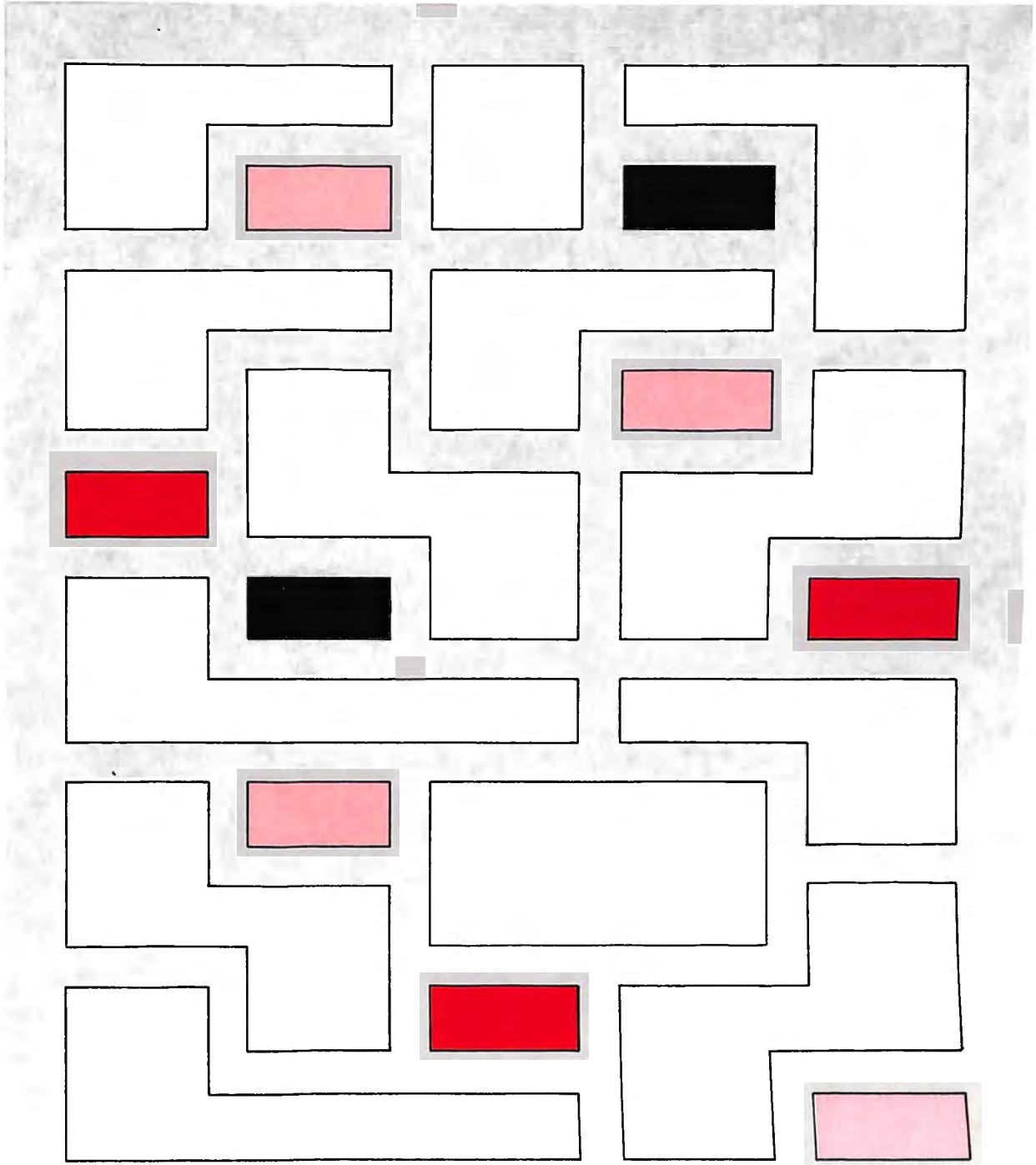


# Access to the Legal Profession in Montana

February 1981



A report of the Montana Advisory Committee to the United States Commission on Civil Rights prepared for the information and consideration of the Commission. This report will be considered by the Commission, and the Commission will make public its reaction. In the meantime, the findings and recommendation of this report should not be attributed to the Commission but only to the Montana Advisory Committee.

## **THE UNITED STATES COMMISSION ON CIVIL RIGHTS**

The United States Commission on Civil Rights, created by the Civil Rights Act of 1957, is an independent, bipartisan agency of the executive branch of the Federal Government. By the terms of the act, as amended, the Commission is charged with the following duties pertaining to discrimination or denials of the equal protection of the laws based on race, color, religion, sex, age, handicap, or national origin, or in the administration of justice: investigation of individual discriminatory denials of the right to vote; study of legal developments with respect to discrimination or denials of the equal protection of the law; appraisal of the laws and policies of the United States with respect to discrimination or denials of equal protection of the law; maintenance of a national clearinghouse for information respecting discrimination or denials of equal protection of the law; and investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections. The Commission is also required to submit reports to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

## **THE STATE ADVISORY COMMITTEES**

An Advisory Committee to the United States Commission on Civil Rights has been established in each of the 50 States and the District of Columbia pursuant to section 105(c) of the Civil Rights Act of 1957 as amended. The Advisory Committees are made up of responsible persons who serve without compensation. Their functions under their mandate from the Commission are to: advise the Commission of all relevant information concerning their respective States on matters within the jurisdiction of the Commission; advise the Commission on matters of mutual concern in the preparation of reports of the Commission to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State Advisory Committee; initiate and forward advice and recommendations to the Commission upon matters in which the Commission shall request the assistance of the State Advisory Committee; and attend, as observers, any open hearing or conference which the Commission may hold within the State.

# Access to the Legal Profession in Montana

—A report prepared by the Montana Advisory  
Committee to the U.S. Commission on Civil Rights

## **Attribution:**

The findings and recommendations contained in this report are those of the Montana Advisory Committee to the United States Commission on Civil Rights and, as such, are not attributable to the Commission. This report has been prepared by the State Advisory Committee for submission to the Commission, and will be considered by the Commission in formulating its recommendations to the President and Congress.

## **Right of Response:**

Prior to publication of a report, the State Advisory Committee affords to all individuals or organizations that may be defamed, degraded, or incriminated by any material contained in the report an opportunity to respond in writing to such material. All responses received have been incorporated, appended, or otherwise reflected in the publication.

## LETTER OF TRANSMITTAL

The Montana Advisory Committee  
to the United States Commission  
on Civil Rights  
February 1981

### MEMBERS OF THE COMMISSION

Arthur S. Flemming, *Chairman*  
Mary F. Berry, *Vice Chairman*  
Stephen Horn  
Blandina C. Ramirez  
Jill Ruckelshaus  
Murray Saltzman

Louis Nuñez, *Staff Director*

Dear Commissioners:

The Montana Advisory Committee to the U.S. Commission on Civil Rights, pursuant to its responsibility to investigate civil rights problems in the region, submits this report on access to the legal profession in Montana.

During the last several years, members of the Montana Advisory Committee have heard allegations that women and minorities in the State sometimes found it difficult to obtain appropriate legal representation for themselves. Research by the Advisory Committee revealed that few women or minorities practiced law in the State. This led the Advisory Committee to consider the reasons for the low numbers of women and minorities in Montana's legal profession. The Committee studied the University of Montana School of Law, looking at entry to the profession through diploma privilege and the State Bar examination. Close attention was given to the former, since the majority of the State's attorneys have entered the legal profession through the law school.

The Montana Advisory Committee found that the number of women and minorities applying for admission to the University of Montana School of Law is far from commensurate with their numbers in the population of Montana. The Committee also found a perception on the part of some minorities and women in Montana that the law school does not provide support systems for these groups. These groups have stated that the school's curriculum does not suit their needs and interests.

The Montana Advisory Committee made a total of 10 recommendations that are addressed to the University of Montana School of Law, the Montana Bar Association, and the Montana Supreme Court.

We urge you to consider this report and make public your reaction to it.

Respectfully,

AUGUSTINE LOPEZ, *Chairperson*  
Montana Advisory Committee

**MEMBERSHIP  
MONTANA ADVISORY COMMITTEE  
TO THE UNITED STATES COMMISSION ON CIVIL RIGHTS**

Augustine Lopez, *Chair*  
Billings

Ernest C. Bighorn, Jr.  
Mile City

John C. Board  
Great Falls

Dorothy Bohn  
Great Falls

Robert Brown  
Whitefish

James E. Gonzales  
Billings

Gay Holliday  
Roundup

Lois A. LaCroix  
Helena

Angela V. Russell  
Lodge Grass

Marie E. Sanchez  
Lame Deer

Geraldine W. Travis  
Great Falls

## ACKNOWLEDGMENTS

The Montana Advisory Committee wishes to thank the staff of the Commission's Rocky Mountain Regional Office, Denver, Colorado, for its help in preparation of this report. The investigation and report were the principal staff assignment of Roger C. Wade. Writing assistance was provided by Cal E. Rollins and legal assistance by Joanne Birge with support from Phyllis Santangelo and Yolanda Montoya. The project was undertaken under the overall supervision of Shirley Hill Witt, director, and William F. Muldrow, deputy director, Rocky Mountain Regional Office. Special thanks go to Dorothy Bohn and Geraldine Travis, Advisory Committee members, for their assistance in this project.

# CONTENTS

<b>Introduction</b> .....	1
<b>Implications of the <i>Bakke</i> Decision</b> .....	2
<b>Demographics</b> .....	3
<b>The State Bar Examination</b> .....	4
<b>The Law School: Admissions and Enrollment</b> .....	4
The Available Pool	
Recruitment	
Perceptions of the Law School	
Financial Aid	
Part-time Attendance	
<b>Findings and Recommendations</b> .....	12
<b>Appendices</b> .....	15

# Introduction

During the last several years, members of the Montana Advisory Committee to the U.S. Commission on Civil Rights have heard allegations from various citizens of Montana that women and minorities in the State sometimes found it difficult to obtain appropriate legal representation for themselves. Preliminary research by the Advisory Committee revealed that few women or minorities practiced law in the State.<sup>1</sup> This knowledge led the Montana Advisory Committee to consider the reasons for the paucity of women and minorities in the State's legal profession.

