

THE LAW SCHOOLS AND THE NEGRO

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INTRODUCTION

In the spring of 1869, George Lewis Ruffin became the first Negro to graduate from an American law school.¹ Of exceptional ability, Ruffin completed the 18-month course of study at Harvard² in one year. The succeeding fall Howard University opened a law school for "freedmen."³ The intervening century's progress in training Negro lawyers, however, has not fulfilled the expectations supported by these bright beginnings.

While Northern law schools have apparently always been nominally open to Negro applicants, only a very limited number have been able to enroll. And except for the occasional "Jim Crow" institution, Southern law schools were completely closed to the Negro until the 1950's.⁴ Refusal to admit Negroes to public law schools first became an issue in the thirties when it came to light that separate Negro schools were so poor as not to meet even the bare requirements of the "separate but equal" doctrine. In 1936 the University of Maryland was ordered to admit Negroes on a nondiscriminatory basis⁵ and

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¹ Brown, *The Genesis of the Negro Lawyer in New England*, 22 NEGRO HIST. BULL. 147, 171, 172 (1958). At least four other Negroes preceded Ruffin to the American bar, but their admission was based on reading law in a law office rather than on attending a law school. *Id.*

² *Id.* at 173.

³ FORD FOUNDATION, . . . AND JUSTICE FOR ALL 34 (1967). While ostensibly dedicated to the education of newly freed slaves, Howard was never specifically designated a "Negro" school; in fact, its first students were four white women. *Wall Street Journal*, June 17, 1968, at 16, col. 3.

⁴ See M. DAVIE, NEGROES IN AMERICAN SOCIETY 163 (1949); Leflar, *Legal Education: Desegregation in Law Schools*, 43 A.B.A.J. 145 (1957).

⁵ *University of Maryland v. Murray*, 169 Md. 478, 182 A. 590 (1936). But the court implied that the equal protection requirement of the fourteenth amendment might be satisfied by scholarship grants for attending out-of-state law schools. After this decision several Southern states sought to avoid desegregation by this device. M. DAVIE, *supra* note 4; C. JOHNSON, PATTERNS OF NEGRO SEGREGATION 182 (1943); see MO. ANN. STAT. § 175.060 (1965); VA.

began to do so in a tiny trickle.⁶ Two years later the University of Missouri's practice of excluding Negroes and of providing them with financial aid to attend out-of-state schools was voided;⁷ but Missouri's response was to set up a separate Negro law school.⁸ A little later, in the late forties, Arkansas concluded that it was financially impractical to maintain a separate Negro law school of equal quality, and so became the first school in the old South to admit Negroes. But again only very few were enrolled.⁹ Further lawsuits at the close of the forties and the early fifties forced public law schools in six other Southern states to drop their racial bars.¹⁰ But even after the constitutional props for these racial barriers were swept away in the 1954 school desegregation decision, outright discrimination did not disappear. In fact, one-third of the Southern schools still refused Negro applicants two years later.¹¹ Several public law schools did not open their doors on a nondiscriminatory basis until threatened by litigation, and the last vestiges of admittedly discriminatory entrance standards were not removed by most of the private Southern schools until this decade.¹²

The law schools' practices mirrored the profession's customs and society's standards. White law firms, government, business and bar associations were closed to the Negro. The Negro lawyer had to operate on the fringe of the profession.¹³ Time and events have altered

CODE ANN. §§ 23-10, -11 (1964). Some of the statutes providing such grants have not been repealed and apparently have the effect of providing Negroes optional means for law training.

⁶ Interview with William G. Hall, Jr., Assistant Dean, University of Maryland School of Law, May 1, 1968.

⁷ Missouri *ex rel. Gaines v. Canada*, 305 U.S. 337 (1938).

⁸ M. DAVIE, *supra* note 4, at 164; Leflar, *supra* note 4, at 146.

⁹ Leflar, *supra* note 4, at 146 & n. 4.

¹⁰ *See id.* (citing cases).

¹¹ *See* Van Hecke, *Racial Desegregation in the Law Schools*, 9 J. LEG. ED. 283, 285 (1956).

¹² *See* Leflar, *supra* note 4, at 146-48. The Duke University School of Law did not drop its racial bars until 1961. As late as 1962 the University of Richmond Law School refused the application of two Negroes because of race. 1962 ASS'N OF AM. L. SCHOOLS PROCEEDINGS 195. The University of Alabama School of Law has never graduated a Negro and has not had a Negro student during the past three years even though there were 117 in the undergraduate school during the past year. Survey response from Dean Daniel J. Meador, University of Alabama School of Law, Feb. 19, 1968; NEWSWEEK, March 4, 1968, at 10.

¹³ *See generally* Note, *The Negro Lawyer in Virginia: A Survey*, 51 VA. L. REV. 521 (1965). Other studies which contain some references to the position of the Negro attorney include G. EDWARDS, *THE NEGRO PROFESSIONAL CLASS* 120-22, 130-37, 153-55, 210 (1959); G. MYRDAL, *AN AMERICAN DILEMMA* 325-26 (1944); A. ROSE, *THE NEGRO IN AMERICA* 112, 172 (1943); D. THOMPSON, *THE NEGRO LEADERSHIP CLASS* 37-39, 126-27 (1963); C. WOODSON, *THE NEGRO PROFESSIONAL MAN AND THE COMMUNITY* 184-249 (1934). Professor Jerome

the attitudes and practices of a number of law firms, of state and federal governments and of many businesses, however, and today the profession generally wants and needs more Negro attorneys than are available. The doors of many law firms are still closed to Negro attorneys, but Wall Street-type firms that would not have considered hiring Negroes ten years ago now actively recruit them—hopefully on more than a token basis.¹⁴ Government and government sponsored programs seek more Negro applicants than the law schools will train in the near future. Some progress is already apparent. Thirty years ago, in the middle of the New Deal's most liberal hour, there was only one Negro among all of the attorneys in the Justice Department, and his appointment was a political favor;¹⁵ now more than 100 of the Department's 2,000 attorneys are Negro.¹⁶ Legal aid and services programs have also opened opportunities to Negro attorneys. In other words, the central burden to recruit and train more Negro attorneys has been shifted to the law schools, and, after years of indifference and delay, recent indications are that the schools are beginning to respond to the challenge on a credible basis.

To place this record in perspective, it should be noted that the legal profession's bleak past regarding minority groups does not stand alone. An account of virtually every other profession and business duplicates this tale of insensitivity and inaction.¹⁷ Journalism is typical. The message of the Riot Commission for the media was that they have been "shockingly backward in seeking out, hiring, training

Shuman of Howard University Law School is currently preparing a report based on a survey of the economic position of all Negro lawyers (based on responses from 45% of those contacted). This author was permitted to read a draft of that study and the findings reported here regarding the location and position of Negro lawyers in the South (see note 22 and Appendix A *infra*) were corroborated.

¹⁴ Contrary observations are contained in studies based on data which is now several years old. See, e.g., I. SMIGEL, *THE WALL STREET LAWYER* 45 (1964). But cf. *HARV. BUS. REV.*, May/June 1968, at 113; *Wall Street Journal*, Jan. 9, 1968, at 1, col. 5.

¹⁵ L. Haynes, *The Negro Federal Government Worker*, 3 *HOWARD UNIV. STUDIES IN SOC. SCI.* 9, 81-2 (1941).

¹⁶ "Department records indicate that as of this date there are 2,095 attorneys employed as such by the [Justice] Department"

"As to attorneys who are Negro, the best available figures indicate that there are some 108 employees in that category." Letter from James T. Devine, Equal Employment Opportunity Officer, Department of Justice, to author, April 15, 1968.

¹⁷ The medical profession also presents a similarly unattractive picture. President Johnson, in a speech given August 14, 1968, to the National Medical Association, noted the following: "Among white citizens one American in 670 becomes a doctor, but among Negroes one in 670? No. Among Negroes it is one in 5,000."

and promoting Negroes."¹⁸ The monochromatism of business leadership is equally apparent. As in the case of the legal profession, businesses and other professional groups now clamor, and even bid, for available Negro talent.¹⁹ The barrier again is in education. Journalism's traditional training grounds have been small town newspapers and journalism schools, but both are virtually all-white.²⁰ Graduate schools likewise have recruited only a miniscule number of Negroes. The business schools are typical. Fewer than ten of Harvard Business School's 1,350 students this past academic year were Negro, and only 24 of their 14,000 graduates since the Second World War have been Negro; Penn's famed Wharton School had but nine Negroes among 1,150 students.²¹

"So if we are going to have whites taking care of whites and blacks taking care of blacks, one white doctor can take care of 670, but one black doctor has to take care of 5,000. That is just not right. That is a tragedy. That is a complete, absolute indictment of our entire educational system and I am going to say so here today." 4 WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS 1229-30 (August 19, 1968). See also D. REITZES, *NEGROES AND MEDICINE* (1958); Kuiken & Eisenman, *The Negro in the Field of Medicine*, 30 ED. FORUM 475 (1966); TIME, June 28, 1968, at 61 ("[I]t will probably be years before Negro physicians and surgeons achieve professional equality."). See also Drake, *The Social and Economic Status of the Negro in the United States*, 94 DAEDALUS 771, 793-97 (1965).

