permissible, we believe that the issue will return to the Court in the not too distant future, and that there is at least a likely possibility that the Court may rule that racial classifications for benign purposes is not constitutionally permissible. See Fiss, *The Fate of An Idea Whose Time Has Come: Antidiscrimination Law in the Second Decade After Brown v. Board of Education*, 41 U. CHI. L. REV. 748 (1974).

118. Ten years ago, a sociological study of large New York law firms revealed that large law firms prefer graduates from the "best eastern law schools and most lawyers in the study did not attend the 'right' law schools. . ." (Only 12% of all partners in the large firms did not have some combination which includes either a socially acceptable college or one of the preferred law schools). The general feeling among partners was that appropriate training and indoctrination takes place in the law school. See E. SMIGEL, *THE WALL STREET LAWYER* 39, 73-74 (1964).

119. Although the supply of black corporate attorneys will rise substantially over time in absolute numbers, it will still not significantly alter the proportion of black to white corporate attorneys. This situation may have social and political ramifications which will extend beyond the practice of corporate law. See pp. 45-47 *infra*.

life. The effect will be indirect because the generally perceived nature of the law is such that one does not normally think of the ethnicity of the attorney as bearing on the substantive content of the law. It is precisely in this context that it serves no useful purpose to speak of the Jewish attorney or the "white" attorney, or any other attorney who comes from a particular racial ancestry, because the characterization is not relevant to the legal problem handled by the attorney, nor, hopefully, to the substantive resolution of the problem. The comparison of the black attorney with attorneys from other ethnic backgrounds is, however, relevant in one respect. One of the primary reasons that one does not speak of the ethnicity of white corporate attorneys is because they constitute most of the corporate attorneys in America. Therefore it has become "normal" to expect corporate attorneys to be white. Indeed, many would consider it strange and even redundant to speak of a "white" partner in Sullivan and Cromwell.¹²⁰

Because of their late entry into law in general, and corporate law in particular, this is not the case with black corporate lawyers. But we are not willing to rule out the possibility that at some point in the future, as their numbers increase, the fact of the blackness of corporate lawyers will be as irrelevant and uninteresting to society's perceptions and judgments as it now is with white corporate lawyers. It is precisely at this point that their presence in the legal profession will have become "normal."

This "normalizing" effect will not only be highly beneficial to the black businesses who will utilize the services of black corporate attorneys in the future, but it will also have the beneficial effect of moving American society one step closer to its articulated ideals.

III. CONCLUSION

The time when it can be said that blacks are unselfconsciously included in the American society has yet to arrive. An important reason for this fact is the absence of black influence in the shaping of social policy and in the formulation of the unstated assumptions governing our system. Blacks have been insulated from the web of power and consequently as a group have suffered from an abnormal experience. Fortunately, the United States is a country where political and economic equality is possible even in the face of the grossest social inequality, and there is always the hope that the former two can be used as leverage for the latter. In this sense, business and law hold their greatest potential because both are important strands in that web of power.

One of the crucially important points which we have attempted to make

120. This normalizing process is not yet as complete for the Jewish corporate attorney but one would not be as startled to hear a reference to a Jewish partner at Sullivan and Cromwell. Yet visually, a picture of all of the partners in Sullivan and Cromwell would evoke no surprise, even though some of the partners were Jewish—unless one of the Jewish partners in the picture was a Hasid Jew, wearing a black hat, black overcoat, possessing long side burns and a well-trimmed beard.

throughout this article is that many blacks are now beginning to travel a road other than the one mapped out for them. What happens now will depend in great part upon how much blacks believe and actively behave as though they feel they can shape the external world and create their own history.¹²¹ It also depends upon how the two worlds, one white, the other black, and both changing over time, interact. Finally, it depends upon the manifestations of the estrangement¹²² between blacks with opportunities and blacks without opportunities. These factors will affect what progress both black businesses and black corporate attorneys will make in the future.

121. See Patterson, *Toward a Future that has no Past—Reflections on the Fate of Blacks in the Americas*, 27 PUB. INTEREST 54-55 (1972).

122. See Levitan, *supra* note 99, at 185-204. Patterson, *supra* note 123. Rainwater, *Crucible of Identity: The Negro Lower Class Family*, in 95 DAEDALUS 160-204 (1966); Scanmon and Wattenberg, *Black Progress and Liberal Rhetoric*, 55 COMMENTARY 35 (1973).

