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## IMPLICATIONS FOR AFFIRMATIVE ADMISSION AFTER BAKKE: ANALYSIS OF ACADEMIC AND BAR PERFORMANCE OF COUNCIL ON LEGAL EDUCATION OPPORTUNITY PROGRAM FELLOWS 1968-1978\*

Wade J. Henderson

### I. INTRODUCTION

It may well be an understatement to call *Regents of the University of California v. Bakke*<sup>1</sup> the most significant United States decision affecting the interests of this country's minority groups since *Brown v. Board of Education*.<sup>2</sup> In several respects, *Bakke* was more than just a court decision, it was a national phenomenon. As Justice Thurgood Marshall implied, *Bakke* may have been symbolic of a public policy shift portending cataclysmic impact on a range of questions involving minority group aspirations beyond 1980.<sup>3</sup> *Bakke* is unquestionably reflective of a peculiar state of mind precipitated by America's current economic condition. But on its underside, *Bakke* is also an attack on the concept of "group remedy" for the legatees of group injustice. Hence, *Bakke* pits notions of individual rights against the rights of historically disenfranchised groups.

The twelve-year experience of the Council on Legal Education Opportunity (CLEO) has helped to shape much in the way of affirmative admission program development in legal education and may shed some light on its future after *Bakke*. Experiment, refinement, and institutionalization have earmarked much done in the name of minority group access to legal education opportunity over the last twelve years. CLEO itself can take some credit for this expansion of access to educational opportunity. Begun in 1968 through the support of two national bar associations and organizations involved in legal education and accreditation, CLEO was one of the earliest progenies of the struggle to expand educational opportunities for minority groups.<sup>4</sup>

Because CLEO sponsorship brought together diverse elements within

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\* This article, co-authored by Linda Flores, is excerpted from the forthcoming volume sponsored by the National Conference of Black Lawyers, *Towards a Diversified Legal Profession: An Inquiry Into the Law School Admission Test, Grade Inflation, and Current Admissions Policy*, edited by David M. White, which will be published by Julian Richardson Associates in 1981.

1. 438 U.S. 265 (1978).

2. 347 U.S. 483 (1954).

3. See *Bakke*, *supra* note 1, at 338.

4. The Council of Legal Education Opportunity was established in 1967 to enlarge the ranks of lawyers coming from minority groups of low-income backgrounds; the responsibility was assumed jointly by the American Bar Association (ABA), the Association of American Law Schools (AALS), the National Bar Association (NBA), and the Law School Admission Council (LSAC). See MINUTES OF DECEMBER 5, 1967 CONFERENCE AT OEO ON LEGAL EDUCATION FOR DISADVANTAGED GROUPS.

the higher education community, including foundation interests and the federal government as well, the program soon became symbolic of the overall effort to broaden higher education admission beyond the law schools. The CLEO model of academic and financial support established early the validity of the program's deceptively simple, yet effective operating premise; that is, that minority and economically disadvantaged persons could be rapidly and successfully infused into legal education with no diminution in academic standards, notwithstanding measurement predictions to the contrary. Since CLEO's inception in 1968, some 2,600 persons have met the program's challenge and in the process, have compiled impressive records of academic and professional achievement.<sup>5</sup>

However, the twelve years of CLEO have also witnessed another major educational accomplishment. With the gradual proliferation of affirmative action admissions programs has also come the increased availability of "performance-related" data concerning the minority group student within affirmative action admissions. Thus, many implicit yet prevailing assumptions on minority group performance within the academic arena may now be examined in ways not previously available to us. This is no small development since many of these programs were based, initially, on untested theories regarding the academic potential of minority group students. Moreover, the opportunity to examine long-term implications and societal effects of these programs via-a-vis the current career placement of program graduates can now be explored with more than merely theoretical projection. This information, unobtainable ten years ago, is a significant underlying consideration although totally ignored in the Supreme Court's analysis in *Bakke*.<sup>6</sup>

## II. CLEO BACKGROUND

The Council on Legal Education Opportunity was formed in 1968 as a joint project of the American Bar Association, the National Bar Association, the Association of American Law Schools, and the Law School Admission Council; in 1972, La Raza National Lawyers Association became a sponsoring organization as well.<sup>7</sup> CLEO's programs have been designed specifically to serve those educationally and economically disadvantaged persons who, but for a program such as CLEO, would have little chance to attend an accredited law school because of economic and admission credential limitations.<sup>8</sup> The concerns of 1968 were concrete: less than one percent of the lawyers in this country were black and in some states there were more than 30,000 black residents for each black lawyer.<sup>9</sup>

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5. CLEO PARTICIPANT DATA REPORT (1979), *infra*, at 13.

