

4-1-1970

Current Legal Education of Minorities: A Survey

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Recommended Citation

A. B. Norton, *Current Legal Education of Minorities: A Survey*, 19 Buff. L. Rev. 639 (1970).

Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol19/iss3/11>

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utilize and coordinate a variety of legal tools including regulation, easement acquisition through purchase and eminent domain, restrictive covenants, tax incentive and federal assistance.

The city should realistically and compassionately anticipate that its preservation program may work hardship on certain land owners. Instead of forcing an aggrieved owner to go to court to plead a "taking," the legislature should define the point at which regulation does create unreasonable personal hardship. The preservation law should then provide for adjustment through purchase of the interest effectively condemned by regulation, or removal of the restriction.

Prior to 1966, the federal government did little to materially assist local preservation efforts. The Historic Sites and Model Cities Amendments of 1966 represent an effort, albeit inadequate, to assist local projects. A more effective program would allow the federal government to assume a larger percentage of local project costs, to provide grants or low cost loans to private persons willing to acquire and rehabilitate historic structures, and to offer federal income tax incentives for private rehabilitation.

Beyond the narrow confines of the National Trust, a nonprofit corporation chartered by Congress, the federal government does not initiate preservation programs. Federal assistance is intended to merely support local efforts. French and British preservation experience suggests that federal initiative might be desirable. While an aggressive preservation program would appear incompatible with the Government's indirect approach to national housing problems, preservation need not be conceptualized as a housing problem. Preservation law appears in conservation as well as housing statutes; the Historic Sites Act is contained within the National Parks Chapter. It would therefore require no profound change in congressional policy to treat historic preservation as a conservation problem calling for federal initiative rather than a housing problem in which Government efforts must be restricted to local assistance.

GRACE BLUMBERG

CURRENT LEGAL EDUCATION OF MINORITIES: A SURVEY

The societal crisis our country faces in terms of racial discrimination is evident. In like manner the American legal profession faces a crisis of its own.

We must encourage Negroes to become lawyers and, thus, enable them to have a larger voice in their own and their people's destiny; to share the obligations as well as the privileges of citizenship; and to achieve self-fulfillment as individual members of society.¹

1. Gosset, *Bar Must Encourage More Negro Lawyers*, April/May TRIAL 22, 24 (1968). At the time his article appeared, Mr. William Gosset was the President-elect of the ABA.

The above mandate, while neither new nor "revolutionary," is far from being realized at this time. During the past several years, however, the legal educational institutions and similarly interested groups have initiated programs designed to significantly increase the number of minority group lawyers in the United States. This comment will examine the relative success of these programs, the need for them, the current status of the minority student in law school and the future of the minorities in law schools.² It is based in large part upon a questionnaire entitled *Minority Group Student Programs* sent to 138 accredited law schools throughout the country.³

THE NEED FOR BLACK LAWYERS AND SOME RESULTING PROGRAMS

There are situations where even statistics cannot lie. Such is the case with respect to the number of black attorneys in the United States. According to the American Bar Foundation⁴ there are more than 317,000 attorneys in the United States. The estimates given for the number of black attorneys range from 2,000⁵ to 5,000.⁶ At best this places the number of lawyers who are black at one and one-half and probably less than one percent. This is a national average and the situation is far worse in the South. In 1968 only 506 black attorneys were practicing in the eleven Southern states that seceded from the Union.⁷ Breaking this down even further, one finds that certain Southern states reveal even more astounding statistics. Alabama, with a black population of approximately one million, has twenty-four black attorneys.⁸ There is one black attorney for every 41,700 black people in Alabama and one white attorney for every 670 whites.⁹ Indeed, these current statistics demonstrate little difference from statistics of twenty-five years ago.¹⁰

During the past several years a number of programs designed to increase the number of black attorneys have been initiated throughout the country. Some of them have been phased out but others are still operative, all with varying degrees of success. Harvard and New York University started "uplift" programs for blacks in 1965-66.¹¹ These two programs, which embodied summer programs

2. Generally this comment is speaking of blacks when it refers to minorities. While some of the statistics involving the *Minority Group Student Programs Questionnaire* (*infra* note 17) include other minority group members, this will be pointed out where significant.

3. The questionnaire is reproduced in the Appendix. Of the 138 questionnaires sent out, 70, or 51%, were returned. The statistical conclusions and opinions in this comment are those of the writer and do not necessarily reflect the conclusions or opinions of the *BUFFALO LAW REVIEW* or the State University of New York at Buffalo School of Law.

4. *The National Observer*, Dec. 1, 1969, at 26, col. 1.

5. Carl and Callahan, *Negroes and the Law*, 17 *J. LEGAL ED.* 250, 251 (1965).

6. *The National Observer*, *supra* note 4.

7. Gellhorn, *The Law Schools and the Negro*, 1968 *DUKE L.J.* 1069, 1073.

8. Comment, 21 *ALABAMA L. REV.* 306 (1969).

9. *The National Observer*, *supra* note 4. In Mississippi, where blacks constitute more than 42% of the state's population, there are 17 black lawyers. *TIME*, Jan. 5, 1970, at 32.

10. G. MYRDAHL, *AN AMERICAN DILEMMA* 326 (1944). Myrdahl stated that in 1930 there were 1,200 Negro attorneys in the United States and approximately 400 of them were in the South.