APPENDIX A

TABLE I
NUMBER AND PERCENTAGE OF RESPONSES

<i>Category</i>	<i># in Category</i>	<i>Responses</i>	<i>%</i>
Insurance	41	24	59
Travel	1	1	100
Construction	14	7	50
Food & Beverage Distributorship	5	2	40
Management Consultant	3	1	33
Real Estate	3	2	67
Entertainment	5	4	80
Others	7	4	57
Auto Dealers	17	10	59
Retail	11	5	45
Banking	37	33	89
Manufacturing	19	13	68
Publishing	8	7	88
Savings & Loan Association	43	28	65
	<u>214</u>	<u>141</u>	<u>66</u>

TABLE II
AVERAGE GROSS INCOME OF COMPANIES
FOR PAST THREE TAXABLE YEARS

	<i>No. of Firms Responding</i>	<i>Percent of Sample</i>
\$500,000 - \$1,000,000	48	(34%)
\$1,000,000 - \$5,000,000	56	(39.7%)
\$5,000,000 - \$10,000,000	18	(12.7%)
\$10,000,000 - \$20,000,000	10	(7%)
Over \$20,000,000	5	(3.5%)
No answer	4	(2.8%)

TABLE III
LENGTH OF OPERATION BY INDUSTRY

<i>Number of Years in Business</i>	<i>Less Than 2 yrs.</i>	<i>2-5 yrs.</i>	<i>5-10 yrs.</i>	<i>10-15 yrs.</i>	<i>over 15 yrs.</i>
<i>Business</i>					
Banking	1	12	7	2	11
Savings & Loan		1	1	6	20
Insurance					24
Real Estate			2		
Auto		8	2		
Retail		3	2		
Entertainment		1	2	1	
Manufacturing		4	5	1	3
Construction		1	1	1	4
Publishing		2		1	4
Food & Beverage		1			1
Management			1		
Travel					1
Others			1	1	2
	<u>1</u>	<u>33</u>	<u>24</u>	<u>13</u>	<u>70</u>
Percent of Sample	[.71%]	[23.4%]	[17%]	[9.2%]	[49.6%]

TABLE IV
 PERCENTAGE OF BLACK CUSTOMERS*

<i>Percentage of Black Customers</i>	<i>90-100%</i>	<i>80-89%</i>	<i>70-79%</i>	<i>60-69%</i>	<i>50-59%</i>	<i>under 50%</i>
<i>Business</i>						
Banking	15	8	5	3	2	
Savings & Loan	19	2	5		1	
Insurance	21	1			1	
Real Estate	1	1				
Auto	1	1	3	2	1	2
Retail	4				1	
Entertainment		1		1		1
Manufacturing	3					10
Construction	1		1	3		2
Publishing	5	1	1			
Food & Beverage	1		1			
Management						1
Travel		1				
Others	$\frac{2}{73}$	$\frac{1}{17}$				$\frac{1}{17}$
Total (138)	$\frac{73}{73}$	$\frac{17}{17}$	$\frac{16}{16}$	$\frac{9}{9}$	$\frac{6}{6}$	$\frac{17}{17}$

* Of those businesses responding, three chose not to answer this question.

TABLE V
RELATIONSHIP BETWEEN AGE OF BUSINESS AND RACE OF ATTORNEY OR LAW FIRM WHO ORGANIZED THE BUSINESS*

<i>Number of Years in Business</i>	<i>Less than 2 yrs.</i>	<i>2-5 yrs.</i>	<i>5-10 yrs.</i>	<i>10-15 yrs.</i>	<i>Over 15 yrs.</i>
<i>How Organized</i>					
Black		6[4.95%]	7[5.78%]	5[4.13%]	32[26.44%]
White	1[.82%]	17[14.04%]	13[10.74%]	5[4.13%]	15[12.39%]
Integrated		5[4.13%]	3[2.48%]	2[1.64%]	10[8.26%]
Total	1[.82%]	28[23.14%]	23[19.01%]	12[9.92%]	57[47.11%]

(percentage of sample is in brackets)

The total number of responses to this question was 121. The figures in the brackets represent percentages of 121.