6. CLEO filed an *amicus* brief in the *Bakke* litigation setting forth the academic achievements as well as preliminary bar performance of CLEO Fellows, the vast majority of whom were admitted under special programs notwithstanding significantly lower LSAT scores than those attained by regular admittees. See Brief for Petitioners. The Court failed to address the implications raised by the data.

7. MINUTES OF DECEMBER 5, 1967 CONFERENCE, *supra* note 4; See MINUTES OF OCTOBER 22, 1972 CLEO COUNCIL MEETING at which La Raza National Lawyers Association's application for participation on the Council as a constituent organization was accepted unanimously.

8. ALL ABOUT CLEO brochure (1980-81 ed.) at 2-8.

9. *Sweatt v. Painter*, 339 U.S. 629 (1950); See Washington, *History and The Role of Black Law Schools*, 18 *How. L.J.* 385 (1974). The underrepresentation of minority group lawyers and law students was well accepted in 1968, but it took the 1970 census to graphically portray the

The present CLEO program has two central components of direct service to students in addition to its services to the law schools. The two primary student components are summer institutes for prospective law students and annual fellowships of \$1,000 each to the successful graduates of the summer institutes who attend law school. The law schools individually absorb more than half the costs of the summer institutes and provide tuition scholarships, as well as financial aid to CLEO students. It is important to note that the present \$1,000,000 annual federal support for CLEO generates as much as three million dollars of cash and services annually from law schools. Over 140 ABA-approved law schools currently enroll the approximately 550 CLEO fellows now attending law school.

The CLEO Regional Summer Institutes were originally designed to operate largely as a screening and evaluation process for minority students who would not otherwise be admitted to law school, focusing on the identification of minority and other disadvantaged students who had the potential for successful entry into the legal profession despite their lack of traditional admissions criteria. This focus has changed slightly as CLEO learned more about the educational process generally, and legal education, in particular. A brief review of the recent history of law school admission is the most efficient means of explaining how this change has occurred.

Prior to the post-World War II education boom, the traditional approach to law school admissions has been to enroll nearly all students who could pay the tuition (except at those schools that were admittedly discriminatory) and weed out the nonlawyers on the basis of law school performance, particularly at the end of the first year of law study. In that era, admission to the profession was determined almost solely by performance in law school, subject to limited further evaluation by bar examinations. The vastly increased number of law school applicants in the post-war era gave rise to the Law School Admission Test (LSAT), which was first administered in 1948, was in widespread use in the mid-50's and in almost universal use by 1960. In the 1960s it became a dominant factor in the admissions process for most law schools.<sup>10</sup> As the schools sought to increase their minority enrollments, it became apparent that the LSAT was standing as an obstacle to this endeavor and the legal education community sought an alternative admissions device. The summer institutes of CLEO were conceived to perform this service.

It seemed feasible for CLEO to revitalize the concept of performance as a means of determining legal aptitude, at least with regard to minority and economically disadvantaged applicants. The summer institutes offered mini-courses in substantive law along with legal research and writing. Initially, they were largely experimental and varied in program format; some were primarily remedial, some attempted only to identify students who

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scarcity of minority lawyers. In 1970, it was estimated that total bar membership reached 272,401 lawyers of which 3,865 were black or members of Spanish-speaking ethnic groups. UNITED STATES DEPARTMENT OF COMMERCE, 1970 CENSUS OF POPULATION (1972); *1967 Proceedings of the Association of American Law Schools*, REPORT OF THE ADVISORY COMMITTEE FOR MINORITY GROUPS STUDY 1, (1967); See also EVANS, APPLICATIONS AND ADMISSIONS TO ABA ACCREDITED LAW SCHOOLS: AN ANALYSIS OF NATIONAL DATA FOR THE CLASS ENTERING IN THE FALL OF 1976. (May 1977), at 7. (hereinafter cited as 1976 LAW SCHOOL ADMISSION RESEARCH REPORT).