In the past there were three avenues to the practice of law in Montana: the diploma privilege, a passing score on the State Bar examination, and leave of the Supreme Court.<sup>2</sup> The diploma privilege enabled persons who graduated in good standing from the University of Montana School of Law to practice law immediately.<sup>3</sup> The Montana Supreme Court has recently eliminated the diploma privilege for students entering the University of Montana School of Law in the Fall of 1981 and thereafter<sup>4</sup>(See Appendix D).

\* Rule XXV(C), Supreme Court of Montana. Compared to other States this is a liberal admission rule. Colorado, for example, requires eight years practice out of the ten years immediately preceding application. (Rule 202, *Supreme Court of Colorado Rules Governing Admission to the Bar*. North Dakota requires four years of active practice out of the five immediately preceding application. South Dakota requires five years active practice. American Bar Association Section of *Legal Education and Admissions to the Bar. A Review of Legal Education in the United States-Fall 1978*. Lawrence, KS; American Bar Association, 1979. The schools used for comparison were the Schools of Law at the Universities of Idaho, Maine, North Dakota and South Dakota. These four schools were selected because they are of similar size, are public institutions, and three are geographically contiguous to Montana. See: *1979-80 Pre-Law Handbook*. In addition, the South Dakota School of Law

A recent study by the Montana State Bar indicated that more than 70 percent of the State's lawyers entered practice as graduates of the University of Montana.<sup>5</sup> Those who have not graduated from the University of Montana School of Law and wish to practice their profession in the State may take the bar examination provided they are graduates of an approved law school and meet certain other requirements. Additionally, attorneys who have practiced law for two years in another State\* may be granted admission to the Montana bar by leave of the Supreme Court.<sup>6</sup>

The Montana Advisory Committee studied the law school, looking at entry to the profession through the diploma privilege and the State Bar examination. Close attention was given to the former, since the majority of the State's attorneys have entered the legal profession through the law school.<sup>7</sup> This report of the Advisory Committee focuses upon the law school's policies towards women and minorities in regard to their admission, retention, and graduation, and surveys the school's affirmative action efforts.

is a diploma privilege school. (Office of the Dean, University of South Dakota School of Law, April 25, 1980.)

<sup>1</sup> Interview with Kent Parcell, Director, Montana Bar Association, in Helena, Montana, July 25, 1979.

<sup>2</sup> 37-61-204 Montana Code Annotated 1979. Rule XXV, Supreme Court of the State of Montana, 1965, as amended.

<sup>3</sup> *Ibid*.

<sup>4</sup> *In Re: Proposed Amendments Concerning the Bar Examination and Admission to the Practice of Law in the State of Montana*, Supreme Court of Montana, March 24, 1980.

<sup>5</sup> State Bar of Montana, *1978 Montana Lawyer Survey*, 1979, p. 3 (hereafter cited as *Lawyer Survey*).

<sup>6</sup> Rule XXV, Supreme Court of the State of Montana.

<sup>7</sup> *Lawyer Survey*, p. 3.



## Implications of the Bakke Decision

Interviews conducted at the law school indicated that the *Regents of the University of California v. Bakke*<sup>8</sup> decision has caused uncertainty in application of affirmative action. Both the Dean and Assistant Dean stated that they were not sure what was permissible in light of the Bakke case.<sup>9</sup> A faculty member, when interviewed, commented about *Bakke* and *United Steelworkers v. Weber*:<sup>10</sup> “*Bakke* and *Weber* and other cases make it unclear just what can and can’t be done. They have at least opened a number of questions about what kinds of entrance criteria can be applied.”<sup>11</sup>

Affirmative action is intended to correct the lingering effects of past discriminatory practices and policies and requires more than a non-discriminatory neutral position. The extent to which voluntary affirmative action programs can resist neutrality and can take into account race or ethnicity was addressed by the U.S. Supreme Court for the first time in June 1978. In six separate opinions the Court held that some forms of race-conscious affirmative action are constitutional.<sup>12</sup> According to Justices Brennan, White, Blackmun, and Marshall, university admissions programs designed to remedy adverse effects of past discrimination may take race into account and may even grant racial preferences.<sup>13</sup>

In *Regents of the University of California v. Bakke*, Allen Bakke, a white male, challenged the affirmative action admissions policy of the University of California at Davis Medical School. Bakke applied for admission to the school in 1973 and 1974 and was rejected both times. He filed suit against the University Regents claiming minority candidates with lower grades and test scores had been granted admission to the school under a two-track procedure that violated the equal protection clause in the California Constitution and Title VI of the Civil Rights Act of 1964.<sup>14</sup> The university stated four reasons for its special admissions program:

- reducing the historic deficit of traditionally disfavored minorities in medical schools and the medical profession;

- countering the effects of societal discrimination;
- increasing the number of physicians who will practice in communities currently underserved;
- obtaining the educational benefits that flow from an ethnically diverse student body.<sup>15</sup>

The Supreme Court added a fifth reason:

Racial classifications in admission conceivably could serve a fifth purpose. . . fair appraisal of each individual’s academic promise in the light of some cultural bias in grading or testing procedures. To the extent that race and ethnic background were considered only to the extent of curing established inaccuracies in predicting academic performance, it might be argued that there is no “preference” at all.<sup>16</sup>

Addressing these purposes, the opinion joined by Justices Brennan, White, Marshall, and Blackmun emphasized earlier statements on:

. . . the fact that the habit of discrimination and the cultural tradition of race prejudice cultivated by centuries of legal slavery and segregation were not immediately dissipated when *Brown I.* . . announced the constitutional principle that equal educational opportunity and participation in all aspects of American life could not be denied on the basis of race. Rather, massive official and private resistance prevented, and to a lesser degree still prevents, attainment of equal opportunity in education at all levels and in the professions.<sup>17</sup>

While the majority of the Justices ruled that Allen Bakke should be admitted to the medical school, most recognized the need for affirmative action programs where minority underrepresentation was “substantial and chronic.”<sup>18</sup> The Court agreed that promotion of a diverse student body was an important justification for a university’s affirmative action program and stated:

Our tradition and experience lend support to the view that the contribution of diversity is substantial. . . It is not too much to say that the “nation’s future depends upon leaders trained through wide exposure” to the ideas and

<sup>8</sup> 438 U.S. 265 (1978).

<sup>9</sup> Interviews in Missoula, Montana, July 24, 1979.

<sup>10</sup> *United Steelworkers of America v. Weber*, 443 U.S. 193 (1979).

<sup>11</sup> Interview with Professor Noel Larrivee in Missoula, Montana, July 24, 1979.

<sup>12</sup> *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* Title VI of the Civil Rights Act of 1964 is codified at 42 U.S.C.

2000d. Title VI states in pertinent part: “No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.”

<sup>15</sup> *Id.*, at 306.

<sup>16</sup> *Id.*, note 43.

<sup>17</sup> *Id.*, at 371.

<sup>18</sup> *Id.*, at 362.

mores of students as diverse as this Nation of many peoples.<sup>19</sup>

The U.S. Department of Health and Human Services has attempted to clarify legitimate affirmative action practices. New Title VI regulations were published in October 1979, setting the following guidelines:

- Affirmative action programs do not violate *Bakke* if they consider race along with other factors in selecting students.
- It is permissible to increase recruitment in minority institutions and communities.
- Alternative admissions criteria may be used for minority applicants.
- Tutorial programs to help disadvantaged students meet admissions requirements are permissible.
- Numerical goals for the racial and ethnic composition of the student body can be set although quotas cannot.<sup>20</sup>

## Demographics

Montana has a total population of 694,409, approximately half of which is female.<sup>21</sup> Of the total population of the State, 27,130 (3.9 percent) are Native Americans.<sup>22</sup> There are seven Indian reservations in the State: Blackfeet, Crow, Flathead, Fort Belknap, Fort Peck, Northern Cheyenne, and Rocky Boys.<sup>23</sup> Hispanics number 7,771 (1.1 percent) of Montana's total population.<sup>24</sup> Blacks represent 1,095 (.2 percent) of the State's population and Asian Americans number 1,099 (.1 percent).<sup>25</sup> The total minority population of the State equals 37,995 (5.4 percent).<sup>26</sup> Only thirteen States have fewer minorities than Montana.<sup>27</sup>

The Montana State Bar does not keep nor can it develop from existing data a breakdown of its numbers by race. The Executive Director of the State Bar, Kent Parcell, stated a belief such data collection was contrary to law. Parcell estimated that there are three Native Americans, two blacks,

two Asian Americans, and no Hispanics practicing law in the State.<sup>28</sup> Other sources indicated that there are six Native American attorneys in Montana but no blacks, Hispanics, or Asian Americans.<sup>29</sup> Parcell gave an initial estimate of 60 female lawyers in the State but later revised this estimate to 120.<sup>30</sup> The *Directory of Attorneys 1977-78*, prepared by the Clerk of the Montana Supreme Court has 57 attorneys identifiable as women.<sup>31</sup> Figures from the *1978 Montana Lawyers Survey*, sponsored by the State Bar and the University of Montana School of Law, indicate that as of March 1978, there were 1,692 members of the Montana Bar Association.<sup>32</sup> This mailed survey asked 71 questions of all practicing attorneys in Montana, but asked no questions about the racial makeup of the Bar. It was completed and returned by 734 members. Of those responding, 35 were female.<sup>33</sup> If the number of women in this sample is reflective of the number of women in the Montana Bar, in 1978 women accounted for about five percent of the State's lawyers.

Inquiries to the Montana Supreme Court concerning the race and sex of those who have taken the State Bar examination failed to produce any information on the composition of the examinees. Until recently the University of Montana School of Law kept no records on the number of minorities that graduated from the school. In the 1970s, it appears that one minority woman dropped from the program, one transferred out, and two are currently enrolled.<sup>34</sup> If, as shown in the *1978 Montana Lawyer Survey*, 71.3 percent (or approximately 1,184) of the lawyers in the State are graduates of the Montana School of Law, then it seems unlikely that minorities are proportionately represented among Montana's lawyers.<sup>35</sup>

The *1978 Montana Lawyer Survey*, while it does not identify the State's lawyers by race, does provide a description of the typical lawyer in Montana. It states:

unpublished document in files of Rocky Mountain Regional Office, U.S. Commission on Civil Rights.