11. See Toepfer, *Harvard's Special Summer Program*, 18 *J. LEGAL ED.* 443 (1966).

and financial aid for blacks not meeting normal admission standards, were designed to prepare blacks for law school but were phased out two years after their inception due to a lack of funding for Harvard's program and insufficient results in NYU's program. NYU has since initiated a summer program in consortium with other New York City area law schools.¹² Harvard has since initiated a program in conjunction with the Council on Legal Education Opportunity (CLEO). Other schools have had similar programs, most notable of which is Emory University Law School.¹³

The largest prestart program for blacks is that set up by CLEO. CLEO was established by the Association of American Law Schools (AALS), the Law School Admission Test Council (LSATC), the American (ABA) and National (NBA) bar associations and the Office of Economic Opportunity (OEO). The original CLEO program was designed to produce 300 black lawyers by 1973. Briefly, the CLEO program has taken black students whose undergraduate records and Law School Admission Test (LSAT) scores are below conventional admission standards and enrolls them in a summer institute designed to prepare them to be competitive students in law school. In addition to the summer institute CLEO offers financial and law school placement assistance to the students. During the summer of 1969, CLEO sponsored, in conjunction with 39 law schools, eleven summer programs that enrolled 444 students. About 70 per cent of these students were black and 27 per cent were of Spanish descent. The results of that summer program are as follows:

. . . 394 1969 CLEO Institute participants, including 377 participants in the 1969 Summer Institutes and 17 post-juniors of the 1968 Institutes, have been admitted to and are attending law school as of October 1, 1969, with financial assistance in the amount of \$800 each during the first year of law school; 88 law schools have enrolled these students; 34 1969 CLEO students have indicated that they were unable to enroll in law school this year because of military obligations or other good cause; and 46 1969 CLEO participants including 14 1968 post-juniors remain unreported.¹⁴

The 1968 CLEO program, was basically the same, but somewhat smaller in scope, with 112 students from disadvantaged groups graduating from the Institutes and 93 entering 31 law schools.¹⁵ The 1970 CLEO Summer Institutes will probably range in size somewhere between the 1968 and 1969 programs.¹⁶

12. Gellhorn, *supra* note 7 at 1083.

13. See EMORY UNIVERSITY SCHOOL OF LAW REPORT TO THE FIELD FOUNDATION, 1966-67 PRE-START PROGRAM FOR PROSPECTIVE NEGRO LAW STUDENTS (October, 1967). During 1966 Emory recruited twelve students from nearby Negro colleges and had them take one regular law course during the summer prior to their first year in law school. If they passed they were then allowed to enter as freshmen with a slightly reduced course load. The program has continued with approximately the same number of students attending each summer. Emory has somewhat enlarged the scope of the summer session in that it now allows the students to take three courses and minority group members serve as teaching assistants.

14. AALS, *Report of Committee on Council of Legal Education Opportunity*, PROCEEDINGS, Part 1, at 23, 24-25 (1969).

15. *Id.* at 23.

16. The forthcoming 1970 CLEO Summer Institutes will be comprised of six or

RESULTS OF MINORITY GROUP STUDENT PROGRAMS QUESTIONNAIRE¹⁷

The most recent figure given indicates that there are now 1,280 enrolled black law students in the United States.¹⁸ Despite the "special programs" of many law schools and the efforts of such organizations as CLEO, over 590 of these blacks are studying at the four predominantly black law schools in this country,¹⁹ meaning that approximately 670 blacks are attending the 138 AALS accredited predominantly white law schools, or, an average of less than five blacks per school.

In response to the first question²⁰ 44 schools stated that they did have special programs.²¹ Table I indicates the number of years that these programs have been in existence.

TABLE I

# of Years	0-1	1-2	2-3	3-4	4-5	5 +
# of Schools	7	12	11	4	0	3

Table I shows the vast majority of the law schools have had their respective programs in existence for three years or less. Hence, the programs have not been in existence long enough to determine if they will have a significant impact on the number of *practicing* black attorneys.²² It is also noteworthy that the three year period corresponds with the advent of the CLEO project and it is within this time bracket that 80 per cent of the schools reporting on duration commenced their programs.

seven programs for approximately 200 students following the model of the 1968 and 1969 programs. Letter from Sanford J. Rosen, Assoc. Director, CLEO, to the writer, Mar. 9, 1970.

17. The Minority Group Student Programs Questionnaire [hereinafter referred to as questionnaire] was sent to the deans of 138 predominantly white law schools in the United States. Those schools were selected on the basis of their listing in the 1969-70 *Directory of Law Teachers* as prepared by the AALS. Responses were received from 70 schools. The responses were, for the most part, in the form of completed questionnaires but several schools felt that a memorandum type letter giving much the same information as that requested was more appropriate. Because of this, and the fact that a few of the schools left some questions unanswered, there are apparent discrepancies in some of the tables. All responses received are on file at the Buffalo Law Review.

Law school deans are traditionally overwhelmed by questionnaires and similar requests for data and therefore answer them on a priority basis. Appreciation is extended to those who were able to respond and understanding to those who were not.

18. *TIME*, Jan. 5, 1970, at 32.

19. The four predominantly black law schools: Texas Southern, Houston, Texas; Southern Univ., Baton Rouge, Louisiana; North Carolina Central Univ., Durham, North Carolina; and Howard Univ., Washington, D. C.

20. App., § B.

21. Two schools replied in the negative and then went on to describe in detail the nature of their program. Evidently the term "special program" created difficulty for some administrators. One Ivy League dean, who did not respond to the questionnaire, stated in a telephone interview that he did not feel the term was appropriate and that while his school did recruit blacks whose admissions qualifications were below that school's normal standards, and they did spend "an awful lot of money on the thing," he did not feel it was a "special program."