10. 1976 LAW SCHOOL ADMISSION RESEARCH, *supra* note 9 at 1-8.

showed promise of succeeding in law school and others aimed at orienting students to the study of law. While the institutes still reflect a combination of these elements, their format and primary aim has solidified. In general, greater emphasis is placed on orientation of the students to law school methodology and on evaluation of the law aptitude and potential of the student, while remedial aspects are minimized.<sup>11</sup>

The second component of the current CLEO Program is the provision of fellowships to the students who go on from the summer institutes to law school. These fellowships are provided under Title IX of the Higher Education Act of 1965, as amended<sup>12</sup> and are currently set at \$1,000 per year. These fellowships are to be used exclusively for living expenses. Each law school admitting a CLEO student makes a commitment to provide tuition, sometimes in the form of a tuition rebate, sometimes through the use of otherwise available scholarship funds, and more frequently through the use of loan funds.

In addition to the summer institutes and fellowships administered by CLEO, the National Office prepares course materials, has operated an Application-Sharing Project by which promising but unsuccessful candidates are referred to other law schools, serves as a catalyst for innovative programs in admissions, cooperates and shares information with special admission programs operated by individual law schools and generally serves as a repository of data and information about legal education and the disadvantaged.

The CLEO Program has also published, in conjunction with Oceana Publications, Inc., two major hard-bound works of particular interest to legal educators and scholars. The first publication, *DeFunis v. Odegaard and the University of Washington*,<sup>13</sup> is a three-volume set containing the complete records and briefs of the case; the second, *Bakke v. Regents of the University of California*,<sup>14</sup> is a six-volume set similar to the *DeFunis* work. In addition, CLEO has published, in cooperation with the Howard University Law Journal, selected papers from a two-day symposium which commemorated the program's Tenth Anniversary in 1978.<sup>15</sup>

CLEO has come to accept the principle that the concept of economic and educational disadvantage in the face of a baccalaureate degree is not married to the concept of race. "Traditional" admissions criteria have had the effect of excluding many disadvantaged persons from law school regardless of race. Frequently, the CLEO participant is one who, by reason of cyclical poverty and attendant educational deficiency, may have experienced initial difficulty in adjusting academically to the college environment. His or her cumulative grade point average, however, may reflect an upward trend characterized by marked improvement during the third and fourth

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11. ALL ABOUT CLEO brochure, *supra* note 8; See CLEO REPORTS (1968-1979).

12. Higher Education Act of 1965, as amended, 20 USC. 1134 (1980).

13. CLEO, *DE FUNIS V. ODEGAARD AND THE UNIVERSITY OF WASHINGTON: THE UNIVERSITY ADMISSIONS CASE*, (A. Ginger ed. 1974).

14. CLEO, *ALLAN BAKKE V. REGENTS OF THE UNIVERSITY OF CALIFORNIA* (A. Slocum ed. 1978).

15. ADVANCING LEGAL EDUCATION—THE FIRST DECADE OF CLEO, 1968-1978: A SYMPOSIUM TO COMMEMORATE THE TENTH ANNIVERSARY OF THE COUNCIL ON LEGAL EDUCATION OPPORTUNITY, 22 *HOW. L.J.* (1979).

years. A large number of CLEO students have also, because of their disadvantaged background, attended undergraduate colleges that are less demanding academically than the more prestigious institutions that furnish candidates for law school. When these factors are produced by membership in an isolated group, whether minority or white in ethnic terms, the student fits the concept of disadvantaged.<sup>16</sup>

In response to its own thought processes and the needs of society, CLEO broadened its concerns several years ago to encompass disadvantaged white students. One readily identifiable target population of disadvantaged white students from which CLEO draws can be found in Appalachia. Yet, it comes as no surprise that the ratio of minority students in the CLEO Program remains overwhelmingly high.