¹⁸ REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 211-12 (1968) (emphasis added) [hereinafter cited as RIOT COMM. REP.]: "Fewer than 5 percent of the people employed by the news business in editorial jobs in the United States today are Negroes. Fewer than 1 percent of editors and supervisors are Negroes, and most of them work for Negro-owned organizations. The lines of various new organizations to the militant blacks are, by admission of the newsmen themselves, almost nonexistent. *The complaint is, 'We can't find qualified Negroes.' But this rings hollow from an industry where, only yesterday, jobs were scarce and promotion unthinkable for a man whose skin was black . . .*

"It is not enough . . . to search for Negro journalists. Journalism is not very popular as a career for aspiring young Negroes. . . . It must become a commitment to seek out young Negro men and women, inspire them to become—and then train them as—journalists. Training programs should be started at high schools and intensified at colleges. Summer vacation and part-time editorial jobs, coupled with offers of permanent employment, can awaken career plans."

¹⁹ See, e.g., Wall Street Journal, April 3, 1968, at 34, cols. 1-3 ("Companies Rush to Hire Negro Graduates, Find Competition Stiff, Students Selective").

²⁰ NEWSWEEK, Dec. 4, 1967, at 96-99.

²¹ NEW REPUBLIC, March 16, 1968, at 5; Wall Street Journal, Dec. 21, 1967, at 1, col. 7 (emphasis omitted): "Stanford's graduate school of business says the university's lawyers advise against scholarships limited to Negroes out of fear of violating the Civil Rights Act." (It is no surprise, then, that Stanford's second year class of 275 included only 5 Negroes. Wall Street Journal, April 3, 1968, at 34, col. 1). But see Todd, *Where Money Grows on Decision Trees*, N.Y. Times, Nov. 10, 1968, at 25, 47 (Magazine) (28 Negroes in Harvard Business School class of 1970).

I. THE SHORTAGE OF NEGRO LAWYERS

The task facing the law schools and the legal profession as a whole is immense. Whereas about one American in 625 becomes a lawyer, only one in 7,100 Negroes chooses the law.²²

The legacy of past discriminatory practices has left the legal profession with approximately 3,000 Negro attorneys among more than 300,000 attorneys in the United States today. Negroes constitute 12 percent²³ of the nation's population, yet comprise less than one percent of the legal profession.²⁴ In other words, even if the size of the profession could be kept constant, an additional 30,000 Negro attorneys would need to be trained before the Negro would achieve parity in the legal profession.

This disparity is more acute in certain regions. Although more than half of the nation's Negroes live in the South, only seventeen percent (or approximately 506) of all Negro attorneys practice there.²⁵ Even these figures deceptively understate the problem in many states.

²² The figures recited here to illustrate the shortage of Negro attorneys are summarized in Appendix A. Despite considerable efforts to insure the accuracy of the figures reported here, only their general accuracy can be asserted. A conservative statistical approach was adopted. Thus, the figures probably reflect an overstatement of the representation of the Negro in the legal profession today. *But see* E. Toles, *The Negro Lawyer in the United States*, October 14, 1966 (Report by the chairman of the NBA Judiciary Comm.), *reprinted*, 112 CONG. REC. A5458 (Oct. 20, 1966): "The National Bar Association . . . has estimated the number of Negro lawyers at more than 4,000, but not all actively engaged in the practice." This same report repeats the *Time* magazine statement (April 15, 1966) that North Carolina has the largest number of Negro lawyers in the South with 125. *Id.* While North Carolina probably had the largest Southern Negro bar in 1966, the actual number of N.C. Negro lawyers at that time was overstated by fifty percent.

²³ The 1960 census recorded that Negroes constituted 10.5% of the total population. By 1966 this figure had risen to an estimated 11.1% and even this proportion is undoubtedly too low because it seems clear that the Census Bureau consistently undercounts the number of Negroes in the United States by as much as 10% (14% of the Negro males were not counted). RIOT COMM. REP. 227; STATISTICAL ABSTRACT OF THE UNITED STATES 21 (1967); U.S. BUREAU OF THE CENSUS, CURRENT POPULATION REPORTS, SERIES P-20 # 168, at 15 (1967); FORTUNE, January, 1968, at 224; Glazen, *The Negro's Stake in America's Future*, N.Y. TIMES MAGAZINE, Sept. 22, 1968, at 30, 90. Even using 1960 census data as reported, if current trends continue, this proportion will reach 12.5% by 1972, 13.5% by 1985 and 25% a century later. RIOT COMM. REP. 227; Spengler, *Population Pressure, Housing and Habitat*, 32 LAW & CONTEMP. PROB. 191, 197 (1967). Thus, if the Negro attorney is to achieve proportional equality, the numbers which must be trained cannot be based on current population figures. In other words, the description here of the shortage of Negro attorneys substantially understates the problem.

²⁴ Non-white males constitute a greater percentage of every other professional group tabulated by the 1960 census. STATISTICAL ABSTRACT OF THE UNITED STATES 232 (1967).

²⁵ This number is essentially unchanged since 1930 when over one-third of the nation's then 1,200 Negro attorneys resided in the South. *See* G. MYRDAHL, *supra* note 13, at 326.

For example, only nine Negroes—just three more than in 1930—practice law in Mississippi where the Negro population approaches one million. Alabama, with slightly more Negroes, has but twenty Negro attorneys. Of Georgia's 5,500 lawyers only 34 are Negro, and one-third of those are federal government employees.

Nor is adequate representation of Negroes provided by the white bar. Legal services are still the preserve of middle and upper incomes. Government sponsored and voluntary legal services programs, while expanding, do not fill the need. They are not available in all parts of the country, are limited by an inability-to-pay test, and do not provide representation in all types of cases.²⁶

Even when the Negro has adequate funds, legal representation is not always available. Political, social, personal, and economic reasons have kept white lawyers from accepting civil rights and social welfare cases. As the efforts of the President's Committee for Civil Rights Under Law has revealed, the profession has been particularly delinquent in Mississippi.²⁷ But testimony in Richard Sobol's lawsuit against Leander Perez and Plaquemines Parish, Louisiana (wherein Sobol, an out-of-state civil-rights lawyer, sought federal protection from state harassment), indicates that Mississippi is not alone.²⁸ The core of Sobol's suit was that there are not enough Louisiana lawyers

²⁶ See Carlin & Howard, *Legal Representation and Class Justice*, 12 U.C.L.A.L. REV. 381, 407-11, 416-17 (1966): "Given the size of their caseloads, Legal Aid attorneys are usually capable of providing only routine, perfunctory services for their clients. The standard caseload requirement set by the NLADA for Legal Aid offices in cities of more than 100,000 population is: 'One full-time employed attorney for the first 750-1,000 cases per year; an additional full-time attorney for each additional 1,200 cases; or equivalent part-time attorneys.' Apparently, even this low standard is not always met. The Los Angeles office, for example, handled 14,361 new cases in 1961 with only 7 attorneys. In New York City . . . only 2 per cent of the private attorneys reported that they handled as many as 500 cases a year, and half reported handling no more than 50." See also TWENTIETH CENTURY FUND, ADMINISTRATION OF JUSTICE IN THE SOUTH (1967); Cahn & Cahn, *What Price Justice: The Civilian Perspective Revisited*, 41 NOTRE DAME LAW. 927 (1966); Johnson, *The O.E.O. Legal Services Program*, 14 CATH. LAW. 92 (1968); Pye, *The Role of Legal Services in the Antipoverty Program*, 31 LAW & CONTEMP. PROB. 211 (1966). The various civil rights organizations have been unable to take up the slack. Several maintain offices that provide legal services in civil and welfare rights cases and some make available office-subsidy programs for Negro lawyers in the South. But to date the scope of these problems is limited by lack of funds and available legal talent.

²⁷ TWENTIETH CENTURY FUND, *supra* note 26, at 3: "In Mississippi, for example, there are less than half a dozen local lawyers who will handle civil rights cases. What occurred, therefore, was a complete breakdown in the traditional professional responsibility and obligation of the bar to provide legal representation." See also Honnold, *The Bourgeois Bar and the Mississippi Movement*, 52 A.B.A.J. 228, 231 (1966).

²⁸ *Sobol v. Perez*, Civil No. 67-243 (D. La., filed July 12, 1968); see NEW REPUBLIC, Feb. 24, 1968, at 17; TIME, Aug. 16, 1968, at 42.

willing to assist and defend the state's Negro population. Moreover, white legal representation, however adequate, still seems no substitute for proportional parity of Negro attorneys.²⁹

Yet, alternatively, where the Negro obtains a Negro lawyer, the legal representation provided may be inferior. Past discriminatory practices mean that the Negro attorney is likely to be a product either of one of the "Jim Crow law schools" or of Howard Law School. Although they count some of the country's ablest attorneys and judges among their graduates, these are the exceptions. The Negro law schools in the South were "academic disaster areas" and generally are now closed;³⁰ those still operating concede their present inadequacy.³¹ Howard, however, embarked on an extensive and expensive quality improvement program in 1965.³² But current efforts are little comfort to their alumni or the latter's clients.

