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Maryland State Bar Exam Under Attack

by Louis Curran

Kenneth Johnson, a Baltimore attorney, has filed a class action suit on behalf of law students, seeking to have the state bar exam declared unconstitutional by the Maryland District Court. This is the fifth such suit to be filed against a state's bar exam — all four prior suits were dismissed in summary judgements.

Speaking at a meeting of the Baltimore chapter of the National Lawyers Guild on January 23rd, Mr. Johnson emphasized three major objections to the Maryland bar exam:

— In an average exam, 50% of the white applicants pass, while only 6-9 of the black applicants succeed, although the implied difference in competence is not evident in the quality of the applicants themselves. The exam's effects are thus discriminatory in effectively keeping black law school graduates from practicing law.

— The overall effect of the bar exam is to keep down the number of practicing attorneys despite the rising demand for legal services. The level of fees charged by lawyers, already comfortably high, is thus insulated from the effects of a free market system.

— The bar exam has never been shown to be a valid indicator of a law school graduate's ability to practice law as it does not, and probably cannot, test the practical skills required for successful litigation. It is therefore void of any merit whatsoever.

Johnson further charged that the state of the administration and grading of the exam is "chaos, haphazard hocus-

pocus." He pointed out that the three members of the Maryland State Board of Law Examiners, which is responsible for writing, supervising, and grading the exam, have no special skills or qualifications to recommend them to their positions. As a consequence, the exam questions are often either vague and ambiguous or trivial and esoteric in substance.

Anonymity of the applicants, while espoused, is not always practiced. Several affidavits have been filed alleging that bar exam proctors have jotted down the names and exam numbers of various test-takers, particularly black applicants.

The grading of the exam was especially criticized by Mr. Johnson. Grading is not done by the three bar examiners, he explained, but by a whole host of hired hands, some of whom have only just passed the bar exam themselves, and so can only pretend to any level of expertise. Moreover, each of these readers does not read all of the answers to a particular question, a practice which at least provide a single standard for each unit of the test. Rather, several readers will divide the various answers to each question, grading them independently, and occasionally even collaborating to reach a decision. The result is inevitable — each exam, and each question in it, is subjected to a random assortment of standards, and yet the exams are eventually aligned and the grades scaled as though a single standard had been applied throughout the process.

Mr. Johnson acknowledged that there was a need for insisting on competency in counsel. However, he cited some relevant data to demonstrate that blacks were not failing the bar exam due to ineptitude. To wit: of the 12 to 18 black applicants who were tested in each of the six exams given between 1968 and 1970, no more than two ever passed. When the exam results of February 1971 showed that no blacks at all had passed, several attorneys and law school graduates confronted the bar examiners with charges of racial discrimination. In the following exam, 12 out of 24 blacks were passed, comparable to the average passage rate for whites. In the sub-

sequent exams, however, the passage rate for blacks dropped back down to around ten percent. Mr. Johnson suggested that this coincidental fluctuation in black bar admissions was particularly damaging to the credibility of the bar examiners.

Mr. Johnson is personally supporting the alternative known as 'diploma privilege.' Under this system, one who has successfully met all the requirements of an accredited law school, involving three or more years of legal studies, is immediately at liberty to practice in the profession. This system puts the burden of a practical legal education more squarely on the shoulders of the schools of law, where testing, for what it is worth, is at least graded consistently.

A greater benefit of the diploma privilege system is that it eliminates the necessity for a student to study certain, generally traditional monetary, specialties in the law simply because they are presently being tested in the bar exam. This would increase a student's opportunities to study in less developed fields, such as the civil rights of tenants, the aged, children and juvenile offenders, consumers, the handicapped, women, workers, the poor, etc.

The National Lawyers Guild, an organization of lawyers, law students, and paralegals dedicated to the use of their skills as a means to bring about basic changes in the political and economic structures of this country, is united in opposition to the Maryland bar exam as it now exists. While some members feel that a reformed bar exam would be a workable solution, the majority are in support of the concept embraced by Delegate Walter Dean (D.-Baltimore City). Delegate Dean is the sponsor of House Bill #77, now on file with the General Assembly in Annapolis, which calls for the abolition of the bar exam — if only for graduates of Maryland's two law schools.

For more information on this issue, contact Joe Evans at 243-3396. Mr. Evans is coordinating the Guild's committee to study the bar exam.

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