The argument is often heard that no person with a baccalaureate degree can be considered disadvantaged, since he or she has an advantage over a large portion of the population. What should be remembered, however, is that this same person can be disadvantaged with respect to other college graduates attempting to enter the legal profession. The patterns that have in the past kept these groups seriously underrepresented in the socially and economically powerful institutions of society and prevented their ready access to the mechanisms for peaceful dispute resolution through the legal system will continue as part of the cyclical poverty to which this Program is addressed. This is the concept of disadvantaged with which CLEO is now working, a concept that recognizes the potential of disadvantage of both whites and minority groups.<sup>17</sup>

### III. OBJECTIVES: PROGRAM FOCUS

CLEO's purpose is to increase the number of attorneys from economically and educationally disadvantaged backgrounds. As presently structured, the program includes a six-week, in-residence summer program which is premised upon the following hypothesis: that significant numbers of disadvantaged students who would be excluded from legal education through the use of traditional measures of aptitude can, with financial and academic support, successfully negotiate the law school curriculum. The net result: increased access to the legal system and to the decision-making processes of the country by those who have been historically disenfranchised for reason of race and/or economic circumstance.

Admission to CLEO is contingent upon two primary factors: economic-background eligibility and the prospect for successful matriculation in law school as indicated by the applicant's complete academic profile, notwithstanding marginal performance on the Law School Admission Test.<sup>18</sup>

Although CLEO conducts a more comprehensive approach to selection

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16. *Hearing on H.R. 13172 Before the Subcommittee of the Committee on Appropriations, United States Senate, 94th Cong., 2nd Sess. 465 (1976)* (statement of Richard G. Huber on behalf of the Council on Legal Education Opportunity).

17. *Id.*, at 467.

18. ALL ABOUT CLEO brochure, *supra* note 8, at 3; See DETAILED COMPARISON OF THE 1980 CLEO REGIONAL SUMMER INSTITUTE PARTICIPANTS (December 1980) at Table VIII; 1979-80 PROGRAM RECRUITMENT AND ADMISSIONS (May 1980) at Table VIII.

in its emphasis on non-quantifiable data, the academic screening for the program must still take into account prevailing admissions standards of law schools. CLEO reviews an applicant's entire file to determine what the prospects are for placement in law school once the summer institute experience has been completed. Persons whose records show little real prospect for admission to accredited schools (usually because of extremely low LSAT scores) are not generally accepted. But, neither does CLEO attempt to select merely the best credentialed applicants.

Many persons who have performed exceptionally well in undergraduate school and on the LSAT would benefit less substantially from the summer institute experience because their admission to law school is less likely to be contingent upon this additional measure of performance potential. Most such applicants who may be otherwise disadvantaged are ably recruited by law schools and can successfully compete for institutional and university financial assistance; therefore, to increase the *overall* number of minority and economically disadvantaged members of the legal profession, the program focuses upon a "middle" group. In quantifiable terms, this "middle" group has been established within a range of 350 to 525 on LSAT performance, and an average undergraduate grade point average of 2.82.<sup>19</sup> However, because present funding restrictions limit financial assistance to successful institute participants, CLEO looks to persons who manifest an ability to negotiate law school and in whom law schools, in cooperation with CLEO, are willing to devote substantial attention and resources.

Emphasis in the institutes is placed on the orientation of the student to the law school experience and the evaluation, in a classroom situation, of the law aptitude and potential of the student. As noted previously, compensatory and remedial academic aspects are now minimized.

The curriculum of the summer institutes focuses on two central aspects: the methodology of legal analysis and law development (using specifically structured substantive law courses as vehicles) and the evaluation of students' ability to master it. At a minimum, a summer program's curriculum—which is approved by CLEO's governing board—includes specially-tailored courses which are derived from the first-year law school curriculum and which emphasize abstract thinking methods of legal analysis and synthesis, as well as, legal research methods and techniques. The summer institutes are structured to include such courses as torts, contracts, property, and criminal law. Efforts are made to select manageable legal cases which generally are not repeated in the first year of law school; in this way program participants are not lulled by the false belief that they have received a substantive "head-start" on their formal legal training. Each institute also offers a detailed legal writing course which focuses on outlining, organizing thoughts, developing argumentative essays, researching and generally committing to writing legal analyses and responses to problems given in the substantive course. From thirty to fifty percent of the summer institute curriculum is devoted to this purpose.<sup>20</sup>

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19. *Id.*

20. Memorandum to Law School Deans and Other Interested Persons from Wade J. Henderson, Executive Director, *Sponsorship of CLEO Regional Summer Institutes in the Summer, 1981* (September 30, 1980) at 6; CLEO REPORTS (1968-1979).

