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The Black Philadelphia Lawyer

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COMMENT

THE BLACK "PHILADELPHIA LAWYER"

I. INTRODUCTION

Attorneys have traditionally played a special role in American society. Their influence may be easily seen at nearly every level of political interaction. Indeed,

[n]o occupational group stands in more regular and intimate relation to American politics than the legal profession. Lawyers make up a large proportion of American politicians at all levels and in all branches of government . . . . In the United States, probably more than any nation, lawyers are the "high priests of politics." The legal profession provides the most substantial reservoir of political personnel.¹

Consequently, lawyers are often viewed as extremely successful individuals, shrewdly taking those actions necessary to attain prominence and wealth. Unfortunately, in the case of the black attorney, the "lawyer" image hardly conforms to the reality of the situation. As so frequently is the explanation in other occupations, black attorneys for the most part have been unable to reach the levels of success of their white counterparts because of the racial barriers that have been imposed.

The legacy of past discriminatory practices within the legal profession nationally is reflected in the fact that there are relatively few black attorneys. Two commentators have noted that while "[t]here are nearly 325,000 lawyers in the United States and although blacks constitute over 11 per cent of the general population, they are just one and one-half per cent (3,845) of the lawyer population.² As a result, there is only one black attorney per 5,736 of the black population, as contrasted to one white attorney per 631 of the white population.³ Furthermore, blacks are more underrepresented in the legal profession than in most other professions,⁴ a phenomenon that has been explained as follows:

[W]hites will hoard those things seen as most valuable. The lawyer can have power (or influence), high financial reward, and status from

⁴. The 1970 Census revealed that in only the engineering profession did blacks constitute a smaller percentage of the total profession. For the census breakdowns of the various professions, see Appendix Part I.
being seen as highly skilled. Most professions at best combine only two of these three characteristics.  

Historically, these observations have been equally true in the Philadelphia area. In 1899, W. E. B. Du Bois inquired into the condition of blacks in Philadelphia, and described the black bar as follows:

There are at present ten practicing Negro Lawyers in the city . . . . Two of these are fairly successful practitioners — well versed in the law, with some experience, and a small but steady practice. Three others are with difficulty earning a living at criminal practice in police cases; and the rest are having little or no practice. This failure of most Negro lawyers is not in all cases due to lack of ability and push on their part. Its principal cause is that the Negroes furnish little lucrative law business, and a Negro lawyer will seldom be employed by whites. Moreover, while the work of a physician is largely private, depending on the individual skill, a lawyer must have cooperation from fellow lawyers and respect and influence in court; thus prejudice or discrimination of any kind is especially felt in this profession. For these reasons Negro lawyers are, for the most part confined to petty criminal practice and seldom get a chance to show their ability.

Unfortunately, many of Du Bois' findings concerning the obstacles that black attorneys faced in 1899 are surprisingly similar to the problems that presently confront black attorneys in Philadelphia.

Pennsylvania, a state with large urban-industrial complexes, still has an abnormally low number of black attorneys, given the respective sizes of its legal and black communities. The scarcity of black attorneys in Pennsylvania — approximately 280 in a black population of nearly 1 million — has unquestionably stifled the effectiveness of black clients seeking equal opportunity through the traditional legal modes. The low numbers of black attorneys is again reflected by the fact that in 1970 there was only one black attorney per 7,600 blacks in Pennsylvania while the ratio of nonblack attorneys to the nonblack population was 1 : 850. Statistics compiled at this time from other northern states which have large urban-industrial complexes and large black populations reveal the following: 1) In New York, there was approximately one black attorney for each 1,000 blacks in the state; 2) Illinois had a ratio of one black attorney for each 1,500 blacks; 3) Ohio had a ratio of one black attorney for each 1,900 blacks.

Currently, in Philadelphia, there are approximately 265 black attorneys in a population of 700,000 black persons — a ratio of 1 : 2,641.

5. Clark, supra note 2, at 14.  
7. This figure was obtained through an interview with Ricardo C. Jackson, Esquire, former President of the Barrister's Club (Philadelphia's association of black lawyers), in Philadelphia, Jan. 31, 1974.  
9. Id.  
10. Id.  
11. This figure was suggested by a number of black Philadelphia attorneys interviewed for purposes of this Comment.  
By contrast, in 1970, there were some 5,000 nonblack attorneys in a nonblack population of 1,300,000 — a ratio of 1:260.13 The ratio of attorneys to the general population is thus 10 times less favorable for blacks than for nonblacks.14

In consideration of the foregoing historical background, and the fact that there has been little, if any, information gathered upon the topic of the black attorney in Philadelphia, the research presented in this Comment was initiated to shed further light upon this subject. Quite often, reports concerning blacks concentrate upon the highly visible problems of the poor, apparently ignoring the fact that black professionals continue to be confronted with racial discrimination. As a means of documenting the largely ignored problems of the legal profession, this Comment will attempt to elucidate some issues of racial discrimination within the legal profession, both individual and institutional, with the objective of ascertaining the problems facing black attorneys in Philadelphia in the pursuit of their professional careers.

II. THE METHOD OF ANALYSIS

The professional history of the black attorney in Philadelphia reflects the interaction of numerous factors of societal, institutional, and interpersonal relationships in which even the most refined empirical techniques cannot be effectively employed to isolate variables, assign to them precise weights, and develop the proper historical context. Therefore, while empirical data was utilized for purposes of illustration, this Comment also relied heavily upon case histories and descriptive material to create a general portrait of the black attorney in Philadelphia. Much of the information used as a basis for the conclusions drawn in this Comment was gathered through interviews of a number of black attorneys and judges following an original questionnaire. The remainder of this section will describe this process in greater detail.

13. Id.
14. Throughout this Comment the underlying assumption is that the ultimate goal should be proportional parity for black attorneys: the ratio of black attorneys to black population, within a geographic region, should be equal to the ratio of nonblack attorneys to the nonblack population. This conclusion, of course, is a simplification of one aspect of the problem of minority group representation in the legal profession. It can be questioned whether the long term objective should be to achieve numerical parity in the profession and thus greater legal representation for minorities, or instead, merely to provide greater opportunity to blacks who are interested in becoming attorneys. At this juncture such questions do not seem worthy of serious debate. One should recognize that the current shortage of black attorneys is a crisis situation and that regardless of one's personal objectives, it is obvious that more black attorneys must be trained as quickly as quality preparation permits. If a choice is mandatory, however, the first objective seems preferable in light of the historic leadership and service function performed by the lawyer in American society. In other words, if American blacks seek greater political and economic participation, it seems to follow that the legal profession is an avenue for entry into the decision-making positions and the leadership of the black community.
A. The Sample

During January, 1974, 45 interviews were conducted with black attorneys and judges in Philadelphia. These respondents were drawn from a directory compiled privately by D. Fleming Tucker in December, 1972, entitled, *Negro Members of the Philadelphia Bar and Judiciary*. Because several historical factors bear a special significance in this study, many of the attorneys who had been practicing less than 5 years and who were under 30 years of age were not interviewed; thus, a relatively larger percentage of the selected respondents were over 30 with at least 5 years of membership in the Pennsylvania Bar. Since a high proportion of the black attorneys who have been members of the Pennsylvania Bar for 20 years or more are judges, 13 of the 45 respondents were judges. However, most of these judges had practiced privately for several years prior to ascending to the bench, and this part of their careers was emphasized during the interviews.

The sample does not purport to represent the precise statistical distribution of various key attributes of the entire population of black attorneys in Philadelphia. However, despite the fact that this sample was not designed according to probablistic criteria, which might assure its representativeness, it was constructed so as to represent a full spectrum of the black bar. It is submitted that the respondents reflect every stratum of the black bar, ranging in age from under 30 to 80.

B. The Questionnaire

Limitations of time and resources prevented the construction of an elaborate questionnaire. The purpose of the questionnaire was to obtain responses which would reflect three stages in the black attorney’s develop-

15. The questionnaire used was in the following form:

**Questionnaire**

1. Where did you attend undergraduate and professional schools?
   a. Dates of graduation.
2. Did you receive scholarship aid?
   a. If so, what percentage of your expenses were covered by scholarship aid (scholarship, grant, G.I. Bill, etc.)?
3. Did you attend day or night school?
4. Were you employed in law school?
   a. If so, how many hours per week did you work?
5. How many times did you take the Pennsylvania Bar Exam?
6. What was your age when you were admitted to the Pennsylvania Bar?
7. What type of law practice are you presently handling (business law, corporate law, real estate, probate, negligence, domestic relations, criminal, etc.)?
8. What were your career intentions (area of legal practice) while attending law school?
9. What caused you to enter your present practice?
10. What other areas of legal practice have you been involved in since your admission to the Pennsylvania Bar?
11. What percentage of the black clients with legal problems seek the advice of black attorneys in Philadelphia?
   a. Why haven’t black attorneys received a larger share of the black clientele?
ment: 1) the pre-bar experience; 2) the bar examination experience; and 3) the black attorney's career in the practice of law. The questions were designed to determine whether a black attorney in the pursuit of his or her professional career encountered particular problems strictly because of race. The first four questions were designed to elicit educational backgrounds. Questions 5 and 13 queried the black attorney as to his or her experience with the Pennsylvania Bar. Question 13 was purposely placed in the latter portion of the questionnaire so that the respondent would answer this question with respect to all black bar candidates instead of answering only from his or her personal experience. The remainder of the questionnaire was designed to illuminate the experiences and problems encountered by the black attorney practicing law in Philadelphia.