22. It has been stated that a much greater proportion of black law students, as opposed to their white counterparts, gravitate to fields other than that of practicing law. See generally, Carl and Callahan, *supra* note 5.

The second section of the questionnaire requested specific numbers concerning minority group students.²³ Because of the short time that the special programs have been in existence much of the information requested in this respect is not applicable and it is not possible to draw reliable inferences from many of the figures. Twenty-nine schools provided specific numbers.²⁴ Five-hundred and seventy-eight minority group students have been admitted under those schools' programs; eleven have graduated; eight have achieved academic honors; six have passed a bar exam; forty have left for academic reasons and twenty-seven have left for other reasons. The one significant figure from this group is the total admitted since the inception of the program. The above figures represent primarily blacks. Further, several of the schools that gave specific numbers did *not* include those blacks in attendance at their schools who were admitted under "normal" circumstances. Although only 51 percent of the schools returned the questionnaire, it can be estimated that the schools which did so account for at least 65, and possibly 75, percent of the black students attending predominantly white law schools.²⁵

The third section of the questionnaire deals with admissions policies.²⁶ Thirty-four of the schools with special programs reported that their admission policies were different for minorities, five reported no difference except for CLEO graduates and three stated their admissions policies were the same. Of course those schools reporting no special programs (24) did not have different admissions standards for minorities.²⁷

The history of the LSAT, in respect to blacks, has not been a happy one. As Professors Carl and Callahan²⁸ pointed out in their excellent article on the subject of blacks and law schools, blacks have traditionally done poorly on this type of aptitude or qualifying examination. The attitude of many admissions

23. App., § C.

24. Two schools, who reported that they did have special programs and gave specific figures, indicated that their programs were for American Indians and Spanish speaking students. Their figures are therefore not added into the totals.

25. The 65% is arrived at by taking the figure of 670 blacks at predominantly white law schools (*supra* at 642) and dividing it into 440, which is the approximate number of blacks presently enrolled at those schools having special programs that gave specific figures. The 440 figure is arrived at by taking the total reported figure of 578 and subtracting from it those who have graduated or left school (78) and another 60 to take into account those minority students included who may not be blacks, thus arriving at 65%. Taking into account that only 29 schools reported specific numbers from which the final figure of 440 was derived, it would seem reasonable to assume that the 15 schools not giving specific numbers, but reporting special programs, could be expected to have the additional 67 blacks which would be necessary to raise the estimated figure to 75%.

In any event it would seem that the information elicited by the questionnaire may be more valid than the 51% return would indicate.

26. App., § D.

27. One deep South school which reported it did not have a special program (2 blacks are enrolled) stated: "To be candid, though, I must state that if a minority group applicant is marginal I tend to favor admission."

28. Carl and Callahan, *supra* note 5, at 257. "Is it any wonder then that such culturally deprived and disadvantaged people are not capable of demonstrating qualifications to study law when their ability is measured by methods and criteria designed to test a group from which they have been effectively excluded both culturally and educationally?"

committees now seems to be that the LSAT score is relatively unreliable for blacks and the committees rely rather on such factors as motivation, interview results, undergraduate records and personal references. Of the schools giving specific figures regarding LSAT, nineteen reported that there is no minimum LSAT score for minority students; nine reported LSAT not determinative for any students; five reported they accept minorities with substantially lower LSAT scores and five reported they accepted CLEO graduates who do not meet their LSAT minimum.

The fourth section of the questionnaire dealt with recruitment. Forty-six schools reported that they actively recruit minority students, both qualified and unqualified according to conventional standards. Five schools that do not have special programs reported that they recruit "qualified minority students." There seemed to be some resentment among Southern schools towards Northern and Eastern schools for "raiding" the Southern colleges for black law student "quotas."²⁹ However, all indications point to the conclusion that in terms of present programming and future expectations, there are more than enough black students capable of becoming lawyers to fill the classrooms of law schools desiring to provide black lawyers. The problem is not in finding potential students, but in providing those recruited with both the financial and academic support necessary to successfully complete law school. Some schools report difficulty in attracting minorities to their programs because the minorities do not believe the *schools* are sincere.³⁰ This does not appear to be a problem of any magnitude however, particularly where law schools have used minority students to make recruitment trips or to accompany a faculty member on such a mission.

The fifth section of the questionnaire dealt with the academic standing of minority students.³¹ The subsection dealing with the question of how minority students were "doing" proved to be difficult. The results in Table II are characterizations of the replies as seen by this writer. While most of the replies were relatively clear, some were sufficiently guarded as to require the category of "neutral reply."³²

29. *E.g.*, "Up until this year, we have felt no real need for a definitely structured Minority Group Student Program. However, more and more Eastern and Northern universities are coming to the South in order to fill their recruitment needs (quotas) and, consequently, the Student Bar Association has just this month developed a plan whereby various members of the Association will travel throughout the State of Arkansas and neighboring States to recruit *qualified* black students." (emphasis added). Letter from Professor George P. Smith, University of Arkansas, to the writer, Jan. 12, 1970.

30. *E.g.*, The following reply came from a law school that has had only one black student since 1964: "A new minority group faculty has just joined us. He is speaking and going out to all the schools in the State and Region. Now that he is with us, they may believe us."

31. App., § F.

32. Some examples of the characterization are as follows:

Below Average—

Last year we had five freshmen who are black. One is doing quite well and is in the second year at present. Three failed and have been allowed to repeat.