The Negro attorney also operates under other considerable disadvantages. Nothing ranks ahead of out-right and often crude discrimination. In Sobol's case against Leander Perez's Parish, one Negro attorney testified³³ that a state judge told him when he appeared in court to try a case: "I didn't know they let you coons practice law." The attorney also testified that the judge dismissed

²⁹ Throughout this paper it is assumed that the goal should be proportional parity for Negro attorneys—i.e., they should constitute approximately the same percentage of the legal profession as they do of the entire population. This conclusion, of course, is an oversimplification of one aspect of the problem of minority group representation in the legal profession. It can also be questioned whether legal education's long-term objective should be to motivate more Negro students toward law for the purpose of achieving parity in the profession, or instead, merely to provide Negroes interested in becoming lawyers greater opportunities. At this juncture such questions do not seem worth serious debate. All should recognize that the current shortage of Negro attorneys has reached crisis proportions. Whatever one's view of ultimate objectives, it is clear that for the present more Negro attorneys must be trained as quickly as quality preparation permits. If a choice must be made, however, the first objective of seeking parity seems preferable in light of the historic leadership and service function performed by the lawyer in American society.

³⁰ See TWENTIETH CENTURY FUND, *supra* note 26, at 20; Note, *supra* note 13, at 528. See also Jenks & Riesman, *The American Negro College*, 37 HARV. ED. REV. 3, 26, 29-30 (Winter 1967) ("Most Negro law schools 'are only one jump ahead of the accrediting agencies.'").

³¹ See Carl, *The Shortage of Negro Lawyers: Pluralistic Legal Education and Legal Services for the Poor*, 20 J. LEG. ED. 21, 27-32 (1967); Carl & Callahan, *Negroes and the Law*, 17 J. LEG. ED. 250 (1965); *Report of the Advisory Comm. for Minority Groups Study*, 1967 ASS'N OF AM. LAW SCHOOLS PROCEEDINGS 160 [hereinafter cited as 1967 MINORITY GROUPS STUDY].

³² See note 46 *infra* and accompanying text.

³³ NEW REPUBLIC, Feb. 24, 1968, at 17-18. Other Negro attorneys, detailing harassment and threats of physical harm, testified to their "unwillingness or reluctance to go to Plaquemine's Parish, especially in civil rights cases." *Sobol v. Perez*, Civil No. 67-243 at 19 (D. La., filed July 12, 1968).

Negro objections to being referred to as "nigger" in court because those using the term were only exercising their freedom of speech.³⁴ Some state and local bar associations in the South apparently continue to apply discriminatory admission standards.³⁵ But of greatest importance is the plain fact that the Negro's law practice in the North as well as the South has lacked a sound economic base.³⁶

Most, if not all, of the patently discriminatory practices in trial courts, ranging from racial slurs to biased jury selection, now have been enjoined by the appellate courts.³⁷ The number of discriminatory bar associations probably is declining, and the economic position of Negro lawyers is improving.³⁸ Opportunities for private and government employment are further diminishing financial disabilities. As the Negro gains economic power, the Negro attorney's financial base will expand, but long term gains will be marginal until the number of qualified Negro attorneys is increased.

II. THE CHALLENGE FOR AMERICAN LAW SCHOOLS

If American law schools are to meet this long-ignored challenge of the shortage of Negro lawyers, several obstacles need to be overcome. The problems divide into three areas. First, a much larger number of Negroes must be recruited into law schools. Unless this effort succeeds, all other comments are irrelevant; hence, current emphasis must be placed here. Second, law school curriculum and training methods need reevaluation. Courses relevant to the problems a Negro attorney is likely to face must be made available; the effectiveness of

³⁴ Senator McClellan's recent remarks that Southerners should not be chastised for referring to Negroes as "boy" reveals a parallel that hardly seems coincidental. *See* N. Y. Times, Mar. 20, 1968, at 28, col. 1.

³⁵ For example, the North Carolina Bar Association has discriminated against qualified Negro attorneys in regard to membership—although recently it has stricken blatant racial membership clauses from its rules and accepted some Negro membership. *See* Raleigh News & Observer, Dec. 15, 1966, at 1, cols. 6-8; at 2, cols. 6-8; Durham Morning Herald, Nov. 2, 1967, at 1C, cols. 4-5. These continued discriminatory practices, however, did not prevent the American Bar Association from not only continuing its affiliation with the North Carolina Bar Association, but also bestowing awards for "meritorious service" on this group. *See* Raleigh News & Observer, Aug. 13, 1968, at 5, col. 3.

³⁶ *See* G. EDWARDS, *supra* note 13, at 38, 135-38; D. THOMPSON, *supra* note 13, at 126-27; Note, *supra* note 13, at 535-37.

³⁷ *Johnson v. Virginia*, 373 U.S. 61 (1963) (reversal of conviction for contempt of court where Negro refused to comply with judge's instruction to sit in the section of a courtroom reserved for Negroes); *Harper v. State*, 251 Miss. 699, 171 So. 2d 129 (1965) (exclusion of Negroes from jury resulting in reversal of Negro defendant's conviction).

³⁸ *See generally* Note, *The Negro Lawyer in Virginia: A Survey*, 51 VA. L. REV. 521 (1965).

current methods of legal education should be questioned. Finally, law schools must concern themselves with discriminatory placement practices and insure that Negro graduates have an equal opportunity to pass state bar examinations. The former problem cannot be denied; the latter must be at least acknowledged as a possibility in light of other discriminatory practices and of the scarcity of Negro attorneys (proportionately) in Southern states.

A. *Individual School Recruiting*

Current law school recruiting techniques are still inadequate and, unless altered substantially, will not produce more than a token number of Negro students. Until the graduating class of 1968, it was estimated that there were only 200 Negroes among the 10,000 graduating from American law schools annually.³⁹ While this number is increasing, the total gain is insignificant, especially in light of the actual need. Proportionate representation of Negroes in law school classes would result in 1,200 Negro graduates out of 10,000—or 1,850 in the 1968 class of about 15,000. Even this proportional ratio would not go far in eliminating the historical shortage of Negro attorneys. At current rates, then, the shortage of Negro lawyers, which is the result first of many law schools' past outright discrimination and subsequently of their lack of active concern for the need for Negro attorneys, is still widening today.

But many schools are now concerned with increasing Negro enrollment, and most have been unable to recruit the numbers (and quality) they seek. If law school recruiting of Negro students is to be effective, some attention must be given to why so few Negroes were enrolled in the past and to why recent recruiting efforts have met with only limited success.⁴⁰ First, of course, is the history of outright discrimination by law schools in the region where, until recently, most Negroes resided—the South. In addition, schools outside the area

³⁹ 1967 MINORITY GROUPS STUDY 160. Current estimates, however, are that the number of law school graduates has reached 15,000 annually. See Cavers, *Legal Education in Forward-Looking Perspective* in *LAW IN A CHANGING AMERICA* 139, 156 (G. Hazard, Jr., ed. 1968). A recent AALS survey revealed that 1,254 Negroes are currently enrolled in 136 law schools. AALS Newsletter, Oct. 7, 1968, at 2.

⁴⁰ This analysis is based on secondary sources (see note 13 *supra*) and on interviews with scores of Negro undergraduates during the past year who are students at such diverse schools as Duke University, Howard University, Morgan State College, Miles College, North Carolina College, Texas Southern University, Furman University, Millsaps College, Berry College, Bishop College, Kentucky State College, Morehouse College and Hampton Institute.

made little effort to attract excluded students.⁴¹ While such basic obstacles have to some degree been overcome, other important limiting factors still exist. The foremost is lack of funds. Four years of college strains the financial abilities of most Negro students, even those receiving financial assistance. Three years of additional expense rather than income discourages others.⁴² Women outnumber men Negro undergraduates,⁴³ and historically law has been a man's profession. Traditionally, law has been the Negro's "starvation profession." Young Negroes often view Negro lawyers as "Uncle Toms" trained to perpetuate the status quo while being poorly rewarded in addition.⁴⁴ Negro college students remain unaware of increasing financial support available from law schools, of changing economic conditions, and of real opportunities for Negroes in the law. Their past education also often leaves them badly prepared for law study involving abstract ideas and close reasoning. Law schools, moreover, have found it difficult to locate qualified students. Negroes have scored poorly on the admissions test—and some have charged that the test is biased in favor of white middle-class values.⁴⁵

One avenue for increasing Negro law student enrollment, of course, could be to improve the attractiveness of the four predominantly Negro law schools still open. In part, this has been the response. With the help of a \$1.8 million Ford Foundation grant, Howard University Law School tripled the size of its graduating class, instituted remedial assistance programs, provided substantial scholarship help, improved its curriculum, and increased its white enrollment to over ten percent.⁴⁶ Other predominantly Negro law schools at North Carolina College, Southern University, and Texas Southern have also increased their enrollment in recent years.⁴⁷

⁴¹ Indeed, until recently, relatively few Negroes attended college, particularly at the predominantly white colleges where law schools traditionally recruited their students. N. Y. Times, Aug. 22, 1965, § 4, at 4, col. 6.

⁴² As one Negro college student observed during one of these interviews: "Why should I go to law school, work as hard as you say I must to pass, and then get a job paying no more than Gulf Oil, IBM or Xerox will pay me today. And these companies say that by going with them I'll be making as much of a contribution to civil rights and all that as I can as a lawyer."

⁴³ MONTHLY LAB. REV., Nov. 1967, at 36. See note 39 *supra*.

⁴⁴ When it came to choosing a career where he could aid his people most effectively, the late Martin Luther King, Jr., without hesitation, chose the ministry as the "proper" means over two other possibilities—medicine and law. Columbia Broadcasting System Television Special, April 5, 1968; see TIME, April 12, 1968, at 19.

⁴⁵ See N. Y. Times, Aug. 22, 1965, § 4, col. 6. Howard University, for example, refuses to use the admissions test.