TABLE VA
INVOLVEMENT OF LAWYER OR LAW FIRM IN ORGANIZATION OF THE BUSINESS

	<i>Law Firm</i>	<i>Individual Practitioner</i>	<i>No Lawyer Involved</i>
(Businesses Responding— total of 136)	71 (52.2%)	47 (34.5%)	18 (13%)

TABLE VB
RACE OF LAWYER OR LAW FIRM INVOLVED IN ORGANIZATIONAL FORMALITIES

	<i>Black</i>	<i>White</i>	<i>Integrated</i>
(Businesses Responding— total of 120)	51 (42.5%)	48 (40%)	21 (17.5%)

TABLE VI
 RACE OF LAWYER OR LAW FIRM RETAINED
 ON YEARLY BASIS

<i>Number of Responses</i>	<i>Race of Attorney or Firm</i>	<i>Percent of those responding to this question</i>
59	Black	41.8%
30	White	21.2%
21	Integrated	14.8%
31	No Race Indicated	21.9%

TABLE VII
 BUSINESS WITH INTERNAL LEGAL DEPARTMENTS, SIZE OF
 LEGAL STAFF AND PERCENTAGE OF
 BLACKS IN LEGAL DEPARTMENT

<i>Number of Businesses with Internal Legal Department</i>	<i>Number of Lawyers in Legal Department</i>	<i>Race of Lawyers in Legal Department</i>
11	1 to 4	100% Black
1	1 to 4	50% Black
1	1 to 4	Did not specify
1	5 to 9	Did not specify
Total 14		

TABLE VIII
 MOST COMMON USE OF LAWYER RANKED IN ORDER
 OF IMPORTANCE TO PARTICULAR BUSINESS

Race of Lawyer or Law Firm Used	DEBT COLLECTION				
	(1) <i>No. of Times Checked Irrespec- tive of Order of Importance</i>	(2) <i>Percentage Represent- ed by Fig- ures in Column One (1)</i>	(3) <i>Percentage of Those Businesses Which Ranked This Activ- ity as Most Important</i>	(4) <i>Percentage of Those Businesses Which Ranked This Activ- ity as Sec- ond Most Important</i>	(5) <i>Percentage of Total Sample</i>
Black	42	61%	53% (8/15)	60% (16/27)	29.7%
White	9	13%	7% (1/15)	14% (4/27)	6.4%
Integrated	4	6%			2.8%
N/A	<u>14</u>	20%	40% (6/15)	26% (7/27)	9.9%
	69				

	LITIGATION				
	(1)	(2)	(3)	(4)	(5)
Black	27	56%	44% (4/9)	56% (9/16)	19 %
White	10	21%	33% (3/9)	19% (3/16)	7.1%
Integrated	5	10%		19% (3/16)	3.5%
N/A	<u>6</u>	13%	22% (2/9)	6% (1/16)	4.2%
	48				

LOCAL, STATE AND FEDERAL REGULATORY MATTERS

	LOCAL, STATE AND FEDERAL REGULATORY MATTERS				
	(1)	(2)	(3)	(4)	(5)
Black	21	40.3%	39% (7/18)	17% (2/12)	15 %
White	15	28.84%	44% (8/18)	25% (3/12)	11 %
Integrated	9	17.3%	17% (3/18)	41% (5/12)	6.4%
N/A	<u>7</u>	13.46%		17% (2/12)	5 %
	52				

TABLE VIII (CONTINUED)
REAL ESTATE

	(1)	(2)	(3)	(4)	(5)
<i>Race of Lawyer or Law Firm Used</i>	<i>No. of Times Checked Irrespective of Order of Importance</i>	<i>Percentage Represented by Figures in Column One (1)</i>	<i>Percentage of Those Businesses Which Ranked This Activity as Most Important</i>	<i>Percentage of Those Businesses Which Ranked This Activity as Second Most Important</i>	<i>Percentage of Total Sample</i>
Black	40	53.3%	59% (22/37)	35% (6/17)	28 %
White	9	12 %	8% (3/37)	30% (5/17)	6.4%
Integrated	6	8 %	3% (1/37)	6% (1/17)	4.2%
N/A	<u>20</u>	26.6%	30% (11/37)	30% (5/17)	14.1%
	75				

CONTRACT NEGOTIATION

	(1)	(2)	(3)	(4)	(5)
Black	28	47.45%	31% (9/29)	50% (7/14)	19.8%
White	10	17 %	27.6% (8/29)	14.2% (2/14)	7 %
Integrated	10	17 %	24.1% (7/29)	21.4% (3/14)	7 %
N/A	<u>11</u>	18 %	17.2% (5/29)	14.2% (2/14)	7.8%
	59				