They tend to be in the lower half of the class, but they do much better than any

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TABLE II

No Reply	28
Below Average	12
Same	2
Above Average	1
Too Early To Tell	6
Neutral Reply	3

Table II indicates that minority students admitted with qualifications below the conventional standards do not do as well academically as students who do meet those standards. Conceding the limitations of the survey, one might nevertheless become bothered by the suspicion that perhaps the reason so many schools failed to reply to the question is a reluctance to discuss the problem. There is a distinct possibility that this very reluctance to acknowledge the problem may be the greatest handicap to its solution. While issues such as this one are extremely sensitive, very little can be accomplished without full disclosure of the problem at some level.³³

The questionnaire sought information on the existence of a double academic standard.³⁴ Only two schools replied that they observed a double standard and one of those carefully qualified its response.³⁵ It seems difficult to believe that some form of double academic standards do not exist at more law schools. Schools are admitting students who, by the school's own standards as applied to the general run of applicants, are academically at a distinct disadvantage with respect to the general student body. It seems patently absurd that the school should expect the disadvantaged student to perform on a par with a non-disadvantaged student. There has been a long-standing debate as to the propriety of applying any double standard based on such a factor as race. Likewise, as to this particular application, some feel that the double standard is mandatory,³⁶ while others feel that it should not exist at all.³⁷ Some

prediction index based on LSAT would indicate they should do.

Most of our black students so far have been on lower fringe in grades but that should change this year.

Neutral Reply—

. . . [T]his means that about half are in the lower half of their class, most of the rest in the middle, and a few stand very highly.

. . . [A]re doing well in relation to the general student body. Many are performing at above average levels, though a few find difficulty in expressing themselves in writing.

33. It is obvious that this "level," *i.e.*, this comment, is not the level at which full disclosures of student's academic performances at various law schools should be made. However, the law schools, individually and collectively, must make strides in the direction of uplifting the academic performance of minority students.

34. App., § F.

35. "Probably the faculty gives special consideration to students who are in academic distress (as to dismissal and as to petitions for readmission) and who it appears were disadvantaged in their prior educational opportunity."

36. In an interesting article, written from a black law student's viewpoint, Joseph Porter III, who is the Director of the Western Region of the Black American Law Students Association (BALSA) said:

How can a law school purport to judge blacks and whites equally when it uses

schools have met the problem, not by adopting a double standard, but by lowering their over-all interim academic standard for *all* students so that, in essence, no one leaves for academic reasons during the first year or two. For example, UCLA lowered its required passing average from 64 to 62 when several minority group students and a few whites failed to achieve a passing average. This faculty action allowed disadvantaged minority students to remain in school on probation.³⁸

The questions of a double standard and the academic difficulty encountered by minorities lead quite naturally to the sixth section of the questionnaire which inquired as to the existence and nature of special assistance programs such as tutoring afforded the minority students.³⁹ Of the 46 schools reporting special programs in general, fifteen reported that they did offer special programs in this respect, and twenty-two stated that they did not. Aside from the question of making special assistance available, which will be discussed later, there remains the question whether if such assistance is to be available, should it be mandatory? A great proportion of minority students do not feel that any assistance that is offered should be mandatory after they have matriculated.⁴⁰ While the law school administrators may feel differently, they have for the most part made such programs voluntary.⁴¹ However, one school not only requires that any minority student not meeting regular admission standards attend either their own eight week summer program or a CLEO program, but also that they then take a reduced course load plus receive mandatory tutoring.⁴² There is then a

only a white yardstick and when, for the most part, the black law student's education for sixteen years preceding law school was filled with pain, rejection, frustration, misunderstanding, alienation, and sometimes failure. A double standard would, and should, challenge the traditional criteria of qualifications necessary to make a good lawyer.

15 Student Law. J., Jan. 1970, at 24.

37. "It is hoped that law schools never compromise their standards of performance for Negro youth, particularly during the last year or two of enrollment. Whatever their needs, this is not one of them." Carl and Callahan, *supra* note 5 at 263.

38. TIME, *supra* note 8 at 33.

39. App., § G.

40. This impression comes not only from the questionnaires but through interviewing minority students in law school.

41. "A tutoring program is conducted for *all* students who wish to participate but *disadvantaged* minority group students are particularly encouraged to participate.

"All first year students now participate in a program of instruction in small tutorial groups. To the extent minority students need help, it is provided through this vehicle. We believe that this approach eliminates an invidious discrimination, but may suffer a reduction in needed additional assistance." Returned questionnaire.

42. A program as described by one university is as follows:

An eight-week summer program before the first year and a continuing, required, tutorial program during the first year (coupled with a slightly reduced course load—12 semester hours instead of 15). The summer program has been completely noncredit; next summer we will include Torts I for credit, team-taught by a member of the faculty and two senior minority students who were themselves in the program in their freshman year. Tutoring during the first year in both group and individual sessions conducted by teaching assistants (preferably who were themselves in the program during their first year) under the general supervision (very loosely exercised) of the program director and another member of the faculty. We will accept CLEO summer programs in lieu of our own, but the

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divergence of opinion on this question. The dilemma is a particularly difficult one. On the one hand there is invidious discrimination and perhaps a better chance for success (at least in the eyes of most law professors) and on the other, the probability that disadvantaged students will not attend a voluntary assistance program.⁴³

The seventh section of the questionnaire pertains to the participation of minority students in the planning and implementation of either the overall program or specific academic assistance elements of the program.⁴⁴ Because of the vagueness of both the question and the answers received, it was necessary to characterize the responses as shown in Table III.⁴⁵

TABLE III

No Participation	8
Minimal	13
Active	7
Very Active	3
Unable to Characterize	3

One school, which was characterized as very active, has set up a tripartite commission of three faculty, three minority group students and three students selected by the Student Bar Association to present to the faculty major reforms in curriculum and teaching methods. The impression one draws from the figures in Table III is that for the most part the black law student is not having much to say about the program within which he finds himself. That the same can be said of the general student body is of little relevance. There are special problems inherent in the situation and the special insights needed to solve those problems will have to come from the black law students.