<sup>28</sup> Parcell interview, July 25, 1979.

<sup>29</sup> Telephone interview with Urban Bear Don't Walk, Esq., Sept. 12, 1979.

<sup>30</sup> Interview, July 25, 1979, and telephone interview, Sept. 19, 1979.

<sup>31</sup> Kearney, Thomas. *Directory of Montana Attorneys, 1977-1978*.

<sup>32</sup> *Lawyer Survey*, p. 1.

<sup>33</sup> *Ibid.*, p. 3.

<sup>34</sup> Interview with Assistant Dean Marjorie Brown in Missoula, Montana, July 24, 1979.

<sup>35</sup> *Lawyer Survey*, p. 3.

<sup>19</sup> *Id.*, at 378.

<sup>20</sup> 44 *Federal Register*, 58509-58517 (Oct. 10, 1979).

<sup>21</sup> U.S., Commission on Civil Rights, *Energy Resource Development* (Rocky Mountain Regional Office, Denver, Colorado), p. 5.

<sup>22</sup> Data are based on the 1970 census reports from the U.S. Bureau of the Census and later census reports on special groups. Percentages computed by the Rocky Mountain Regional Office, U.S. Commission on Civil Rights.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>27</sup> U.S., Department of Housing and Urban Development, Region VIII,

the typical member of the Montana State Bar, who is male, graduated from the University of Montana Law School and is not likely to have any nonlegal post-graduate training. He believes that law school adequately prepared him for the practice of law in terms of theory but inadequately in terms of the practical legal mechanics. He is not licensed to practice law in a State other than Montana and he primarily practices within the State of Montana in private practice with a partner. . . .<sup>36</sup>

## The State Bar Examination

The Supreme Court of Montana is responsible for administering the State Bar exam through the State Board of Law Examiners. According to the *1978 Montana Lawyer Survey*, about 28 percent of the lawyers in Montana entered the legal profession via the Bar exam given annually on the fourth Monday of October.<sup>37</sup> Until 1980 the exam was composed entirely of essay questions made up by the committee in charge; it did not include the frequently used computer graded multi-state multiple choice examination.<sup>38</sup> The Supreme Court of Montana made several changes in April 1980, including adding the multi-state examination to future testing.<sup>39</sup>

Between 1968 and 1978 applicants for the Bar examination numbered 496.<sup>40</sup> The number of applicants, male and female, has risen considerably in recent years.<sup>41</sup> Of those who took the examination between 1968-1978, 440 were male and 56 female with 297 passing (262 males and 35 females). While 59 percent of all those who took the exam passed it, 62 percent of the women were successful.<sup>42</sup>

## The Law School: Admissions and Enrollment

Concerning admissions policies for the University of Montana School of Law, the Dean states:

Between 1970 and 1974, minority status was considered positively in evaluating applications for admission. But the policy changed. Between 1974 and 1977, the undergraduate grade point average and the Law School Admission Test

(LSAT) score were virtually the only factors considered for admission.<sup>43</sup>

The policy was changed again, however, in June 1977, when the faculty determined to use the LSAT score, undergraduate grade point average, college or university attended, trend in college grades, quality of work in difficult courses, and prior experience, including graduate study, as factors in acceptance of students to the law school.<sup>44</sup> This policy

makes it possible to review an applicant's performance in an area other than mere grades and test scores which may adversely affect minority students whose backgrounds would indicate an ability to complete the program successfully but whose test scores may not be as competitive.<sup>45</sup>

*The University of Montana School of Law Admissions Bulletin* (August 1978) states the following admissions criteria:

The law faculty policy is that the most important admissions criteria are the cumulative grade point average and the score on the Law School Admission Test (LSAT), from which is derived a prediction index produced by a formula based on the experience of first-year students in the School of Law. In making admissions decisions, the Admissions Committee weighs such factors as college or university attended, trend in college grades, quality of work in difficult courses, change in performance after an absence from college, and experience prior to application to law school, including graduate study.<sup>46</sup>

Although the bulletin offers no definition of "experience prior to application to law school," Assistant Dean Brown explains that the admissions committee looks at work and academic experience broadly, considering things that would indicate a motive to go to law school and fitness for the practice of law.<sup>47</sup> Dean Brown indicated that minority applicants could receive a favorable ruling based on such factors.<sup>48</sup>

<sup>36</sup> *Ibid.*, p. 2.

<sup>37</sup> *Ibid.*, p. 3.

<sup>38</sup> Telephone interview with Richard T. Conboy, Deputy Clerk of the Supreme Court, Aug. 21, 1979.

<sup>39</sup> *In Re: Proposed Amendments*.

<sup>40</sup> Conboy interview, August 21, 1979.

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*

<sup>43</sup> Letter from Dean John O. Mudd to Rocky Mountain Regional office, March 12, 1980 (hereafter cited as Letter from Dean Mudd).

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

<sup>46</sup> *University of Montana School of Law Admissions Bulletin* (Missoula, Montana: University of Montana, August 1978) p. 7 (hereafter cited as *Admissions Bulletin*).

<sup>47</sup> Telephone interview, Nov. 8, 1979.

<sup>48</sup> *Ibid.*

Unlike many law schools the University of Montana School of Law averages a candidate's scores on the LSAT if it is taken more than once. The average is then used in ranking the applicant.<sup>49</sup> Many law schools use only the highest score attained by a candidate within a specified period of time.<sup>50</sup> Montana's law school is unique in requiring that applicants must have taken four semester credits or six quarter credits of accounting during their undergraduate work with at least a C grade in these courses.<sup>51</sup> Dean Brown explained that this requirement was instituted because it was believed that graduates would need a knowledge of accounting in their legal practices.<sup>52</sup>

Applications for admission to the law school are screened by a five-member admissions committee appointed by the Dean of the School of Law. According to Dean Brown the sexual and ethnic composition of this committee has not been a consideration in appointments to its ranks. Each member of the committee reads applications to the law school, and when three members concur, that application is accepted.<sup>53</sup>

As with most law schools throughout the country, the average LSAT score and the average grade point of those admitted to the University of Montana School of Law has climbed since 1974. In 1974 the average LSAT score of those accepted to the school was 601. By 1978 the average LSAT score of students accepted to the school was 13 points higher. Mean grade point average for applicants also increased until 1978.<sup>54</sup> These increases in the mean scores of applicants accepted to the law school are generally attributed to heightened competition for entrance. (See Table I).

When interviewed, some faculty members at the University of Montana School of Law were concerned that increasing the number of minorities in the school might effectively lower the school's entry score standards.<sup>55</sup> Conceivably, minority applicants to the law school could be admitted with scores lower than those of non-minority applicants, but these scores would at the same time be higher than

those of applicants admitted in previous years. These scores could also be higher than those of students in similar law schools elsewhere. A comparison of the University of Montana's 1979 entering class and the 1979 entering classes of four other schools indicated Montana's class had a higher LSAT score and grade point average than any of the schools to which it was compared.<sup>56</sup> (See Table II)

The law school admissions bulletin states a policy preference for Montana residents. Nonresidents seeking admission must have attained a cumulative undergraduate grade point of at least 3.0 and an LSAT score of at least 600. The number of nonresident applicants admitted is limited to 10 percent of the number of places in an entering class.<sup>57</sup>

The admissions bulletin also states that an entering class is limited to 75 students.<sup>58</sup> In the past some classes have been larger than this standard. The Class of 1970 was 100 students in size; only 62 graduated. Classes of 75 students have suffered far less attrition. Only 8.4 percent of the 1974-75 class, 1.4 percent of the 1975-76 class, 1.4 percent of the 1976-77 class, and 1.3 percent of the 1977-78 class did not complete the program.<sup>59</sup> Dean Mudd states that neither the faculty nor the school's library and building are sufficient to serve more than 75 students.<sup>60</sup>

Although the University between 1974 and 1979 did not record data on a student's race, information collected by the law school's Assistant Dean indicates that few minorities apply to the school. One black person applied for admission in 1977 but was denied. In 1978 four Native Americans made application with one admitted and one placed on the waiting list. No Native Americans actually entered the 1978 class. In 1979 six minority persons applied for admission; four were Native American and all four were admitted. One chose to attend another law school and the other three are currently enrolled. One Hispanic student also entered the 1979 class.<sup>61</sup>

The number of females enrolled in the Montana School of Law has steadily increased. In 1974, of the

<sup>49</sup> Association of American Law Schools and the Law School Admission Council, *1979-80 Pre-Law Handbook* (hereafter cited as *Pre-Law Handbook*).

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.* See esp. p. 223.

<sup>52</sup> Telephone interview, Nov. 8, 1979.

<sup>53</sup> *Ibid.*

<sup>54</sup> *Pre-Law Handbook*.

<sup>55</sup> Interview with Gardner Cromwell in Missoula, Montana, Sept. 27, 1979; interview with John McDonald in Missoula, July 24, 1979.

<sup>56</sup> *Pre-Law Handbook*.

<sup>57</sup> *Admission Bulletin*, p. 7. The University of Montana does not state this limitation on non-residents in its *1979-80 Pre-Law Handbook* profile. Twenty-six of 48 State university law schools, however, do state in the *Handbook* a strictly limited nonresidency admissions policy or a significant preference for residents.

<sup>58</sup> *Ibid.*, p. 6.

<sup>59</sup> Data provided by Assistant Dean Brown, July 24, 1979 (hereafter cited as Brown data).

<sup>60</sup> Letter to Rocky Mountain Regional Office, May 23, 1980.

<sup>61</sup> Brown data.

**TABLE I****University of Montana School of Law Entering Student Scores**

	Average LSAT Score	Mean Grade Point Average
1974	601	3.23
1975	614	3.29
1976	614	3.29
1977	629	3.36
1978	631	3.20

Source: Records provided by Assistant Dean of the University of Montana School of Law, July 24, 1979.