TAX

	(1)	(2)	(3)	(4)	(5)
Black	19	48.7%	0	22.2% (2/9)	13.47%
White	7	17.94%	50% (1/2)	33% (3/9)	4.96%
Integrated	7	17.94%	50% (1/2)	33% (3/9)	4.96%
N/A	<u>6</u>	15.3%		11% (1/9)	4.2 %
	39				

OTHER

	(1)	(2)	(3)	(4)	(5)
Black	2	50 %	50%		1.4 %
White	2	50 %	50%		1.4 %
Integrated					
N/A	<u>—</u>				
	4				

TABLE IX
CRITERION USED BY BUSINESS IN SELECTION OF
LAWYER ON RETAINER BASIS*

<i>Business</i>	<i>Personally Known to Officer of Company</i>	<i>Referred by Friend or Business Associate</i>	<i>Referred by Another Source</i>	<i>Yellow Pages or Other Directory</i>	<i>Other</i>
Banking	16	1	2		7
Savings & Loan	15				4
Insurance	18				
Real Estate	1	1			
Auto Dealers	6	1	3		
Retail	3		1		
Entertain- ment	2	1			
Manufac- turing	8	2			
Construction	4	1			
Publishing	6				
Food & Beverage	1				
Management		1			
Travel					
Others		1	1		
Total (108)	80	9	8	—	11

* These responses are from businesses which do retain lawyers on a regular basis. Some respondents indicated more than one criterion.

TABLE X
CRITERION USED BY BUSINESS IN SELECTION OF
LAWYER ON NON-RETAINER BASIS

<i>Number of Respondents</i>	<i>Criterion</i>	<i>Percentage of Those Responding to This Question</i>
27	Lawyer with whom company has dealt with in the past	50.9%
7	Lawyer referred to by friends, business associates or others	13.2%
11	Lawyer known by one of the company officials	20.7%
8	Other	15.1%

TABLE XI
QUALITIES USED BY BUSINESS WHEN
SELECTING A LAWYER

	<i>Reputa- tion</i>	<i>Educa- tion</i>	<i>Race</i>	<i>Social, Civic Connec- tions</i>	<i>Business Contacts</i>	<i>Govern- mental Contacts</i>	<i>Other</i>
Most Important	61	9	6	4	6	3	2
Second Most Important	20	10	12	5	11	4	
Third Most Important	3	9	7	10	11	5	
Fourth Most Important	1	1	3	6	12	1	2
Fifth Most Important	3	7	2	5	3	4	
Sixth Most Important	1	2	5	6		3	
Least Important	1	6	4	3	2	2	
Total (287)	90	53	39	34	45	22	4

TABLE XII

ARE THERE ENOUGH QUALIFIED BLACK ATTORNEYS WHO
COULD COMPETENTLY HANDLE YOUR
BUSINESS AFFAIRS*

Yes	80	60%
No	53	40%

* This question sought to determine whether business persons in particular fields, e.g., banking, insurance, felt that there were enough black attorneys who were capable of handling problems in that particular field.

TABLE XIII

ARE BLACK ATTORNEYS AS COMPETENT (EXPERIENCE
PLUS ABILITY) OR ABLE TO ADVISE THE
BUSINESS ON BUSINESS PROBLEMS
AS WHITE ATTORNEYS

Yes	92	80%
No	23	20%

TABLE XIV

IF WHITE LAWYERS ARE MORE COMPETENT,
WHAT IS THE REASON

<i>Number of Responses</i>	<i>Reason</i>	<i>Percentage of Those Responding to This Question</i>
2	Better Educated	5 %
22	More Experienced	55 %
14	Better Contacts	35 %
1	Easier to Work With	2.5%
1	Black Lawyer's are not Dependable	2.5%

TABLE XV
RELATIONSHIP BETWEEN SIZE OF BUSINESS AND TYPE
OF LAW FIRM WHICH BUSINESS WOULD USE
ASSUMING ALL WERE EQUALLY GOOD

<i>Income Category</i>	<i>500,000-1*</i>	<i>1-5</i>	<i>5-10</i>	<i>10-20</i>	<i>Over 20</i>	<i>Total**</i>
Black	34	32	11	13	1	91
White						0
Integrated	11	13	6	7	2	39

* Represents Million Dollars

** Not All Respondents Answered the Questions

TABLE XVI
RELATIONSHIP BETWEEN THE RACE OF THE LAWYER
OR LAW FIRM USED BY BUSINESSES WITH
VARYING PERCENTAGES OF BLACK
CUSTOMERS OR CLIENTS*

<i>Percentage of Black Customers</i>	<i>90-100</i>	<i>80-89</i>	<i>70-79</i>	<i>60-69</i>	<i>50-59</i>	<i>Under 50</i>
Black Lawyer or Law Firm	41	12	11	4	10	
White Lawyer or Law Firm	3					
Integrated Law Firm	22	6	7	3	1	

* Not all respondents answered
this question

APPENDIX B

Questionnaire for Black Businesses
Re Utilization of Legal Services

Please check one for each of the following questions.