The eighth section of the questionnaire asked whether the law schools offered courses of special interest for minority students.⁴⁶ The vast majority of the law schools answered this in the affirmative. When one looks at the types of courses

student is required to be in the tutorial program during his freshman year (again, bear in mind we are talking about students who do not meet our regular admission standards). Returned questionnaire.

43. The experience of many schools is that attendance is very low at voluntary tutorial and orientation sessions. There have been several notable exceptions but these have been largely when the program is administered and run by minority group students.

44. App., § H.

45. Some of the characterizations are as follows:

None—

Minority students did not participate in the formation of the program although students did participate.

Minimal—

Not very much. A few suggestions.

Active—

Last year there was little participation; this year, Balsa and the *Chicano* Law Student's Ass'n have actively participated. . . .

Very Active—

Extensively in recruiting and admissions, both informally and as members of the admissions and standards committee.

46. App., § I.

that the schools list as of "special interest," however, one finds the old standbys such as Constitutional Law, Criminal Law and Procedure, Sales, etc. Most of the schools replied, either directly or by implication (through the courses listed) in the following manner:

Major portions of our curriculum have been devoted to contemporary problems, and we do not find it necessary to create special courses for black students.

This opinion, while apparently that of a majority of the law schools, is not necessarily that of black law students. One student, in condemning the law schools' curricula, stated that:

The law schools are in effect requiring that black students fulfill the needs of white middle class America and forget the most immediate needs of the people that the black students represent.⁴⁷

At the State University of New York at Buffalo, a school that offers such courses as Urban Problems, Selected Problems of the Alienated, Problems of Metropolitan Communities, Police Practices, *et al.*, interviews with black students showed them to be about equally divided on this issue. Most felt that improvements were needed and some felt that the majority of courses were irrelevant to blacks.

The last section of the questionnaire was an invitation for the reporting school to express its views as to minority group student programs in general. Most of these opinions will be taken up in the concluding section of this comment as point and counterpoint for the conclusions. A response that was typical of those schools which had relatively large special programs is as follows:

We feel very strongly that minority students must gain confidence in their own ability to deal with both legal problems and the governmental establishment with which they will have to contend as attorneys. To some extent minority students have been hampered by their distrust and lack of confidence in the law in general and in the purposes of the law school in particular. We have made every effort to reassure them concerning our sincere desire to improve the quality of legal representation in minority communities as well as our conviction that minority students can do much to broaden the understanding of the law school faculty and its student body in general.

The minority students seem to have responded well to our tactics for they have increasingly asserted themselves both in class and as a pressure group within the law school community. Because of the great need for self-confidence we have attempted to avoid forcing the black students to see themselves as a specially treated group, and we have been extremely careful not to distinguish them in a negative sense from other law students. Thus, their activities as "black law students" have been largely self-motivated. The only encouragement coming from the law school has been our communication to them of our understanding

47. 15 Student Law. J., Jan. 1970, at 22.

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that black students have somewhat different perceptions and may have different approaches to law school and the law in general and our encouragement to follow their inclinations in this regard.⁴⁸

CONCLUSIONS

The problem facing the law schools today, in terms of training black lawyers for tomorrow, is immense. That black lawyers are needed in large quantities is irrefutable.

The law schools and organizations such as OEO, CLEO, AALS, LSATC, NBA, ABA and other similar groups have started "special programs" designed to significantly increase the number of black lawyers. These programs take place, for the most part within the law schools and an attempt has been made here to describe them generally and, in some instances, in detail. Some conclusions are obvious while others are purely speculative.

The problem is basically two-fold. First, there is the problem of mechanics at those schools that genuinely desire to graduate substantial numbers of black lawyers. Second, there is the problem of obtaining black lawyers in those areas of the country where the law schools are not willing to make this commitment.

Mechanics

The problem of mechanics would seem to apply to all schools having a special program, no matter where they are located geographically. Of course the emphasis may be stronger in one area than in another because of geographical location.⁴⁹ The mechanical problems that appear most frequently are those of admissions, tutoring, double academic standards, participation by blacks in planning and implementation of programs, special courses of interest to blacks and the social-psychological problems inherent in such programs.

Admissions. In order to increase significantly the number of black students in law school, traditional admissions criteria must be altered. As stated earlier, blacks have not scored well on the LSAT. Admissions committees that do not drop their minimal LSAT acceptance score for blacks are, in effect, preventing substantial numbers of black students from attending their schools. As suggested by Carl and Callahan⁵⁰ perhaps the only meaningful test to determine whether a black student who has obtained an undergraduate degree can study law is to allow him to do so in a law school setting. This does not mean that the law schools must accept all black graduates, but it would seem that an expansion of the CLEO program, and summer programs such as those at Emory, might present the vehicle to determine whether or not a student can function successfully in law school.