**TABLE II****Law School Admissions Test: Percentage of 1979-80 Admissions Attaining Each Score**

	IDAHO		MAINE		MONTANA		N. DAKOTA		S. DAKOTA	
	%	Cumulative %	%	Cumulative %	%	Cumulative %	%	Cumulative %	%	Cumulative %
Below 300	0	0	0	0	0	0	0	0	0	0
300-349	0	0	0	0	0	0	0	0	0	0
350-399	0	0	0	0	0	0	0	0	0	0
400-449	2%	2%	0	0	0	0	1%	1%	2%	2%
450-499	3%	5%	1%	1%	2%	2%	7%	8%	8%	10%
500-549	15%	20%	3%	4%	4%	6%	22%	30%	15%	25%
550-599	30%	50%	17%	21%	26%	32%	31%	61%	25%	50%
600-649	30%	80%	34%	55%	40%	72%	24%	85%	32%	82%
650-699	13%	93%	31%	86%	22%	94%	10%	95%	11%	93%
700-749	4%	97%	8%	94%	4%	98%	2%	97%	5%	98%
755 over	1%	98%	4%	98%	0	98%	0	0	0	98%
<b>TOTALS</b>	<b>98%</b>	<b>98%</b>	<b>98%</b>	<b>98%</b>	<b>98%</b>	<b>98%</b>	<b>97%</b>	<b>97%</b>	<b>98%</b>	<b>98%</b>

\*Less than 100% due to rounding

Source: Association of American Law Schools and the Law School Admission Council 1979-80 Pre-Law Handbook.  
 Compilation by staff, U.S. Commission on Civil Rights.

75 students matriculating, nine were women. This represented 12 percent of the class.<sup>62</sup> At that time women constituted 15 percent of all law students in the Nation.<sup>63</sup> In 1978, 62 women applied for admission; 42 were accepted.<sup>64</sup> That year while women constituted 34 percent of Montana's freshmen class, 30 percent of the Nation's law students were female.<sup>65</sup> Of the 1,092 Montana applicants between 1974 and 1978, there were 252 female applications. Fifty-six percent of the female applicants were accepted and 49 percent of the males.<sup>66</sup>

### The Available Pool

A professor at the University of Montana School of Law and a member of the State Bar Association both expressed a belief that minorities did not apply to law school because few were qualified to do so.<sup>67</sup> However, in the 1972, 1974, 1976, and 1978 censuses of minority students in institutions of higher education, the Office for Civil Rights in the U.S. Department of Health and Human Services found Native Americans in Montana in proportion to their population in the State.<sup>68</sup> (See Tables III, IV and V.)

### Recruitment

Persons working in education in Montana expressed concern that lack of minority recruitment was a significant factor in low minority representation in the law program. Robert Peregoy, Director of the Native American Studies Program, Montana State University, Bozemen, commented:

I have never been contacted by anyone from the University of Montana Law School in the five years I have been head of the Indian Studies Program. We have people from all over the United States (recruiting) but not from Missoula.<sup>69</sup>

Similarly, Darryl Gray, Director of the Montana United Scholarship Service, said that the law school had never recruited at that organization.<sup>70</sup> Director of Indian Career Services at Eastern Montana College in Billings, Lavon French, could not recall having been contacted by the law school.<sup>71</sup> Gary

Rogers, counselor at Billings Senior High School, which has a large Hispanic population, confirmed no contacts with the law school.<sup>72</sup> Merton McKlusky, Director of Indian Education for Great Falls Public Schools, commented on seeming lack of interest in minorities by the law school: "I don't think it [law] has been sold enough to minorities. There hasn't been enough public relations."<sup>73</sup> McKlusky believed several of his students were capable of completing law school. While some of his students have completed medical school, none have attended the University of Montana School of Law.<sup>74</sup> Henrietta Whiteman, Director of Indian Studies at the University of Montana, stated that many Native Americans go out-of-State to law school because they feel programs in other schools are better suited to them.<sup>75</sup> Dean Mudd affirms, however, that the law school is committed to recruiting minority students.<sup>76</sup> (See Appendix A.)

### Perceptions of the Law School

Minority educators in the State interviewed concerning minority attitudes toward law school were neutral in their responses. One educator commented that minorities had no image of the law school at all and another believed minority students needed early counseling to consider law as a profession.<sup>77</sup> These educators questioned adequacy of support for minority enrollment in professional schools.<sup>78</sup>

Of particular concern to some was that the curriculum of the University of Montana Law School might not meet the needs of minorities. Ms. Whiteman felt that many Native Americans from the area go to the University of New Mexico School of Law because that school's class offerings were of greater interest to Native American students.<sup>79</sup> A female student commented that the curriculum also failed to provide courses of interest to women.<sup>80</sup> Dana Smith, a former student now practicing law in Montana, said she did not believe the Montana curriculum met the needs of women and minorities

<sup>62</sup> Ibid.

<sup>63</sup> American Bar Association, *A Review of Legal Education in the United States: Fall 1978*, p. 64 (hereafter cited as ABA).

<sup>64</sup> Brown data.

<sup>65</sup> ABA, p. 64.

<sup>66</sup> Brown data.

<sup>67</sup> Parcell interview and Cromwell interview.

<sup>68</sup> Data supplied by the Region VIII office, Denver, Colorado.

<sup>69</sup> Interview in Missoula, Montana, July 24, 1979.

<sup>70</sup> Interview in Great Falls, Montana, Sept. 4, 1979.

<sup>71</sup> Telephone interview, Nov. 8, 1979.

<sup>72</sup> Telephone interview, Nov. 9, 1979.

<sup>73</sup> Telephone interview, Nov. 9, 1979.

<sup>74</sup> Ibid.

<sup>75</sup> Interview in Missoula, Montana, July 24, 1979.

<sup>76</sup> Letter from Dean Mudd.

<sup>77</sup> Peregoy interview.

<sup>78</sup> Peregoy, French, Rogers, McKlusky, and Whiteman interviews.

<sup>79</sup> Whiteman interview.

<sup>80</sup> Interview with Ann McIntyre, in Missoula, July 24, 1979.

---

**TABLE III****Minority Student Enrollment in Twelve Montana Institutions of Higher Education**

	American Indian Alaskan Native		Black Non-Hispanic		Asian or Pacific Islander		% Hispanic		Total Minority		White Non-Hispanic		Total
		%		%				%		%		%	
1972	581	2.8	129	.6	107	.5	95	.5	912	4.3	20,169	95.7	21,081
1974	775	3.6	158	.7	101	.5	95	.4	1,129	5.2	20,446	94.8	21,575
1976	864	3.9	135	.6	94	.4	98	.4	1,191	5.4	21,013	94.6	22,204
Change: '72 to '74	33.4		22.5		5.6		0		23.8		1.4		2.3
Change: '74 to '76	11.5		14.6		6.9		3.2		5.5		2.8		2.9

Source: U.S. Department of Health and Human Services, Office for Civil Rights, Region VIII, Denver, Colorado

---

**TABLE IV****Minority Enrollment by Race in Montana Institution of Higher Education Fall 1978**

Black and Non-Hispanic			American Indian			Asian			Hispanic			Total		
<i>M</i>	<i>F</i>	<i>T</i>	<i>M</i>	<i>F</i>	<i>T</i>	<i>M</i>	<i>F</i>	<i>T</i>	<i>M</i>	<i>F</i>	<i>T</i>	<i>Male</i>	<i>Female</i>	<i>Total</i>
56	29	85	221	328	549	67	22	89	46	32	78	12,851	11,181	24,032*
43	28	71	49	105	154	12	12	24	16	9	25	3,154	3,671	6,825**
99	57	156	270	433	703	79	34	113	62	41	103	16,005	14,852	30,857***

Source: "Fall Enrollment and Compliance Report(s) of Institutions of Higher Education," U.S. Department of Health and Human Services, Office for Civil Rights, Region VIII, Denver, Colorado

\* Fulltime  
\*\* Parttime  
\*\*\* Total

**TABLE V**

**Ethnicity of Students Awarded Degrees by Colleges and Universities in the State of Montana, 1976-77**

	DOCTORAL DEGREES		MASTER'S DEGREES		BACHELOR'S DEGREES		PROFESSIONAL DEGREES	
	Men	Women	Men	Women	Men	Women	Men	Women
ALL DEGREES	59	4	454	218	2,025	1,635	67	8
Black, non-Hispanic					11	2		
American Indian/ Alaskan Native	1		3	2	22	46		
Asian/Pacific Islander			2		2	2		
White/non-Hispanic	53	4	437	214	1,962	1,569	67	8

Source: "Fall Enrollment and Compliance Report(s) of Institutions of Higher Education," U.S. Department of Health and Human Services, Office for Civil Rights, Region VIII, Denver, Colorado

and that, with one exception, no classes touched on minority interests.<sup>81</sup>

The number of elective courses was another student criticism of Montana's program.<sup>82</sup> The University of Montana School of Law, according to its bulletin, lists electives of conceivable interest to minorities and women. (See table VI). Indian Law and Law of the Poor, for example, have been available as electives.<sup>83</sup> Elective classes, however, are limited to second and third year students and several are limited to no more than 12 to a class.<sup>84</sup> One former student commented that because the curriculum is business oriented, it left no room for electives.<sup>85</sup> Two practicing attorneys who graduated in 1978, Beate Golda and Susan Stratman, agreed.<sup>86</sup> The diploma privilege is said to have mandated a tight curriculum to assure adequate legal background.<sup>87</sup> Dean Mudd states that the curriculum is now under review by a committee formed in the Fall of 1979. "One of the aspects which the newly created curriculum committee will explore," comments Dean Mudd, "is the curriculum's role in attracting or inhibiting minority students from attending school."<sup>88</sup>

Lavon French commented that Native Americans would rather attend schools in which there were other Indians.<sup>89</sup> Dan Decker, an Indian student currently enrolled at the law school, stated that lack of Native American faculty in the law school is also a deterrent to Indian enrollment.<sup>90</sup> Of the 25 faculty members listed in the admissions bulletin, none are minorities. Two of the faculty listed are females who teach part-time.<sup>91</sup>

**Financial Aid**

The University of Montana School of Law provides approximately \$45,000 yearly in student financial aid. About \$22,000 of this aid is in the form of grants and loans made at registration in parcels of \$500 each semester. Eligibility for student aid requires application to the law school and to the financial aids office of the University. An additional form is sent to the College Scholarship Service for evaluation of student financial need. Student need as determined by the financial aids office sets the limit of monetary help a student may receive from both the University office and the law school. If it were determined that a student needed \$1,000 and the financial aids office provided \$600, the law school

<sup>81</sup> Interview in Missoula, July 24, 1979.

<sup>82</sup> Interview with attorneys Paulette Ferguson, Dierdra Boggs, and Carol Mitchell in Missoula, Sept. 27, 1979.

<sup>83</sup> *Admissions Bulletin*, p. 28.

<sup>84</sup> *Ibid.*

<sup>85</sup> Interview with Thelma Stiffarm, Esq., in Boulder, Colorado, Aug. 24, 1979.

<sup>86</sup> Interview in Missoula, Sept. 4, 1979.

<sup>87</sup> Stiffarm interview.

<sup>88</sup> Letter from Dean Mudd.

<sup>89</sup> French interview.

<sup>90</sup> Interview in Missoula, Sept. 27, 1979.

<sup>91</sup> *Admissions Bulletin*, p. 27. Mudd interview, July 24, 1979.



**TABLE VI**  
**CURRICULUM**

**FIRST YEAR**

511 Contracts I .....	3	512 Contracts II .....	3
543 Torts I .....	2	544 Torts II .....	4
535 Property I .....	2	536 Property II .....	3
531 Legal Writing I .....	1	532 Legal Writing II .....	1
525 Introduction to Law .....	3	504 Civil Procedure I .....	3
515 Criminal Law .....	3	548 Agency and Partnership .....	2
	14		16

**SECOND YEAR**

569 Estate Planning I .....	3	570 Estate Planning .....	3
583 Legal Writing III .....	1	584 Legal Writing IV .....	1
557 Civil Procedure II .....	3	594 Criminal Procedure .....	3
563 Constitutional Law .....	4	574 Evidence .....	4
555 Corporations .....	3	578 Professional Responsibility .....	2
Elective .....	2	Elective .....	3
	16		16
591 Law Review I .....	1	592 Law Review II .....	1

All designated courses in the first two years with the exception of Law Review are required.

**THIRD YEAR REQUIRED**

615 Trial Tactics or Ex Parte and Office Practice I .....	2	616 Trial Tactics or Ex Parte and Office Practice II .....	2
601 Commercial Transactions I .....	2	602 Commercial Transactions II .....	3
631 Federal Tax I .....	4	632 Federal Tax II .....	2
651 Legal Aid I .....	2	652 Legal Aid II .....	2
	or		or
603 Law Review III .....	1	604 Law Review IV .....	1

ELECTIVE Courses available to second- or third-year law students:

621 Creditor and Debtor .....	2	690 Administrative Law .....	3
695 The Family .....	2	660 Oil and Gas .....	3
647 Legislation .....	2	640 Remedies .....	3

ELECTIVE Courses available to third-year law students only:

611 Conflicts .....	3	650 Labor Law .....	3
683 Federal Jurisdiction .....	3	688 Water Law .....	3
671 Secured Transactions .....	3		
685 Securities Regulation .....	2		

Limited Enrollment Courses—available to third-year students only:

691 Contemporary Legal Problems* .....	2	692 Contemporary Legal Problems* .....	2
681 Independent Study .....	2	682 Independent Study .....	2
697 Natural Resources .....	2	696 Jurisprudence .....	2
699 Moot Court .....	1	656 Local Government .....	2
		694 Employment Relations .....	2

\*Criminology, Environmental Law, Forensic Medicine, Indian Law, Land Use Planning, Law of the Poor, Comparative Law, and Regulation of Business are examples of subjects that have been available under this description.

could provide only \$400. The university financial aids office additionally assigns work-study authorizations and approves applications for federally insured loans.<sup>92</sup>

During the 1979-80 school year, the University of Montana School of Law awarded 29 grants totaling \$9,520. Student loans numbered 24 and totalled \$12,000. An additional source for students is the emergency loan program enabling students to borrow up to \$300 interest free on a short-term basis. Three scholarships for academic excellence are awarded (one for \$1,000 and two for \$300). The law school employs ten third-year students as teaching assistants and Student Bar Association officers receive remuneration for their work.<sup>93</sup>

Lack of sufficient financial aid at the law school particularly affects women.<sup>94</sup> Dean Mudd comments, "I don't think \$500 per student is adequate, particularly for those supporting families."<sup>95</sup>

### Part-time Attendance

Past and present students of the law school are concerned about the status of part-time attendance. One former student expressed the view that the school's prohibition against part-time attendance discriminated against women and the poor.<sup>96</sup> While Assistant Dean Brown stated that students "can be out for one semester and then return say after a

pregnancy," this is not the common meaning of part-time status.<sup>97</sup> Those expressing concern referred to a reduced number of credit hours per semester. In its 1977 standards for law schools the American Bar Association makes allowance for part-time attendance other than maternity or sick leave. The American Bar Association standards refer to a reduced number of courses and credit hours per semester.<sup>98</sup> Law School standard 305 (b) states:

To receive residence credit for an academic period, a full-time student must be enrolled in a schedule requiring a minimum of ten class hours a week and must receive credit for at least nine class hours and a part-time student must be enrolled in a schedule requiring a minimum of eight class hours a week and must receive credit for at least eight class hours. If a student is not enrolled in or fails to receive credit for the minimum number of hours specified in this subsection, he may receive residence credit only in the ratio that the hours enrolled in or in which credit was received, as the case may be, bear to the minimum specified.<sup>99</sup>

Of the 169 law schools surveyed in the 1979-80 *Pre-Law Handbook* 82 schools indicated part-time attendance was permissible. The admissions bulletin for the University of Montana School of Law makes no provision for part-time attendance.<sup>100</sup>

<sup>92</sup> Letter from Dean Mudd.

<sup>93</sup> Ibid.

<sup>94</sup> Fergeson, Boggs, and Mitchell interviews.

<sup>95</sup> Letter from Dean Mudd.

<sup>96</sup> Stiffarm interview.

<sup>97</sup> Brown interview, July 24, 1979.

<sup>98</sup> Standards and Rules of Procedure for Approval of Law Schools, 1977, as amended.

<sup>99</sup> Ibid.

<sup>100</sup> *Admissions Bulletin*.

## **Findings and Recommendations**

In its analysis of factors influencing attendance of minorities at the University of Montana School of Law, the Montana Advisory Committee to the U.S. Commission on Civil Rights studied a number of factors and, through the staff of the Rocky Mountain Regional Office of the Commission, contacted the Dean of the School of Law with suggestions for making the law school responsive to the needs of women and minorities. Responses to these findings and recommendations were made by the Dean and included herein. (See Appendix for a summary of the Dean's response).

### **FINDING**

The number of women and minorities attending the University of Montana School of Law is far from commensurate with their numbers in the population of Montana. While 44 percent of those who receive bachelor's degrees in Montana are women and 2.8 percent are minorities, these groups are underrepresented in the law school's student population.

### **RECOMMENDATION**

The law school should institute a recruitment program headed by a committee composed of law school faculty and students. This committee should contact educators throughout Montana for assistance in locating qualified women and minorities. Disseminating information about the school's program and visiting colleges and high schools in the state should be additional responsibilities of the recruitment committee.

### **RECOMMENDATION**

The United States Commission on Civil Rights should monitor the University of Montana's progress in attaining increased numbers of women and minority students. This monitoring should be conducted in the Fall of 1981, 1982, and 1983.

### **DEAN'S RESPONSE**

The School of Law is committed to a policy of recruiting minority applicants. That effort will continue and will be expanded. The School has recently subscribed to a service which will provide the names of minority students who may be interested in the School of Law and will undertake direct mailing efforts to inform those students about the School. . . . The Dean has begun a program of visitation to those colleges which produce most of the School's applicants. The School will also undertake programs designed to inform interested high school students of careers in law. . . .

### **RECOMMENDATION**

The School of Law, in cooperation with the Native American Studies Program and the Women's Law Caucus at the University of Montana, should hold a conference with minority and women's groups and with educators in order to develop a strategy and system for increasing the numbers of women and minorities who attend and graduate from the law school. The conferences should be held at the earliest possible date.

## **DEAN'S RESPONSE**

While the suggestion for another conference on women and minorities in the legal profession may be helpful, it is felt at this time that a direct outreach program would be more satisfactory. The School is developing a brochure which it can use in connection with these outreach activities. . . .An expanded outreach program to Native American students in the state will be implemented beginning in the summer months of 1980. . . .

## **FINDING**

There are no minority faculty members and only two part-time female teachers at the law school. There are no tutorial or other support programs especially directed to women or minority students.

## **RECOMMENDATION**

The next opening on the law school faculty should be filled with a minority person. For ensuing positions women and minorities should be sought out and recruited nationwide and the number of female and minority faculty members should be substantially increased. Recruitment at law schools and other institutions known to have large numbers of women and minority faculty members should also be a part of the hiring process.

## **DEAN'S RESPONSE**

All full-time faculty members at the School are filled following a nationwide search. That policy will continue in an effort to reach the largest possible number of women and minority applicants for faculty positions.

## **RECOMMENDATION**

The law school should develop a program for minority students enrolled. This program should involve faculty of the Native American Studies Program and other ethnic programs at the University as well as law school personnel. Tutoring, counseling, and other means of support should be provided. Formation of minority student law caucuses should also be a part of support efforts.

## **DEAN'S RESPONSE**

At the present time, the Law School has a program for scholastic assistance to minority students. The performance of these students, as with others, is monitored by the Dean and the Assistant Dean with an eye to identifying any

difficulties that may be experienced. These students are then counseled on an individual basis and provided with appropriate levels of assistance.

## **RECOMMENDATION**

The law school should publicize efforts it is making in attempting to attract women and minorities to its law program. Press releases with items of interest concerning the school's program should be sent periodically to newspapers and to women and minority organizations.

## **DEAN'S RESPONSE**

The Law School should do a better job in publicizing the policies and interest in minority students. To accomplish that, the School has undertaken a more extensive policy of news releases for hometown newspapers which might not otherwise receive this type of information about the School. The School will continue this on its own and in conjunction with the University's general efforts to distribute information to all parts of the state.

## **FINDING**

Women and minorities who have attended or are attending the law school have stated that its curriculum is not particularly relevant to their interests. The curriculum leaves very limited time for elective classes and these are sometimes restricted in size.

## **RECOMMENDATION**

The law school should create a committee of faculty members and students to analyze the curriculum. As part of their duties this curriculum committee should focus on the curricular needs of women and minorities. The committee should report publicly their findings, progress, and recommendations.

## **DEAN'S RESPONSE**

In the fall of 1979 the Dean formed a committee to analyze the Law School curriculum and to begin a study of what the curriculum should be five to ten years in the future. One of the aspects which the committee will explore is the curriculum's role in attracting or inhibiting minority students from attending the School. Of particular concern to the committee in its early work is establishing the needs of the profession and the public in the future, particularly those needs as they exist in rural Montana communities.

**FINDING**

Inadequate financial assistance may deter some otherwise qualified female and minority students from applying for admission to the law school.

**RECOMMENDATION**

The law school should appoint one of its administrators to seek out and obtain funding for scholarship and loan programs. A campaign to raise funds for private scholarship grants should be conducted. Indian tribes, other minority groups, and women's organizations should be involved in the campaign.

**DEAN'S RESPONSE**

As part of a federal fund drive, a scholarship improvement program is planned for the fall of 1980. The Women's Law Caucus currently has a special scholarship program and Native American students have special avenues of assistance open to them.

**FINDING**

The law school's policy regarding part-time attendance is ill-defined. Use of "life experience" as an admission criterion is not elucidated in the admissions bulletin. This lack of clarity could be discouraging to women and minority applicants.

**RECOMMENDATION**

The law school should allow students to take a reduced number of credit hours per semester in line

with the American Bar Association's definition of part-time student. Although the school's policy need not be to encourage part-time attendance, the fact that such attendance is possible should be made known.

**DEAN'S RESPONSE**

It is possible for students at the School who find themselves in financial difficulty or who are otherwise unable to continue with a full-time load to adjust their curriculum requirements accordingly. Most students prefer not to take this alternative although it is open to them. This is in part due to the fact that the small size of the School reduces its flexibility in tailoring programs to the individual needs of students. However, that option is presently open.

**FINDING**

There are no accurate records of the numbers of minorities practicing law in the State. Neither the Supreme Court of Montana nor the State Bar Association collects this data.

**RECOMMENDATION**

The Montana State Bar Association should survey the racial and sexual makeup of its membership. This information should be available to the public. In addition the Montana Supreme Court should obtain this information from applicants for the Bar examination.

## APPENDIX A

[Facsimile]

University of Montana  
School of Law  
Missoula, Montana 59812

United States Commission on Civil Rights  
Rocky Mountain Regional Office  
Executive Tower, Suite 1700  
1405 Curtis Street  
Denver, Colorado 80202  
Roger C. Wade  
Equal Opportunity Specialist

March 12, 1980

Dear Mr. Wade:

This is written in response to your letter of January 29.

### *Background*

The University of Montana School of Law is a state supported law school with a steady enrollment in recent years of approximately 225 students. Experience has indicated that students who attend the University of Montana do so because they intend to practice in Montana. This is true even of the out-of-state students who enter the School.

Historically the School has not engaged in extensive recruiting of any students. In 1970 the School was faced with an entering class larger than it could handle and thereafter restricted the entering enrollment to a class size which was appropriate for the faculty and facilities available. That enrollment limitation of seventy-five students per class has continued to the present time. Applications for the seventy-five positions reached a high of approximately 500 and in the last several years has remained steady at between 200 and 225 applications.

Traditionally most of the students attending the School are Montana residents who have attended colleges and universities within the state or Montana residents who have taken their undergraduate education outside of the state but plan to return for permanent residence. In recent years the bulk of admitted students have come from the two large state universities, the University of Montana and the Montana State University. Recent data indicate that of the 3,467 graduates from public colleges in Montana there were a total of 57 students with a racial minority background. There was one Hispanic student, seven Asian or Pacific Islander students, nine black students and forty Indian students.

The Law School's attempt to recruit minority students has been consistent during the past decade. It has not, however, been uniformly successful, nor has the Law School been satisfied with the results the efforts have produced. Between 1970 and 1974, minority status was an affirmative factor in the application review process. As with many other law schools, between 1974 and 1977, the undergraduates grade point average and the Law School Admission Test score were virtually the only factors considered for admission.

In cooperation with the Women's Law Caucus, the Law School has sent pre-law information to each of Montana's seven Indian reservations and there are continuing contacts with several of the tribal court judges and tribal attorneys. Reflective, perhaps, of these efforts is the acceptance by the Law School of four

Native American students for admission in September, 1979. Of this number, three enrolled and all have successfully completed their first semester of study.

In May of 1977 the School and the Women's Law Caucus sponsored a conference on "Montana Minorities and the Law." The principal speaker was Professor Ronald C. Griffin, now on the faculty of the Washburn University School of Law. Other presentations were made by Native American and women attorneys.

In June of 1977 the law faculty adopted the current admissions policy which, in addition to the Law School Admission Test score and undergraduate grade point average, permits the weighing of such factors as college or university attended, trend in college grades, quality of work in difficult courses, change in performance after an absence from college, and experience prior to application to Law School, including graduate study. This policy makes it possible to review an applicant's performance in an area other than mere grades and test scores which may adversely affect minority students whose backgrounds would indicate the ability to complete the program successfully but whose test scores may not be as competitive.

In addition to efforts to establish a pre-admission law program in 1975, there has been other interaction between the Native American Studies program and the School of Law in recent years. The Assistant Dean has served on an interdepartmental advisory committee for the Graduate and Professional Opportunities Program and on planning committees for conferences on Indian Law. Faculty members from the Native American Studies program and other disciplines refer Native American students to the Assistant Dean for pre-law advice and counseling. Since 1975, the Women's Law Caucus has provided the nucleus for recruitment efforts of women law students. The Caucus has sponsored a recruitment seminar each year, and in the summer of 1979 a brochure was prepared and widely distributed to high schools and colleges in the state in order to provide practical information to women who may be considering law study. The enrollment of women in the first year classes since 1972 has been:

1972—8

1973—9

1974—9

1975—14

1976—25

1977—17

1978—26

1979—18

Currently there are 56 women enrolled in the Law School.

#### *Current Efforts to Recruit Minority Applicants*

The School of Law is committed to a policy of recruiting minority applicants. That effort will continue and will be expanded. The School has recently subscribed to a service which will provide the names of minority students who may be interested in the School of Law and will undertake direct mailing efforts to inform those students about the School. The Dean has begun a program of visitation to those colleges which produce most of the School's applicants. The School will also undertake programs designed to inform interested high school students of careers in law. The Dean has had past contact with several high school organizations and will take advantage of those contacts to inform students, particularly women and minority students, of career opportunities in the legal profession.

While the suggestion for another conference on women and minorities in the legal profession may be helpful, it is felt at this time that a direct outreach program would be more satisfactory. The School is developing a brochure which it can use

in connection with these outreach activities. This School will continue to support the program of the Women's Law Caucus to inform women applicants about the school. An expanded outreach program to Native American students in the state will be implemented beginning in the summer months of 1980. This outreach program will build upon the current contacts the School has with individual tribes and Native American Studies programs in the state. The Assistant Dean, who is chairwoman of the Admissions Committee and who also has increasing contact with Native Americans in the state, will direct that effort.

All full-time faculty positions at the School are filled following a nationwide search. That policy will continue in an effort to reach the largest possible number of women and minority applicants for faculty positions.

At the present time, the Law School has a program for scholastic assistance to minority students. The performance of these students, as with others, is monitored by the Dean and the Assistant Dean with an eye to identifying any difficulties that may be experienced. These students are then counseled on an individual basis and provided with appropriate levels of assistance.

The Women's Law Caucus has developed programs it considers are helpful to women in the Law School, and is provided with financial support to carry them out. A part of the program which the Caucus has found helpful is bringing guest speakers to the Law School who may be of particular interest to women students. In March of 1980, Judge Constance Motely of New York, the first black woman to be appointed to the federal bench, will present a lecture at the School.

The Law School should do a better job in publicizing its policies and interest in minority students. To accomplish that, the School has undertaken a more extensive policy of news releases for hometown newspapers which might not otherwise receive this type of information about the School. The School will continue this on its own and in conjunction with the University's general efforts to distribute information to all parts of the state.

In the fall of 1979 the Dean formed a committee to analyze the Law School curriculum and to begin a study of what the curriculum should be five to ten years in the future. One of the aspects which the committee will explore is the curriculum's role in attracting or inhibiting minority students from attending the School. Of particular concern to the committee in its early work is establishing the needs of the profession and the public in the future, particularly those needs as they exist in rural Montana communities.

As part of a general fund drive, a scholarship improvement program is planned for the fall of 1980. The Women's Law Caucus currently has a special scholarship program and Native American students have special avenues of assistance open to them.

The current limitation on student employment is derived from the American Bar Association's limitation on outside employment for full-time students. In administering that regulation, the Law School takes into account the individual needs of students and their capacities to handle additional activity beyond the Law School. It is possible for students at the School who find themselves in financial difficulty or who are otherwise unable to continue with a full-time load, to adjust their curriculum requirements accordingly. Most students prefer not to take this alternative although it is open to them. This is in part due to the fact that the small size of the School reduces its flexibility in tailoring programs to the individual needs of students. However, that option is presently open.

The Law School's admissions policy relating to general experience beyond academic performance should be made more widely known among potential



applicants. The more active recruiting policy described above will refer to this aspect of the admissions process.

We appreciate the visits you have made to the University of Montana School of Law and the comments you have submitted to us. We hope that this response will be helpful in providing you with background on proposals which we intend to undertake to expand the number of women and minority students who apply for admission.

Sincerely yours,

John O. Mudd  
Dean, School of Law

## **Financial Aid Program, University of Montana School of Law**

The University of Montana School of Law awards approximately \$22,000 in grants and loans yearly in its financial aid program. Funds come from annual donations from law firms, bar associations, and individuals, and from the income from scholarship endowments established either as memorials to individuals, or as direct gifts to the School of Law.

Law School financial assistance takes two forms: direct grant and loans. The loans are repayable over a three-year period, commencing a year after graduation, at 3% interest. Most grants and loans are for \$500 yearly; this aid is divided into two parts, and made available at the time of registration each semester. There are a few \$250 awards made, and the long-term aim is to seek further funds for the program, to enable the award of several \$1,000 grants or loans.

To be eligible for consideration for Law School financial aid, students must file a brief application form with the School of Law, and also file an application for University of Montana financial aid. That application includes a form that is sent to the College Scholarship Service for evaluation of the student's need. The Law School financial aid officer confers with the University of Montana Financial Aid director before making awards of Law School financial aid funds. He in turn will consider the awards made by the Law School in his assignment of U/M financial aid to law students. This aid is in the form of national direct student loans. If a student has an evaluated financial need of \$2,500, and the Law School has provided a \$500 loan or grant, the U/M Financial Aid officer also assigns work-study authorizations, and approves applications for federally insured loans.

The Law School is governed by the U/M Financial Aid office evaluations of student need to this extent: the evaluations are taken into consideration in the award of Law School aid, and a student's "financial budget" sets the outer limits for loans or grants from either the U/M Financial Aid office and the Law School. The limitation seldom arises, but it would arise in this context: a student has a "financial aid budget" of \$2,000. He or she is awarded a \$1,500 National Direct Student Loan, and a \$500 Law School loan. The Law School would not be able to award the student additional financial aid at mid-year, because we are required to gain the approval of the Financial Aid office for the money we disburse.

During the summer months, the available financial aid is assigned to law students chiefly on the basis of evaluations made by the U/M Financial Aid office. In recent years, we have been able to provide assistance to all second and third-year students who applied to us for financial aid, and to several first-year students. For the current year, 29 grants were awarded, totally \$9,520; 24 loans were made, totally \$12,000. The Assistant Dean serves as Financial Aids officer and devotes at least two full weeks in July to Financial Aid assignments and notifications to students and donors. She frequently confers with students during the academic year on financial needs, and serves as liaison with the University Financial Aids office.

In addition to these regular grants and loans, the Law School operates an emergency loan program on a revolving basis. Students are able to borrow up to \$300, without interest, over a short term. Ordinarily these loans are made in the course of the academic year, and repayment is due the following September 1.

In addition to the program of grants and loans described above, there are three scholarships awarded for academic excellence; two are in the \$300 range, and a newly established scholarship will provide \$1,000. The Montana Trial Attorneys Association awards \$1,500 to a student completing the first year of law study, on the basis of interest in trial practice, and academic qualifications.

The School of Law is authorized by the University of Montana to employ ten third-year students as teaching assistants,—six on a full-year basis to assist with the Legal Writing Program, and four on a quarter's basis, to assist with the undergraduate Law and Society course. Approximately \$1,800 is allocated to Student Bar officers, to compensate in small measure for the time devoted to Law School affairs. When these programs are added to the basic grants and loans, Law School financial assistance to students is approximately \$45,000.

## APPENDIX B

Invited to respond to specific statements in the report, Dean Mudd commented by letter dated May 23, 1980:

Re: Impact of *Regents of the University of California v. Bakke*

The recollection of Assistant Dean Brown and I is that our statement on the Bakke case was that, although we were aware of what the Bakke case stated, the implementation of the Bakke decision was still subject to some disagreement at the time that we spoke with you. At that time, experts were disagreeing as to the precise ramifications of the decision. It was that disagreement which we were referring to.

Re: Minority enrollments

It is not accurate that no Hispanic, black or Asian American has ever graduated from the Law School. It is accurate to say that, until recently, the School did not keep records which would enable it to determine how many students have graduated. At present, two women students have indicated that they are of a minority background, one Native American and one Hispanic.

In 1979, four Native American students applied for admission, and four were admitted. One chose to attend law school elsewhere and the other three are currently enrolled. One Hispanic student is also currently enrolled. In all, six minority students applied for the entering class of 1979 and five were accepted. In the current admissions cycle, eight applications have been received from minority applicants. To date, five of these applications have been accepted, two have been denied, and one was withdrawn before action was taken on the file.

Re: Averaging of an applicant's LSAT scores

The averaging of LSAT scores is the procedure recommended as being the most fair by the testing agency. The scores that are reviewed by the Law School Admissions Committee include not only the LSAT, but the undergraduate academic record.

Re: Evaluation of applicants

The Law School's current policy, and the statement Assistant Dean Brown recalls making is that the School is attempting to encourage women and minority students to apply to the School, but at the present time there is no preference given to those students once they have applied. What does happen in the admissions process is that factors such as prior work experience and graduate training are looked upon by the Admissions Committee in addition to the LSAT scores and undergraduate grade point average. Consideration of these factors can help women and minority students in the admissions process.

Re: Elective courses

While some elective classes are limited to twelve students, most are not. Last fall we offered a new course in Employment Discrimination and Civil Rights Litigation which, together with Indian Law, are open enrollment electives.

Re: Part-time attendance

Assistant Dean Brown does not recall making a statement about a policy permitting one semester's pregnancy leave. This School does not have any fixed period on such leaves, whether for pregnancy or other reasons, other than to attempt to tailor the program to suit the student's needs. The School has accepted students on extended programs in the past and will continue to do so. The School of Law is one of the smallest law schools in the country and, as with other small schools, does not offer part-time evening programs. Because the School does not

make that option available to students, every effort is made to meet individual student's needs as they might arise under an extended program. Other of the Dean's comments were incorporated into the text.

## APPENDIX C

[Facsimile]

THOMAS J. KEARNEY  
Clerk of Supreme Court  
Helena, Montana

### RULE XXV ATTORNEYS AND COUNSELORS AT-LAW

#### A. GENERAL PROVISIONS

1. **WHO IS ELIGIBLE.** An applicant for admission to the bar of Montana must be at least twenty-years of age and a graduate of a law school approved by the American Bar Association. An applicant for admission by examination, in addition to the foregoing requirements must have been for at least six months prior to the date of filing his application, continuously a bona fide resident of and actually making his home within the State of Montana. An applicant for admission on motion, in addition to the foregoing requirements must be a bona fide resident of and actually making his home within the State of Montana, and prior to a hearing being granted upon such application must provide proof that such residence requirements have existed for a period of at least six months. A member of the bar of another jurisdiction applying for admission on motion to the bar of this state shall not be admitted upon more favorable terms than a member of the bar of this state may be admitted in that jurisdiction and any laws applying for admission in that jurisdiction are automatically adopted and will be imposed upon applicants from such jurisdictions who seek admission here. (By order of Court dated December 26, 1961)

#### 2. **OBJECTION TO THE ADMISSION OF APPLICANTS. HOW MADE.**

Objection to the admission of an applicant to practice law in the Courts of this state may be made by any person by filing with the Clerk of this Court a statement setting forth the grounds thereof; and thereupon investigation may be made in such manner as the Court may deem appropriate.

3. **OATH OF OFFICE.** Every attorney admitted to practice must, before his certificate is issued to him by the Clerk, take an oath to support the Constitution of the United States and the Constitution of the State of Montana, and faithfully and with fidelity to discharge the duties of an attorney and counselor-at-law, to the best of his knowledge and ability. A certificate of his oath must be endorsed upon the license issued to the attorney and a duplicate filed with the Clerk.

4. **ROLL OF ATTORNEYS.** Each attorney admitted to practice must sign the roll of attorneys kept by the Clerk of the Court, before the license is issued to him.

#### B. **ADMISSION BY EXAMINATION.**

1. **EXAMINATION.** Examinations for admission to the Bar will be conducted by the State Board of Law Examiners at the Capitol, at ten o'clock a.m., ON THE FOURTH MONDAY IN OCTOBER OF EACH YEAR.

2. Any person who has filed a declaration for registration is provided by this section before its repeal effective January 1, 1970, shall have a period of three years in which to complete his studies and will be permitted to apply, and if found qualified, to take the bar examinations to be given in the month of October in the years 1970, 1971, 1972 and 1973.

This rule shall be effective on January 1, 1970 as to all applicants who have not filed a declaration of registration prior to such date. Applicants who have filed

declarations of registration prior to January 1, 1970 shall be permitted to file an application to take bar examination as provided in Section 3, thereof. (By order of Court dated November 23, 1964.)

### 3. REQUIREMENTS FOR PERMISSION TO TAKE EXAMINATION.

An applicant must:

- (a) be a graduate of a law school approved by the American Bar Association;
- (b) be qualified under subdivision of A of this Rule; and
- (c) intend if admitted to the bar to engage actually in the practice of law in Montana.

Proof of qualification shall be made on the forms prescribed by the Court and furnished by the Clerk, coupled with request for permission to take the examination, and shall be filed at least 45 days prior to the date of the examination.

4. PUBLICATION. The Clerk of the Supreme Court shall cause the list of applicants to be published once in some daily newspaper in the City of Helena, at least TWENTY DAYS before the date of examination.

5. NOTICE. TEN DAYS PRIOR TO THE DATE OF THE EXAMINATION the petition will be passed upon and those entitled to take the examination will be notified by the Clerk of the Supreme Court.

6. SCOPE OF EXAMINATION. Candidates will present themselves prepared for examination in the following subjects. Constitutional law, including the Constitution of the United States and the State of Montana; Equity; Trusts and Suretyship; the law of Real and Personal Property; Evidence; Decedent's Estates; Mortgages; Contracts; Partnership; Corporation; Torts; Crimes; Agency; Uniform Commercial Code; Domestic Relations; Master and Servant; Montana Rules of Civil Procedure; Conflict of Laws; Mining Laws; including oil and gas; Water Rights; Federal and State Income and Inheritance and Gift Taxation; Professional Ethics, particularly with reference to the Canons of Professional Ethics adopted by this Court; and the Principles of Law as exemplified by the decisions of the Supreme Court of Montana and by Statutory enactments of the Legislature of Montana.

7. CHARACTER OF EXAMINATION. The examination will be principally in writing and no more than three days will be allowed to complete the work.

