

Michigan Law Review

Volume 69 | Issue 8

1971

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Recommended Citation

Harry T. Edwards, *A New Role for the Black Law Graduate—A Reality or an Illusion*, 69 MICH. L. REV. 1407 (1971).

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A NEW ROLE FOR THE BLACK LAW GRADUATE—A REALITY OR AN ILLUSION?

Harry T. Edwards*

I. THE PROBLEM

IN terms of sheer numbers, "progress" may be the apt term to describe the developing status of Blacks in the legal profession. In the decade since 1960, particularly during the last five years, the legal profession has become sensitized to the social problems stemming from the dire shortage of Black legal practitioners. With lawyer-like precision, the perceived societal need for greater numbers of Black attorneys has recently been exposed, studied, and debated at length within the legal community.¹ In this effort the needs of the larger community, and the Black community within, have been analyzed by practitioners, legal scholars, and laymen alike to support the case for expansion in the number of Blacks practicing at the bar.

Society in general, and the white-controlled professional bar in

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1. See, e.g., D. DENNIS, E. JONES & M. YOUNG, TASK FORCE FINDINGS ON PROBLEMS OF SOUTHERN BLACK LAW PRACTITIONERS, PRELIMINARY REPORT (1970) (unpublished report on file with the *Michigan Law Review*) [hereinafter TASK FORCE REPORT]; Askin, *The Case for Compensatory Treatment*, 24 RUTGERS L. REV. 65 (1969); Bell, *In Defense of Minority Admissions Programs: A Response to Professor Graglia*, 119 U. PA. L. REV. 364 (1970); Brown, *Racial Discrimination in the Legal Profession*, 53 JUDICATURE 385 (1970); Edwards, *Black Perspective: Justice and the Judicial System*, 15 L. QUADRANGLE NOTES 20 (Univ. of Mich. Law School, Winter 1971); Fleming & Pollak, *An Exchange of Letters—The Black Quota at Yale Law School*, 19 THE PUBLIC INTEREST 44 (Spring 1970); Gellhorn, *The Law Schools and the Negro*, 1968 DUKE L.J. 1069; Gellhorn, Address, in ASSN. OF AM. LAW SCHOOLS: PROCEEDINGS 28, 33-34 (1963); Gossett, *Bar Must Encourage More Negro Lawyers*, 4 TRIAL 22 (April-May 1968); Graglia, *Special Admission of the "Culturally Deprived" to Law School*, 119 U. PA. L. REV. 351 (1970); Leonard, Address to Assn. of Am. Law Schools Conf., April 1971, on file with the *Michigan Law Review*; McGee, *Minority Students in Law School: Black Lawyers and the Struggle for Racial Justice in the American Social Order*, 20 BUFFALO L. REV. 423 (1971); McPherson, *The Black Law Student: A Problem of Fidelities*, ATLANTIC, April 1970, at 93; Paone & Reis, *Effective Enforcement of Federal Nondiscrimination Provisions in the Hiring of Lawyers*, 40 S. CAL L. REV. 615 (1967); Pinderhughes, *Increasing Minority Group Students in Law Schools: The Rationale and the Critical Issues*, 20 BUFFALO L. REV. 447 (1971); Shuman, *A Black Lawyers Study*, 16 HOW. L.J. 226 (1971); Wirtz, Address, in ASSN. OF AM. LAW SCHOOLS: PROCEEDINGS 92, 100 (1963); *Symposium on the Black Lawyer in America Today*, 22 HARV. LAW SCHOOL BULL. 6 (1971); *Symposium: Disadvantaged Students and Legal Education—Programs for Affirmative Action*, 1970 U. TOL. L. REV. 277; Commentary, *Negro Members of the Alabama Bar*, 21 ALA. L. REV. 306 (1969); Comment, *Current Legal Education of Minorities: A Survey*, 19 BUFFALO L. REV. 639 (1970).

particular, has been prodded over the past decade to focus critical attention on the alarming underrepresentation of Blacks within the legal profession. Although prior to the late 1960's thoughtful observation would have revealed the paucity of Black lawyers, it has taken the composite effect of the civil rights movement, the angry voices of militant Black organizations, the violence borne of frustration during long hot summers, and the incisive commentary of the Kerner Commission Report² to trigger a serious and accurate assessment of the impact of racial imbalance at the bar.

Fortunately, the by-product of this effort at assessment has been the procreation of some excellent scholarly comment, which in turn has helped to produce long overdue compensatory education programs in the major American law schools.³ However, it is noteworthy that, with rare exception, most of the significant recent studies⁴ focus on the fact of numerical underrepresentation of Blacks in the legal profession as the critical consideration in any exploration of the problem. Most commentators have expressed a concern about the "severe shortage" of Black lawyers:

There is no need here to define exactly what constitutes "shortage," or to discuss the question whether the number of minority lawyers should be exactly proportionate to the minority population. The number of minority lawyers is now so small that there is a shortage by definition, and we are obviously years from having to confront the question whether the shortage no longer exists.⁵

As correlative considerations to this problem of underrepresentation, commentators have dealt with the question whether the "shortage" should in fact be overcome and, if so, what affirmative measures should be employed to deal with it. Only a few commentators, however, have dealt with the problem of the *quality*, as opposed to quantity, of Black participation in the legal profession.⁶ To date, the real concern has been to get more Blacks into law schools and then into the legal profession. The quality of Black participation in the profession has been treated as a secondary consideration.

It is not really surprising that so much attention has recently been given to the gross disparity in White v. Black participation in

2. NATIONAL ADVISORY COMM. ON CIVIL DISORDERS, REPORT (1968).

3. For a discussion of the various programs, see Rosen, *Equalizing Access to Legal Education: Special Programs for Law Students Who Are Not Admissible by Traditional Criteria*, 1970 U. Tol. L. Rev. 321.

4. See authorities in note 1 *supra*.

5. Summers, *Preferential Admissions: An Unreal Solution to a Real Problem*, 1970 U. Tol. L. Rev. 377, 381 n.8.

6. See, e.g., Shuman, *A Black Lawyers Study*, 16 How. L.J. 226 (1971).

the legal profession. Indeed, the question of *quality* participation by Black lawyers is an irrelevant consideration until there is a real commitment to give Blacks equal access to the formerly all-white legal educational institutions. In examining the nature of this heretofore obvious (but only recently acknowledged) problem of Black underrepresentation, at least three questions may be posed: (1) Why are there so few Black lawyers? (2) What impact does the lack of Black lawyers have within our society? (3) What must be done by the legal profession not only to alleviate the negative impact of such a shortage, but also to enhance the opportunity for Black attorneys to become a more significant and influential force in the effort to bring about social justice?

A. *Why Are There So Few Black Lawyers?*

The results of reliable surveys and statistical study reveal that of nearly 300,000 lawyers in America today less than 4,000 are Black.⁷ The exclusion of Blacks from the bar can be best highlighted by the comparative figures for some states in the southern region of the United States:

State	1970 Popula- tion ⁸	1970 Black Popula- tion ⁸	1966 Law- yers ⁹	1970 Black Law- yers ¹⁰
Alabama	3,444,165	908,247	2,712	24
Arkansas	1,923,295	357,225	1,789	10
Florida	6,789,443	1,049,578	7,801	60
Georgia	4,589,575	1,190,779	4,824	30
Louisiana	3,643,180	1,088,734	4,217	27
Mississippi	2,212,912	815,770	2,201	23
North Carolina	5,082,059	1,137,664	3,637	70
South Carolina	2,590,516	789,041	1,896	11
Tennessee	3,924,164	631,696	4,251	35
Virginia	4,648,494	865,388	4,758	103

Why such a disparity? One writer has suggested that this query is usually posed as a rhetorical question since the answer is self-evident:

7. See 116 CONG. REC. E. 7996 (daily ed. Sept. 2, 1970) [hereinafter RECORD]. Part of this material is reproduced in Appendix A *infra*.

8. U.S. BUREAU OF THE CENSUS, 1970 CENSUS OF POPULATION—ADVANCE REPORT.

9. Note, *Summaries of Judicial Salaries and Retirement Plans*, 49 JUDICATURE 168, 192-93 (1966). The figures are reproduced in RECORD, *supra* note 7. The figures given may be a little low; slightly higher ones are reported for 1966 in U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES: 1970, Table No. 242, at 156 [hereinafter 1970 STATISTICAL ABSTRACT].

10. See RECORD, *supra* note 7.

Segregation and discrimination, which permeates every aspect of our culture, operates directly and effectively to limit Black potential and maintain White socioeconomic advantage. This factor simplifies analysis somewhat since it is not necessary to ask if Blacks are disadvantaged in an area, only how they are disadvantaged.¹¹

Black Americans are the nation's largest distinct minority, constituting over 11% of the population,¹² yet they comprise less than 2% of all lawyers.¹³ This numerical disparity cannot be attributed solely to the financial inability of Blacks to pursue a legal education; it must also be squarely acknowledged as the result of past discriminatory practices within the legal profession. Until the past five years, most law schools either totally barred Blacks or admitted only token numbers.¹⁴ Further, there has been a historical disinterest on the part of intellectually capable Blacks in pursuing a legal career. This disinterest is not without justification when one catalogues the dim prospects for professional satisfaction due to racial discrimination by white bar associations, large white law firms, white judges and juries, white clients, and white bureaucrats, who control the governmental agencies.¹⁵ In the face of such barriers the number of Black attorneys has grown from 2,180 in 1960 to 3,845 in 1970.¹⁶ This marginal growth, however, may not be because of the system, but rather in spite of it.