C. The Interview Process

The interviews, as an average, lasted approximately 75 minutes and were conducted in the offices of the respondents. The sessions were rather structured in that the conversation generally followed the text of the questionnaire. However, a few questions were sufficiently open-ended to allow the respondents to speak at length upon a topic which interested them. In general, the respondents were receptive to the interviews and attempted to give full answers to the questions.

D. Summary

Utilizing the information obtained through these interviews and other studies relevant to the discussion, this Comment has been organized in a manner which presents a generalized view of the black Philadelphia attorney during his prelegal experiences, his legal training, and his life as a professional. In all cases, the picture is remarkably different from that for attorneys in general.

12. What percentage of your practice is with black clients?
   a. Describe the makeup of your clientele?
13. Has the Pennsylvania Bar Exam ever acted in a discriminatory manner in the admission of black candidates to the Pennsylvania Bar?
14. What problems have impeded the development of black law firms that operate as partnerships in Philadelphia?
15. What impact will the recent ascendency of the several seasoned black attorneys to the Common Pleas Court have on the black community and the Philadelphia legal profession?
16. What is your approximate income?
   a) $10,000-20,000; b) $20,000-30,000; c) $30,000-40,000
   d) $40,000-50,000; e) $50,000 and over.
17. Are there any particular problems that face black attorneys in the pursuit of their professional careers?
18. In what types of directions would you like to see black attorneys in Philadelphia head in the future?

16. See note 15 supra.
17. See note 15 supra.
III. Prelegal Experience

In view of the data presented, one might naturally ask why there are so few black attorneys. The answer partly depends upon the fact that undergraduate institutions historically functioned in a racially discriminatory manner, resulting in the screening out of many blacks.

The interview results for Philadelphia indicate that 19 (42 per cent) of the respondents attended predominately black undergraduate institutions. Of this group, nine, attended Lincoln University, a private predominately black institution located near Philadelphia. Black undergraduate institutions such as Lincoln generally impose lower tuition, have more flexible admission standards, and historically were founded to provide black students with an alternative to other undergraduate schools.

The relatively high percentage of graduates from these black institutions is probably due to one factor above others — financial resources. Professor Goldman, who wrote a distinguished book about the black attorney in Chicago, reported that prior to the 1960's (when most of the Philadelphia respondents attended college), "few scholarships were available to blacks and no large-scale university programs recruited disadvantaged students." As a result, many blacks probably chose to attend the less expensive black colleges and universities, as demonstrated in the figures above, if they attended college at all. The unavailability of large amounts of scholarship aid most likely discouraged applicants even to the black institutions, thereby limiting the number of potential attorneys.

Availability of financial resources has had an additional affect upon the number of potential attorneys. The figures obtained through the interviews suggest that even those who were fortunate enough to obtain scholarship aid were financially limited while attending undergraduate school. In the Philadelphia sample, 16 attorneys did not receive any scholarship aid. At the same time, 12 respondents received financial aid for 80-100 per cent of their expenses. Another 17 attorneys in the sample received partial scholarships, while 9 others received aid during their formal education years from the G.I. Bill. Thus, for most of the financial aid students, the program of financial assistance did not provide for most expenses. This must have had a bearing upon the number of blacks entering the legal profession. Since a 4-year undergraduate degree often suffices in a number of professional careers, e.g., engineering and teaching, and since starting salaries to such occupations are increasingly attractive to talented blacks,
an additional 3 years of uncompensated work may present a real barrier to many potential attorneys.

Aside from the financial barriers to obtaining an undergraduate education and the financial disadvantages of continuing on to law school, other factors have operated to discourage blacks from entering the legal profession. One was the failure of academic institutions to recruit disadvantaged youths upon a large scale prior to the 1960's. Moreover, it is not possible to gauge how many black youths have been exposed to experiences similar to the following conversation between Malcolm X and one of his high school teachers. It was in the early 1940's, in East Lansing, Michigan, and his English teacher, who had given him good grades, asked Malcolm of his plans for a career after graduation. Malcolm replied:

"Well, yes sir, I've been thinking I'd like to be a lawyer." Lansing certainly had no Negro Lawyers — or doctors either — in those days, to hold up an image I might have aspired to. All I really knew for certain was that a lawyer didn't wash dishes, as I was doing.

Mr. Ostrowski looked surprised, I remember, and leaned back in his chair and clasped his hands behind his head. He kind of half-smiled and said, "Malcolm, one of life's first needs is for us to be realistic. Don't misunderstand me, now. We all here like you, you know that. But you've got to be realistic about being a nigger. A lawyer — that's no realistic goal for a nigger. You need to think about something you can be. You're good with your hands — making things. Everybody admires your carpentry shop work. Why don't you plan on carpentry?"

Even once these obstacles were surmounted, the aspiring college graduate faced and continues to face additional burdens in attempting to become a member of the legal profession, as outlined in the next section.

IV. LEGAL TRAINING AND ADMISSION TO THE BAR

A. Legal and Other Post Graduate Education

Racial prejudice, combined with a continuing lack of educational and economic resources, has served to curtail the number of blacks aspiring to join the legal profession after their undergraduate training. Most Southern law schools, with the exception of a few predominantly black law schools, were completely closed to blacks until a series of court orders, which began in the 1930's, required these schools to open their admission policies. As the Southern schools developed various evasive tactics to keep from

23. See text accompanying note 21 supra.
25. E.g., Missouri ex rel. Gaines v. Canada, 305 U.S. 337 (1938) (Blacks prohibited from attending Missouri State University Law School, although state assisted applications to law schools in neighboring states); Pearson v. Murray, 169 Md. 168, 162 W. 590 (1938) (Blacks excluded from the University of Maryland School of Law).
admitting blacks, courts found it necessary to act to insure blacks access to white institutions through the early 1950's.\textsuperscript{26} Even after the 1954 school desegregation decision,\textsuperscript{27} several Southern law schools refused to admit blacks until the early part of the next decade.\textsuperscript{28}

While Northern law schools have been nominally open to black applicants, only limited numbers of blacks were able to enroll, until the initiation of the minority recruitment and admissions programs in the late 1960's.\textsuperscript{29} As a result, in part, of these programs, there were 7,589 minority students, of whom 4,817 were black, in American Bar Association-approved law schools during the 1973–74 school year.\textsuperscript{30}

Nonetheless, satisfaction with this progress is muted by a review of statistics which reveals that the 7,589 minority-group students in law school represented only seven per cent of the 106,102 students in law schools during the 1973–74 school year.\textsuperscript{31} And the estimated 4,000 black attorneys in the nation represent little more than one per cent of the nation's 300,000 attorneys.\textsuperscript{32} Thus, despite the efforts of the affirmative action programs, it would appear that their present effect has been limited by past discrimination, so the solution to the problem has not as yet been attained.

\begin{itemize}
\item 28. Gellhorn, \textit{The Law Schools and the Negro}, 1968 \textsc{Duke L.J.} 1069, 1070.
\item 29. \textit{Id.} at 1069.
\item 31. White, \textit{Is that Burgeoning Law School Enrollment Ending?}, 61 \textsc{A.B.A.J.} 202 (Feb. 1975). What is even more distressing is that the growth of the number of minority students has decreased considerably in the last year. As the Association of American Law School's Section on Minority Groups has reported:
\begin{itemize}
\item In 1973–74 the rate of increase for minority enrollments in law school slowed dramatically as compared to the progress made over the past five years. For example, in the current academic term Black first-year enrollments rose nationally by only thirty-six (36) persons, or by slightly less than two per cent over last year. This contrasts with an increase of six hundred and one (601) students over the two year period spanning academic years 1970–72. In that space of time enrollments increased 53% over the 1969–70 base. The first year of significantly slower growth was 1972–73 when there was an approximate 11% increase over the year before. This reduction was followed in 1973–74 by a 1.9% increase.
\item While an examination of overall black enrollment for the last five years reveals an increase of 126%, the percentage increase this academic year over last, was 9%. Since first-year enrollments accounted for only thirty-six of the three hundred ninety-four person increase, the major gains were made in greater retention of black law students. It is significant to note that of the four thousand eight hundred seventeen (4,817) enrollees this year nearly one in every five attended a predominantly black law school . . . The remaining four of every five were dispersed over approximately one hundred forty-five other ABA-approved schools.
\end{itemize}
\end{itemize}

\textit{Minority Groups, supra} note 30, at 114, \textit{quoting} \textsc{American Association of Law Schools Newsletter, No. 74-1, 4-5} (May, 1974).

\item 32. \textit{See} text accompanying note 2 \textit{supra}.
Turning to the Philadelphia sample, all of the participating black attorneys graduated from law schools accredited by the American Association of Law Schools. As a matter of fact, all of the respondents have completed more formal education than the average lawyer in the United States. One hundred per cent of the black attorneys interviewed had both bachelor’s and law degrees. In contrast, the American Bar Foundation, as late as 1966, found that only 67.1 per cent of all attorneys had bachelor’s degrees and only 89.6 per cent held a law degree. Interestingly, not only did all the respondents hold college and law degrees, but 13 per cent were also holders of other advanced degrees. In short, the survey results suggest that, perhaps, black attorneys need to have more formal education than their nonblack professional colleagues.