⁴⁶ FORD FOUNDATION, *supra* note 3, at 36-37.

⁴⁷ See Appendix B.

All other Negro law schools have closed now that their constitutional justification has disappeared, and, except for Howard, the future of those still open either is clouded or offers little prospect that they will make a significant contribution toward educating sufficient numbers of Negro attorneys.⁴⁸ In the last three years, law schools at South Carolina State and Florida A & M closed their doors. North Carolina College's law school only narrowly averted being phased out last year; now starved for operating funds, its future remains uncertain. Texas Southern is under order to be "phased out" by September 1, 1973, and Southern University with its exceedingly small and unintegrated enrollment is in a civil law jurisdiction and therefore unlikely to draw students or faculty from other states. As a result, even with expansion, the Negro law schools still open in the South (which does not include Howard) had only 150 full-time students during the past academic year and apparently have never graduated 25 students in one year.⁴⁹

While it seems inappropriate to urge that these Southern Negro law schools be closed as long as so many inadequate white schools continue without challenge, their expansion as essentially segregated institutions seems questionable. Although they are a supplementary source of Negro lawyers, and may serve a useful function for those unwilling to accept identification with "white" law schools, none of them are accredited by the Association of American Law Schools. One Negro educator and former dean of such an institution concluded that these schools are so far from the mainstream of legal teaching that they should be closed.⁵⁰ Since their origins were in the separate but equal shibboleth, they often duplicate nearby facilities of better

⁴⁸ See 1967 MINORITY GROUPS STUDY 167-72; LAW STUDY AND PRACTICES IN THE UNITED STATES B-7 to B-14 (Pre-Law Handbook of AALS-LSATC, 1968) (Scholarships granted in 1967-68: Howard, \$185,183; North Carolina College, \$0; Southern, \$4,800; Texas Southern, \$1,015). For a contrary conclusion based on the view that Negro law students will have a better opportunity to obtain a sound legal education in a predominantly Negro law school, see Carl, *supra* note 31. But see note 30 *supra*, and note 50 *infra* and accompanying text. A more realistic—and devastating—appraisal of the educational worth of predominantly Negro schools is presented in Hare, *The Legacy of Paternalism*, SATURDAY REVIEW, July 20, 1968, at 44. See also Jenks & Reisman, *supra* note 30; Wright, *The Promise of Equality*, SATURDAY REVIEW, July 20, 1968, at 45. See generally E. McGRATH, THE PREDOMINANTLY NEGRO COLLEGES AND UNIVERSITIES IN TRANSITION 5-6 (1965).

⁴⁹ See Appendix B. For example, in 1968 Southern University graduated 4 and North Carolina College graduated 7, all Negroes.

⁵⁰ See N.Y. Times, Dec. 25, 1965, at 10, col. 7. According to Professor Groves, there is no reason to alter this conclusion today. Interview with Professor Harry Groves, Sept. 21, 1968.

equipped and endowed schools; expansion seems inefficient and uneconomical; and those unable to integrate continue of necessity in the odious environment of de facto segregation. In any case, their number is so few, their enrollment so limited, and their relevance to current needs so inadequate, that they do not constitute a viable alternative source for the number of Negro attorneys needed in coming years.

The alternative which has been selected, perhaps by default, is to recruit increasing numbers of Negroes for predominantly white law schools. One result is that the recent average of 200 Negro law graduates per year apparently doubled last June and probably will triple within another two years.⁵¹ Nine schools, for example, increased Negro enrollment from a total of 20 two years ago to 122 during the past academic year.⁵² Gains at other schools have not been this spectacular, but many are making solid progress. Law schools at Harvard and Columbia are the current leaders. Harvard's Negro enrollment, probably the largest in number among the major schools, increased from 31 to 58 between 1965 and 1967.⁵³ Columbia's

⁵¹ The results and information reported here regarding Negro enrollment in law schools is derived from an informal letter survey of 75 AALS accredited schools, the preliminary results of a survey of all law schools by Professor Robert O'Neil for CLEO, and the two AALS reports, 1967 MINORITY GROUPS STUDY 160; Groves, *Report on Minority Groups Project*, 1965 Ass'n of AM. LAW SCHOOLS PROCEEDING 171, 172. Although the number of Negro graduates doubled, total graduates climbed to around 15,000. See note 39, *supra*. The Scholarship Information Center, a service of the YM-YWCA at the University of North Carolina, also began collecting similar data on Oct. 1, 1968 as is a joint CLEO, LSAT and AALS survey.

⁵² The individual law school increases in Negro enrollment were:

<i>School</i>	<u>1965-66</u>	<u>1967-68</u>
Case-Western Reserve	1	12
Emory	4	21
Illinois	1	5
Maryland	3	8
Michigan	0	15
Mississippi	5	22
New York University	1	16
Pennsylvania	4	11
UCLA	1	12
<i>Total</i>	<u>20</u>	<u>122</u>

Conversations with faculty members at these and other schools indicate that Negro enrollment has increased even more sharply in 1968 at most schools.

⁵³ Survey response from Professor Frank Sander, Harvard Law School. 1968 minority group enrollment at Harvard included 76 Negroes, 16 Spanish-Americans and 2 Indians (except these

expanded from 25 to 44 during the same period.⁵⁴

But the efforts and results have been irregular. Many law schools never have had more than token Negro enrollment. And this inability is not caused by a lack of Negro undergraduates in the area. During the past three years, for example, Emory University's law school has had up to 22 Negroes enrolled while its neighbor, Georgia, has had but one Negro law student. Alabama, which enrolled 117 Negroes in its undergraduate school last year,⁵⁵ had none in its law school during the same period and has never graduated a Negro. Nor is this recruiting inability regional. Indiana, whose 27,000 undergraduates include the greatest number of Negroes on any Big Ten campus (almost 1,700),⁵⁶ had only three Negro law students during the past academic year; its northern Big Ten neighbor, Michigan, had five times that number in a comparable law school enrollment.

Unsurprisingly, increased Negro enrollment in law schools appears to be related directly to whether the school has made significant efforts to attract and motivate Negroes toward legal careers. The thrust of most programs is in either of two directions: (1) *inducement* recruiting—recruiting and supporting Negro students who meet current admission standards with sufficiently high admission test scores and college records; and (2) *uplift* recruiting—providing some remedial assistance either just prior to admission or during law school to enable Negro students not meeting standard test requirements to obtain the skills necessary for graduation. In practice many programs combine both features.

The inducement approach was first used most effectively in its purest form by Yale and Columbia. Specially assigned personnel, with the aid of willing alumni and college pre-law advisers, scour college campuses (usually concentrating on the Negro schools) for outstanding students and entice them with offers of substantial scholarship and loan assistance, the prestige of their degrees, and the solid legal education they offer. Yale became so effective with this technique that Howard Law School complained three years ago of Yale's "grabbing" the cream of Negro undergraduates interested in studying law.⁵⁷ As other law schools have joined this parade,

figures do not account for any draft-related attrition among 32 second year students). HARV. L. RECORD, Sept. 26, 1968, at 1, col. 2; Letter from Professor Sander to author, Oct. 1, 1968.

⁵⁴ Survey response from Ass't Dean Frank Walwer, Columbia University Law School.

⁵⁵ NEWSWEEK, March 4, 1968, at 10.

⁵⁶ *Id.*, Feb. 26, 1968, at 81.

⁵⁷ N. Y. Times, Aug. 22, 1965, § 4, at 4, col. 6.

especially to the eight or nine Negro colleges which are academically sound, recruiting for any one law school has become more difficult. For example, Yale's Negro enrollment declined even though the number of Negro undergraduates in the nation's colleges increased from 220,000 in 1963 to 320,000 three years later.⁵⁸

An interesting reverse twist to the inducement approach was applied to the Mississippi Law School by the Ford Foundation.⁵⁹ It gave that law school nearly half a million dollars to relate legal training more closely to current government problems and to public affairs aspects of the law. A total of 90 scholarships were financed on the tacit understanding that at least five would go to low income Negroes each year. Ole Miss apparently has kept its word. Five Negroes were enrolled in the law school in 1965, and in the fall of 1967, 22 were registered. The impact of this program on Mississippi is enhanced by the fact that three-fourths of the state bar are graduates of the school and its graduates are automatically admitted to the bar. This latter policy is now endangered because of law faculty participation in an OEO legal services program, however, and at the last session one house of a displeased legislature approved cancellation of this privilege.⁶⁰

Although also relying on inducement recruiting, both Harvard and New York University law schools have operated programs emphasizing the uplift method which opens law school doors to Negro students not meeting current admission standards. Harvard first experimented with a summer institute in 1965. Its eight-week program was designed to interest a select group of 40 juniors, seniors, and graduates drawn from Southern Negro colleges in the study of law and, incidentally, to provide some remedial assistance.⁶¹ Since 1966 NYU has operated a nine-week summer session seeking to teach

⁵⁸ U.S. NEWS & WORLD REPORT, July 31, 1967, at 84-85. Yale's Negro enrollment dropped from 20 to 14 during this three-year period.

⁵⁹ FORD FOUNDATION, *supra* note 3, at 38-40; N.Y. Times, Aug. 22, 1965, § 4, at 4, col. 6.

⁶⁰ H.R. 177, Miss. Legis., Reg. Sess. (1968) (died in Senate Committee).