The geographical distribution of Black lawyers highlights another critical shortage. It is noteworthy that less than 28% of the Black lawyers practice in the southern region, where over 50% of the nation's Black population may be found (excluding the District of Columbia, the figures are 14.7% of the Black lawyers compared to 49.9% of the Black population).¹⁷ Further, although Blacks make up over 18% of the total population in the southern states, Black lawyers constitute less than 1.5% of the total practicing lawyers in those same states (excluding the District of Columbia, the figures are over 17% of the total population, but less than 1% of

11. Shuman, *supra* note 6, at 257.

12. 1970 STATISTICAL ABSTRACT, *supra* note 9, Table No. 21, at 23.

13. See text accompanying note 7 *supra*.

14. See Gellhorn, *The Law Schools and the Negro*, 1968 DUKE L.J. 1069, 1070; O'Neil, *Preferential Admissions: Equalizing Access to Legal Education*, 1970 U. TOL. L. REV. 281, 300-01.

15. See Bell, *Black Students in White Law Schools: The Ordeal and the Opportunity*, 1970 U. TOL. L. REV. 539, 541; Morgan, *Dual Justice in the South*, 53 JUDICATURE 379 (1970).

16. See RECORD, *supra* note 7.

17. See Appendix B *infra*, cols. 7 & 8.

the total lawyers).¹⁸ A recent report dealing with the problems of southern Black law practitioners indicates that a substantial portion (30%) of Black lawyers in the South "are working in governmental programs, such as legal service and as governmental aides."¹⁹ Of those Black attorneys in private practice the overwhelming proportion were found to be servicing clients who were classified as poor in generally insignificant criminal, traffic, divorce, and personal injury matters. Additionally, the report reveals that "of the Black lawyers practicing in the South, approximately 90% graduated from southern Black Law Schools or Howard University."²⁰ Thus, it becomes clear that Black people in the South substantially lack Black legal practitioners as a means to protect Black interests in a region where racial discrimination has traditionally reigned and the law has for years been but a tool of subjugation.²¹

But the problem does not lie in the South alone, nor in any geographic limitation. Rather, one must look to the institutions within society for the real sources of discrimination. Professor Jerome Shuman made the poignant observation that

The most prominent factor obstructing Blacks from successful private practices is discrimination by large established White firms. This discrimination is being fought and slow headway is being made. But underlying this discrimination is social discrimination and client discrimination. The former is an artificial remnant of slavery and the latter is a remnant of the myth of White superiority. There is little that can be done directly to overcome these problems. The income potential of Black lawyers is dependent on the affluence of the clients they attract. Discrimination by corporations, affluent institutions, and other wealthy clients prevents Black lawyers from establishing an economic base on which to build.²²

The professor had further animadversions for the government

18. See Appendix B *infra*, cols. 3 & 6.

19. TASK FORCE REPORT, *supra* note 1, at 2. The study was conducted during the summer of 1970 and was financed through grants from the Field Foundation and the Cummins Foundation. The Report was limited to Black lawyers practicing in the South and Black law students who were from the South, regardless of where they were attending law school. *Id.* at 1. The findings were based on 102 interviews with Black lawyers who were practicing in 10 southern states and 54 Black law students who were then attending law school in the United States. *Id.* According to the authors, "the purpose of the study was (a) to identify the problems confronting Black law graduates who desired to set up a law practice in the South, and (b) to develop programs to encourage Black law graduates to return South and to develop programs to eliminate the problems that confront beginning legal practitioners." *Id.*

20. *Id.* at 7.

21. See Morgan, *supra* note 15.

22. Shuman, *supra* note 6, at 260.

sector. He warned that the equality in pay scales that Black attorneys in government enjoy with their white counterparts is deceiving. This equality merely shrouds a discrimination of another kind: few Blacks are placed in high power positions in the government. In Shuman's words, "[t]his same technique of high pay and medium position is most prevalent in industry and corporations."²³ The fact of discrimination by the large established white law firms when coupled with the parallel patterns of discrimination that have long excluded Blacks from important government positions²⁴ serves to explain in part why too few Blacks have achieved positions of power and influence in the bar.

In focusing on the fact that less than 1½% of the nation's legal practitioners come from the nation's 11% Black minority, there has been a tendency to halt the analysis upon unearthing this disparity. Aborting the analysis at this point unfortunately tends to engender a sense of relief that the problem has been fully identified, and thus has fostered a legion of proposed solutions which envision no efforts beyond a reduction in the mathematical disparity. Much heat and noise is now being generated by the organized bar and the law schools aimed at trimming this disparity. It will later be submitted that the number-proportion facet of the gap between white and Black participation in the legal profession is only one of the heads of the hydra of institutionalized racism in the professional bar. Therefore, it becomes essential to identify the companion facets of the problem of the lack of Black lawyers that confronts society today.

B. *What Impact Does the Lack of Black Lawyers Have Within Our Society?*

One useful approach to isolate the character of the problem and to define the scope of the needs identified as concomitant with the problem is to attempt to assess the role of the lawyer in contemporary society. The most frequently cited aspect of the lawyer's calling is his participation in the American governmental system. As any student of American government will acknowledge, the shuttle of history has carried the influence of lawyers like the threads of the woof through the warp of governmental evolution, structuring thereby the texture of American society. All three branches of

23. *Id.* at 260-61.

24. Cf. JOINT CENTER FOR POLITICAL STUDIES, NATIONAL ROSTER OF BLACK ELECTED OFFICIALS (1971) [hereinafter ROSTER].

government, the legislative, administrative, and judicial, deserve attention to put the impact, or lack thereof, of Black lawyers in perspective.

In the legislative area lawyers have historically exerted substantial influence by virtue of their professional training and their disproportionate numbers as compared with legislators from other professions.²⁵ At the Constitutional Convention in 1787, where a Black man was defined for constitutional purposes as $\frac{3}{5}$ of a person,²⁶ 30 of the 56 delegates at the Convention were lawyers.²⁷ This relative domination of legislative bodies by lawyers has carried over to the present day. The American Bar Association (ABA) has estimated that the percentage of lawyers in state legislative bodies has remained fairly constant at 25% since 1900.²⁸ As might be expected, the paucity of Black participation in the legal profession is reflected in a minimal participation in the councils of government. At the federal level, just prior to the November 1970 elections, of 435 Congressmen, 242 were lawyers, and of 100 Senators, 68 were lawyers.²⁹ However, only 9 of the 435 Congressmen and 1 of the 100 Senators were Black.³⁰ A recent report indicates that as of March 1971 there were 1,860 Blacks in elected public office ranging from local school boards to the United States Senate.³¹ This is a 22% rise over 1970, but still comprises only 0.3% of the total 522,000 elected officials in the nation.³² Over 60% of the offices held by Blacks are in the South, and over 60% of the positions are on school boards and city councils.³³ It is thus clear that although "the increases in Blacks elected to public office represent an encouraging and significant trend, Blacks still have a long way to go before they realize their full representation in Government."³⁴

In the administrative areas of government, in the execution

25. See generally H. EULAU & J. SPRAGUE, *LAWYERS IN POLITICS: A STUDY IN PROFESSIONAL CONVERGENCE* 11-12, 14 (1964).

26. U.S. CONST. art. I, § 2, amended by U.S. CONST. amend. XIV, § 2.

27. AMERICAN BAR ASSN., *CAREERS IN LAW: THE LAWYER'S ROLE IN SOCIETY, LEGAL AND PRELEGAL EDUCATION, STATISTICS 17-18* (1968) [hereinafter *CAREERS*].

28. *Id.* at 18.

29. 1970 STATISTICAL ABSTRACT, *supra* note 9, Table No. 543, at 360.

30. *Id.*

31. ROSTER, *supra* note 24, at 1.

32. See JOINT CENTER FOR POLITICAL STUDIES, *News Release 1-2* (April 27, 1971) (copy on file with the *Michigan Law Review*) [hereinafter *Release*].

33. See ROSTER, *supra* note 24, at 1.

34. *Release*, *supra* note 32, at 2, quoting F. Reeves, Executive Director of the Joint Center for Political Studies.

and enforcement of the laws, attorneys likewise enjoy a special position. The ABA has reported that "ten per cent of American lawyers are employed in government positions" and that "in the executive branch of government, law training is a recommendation for all kinds of policy-making and administrative-agency positions."³⁵ Here again we find gross underrepresentation of Blacks. For example, there are only 69 Black mayors, only 275 Black law enforcement officials (exclusive of policemen), and but a handful of other Black administrators in America today.³⁶

In the judicial area, among those who interpret and apply the laws, only 19 of the federal judges are Black; and only 195 of the city and state judges are Black.³⁷ At the state and municipal court level, most of the Black judges are sitting in New York, Illinois, Michigan, California, Ohio, and Pennsylvania;³⁸ in the remaining 44 states there are few Black judges.

If the degree of participation, influence, and, arguably, control exercised by lawyers in all aspects of the governmental system is juxtaposed with the dearth of Black participation and influence in the legal profession, then one significant justification for remedying the problem of "underrepresentation" may be seen. By increasing the number of Black lawyers it is at least arguable that a greater degree of Black participation in the governmental processes will result.