With respect to particular law schools, 14 of the 45 respondents held law degrees from Howard University Law School. Following Howard closely is Temple University Law School, which led the state in black enrollments after World War II, from which 29 per cent of the respondents had obtained their diplomas. Although Temple graduated 30 blacks in the 1955-65 period, “the percentage of Blacks to the total Temple Law School student body was never as high as 3 per cent, and as late as 1968, Temple had but 2 Blacks out of more than 500 students.” Therefore, Temple’s past record with black students was deplorable at this point when one considers that it is a state-related institution located in a black community within a city (Philadelphia) which is 33.6 per cent black. It should be noted that there are certain advantages to obtaining legal education in Philadelphia if one plans to practice there, as there are with studying at any law school in the intended area of practice. The law student can meet the local practitioners; of course, he can become acquainted with his classmates, with whom he may practice in the future. The benefits from such relationships are several. The local practitioners may assist in future occupational placement, while classmates may refer valuable clients to him in years to come. In addition, the law student may gain insight into the operation of the local practice and the local legal institutions. Political contacts may also be established which may be vital resources for aspiring lawyer-politicians. Unfortunately, as recently as the academic year ending in June, 1966, there were probably “no more than ten black law students in all six Pennsylvania law schools (Dickinson, Duquesne, Pennsylvania, Pittsburgh, Temple, Villanova) and neighboring Rutgers-Camden,”

33. See Appendix Part II.
34. Id.
35. AMERICAN BAR FOUNDATION, 1967 LAWYER STATISTICAL REPORT.
36. See Appendix Part II.
37. REPORT, supra note 8, at 29.
38. See Appendix Part II.
39. REPORT, supra note 8, at 29.
40. 1975 PHILADELPHIA BULLETIN ALMANAC 211.
41. See Goldman, supra note 19, at 123.
42. REPORT, supra note 8, at 29.
surprising statistic in view of the size of the potential black clientele in the surrounding area. Moreover, the relatively high number of Howard Law School graduates present in the sample would seem to suggest that some attorneys faced difficulty in attending law schools in the Philadelphia area.

Another problem that appears to have confronted the lawyers in the sample was a financial one, even for those who received some form of financial assistance. A law student's personal expenses normally exceed his educational expense, especially when one must absorb such costs as room, board, or car. Consequently, academic scholarships may not fully cover a law student's personal expenses. In addition, black law students frequently cannot look to their parents for further support because of their limited resources. Since traditionally little financial aid has been available to law students, the facts that 51 per cent of the attorneys interviewed had received partial or full scholarships and 20 per cent of the entire sample received financial assistance for 80-100 per cent of their educational expenses would indicate that the recipients' financial resources were limited.

Furthermore, 27 per cent of the respondents were employed 20 to 40 hours or more per week during their law school days. More importantly, only 40 per cent of the respondents were fortunate enough to indicate that they had not been employed during the course of their legal education. The need to earn an income during law school was again reflected by the fact that eight of the respondents attended night law school, at Temple University.

Finally, 16 (35.5 per cent) of the respondents indicated that they had been admitted to the bar at the age of 30 or older. Assuming that these attorneys attended law school within 5 years of their admission to the bar, it seems reasonable to conclude that these 16 respondents were self-supporting during their law school days.

In light of the high percentage of scholarship students, those who were employed, and those admitted to the bar after the age of 30, it is clear that attendance at law school required considerable self-sacrifice for a significant portion of the respondents. Those attorneys who were financially handicapped had less time to devote to their scholastic work, which must have reduced or eliminated the possibility of their participating in extracurricular activities. There apparently was little time for debate and other forms of activity which can provide an important training supplement for the law student.

43. See Goldman, supra note 19, at 17.
44. See Appendix Part III.
45. See Appendix Part IV.
46. Id.
47. Night law schools developed during the '20's and '30's to accommodate immigrants who had to maintain full-time employment while attending law school. These schools generally have four year programs. See generally A. Harno, Legal Education in the United States (1965).
48. See Appendix Part V.
B. Bar Examination and Bar Admission

To qualify to practice law in Pennsylvania, one must take and pass the bar examination, unless the candidate is an attorney from another state who has practiced law in that state for at least 5 years, a full-time law professor in an accredited law school who has taught for at least the same amount of time, or a war veteran exempted by an extraordinary mandate of the Supreme Court during or immediately after the last two world wars and the Korean War.

In 1970, a member of the State Board of Law Examiners, David E. Seymour, estimated that 98 per cent of those who took the bar examination eventually passed. On the other hand, during the 30 years before that time, the “eventual pass” rate for blacks had been below 70 per cent. During the period of 1955-70, while 67.6 per cent (7,300 of 10,790) of all candidates passed, only 27.7 per cent (85 out of 306) of the papers submitted by black candidates were deemed acceptable.

The average yearly number of blacks admitted annually to the Pennsylvania Bar during the years 1930-70 was less than four. However, between 1933 and 1943, no black candidate became a member. During the 15 year period of 1955-70, about five blacks per year (a total of 85) were admitted to the practice of law in Pennsylvania. Meanwhile, during the same period, 7,300 non-blacks (456 per year), passed the Pennsylvania Bar examination.

Other factors tend to make these figures even more surprising. At the time of the study, a candidate could qualify for the bar examination even though he had not graduated from an American Bar Association “approved” law school. As to the black candidates during 1933-70 period, all were graduates of approved law schools. In contrast, there was the “combined law study-clerkship” where a candidate merely had to read law for several

50. Id.
51. Id.
52. REPORT, supra note 8, at 11.
53. The State Board of Law Examiners is a five-member panel appointed by the Supreme Court of Pennsylvania to enforce the rules of the court relating to the Bar examination and admission to the Bar. PA. Sup. Ct. R. 7.
54. REPORT, supra note 8, at 9.
55. Id.
56. Id. at 18.
57. Id. at 6.
58. Id.
59. Id.
60. Id.
61. Id. at 12. This is no longer true in Pennsylvania for rule 8 of the Supreme Court of Pennsylvania states that one of the requirements for taking the Bar examination is that the applicant “shall have completed the study of law in a law school accredited by the American Bar Association . . . .” PA. Sup. Ct. R. 8(C)(2).
62. REPORT, supra note 8, at 13.
years in a law office under the supervision of a lawyer or judge before taking the bar examination.63 Thus, it is startling to observe that the nonblack candidates who had not even completed an unapproved law school have had greater success on the Pennsylvania Bar examination than black candidates from approved law schools. Between 1955–70, 27.7 per cent (85) of all black candidates passed, while 28.4 per cent (21) of the “combined law school-clerkship” papers passed, while the results between 1965–70 were 30.7 per cent and 34.2 per cent respectively.64 Assuming that graduation from an approved law school indicates that a student has met the minimal requirements of a school which is required to maintain a standard of excellence, these results again suggest that black candidates were systematically “weeded out” and excluded from admission to the Pennsylvania Bar.65

Another indication of bar examination discrimination in Pennsylvania can be seen in the experiences of the Howard Law graduates with other bar examinations. In the 1965–70 period, Howard Law School graduates passed the Pennsylvania bar examination at a rate of 11.4 per cent (5 of 44).66 The pass rate for Howard applicants was lower in Pennsylvania than other comparable states. For example, New York, 70 per cent (21 of 30), Ohio, 68.8 per cent (11 of 16), and Maryland, 32.2 per cent (9 of 28).67 Arguably, the low passing rate for Howard graduates in Pennsylvania, assuming that the other states had Howard graduates of comparable quality as candidates, implies that Pennsylvania’s Bar examination systematically excluded Howard graduates. As the Dean of Howard Law School stated:

For years we at Howard have cautioned our students considering law practice in Pennsylvania to think about it again. We have told them what we know. Blacks are not welcome in Pennsylvania, and the Bar examination is the State Board’s way of making sure that the number of Black lawyers in that state remains small.68

Statements like the above not only indicate the atmosphere created by the examination results, but also suggest that many competent black attorneys who otherwise would have come to Pennsylvania have been directed to other states.

So that it may not appear that only Howard black graduates experienced difficulty with the Pennsylvania Bar examination, compare the results of candidates from the University of Pennsylvania, Villanova, and

63. Id. at 10, 12–13. Apparently, this method is no longer available since a degree from an accredited law school is a prerequisite. See note 61 supra.
64. Report, supra note 8, at 19.
65. Id. at 9.
66. Id. at 23.
67. Id.
68. Id. at 25.
Temple during the same period. Once more, black candidates still had noticeably lower pass rates than non-blacks from those schools.69

These low passing rates for black candidates seeking admission to the Pennsylvania Bar should be contrasted to the relatively higher rate indicated by the respondents in the sample. More than half (25) of the respondents said that they only took the bar examination once. Thirteen (27 per cent) responded that they only took the examination twice while another 6 respondents made three or more attempts before they were successful.70 Only one attorney interviewed was admitted to the Bar after practicing in another state for several years. However, an attorney’s experience with the bar examination may be quite embarrassing and even traumatic, as pointed out by one black judge, who forewarned, “Most of the black attorneys are not willing to give accurate information on their experiences with the Bar.” Therefore, due to the personal nature of this question, these results may not be wholly accurate reflections of the respondents’ experiences with the Bar examination.