The intensive course of study covers a six-week period, wherein one-half week is reserved for student evaluations, including "one-on-one" faculty-student performance reviews of institute participants' work. The summer institutes begin in mid-June and end by July 31st of each year; this schedule is designed to permit maximum program impact on the law school admission process on behalf of successful CLEO participants. Exclusive of tutorial sessions, program participants receive fourteen to sixteen class contact hours per week. Through constant feedback between the professor/teaching assistant and student, an individual can identify not only academic problems, but also areas of strength—the central focus of the institute program. In this manner, a participant gains confidence in him/herself, as well as in his/her abilities.

Each institute also attempts to establish a close rapport between professors, teaching assistants, and students in an informal atmosphere. Teaching assistants are each assigned a specific number of students, live in the same dormitory facilities as the students, and attend classes with them. A student thus can obtain academic assistance as needed.

#### IV. DATA RETRIEVAL PROCESS

In view of the upcoming legislative reauthorization of CLEO, the CLEO National Office initiated a comprehensive survey in the summer of 1978 to compile relevant data on the performance of the over 1,400 Program participants during their matriculation in law school. While data on the three-year law school performance of CLEO Fellows is readily available from the law schools via academic reporting requirements associated with each Fellow's continuing fellowship eligibility, additional data on post-law school performance (i.e., bar data and career patterns) has been difficult to obtain. Although the National Office attempts to solicit this information annually from graduating CLEO Fellows, the data on hand remains incomplete. This has resulted primarily from a failure of CLEO Fellows to remain in contact with the National Office, particularly after graduation, and is further compounded by the typically transient nature of the law graduate vis-à-vis his/her place of residence.

As a device to initiate the survey, it was determined that CLEO's Tenth Anniversary Commemorative Symposium, held at Howard University School of Law in the Fall of 1978, could provide a unique opportunity for re-establishing contact with the more than 1,400 CLEO Fellows. The Symposium, therefore, served as the launching point for generating the interest and cooperation of CLEO Fellows in supplying the relevant performance data.

The National Office conducted a review of its internal program files to begin the process of locating Program Fellows. Recognizing that the information contained in the CLEO file would, in many instances, be outdated, it was determined that a process for address verification was necessary. Initially, the process focused upon data obtained by way of the law schools from which the Fellows graduated. Accordingly, a solicitation to all of the then 164 ABA-approved law schools was sent requesting the addresses for all CLEO students having attended their law school since the inception of



the Program in 1968, accompanied by a list which denominated each CLEO student by year of law school entry.

The law schools proved cooperative in supplying the addresses which they had on hand. However, in many instances, the information provided proved inaccurate; apparently, many of the schools encountered CLEO's similar difficulty in keeping track of the location of their alumni. Also, a few schools refused to disclose the data, maintaining that student privacy rights precluded the dissemination of the information requested, although at least one law school in this latter category forwarded CLEO's inquiry directly to the Fellows themselves.

Upon receipt of addresses from the law schools, a package of information regarding the upcoming Symposium was mailed to each CLEO Fellow. In many instances, these Symposium packages were returned to CLEO; obviously, the initial success of the venture was entirely contingent upon the accuracy of each law school's address data for its graduates. However, most were not returned to the National Office nor did we receive the return postcard provided from them.

After the Symposium, a second mailing to those CLEO Fellows who had provided their current address via the return postcard was conducted. This package was directed principally at stimulating support for CLEO's reauthorization effort in Congress and included a general letter explaining the reauthorization campaign; the need for their assistance and cooperation; the questionnaire regarding employment and bar performance data and a request for address information on fellow CLEO participants. It should be noted that the questionnaire and the law school reporting files have been, and continue to be, the central components for obtaining the data for the CLEO Fellows Performance Survey.

Because current address information on CLEO Fellows remained difficult to obtain, the data retrieval process developed more slowly than was initially anticipated. The first stage of the process was completed by mid-December, 1978 with more than 1,200 mailings to CLEO Fellows, based on information obtained from both the law schools and CLEO's program files. However, although response questionnaires from the initial mailing were encouraging, by June 1979 the National Office had received only 300 responses. The information was viewed as an insufficient basis for the more thorough study initially envisioned. Therefore, a secondary effort relating to identification of current address information was devised to obtain additional data.