Given this *need* to correct the problem of inadequate representation among Blacks in law practice, it is axiomatic that legal education must be opened up and made available to Blacks in greater numbers. But the popularized concentration on those factors relating only to the quantity of Black participation in the American government system has had the attendant effect of obscuring consideration of the true panoply of needs for increasing Black impact on society by means of the Black lawyer. Not only might overemphasis on Black progress by the political engine obscure consideration of alternative roles for the Black lawyer that may be equally or more effective, but it must also be recognized that an inherent frailty exists within the political vehicle:

The dream of black political power is an old one; now . . . the

35. CAREERS, *supra* note 27, at 17.

36. See Release, *supra* note 32, at 2, 5.

37. See RECORD, *supra* note 7.

38. *Id.*

votes are there as well—and politics as a result is fast becoming the cutting edge of what used to be called the Negro revolution. . . .

And yet for Negroes to place too high store on the possibilities of politics as a route to salvation would be foolish—perhaps dangerously so. They remain, for one thing, a minority of 11 per cent in a white and at heart rather conservative society; the politics of the ghetto accordingly will have to make its compromises with white power to accomplish anything. . . .³⁹

II. THE REMEDY

A. *What Must Be Done To Remedy the Problem?*

The problem of underrepresentation has often been characterized simply as the need to alleviate the shortage in attorneys who can advise, counsel, and defend Blacks or the poor in general when they become subjects of and are adversely affected by our system of laws. However, such a definition of the problem is unnecessarily and unrealistically narrow. The system of laws in the United States cannot be affected substantively by mere representation because that system reflects nothing more than the power of certain men to transform their views into regularized and codified mores. Furthermore, the impact of the now identified problem of the lack of Black lawyers surely extends beyond the lack of representation in the elective political process. Indeed the impact of this scarcity extends in great measure to those “power pockets” and influential political lobbies in American society that historically have created, controlled, or dominated the process of societal decision. In this arena, the need for Black lawyers in the offices of major law firms, corporations, brokerage houses, and banks—the real power pockets in American society—is plainly apparent.

Thus the need for adequate Black representation in the legal profession goes beyond the current attention to pure numerical proportions. The arguments recently made and accepted have rested upon the assumption that the plight of the Black man in America will ease as the number of Black lawyers moving into the profession approaches the proportion of Blacks in the total population (33,000 lawyers or 11%).⁴⁰ This assumption is patently simplistic. The illusion has been generated that increased Black involvement at the bar will bring about Black power in society. As a consequence,

39. *Black Politics: New Way To Overcome*, NEWSWEEK, June 7, 1971, at 30.

40. See text accompanying notes 7 & 12 *supra*.

the institutions of legal learning are busy at the task of increasing Black admissions, developing "relevant" curriculums, and in general focusing institutional resources upon the preparation of a corps of young Black lawyers who can "return to *their* community." This is a deceitful scheme if the true goal is a modicum of Black power in society as a whole. Black lawyers must be directed toward, and have the opportunities to elect among, all phases of professional practice. The law schools, the professional associations, and the major law firms are rendering an egregious disservice to society in general and the profession in particular when, by acts of omission or commission, Blacks are "nudged" or "forced" to limit their professional career choice to "neighborhood practice" or practice with "legal service programs," both of which emphasize such matters as criminal defense, divorce and family law, personal injury, and landlord-tenant. Providing legal services for the poor is a necessary and important task to be discharged by the entire profession as a fundamental duty and responsibility of the calling. The responsibility must not be transmitted as the foreordained role of the newly increasing number of Black graduates. The gravity of this problem of misdirection of Black law students is becoming more apparent to Black scholars in legal education and appropriate concern is finally being voiced.⁴¹

Black lawyers must have the opportunity to move into all areas of concentration and specialty within the profession. In addition to dealing with problems of poverty, discrimination, and criminality, the upcoming generation of young Black lawyers must face no barriers to specializing in such areas as taxation, antitrust, securities, admiralty, corporate, labor, and administrative law. As Professor Shuman has noted, "[B]ecause of tradition, racial discrimination, and lack of training Black lawyers have been excluded from the areas of law where specialization would be most profitable."⁴² The professor was referring to individual pecuniary advantage, but it should be added that "profitable" also includes the benefits to Black society of having the Black perspective forcefully represented in those spheres of activity that are at the heart of the decision-

41. See, e.g., Leonard, Address to Assn. of Am. Law Schools Conf., April 1971, on file with the *Michigan Law Review*, at 3: "[I]t is an appalling disservice to the student to hold out the view that the heights he or she is supposed to reach is that of a sort of legalistic social worker"

42. Shuman, *supra* note 6, at 239.

making process, where the stakes are high and the impact ubiquitous.⁴³

The corporate lawyer, for example, whether associated with a major law firm or a large corporation, is relied upon to formulate and articulate societal norms under various guises. In the intense, yet hushed, world of the corporate legal advisor certain normative ideas deemed in the best interest of a particularized segment of society are nurtured.⁴⁴ This particularized segment of society (sometimes affectionately labeled "the establishment") with the aid of its lawyers plays a significant part in setting the pace and tenor of life as it is known in America. This is a historical fact as well as a present reality.

It is also a historical fact and a present reality that the interests of "the establishment" and its lawyers usually are not directed toward the plight of the Black American:

The anachronistic posture of the majority of the legal profession, reflected by the absence of minorities in law firms and courts, has tainted the profession with an image of insensitivity and insincerity toward the nation's social ills and in particular toward minority groups, and this image is beginning to take its toll of young lawyers.⁴⁵

Traditionally, it is only when discord erupts in the Black minority component of our mass production and consumption society—discord that is "bad for business"—that an attempt is made to acknowledge the existence of Black interests. But such an attempt is unfailingly focused on salving the immediate sore in order to get back to "business as usual" (e.g., Equal Opportunity Employment programs, Legal Aid programs, Headstart programs, and Philadelphia Plans), and rarely is the focus placed upon the pith of the problem, i.e., the elimination of institutionalized racism as a norm of society.

It is surely possible that one way to direct the interests of "the establishment" to the plight of the Black and to cause that establishment to move, albeit slowly, to eliminate the onerous oppressiveness of racism is to inject significant numbers of Black lawyers into the role of corporate legal advisor, for example. Opening the world of the lawyer in the boardroom to the Black input, the Black perspective, and the Black goal is one essential way in which the

43. Smith, *The Black Lawyer and Business and Industry*, in *Symposium on the Black Lawyer in America Today*, 22 HARV. LAW SCHOOL BULL. 61, 62 (1971).

44. *Id.* at 65.

45. Brown, *Discrimination in the Legal Profession*, 53 JUDICATURE 385, 386-87 (1970).

pith of racial disease may be extirpated from society. Hordes of programs and legions of lawyers directed at effects (*e.g.*, government processes, criminal arrests and convictions, drugs, slum landlordism, divorce, exclusionary unionism, poor schools) can only serve to temporize with the real problem. There is also a need to direct Black-thinking Black lawyers into the heart of the cauldron of causes (corporations, banks, brokerage firms, regulatory agencies, and large corporate law firms).

B. *The Theoretical Objections to the Remedy*

This need for a portion of the oncoming generation of Black lawyers to move into the formerly sacrosanct and off-limits areas of professional practice has not been much discussed, and, it may be ventured, will not be readily accepted. The fight against this area of discrimination is just beginning and only token headway is being made. The significant element of the obstacles erected within this area is attitudinal. The anti-Black attitudes are often sought to be supported by reference to such views as those of Professor Arthur Jensen in his articles *How Much Can We Boost IQ and Scholastic Achievement*⁴⁶ and *Selection of Minority Students in Higher Education*.⁴⁷ In a nutshell, those who accept Jensen as authority have questioned whether the intellectual capacities of Black students will permit them to stand up to the rigors of legal education. That question was posed in a letter written in 1969 by Macklin Fleming, a Justice of the Court of Appeals for California, to Louis Pollak, Dean of the Yale Law School, in which he criticized the admission of 43 Black students to the school without regard to their qualifications, which were below what he called "regular standards."⁴⁸ He predicted these Black students would find themselves unable to compete with the white students; the result would be agitation by the Blacks to change the environment to their own level of competition with a consequent reduction in over-all standards of performance. In his reply to Mr. Fleming, Dean Pollak pointed out that the admissions policies at Yale were not new, for other indices of promise besides college grades and LSAT scores had always been considered. Only the number of Black students admitted had been changed. He felt that increasing Black enrollment was justified,

46. 39 HARV. EDUC. REV. 1 (1969).

47. 1970 U. TOL. L. REV. 403.