⁶¹ See Toepfer, *Harvard's Special Summer Program*, 18 J. LEG. ED. 443 (1966). The Twentieth Century Fund notes that since it is likely that these students will also practice law in the North, the effect of this program may have been to "diminish further the number of Negro law students and lawyers in the South." TWENTIETH CENTURY FUND, *supra* note 26, at 19.

Harvard undoubtedly was sensitive about its lack of any program to attract or train Negro students. A short time earlier, Harvard's Dean Griswold was embarrassed by North Carolina's Senator Erwin after Griswold had relied upon registration and voting statistics to support the voting rights bill. After this recital, Senator Erwin sought Griswold's admission that since Harvard's nonwhite enrollment was substantially less than the national average, one could infer

“underprivileged” pre-law students the fundamentals of legal study and to prepare them for the law school curriculum.⁶² Both schools have abandoned their summer programs, however; Harvard was unable to obtain sufficient funding in 1967,⁶³ and after two summers NYU concluded that the results were too meager to justify the cost in money and time.

Perhaps more successful in producing immediate results was the “pre-start” program initiated at Emory University Law School in Atlanta and continued under a slightly different format this summer by the CLEO program considered below.⁶⁴ The Emory program assumed that because of differences in educational and cultural backgrounds, Negroes scored poorly on admission tests and hence were discouraged from applying to white law schools simply to be turned down. As an alternative measure for determining law school entry, a dozen students from nearby Negro colleges were recruited with the aid of on-campus pre-law advisers to take one regular law course in the summer prior to their first year of law school. If they passed, they were then admitted to Emory as regular students taking the usual courses, except that their course-load during the first year was lighter by that one course. Of the 23 students who took part in the two summer programs, 16 passed the summer phase, and 12 are still enrolled at Emory.⁶⁵ All but one have done passing work. The relative impact of this program could be substantial. If the 12 expected to graduate were to practice in Georgia, the size of the Negro bar in private practice would be increased by over 50 percent!

that this national law school was discriminating on account of race or color. *Hearings on S. 480, S. 2750 & S. 2979 Before the Subcomm. on Constitutional Rights of the Senate Comm. on the Judiciary, 87th Cong., 2d Sess. 161-62 (1962).*

⁶² Letter from Professor Charles Knapp, New York University School of Law, to Professor Bertel Sparks, Duke University School of Law, Jan. 30, 1968; Letter from Peter Winograd, Director of Admissions, New York University School of Law, to author, March 5, 1968; see 17 HIGHER EDUCATION & NATIONAL AFFAIRS No. 16, May 3, 1968, at 7 (Carnegie Corp. of New York granted \$150,000 to NYU Law School to recruit Negro law students).

⁶³ As noted below, Harvard operated a CLEO sponsored summer program in 1968.

⁶⁴ See generally EMORY UNIVERSITY SCHOOL OF LAW REPORT TO THE FIELD FOUNDATION, 1966-67 PRE-START PROGRAM FOR PROSPECTIVE NEGRO LAW STUDENTS (October 1967).

⁶⁵ Professor Michael DeVito of Emory reported to the Southeastern Conference of the AALS on August 19, 1968, that three of the 16 students passing the summer work dropped out of law school for nonacademic reasons (marriage, childbirth, family death) and one failed. Two of the former are expected to return to law school, but three others are now in academic difficulty and it seems likely that two of these will fail. If these numbers remain unchanged, of the 23 entering the program during its first two years, it is expected that 12 or a little more than 50% will graduate eventually.

Substantial as recruiting efforts by several schools and concomitant increases in Negro enrollment have been, the overall result seems meager. Even if the optimistic forecast of 600 Negro law graduates by 1970—a 20 percent increase in the Negro bar—becomes reality, the nation's need for Negro attorneys will be far from satisfied. Progressing at this rate the position of the Negro lawyer will be somewhat improved within a few generations, but it is questionable whether we can afford the social cost of such "deliberate speed."

This survey of individual law school recruiting efforts suggests several items which should be noted if we are to learn from past efforts. First, of course, is the need for all schools to increase their efforts. As the next section of this article will demonstrate, no suitable substitute is available. Second, the recruitment of Negro law students is not at or near the saturation point. There does not appear to be any danger that law schools will exhaust the supply of qualified Negro students as more and more are graduated from college each year. University of Illinois' experience is instructive. After one year of strenuous effort, the Illinois recruiting committee concluded that more qualified Negro students were available than were funds to support them.⁶⁶ UCLA's CLEO recruiting confirms that this observation is not an isolated incident. Third, intelligent and selective recruiting techniques result in substantially increased applications from qualified Negro students. After beginning to visit 25 Negro colleges and to write to Negro college students receiving academic scholarships, NYU's Negro applications have exceeded 60 in each year, in contrast to the occasional application before that date. Again Illinois' experience was identical. Fourth, several schools have doubled or tripled their enrollment of Negro students and now have substantial numbers without apparent adverse effects on the quality of the education offered. Harvard, Yale, Columbia, Pennsylvania and Michigan, collectively among the cream of American law schools, are the prime examples. Fifth, the success of a law school's Negro recruitment program appears to be directly related to the intensity of its efforts and to the availability of scholarship funds. Of significance are the number of Negro schools and Negro students contacted, maintenance of continuing contacts with pre-law advisers keeping them informed of current opportunities for Negro students, follow-up

⁶⁶ See Report of the Equal Opportunity Comm. to the College of Law Faculty for the academic year 1966-67 (University of Illinois College of Law) (copy on file with the author at Duke University School of Law).

efforts with the individual, availability of financial support, and commitment of the law school (including its curriculum) to interests of minority groups. Finally the Emory experience and UCLA experiment suggest that the admissions criteria currently applied by law schools may be unnecessarily rigid and unfairly restrictive to Negro applicants—if ability to perform successfully in law school is the desired standard.

A. Inter-School or United Law School Efforts to Recruit

The obstacles to massive recruiting and preparatory training of Negro law students are not much different from the difficulties faced by individual school efforts. Attention has been concentrated at two levels: (1) locating and interesting qualified Negro undergraduates in law study; and (2) assisting those not meeting current admission standards for law school with remedial preparation.

Several programs attack this larger problem. The Association of American Law Schools recently published and distributed a pamphlet seeking to interest Negro college and high school students in legal careers.⁶⁷ The Council directing the Law School Admissions Test (LSAT) has sponsored visits to predominantly Negro colleges by selected law professors who spend several days answering student and faculty questions, attending classes, and giving short talks on law and its study. The Council now also administers the LSAT without charge to students in predominantly Negro undergraduate schools.⁶⁸ Massive financial aid may be made available soon through a foundation being established by the National Bar Association, the Negro counterpart to the ABA, but this project is still on the drawing boards. Remedial steps to close educational and cultural gaps are being attempted through legal aid office projects and by federally sponsored summer institutes, both including financial aid beyond tuition needs.

⁶⁷ OPPORTUNITIES FOR NEGROES IN LAW (1967).

⁶⁸ In February, 1967, 342 students in 24 schools took this free LSAT; by comparison, only four more students from these schools had taken the test during the preceding eight years. 1967 MINORITY GROUPS STUDY 165. (The LSAT's Ad Hoc Committee on Student Background Factors, however, reported that 32 schools participated.) Even more significant may be the opportunity to take the test in familiar surroundings. As one college professor stressed to the author, previously students at some Negro colleges could take the test only by rising at dawn, going across town, appearing on an all-white campus, paying car fare and, because of financial pressures or unavailability of restaurants to serve them, passing up lunch.

The program is continuing. In November, 1967, the free test was administered at 49 institutions and 462 students took the test.

The legal aid office project is still at the experimental stage. College students from minority groups who do not meet current law school admission standards spend a year working for pay in neighborhood legal aid offices in the San Francisco area.⁶⁹ In addition to helping attorneys prepare cases, they take language skills courses and audit one law school course without cost. The program not only seeks to prepare these students for law school, but also hopes to interest them in legal careers in aiding the poor. Bay area law schools are committed to admitting those successfully completing their "legal aid year" with more than tuition aid.

More pragmatic, although it has some earmarks of a plan about to be oversold, is the massive undertaking by the Office of Economic Opportunity (OEO), the Association of American Law Schools (AALS), and the Law School Admission Test Council (LSATC), and the nation's leading bar associations (the ABA and the NBA).⁷⁰ OEO, along with other government agencies and foundations, is providing some of the original ideas and seed money, the law school associations are directing the program, and the bar associations are giving their blessing and, it is hoped, are thereby providing an impregnable political shield. These groups have set up another organization under the name "CLEO," which is shorthand for Council on Legal Education Opportunity, to bring 300 minority group lawyers into the profession by 1973.

A critical analysis of the CLEO record and future plans cannot be provided here. The latter has not yet been decided upon, and the former needs to be described at much greater length by faculty and student participants as well as disinterested observers. A brief overview, however, can be given. Four 8-week institutes for a total of 160 students were operated during the summer of 1968 at Denver, Emory, Harvard and UCLA (the latter being a consortium with USC

⁶⁹ Letter and attached project program from Jerome E. Carlin, Coordinator, SF Neighborhood Legal Assistance Foundation, to author, May 22, 1968.