Tutoring. Whether tutoring should be mandatory is a difficult problem. Of

48. Returned questionnaire.

49. *E.g.*, "Since we are located in a small community, we have some difficulty in appealing to black students who are generally accustomed to living in an urban area. The small number of black students creates social problems for them." Returned questionnaire.

50. Carl and Callahan, *supra* note 5 at 259.

course, one must first assume that tutoring *does* have beneficial effects.⁵¹ One major law school presented the problem concisely:

The biggest single problem of our program revolves around the question of whether or not a special offering of academic assistance for those who do not meet our admissions requirements should be required or be optional. At the outset of our special program we made participation in our tutorial offering optional. The result of that was that none of the students took advantage of it and all remained in academic difficulty. As a result of that, we made the program required of all students whose credentials are below our minimum standards of admission. Some of the students clearly object to a required special assistance program regarding it as a suggestion of inferiority. We take great pains to eliminate such feeling and generally successfully so; or rather the students themselves in the program become persuaded that the tutorial offering is neither demeaning nor insulting.

The solution to this problem is not apparent. It would seem that the significant factors are (1) the amount of participation by the minority students in planning the tutoring, (2) the people who conduct the tutoring, (3) the groups of students required to attend and (4) the atmosphere within which the general special program is conducted. In order to successfully operate a mandatory tutoring program it would appear that the following steps are necessary. First, minorities must be the ones who determine that the sessions are mandatory. In this respect, the aid of second or third year minority students would be helpful.⁵² Second, the tutors, or at least a significant number of them, should be minority group people. The inferiority suggestion can easily be heightened by white middle class tutors, regardless of their good intentions. Third, the tutorial sessions should be required of *all* students who are either suffering academic difficulties or were admitted with marginal (or lower) admissions credentials. This "integration" of the tutorial program should help alleviate some of the feelings of invidious discrimination. Finally, the attitude of the administration must be one of true understanding of the problem. This is a sensitive area, and special efforts must be made to provide an atmosphere that enhances, rather than corrodes, the program.

Double Academic Standards. The problem of double academic standards has for the most part been avoided. Professor Gellhorn states that one major law school passes Negro students on an easier scale.⁵³ Questionnaire responses showed that only two schools applied any sort of double standard at all in terms of

51. Professor Gellhorn states that special tutoring programs for blacks has proved unsuccessful at Harvard, Michigan, N.Y.U. and other schools. "The scholastic results were meager or insignificant." Gellhorn, *supra* note 7 at 1090. This writer was unable to obtain responses from any of the three schools mentioned by Professor Gellhorn and is therefore unable to determine if these "meager or insignificant results" were obtained in any sort of experimental situation, for example, half of the disadvantaged students receiving no tutoring and the others having mandatory tutoring, with comparative results being analyzed.

52. While most first year minority students do not desire mandatory tutoring, the students who get to their second and third year in law school think it would be an excellent idea for incoming freshmen to receive special assistance.

53. Gellhorn, *supra* note 7 at 1091.

academic standing and those were not in regard to grading but rather, whether to allow students in academic difficulty to continue. The attitude of many, both black and white, both student and professional, is that double standards are bad *per se*. The primary reason is that a double standard will create inferior black lawyers and an attitude of "inferiority." There are those however who feel that double standards, because of the minority students' disadvantaged background, are necessary.⁵⁴

The solution to the problem of interim academic standards might be easy to solve. If, instead of worrying about whether to have double standards, and, if so, what they should be, schools might simply abolish interim standards so that no one "flunked out." This would have to be done within limits, *e.g.*, time and quality. In terms of time there should be some ceiling as to the length of time a student is allowed to remain enrolled. For instance, an arbitrary but reasonable time might be five years. Since all students would be required to meet certain standards to graduate, it would be relatively easy to compute the point in time when it would become mathematically impossible for a student to graduate "on time" and he would then be asked to leave. As to quality, there are undoubtedly certain numbers and kinds of courses that *all* students should pass before being allowed to graduate. Most schools feel that courses such as Torts, Contracts, Civil Procedure, Criminal Law, Constitutional Law and others are basic and require all students to take them. Even with the abolition of interim academic standards it would still be possible to require that in order to graduate, a student must, in addition to passing a total number of hours within the outside time limit, pass a certain percentage of the "essential" courses, *e.g.*, five out of seven, six out of eight or whatever. This solution has the advantages of offering the disadvantaged student an opportunity to graduate with a degree that is not tainted with the "inferiority" (real or imagined) that comes with a double standard. The criticisms of such a plan are apparent. The higher ceiling placed on length of time might hurt a school's "prestige;" it might allow certain students to take up classroom space that they formerly would have vacated; it might even allow students to "slide by" who would otherwise work harder. These criticisms, in all likelihood, would become problems of varying magnitude, but they should be, and hopefully are, subservient to the total problem of producing minority group lawyers.

Participation. Closely related to all of the problems in the area of special programs is that of participation of minorities in the planning and implementation of a very significant event in their lives. Sociologists and other social scientists have told us that the black man must control his own destiny, that the white man, even when giving solicited advice, must not tell the black man "how to do it." Suffice it to say that the minorities *must* control the special programs in order for those programs to succeed, not only quantitatively, but qualitatively.

54. *Supra* note 47.