48. Fleming & Pollak, *The Black Quota at Yale Law School—An Exchange of Letters*, 19 THE PUBLIC INTEREST 44 (Spring 1970).

because "[l]eadership—training is needed on many fronts, but it seems particularly clear that the country needs far more—and especially far more well-trained—black lawyers"⁴⁹

It is not the purpose of this Article to rehash the arguments pro and con dealing with the Jensen thesis. Enough clear evidence has already been reported to effectively blunt Jensen's assertions and to quash the notion that Black students as a group have hereditarily deficient intellects, incapable or less capable of coping with the rigors of a legal education.⁵⁰ It is also significant that despite a "culturally disadvantaged" heritage and despite the long history of exclusionary policies followed by the law schools and the law profession, many Blacks have *already* achieved a high degree of success in both the law schools and in the law profession. To this author the arguments advanced by Jensen and his followers are at best an amusing aside and are designed—in the true American tradition—to delay further the just claim of Blacks to equal status in our society.⁵¹

Two years after the Fleming-Pollak exchange it is disquieting and vexatious to note that Professor Summers of the Yale Law School has revived the arguments that the profession put behind when the barriers to increased Black law school admissions were relaxed (not removed). Professor Summers has recently argued that preferential admissions programs are an ineffectual and unnecessary waste of legal resources, at least as they apply to the so-called "distinguished" law schools with high standards of admission and performance.⁵² The professor postulates that the net result of preferential admissions by leading schools is not to increase the

49. *Id.* at 51.

50. See, e.g., Burt, *Intelligence and Heredity*, 42 THE NEW SCIENTIST 226 (1969); Hamblin, Buckholdt & Doss, *Compensatory Education: A New Perspective*, 1970 U. TOL. L. REV. 459; Rosen, *supra* note 3; Strickland, *Can Slum Children Learn?*, 7 AM. EDUC. 3 (1971).

51. In this same vein, Professor Rosen has recently observed that

The number of minority-group applicants who are well qualified under the traditional admissions criteria is increasing rapidly. Nevertheless it seems clear that many, perhaps a majority, of the black and brown students currently enrolled in predominantly white law schools were admitted on a preferential basis. . . .

By no means does it necessarily follow that individuals who are intellectually or educationally unqualified for the study of law have been admitted to accredited law schools in any great numbers. Many of the facts necessary to illuminate this subject fully are unknown; they may be unknowable because of the numerous variables and skewing influences involved. Yet, a number of considerations permit, even compel, us to proceed on the assumption that as a group the minority-group students who are admitted preferentially are capable of succeeding in law school and becoming qualified lawyers.

Rosen, *supra* note 3, at 326-27 (footnotes omitted).

52. Summers, *supra* note 5, at 394-97.

gross number of Black lawyers, but rather to shift the finite number of potential Black law students from the lower caliber to the more selective schools at great institutional cost.⁵³ It seems clear that Summers has either (1) failed to comprehend the scope of the problem of underrepresentation by succumbing to the previously noted restrictive view of the need for and future roles of Black lawyers or (2) found his working hypothesis in the milieu of impermissible and discredited social theory. Preferring to believe that it is the former rather than the latter reason, I would contend that the points previously advanced regarding the need for Blacks in an expanded professional role tend to refute the professor's premise and conclusions. It would appear that Professor Summers' views are based in part on the suppositions that (a) there is a finite number of potential Black students of law, and they are fungible; (b) schools with lesser standards are the better training ground for almost all Black aspirants to the bar; and (c) the qualitative nature of society's need for Black lawyers is correlative to the traditional quantitative standards imposed upon admission to the study of law.

Looking to the first supposition, there has been considerable discussion of the reasons for the historical lack of interest among Blacks for a career in law.⁵⁴ These reasons lie essentially in the justifiable view formerly taken by Black college graduates that discrimination in the system of justice and among those who hire lawyers dictated the choice of a field where the chances for advancement were greater. However, it is significant now that Blacks, like whites, are among the "college generation [that] is perceptive enough to realize that law is where the action is."⁵⁵ Not only is the number of Blacks attracted to a legal career growing, but the nature of their interest is expanding as well. Black students of law are now examining opportunities in taxation, corporate finance, real property transactions, securities, antitrust, labor, trusts and estates, and law teaching as well as in the traditional areas such as criminal law, family law, negligence and personal injury, and politics. This expansion of interests must be attributed in part to the quality of exposure and to the breadth of legal opportunity that is an integral part of the "distinguished" law school atmosphere. It is also a function of increased numbers. Thus, it is a tenuous position for Professor Summers to advance that there is a finite and fungible number

53. See Summers, *supra* note 5, at 401-02.

54. See, e.g., Brown, *supra* note 45, at 386.

55. TIME, May 24, 1971, at 52 (quoting unnamed law school administrator).

of Blacks who will be serious students of law solely on the basis of data influenced by historical discriminatory practices.

Looking to the second supposition, the societal need for Black lawyers to permeate all facets of the profession, when considered with the close relationship between law schools and the practicing bar, confutes any suggestion that law schools with lesser standards (or those of lesser professional reputation) are the more appropriate training ground for Blacks aspiring to the bar. Black community needs and Black lawyer interests are no longer narrow in perspective. Admittedly, there is a popularized notion that the greatest volume of demand for Black lawyers is among the poor community for legal aid services or criminal defense. Indeed, there is a need for *lawyers* (Black lawyers included) in these areas. But even assuming, *arguendo*, that it is possible to resolve these immediate problems as they occur by having Black lawyers available to meet them, not only must these symptoms of social dysfunction be treated as they arise, but attempts must be made to transform the initiating causes before their effects are visited upon the community. Acknowledging this necessity, it follows that the training needs for Black aspirants to the bar are as diverse as those of their white counterparts. It further follows that admissions to study and opportunities for placement after successful study must be opened to Black students according to their area of legal interest and to the community's area of legal need.

Looking to the final supposition, it should be obvious that the qualitative nature of society's need for Black lawyers is in no way correlative to the traditional and rigid quantitative standards imposed upon admissions to law study. Further, the traditional discriminatory standards inflicted by white lawyers and law firms upon Blacks seeking a professional career in other than "neighborhood legal services" must fall in the face of social reality. It remains to be added and emphasized that prior qualitative judgments made by the white power structure, usually articulated by lawyers, concerning the legal needs of the Black community have been rejected by that community and are in the process of being reformulated by that community. This reformulation is taking place for the most part without the active support of the establishment community, but it nevertheless shows sufficient vitality that we can feel confident of the irreversible nature of the process. Given these developments, then, we must recognize that a position for competent Black attorneys in the establishment hierarchy is essential to the future of so-

ciety, for the establishment hierarchy must have the benefit of Black vision and receive it on the level of equals. Lacking such Black vision and participation in the social process, opportunities for democratic absorption and compromise may go unrecognized or be turned away, with foreseeably unfortunate consequences.

It is thus submitted that the role of the Black lawyer in society is in the process of basic change, and it appears that the tempo of that change is likely to accelerate in the future. The new role of the burgeoning number of Black lawyers will be in part to formulate and articulate Black community interests within the influential echelons of our society. This role will place new demands upon the legal profession and upon the future Black lawyer. The premier demand upon the profession, greater numbers of Black lawyers, is in the process of being met and it should no longer be the point for critical debate. The process of enrolling and training Blacks for careers in law should now be routinized, with any further debate narrowed to questions of quality, not quantity, education.

The resolution of the threshold issues brings us to the next area of demand upon the profession, namely, that of moving Black attorneys into those nonpolitical roles of impact, influence, decision, and power. At least at the present time in American history, this role is the domain of the large white law firms and a few major corporate giants. These firms and corporations, both publicly and sub rosa, play a major role in our society. These firms for the most part minister to the needs of business, government, and certain individuals as societal institutions of dominant influence. For young legal talent these firms rely upon and look to those "distinguished" law schools that Professor Summers argued⁵⁶ should be set apart from the program of affirmative action to combat Black underrepresentation in the bar. It is evident that the nature and intensity of curricular and extracurricular exposure to legal areas of ongoing moment that exists in the so-called "distinguished" law schools and the impact wielded by the principal law firms are very strong indications that the Summers view is wrong, that the appropriate and primary place for educating Black lawyers should not be the lower caliber law schools. This conclusion becomes even stronger when we consider the high degree of interaction between the major law firms and the "distinguished" law schools.

56. Summers, *supra* note 5, at 402. The results of a survey of past recruitment patterns of major Midwestern law firms is found in Appendix C *infra*.

C. *The Basis for the Remedy—The Relationship Between the “Distinguished” Law Schools and the Major Law Firms*

In order to explore the law firm-law school conduit relationship as a potential means of enhancing Black lawyer influence, a study was undertaken in the summer of 1971 to examine principal law firms and their relationship to the law schools. Since the midwest region is the second largest area of Black population concentration with almost 21% of the national Black figure (the South being the largest with 52%),⁵⁷ it was selected to illustrate this relationship and the potential effects that stem therefrom. The survey⁵⁸ involved seven states and nine major metropolitan centers.⁵⁹ In the indicated cities the Black population ratio ranges from 4% to 44%, with only one area below 14%.⁶⁰ For purposes of the survey, “Major Midwestern Law Firms” was defined to include all firms in the indicated cities that employed at least thirty attorneys (partners and associates).

In order to discover and illustrate any existing relationships, the survey was divided into two parts. The first part of the survey⁶¹ sought to unearth the connection between the surveyed law firms and the law schools. This study was limited to “associate” (*i.e.*, non-partner) attorneys presently employed by the major law firms so that the results would reflect more current recruitment and hiring patterns. This part of the survey sought to discover relationships between the major law firms and the “distinguished” law schools by identifying the law schools attended by all of the associates presently employed by the firms surveyed. The study revealed the following:

- (1) There were 71 law firms employing 30 or more attorneys in the 9 sample cities.
- (2) There were 1,427 associate attorneys in the 71 firms.
- (3) Of the 1,427 associates, 921, or 60%, received their legal education at 10 law schools. The remaining 40% received their legal training at 58 law schools.
- (4) Among the 10 law schools that provided 60% of the associ-

57. 1970 STATISTICAL ABSTRACT, *supra* note 9, Table No. 18, at 19.

58. Appendices C-F *infra*.

59. See Appendix G *infra*.

60. *Id.*

61. Appendix C *infra*.

ates to these major law firms, 5 schools contributed nearly 50%. Further, 2 schools (Harvard and Michigan) were the source of almost 30% of all the associates in the 71 firms.⁶²

Most of the schools within the 10 noted are characterized in professional circles as "national" or "distinguished" institutions of legal learning. Upon examining the total enrollment and the Black enrollment of these 10 schools,⁶³ it will be found that the greatest potential for opening these "major" or "principal" law firms to Black law graduates is within the existing framework of relationships. This is so because the law schools that emerged from the survey as the prime sources of new legal talent for the firms are also those law schools that have been in the forefront of the effort to recruit and train future Black lawyers. Because of the variations in enrollments and school sizes, numbers and statistics may be misleading at this juncture, but certain general observations may properly be tendered:

- (1) The 2 largest schools in terms of total enrollment, Harvard and Michigan, also have the greatest number of Blacks enrolled (118 and 77 in 1970-1971, and 150 and 113 anticipated for 1971-1972, respectively).⁶⁴
- (2) Only 1 school, Yale, had a 10% Black enrollment in 1970-1971, and again Yale will be the only school with over 10% in 1971-1972; Michigan, Northwestern, and Harvard will approach 10% in 1971-1972.⁶⁵
- (3) All of the 10 schools anticipate increases in Black enrollment for 1971-1972, although 4 will still remain below 5% in Black enrollment. These 10 schools contemplated enrolling 547 Blacks in 1971-1972,⁶⁶ approximately equivalent to the 576 Blacks enrolled in the 1970-1971 year at all 4 "Black law schools."⁶⁷

A portion of the energies to be marshalled in directing Black lawyers into the principal law firms thus should be applied to ex-

62. See Appendix C *infra*.

63. See Appendix H *infra*.

64. *Id.*

65. *Id.*

66. *Id.*

67. See TASK FORCE REPORT, *supra* note 1, at 11. The four Black law schools referred to are Howard University, North Carolina Central, Southern University, and Texas Southern University.

exploiting the existing well-developed interrelationships between this type of law school and the targeted type of law firms:

Many law firms have defended their hiring policies by arguing that there are not enough Blacks graduating from law schools. Such firms overlook the close connection between law firms and law schools. In probably no other field does the profession have as much influence over its learning institutions as does the legal profession over law schools.⁶⁸

This admittedly cursory examination of the interrelationship between principal law firms and major law schools should serve only the purpose of initially identifying the situation and its potential for the needs of Black people. More study in greater depth is required, but such study should not become a means of justifying delay on the part of firms and schools in the initiation of policies that would channel opportunities to the unprecedented numbers of Blacks who will be graduating from law schools in the immediate future.

The second portion of the study⁶⁹ sought to determine the hiring patterns for Blacks among major midwestern law firms. As in the first survey, the law firms surveyed were those employing more than thirty attorneys in the nine large midwestern cities. Large firms were selected both because they employ a large percentage of the lawyers working in these cities and because of their presumed influence and prestige, both in the legal community and in the community at large. The survey was conducted by a confidential questionnaire submitted to the large law firms;⁷⁰ 44 of the 71 firms replied and answered the questionnaire. The results revealed the following:

1. Only 1 out of 1,249 "partners" in the responding firms was Black, and only 12 of 976 "associates" were Black.⁷¹
2. With the exception of Minneapolis-St. Paul and Columbus, the percentage of Black lawyers employed in the firms surveyed varies directly with the relative size of the black population of the city. Thus Detroit, with the largest percentage of black population, also had the highest percentage of black lawyers per firm surveyed.⁷²

68. Brown, *supra* note 45, at 386.

69. Appendices D, E & F *infra*.

70. The Questionnaire is reproduced as Appendix I *infra*.

71. See Appendix D *infra*, cols. 4 & 6.

72. See Appendix F *infra*, col. 5.

3. In each case, except Minneapolis-St. Paul, the percentage of Black lawyers among total lawyers in the state is significantly higher than the percentage of Black lawyers among the number of lawyers in the firms surveyed.⁷³ State figures were used here as figures for Black lawyers per city were unavailable. However, state figures should give a roughly accurate yardstick of Black lawyers per lawyers in each city as the great bulk of the Black population of each state (except Pennsylvania) is located in the urban centers surveyed. The survey assumes that the incidence of Black lawyers likely to be found outside of the cities is very small compared to the number in the cities. The data can be explained in many ways: as a residual effect of previous discrimination (*i.e.*, Blacks not desiring to enter all-white firms), as evidence that a large corporate law firm is a white man's firm and intends to stay that way (a theory strongly protested in comments received from some of the responding firms), or as an indication of ideological splits between Black lawyers and the attorneys working in the firms surveyed. One factor that is almost surely involved in this difference in the percentages is the general tendency of large corporate firms to rely on the placement offices of the "major" law schools as the prime device for whatever recruiting they do. Until recently, the number of Blacks attending "major" law schools was very small and the number utilizing the placement offices even smaller; these circumstances resulted in a lack of contact between firms such as those surveyed and Black applicants.
4. The percentage of Black "associates" per city varied directly with the relative Black population of the city, with the exception of Minneapolis-St. Paul.⁷⁴ This, of course, is to be expected, consistent with 2 above.
5. In the matter of summer positions, there are more cities in which a Black clerk will be working this summer (1971) than there are cities in which a Black attorney is currently being employed.⁷⁵ In all cities in which Black clerks are being employed this summer, the percentage of Black clerks to total clerks employed is significantly higher than the percentage of

73. See Appendix F *infra*.

74. Compare Appendix D *infra*, col. 7, with Appendix G *infra*, col. 3.

75. Compare Appendix E *infra*, cols. 3 & 4, with Appendix E *infra*, col. 5.

Black associates to associates surveyed.⁷⁶ In all cities employing Black clerks, the percentage of Black clerks to total clerks exceeds the percentage of Black lawyers to total lawyers in the state.⁷⁷

In analyzing these data, it is too easy merely to say that more Blacks are now attending the "major" law schools and, therefore, more are being employed by larger corporate firms, which recruit primarily from those schools. The presence of more Black students at such institutions may, of course, be a major factor in increased Black hiring, both because many of the large firms tend to rely on a school's reputation to determine the abilities of the individual applicant, and because more Blacks will tend to be in contact with the larger firms than before. Along with this factor, however, must be coupled a growing sense of "acceptability" of Black attorneys in large firms. For example, only 1 Black partner was found (in Cleveland) among all the firms surveyed, and he was hired in 1968. Of the 12 Black associates found, 10 were hired in 1970 or 1971. The data suggest a recent "trend" toward breaking down whatever racial barriers there may be in larger firms.

This conclusion is borne out by the comments received with many of the survey returns. Only 1 firm could be classified as hostile (*i.e.*, it decided not to participate and chose to respond to advise of its decision). Of the 44 others, 10 sent along either comments indicating a willingness to hire Black applicants (*e.g.*, "We are constantly in search of scholastically qualified Black and other minority group applicants," "During the past five years we have had only one single Black applicant for a job as a legal associate, part-time or temporary. We would welcome qualified applicants") or explaining that the reason they had not hired Blacks was not because of any policy, but because they had no qualified applicants. Further, of the 44 firms, 28 in 8 cities had "seriously considered" a Black applicant within the past 3 years, and 19 firms in 7 cities had made an offer to a Black applicant for an associate's position within the same period. Of the 56 offers made by these firms, 20 were accepted and 36 refused, a fact indicating either a somewhat greater percentage of Blacks recruited than presently employed in these firms or a duplication of offers made to certain Black students by several firms.

This survey indicates a slight trend toward increased hiring of

76. Compare Appendix D *infra*, col. 10, with Appendix D *infra*, col. 7.

77. Compare Appendix D *infra*, col. 10, with Appendix F *infra*, col. 2.

Blacks in some major midwestern firms employing more than 30 attorneys.⁷⁸ This trend, however laudable, indicates that the formerly closed corporate door is only slightly ajar, not yet fully open. The percentage of Blacks employed by the large firms surveyed is still *well below* the percentage of Black lawyers in the total attorney population in all but one state studied. Even with increasingly larger numbers of Blacks employed as summer clerks in 1971, the fact remains that if all of these clerks were hired without any other increase in the firms surveyed, only in one area (Minneapolis-St. Paul) would the percentage of Blacks in the firms surveyed equal or exceed the percentage of Black lawyers (per total lawyers) in the state. With an increased number of Blacks attending the "major" law schools, however, hopefully more large firms will be exposed to "qualified" Black applicants, and more Black applicants will be encouraged to apply to these firms because of brighter prospects of success in obtaining employment. If this is true, the trends indicated by this survey may be followed by greater equality in job opportunity in large law firms in the Midwest.