- 1) What is the primary area in which your company is engaged?
 - Manufacturing
 - Insurance
 - Banking
 - Savings and Loan
 - Automobile Dealership
 - Construction
 - Entertainment
 - Retail
 - Real Estate
 - Publishing
 - Food and/or Beverage Distributorship
 - Management Consulting
 - Travel
 - Other, please specify _____

- 2) What was the average gross income of the company for the last three taxable years?
 - \$500,000 - \$1,000,000
 - \$1,000,000 - \$5,000,000
 - \$5,000,000 - \$10,000,000
 - \$10,000,000 - \$20,000,000
 - Over \$20,000,000

- 3) What is the legal form in which your business operates?
 - Corporation
 - Partnership
 - Proprietorship
 - Other, please specify _____

- 4) How long has the business been operating?
 - less than 2 years
 - 2 to 5 years
 - 5 to 10 years
 - 10 to 15 years
 - over 15 years

- 5) What proportion of your customers are black?
 - 90% to 100%
 - 80% to 89%
 - 70% to 79%
 - 60% to 69%
 - 50% to 59%
 - under 50%

Data Relating to Legal Services

- 6) Was your business organized by an attorney?
_____ Law firm
_____ Individual Practitioner
_____ No lawyer involved
- 7) If a lawyer or law firm helped with the organization formalities, was the lawyer or law firm
_____ Black
_____ White
_____ Integrated
- 8) Do you retain a law firm on a yearly basis?
_____ Yes
_____ No
- 9) If a lawyer or law firm is retained on a yearly basis is the lawyer or firm
_____ Black
_____ White
_____ Integrated
- 10) Does your company have an internal legal department?
_____ Yes
_____ No
- 11) What is the size of the legal department, if there is one?
_____ 10 or more lawyers
_____ 5 to 9 lawyers
_____ 1 to 4 lawyers
- 12) How many members of the legal department are black?
_____ All
_____ 50%
_____ 25%
_____, specify exact number of blacks on legal staff if information is available
- 13) What are the most common uses of a lawyer in your business? Please rank in order of importance (“1” is most frequent; “2” second most frequent, etc.)
_____ Contract drafting and negotiating
_____ Tax matters
_____ Local, State and Federal Regulatory Matters
_____ Real Estate Transactions
_____ Debt Collection
_____ Litigation
_____ Other, please specify _____
- 14) If you have a lawyer or law firm on retainer, how was he or she or it selected?
_____ Personally known to one of the officers of the company
_____ Referred by a friend or business associate
_____ Referred by another source. Please specify source

- Yellow pages or some other directory
 Other, please specify _____
- 15) If your company does not have a regular lawyer or law firm or house counsel, how does it select one when the occasion arises?
- Lawyer with whom company has dealt in the past
 Lawyer who is referred by friends, business associates or others
 Lawyer known by one of the company officials
 Other, please specify _____
- 16) When you select a lawyer or law firm which of the following qualities do you consider most important? Please rank as in question 12.
- Reputation
 Education
 Race
 Social or Civic Connections
 Business Connections or Contacts
 Governmental Connections or Contacts
 Other, please specify _____
- 17) Does your company feel that there are enough qualified black attorneys who could competently handle your business affairs?
- Yes
 No
- 18) Does your company feel that black lawyers are as competent (i.e., experience plus ability) or able to advise you on business problems as white lawyers?
- Yes
 No
- 19) If you feel that white lawyers are more competent what, in your opinion, is the reason?
- Better educated
 More experienced
 Better contacts
 Easier to work with
 Black lawyers are not dependable
 Other, please specify _____
- 20) If your company had its choice of equally qualified law firms, would it select
- Black Law Firm
 White Law Firm
 Integrated Law Firm
- 21) If you have any comments which go beyond the questions asked above, please feel free to make them below: