

Keynote Introduction
Lennox S. Hinds, National Director
National Conference of Black Lawyers

Ladies and Gentlemen, Brothers and Sisters, esteemed Colleagues, fellow spiders in the seamless web. I am pleased and honored to have been provided this opportunity to share my views on this subject of tremendous concern to the N.C.B.L.; to the legal profession; to minority applicants; to the Bar and of course, to you.

I would first like to pause a moment in honor of the memory of one of America's most brilliant, articulate and courageous Black lawyers, who during his lifetime championed the cause of Human Rights and was scorned and villified by his country—Paul Robeson. We should particularly thank the Black Law Journal for taking the leadership in paying him homage.

This symposium is entitled: The Minority Candidate and The Bar Examination. More meaningfully put—The reason why we are gathered here today is to conduct an inquiry on the reasons for the disparate performance of minority candidates as compared to (what is known as) Anglos in California on the bar exam.

This issue is national in scope and the resultant debate has resounded throughout the legal profession.

I need not remind you that there are over 4,500 Black law students enrolled in approximately 150 law schools across the country. You are also undoubtedly aware that of the 325,000 lawyers in the United States only about 5,000 are minorities, i.e., less than 2%.

Interestingly, the number of Black lawyers admitted to the bar has *not* risen as was anticipated by the significant increase of the enrollment of Black law students.

In 1965, when there were 65,000 law students in American law schools, there were less than 800 minority law students.

Today, there are more than 85,000 law students and 6,750 minority law students. Yet, the racial composition of the Nation's bar has not changed significantly.

As minority law student graduates continue to be excluded from entering the practice of law by failure to pass bar examinations, the profession can expect increased pressure and hostility from those excluded groups, which can take the form of petitions, litigation, legislative and political pressure—(and, perhaps, othermeans).

The Conference of Black Lawyers has conducted a survey through its Task Force on Legal Education and Bar Admissions of the ratio of Black lawyers to the Black population in some key states.

TABLE A¹
 RATIO OF BLACK LAWYERS TO THE BLACK POPULATION
 STATES

	Approximate Number of Black Persons in Population Served by <i>One</i> Black Lawyer
District of Columbia	820
New York	1,000
Illinois	1,500
Ohio	1,900
California	2,200
Massachusetts	2,300
Michigan	2,900
Wisconsin	4,100
Pennsylvania	7,600
Virginia	8,000
Texas	12,600
Florida	15,000
Maryland	16,000
Delaware	20,000
Alabama	40,000
Mississippi	40,000

Let us also examine the statistics on the failing rate of Black candidates on state bar examinations on a state by state basis as of 1974.

TABLE B²
 STATE STATISTICS ON FAILING RATE OF BLACK
 CANDIDATES FOR THE BAR EXAMINATION

**ALABAMA*

1968	4 Blacks took exam 2 Blacks failed
1969	4 Blacks took exam 3 Blacks failed
1970	8 Blacks took exam 6 Blacks failed
1971	13 Blacks took exam 9 Blacks failed
1972	17 Blacks took exam 12 Blacks failed
1973	4 Blacks took exam 2 Blacks failed

**ALASKA*

No statistics available
 Suit filed 1973

1. Table A derived from the Philadelphia Bar Association, Special Committee on Pennsylvania Bar Admissions Procedures, Peter J. Liacouras, Professor of Law, Temple University School of Law, Chairman. (Known as the "Liacouras Report")

2. This information was compiled by NCBL member, Lani Guiner, in 1973, then a student at Yale Law School. The information is not as complete as it might be because Bar Examiners allegedly do not maintain these type of statistics and they must be obtained on an *ad hoc* basis.

- *CALIFORNIA** Only 44% of the Black and Latin graduates passed compared to 76% of non-minority graduates.
- *COLORADO**
- Feb. 1972 10 Blacks took exam
8 Blacks failed
- July 1972 13 Blacks took exam
10 Blacks failed exam
13 Chicanos took exam
7 Chicanos failed exam
- July 1973 12 Blacks took exam
3 Blacks failed
4 Chicanos took exam
4 Chicanos failed
2 Indians took exam
2 Indians failed
- *CONNECTICUT**
- 1972 8 Blacks took exam
5 Blacks failed
- 1973 4 Blacks took exam (3 of the 4 were repeaters)
3 Blacks failed (the 1 non-repeater passed)
- DELAWARE**
- June 1973 6 Blacks took exam
4 Blacks failed
- Prior to 1973, the last Black to pass the Bar was in 1957. Until that time there were only 3 Black practicing attorneys in the state—all of whom are over 40 years old. Between 1929-1972 14 Blacks have applied for admission to this state's Bar.
- *DISTRICT OF COLUMBIA**
- June 1973 200 Blacks took exam
184 Blacks failed
- *GEORGIA**
- 1972 41 Blacks took exam
41 Blacks failed
- *ILLINOIS**
- Aug. 1972 40 Blacks took exam
30 Blacks failed
- Mar. 1973 16 Blacks took exam
12 Blacks failed
- INDIANA**
- Mar. 1973 6 Blacks took exam
5 Blacks failed
- July 1972 16 Blacks took exam
11 Blacks failed
- *MARYLAND**
- Feb. 1970 11 Blacks took exam
9 Blacks failed
- July 1970 15 Blacks took exam
13 Blacks failed
- Feb. 1971 19 Blacks took exam
18 Blacks failed
- July 1971 24 Blacks took exam
12 Blacks failed

TABLE B (con't)

Feb. 1972	15 Blacks took exam 13 Blacks failed
<i>MISSOURI</i>	
July 1972	16 Blacks took exam 13 Blacks failed
Feb. 1972	4 Blacks took exam 2 Blacks failed
<i>NEBRASKA</i>	
June 1972	10 Blacks took exam 5 Blacks failed
Jan. 1973	9 Blacks took exam 1 Black failed
<i>*NEW JERSEY**</i>	
1970	2 Blacks took exam 0 Blacks failed
1971	14 Blacks took exam 7 passed 1st time 6 passed 2nd time 1 passed 3rd time
1972	16 Blacks took exam 9 passed 1st time 1 passed 2nd time 3 passed 3rd time
1973	13 Blacks took exam 11 passed first time 2 passed 2nd time
1974	45 Blacks took exam 15 passed first time (no results for 2nd time)
<i>*NEW MEXICO</i>	
	Statistics for Black and Chicano failure rate unavailable.
<i>*OHIO</i>	
1973	29 Blacks took exam 11 Blacks failed
<i>*RHODE ISLAND</i>	
July 1972	3 Blacks took exam 3 Blacks failed first time
Feb. 1973	The same 3 took exam, 1 passed
May 1973	20 Blacks took exam 13 Blacks failed
<i>*SOUTH CAROLINA</i>	
	Only 15% of the Black applicants have passed compared to 90% pass rate of whites.
<i>*TENNESSEE</i>	
	No figures available
<i>*VIRGINIA</i>	
1970	30 Blacks took exam 24 Blacks failed

* Indicates that a suit has been filed challenging that Bar.

** These figures, except for 1974, only represent Rutgers graduates.

The results of the 1972 Georgia State Bar examination are most instructive and strongly suggest a *prima facie* case of racial discrimination or, in the alternative, shifts the burden of proof on the state to disprove that racial discrimination in some form is not tainting the results.

The results show that all 41 Blacks who took the Bar failed—while 50% of whites passed compared to 0% of the Blacks.

All of the white Yale Law School graduates, who took the Georgia test passed, but the two Black Yale graduates failed. All of the white Harvard Law School graduates passed and the one Black Harvard person failed.

All of the white Columbia law students passed and the 3 Black graduates from Columbia failed.

Now, what have been the responses of State Boards of Bar Examiners who have been confronted and therefore, have been forced, albeit reluctantly to come to grips with this problem?

Most have chosen to categorically deny any charges of racial bias in the exam and have stalwartly defended their time honored practices, policies and procedures.

Others have established commissions and task forces.

In 1970, the Pennsylvania Board of Bar Examiners formed such a commission to scrutinize charges of racial discrimination in their Bar exam.

This commission chaired by then Temple Law Professor, later Dean, Peter J. Liacouras, concluded that between 1955-1970 only 83 of the 306 Black applicants passed the state's Bar compared with 7,300 of 10,790 white applicants. The average percentage of whites passing equaled 70%—and Blacks less than 30%. Between 1930 and 1970 an average of only four Blacks per year passed the state's Bar.

The commission came to three conclusions:

1. Certain practices raised the strongest presumptions that minorities are discriminated against under the procedures used in Pennsylvania.

2. That unequal or arbitrary and capricious application of exam standards and procedures by the Board of Examiners have resulted in the exclusion of substantial numbers of candidates of all races from admission to the Bar.