The results of the second survey offer at least some hope that there will be a more open and active searching by major firms for Black associates. If the expressed attitudes are sincere, the duty devolves upon the firms, the law schools, and the profession in general to ensure a matching of student interests with these expanded firm requirements. Placement of Blacks into this area of practice has not yet become a grave problem because of the lack of interest on the part of firms beyond a "token" minimum of Blacks, the lack of interest on the part of Black students to prepare for this type of practice resulting from an awareness that there would be no opportunities, and the insurance, for the few Blacks studying law, that some other form of professional opportunity would be available upon graduation (*e.g.*, solo practice, government bureaus, Legal Service programs, NAACP, Reginald Heber Smith Fellowships, Legal Aid, and Public Defender offices).⁷⁹ However, the placement of Blacks in professional

78. Compare Appendix D *infra*, col. 7, with Appendix D *infra*, col. 10.

79. The difficulties that will face Black placement are perhaps most obvious in the South. The authors of one study in that region have noted that

Unlike whites, Black law graduates do not have "law firms" into which they can go. Of 50 Northern law schools and 40 Southern law schools we contacted, none reported that Southern law firms were recruiting Blacks. The Southern law schools, including Howard, reported that neither white nor Black Southern law firms actively recruit on their campuses. In regard to Black law firms, we were able to locate very few.

TASK FORCE REPORT, *supra* note 1, at 8-9.

positions upon graduation from law school takes on a grave character when we consider the substantially increased number of Blacks now preparing for careers in law. No longer will a Black graduate be able to go out and do the best he can on a hit-or-miss basis. The situation at the University of Michigan Law School is probably reflective of the trend at many law schools:

*Blacks entering in the Freshman Law Class*⁸⁰

1966 —	0
1967 —	6
1968 —	14
1969 —	17
1970 —	54
1971 —	50 (anticipated).

Extensive commentary on the seriousness of the coming professional placement problem is not necessary; the explosion in Black enrollments⁸¹ speaks for itself—or soon will.

In the spring of 1971 a survey was taken of Black second- and third-year law students at the University of Michigan Law School regarding placement and career plans.⁸² This survey revealed that over 50% of the 1971 graduating seniors were going into those traditional areas of practice open to Blacks (*e.g.*, Justice Department, Public Defender offices, Legal Aid offices). An additional 25% of graduating seniors were entering into private practice with community or civil rights firms. No graduating seniors were going into corporate practice, judicial clerkships, or any of the other previously discussed areas of need.

The Placement Office at Michigan Law School, as is true with many law school placement offices, caters overwhelmingly to that third area of career opportunity, so an effort was made to determine why Black students had omitted this area as a career choice. The results of the investigation provide a partial answer. All of the graduating seniors had previously held second-year summer jobs, but only half of these were law-related jobs. Of the half that were law related, only one was acquired through use of placement office services. But over half of all the students had sought opportunity through the placement service. Of those jobs acquired by means other than the placement service, 50% were from personal

80. Figures from Dean of Admissions, Michigan Law School.

81. *See, e.g.*, Appendix H *infra*.

82. Survey on file with the *Michigan Law Review*.

contacts and 25% were secured by means of faculty contacts. Among the students who had not sought to use the placement service, the reasons given for nonuse were "not interested in the jobs offered," "office was irrelevant," "useless for Blacks to go," and "placement office discriminates." No effort was undertaken to look behind the "reasons" given, but the fact that they were stated highlights an attitudinal problem irrespective of the verity of the assertions made.

The students were also questioned about whether they felt there was equality of opportunity with white law students in securing jobs via the placement services. Only 15% responded favorably. Of the 85% responding negatively, 34% cited racial bias as the reason, 17% cited grades, and 34% cited the white middle-class orientation of corporate law firms. There was also mention of the belief that firms do not make a sincere effort, that firms are only seeking a token Black, and that there is a lack of attention to Black concerns by the placement office.

This survey was made of 11 third-year students and 11 second-year students, admittedly a small sample from which to propound unchallengeable conclusions, but the size of the sample itself is reflective of past exclusionary admissions practices. It is anticipated that the experiences of the present first-year class (54 students) will yield more reliable and predictive data. What the survey does is point to particular areas that should be given immediate attention. The need for attention takes on a more critical aura when viewed not just as the general need to secure professional opportunities for the growing numbers of Black graduates, but also as the more particular need to move Black graduates into *significant* professional positions of influence and responsibility.

The responses to the law firm survey⁸³ revealed that of 976 associate attorneys, only 12 were Black; of the 1,249 partners, only 1 was Black; of the 220 summer clerks employed in 1971, only 12 were Black. Thus the first task of the law firms is to make a total commitment to provide equal employment opportunity. This means that firms must take a positive view toward recruiting Blacks for those positions from which they have historically been excluded. The onus is upon the firms to seek out those Blacks oriented toward "their kind of practice," and further to make it widely known to future Black students that opportunities will be available for those who prepare for them.

83. See Appendices D, E & F *infra*.

The onus is also upon the law schools to undertake a comprehensive re-evaluation of placement office practices and relationships with law firms and alumni. The law schools must goad, and be goaded by, the law firms into implementing programs geared to opening the conduit to law firms for the coming generation of Black law students. Programs must be established to apprise both law firms and Black law students of the needs that must be met and the opportunities to meet them if our society is to receive any benefits from the reduction of the disparity in the proportion of Blacks at the bar.

The organized bar associations, especially Black ones, have a vital catalytic role to play in making all the various parts of the solution—the professional considerations, the law firm inputs, the law school programs, the community demands, and the interests of young Black lawyers—one synergistic effort. If this is not a function for bar associations, then they have no function at all.

If the array of professional components can be made to function harmoniously to achieve this single and essential goal, then the final onus will fall upon Black students to become aware of and respond to the opportunities available. With the firms, schools, and bar associations working to eliminate the barriers of discrimination, it will, for the first time, be up to the Black student to make the discriminating choice: the choice among competing professional avenues and opportunities.

The Black students have a second role to play in this process and I feel certain that they will assert it, whether invited to do so or not. This role is expressed here more as a warning to the professional entities than as advice to the students of their need to act. The role is to act as a more creative, vigorous, and assertive advocate of contemporary community and student concerns. This role is useful both in the planning stages of any total professional efforts and as a check upon any misguided action at later stages. The profession must not just accept the Black student's input grudgingly, but must actively seek it out, lest any effort, no matter how well-conceived, lose its efficacy and chances for success.

III. CONCLUSION

In this era of intense and expanding conflict, society can ill afford to lose or underutilize Black resources. Frustration, dissatisfaction, and disillusionment have built to the point that the legal profession must change to accommodate Black lawyers within all

levels of the profession, even if only in response to imminency of social eruption. Blacks will be the engine of Black progress in America; or, to a lesser extent, Blacks will be the engine of societal destruction if there is not sufficient recognition by the establishment that there must be an input of the Black vision in the societal process. To the extent that the norms generated in the societal process are the product of, or are influenced by, the legal profession, and to the extent that major law firms and corporations in partnership with important government officials and members of the judiciary occupy the lion's role in that process, there is an undeniable need for more Black lawyers to exert a full measure of Black power within those councils of the lions.

APPENDIX A
BLACK LAWYERS AND JUDGES PER STATE

State	(1) 1970 Population ¹	(2) 1970 Black Population ¹	(3) 1966 Total Lawyers ²	(4) 1970 Black Lawyers ³	(5) 1970 Black Judges ³
Alabama ⁴	3,444,165	908,247	2,712	24	1
Alaska	302,173	8,911	198	1	0
Arizona	1,693,000 ⁶	43,403 ⁷	1,693	2	1
Arkansas ⁴	1,923,295	357,225	1,789	10	0
California	19,953,134	1,400,143	22,798	373	15
Colorado	2,207,259	66,411	3,635	10	2
Connecticut	3,032,217	181,177	4,002	26	3
Delaware ⁴	548,104	78,276	514	3	1
Florida ⁴	6,789,443	1,049,578	7,801	60	2
Georgia ⁴	4,589,575	1,190,779	4,824	30	3
Hawaii	768,561	7,573	482	1	0
Idaho	712,567	2,130	683	1	0
ILLINOIS ⁵	11,113,976	1,425,674	19,045	667	26
INDIANA ⁵	5,193,669	357,464	4,757	56	2
IOWA ⁵	2,825,041	32,596	3,596	15	2
KANSAS ⁵	2,249,071	106,977	3,013	30	2
Kentucky ⁴	3,219,311	241,292	3,353	22	4
Louisiana ⁴	3,643,180	1,088,734	4,217	27	2
Maine	992,048	2,800	990	0	0
Maryland ⁴	3,765,000	518,410 ⁷	5,301	32	5
Massachusetts	5,689,170	175,817	10,443	50	3
MICHIGAN ⁵	8,875,083	991,066	9,464	250	15
MINNESOTA ⁵	3,805,069	34,868	4,787	14	1
Mississippi ⁴	2,216,912	815,770	2,201	23	0
MISSOURI ⁵	4,677,399	480,172	7,501	64	6
Montana	694,409	1,995	1,031	1	0
NEBRASKA ⁵	1,483,791	39,911	2,358	5	0
Nevada	488,738	27,762	441	4	1
New Hampshire	737,681	2,505	647	1	1
New Jersey	7,168,164	770,292	9,460	65	9
New Mexico	994,000 ⁶	17,063 ⁷	980	0	0
New York	18,190,740	2,166,933	50,204	650	36