The revised strategy to obtain accurate address information centered on secondary sources which included the enlistment of past Summer Institute Directors' support for the project. This approach was precipitated by offers of assistance from the Directors themselves who had been apprised of CLEO's reauthorization objectives. Because several of the Program's Directors indicated that they had maintained regular contact with Fellows who had participated in their respective Institutes, the National Office, after synthesizing the results of its two previous efforts, compiled a list of CLEO Fellows for whom current address information remained outstanding. The various lists, developed according to the Summer Institute attended, were forwarded to the respective Institute Directors to obtain any address data

available to them. Sample questionnaires were provided as well so that they might be fully informed as to the kind of information being sought from the CLEO Fellows.

In total, the Survey produced bar performance data on approximately 690 CLEO Fellows and employment information for approximately 305. The following tables provide the information on CLEO Fellows' performance in various categories:

#### CLEO PARTICIPANT DATA REPORT (1979)<sup>21</sup>

1. Number of students participating in CLEO since its inception:

<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>	<u>1972</u>	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>TOTAL</u>
161	448	212	221	217	233	225	251	220	221	217	224	2,850

2. Number of students successfully completing the summer institute program:

<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>	<u>1972</u>	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>TOTAL</u>
151	444	197	210	123	229	225	244	216	208	213	222	2,722

3. Number of summer institute graduates entering law school:

<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>	<u>1972</u>	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>TOTAL</u>
131	400	191	207	210	218	219	234	205	197	203	214	2,629

4. Number of students who have graduated from law school:

<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>	<u>1972</u>	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>TOTAL</u>
83	292	130	138	142	158	161	157	149	NA	NA	NA	1,410

5. Number of law school graduates who have passed the bar examination:

<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>	<u>1972</u>	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>TOTAL</u>
69	176	83	63	56	53	55	47	3	NA	NA	NA	605

6. Number of law school graduates for whom CLEO has no bar data:

<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>	<u>1972</u>	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>TOTAL</u>
8	85	38	71	81	97	98	98	145	NA	NA	NA	721

7. Number of law school graduates who failed the bar examination:

<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>	<u>1972</u>	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>TOTAL</u>
7	30	10	3	5	8	6	12	NA	NA	NA	NA	81
			1*			2*						3
												689

\* Did not take

NOTE Bar information is grossly understated. The CLEO National Office has been conducting an extensive survey over the past year of *all* CLEO law school graduates to determine more accurate bar statistics. This information is not generally known by the law schools and can only be ascertained with accuracy if it is known in which of the fifty (50) jurisdictions an individual sat for an examination. The survey, when complete, will hopefully provide more satisfactory statistical results.

21. Each year, the CLEO National Office compiles relevant statistical data on the Program's participants. The available data is then synthesized by CLEO's Admissions Analyst and the cumulative data is provided in the *CLEO Participant Data Report*.

8. Number of students enrolled in law school receiving CLEO stipends:

1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	TOTAL
0	0	0	0	0	0	0	0	6	152	159	206	523

9. Number of students enrolled in law school *not* receiving CLEO stipends:

1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	TOTAL
0	0	0	0	0	0	0	0	10	2	7	7	26

10. Total number of students enrolled in law school:

1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	TOTAL
0	0	0	0	0	0	0	0	16	154	166	213	549

11. Number of male/female students in law school receiving CLEO stipends:

	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	TOTAL
Male	0	0	0	0	0	0	0	0	4	83	84	102	273
Female	0	0	0	0	0	0	0	0	2	69	75	104	250

12. Unknown Academic Status: some law schools became reluctant in 1978/1979 to release academic data on CLEO students. The academic status of the following students is presently unknown:

1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	TOTAL
0	0	0	0	0	0	0	25	6	5	4	0	40

13. Number of students who have deferred entrance, withdrawn or failed law school:

	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	
Deferred entrance	-	-	-	-	-	-	-	-	-	-	4	3	5
Leave of absence	-	-	-	-	-	-	-	-	4	1	3	-	-
Academic dismissal	21	52	43	49	31	30	31	29	24	23	-	-	
Withdrew-good standg.	1	7	10	10	7	1	4	-	-	-	-	-	
Withdrew-failing	8	18	7	5	1	3	3	-	-	-	-	-	
Withdrew-military	5	6	-	-	-	-	1	-	-	-	-	-	
Withdrew-illness/death	1	4	-	1	-	3	2	1	1	2	1	-	
Withdrew-financial	-	2	-	1	2	-	-	-	-	1	-	-	
Withdrew-unknown	12	18	1	4	28	23	18	18	10	11	9	1	
	48	108	61	70	69	60	59	52	36	47	36	6	