Special Courses. As Professors Carl and Callahan, in 1965,⁵⁵ and Gellhorn, in 1968,⁵⁶ have pointed out, changes must be made in the curricula of the law schools for the benefit of the minorities. This is true not only in terms of courses of special interest to black students but of courses for white students who must be made to understand the special problems of the minorities if they are to represent them effectively. The results of the questionnaire are difficult to evaluate in this respect. While most of the schools consider their curricula to include courses of special interest, the courses they list, for the most part, have appeared on and off in their catalogues for years. However, it is possible that the courses, while remaining the same in name, are being changed internally for the benefit of minorities. In any event, law schools must reevaluate their curricula in light of their increased commitment to graduating students who can be expected to become more and more involved with minority people.

Social-Psychological. The social-psychological problems that face the black student in a predominantly white law school have been alluded to throughout this comment. Like black participation, they are connected with all phases of special programming. It is not intended here to suggest any solutions in this area, but rather, to identify some of those problems as suggested by the returned questionnaires. There seems to be a small amount of "backlash" among white students and faculties directed towards the minority students. One dean reported that some faculty members got "overly excited" whenever black students failed to attend class. In general, the student body's resentment has shown itself through complaints regarding such things as financial assistance.⁵⁷ Moreover, some outright racial discrimination is evident.⁵⁸ In summary, the following is a typical response:

Generally favorable. Some resentment among general student body of financial aid to minority students. Some skepticism among certain faculty members.⁵⁹

The South

The second basic problem, that of training black lawyers for areas of the country where the law schools are not willing to adopt special programs, is, if possible, even more complex than those problems previously discussed.

55. Carl and Callahan, *supra* note 5 at 262.

56. Gellhorn, *supra* note 7 at 1096.

57. "A few white students have expressed fears that the emphasis on minority students would deprive the whites of scholarships or loan money. Happily our scholarship money has been increased by the University to finance the Blacks without having to reduce aid for others. Federal loan funds, while not inexhaustible, are big enough that our recruiting drive does not dent them significantly. All open inquires have been resolved amicably. There is nothing we can do about uninformed locker room griping." Returned questionnaire.

58. "Yale's black law students charge that university police ask them to show their identification cards on campus, but never stop whites for the same purpose." *TIME*, Jan. 5, 1970, at 33. For an interesting and enlightening black student's viewpoint regarding the social pressures on a black attending a predominantly white school, see James, *Is It Easier to Get In If You're Colored?*, *The National Catholic Reporter*, Oct. 15, 1969, at 8, col. 1.

59. Returned questionnaire.

With notable exceptions, the Southern law schools have done little to increase the number of black lawyers in their respective geographical areas.⁶⁰ While the University of Richmond Law School refused two black law students on the basis of race in 1962-63,⁶¹ at this time virtually all law schools do admit "qualified" black applicants. The issue exists in the word qualified. While the number of black students in attendance at predominantly white schools is on the increase throughout the country, this trend is barely visible in the South. For example, the University of Georgia Law School has admitted eight black students since 1962. Only one has graduated and there are currently one senior and three freshmen enrolled.⁶² It is possible that, with time, all of the law schools of the deep South will join in the effort to train a substantial number of black lawyers. However, some of the schools who responded to the questionnaires indicated that they do *not intend* to make any extra efforts in this area.⁶³ Other deep South schools who reported that they had no special programs used such phrases as "color-blind" and "ethnic-religious blindness" in describing their respective approaches to the problem.

One possible means of increasing the number of black lawyers in the deep South (where, statistically, they are most needed) is by training black students from the South at schools conducting special programs with the intent of their returning as lawyers to their home areas. The problems this course of action raises are numerous. In addition to financial, social and political problems, no law schools to date have been able to graduate enough blacks to even come close to fulfilling the needs of the black communities in their own geographical backyards. The need is for *substantial* numbers of black lawyers *throughout* the country.

At the risk of being accused of taking two giant steps backward, this writer would suggest that the only possible solution at this time is to increase the quality of the predominantly black law schools and in fact to *create more predominantly black law schools* at already existing black colleges and universities.

60. Known exceptions to this statement are: Emory Univ.; Univ. of Louisville; Florida St. Univ.; Univ. of Mississippi; and Univ. of Virginia which all have at least five black students in attendance who would not have been admitted under normal circumstances. This is not to say that other Southern law schools do not have substantial special programs for blacks, it is to say only that those schools listed are *known* to have such programs.

61. AALS, *Report of the Committee on Racial Discrimination in Law Schools*, PROGRAM AND REPORTS OF COMMITTEES, at 130 (1962).

62. Returned questionnaire. This situation of very limited numbers of blacks in attendance, while more common in the South, is by no means exclusively limited to that geographical area. One large midwestern state university law school reports that it has had but two black graduates in its history.

63. *E.g.*, "We do not have minority group programs and do not intend to have any. We have a completely open door policy and accept everyone on the same basis and require the same performance from everyone. *Our concept of a racist* is to base any decision for or against a person on his race or to treat him differently because of his race." (emphasis added). (This statement was typed in the margin of the returned questionnaire and personally signed by the dean of that school).

In their 1965 article, Professors Carl and Callahan wrote poignantly on the need for the survival of Texas Southern University in the wake of widespread criticism of any racist policies of education.⁶⁴ At that time their arguments were strong. Today they are unassailable.