APPENDIX A (Continued)

State	(1) 1970 Population ¹	(2) 1970 Black Population ¹	(3) 1966 Total Lawyers ²	(4) 1970 Black Lawyers ³	(5) 1970 Black Judges ³
North Carolina ⁴	5,082,059	1,137,664	3,637	70	2
NORTH DAKOTA ⁵	617,761	2,494	742	0	0
OHIO ⁵	10,652,017	970,477	15,535	416	18
Oklahoma ⁴	2,559,253	177,907	4,829	16	2
Oregon	2,091,385	26,308	2,657	7	1
Pennsylvania	11,793,909	1,016,514	12,319	141	14
Rhode Island	949,723	25,338	1,070	2	0
So. Carolina ⁴	2,590,516	789,041	1,896	11	1
So. DAKOTA ⁵	665,507	1,627	760	0	0
Tennessee ⁴	3,924,164	631,696	4,251	35	3
Texas ⁴	11,187,000	1,187,125 ⁷	14,022	95	2
Utah	1,059,273	6,617	1,151	1	0
Vermont	444,330	761	496	0	0
Virginia ⁴	4,648,494	865,388	4,758	103	3
Washington	3,409,169	71,308	3,907	20	3
West Virginia ⁴	1,744,237	73,931	1,809	8	1
WISCONSIN ⁵	4,417,933	128,224	6,231	18	0
Wyoming	332,416	2,568	497	1	0
D.C. ⁴	756,510	537,712	12,603	503	6
TOTALS	202,911,581	22,260,609	288,336	3,845	195
				Fed. Courts	19
				Total	214

1. U.S. BUREAU OF THE CENSUS, 1970 CENSUS OF POPULATION—ADVANCE REPORT.

2. Note, *Summaries of Judicial Salaries and Retirement Plans*, 49 JUDICATURE 168, 192-93 (1966). The figures are reproduced at 116 CONG. REC. E. 7996 (daily ed. Sept. 2, 1970) [hereinafter RECORD]. These figures may be low; slightly higher ones are reported for 1966 in U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES: 1970, Table No. 242, at 156 [hereinafter 1970 STATISTICAL ABSTRACT].

3. RECORD, *supra* note 2.

4. States of the South [hereinafter Southern Region]. 1970 STATISTICAL ABSTRACT, *supra* note 2, Fig. I, at xii.

5. States of the North Central Region [hereinafter Midwestern Region]. *Id.*

6. 1970 data not available; 1969 preliminary data used. *Id.*, Table No. 11, at 12.

7. 1970 data not available; 1960 data used. *Id.*, Table No. 27, at 28.

APPENDIX B
COMPARATIVE STATISTICAL DATA

Area	(1)	(2) Popu- lation	(3)	(4)	(5) Lawyers	(6)	(7) Percent- age of Total Black Popula- tion Located in	(8) Percent- age of Total Black Lawyers Located in
	Total ¹	Black ²	Black Per- centage	Total ³	Black ⁴	Black Per- centage		
United States	202,911,581	22,260,609	10.9% ⁵	288,336	3845	1.3%	100%	100%
Southern Region ⁶	63,200,192	11,648,775	18.4	80,607	1072	1.3	52	27.9
Southern Region without D.C. ⁶	62,443,682	11,111,063	17.8	67,914	569	.8	49.9	14.7
Midwestern Region ⁷	56,576,317	4,572,550	8.1	77,789	1535	2.0	20.5	39.9

1. See Appendix A *supra*, col. 1 and accompanying notes.

2. See Appendix A *supra*, col. 2 and accompanying notes.

3. See Appendix A *supra*, col. 3 and accompanying note.

4. See Appendix A *supra*, col. 4 and accompanying note.

5. This figure does not agree with that in Article *supra*, at note 12. The difference is because certain 1960 figures were used in Appendix A *supra*, col. 2 (see note 7 of Appendix A) and the percentage here is based on that figure. The data used for the figure in Article at note 12 were not broken down by state.

6. See Appendix A *supra*, n.4 and accompanying text.

7. See Appendix A *supra*, n.5 and accompanying text.

APPENDIX C
RECRUITMENT PATTERNS OF MAJOR MIDWESTERN LAW FIRMS
Law Schools Attended by the "Associate" (Non-partner) Attorneys Presently Employed by Major Midwestern Law Firms¹

Law Schools Attended by Associates Presently Employed	Total Associates in									Total Assoc. from Each School	Assoc. from Each School as a Percent- age of Total ³
	Chi- cago	De- troit	India- nap- olis	Minne- apolis- St. Paul ²	Cin- cin- nati	Cleve- land	Colum- bus	Pitts- burgh	Mil- wau- kee		
Harvard	105	17	7	18	7	26	5	17	14	216	15%
Michigan	58	52	12	2	12	39	5	8	13	201	14
Northwestern	99	4	—	1	1	6	1	2	4	118	8.5
Chicago	67	2	—	3	1	4	—	—	2	79	5.5
Minnesota	2	—	—	67	—	2	1	—	—	72	5
Wisconsin	22	—	—	5	—	3	—	—	22	52	3.5
Illinois	51	—	—	—	—	—	—	—	—	51	3.5
Duke	7	—	1	4	5	23	1	4	3	48	3.5
Yale	21	—	1	4	1	8	1	4	2	42	3.0
Ohio State	2	—	—	—	3	11	25	—	1	42	3.0
Western Reserve	1	—	—	—	—	32	—	—	—	33	2.3
Georgetown	13	3	—	5	—	5	1	2	2	31	2.3
Columbia	11	1	1	1	3	8	—	1	1	27	1.9
Indiana	9	—	14	—	—	2	—	—	1	26	1.8
Notre Dame	11	2	—	1	5	3	—	—	2	24	1.7
Pittsburgh	1	—	—	1	—	1	—	21	—	24	1.7
DePaul	24	—	—	—	—	—	—	—	—	24	1.7
Loyola	24	—	—	—	—	—	—	—	—	24	1.7
Iowa	8	1	1	5	—	3	1	—	2	21	1.5
Wayne State	3	16	1	—	—	—	—	—	—	20	1.4
Virginia	7	—	—	—	2	7	—	1	1	18	1.3
Pennsylvania	5	—	—	—	—	4	—	6	—	15	1.1
NYU	6	1	—	3	—	4	—	—	1	15	1.1
Stanford	5	1	—	2	—	—	—	2	4	14	1.0
Duquesne	—	—	—	—	—	—	—	14	—	14	1.0
University of Detroit	—	14	—	—	—	—	—	—	—	14	1.0

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Law Schools Attended by Associates Presently Employed	Total Associates in									Total Assoc. from Each School	Assoc. from Each School as a Percent- age of Total ³
	Chi- cago	De- troit	India- nap- olis	Minne- apolis- St. Paul ²	Cin- cin- nati	Cleve- land	Colum- bus	Pitts- burgh	Mil- wau- kee		
Cincinnati	—	—	—	—	12	—	—	—	—	12	0.8
Detroit College of Law	—	11	—	—	—	—	—	—	—	11	0.8
Cornell	3	—	—	—	—	6	—	2	—	11	0.8
Marquette	—	—	—	—	—	—	—	—	11	11	0.8
William Mitchell	—	—	—	10	—	—	—	—	—	10	0.7
George Washington	5	—	—	2	—	—	—	2	—	9	0.6
Chicago Kent	9	—	—	—	—	—	—	—	—	9	0.6
Vanderbilt	—	—	—	—	6	—	—	1	1	8	0.6
Dickinson	—	—	—	—	—	—	—	7	—	7	0.5
Berkeley	5	—	—	—	—	1	—	—	—	6	0.4
John Marshall	6	—	—	—	—	—	—	—	—	6	0.4
Nebraska	3	—	—	1	—	—	—	—	1	5	0.4
Boston College	1	—	—	—	1	—	—	—	2	4	0.3
Hastings	3	—	—	1	—	—	—	—	—	4	0.3
Cleveland Marshall	—	—	—	—	—	4	—	—	—	4	0.3
Miami	1	—	—	—	—	1	—	—	1	3	0.2
Oklahoma	1	—	—	2	—	—	—	—	—	3	0.2
Syracuse	—	—	—	—	—	—	—	—	3	3	0.2
Washington Univ. (St. Louis)	1	—	1	—	—	1	—	—	—	3	0.2
Boston University	1	1	—	—	—	1	—	—	—	3	0.2
Chase	—	—	—	—	3	—	—	—	—	3	0.2
Denver	2	—	—	—	—	—	—	—	1	3	0.2
Villanova	1	—	—	—	—	1	—	—	—	2	0.1
Washington & Lee	1	—	—	—	—	—	1	—	—	2	0.1
Buffalo	—	—	—	—	—	—	—	1	1	2	0.1
Connecticut	—	1	—	—	—	—	—	—	—	1	0.1
Franklin	—	—	—	—	—	—	1	—	—	1	0.1
Howard	—	—	—	—	—	1	—	—	—	1	0.1