Further suspicion concerning the reported high pass rate of the black attorneys in this sample results from the fact that all but one of the respondents argued that as late as 1970 the bar examination had acted in a discriminatory manner to exclude blacks from entrance into the profession. Consequently, it is arguable that the respondents may have given less than accurate answers as to the number of times that they took the Pennsylvania Bar examination.71

It should be noted that through the efforts of the Pennsylvania Bar Association, the discriminatory features of the Bar examination have been eliminated. By letter dated June 23, 1970, the Chancellor of the Philadelphia Bar Association, Robert M. Landis, designated Judge Paul A. Dandridge, Judge Clifford Scott Green, Ricardo C. Jackson, Esquire, W. Bourne Ruthrauff, Esquire, and Peter J. Liacouras, Esquire (Chairman), as a Special Committee on Pennsylvania Bar Admission Procedures “to investigate the claims of possible discrimination against Black Law students . . .”72 Oral and written complaints to the Bar Association, as well as to the public via the news media, had suggested that the State Board of Law Examiners was practicing racial discrimination in the Bar Examina-

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69. Of all the candidates from the University of Pennsylvania, 85.6 percent (458 of 535) passed, while only 57.1 percent (4 of 7) of the black candidates were successful. The figures for Villanova Law School candidates were 81.7 percent (412 of 504) and 50 percent (2 of 4), respectively. Candidates from Temple Law School (13 of the survey respondents were graduates of this institution) passed at a rate of 83.2 percent (502 of 603), while their black candidates experienced less success, at a rate of 70 percent (7 of 10). Id. at 22.
70. See Appendix Part VI.
71. It is also possible that the “eventual pass” rate for black candidates in general (see text accompanying note 55 supra) was somewhat lower due to the probability that many Blacks who were unsuccessful at their initial attempt at the Pennsylvania Bar examination left the state to take bar examinations in other jurisdictions where their chances of success were greater.
72. See Appendix Part VI.
tion process. The complaints alleged that the State Board deliberately had "fostered an atmosphere hostile to Black candidates . . . and [had] consciously created or otherwise tolerated procedures which cumulatively [had] resulted in a systematic exclusion of Blacks from the Bar." 73

The Special Committee concluded that "[certain] practices raise[d] the strongest presumption that Blacks were discriminated against under procedures used by the State Board of Law Examiners . . . ." 74 As a result of the findings of the Special Committee, the State Board of Law Examiners and the Pennsylvania Supreme Court agreed to change from an essay to a multiple choice examination beginning in July, 1971. Subsequently, an average of about 95 per cent of the candidates, blacks and non-blacks, have passed the bar examination. 75 Moreover, the respondents in the Philadelphia survey asserted unanimously that the bar examination no longer operated in a racially discriminatory manner.

V. CHARACTERISTICS OF PROFESSIONAL LIFE

An analysis of the directory of Negro Members of the Philadelphia Bar and Judiciary establishes that the black Bar in Philadelphia is rapidly growing. Between 1920 and 1954, black attorneys in Philadelphia were gaining admission to the Pennsylvania Bar at an average rate of 2 per year, including the ten-year period of 1933-43, when no Blacks were admitted to practice in Pennsylvania. From 1955 until 1970, the average rate of admission of black candidates in Philadelphia rose to about five per year. 76 In 1971 the number of black admittees rose to 17, and in 1972 it leaped to 54. It is clear from this that the Special Committee's Report and the change to the multiple choice bar examination have resulted in a larger influx of black Bar members. It remains to be seen, however, if the new black members will have an effect upon those aspects of professional practice depicted in this section.

A. Age and Amount of Time Since Admission to the Bar

Ten (22 per cent) of the survey respondents reported their practice at the bar to have been 5 years or less, 77 an interesting statistic since only three (7 per cent) of the respondents, were at the time of the interviews, less than 30 years of age. 78 This comparison indicates that a sizable portion

73. Id.
74. Id. at 104. For the pertinent conclusions of the Committee's findings, see Summary of the Report of the Philadelphia Bar Association Special Committee on Pennsylvania Bar Admission Procedures, quoted in part in Appendix Part XIII.
75. In the July, 1974, Bar examination, 93.8 percent of all candidates passed. The figures for the July examination in 1973 and 1972 show that 95.2 percent and 97.55 percent of all candidates passed in those years. These statistics were released publicly by the Pennsylvania State Board of Law Examiners.
76. Report, supra note 8, at 6.
77. See Appendix Part V.
78. See Appendix Part VIII.
of the respondents are recent admittees and that they were admitted to the Bar at a relatively late age (over 30).\(^79\)

One may easily conclude that a large segment of the black Bar in Philadelphia was unable to finish their undergraduate and legal education without interruption, and then gain admission to the Bar immediately upon graduation from law school.\(^80\) It is logical that the necessity of having to be self-supporting during the years of formal education, along with unsuccessful attempts at passing the bar examination, have caused black attorneys to gain admission to the Bar at a relatively late age. At the same time, it is now probable that the new recruitment practices of colleges and law schools along with the new bar examination will allow a larger percentage of black attorneys to gain admission to the Bar at a younger age.

B. Form of Practice

During the 20th century, the lawyer population in most metropolitan areas throughout the nation has become a highly stratified one. It has been contended that the rigidity of these stratified groups is displayed by the fact that attorneys tend to remain in one stratum throughout their careers:

There are marked differences in what lawyers do and the kinds of clients they serve. This diversity of practice is, in turn, related to size of the law firm. Lawyers in the larger firms are at the top of the status ladder; individual practitioners and small-firm lawyers are the lowest group; members of the medium-sized firms fall between. Large-firm lawyers have the highest average incomes. They represent the most affluent clients and come into contact with the highest levels of government, including the judiciary. Individual practitioners and small-firm lawyers have the lowest incomes. They represent the least affluent clients and deal with the lowest levels of government.\(^81\)

Not only do large firms offer their associates large incomes and prestige, but these firms also afford a young attorney an excellent opportunity to develop a specialty. The division of labor among partners, associates, and apprentices enables these firms to supply their clients with thorough research and sound legal advice.

Professor Edwards of the University of Michigan conducted a study in 1971 of large law firms in the Midwest.\(^82\) He found that despite the recent and growing increase of black students in law school, only 13 of a

\(^79\) In fact, 16 (35.5 percent) were admitted after age 30. See Appendix Part VII.

\(^80\) The sample statistics show that only eight (17.8 percent) were admitted to the Bar under the age of 26, id., the usual age of an individual who has completed his undergraduate education in 4 years, and has immediately gone on to law school, finishing his education there in 3 years.

\(^81\) J. CARLIN, LAWYERS' ETHICS 168 (1968).

sample of 2,225 attorneys had been black; and of this total, only one of the 13 had held the superior status of "partner" that allows the attorney to share in the profits and in the decisionmaking processes of a firm. Although the sample for Philadelphia used for this Comment indicated that seven (16 per cent) of the respondents were partners, only three were partners in the firms generally regarded as large prestigious law firms. These three black partners, also, were the only three who occupied such prestigious and powerful positions in the large law firms of Philadelphia.

One of the respondents, William T. Coleman, Jr., a 1947 graduate of Harvard Law School, who ranked first in his class and who clerked with both Judge Herbert Goodrich, of the United States Court of Appeals for the Third Circuit and Felix Frankfurter of the Supreme Court of the United States, was thereafter unable to secure employment with a number of law firms in Philadelphia. In 1952, after Mr. Coleman had practiced in New York City, the late Mayor and then District Attorney Dilworth offered Mr. Coleman a position in the firm of Dilworth, Paxson, Kalish, and Levy. Mr. Coleman thus became the first black attorney in Philadelphia to gain entrance into a major white firm.

Stories abound of qualified black attorneys who were denied admission to the more prestigious law firms. Judge A. Leon Higginbotham, Jr., one of the youngest judges appointed to the federal bench, reports that upon graduating from Yale Law School in 1953, with more honors in oral advocacy than had ever been won in Yale's history, he was consistently turned down by Philadelphia's major law firms. Meanwhile, many white students he had defeated in the American Bar Association and Moot Court competitions were successful in gaining admission to these same firms.

Progress has been made, and the Colemans and Higginbothams of today can easily secure jobs in most major white firms. However, the prospects are not as bright for less outstanding blacks who seek positions with these major firms. Only nine of the respondents had ever been associated with the large prestigious firms in Philadelphia. Eighteen of the respondents were practicing at the time of the interviews as individual practitioners and as small-firm attorneys. Twelve of the 14 black judges interviewed also practiced either alone or with the smaller, less prestigious firms.