. . . [A] completely integrated law school would be ideal. However, until such time as the damaging and deadly effect of three hundred years of segregation and discrimination have been dissipated, such special law schools should be among the choices available to prospective Negro law students.⁶⁵

Besides the convincing argument that blacks should be able to attend a school that is of their own culture it is clear that states such as Alabama, Georgia, Louisiana, South Carolina, Tennessee, Kentucky, Mississippi, Texas, and others will continue to have a minute number of black lawyers unless those black law schools in existence receive extensive support and new law schools are created where, geographically, they do not now exist. The argument that this is "reverse discrimination" will, of course, be made. The answer to it is this:

Surely no one can deny that Negroes, for three hundred years, and Negro law schools, since their establishment, have been the victims of "preferential consideration." It would seem to us that now is the time for Negro law schools to be the beneficiaries of preferential or compensatory consideration. The cost involved in educating a Negro law student . . . was of no consequence when it suited the purposes of the respective state legislatures and their advisors to establish and maintain these law schools. Somehow it does not seem reasonable or even conceivable that these state legislatures and their advisors can now expect the Negro student who has been the victim of preferential consideration for three hundred years to be prepared miraculously, as if by some kind of black or white magic, for a totally integrated law school situation.⁶⁶

The obvious stumbling block to this proposal is the inevitable one—funds. It would seem, however, that at this point in history enough monies should be provided by federal agencies, organizations such as the ABA, NBA, and private foundations to make this proposal a workable concept. Other avenues such as professors of law from established "prestige" law schools spending their sabbaticals at these new schools might be a means of keeping the cost of a quality legal education at a lower level. In any event, the cost of such a project could prove to be small compared to the possible price to be paid in the future if there is not a significant increase in the number of black lawyers in those areas of the country that have the largest populations of black people.

In brief, it would seem that the challenge is obvious. What is not so obvious is the means by which this challenge can best be met. At this point it is within the grasp of the law schools, the organizations that have been mentioned

64. See generally Carl and Callahan, *supra* note 5.

65. *Id.* at 266.

66. *Id.* at 267.

COMMENTS

throughout this comment and the minorities to work out and implement programs that will do more than merely effect a token increase in the number of practicing black lawyers. Literally thousands of blacks must be graduated from law schools before proportionate representation in the legal profession can be approached.

A. BRUCE NORTON

APPENDIX

MINORITY GROUP STUDENTS PROGRAM QUESTIONNAIRE

- § A. Name of Law School:
- § B. Does your law school have a special program of any kind for minority group students?
If so, how many years has the program been in existence?
- § C. Number of minority group students:
1. admitted since inception of program.
 2. graduated since inception of program.
 3. who have passed a bar exam.
 4. have left school for academic reasons:
 - a) during first year
 - b) during second year
 - c) during third or fourth year
 5. have left for other reasons.
 6. who have achieved academic honors such as top 15%, law review, etc.
- § D. Admission:
1. Are admission standards different in any way for minority group students?
 2. LSAT cutoff:
 - a) for minority group students
 - b) for general student body
 3. If your admission policies for minority group students are elaborately different, please indicate in what way.
- § E. Recruitment:
Does your law school actively recruit minority group students?
If so, what are the mechanics of your recruitment program?
- § F. Academic Standing:
1. Does a double-standard exist as between the minority students and the general student body as to academic standing?
If so, how does this work in terms of mechanics?
 2. Briefly, what has been the response of the faculty, minority students and the general student body, if applicable?
 3. How are the minority students "doing" in relation to the general student body?
Realizing this question is difficult to assess, please feel free to answer in any terms which you feel are relevant.
- § G. Are the minority students offered special programming such as tutoring, orientation, study-groups, etc.? If so, what is the nature of the program?
- § H. Participation of Minority Group Students:
To what extent do the minority group students participate in the planning and implementation of your program?

§ I. Special Courses:

Does your law school offer courses which are of special interest to minority group students? If so, please list.

§ J. Special Problems and/or Comments:

Please feel free to make any comments you might have as to special problems your law school has had in regard to minority group programs for students and also, any comments you may have in general.

INSURANCE PREMIUM FINANCING

I. INTRODUCTION

As consumer protection has come into fashion, its legal aspects have become a favorite topic for analysis. One area of potential concern, insurance premium financing, has not been legally explored. This lack of attention is probably due to the emergence of premium financing and its gradual acceptance by the consuming public only over the past decade.

This comment will consider the origin, mechanics, function, and legality of various aspects of premium financing. For analytical purposes, it will be divided into four basic sections. In the first two sections some fundamental elements of insurance premium financing will be discussed. Consideration of the evolution and validity of regulation will be set forth in the next section. Finally, the comment will conclude with an analysis of some current controversies, particularly the "cancellation tort-victim controversy."

II. SOME FUNDAMENTALS OF INSURANCE PREMIUM FINANCING

A. *Origin*

The contemporary era can be characterized as an age of credit. Installment credit is extensively used in purchasing durable consumer goods, and services, and has become an integral part of the American economy. This general acceptance of installment buying is not new. The time-sale of automobiles and television sets, and the revolving credit plans of most department stores were the forerunners of the credit revolution. Today such diverse uses as church donations, doctors' visits, bail, and city fees ranging from business licenses to civic theater tickets can be made of credit cards. In some areas, even federal income taxes can now be charged on bank credit cards.¹

It is hardly surprising that the payment of insurance premiums has also been engulfed by the credit revolution. Insurance companies inaugurated this development with their time honored policy of granting a discount if a term policy premium was paid in advance. Under such a plan, five-year coverage for four annual premiums, or three year coverage for two-and-a-half annual premiums, was offered for full payment for the entire term made at the policy's inception. This practice resulted in a benefit to the insurance company as well as the insured since in addition to saving money by not having to issue a new

1. TIME, Jan. 26, 1970, at 70.