⁷⁰ Letter from Gerald M. Caplan, OEO, to author, Sept. 1, 1967, and attached draft proposal for a national legal head-start program; Memorandum from CLEO to Deans of AALS schools, Jan. 24, 1968; Joint ABA, AALS, NBA, LSATC Press Release, March 1, 1968. The latter publicity release asserts that Negro, American Indian and Spanish-speaking minorities make up one-third of the nation's population (this "statistic" has been repeated often, e.g., Morris, *From Diamond Head to Independence Hall—And Beyond*, 54 A.B.A.J. 845, 851 (1968)). The truth of the matter, unless all those who have had a semester of high school Spanish are included, is that these groups constitute at most one-sixth of the population. STATISTICAL ABSTRACT OF THE UNITED STATES 2-3, 10 (1967).

and Loyola in Los Angeles).⁷¹ The Denver program concentrated on Spanish-speaking students and was an expansion of a Ford Foundation program from the previous summer. Emory continued its pre-start program under the CLEO banner except that three non-credit courses were taught and more students participated. Harvard in essence carried forward the format of its earlier institute, concentrating on post-juniors, and UCLA offered a combined program which also utilized CLEO support to interest and recruit an equal number of minority group students for law school. Although rationalized as being the only possible institute sites in 1968 because of extreme time pressures, the numerous serious applications which CLEO received for summer institutes when CLEO was first announced suggests that the impact of the 1968 program was unnecessarily minimized by subsuming viable programs under CLEO rather than by adding new outlets for summer training.⁷²

Lack of objective data makes it virtually impossible to evaluate the success of these first CLEO institutes, but one can observe that almost 100 minority group students from the program entered law school this fall after an experience designed to prepare them for the transition to legal study. The subjective self-evaluations of institute directors, faculty and students were generally commendatory. Comparative follow-up data and experience with future institutes are

⁷¹ In addition, New Mexico's law school has run a CLEO-type summer institute for 15 American Indian pre-law students under OEO and Bureau of Indian Affairs sponsorship for the past two summers. The scarcity of Indian lawyers exceeds that of Negro attorneys. Although there are over a half-million Indians in the country, it is estimated that fewer than 25 are attorneys. No American Indian has ever received a law degree in Arizona, New Mexico, or Utah; none is practicing in Arizona or New Mexico even though these two states have over 135,000 Indians. Nor is this because of lack of legal business. Tribal budgets and holdings are often substantial. In recent years, for example, the Navajos have paid a large eastern law firm over \$100,000 each year to represent their interests. Letter from Professor Frederick M. Hart, University of New Mexico School of Law, to President Douglas M. Knight, Duke University, March 22, 1968, and attached announcement.

⁷² The Ford Foundation was already committed to support Denver's 1968 institute; the Field Foundation had previously agreed to sustain Emory; and UCLA was in the process of obtaining financing from several groups for its program. Only Harvard had not yet funded its program, and the recent CLEO-sponsored institute evaluation conference in San Antonio, Texas, agreed that future CLEO funds should not be spent on post-junior programs such as Harvard's.

Of course, CLEO sponsorship increased the size of these programs. But had different sites been selected, there seems little question that more minority-group students would have benefited and that the program would have been geographically better balanced and numerically not so over-balanced in favor of Hispano students. In at least one respect, the institute site selection in 1968 seems harmful. As a result of becoming a CLEO program, Emory's summer courses were no longer for credit and the significant light-loading feature resulting from its previous summer institutes was lost.

needed to determine whether this judgment is validated by the law school experience of CLEO participants. If the recommendations of the recent CLEO evaluation conference are accepted, future programs will concentrate at least two-thirds of available funds on scholarship aid⁷³ with some form of institute experiment being continued.

Whether proper allocation of the nation's resources supports this spending of so many dollars on law school students, which might otherwise be earmarked for civil rights and poverty projects, of course, can be disputed. Putting this question aside, CLEO and other programs are the beginning steps toward filling a significant need. On the other hand, it also needs to be recognized that such general programs cannot supplant or excuse substantial efforts by all law schools to recruit and offer financial support, including living expenses as well as tuition, for a proportionate number of Negro and other minority group students. As Negro enrollment in the nation's colleges increases, the task of recruitment may become simpler; but as law school enrollment of minority groups also increases, the need for additional funds will grow rather than shrink, until minority groups achieve equal economic status in our society. At the same time, law schools need to face problems of training and placing minority group attorneys which until now have not received the same attention or thought.

C. *Training*

As noted, substantial efforts, particularly by Harvard, NYU and CLEO, as well as other programs,⁷⁴ have been made to prepare Negro students for law school. The major problems still unresolved, however, are (1) providing sufficient training to enable Negro students to graduate and pass the bar examination and (2) educating them to tackle the special legal problems they are likely to face upon graduation.

Little attention has been given to the question of cultural bias in

⁷³ This year's law school assistance amounted to an average of only \$1,500 per student which often meant that living expenses were not covered.

After preparation of this article, it was learned that 1969 CLEO funds will probably be used again to support several summer institutes and to sustain institute participants in their subsequent law school years.

⁷⁴ Beginning with the summer of 1966, Harvard, Yale and Columbia Universities have operated a summer program labeled the Intensive Summer Studies Program (ISSP) for post

the law schools unrelated to the quality of education offered. A recent study suggests that the admissions test is as accurate (or inaccurate) a predictor of law school success for culturally deprived as for more fortunate students.⁷⁵ But any other result would have been startling. The admissions test is a mirror image of the law schools. Thus, the cultural bias, if any, is not inherent in the test, but rather is in the law schools and in their teaching and testing methods. The real test for the "white" law schools, then, is whether they can honestly examine and evaluate the fairness and utility of current practices, and, where necessary, adapt their methods to meet the needs of Negro students to provide them with adequate legal training while at the same time not destroying the quality education now made available to the student body as a whole. To date, no law school appears to have met this challenge adequately.

While schools are reluctant to disclose specific figures, most major law schools which have enrolled substantial numbers of Negroes acknowledge that Negro students, in general, have performed below the expectations suggested by their grade and test records.⁷⁶ Several possible explanations—and therefore suggested alternative teaching approaches—seem worth exploring.

One explanation could be the testing system employed by most schools. Having performance tested solely by one multi-hour essay examination at one time during the school year for all courses is a new and often frightening experience for beginning law students. It should not be surprising that those already facing the difficult adjustment to a different racial and cultural environment have done poorly. Perhaps a system more closely related to the students' prior school experience could be devised to measure law school progress, at least during a "break-in" period. Practice examinations apparently are an inadequate substitute.

Another explanation may be that the curriculum of most law

sophomores, juniors and seniors which is similar to the CLEO program. It is "an effort to identify and evaluate students from selected southern colleges capable of completing advanced degree programs, to encourage such students to apply to graduate schools, and to recommend them for admission to appropriate graduate committees." 1968 ISSP Announcement. Many ISSP students have gone on to law school.

⁷⁵ However, "[t]here were too few Negroes in the group to provide a basis for a statistical conclusion as to them." 1967 MINORITY GROUPS STUDY 166. But of 554 LSAT tests administered without charge at 50 Negro colleges, the median score was only 349 and only 7% scored above 525; by comparison, the LSAT historical median is about 515.

⁷⁶ The Committee on Student Background Factors of the Law School Admissions Test Council, under the direction of Assistant Dean William Hall, Jr., of the University of Maryland, is now undertaking a study of the academic records of minority group students in law school.

schools is structured so as to place minority group students at a distinct disadvantage. First year courses, for example, often concentrate on historical or abstract materials unrelated to the prior experience of these students. Law schools might experiment with postponing such courses as pleading, procedure and property until the student becomes more familiar with the law school setting. Alternatively, a law school might consider something other than the total classroom program in order to provide these students with a better bridge for understanding legal materials. The apprenticeship or fieldwork programs of the San Francisco Legal Aid Project and of the Council on Education in Professional Responsibility⁷⁷ are examples of methods which merit further study.

On the other hand, special tutoring programs have generally proved unsuccessful. Harvard, NYU, Michigan and others have tried and expended considerable effort on intensive tutoring of Negro students. In each case the scholastic results were meager or insignificant. And in each school the Negro students eventually rebelled at being re-segregated into a group silently labeled inferior.⁷⁸ Perhaps this concern could be met by offering or requiring attendance at special tutoring sessions for others near the bottom-rank of their class without regard to race. Whether this procedure would avoid resentment, of course, is still conjectural.⁷⁹

Law schools also have not generally adopted a flexible course load—*e.g.*, light-loading students whose records or law school experience suggest possible difficulties—although the Emory experience seems to call for this alternative. True, Emory has claimed that its pre-start program is a method for successfully identifying Negroes capable of law study and not a compensatory “head start” program, but it seems more likely that Emory in fact has pointed out one method for successfully preparing Negroes to study at quality law schools.⁸⁰ That is, cultural and preparatory gaps for graduate

⁷⁷ See Sacks, *Student Fieldwork as a Technique in Educating Law Students in Professional Responsibility*, 20 J. LEG. ED. 291 (1968).

⁷⁸ Maryland and UCLA have claimed success in their tutoring efforts, but neither program has been operational for more than one year. Tutorials at the other schools, however, did not encounter stiff resistance and prove unsuccessful until their second or later years.

⁷⁹ Harvard's unsuccessful effort in this direction may have been hampered by other factors. Letter from Professor Frank Sander, Harvard Law School, to author, Oct. 1, 1968.