The primary effect of the failure of young black attorneys to secure positions with these large firms is to make their gathering of practical legal experience more arduous, more lengthy, and less rewarding financially. Without the opportunities afforded by large law firms to develop specific areas of expertise and to serve affluent clients, the black attorney must...
obtain the necessary practical knowledge on his own, relying upon his experiences with his first few, relatively poor clients. 87

C. Field of Law and Specialisation

Black attorneys in private practice generally have what is termed a “neighborhood practice.” That is, they represent individual clients living in their area rather than corporations. In general, it can be said that legal assignments most often involve personal injury cases, criminal work, corporate matters, divorce and custody proceedings, and estate work. 88

Thirteen (39.5% per cent) respondents listed criminal work as their primary field of practice; nine (21.4% per cent) respondents reported corporate law as their primary area; another six responded to this question by designating probate work; and five stated that their primary field was domestic relations work. A few respondents (three and four respectively) listed negligence and real property as their major fields of practice. 89

Unfortunately for these lawyers, negligence, domestic relations, and criminal work are the “three types likely to disappear from private practice in the future.” 90 In the case of negligence work, no-fault insurance schemes have had detrimental effects upon the incomes of attorneys in those states which have adopted the plans. 91 Since Pennsylvania has recently passed a no-fault automobile insurance bill to be effective in 1975, 92 black attorneys in Philadelphia may be in danger of losing a substantial portion of their practices. Similarly, no-fault divorce laws may, by merely requiring an assertion of incompatibility, 93 substantially reduce the number of adversary divorce proceedings, with a corresponding reduction in fees from this type of practice. Finally, black criminal lawyers face a threat from public law organizations, such as the Public Defenders’ Office. Whereas in the past, criminal defendants often obtained from their family and friends the funds to pay the fees necessary to retain a private attorney, the availability of public servants to indigent individuals makes this occurrence less likely. 94

D. Clientele

George D. Covington, a partner in one of the two black law firms in New York City, stated, “White lawyers have had both black business and white business. Black lawyers expect no less.” 95 Unfortunately, black

87. See Clark, supra note 2, at 16-17.
88. See Goldman, supra note 19, at 25.
89. See Appendix Part X.
90. Clark, supra note 2, at 17.
91. In Massachusetts and Florida, attorneys reported substantial reductions of income because of the no-fault legislation. See id. at 17.
94. Quoted in id. at 18.
attorneys, in Philadelphia are not attracting both black and white clientele. More than half (26) of the black attorneys interviewed reported that their practice was 80-100 per cent black. More importantly, 14 (31 per cent) of the black attorneys interviewed reported that their business consisted of a 98-100 per cent black clientele. Although a black attorney may handle specific legal matters for white clients, he rarely attracts a permanent white clientele. A black attorney from a black Philadelphia law firm commented: "Our firm represents a few white firms, but usually we get special cases. Most don't ask us to represent them generally." In the Philadelphia sample, only one black attorney who was not associated with a prestigious white firm reported that more than one-fourth of his clients were white. The other respondents with a sizable number of white clients worked for large firms, and generally noted that these clients had been referred to them by their firms.

Although the black attorney remains largely dependent upon clients of his own race, moderately affluent blacks seem to prefer going to white attorneys for legal advice. With respect to the total amount of black legal business in Philadelphia, 16 (40 per cent) of the respondents estimated that black attorneys attract less than 20 per cent of the total black clientele, while none estimated that black attorneys received more than half of these cases. In the American tradition, business and professional referrals are, for the most part, channelled along ethnic lines, but since black attorneys in general represent few white clients, and are unable to attract a large percentage of the total black clients, one can safely conclude that black attorneys in Philadelphia are operating at a relative disadvantage.

The question remains of why black attorneys have been unable to attract a larger percentage of the black clients who are in need of legal services. Most of the respondents indicated that the core of this problem lies in the small number of black attorneys who have traditionally practiced law in Philadelphia — they have been able to represent only a small portion of the black clients in the city. In addition, most blacks had had little contact with the legal profession except in the court room, where, until the 1940's, there were no black judges or black court personnel. Judge Curtis C. Carson, Jr., asserted that he was the first assistant district attorney to try a major homicide in Pennsylvania. Along with Judge Carson, the late Judge Thomas Reed, Isaiah Crippins, and Ed Nichs, were appointed by the late District Attorney Dilworth as the first black Trial Assistant District Attorneys in Philadelphia in 1952. Judge Carson argued that Dilworth felt committed to black Democrats in Philadelphia after winning blacks away from the Republican Party in his election to
the District Attorney's office, and that he demonstrated this commitment by making these appointments. 100

Since blacks seldom saw other blacks in the courtrooms, they may have accepted this poor self-image by assuming that black attorneys lacked the competence and the contacts with the white judges necessary to secure favorable results. White attorneys, in turn, were able to gain the business of these black clients. An overwhelming majority of the respondents were of the opinion that these problems are improving, and that the recent arrival of black judges is acting to correct this poor self-image from which black attorneys have suffered.

At present, the black attorney's financial success depends primarily upon his ability to attract black clients. The segregation of clientele reflects both institutional patterns of discrimination within the legal profession (too few black attorneys and judges) and individual preferences among clients. Those black attorneys who specialize in areas of law, such as criminal law, that do not attract repeat clients must handle a large volume of business to achieve financial security. This in turn means that they must give less time to each case, and, therefore, the quality of their representation is lower. On the other hand, those attorneys in other areas of the law whose permanent clients pay regular retainer fees can afford to see a smaller number of clients and better prepare their cases.

E. Lack of Black Law Firms

The establishment of a firm requires a substantial capital investment both to start an office and to maintain its operation. 101 Added to these costs is the expense necessary to support the attorneys' families, resulting in a waiting period of several years before the investment can begin to yield returns. Consequently, not many black attorneys have had the financial capability either to meet the initial costs of the start-up or to sustain themselves until the investment has been recovered.

Currently, Norris, Hutton, and Wells is the only black law firm operating as a partnership in Philadelphia. It was organized in 1954 as Schmidt, Green, and Harris, with Austin Norris, the oldest black attorney of the Philadelphia Bar, joining one year later, eventually to become the senior member. Mr. Norris reported in 1974 that this firm "represents more black churches than anyone else in the country." 102 These regular clients have provided the firm with a broad base of steady financial support. The firm is also the only one in Philadelphia that can presently claim two federal district court judges, A. Leon Higginbotham, Jr. and Clifford Scott

100. Id.
101. The acquisition and maintenance of office space, including attractive furnishings, constitutes a large portion of this cost. However, successful operation of a firm involves not only capital, but considerable management expertise as well. See M. Altman & R. Weil, How to Manage Your Law Office (1973) [hereinafter cited as Altman & Weil].
Green, as former members. Several of the black Common Pleas Court judges have also been affiliated with this firm. 103

The general explanation offered by the respondents for the presence of only one black law firm was that black attorneys lack the business clientele who can afford to pay the substantial retainer fees that are necessary for the continued operation of a law firm. The respondents argued that this stemmed from the relatively small number of black-owned businesses in Philadelphia. For example, there are presently no black-owned banks, insurance companies, or hospitals that might provide the need for legal representation sufficient to support more black law firms. An additional effect of the lack of business clientele with complicated corporate legal problems was the reduction of a need for specialists in these areas among members of the black bar, with the consequence that most black attorneys developed some form of general practice. Because most of the black attorneys handled the same type of cases, they would have been competing against each other for the same cases if they were to have formed a firm of general practitioners given their limited clientele. One black federal judge stated: "A partnership is developed from businesses which take advantage of specialization. If everyone is practicing on a general basis, there is no advantage to a firm." A young black attorney from a large white firm added: "You can't build a firm on a criminal or small civil practice. You need fixed retainers. Black attorneys have lacked this."

One response to this situation has been the use of space-sharing. 104 These practices are not organized as partnerships in the strict sense, but are loose associations of attorneys in which rent and other office expenses are shared while fees and other professional matters are handled separately. This kind of arrangement also assists these attorneys in referring cases to one another and makes the advice of other attorneys readily accessible. Eight of the respondents were at the time of the interviews space-sharers, while two of the four public officials and the one corporate counsel shared space with other attorneys on a part-time basis. 105 In addition, several of the judges also had been sharing space before they ascended to the bench. The adoption of this method appears to be a step away from solo practice in the direction of more black firms.

There are those who would argue that black attorneys should concern themselves with the development of integrated firms rather than black firms. One young black attorney contended: "A purely black firm can't

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103. This information was obtained from interviews with Austin Norris, Esquire, and Judge Harvey N. Schmidt of the Court of Common Pleas, Philadelphia County. The interviews were conducted in Philadelphia, Jan. 16, 1974, and Jan. 21, 1974, respectively.

104. For a discussion of the advantages and disadvantages of this arrangement as well as the management problems created, see Altman & Weil, supra note 95, at §§ 2.01–.04.

105. See Appendix Part IX.
get enough money from the businesses in the black community. This leads to the need for a strong integrated firm." The feeling of three of the respondents, listed as partners, who were working in small integrated firms was that an integrated firm can attract a wider variety of clients. One of these young respondents who had recently entered a partnership with several young white attorneys maintained that more black attorneys should enter private practice in integrated firms, stating: "It is easier in an integrated firm. White attorneys will draw people, Blacks won't. A firm should be as diversified as possible, and for this reason, a firm should be integrated." It remains to be seen whether the integrated partnership will become a familiar presence in Philadelphia, or whether an increase in black clients will permit the organization of black law firms.