Law Schools Attended by Associates presently Employed	Total Associates in									Total Assoc. from Each School	Assoc. from Each School as a Percent- age of Total ³
	Chi- cago	De- troit	India- nap- olis	Minne- apolis- St. Paul ²	Cin- cinnati	Cleve- land	Colum- bus	Pitts- burgh	Mil- wau- kee		
Houston	—	—	—	1	—	—	—	—	—	1	0.1
Valparaiso	1	—	—	—	—	—	—	—	1	2	0.1
Kansas	1	—	—	—	—	—	—	—	—	1	0.1
Rutgers	—	—	—	—	1	—	—	—	—	1	0.1
Tennessee	1	—	—	—	—	—	—	—	—	1	0.1
Texas	—	—	—	—	1	—	—	—	—	1	0.1
West Virginia	1	—	—	—	—	—	—	—	—	1	0.1
Wake Forest	—	—	—	—	—	—	—	1	—	1	0.1
Creighton	—	—	—	1	—	—	—	—	—	1	0.1
Arkansas	—	—	—	—	1	—	—	—	—	1	0.1
North Dakota	—	—	—	1	—	—	—	—	—	1	0.1
Kentucky	—	—	—	—	1	—	—	—	—	1	0.1
Louisville	—	—	—	—	1	—	—	—	—	1	0.1
American University	—	—	—	—	—	—	1	—	—	1	0.1
Total Associates in Each City	609	127	39	141	67	207	44	96	97		
Total Midwestern Cities Surveyed		—	9 ^a								
Total Law Firms Surveyed		—	71								
Total Number of "Associate" Attorneys Listed for all Cities in the Survey		—	1427								

1. For the purpose of this survey, "Major Midwestern Law Firms" includes all firms in Chicago, Detroit, Indianapolis, Minneapolis-St. Paul, Cincinnati, Cleveland, Columbus, Pittsburgh, and Milwaukee presently employing at least 30 attorneys (*i.e.*, partners or associates). The survey intentionally included only "associates" so that the figures would reflect the *current* recruitment patterns of these firms. All of the data shown (except for the totals and percentages) were taken from the 1971 edition of the Martindale-Hubbell Law Directory. Most of the firms in the survey list "associates" separately in Martindale-Hubbell, and therefore they were easily identifiable; in the case of the few firms that are registered as professional associations and that do not list "associates," all attorneys who graduated from law school in 1963 or later were included in the survey.

2. Minneapolis-St. Paul was considered a single city for purposes of this survey.

3. The percentage figures have been rounded; hence, the total will not equal precisely 100%.

APPENDIX D
BLACK LAW GRADUATES PRESENTLY EMPLOYED AS SUMMER CLERKS, ASSOCIATES, OR PARTNERS BY
MAJOR MIDWESTERN LAW FIRMS

City	(1) Firms sur- veyed	(2) Firms reply- ing	Of Firms Replying					(8) Summer clerks employed 1971	(9) Black summer clerks	(10) Percentage of Black summer clerks
			(3) Part- ners	(4) Black part- ners	(5) Asso- ciates	(6) Black asso- ciates	(7) Percent- age of Black asso- ciates			
Chicago	28	15	452	0	354	3	.9%	81	6	7.4%
Cincinnati	3	1	19	0	15	0	0	4	0	0
Columbus	3	2	41	0	32	1	3.1	11	0	0
Cleveland	7	4	221	1	165	4	2.4	28	2	7.1
Detroit	8	3	68	0	55	2	3.6	10	1	10
Indianapolis	3	3	73	0	43	0	0	20	0	0
Milwaukee	5	4	99	0	88	0	0	21-22	0	0
Minneapolis-										
St. Paul	8	6	171	0	111	2	1.8	25-26	1	4.0
Pittsburgh	6	4	75	0	57	0	0	14	1	7.1
Unidentified		2	30	0	56	0	0	4	1	25
Totals	71	44	1249	1	976	12	—	218-220	12	—
Percentage	—	62%	—	.08%	—	1.2%	1.2%	—	5.5%	5.5%

APPENDIX E
PLACEMENT PATTERNS OF BLACK LAW GRADUATES IN MAJOR MIDWESTERN LAW FIRMS

City	Of Firms Replying										
	(1) Firms sur- veyed	(2) Firms reply- ing	(3) Firms with Black part- ners	(4) Firms with Black asso- ciates	(5) Firms that will employ Black summer clerks in 1971	(6) Firms having "seri- ously consid- ered" Black appli- cants within 3 years	Firms that have made offers to Black applicants within 3 years				(11) Firms that have ever employed Black part- ners or associates
							(7) Total Firms	(8) Offers Made	(9) Offers Accepted	(10) Offers Refused	
Chicago	28	15	0	3	4	11	6	15	4	11	6
Cincinnati	3	1	0	0	0	0	0	0	0	0	0
Columbus	3	2	0	1	0	1	1	1	1	0	1
Cleveland	7	4	1	3	2	4	3	18	8	10	4
Detroit	8	3	0	1	1	2	2	8	2	6	1
Indianapolis	3	3	0	0	0	0	0	0	0	0	0
Milwaukee	5	4	0	0	0	1	1	1	0	1	0
Minneapolis- St. Paul	8	6	0	2	1	4	3	4	3	1	3
Pittsburgh	6	4	0	0	1	3	1	1	0	1	1
Unidentified	—	2	0	0	1	2	2	8	2	6	2
Totals	71	44	1	10	10	28	19	56	20	36	18
Percentage	—	62%	2.3%	22.7%	22.7%	63.6%	43.2%	—	—	—	40.9%

APPENDIX F
DEGREE OF INTEGRATION OF BLACKS INTO MAJOR MIDWESTERN LAW FIRMS

City	(1) Percentage of Black population ¹	(2) Percentage of Black lawyers among lawyers in state ²	(3) Total attorneys in firms re- sponding	(4) Total Black at- torneys in firms responding	(5) Percentage of Black lawyers among lawyers of firms responding
Chicago	32.7%	3.5%	806	3	.37%
Cincinnati	27.6	2.7	34	0	0
Columbus	18.5	2.7	73	1	1.4
Detroit	43.7	2.6	123	2	1.6
Cleveland	38.3	2.7	386	5	1.3
Indianapolis	18.0	1.2	116	0	0
Milwaukee	14.8	.29	187	0	0
Minneapolis- St. Paul	4.0	.29	282	2	.71
Pittsburgh	20.2	1.1	132	0	0
Unidentified	—	—	86	0	0
Totals	—	—	2225	13	—
Percentage	—	—	—	.58%	0.58%

1. See Appendix G *infra*.

2. Percentages derived from Appendix A *supra*, cols. 3 & 4.

APPENDIX G
BLACK POPULATION IN MAJOR MIDWESTERN CITIES SURVEYED

City	(1) Total Population ¹	(2) Black Population ¹	(3) Black Population Percentage
Chicago	3,366,957	1,102,620	32.7%
Cincinnati	452,524	125,070	27.6
Cleveland	750,903	287,841	38.3
Columbus	539,677	99,627	18.5
Detroit	1,511,482	660,428	43.7
Indianapolis	744,624	134,320	18.0
Milwaukee	717,099	105,088	14.8
Minneapolis-St. Paul	744,380	29,935	4.1
Pittsburgh	520,117	104,904	20.2

1. U.S. BUREAU OF THE CENSUS, 1970 CENSUS OF POPULATION—ADVANCE REPORT.

APPENDIX H
CURRENT BLACK ENROLLMENT
IN SOME MAJOR NATIONAL
LAW SCHOOLS¹

Law School	Enrollment 1970-71	Black Enrollment 1970-71		Anticipated Enrollment 1971-72	Anticipated Black Enrollment 1971-72	
		Number	Per cent		Number	Per cent
Harvard	1,608	118	7.0%	1,680	150	8.8%
Michigan	1,154	77	6.7	1,175	113	9.6
Northwestern	508	32	6.5	508	45	9.0
Chicago	465	14	3.0	450	18	4.0
Minnesota	670	15	2.2	N.A.	28	N.A.
Wisconsin	775	12	1.5	900	21	2.3
Illinois	735	40	5.4	800	57	7.1
Duke	390	9	2.3	450	17	3.8
Yale	594	59	10.0	560	63	11.3
Ohio State	550	17	3.0	600	35	5.0

1. Data based upon telephone conversations with admissions offices of the law schools involved.

APPENDIX I
SURVEY STUDY OF MINORITY PLACEMENTS QUESTIONNAIRE
(Please Fill in the Appropriate Spaces)

1. How many partners are in your firm? _____
 - 1a. How many, if any, are black? (Please indicate date(s) of hire) _____
 2. How many associates are there in your firm? _____
 - 2a. How many, if any, are black? (Please indicate date(s) of hire) _____
 3. How many "summer clerks" will you be employing this summer? _____
 - 3a. How many, if any, will be black? _____
 4. During the past three years has your firm ever had an occasion to seriously consider a black applicant for a job position as an associate or partner within the firm? _____
 5. During the past three years has your firm ever had occasion to make a job offer to a black applicant for a position as an associate or partner in the firm? _____
 - 5a. How many, if any, such offers were made to black applicants? _____
 6. Has your firm ever employed a black summer clerk, associate or partner? If yes, please indicate the appropriate category of employment, the number of persons involved, and the years of employment (i.e. when and for how long). _____
- _____
- _____
- _____

Please return by June 5, 1971, to:

Professor Harry T. Edwards
Legal Research Building
University of Michigan Law School
Ann Arbor, Michigan 48104

C O N F I D E N T I A L