⁸⁰ Similar conclusions have been suggested by evaluations of pre-elementary school head start programs. *E.g.*, G. SMALL, WHAT WE HAVE LEARNED FROM CURRENT PROGRAMS AND RESEARCH ABOUT DISADVANTAGED PRE-SCHOOL AND ELEMENTARY SCHOOL CHILDREN 7

education may be closed by slowing down the learning pace—after a one or multi-course introduction the first year student carries only a reduced load; when sufficient progress is shown the student may be ready for a full load. The difficulty some Emory pre-start students have encountered in their second year—*i.e.*, their first year on a full load—supports this thesis. However, other explanations for the short-term effect of the pre-start program can also be offered,⁸¹ and the problem of re-segregating minority group students must be overcome if this suggestion is to be applied successfully.

Finally, an alternative quietly applied by at least one major law school, and probably the rule of more, is the application of a double standard—*i.e.*, passing Negro students on an easier scale. While this practice seems an undesirable reverse image of odious discriminatory tests applied in the past, it may be less objectionable. That is, if the double standard is only a law school's recognition that its normal standards are unnecessarily high, then the second standard utilizing competency rather than excellence as the test of graduation seems temporarily acceptable. What seems needed in this situation is an adjustment of the entire grading scale so that the grades of other students fairly measure relative success.

In the long run, as educational and cultural gaps narrow, the more pressing problem may be educating Negro students for the legal problems facing them after graduation. Current opportunities and, perhaps, the major interests of most Negro law students in the near future probably will not involve problems of corporate insiders and section 10b-5, admiralty, world law, or foreign taxation. What is needed for these and other socially concerned students in addition to the sound general background essential to success either on Wall Street or in the neighborhood legal office is an opportunity to take courses in law and poverty, urban law and urban renewal, low level problems of administrative law (*e.g.*, dealing with housing authorities,

(Chronicle Guidance Publications, Inc. 1967): "They learn best when they can proceed at their own pace. They do not perform well under pressure or on time-limited projects . . . They are likely to reach more plateaus in the learning where they will need additional individual attention than other students."

⁸¹ Professor DeVito of Emory acknowledges the compensatory feature of his pre-start program, but he also points out that the advantage of the program may be more psychological than compensatory in that the summer participant will have already gone through the rigors of a set of law school examinations, become familiar with law school surroundings, and made the initial adjustment to law school—which may be particularly difficult for the culturally disadvantaged student. Speech by Professor DeVito to Southeastern Conference of AALS, Oxford, Mississippi, August 19, 1968.

welfare agencies, etc.), or problems of consumer protection. The discussions of The American Assembly on "Law and the Changing Society" earlier this year indicate that serious thought is being given to rendering the law school curriculum more relevant to current societal needs.⁸² Evaluation and implementation must be the next steps.⁸³

D. Placement

Current programs for recruiting and training Negro attorneys on a greatly expanded scale will be rendered ineffective or, worse yet, will constitute a grossly deceptive scheme, unless Negro graduates are assured equal treatment when taking state bar examinations and seeking employment.

Little is currently known as to whether bar examinations are actually being administered even-handedly. Neither civil rights commissions nor bar associations have examined bar admission practices for racial discrimination; but even casual inquiries of Negro attorneys quickly reveal disturbing practices.⁸⁴ To date no serious complaints apparently have been registered, or at least reported. Whether this is the result of fair administration of bar examinations or of a lack of Negro applicants, however, is also unknown. Thus, as a matter of simple justice, in fairness to the Negro students they recruit for the law, and to protect their investment in these students, the law schools should encourage independent investigation of bar admission practices to satisfy themselves of their fairness, or, if necessary, to assure their fairness. This task would seem peculiarly adapted to an AALS or joint bar association-law teacher association effort.

The more difficult related question of whether the criteria relied upon by state bar examinations are fair or appropriate was raised recently at the CLEO evaluation conference. That is, do the bar

⁸² See *LAW IN A CHANGING AMERICA* (G. Hazard, Jr., ed. 1968). See also, e.g., *Symposium: Selected Problems on the Law and the Individual*, 44 *DEN. L. J.* 1-101 (1967).

⁸³ Harvard Law School has taken some initial steps in this direction. It currently offers a seminar entitled "Limitations of the Law in a Context of Social Upheaval," open only to Negro students or students with a record of participation in the civil rights movement. Seminars are also offered in race relations, consumer credit, law and social order, urban legal studies, and welfare law. In addition, the first year courses in legal methods and property seek to expose the student to landlord-tenant problems with emphasis on tenant's rights. *HARV. L. RECORD*, Sept. 26, 1968, at 7, col. 2; at 16, col. 1.

⁸⁴ One common practice related by several Negro attorneys to the author is the scheduling of searching character examination interviews on the day before the bar examination for Negro applicants; white applicants, in contrast, faced only cursory inquiries substantially in advance of the test.

examinations measure whether or not those who pass the examination have sufficient knowledge to be competent lawyers, and do the tests exclude only those who do not possess the requisite skills to represent their clients adequately? The problem is essentially the same as that facing the law schools in regard to admissions and to their educational methods and course content. The possibility certainly exists that bar examinations as well as law school course programs contain an inherent bias for the white middle class cultural background which is not immediately relevant to proficiency in the practice of law. The problem this presents to the law schools and the current system of state bar examinations seems equally difficult to resolve. Nonetheless, it seems obvious that bar examiners should re-examine current methods and standards and seek to learn from the experience of the law schools; conversely, the law schools have a similar obligation to assist and learn from the bar examiners.

Of equal significance is the problem of placement for the Negro graduate. Currently it cannot be gainsaid that many and probably most law firms discriminate against Negro attorneys.⁸⁵ In fact, the integrating of law firms, which has occurred most significantly in large firms in Northern metropolitan areas, is still the exceptional event. Although it cannot be asserted with certainty from current data, it appears that Negroes are still excluded from almost all white Southern law firms, and from most large and almost all middle and smaller sized law firms throughout the rest of the country. Exceptions are rare. Corporate law departments are beginning to drop their racial bars, primarily as the result of federal "equal

⁸⁵ E. Toles, *The Negro Lawyer in the United States*, October 14, 1966 (Report by the chairman of the NBA Judiciary Comm.), *reprinted*, 112 CONG. REC. A5458-59 (Oct. 20, 1966), quotes a study by Secretary of Labor Willard Wirtz apparently conducted in 1962 or 1963 responding to the assertion that qualified Negro law school applicants are rare: "I'll give you two answers. . . . One is in the recent issue of the Harvard Law Record in which you listed the things that employer firms are interested in, positively and negatively. [The] Negro has a minus 3.5 which is surpassed only by those who are in the lower one half of the class, those who are female, and those who are badly groomed. And we made a study recently, or a survey, to find out how many integrated law firms there are in the country. We are able to find 35 in the whole country. Well you are kidding yourselves if you think you are going to get good Negro boys to come to law school when they are going to be ruled out because their race is next to their being badly groomed as far as employers are concerned and they cannot go into integrated law firms. . . . I thing [*sic*] the legal profession has got a lot to answer for on this particular score—that today it is the worst segregated group in the whole economy or society. And we had better stop taking our signals from those whom we are serving. . . ." Cf. Note, *The Jewish Law Student and New York Jobs—Discriminatory Effects in Law Firm Hiring Practices*, 73 YALE L.J. 625 (1964).

opportunity" contract pressures and legislation, rather than because of the leadership of either the law schools or the bar.⁸⁶ Government, except perhaps on a state and local level in the South, is now open to Negro attorneys, and still-existing state and local barriers are falling rapidly, again because of federal "grant-in-aid" pressure.

Law teaching probably is still the least open segment of the profession today. Except for the predominantly Negro law schools there are only about a dozen Negro law teachers. While teaching traditionally has drawn its ranks from the upper ten percent of law school classes, few Negroes have achieved that position. As more Negroes attend and are successful in law school, it will be easier to determine whether lack of qualification in fact, rather than in the manner the phrase has been relied upon by the craft unions, is the reason for the almost all-white color of American law teachers.⁸⁷

But more should be demanded of law schools than merely increasing the number of Negro attorneys available for positions now open to them. Their current inert role in placement—of inviting and making space available for any and all employers to contact students—seems inadequate. Despite recent disturbances over campus recruiting by certain employers, it seems clear that universities will not and should not restrict placement services to only certain types of employers. But this premise does not lead inexorably to the conclusion that all employers must be welcomed. Certainly a distinction can be made regarding those employers who discriminate against some of a school's students for other than bona fide reasons. Employers discriminating on racial grounds should be denied use of a school's placement facilities. The difficulty, of course, will be in designing an effective but not burdensome enforcement scheme.⁸⁸ While such a policy may not alter the attitudes or practices of many, it is a legitimate use of the leverage available to legal education. Of course, law schools should not ignore efforts at quiet persuasion, but

⁸⁶ See *Wall Street Journal*, April 2, 1968, at 34, col. 1.

⁸⁷ Cf. note 18 *supra*.

⁸⁸ One method suggested by the federal government's equal opportunity program would be to require pledges of nondiscrimination from all employers seeking to use a school's placement service. Furthermore, taking a lesson from the Federal Housing Administration's "Precautionary Measures List," employers refusing to sign or failing to comply could be "black-listed" with all cooperating schools. But pledge programs have seldom been very successful, and law schools cannot become embroiled in investigation of compliance. On the other hand, a pledge program is better than current procedures; it might alter some practices, and it would be more satisfactory than the alternatives which come to mind.

attempts in this regard on other counts support serious doubts as to the effectiveness of this method in matters of racial discrimination. Finally, law schools might consider cooperative efforts or develop other methods to eliminate discriminatory employment practices.