F. **Office Location**

The type of client also often affects the choice of office location. In Chicago, Professor Goldman observed: "The nature of a black attorney's clientele and practice situation relates closely to the location of his office. Most of the respondents who were in private practice had offices located outside the downtown area, within the black community." In contrast, the black attorneys in Philadelphia do not appear to have followed the nature of their clientele in locating their offices. All of the respondents, with the exception of two, were located in downtown offices, within 5 blocks of City Hall. Such downtown location, the respondents claimed, afforded the black attorney access to the courts and the central business district where the banks and major lending institutions are situated.

Despite their present locations, several of the older respondents contended that it was difficult until the 1960's for black attorneys to acquire an office within this 5-block radius of City Hall. Judge Raymond Pace Alexander, who was not a respondent, reflecting upon his initial experiences in practice, recalled: "[N]ot one office building, new or old, in the central city or court house area or otherwise would rent to Negroes. To the Negro section I went and rented a Third floor bedroom on Philadelphia's famous Lombard Street." For those who might wonder if Judge Alexander's example is dated, there are other similar instances as recently as 1959. One respondent who formed an association with a Jewish attorney asserted that the superintendent of Bankers' Securities Building, a few short blocks from City Hall, postponed his moving into the building for 30 days. Years later, the superintendent apologized for intentionally detaining the attorney's relocation by saying, "[H]e found him to be a gentleman and to be a 'white' man." This example well depicts the attitude that excluded black attorneys from these central city office buildings.


G. Black Judges

In 1948, the late Judge Herbert Mellen became Philadelphia's first black judge when he was appointed to the Municipal Court. Presently, there are 19 black judges: 14 on the Common Pleas Court; three on the Federal Courts (two on the United States District Court for the Eastern District of Pennsylvania and one on the Third Circuit Court of Appeals); one on the Supreme Court of Pennsylvania; and one Administrative Law judge in the Social Security Administration. Twelve of these black judges reached their present positions within the past 4 years.

Almost unanimously, the respondents thought that this increase in the number of black judges was having a profound effect upon the Philadelphia community-at-large, the black community, the judiciary, and the black bar. By placing black attorneys in the judiciary, more clients, both black and white, were gaining confidence in the capabilities of the black attorney. One additional benefit should be a greater sense of fraternity among all members of the Bar which will help to clear the air of any tension that might exist when a black attorney appears before a white judge. One black federal judge summarized the effects of more black judges as follows: "Blacks will have what whites have had, a friend in the courtroom. The increase of black judges negates the image of black impotence. It will bring diversity to the judiciary, i.e., the black experience, as black judges will be interpreting to whites how the system will be run."

Many respondents also maintained that the increase in black judges would enlarge the amount of legal business available to black attorneys. Not only would blacks gain confidence in black attorneys, but white clients would realize that their case might come before a black judge, thereby increasing the likelihood that more white clients would retain black attorneys. One young black attorney contended:

Black people respond to the justice system in a manner similar to whites. They want a system to be represented by someone who is likely to give them the best "shake" from the courts. Black attorneys, comparatively are just getting into the traditional justice system (practice and judgeships on more than a token basis). Due to the lack of presence of black attorneys in certain fields, there has been no reason for black clients to believe that black attorneys, in general, would receive any attention or "breaks" in the court system in the presentation of their cases. The presence of more black judges will create more work for black attorneys in representing black and white clients. More importantly, black attorneys will at least not get hostility from the judge.

Another contention asserted by several of the black attorneys interviewed was that the presence of more black judges will serve to correct the past wrongs of the "legacy of too few black lawyers." For example, one respondent commented, "It will increase the number of practicing black
lawyers in Philadelphia because there is now more of a feeling that the Philadelphia Courts will be fairer by the presence of more black judges."

Fortunately, it appears that there is a substantial likelihood that more and more blacks will become judges. The appointment of nine black judges to the Common Pleas Court in Philadelphia in January, 1971, was a dramatic sign of commitment by Governor Shapp to the black Democrats in Philadelphia. The placement of these black attorneys in such highly visible positions of responsibility is bound to have far reaching effects. However, 14 black judges in a total of 82 Common Pleas judges is still a low ratio — especially in a city with a population that is 40 per cent black\(^{108}\) and where 90 per cent of the defendants in its criminal courts are black\(^{109}\)

H. Income

Information concerning the annual income of black attorneys in Philadelphia has been purposely omitted. The question regarding the size of the attorneys' income was admittedly not clear as to whether it sought figures of gross income or net income\(^{110}\). Consequently, some respondents who were in private practice may not have deducted their office expenses in their responses. Another consideration is that an attorney's income is a highly personal matter, and several respondents evidenced marked discomfort in answering this question. Professor Goldman experienced this problem in her study, concluding, "The intense responses seemed to show the significance of the relationship they felt to exist between earning power and self-esteem."\(^{111}\) In short, the income data gathered is questionable at best, and the results may not be valid.

I. Conclusion

Various forms of racism and racial exclusion, which have entered all major American institutions, also pervade the legal profession. Despite the profession's ethics, which ostensibly support equal justice for all, both black candidates for professional status and black attorneys have met direct and indirect forms of racial discrimination. Although the situation is improving, black attorneys still face obstacles in the pursuit of their professional careers simply because of their race.

Racial prejudice, combined with the continuing lack of education and resources, served to curtail the number of blacks who aspired to join the legal profession. After 4 years of uncompensated work in college, talented blacks may easily be attracted to an occupation which offers a seemingly attractive salary immediately upon graduation. In addition, law schools in the North and South limited the number of blacks who could enroll in

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108. See note 38 supra.
109. This figure was suggested by a number of the interviewees.
110. See note 15 supra.
111. Goldman, supra note 19, at 37.
these schools. In the Philadelphia sample, more than half of the respondents were evenly split between Howard and Temple Law Schools. Those black attorneys who were self-supporting generally worked to supplement their financial aid, and so, were restricted in the amount of time they could devote to academic pursuits and extracurricular activities.

Following graduation from law school, black candidates in Philadelphia, until 1971, faced a bar examination that historically had excluded a high percentage of blacks. Those who passed generally did so with scores superior to 75 per cent of the other candidates. In effect, the heavy psychological burden of the legacy of the bar examination in excluding blacks, coupled with the State Board’s practice of “weeding out” blacks, resulted in most blacks’ taking the bar examination several times before passing. The struggle through college, law school, and the bar examination caused the black attorneys to gain admission to the bar at a late age.

Today, government agencies, white corporations, and white firms are offering employment opportunities, whereas 25 years ago these doors were completely closed to blacks. Nevertheless, black attorneys still face racial discrimination in the hiring and advancement practices of many personnel offices. It is significant that there are only three black attorneys who have achieved the powerful position of “partner” in the large firms of Philadelphia. These discriminatory hiring and advancement practices, coupled with the small number of black businesses and the fact that black attorneys have been limited to handling the individual cases of black clients, have led most of these attorneys to become general practitioners. The corporate work that these attorneys handle is generally the case given to them by their firms, or individual matters for doctors, real estate agents, or other small businessmen.

VI. Suggestions for the Future

The distinct rise in the number of black law school students, and the fact that approximately 95 per cent of the candidates are now passing the Pennsylvania Bar Examination, suggests rather strongly that the black Philadelphia bar is rapidly growing. A few years ago, as more blacks were admitted to the Bar, several of the older black attorneys feared that this influx would create fierce competition in their limited legal business. William H. Brown, III, former Commissioner of the Equal Employment Opportunity Commission and presently a partner in one of Philadelphia’s large law firms, disagreed: “The more black attorneys an area has, the more legal business will go to the black attorneys. This increase in legal business will make more contacts, and as Blacks learn that black attorneys are doing good jobs, this will lead to more legal business.” The growing black bar

112. See Appendix Part II.
113. Report, supra note 8, at 25.
114. See note 74 and accompanying text supra.
115. See supra note 74.
promises to increase the amount of the legal business handled by black attorneys and offers these attorneys an opportunity to diversify their practices, an opportunity which in turn will lead to more efficient case preparation.

The concerted contention of the respondents was that young black attorneys should stay away from general practice and gain expertise in specific areas of the law. They felt that the day of the general practitioner was over. Today, young black attorneys may acquire specialties by working in various positions which were formerly closed to black attorneys in Philadelphia: government agencies, large white firms, and large corporations as in-house counsel. Professor Edwards has agreed, and challenged past measures of participation:

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 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 lawyers into the heart of the cauldron of causes (corporations, banks, brokerage firms, regulatory agencies, and large corporate law firms).\(^{117}\)

Significant input by black attorneys in the decision-making positions in these "cauldrons of causes" can, \textit{inter alia}, open employment and educational opportunities for blacks, stimulate and finance the development of black business, and consequently, improve the conditions of the black community.

After gaining expertise in a specific area of the law, the black attorney may join other members of the black bar in the establishment of black law firms.\(^{118}\) Austin Norris has maintained that, "the formation of black firms will allow black attorneys to operate more efficiently, as the division of labor creates an opportunity for a few attorneys to 'drum up' business clients, while others conduct research, and the remainder represent clients in meetings and in litigation. In turn, the clients will receive better prepared representation."\(^{119}\)

Judge Harvey N. Schmidt argued persuasively that a fatal omission in the black law firms of the past was the lack of a salaried, contracted attorney to serve in an administrative position to delegate the division of work, handle the accounting and payment of bills, and oversee the dis-

\(^{117}\) Edwards, \textit{supra} note 82, at 1417–18.