14. Number of students presently receiving CLEO stipends - by ethnic breakdown:

	1976	1977	1978	1979	TOTAL
American Indian	-	-	-	3	3
Appalachian	1	-	-	1	2
Asian American	-	5	4	5	14
Black	8	80	102	111	301
Black Panamanian	-	1	-	-	1
Black West Indian	-	1	-	-	1
Caucasian	-	2	2	6	10
Chicano	6	44	34	55	139
Cuban American	-	3	2	5	10
Dominican American	-	-	-	1	1
Filipino American	-	-	-	1	1
Hawaiian	-	-	1	-	1

Italian American	-	-	1	-	1
Puerto Rican	1	17	16	18	52
Spanish Surname	-	2	2	2	6
Other Groups	-	-	-	5	5
TOTAL	16	159	166	213	549

## 15. Number of students who audited the summer institute programs:

1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	TOTAL
0	1	6	3	1	16	231	5	9	11	19	6	91

16. Anticipated law school enrollment of CLEO participants in 1979-80:  
22017. Number of law schools who have participated by accepting CLEO students:  
144

## V. CAREER PATTERNS

Legal education was perhaps the first professional discipline to respond to the demand for broader opportunities for politically and economically disenfranchised groups. The early organized efforts of the law schools to address the need for structured affirmative action reflect the intense interest of members of minority groups in the law as a tool for "social engineering" and societal decisionmaking, as much as they reflect the social conscience of the profession.

To the extent that the ultimate *raison d'être* of any affirmative admission program in law schools is to increase access to the decision-making process of both the private and governmental sectors by members of disadvantaged groups, the career patterns of successful graduates of these programs may be the most significant measure of the success of affirmative admissions.

The assumption that minority group lawyers would return to assist indirectly minority communities has long been one of the unvalidated considerations which served to undergird principles of affirmative admissions in legal education. In both the *DeFunis* and *Bakke* challenges to affirmative admissions, the factor of additional community service to underserved minority communities was proffered as a principal justification for the continued need for such programs. However, because this assumption has remained, for the most part, unvalidated through lack of concrete documentation, the Supreme Court has been reluctant to accept this rationale at first glance.

The CLEO survey sought to shed some light on this question. Questionnaire returns provided career patterns data on 305 CLEO Fellows or 21.6 percent of those candidates eligible to respond. Although by no means complete, the career patterns of CLEO Fellows is particularly interesting when viewed in the context that but for CLEO, many of these attorneys would have been denied access to a legal education.

It is interesting to note as well that the career activities of CLEO Fellows extend well beyond the exclusive interests (as traditionally defined) of minority communities, reflecting a job dispersal and diversity of interest of considerable breadth; in reality, minority interests have never been monolithic or one-dimensional.

The following Table provides data on CLEO Fellows' employment and career activities as of 1978-1979:

JUDGES	
Administrative Law .....	3
Municipal .....	1
State District .....	2
County District Court .....	1
U.S. Bankruptcy Court .....	1
LEGAL EDUCATION	
Professors (Non-tenured) .....	4
Professors (Tenured).....	1
Associate Deans .....	1
Associate Director - CLEO .....	1
ELECTED OFFICIALS	
State Representative .....	1
FULL-TIME GRADUATE SCHOOL	
Candidates for LLM .....	1
Candidates for SJD .....	1
*PART-TIME GRADUATE SCHOOL	
Candidates for LLM .....	3
UNDERGRADUATE EDUCATION	
Professors .....	5
Deans .....	1
Special Assistant to the Chancellor .....	1
Director of Fundraising for Private University.....	1
General Counsel for University Students .....	1
ATTORNEYS IN PUBLIC SECTOR	
Assistant Prosecutors .....	3
City Attorneys.....	11
State District Attorneys.....	10
Federal Agencies, (Administration) .....	1
Federal Agencies, (Litigation) .....	25
Judge Advocates General Corps (Military) .....	3
Judicial Law Clerks .....	3
Executive Directors, Legal Services .....	4
Managing Attorneys, Legal Services .....	7
Staff Attorneys, Legal Services.....	32
Municipal Government (Administration) .....	1
Municipal Government (Litigation).....	3
Municipal Government (Executive Director).....	4
Public Defenders (State & Federal).....	11