III. ONE SCHOOL'S RESPONSE

As this survey reveals, even if the CLEO project and the individual efforts of many law schools meet their objectives, the obligation of *all* law schools to recruit and train Negro attorneys and to place them where needed will not have been fulfilled. CLEO is admittedly a limited project. It seeks to begin the preparation of an additional 300 minority group attorneys in the next three years—but the need is for another 30,000. If successful it deserves to be expanded.

The financial assistance offered by most schools is limited to tuition scholarships and some loan assistance, but experience suggests that without financial aid covering living expenses as well as tuition, most Negro college students are unable to consider graduate education. The rigors of law study make it difficult even for the best students to stay employed and in law school at the same time. Consequently, money for living expenses needs to be made available to Negro law students. Nor have programs been designed to encourage Negro attorneys to practice in the South where the shortage is most acute. As the AALS' Minority Groups Study recently concluded, "[t]he situation bespeaks the willingness to make use of any reasonable means of responding to the need consistently with acceptable education standards and basic principles of equality of opportunity."⁸⁹ Law schools, in other words, need to be "resourceful and imaginative" in developing programs to attract and sustain Negro students and to encourage their practice where the need for their services is greatest.

Many schools now recognize this special responsibility. New programs are being proposed and implemented. One recently developed at the Duke University Law School, for which funds are being sought,⁹⁰ is an example. Duke is concerned with the need not only to recruit and train qualified Negro attorneys but also to en-

⁸⁹ 1967 MINORITY GROUPS STUDY 160-161.

⁹⁰ On November 27, 1968, the Field Foundation awarded an \$85,000 grant to Duke Law School to provide tuition scholarships for five "high-risk" Negro students in each of the next three law school classes. Additional funds are still being solicited.

courage their practicing in the South. The Duke plan will proceed on both levels. In connection with recruiting, new ideas will be tried including systematic correspondence recruiting of Negro undergraduate scholarship recipients, use of computer printouts of Negro students from quality schools with substantial Negro enrollments, and a biennial conference at the law school for pre-law advisers from Negro colleges or colleges with substantial Negro enrollments. Modification of current law student training methods are also planned. An intensive counseling program is envisaged. Course loads will be tailored to individual performance without any set graduation time. If needed, a tutorial program will be operated by upper-class students under close faculty supervision. Resegregation of Negro students will be avoided by making the tutorial assistance available and mandatory to other members of the class who could profit from it. The curriculum is being revised and a "major area of study" approach is being considered. Those qualifying under the program will, depending upon their needs, receive full tuition, book allowances and living expense grants. To encourage the participants to practice in the South, these grants will be made on a 50-50 scholarship-loan basis, one half of the grant being an outright gift, the other half a loan repayable to the school in ten yearly installments beginning after graduation. But the loan will be forgiven and no payments expected if, upon graduation, the Negro attorney practices law in the South.⁹¹ Practically, of course, the student cannot be expected to promise to stay in one place or region forever. Nor does the plan seek this result. Rather, the forgiveness feature is designed to encourage at least three years practice in the South by forgiving one-third of the loan for each year of practice below the Mason-Dixon line.

CONCLUSION

It is too early to evaluate the success of these varied programs. Little objective data is available. Undoubtedly they will increase the number and improve the training of Negro attorneys in the country. Hopefully more Negro graduates will settle in the South where the need for Negro lawyers is the greatest. Although increasing, the scope of present commitments and the number of law schools devoting

⁹¹ Such restricted "forgiveness" loans are commonly provided by states for teachers and doctors. *E.g.*, MD. ANN. CODE art. 77, § 284 (1957) (teachers); N.C. GEN. STAT. § 116-174 (1966) (same); OHIO REV. CODE ANN. § 3315.35 (1960) (same); Health Professions Educational Assistance Amendments of 1965, 42 U.S.C. § 294a(f) (Supp. 1 1965) (doctors).

substantial efforts to recruiting and training Negro lawyers is still too limited. Current curriculum and placement practices deserve re-examination to eliminate all discriminatory features or results not required for maintaining quality. The challenge is to increase the number of Negro law students substantially and to expand the size of the qualified Negro bar while maintaining the best educational program possible in all law schools.

The long range significance of these programs, even if successful, is also difficult to assess. Increasing the number and training of Negro attorneys does attack three of the four commonly identified causes of racial violence⁹²—unequal justice, employment opportunities and education. The fourth, unequal housing, is indirectly affected. The shortage of Negro attorneys has also deprived the Negro community of responsible, effective, stable leadership which lawyers historically have exercised in this country. On the other hand, it must not be assumed that these legal education programs are substitutes for other poverty and civil rights programs. They cannot eradicate poverty and discrimination, prevent future riots, create better housing, improve and desegregate schools, or significantly affect the job opportunities of the vast majority of American Negroes. They can, however, provide the direction and means of expression necessary to advance those goals within an orderly society.

⁹² J. HERSEY, *THE ALGIERS MOTEL INCIDENT* 29 (Bantam Books ed. 1968); *RIOT COMM. REP.* ch. 4.

APPENDIX A*

Distribution of Negro Lawyers in the South

States	(1) Total Population 1960 (thous.)	(2) Negro Population 1960 (thous.)	(3) % Negro Pop. of Total Pop. 1960	(4) Total Lawyers 1966	(5) Population per Lawyer (cols. 1:4)	(6) Negro Lawyers 1968	(7) Negro Pop. per Negro Lawyer (cols. 2:6)	(8) % Negro Lawyer of Total Lawyer (cols. 6:4)
Alabama	3,276	980	30.0	3,041	1,077	20	49,000	0.66
Arkansas	1,792	389	21.8	1,933	927	10	38,900	0.52
Florida	4,997	880	17.8	9,549	523	44	20,000	0.46
Georgia	3,958	1,123	28.5	5,465	724	34	33,029	0.62
Louisiana	3,263	1,039	31.9	4,815	678	55	18,891	1.14
Mississippi	2,185	915	42.0	2,505	872	9	101,667	0.36
North Carolina	4,576	1,116	24.5	4,279	1,069	90	12,400	2.10
South Carolina	2,395	829	34.8	2,095	1,143	30	27,633	1.43
Tennessee	3,577	587	16.5	4,772	750	62	9,468	1.30
Texas	9,631	1,187	12.4	16,333	590	85	13,965	0.52
Virginia	3,987	816	20.6	5,800	687	67	12,179	1.16
South	43,637	9,861	22.6	60,587	720	506	19,488	0.86
U.S.—1966	195,857	21,508	11.0	313,462	625	3,000	7,169	0.96

**Caveat*: As noted in each column, the data reported here is based in part on differing dates and to that extent comparisons (as in columns 5, 7 and 8) are distorted. Review of available regional census data indicates that no significant changes have occurred in the intervening years. This date differential between columns does not apply, however, to figures for the United States as a whole since all data on that line is based on 1966 information (except that column 6, total Negro Lawyers in the U. S., is a 1965-68 estimate).

Sources: STATISTICAL ABSTRACT OF THE UNITED STATES 12, 27, 29, 161, 232 (1967); WHO'S WHO IN THE NATIONAL BAR ASSOCIATION 136 (1963); Carl, *The Shortage of Negro Lawyers: Pluraisitic Legal Education and Legal Education and Legal Services for the Poor*, 20 J. LEG. ED. 21 (1967); Personal or telephone interviews or correspondence with Professor LeMarquis DeLarmon, North Carolina College Law School; Dean Kenneth Tollett, Texas Southern Law School; Dean Agumaldo Lenoir, Southern University Law School; Professor Jerome Shuman, Howard University Law School; Hon. Billy Jones, President, National Bar Ass'n; Hon. Carlton Petway, Ass't. U.S. Dist. Atty, Nashville, Tenn.; Wiley Branton, Esq., Director, United Planning Organization, Washington, D. C.; R. Jess Brown, Esq., Jackson, Mississippi; Francisco A. Rodriques, Esq., Tampa, Florida.

APPENDIX B*

Law School Registration: Predominantly Negro Schools

SCHOOL	Y E A R					
	1968	1967	1966	1965	1964	1963
Florida A&M University	—	12	14	15	16	15
Howard University	416	422	372	320	191	138
North Carolina College	87	81	53	31	22	23
South Carolina State College	—	—	—	4	13	12
Southern University	31	24	14	16	12	10
Texas Southern University	87	50	34	32	28	25
TOTAL	621	589	487	418	282	223

**Caveat:* Howard University Law School's 1967 registration included 45 white students. 1968 enrollment at North Carolina College included 8 white students, whereas Southern University's Law School enrollment this year is nonwhite. Texas Southern's 1967 enrollment also included an additional 14 part-time students; 1968 registration figures include part-time students, and 23 of this total figure are white.

Sources: FORD FOUNDATION, . . . AND JUSTICE FOR ALL 37 (1967); 20 J. LEG. ED. 178 (1967); 19 J. LEG. ED. 200 (1966); Personal or telephone interviews or correspondence with: Professor Jerome Shuman, Howard University Law School; Dean Daniel Sampson, North Carolina College Law School; Dean Aguinaldo Lenoir, Southern University Law School; Dean Kenneth Tollett, Texas Southern Law School.