\(^{118}\) Underlying the probability of increased formation of black law firms are the assumptions that black businesses will continue to grow as they have since the 1960's and will seek the advice of black counsel.

\(^{119}\) Interview with Austin Norris, Esquire, in Philadelphia, Jan. 16, 1974.
tribution of time spent on various assignments. Judge Clifford Scott Green agreed, for he claimed that the strong direction of Norris' leadership served to keep his firm together when personal differences threatened to split the partnership, thus illustrating Judge Schmidt's point that such an administrator may prove to be a valuable asset for any firm.

With respect to the question of political involvement by black attorneys, John Hadley Strange, in The Negro and Philadelphia Politics, asserted, "Negroes have not made ... significant gains in political power or in the rewards and benefits they receive from the local political system." Unfortunately, the black attorneys in Philadelphia have not been active leaders, and in many cases, black ministers have carried the political banner. Because of the many advantages, several of the respondents believed that the future of the black attorneys in Philadelphia lies in their political involvement. For example, Ira Wells, an attorney in the Norris firm, maintained that lawyers are the best equipped to lead people. Wells concluded: "Blacks have not gotten much business law, due to their lack of political strength. Quite often, when a [business] client is unable to work through the traditional channels, he can work through a politician." Hence, more black attorneys should become involved in political activities, and in turn, seek political office.

In contrast to the situation in Philadelphia, black attorneys in Chicago have been the black professionals who were most involved in local politics, a relationship dating back to the 1920's when the Cook County Bar Association members (the black bar organization in Chicago) appeared at black churches to endorse candidates which the Association supported. Given this long history of political involvement, it comes as no surprise that as of 1972, there were about 400 black lawyers in Chicago and three black law firms. These three firms represent the city's few relatively large black corporations, along with regional branches of national civil rights groups, and a small number of extremely wealthy black clients with substantial corporate holdings. Quite obviously, black attorneys in Philadelphia must become more involved in local politics.

Finally, the further development of the black bar depends upon its involvement with other professional organizations, such as the American

120. Interview with Judge Harvey N. Schmidt of the Court of Common Pleas, Philadelphia County, in Philadelphia, Jan. 21, 1974.
123. Id. at 408.
125. Goldman, supra note 19, at 38.
126. Id. at 2 n.1.
127. Id. at 5.
Bar Association, the National Bar Association, the Philadelphia Bar Association, and the Barrister's Club, Philadelphia's association of black attorneys. The respondents, in general, were of the opinion that black attorneys should seek increased involvement in all professional organizations for attorneys — especially the Philadelphia Bar Association — by attending meetings and serving on the various committees of these associations. Additional service upon the various committees will effectuate a black perspective in policymaking. For example, by serving upon the committees which lobby for or against proposed legislative bills, black attorneys could, quite possibly, influence social impact laws in their initial stages, rather than merely reacting to these laws by filing court suits after the bills have been enacted.

Another organization in which increased participation might have a significant impact is the Barrister's Club, which automatically considers every black attorney in Philadelphia a member upon admission to the Pennsylvania Bar. The Barristers, or some other organized black bar association in Philadelphia, might serve black attorneys and, therefore, the entire Philadelphia community more effectively as a vehicle by taking the following steps:

1. Arrange clerkships for its members with judges — especially with black judges.
2. Make public statements concerning political activities and public officials.
3. Support black politicians running for political office.
4. Hold seminars to inform its members of recent developments in the law.
5. Educate black businessmen concerning the need to hire black attorneys for "preventive measures."

In taking the first step, the organized black bar could offer a type of lawyer employment service for those blacks who are interested in gaining experience within the court system under the tutelage of a judge. Conversely, judges would have available a referral service for obtaining a clerk.

The making of public statements by attorneys' organizations is not at all unusual. Occasionally, the ABA and other state bar associations comment upon public issues. By taking similar actions, an organized black

129. Black attorneys were not admitted to the American Bar Association until 1943 when Judge James S. Watson became a member. It should be noted, however, that three blacks were actually admitted in 1912, although as a result of a misconception as to their racial identities. In response to the actions of the American Bar Association, black attorneys formed the National Bar Association in 1925. M. Davies, Negroes in American Society 118 (1949).

130. One example was the New York City Bar Association's call for a full-scale investigation of the Watergate scandal in the Washington Post, N.Y. Times, May 8, 1973, at 43, col. 4; id., Apr. 27, 1973, at 14, col. 7. Several bar associations also
bar not only could make its position clear upon various issues, but would educate the black community upon the issues that need clarification as well. An excellent opportunity for such public statements occurred when the "Good Judges For Philadelphia" and Mayor Rizzo made damaging statements about several incumbent black judges before the last election.\textsuperscript{131} An organized black bar could have made an important contribution by supporting those judges who deserved its praise. In addition, by making public statements, this organization could give the black bar additional publicity and enhance the image of black attorneys. This is particularly important, since the canons of ethics within this profession prohibit advertising.\textsuperscript{132}

The use of seminars to inform the black attorneys of recent legal developments, the fourth suggested step, would serve to keep them informed upon the ever-changing status of the law. In this manner, not only could formal material be presented, but informal discussion, in which the participants might discuss their individual cases, could be encouraged as well. Such a program would be similar to professional conventions and the day-to-day dispersion of information which occurs through conversation in large law firms.

Finally, by educating black businessmen in the need for preventive measures, the black attorney could not only stimulate more personal business, but could also assist black businessmen in avoiding future problems with the law. For example, this legal advice might serve to increase the profits of businessmen through incorporation or the utilization of various tax deductions.

In short, the future for black attorneys is promising, as employment openings and the increase in the number of black attorneys will have a significant effect upon the total Philadelphia community. Nevertheless, the day of the individual practitioner is over, and black attorneys must abandon the traditional practices to seek more group involvement in firms, politics, and professional organizations.

\textit{Charles L. Mitchell}

\textsuperscript{131} The Mayor accused Judges Curtis C. Carson, Jr., and Calvin T. Wilson of being soft on criminals. The Philadelphia Inquirer, Nov. 2, 1973, at 1, col. 3.

APPENDIX


<table>
<thead>
<tr>
<th>Professional Occupation</th>
<th>Number of Blacks</th>
<th>Per cent of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Religious Workers</td>
<td>12951</td>
<td>5.7</td>
</tr>
<tr>
<td>Physicians &amp; Surgeons</td>
<td>9014</td>
<td>1.9</td>
</tr>
<tr>
<td>Dentists</td>
<td>1983</td>
<td>2.3</td>
</tr>
<tr>
<td>Accountants</td>
<td>9177</td>
<td>1.7</td>
</tr>
<tr>
<td>Chemists</td>
<td>3332</td>
<td>3.4</td>
</tr>
<tr>
<td>Pharmacists</td>
<td>1917</td>
<td>2.0</td>
</tr>
<tr>
<td>Engineers</td>
<td>13375</td>
<td>1.1</td>
</tr>
<tr>
<td>Lawyers &amp; Judges</td>
<td>3236</td>
<td>1.3</td>
</tr>
</tbody>
</table>

II. Educational background of sample.

<table>
<thead>
<tr>
<th>Undergraduate</th>
<th>Law Schools</th>
<th>Per cent of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harvard</td>
<td>Harvard</td>
<td>6.7</td>
</tr>
<tr>
<td>Penn State</td>
<td>Univ. of Penna.</td>
<td>17.8</td>
</tr>
<tr>
<td>LaSalle</td>
<td>Temple</td>
<td>28.8</td>
</tr>
<tr>
<td>*Lincoln University, Pa.</td>
<td>*Howard</td>
<td>31.1</td>
</tr>
<tr>
<td>Univ. of Iowa</td>
<td>Indiana Univ.</td>
<td>4.2</td>
</tr>
<tr>
<td>*Cheyney St. Teachers College</td>
<td>Villanova</td>
<td>6.7</td>
</tr>
<tr>
<td>*Morrocohe College</td>
<td>Yale</td>
<td>6.7</td>
</tr>
<tr>
<td>*Howard University</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bowdoin</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Villanova</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Temple</td>
<td></td>
<td></td>
</tr>
<tr>
<td>*North Carolina Central</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Albright</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Univ. of Pennsylvania</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amherst</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Antioch</td>
<td></td>
<td></td>
</tr>
<tr>
<td>*Virginia State College</td>
<td></td>
<td></td>
</tr>
<tr>
<td>*Clark</td>
<td></td>
<td></td>
</tr>
<tr>
<td>*Virginia Union</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bates</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Boston University</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number responding (n) = 45</td>
<td></td>
<td></td>
</tr>
<tr>
<td>*Predominantly Black School</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

III. Scholarship aid.

<table>
<thead>
<tr>
<th>Undergraduate</th>
<th>Law School</th>
</tr>
</thead>
<tbody>
<tr>
<td>n</td>
<td>Per cent</td>
</tr>
<tr>
<td>None</td>
<td>16</td>
</tr>
<tr>
<td>Under 20%</td>
<td>5</td>
</tr>
<tr>
<td>20-39%</td>
<td>5</td>
</tr>
<tr>
<td>40-69%</td>
<td>4</td>
</tr>
<tr>
<td>60-79%</td>
<td>3</td>
</tr>
<tr>
<td>80-100%</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>45</td>
</tr>
</tbody>
</table>

9 received G.I. Bill Benefits.