Public Interest Organizations (Administration).....	5
Public Interest Organizations (Litigation).....	1
Office of State Attorneys General.....	15
State Government (Administration).....	2
State Government (Litigation).....	11
Office of U.S. Attorney.....	11

#### PRIVATE SECTOR

Congressional Aides (House of Representatives).....	1
Congressional Aides (Senate).....	2
Corporate Practice (Litigation).....	22
Corporations, Banks, Insurance Companies, Accounting firms, et. al (Adminstration).....	5
Entrepreneur (Owner of a Real Estate Firm).....	1
Law Clerk.....	2
Partner in a Law Firm (3 or more partners in firm).....	17
Private Practice (Sole practitioner or partnership).....	57
Staff Attorney in a Law Firm (3 or more partners in firm).....	7
Staff Attorney in a Small Law Firm.....	<u>1</u>
Total	305

\* Note: Part-time candidates are reflected only once in the total.

#### VI. CONCLUSION

It has been over two years since the United States' Supreme Court rendered its opinion in *Bakke*. During the ensuing period, educators, test specialists, legislators and representatives of interests groups which were organized in response to *Bakke* have sought to influence, in various forums, legal education's collective response to the mandates of *Bakke*; as a legal question, *Bakke* was resolved by the Court, and the central issues remaining were shifted to the political arena.

Many assumed that the Court's decision would bring about substantial alteration to affirmative admissions; and notwithstanding the Court's affirmation that race could be used as a permissible criterion in the admissions process (within defined parameters), there was fairly widespread concern, at least among some members of minority groups, that perceptible decreases in enrollment of these groups would occur. In this respect, *Bakke* appears to have had little direct impact on the enrollment patterns of minority group students in legal education.

Yet, *Bakke* left an indelible imprint on the admission policies of law schools, while simultaneously focusing America's attention on the importance of higher education as the gatekeeper of meaningful political and economic decision-making; the public's awareness of the political side of meritocratic admissions selection has been heightened.

Several policy questions which were posed by *Bakke*, but which received scant attention by the Court, are now being explored more fully. The use, impact and validity of standardized testing in all areas has been raised to a matter of national concern. Already, several states have enacted legisla-

tion affecting changes in the reporting requirements associated with several standardized tests.

Perhaps of greater significance have been attempts by several law schools to concretize affirmative admissions policies in response to *Bakke* in ways designed to insulate these programs from legal and political attack. The *Law School Admission Study* prepared by Susan Brown and Edward Marenko of the Mexican-American Legal Defense and Education Fund (MALDEF), analyzes a variety of workable admissions models which are structured to achieve this purpose. The recent adoption of an affirmative action accreditation standard (Standard 212) by the American Bar Association pursuant to a recommendation of the ABA Section on Legal Education and Admission to the Bar can be viewed as a further extension of the "shield" concept as it applies to voluntary affirmative action efforts.

An additional and important element which appeared woven in the fabric of *Bakke* was the need for an alternate measure of the performance potential of disadvantaged applicants to law schools which, itself, could be supported through actual performance-related data. Of course, this alternate evaluation of performance would be used to moderate the over-reliance on LSAT and UGPA data alone. From the foregoing analysis of the performance data gathered on CLEO Fellows, it appears that the CLEO experience, when used in conjunction with quantifiable variables, may well be the most solidly-based evaluation measure available.

The success of CLEO Fellows in law school and on the bar examination cannot be divorced entirely from a comparison of similarly-credentialed, non-CLEO students. While little comparative data similar in scope and kind is available, all reasonable conclusions lead to substantially improved performance by CLEO-trained students.

A restatement of the statistics of achievement by program Fellows would be superfluous; however, suffice it to say that by any measure they are impressive. When one takes into consideration the national scope of the data and the magnitude of the sample involved, it becomes increasingly difficult to attribute this performance to isolated variables having little common impact on the entire class.

Because CLEO also enjoys unique institutional sponsorships and federal support, the program may well represent one of the most acceptable policy responses to the dilemma posed by *Bakke*; already several law schools have endorsed CLEO participation as a positive consideration in the admission process.

In the final analysis, the performance of CLEO Fellows speaks for itself.