3. That thorough review of the Bar examination process—i.e. examiners, standards, and procedures—raised serious doubts as to the validity of the Pennsylvania Bar's efforts to assess graduates of law schools on the ABA approved list.

As a result of the changes implemented the overall passing rate increased to 90% and for Blacks the numbers passing have increased from 25% to 60%.

Another commission—in California—was organized in 1973 and in its charge it was asked to investigate whether there are factors attributable to a "cultural bias"³ which are not related to a person's effectiveness as a lawyer which adversely affect that person's ability to do satisfactory work.

3. Final Report to the Board of Governors of the State Bar of California—Commission to Study the Bar Examination Process, August 1975 (Unpublished) p. 2.

This report is subtly deceptive in that the commission decided that "since it was practically impossible to arrive at an acceptable measure of one's effectiveness as an attorney,"⁴ it would ignore that part of the charge and substituted as a criteria, other comparative indicators which themselves are suspect and under attack such as LSAT scores, Grade Point Averages from the undergraduate and Law School record.

None of these indicators have diagnosed value with respect to the ability to practice law.

I must tell you that this report is extremely dangerous because without *caveat* it seems to prove that minority law students are patently inferior to Anglos. Most specifically the results (oh so simply and naively) conclude that "the difference in bar performance between Anglo and Minority candidates is most likely a difference in their respective skills and knowledge rather than in any bias in the bar examination or in how it is graded."⁵

We have very little choice but to expose and discredit this type of self-serving, self-perpetuating analysis and statistics juggling which can easily be adopted as a model and justification for doing nothing about racist bar admission practices—since—if we are to rely on this report then the only problems are the *minority students*.

Yet, the question remains, my friends—if Blacks and Browns cannot be assumed to be inherently inferior—what *is* the reason for the high mortality rate among Black bar candidates?

Why is it that students who have managed to succeed through college and law school are not able to cope with a two- or three-day examination.

It would seem that if the problem cannot lie exclusively with the candidates then there must be some problems with the tests or their administration.

There are no easy solutions—it is certainly my view and that of the National Conference of Black Lawyers that to the extent that bar exams are not able to serve as valid predictors of candidates' ability to function as lawyers in the profession—they should be abolished as they are presently constituted and alternate appraisal mechanisms be devised.

Such alternatives may include: diploma privileges, which four states practice (Mississippi, Montana, West Virginia, Wisconsin).

What strategies then should we be addressing today?

In our deliberations may I suggest consideration of the following:

AREA I—Statistical Analyses.

Before there can be a meaningful resolution of the problem, there is a tremendous need to more precisely define its magnitude by coordination of resources and information. Simply put, the numbers, as well as the percentages of blacks sitting for, passing and/or failing the bar examinations in each state of the union every time the bar is given, need to be compiled.

4. *Id.* p. 8.

5. Klein, Stephen P., and McDermott, Anthony; "An Examination of Possible Item, Test, and Grades Bias in the California Bar Examination" 4 Black L.J. 553, 560 (Spring 1975).

Each bar examination should be statistically monitored. Also, statistics should be compiled for each state for as many years as they can be obtained.

AREA II—Status of Present Litigation.

Of utmost importance is the status of present litigation in this area. Nowhere is there a compilation of all of the suits that have been filed, whether by minorities or by whites. A plethora of cases exist questioning various aspects of the bar examination. There are suits in federal as well as state courts, charges before the EEOC, and various state administrative agencies. Nowhere is there a list of all of these "actions" and the present status and/or disposition of each.

AREA III—Analyses of Litigation.

Functionally, this area is closely akin to Area I, Statistical Analyses. Once the status of all litigation in this area is determined, it naturally follows that the disposition and ruling in various cases and administrative proceedings should be closely analyzed with an eye toward seeing what precedents there are in the area, whether favorable or unfavorable. A determination needs to be made as to what the state of the law is. Further determinations need be made as to whether overall the suits have either served the purpose of increasing black successes on the bar examination ill or well. Good legal minds must be put to the task of answering the "state of the law" and its implications for our concerns.

AREA IV—Alternatives to the Bar

A compilation of alternative strategies contemplated nationally by legislation⁶ or Bar Examiners *Fiat* that may have general acceptability.

We can do no less than accompany our concern for minority student failure with the action it will take to resolve it.

6. See especially, H.R. 2276; January 28, 1975 introduced by Congressman Hawkins to the 94th Congress.