IV. Employment in law school.

<table>
<thead>
<tr>
<th>Hours/Week</th>
<th>n</th>
<th>Per cent</th>
</tr>
</thead>
<tbody>
<tr>
<td>No work</td>
<td>18</td>
<td>40.0</td>
</tr>
<tr>
<td>Under 20</td>
<td>15</td>
<td>33.3</td>
</tr>
<tr>
<td>20-40</td>
<td>8</td>
<td>17.8</td>
</tr>
<tr>
<td>40-over</td>
<td>4</td>
<td>8.9</td>
</tr>
<tr>
<td></td>
<td>45</td>
<td>100.0</td>
</tr>
</tbody>
</table>

V. Years since admission to the Pennsylvania Bar.

<table>
<thead>
<tr>
<th>No. of Years</th>
<th>n</th>
<th>Per cent</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 or less</td>
<td>10</td>
<td>22.2</td>
</tr>
<tr>
<td>6-9</td>
<td>8</td>
<td>17.8</td>
</tr>
<tr>
<td>10-14</td>
<td>3</td>
<td>6.7</td>
</tr>
<tr>
<td>15-19</td>
<td>7</td>
<td>15.5</td>
</tr>
<tr>
<td>20-29</td>
<td>11</td>
<td>24.4</td>
</tr>
<tr>
<td>30-39</td>
<td>3</td>
<td>6.7</td>
</tr>
<tr>
<td>40-over</td>
<td>3</td>
<td>6.7</td>
</tr>
</tbody>
</table>
VI. Attempts at Bar examination.

<table>
<thead>
<tr>
<th>Attempts</th>
<th>n</th>
<th>Per cent</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>25</td>
<td>55.6</td>
</tr>
<tr>
<td>2</td>
<td>13</td>
<td>28.9</td>
</tr>
<tr>
<td>3</td>
<td>2</td>
<td>4.4</td>
</tr>
<tr>
<td>4</td>
<td>3</td>
<td>6.7</td>
</tr>
<tr>
<td>5</td>
<td>1</td>
<td>2.2</td>
</tr>
<tr>
<td>6-over</td>
<td>0</td>
<td>0.0</td>
</tr>
<tr>
<td>comity</td>
<td>1</td>
<td>2.2</td>
</tr>
<tr>
<td></td>
<td>45</td>
<td>100.0</td>
</tr>
</tbody>
</table>

VII. Age admitted.

<table>
<thead>
<tr>
<th>Years</th>
<th>n</th>
<th>Per cent</th>
</tr>
</thead>
<tbody>
<tr>
<td>under 26</td>
<td>8</td>
<td>17.8</td>
</tr>
<tr>
<td>26-29</td>
<td>21</td>
<td>46.7</td>
</tr>
<tr>
<td>30-35</td>
<td>7</td>
<td>15.5</td>
</tr>
<tr>
<td>35-over</td>
<td>9</td>
<td>20.0</td>
</tr>
<tr>
<td></td>
<td>45</td>
<td>100.0</td>
</tr>
</tbody>
</table>

VIII. Age at time of interview.

<table>
<thead>
<tr>
<th>Years</th>
<th>n</th>
<th>Per cent</th>
</tr>
</thead>
<tbody>
<tr>
<td>under 30</td>
<td>3</td>
<td>6.7</td>
</tr>
<tr>
<td>30-39</td>
<td>12</td>
<td>26.7</td>
</tr>
<tr>
<td>40-49</td>
<td>11</td>
<td>24.4</td>
</tr>
<tr>
<td>50-59</td>
<td>15</td>
<td>33.3</td>
</tr>
<tr>
<td>60-over</td>
<td>4</td>
<td>8.9</td>
</tr>
<tr>
<td></td>
<td>45</td>
<td>100.0</td>
</tr>
</tbody>
</table>

IX. Forms of practice.

- Sole Practice — 5
- Space Sharer — 8
- Partner — 7
- Associate — 6
- Judge — 13

n = 45

X. Primary field of legal practice.

<table>
<thead>
<tr>
<th>n</th>
<th>Per cent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporate</td>
<td>9</td>
</tr>
<tr>
<td>Commercial</td>
<td>1</td>
</tr>
<tr>
<td>Criminal</td>
<td>13</td>
</tr>
<tr>
<td>Domestic Relations</td>
<td>5</td>
</tr>
<tr>
<td>Labor</td>
<td>1</td>
</tr>
<tr>
<td>Real Property</td>
<td>4</td>
</tr>
<tr>
<td>Probate</td>
<td>6</td>
</tr>
<tr>
<td>Negligence</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>42</td>
</tr>
</tbody>
</table>

XI. Percentage of clientele who are black.

<table>
<thead>
<tr>
<th>n</th>
<th>Per cent</th>
</tr>
</thead>
<tbody>
<tr>
<td>98-100%</td>
<td>14</td>
</tr>
<tr>
<td>80-97%</td>
<td>12</td>
</tr>
<tr>
<td>60-79%</td>
<td>9</td>
</tr>
<tr>
<td>40-59%</td>
<td>1</td>
</tr>
<tr>
<td>Under 40%</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>41</td>
</tr>
</tbody>
</table>

XII. Estimates by respondents of the percentage of black clients who hire black attorneys.

<table>
<thead>
<tr>
<th>n</th>
<th>Per cent</th>
</tr>
</thead>
<tbody>
<tr>
<td>40-50%</td>
<td>5</td>
</tr>
<tr>
<td>30-39%</td>
<td>7</td>
</tr>
<tr>
<td>20-29%</td>
<td>4</td>
</tr>
<tr>
<td>10-19%</td>
<td>12</td>
</tr>
<tr>
<td>0-0%</td>
<td>4</td>
</tr>
<tr>
<td>0-4%</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>32</td>
</tr>
</tbody>
</table>
XIII. Summary of the Report of the Philadelphia Bar Association Special Committee on Pennsylvania Bar Admission Procedures, in pertinent part:

A. . . .
B. We have ascertained that the following practices raise the strongest presumption that Blacks are indeed discriminated against under procedures used by the State Board of Law Examiners:

1. . . .
2. Other procedures used in the examination process unnecessarily create opportunities to ascertain the race of candidates. These are:
   (a) A photograph of every candidate together with his signature, his preceptor's signature, and his file number in the custody of the Board at all pertinent times.
   (b) At the time of the examination, the following procedures permit immediate racial identification of candidates:
      (1) Each candidate's examination number (which is assigned alphabetically, except for repeaters) is displayed prominently on his desk.
      (2) Master lists pairing each candidate's name and number are present in the examination rooms on the desk of each chief proctor.
      (3) In the July 1969 examination, a majority of Black candidates, all of whom were repeaters, were seated consecutively on the same row.

3. . . .
4. . . . The absence of any procedures or reviews which Blacks may use to discover if the process, as to them, was tainted with racial discrimination, only reinforces the reasonableness of this belief.

C. . . .
1. In the final procedures before determining passing and failing, the State Board has access to and makes use of personal data revealing at the minimum, inter alia: college, law school, degrees and dates awarded, date of birth, number of times examined. . . .
2. Before any papers are graded, 17 papers are selected on a pre-determination based on background data of each candidate that the papers will represent a probable distribution of superior, average, and inferior performance.
3. Despite its published Regulation that the minimum passing grade is 70%, the Board systematically passes papers scoring less than 70%. Through the use of "discretionary points," a substantial number of papers with grades lower than 70 (66.458 for the July 1969 examination) is, by motion, raised to 70 and thereby passed. It is estimated that, until recently, 75% of all passing grades recorded were precisely that same 70.
4. . . .
   (a) . . .
   (b) Notwithstanding an increment of a substantial number of points as a result of re-reading, the Board has arbitrarily and systematically created a classification called "borderline papers." Such papers are awarded second, third, and even fourth readings on the basis of differences which are not rationally defensible. In addition, only those so classified are eligible to have their grades raised.

D. Our thorough review of the Bar examination process (participants, standards and procedures) raises grave doubts concerning the validity of the Pennsylvania Bar Examination for graduates of law schools on the approved list of the American Bar Association. The following factors give credence to these doubts:

1. There is no consensus among the Board of its Examiners as to what the test is intended to measure. Particularly, the Board has been unable to identify or differentiate between a test measuring "achieve-
ment" and a test measuring "aptitude" for graduates of approved law schools.

2. Notwithstanding repeated assurances, and a Board regulation requiring that "marking will be based primarily upon whether the candidate has the ability to analyze," no one connected with the Board has been able to identify any element of analytical ability actually tested. All deny that a principal purpose of the test is to measure a candidate's knowledge of substantive law (such as Pennsylvania idiosyncracies).

3. At no critical phase in the examination process (question preparation, establishment and implementation of grading procedures and standards) has the Board included or attempted to include experts. They have deliberately avoided using law professors or testing experts in any phase of the examination.

4. ....

5. Additional specific criticisms as found in Part Two, Section E of this Report including:

(a) Use of non-professional and part-time examiners at every stage of the examination process;

(b) Substitution of quantitative (arithmetic mean averages) standards for qualitative standards, e.g., no consideration is given to the test as a whole: each question is graded separately by a particular examiner, and the entire test is not read, as a rule, by a single examiner.