8. OATH OF APPLICANT. Before commencing the examination every applicant must take an oath that he will not ask or accept aid or assistance from anyone in answering questions, or tender or render any such aid or assistance to another, that he will not consult any book or books except as permitted by the Board of Law Examiners, that he will not consult any person during any recess, and that he will not remove from the room where the examination is held any examination paper or make a copy or copies of the same.

### C. ADMISSION ON MOTION

1. SPECIAL QUALIFICATIONS. An attorney who has been duly admitted to practice law in another state, territory or the District of Columbia, may apply to this court for admission to practice in the courts of this state upon motions of the attorney general and without examinations, by submitting with his application satisfactory proof that he has been admitted to practice in the highest court of such other jurisdiction and has *actively been engaged* in the *practice of law* for at least two years immediately prior to his application here, subject to compliance with the provisions of subdivision A of Rule XXV. (By order of Court dated December 26, 1961.)

2. APPLICATION. A candidate for admission to practice in the courts of this State, desiring to be admitted to practice in the Court of this State on motion, must file the application form furnished by the Clerk setting forth his eligibility under

this Rule, together with his verified petition showing where, with whom, and the period of time during which he has practiced as attorney or counselor-at-law elsewhere than in this State; whether or not any proceedings for his disbarment or criminal charges have been instituted or prosecuted against him in any jurisdiction and if so, a statement of the time, place and circumstances, and the result thereof; that he has not been out of practice for more than two years immediately prior to making application, and that if admitted to the bar it is his intention to engage actively in the practice of the law in this State; if he has never practiced and not more than one year has elapsed since his admission, he shall so state. Such petition will not be heard by the Court until eligibility under subdivision A of this Rule is established. such papers must be on file at least six weeks before the hearing on same.

One who has actively engaged in the teaching of law as a full-time faculty member of a recognized law school in the State of Montana for a period of five consecutive years shall be considered as having actively engaged in the practice of law under the provisions of this Rule.

Such petition must be accompanied by a certificate of the *presiding judge of the highest court of record of the jurisdiction in which the petitioner last practiced*, exemplified as required by the laws of this State for the exemplification of judicial records from another state or foreign country (R.C.M. 1947, —93-1101-17), *showing that the petitioner was of good reputation, and trustworthy in the practice of his profession as attorney and counselor-at-law in such jurisdiction.*

The petition, application form, affidavits and certificate shall be filed and preserved in the office of the Clerk of this Court.

The candidate for admission shall also cause to be furnished, at his own expense to the Clerk of this Court, a report by the National Conference of Bar Examiners, American Bar Center, Suite 1025, 333 No. Michigan Avenue, Chicago, Illinois 60001, as to its investigation concerning the candidate's character, reputation, experience and qualifications, which report of such investigation must be supplied to the Clerk prior to a determination by this court of the candidate's petition for admission on motion.

**3. ACTION BY ATTORNEY GENERAL.** The Clerk shall forthwith deliver the petition and other papers to the Attorney General. If upon examination by him he is satisfied that the applicant is prime facie entitled to admission, *he shall thereupon notify the applicant when the court will hear the application.* The applicant need not appear until the motion for admission is made. All applications must be made upon motion of the Attorney General or one of his assistants.

**4. PRESENCE OF APPLICANT IN COURT.** All such applicants for admission shall be personally present in Court when the motion is made, which may be at 10 o'clock, a.m. on any day when a quorum of the Court is present.

**5. EXAMINATION MAY BE REQUIRED.** If for any reason the court is of the opinion that an applicant for admission from another jurisdiction should be required to pass an examination as to his qualifications, provided his application in other respects conforms to the requirements for admission of attorneys from other jurisdictions, his name will be entered in the list of candidates for the next ensuing examination.

#### **D. FEES FOR ADMISSION.**

Every applicant for admission to the Bar by examination or otherwise must pay to the Clerk of the Supreme Court at the time he files his application for examination or his petition for admission, the sum of Twenty-five Dollars (\$25.00), by cash, cashiers check or money order. In addition thereto, if the applicant is



admitted to practice, he shall pay an enrollment fee; in the case of attorneys admitted upon motion without examination by reason of practice in another jurisdiction such enrollment fee shall be Seventy-five Dollars (\$75.00); as to all applicants admitted as a result of passing the examination the enrollment fee shall be Fifty-Dollars (\$50.00); as to all other applicants the enrollment fee shall be Twenty-five Dollars (\$25.00). Should an applicant fail in the examination taken by him, he may take the next succeeding examination given without further payment. (By order of Court dated December 26, 1961.)

#### **E. ATTORNEY'S LICENSE FEE**

Each attorney at law admitted to practice his profession within the State of Montana shall pay the annual attorney's license fee as provided by law, for the license year during which he is admitted, and for each license year thereafter so long as he practices his profession within the State, whether as a public officer or otherwise; upon his discontinuing such practice within the State (except to take judicial office) and discontinuing the payment of the annual license fee, his name shall be removed from the list of persons engaged in the active practice of law therein, and shall be restored thereto only upon his filing an application for reinstatement setting forth the reasons for his discontinuance of practice within the state and containing the information required of an applicant for admission on motion under subdivision C, and, also executing the form furnished by the Clerk of this Court. The Court may waive these requirements, or any part thereof, after consideration of the particular circumstances disclosed by the application for reinstatement. If reinstatement be granted, the court will require all of the unpaid annual license fees to be paid. In May of each year a copy of the said list shall be delivered by the Clerk of this Court to each District Judge.

No certificates of admission to and good standing at the Bar of the State of Montana shall be given unless the applicant's name is on the list of persons engaged in the active practice of law in accordance with these Rules and the Statutes of Montana. (By order of Court dated November 23, 1964.)

#### **ORDER**

These Rules shall take effect and be in full force from and after January 1, 1965, with amendments included and effective as of January 1, 1970.

## APPENDIX D

Excerpts from the Order filed March 24, 1980, Supreme Court of the State of Montana: *In The Matter of Proposed Amendments Concerning the Bar Examination and Admission to the Practice of Law in The State of Montana.*

### ORDER

#### PER CURIAM:

The Montana Legislature has by resolution requested changes in the procedures and requirements for the admission to the practice of law in Montana. A constitutional amendment was presented to the electorate at the last general election, resulting in an affirmation of the constitutional provision that the Supreme Court continue to be the rule-making authority with regard to admission to the Bar of Montana.

\* \* \* \*

First and foremost, the complexity of the law as it has developed in our modern society has rendered our present system for admission to the practice of law outdated and inadequate to serve the present needs of the legal and judicial system. It necessarily follows that the public is not being properly protected. The wrong people are making threshold decisions that have the effect of transferring control of the admission of lawyers to the Bar away from the court of last resort, i.e., when we eliminate from examination all but graduates from American Bar Association certified schools and extend diploma privilege to our state law school graduates, we have effectively turned over the selection of who becomes a member of the Montana Bar to the American Bar Association, a nonprofit professional association, and the University of Montana School of Law. This is contrary to all present practice and has no recognizable redeeming value.

The obvious solution and the one we have selected is the institution of a new and modern Montana Bar examination process which will be a prerequisite for admission to the Bar of Montana.

\* \* \* \*

Therefore, we hold as follows:

(1) A Bar examination will be a prerequisite for admission of all law school graduates to the Bar of Montana.

(2) Eligibility to participate in the Bar examination will not be limited to any particular class of law schools. The Supreme Court will approve the law schools based on numerous factors including hours of instruction, degree offered, certification by their own state court of last resort, and other standards including but not exclusive to certification by the American Association of Law Schools and the American Bar Association.

(3) There will be an examination to admit practicing attorneys from other jurisdictions who do not qualify under our rule on reciprocity.

(4) There will be two examinations given each year.

(5) there will be a grandfather clause for any person in the process of becoming a student of the University of Montana School of Law or a present student of that school, and/or people who have applied to take the examination (essentially, all those who have any probable contractual right to expect to be treated under the old rules covering any change in the qualifications to take the Bar examination or qualifications for admission to practice).

\* \* \* \*

We might say something more about the multi-state bar examination here since it attempts to solve at least some of the problems we have just been addressing and could reasonably be used in every state. It is confined to the basic legal subjects. It was put together by the conference of bar examiners in 1972 and was made available to anybody who wants to use it. At present it consists of 200 multiple choice questions allocated among six basic areas: Contracts (40 questions); Constitutional Law (30 questions); Criminal Law (30 questions); Evidence (30 questions); Real Property (30 questions); and Torts (40 questions). There has been talk of putting Ethics in the examination, but this has not been done yet. These questions are developed in cooperation with the Educational Testing Services and all papers are graded by their headquarters. It is a computerized situation reducing the possibility of subjectivity and inequity. Forty-three states have accepted this examination, and the District of Columbia is now using or planning to use it. In each case, these states supplement the examination with questions promulgated by their own bar examiners.

(1) We will adopt the multi-state bar examination to be supplemented by essay type questions recommended by the Board of Bar Examiners and approved by the Supreme Court.

(2) As indicated previously, there will be a substantial increase in the fee for sitting for the Bar examination in Montana, which will include the cost of the multi-state bar examination plus a minimum of \$125.00 additional fee which will help defray the remaining costs of the Bar examination. Administrative costs are on the increase and the Board of Bar Examiners that is working with the State Bar is directed to investigate costs, implement a plan, and submit the proposals to the Supreme Court.

(3) Any person who has qualified to sit for the state Bar examination will be limited to sit three times within a five year period, except by petition to the Supreme Court.

#### *QUALIFICATIONS AND ADMISSION TO PRACTICE*

(1) reciprocity. The fact that an applicant is practicing in a sister state and that that state extends reciprocity to Montana shall be prima facie evidence of its fitness to practice in this state and to be admitted on reciprocity, reserving to the Supreme Court the power to review such circumstances as might be indicated.

(2) Clinical training. Our own profession has been critical in the recent past, from Chief Justice Burger to Chesterfield Smith, on the ability of lawyers to properly perform their duties and particularly in the trial of cases. This criticism does not come from the general public. The composite of their comment is that we have never had so many well-qualified applicants or so many law schools as we have today. So, we must, if we change at all, provide a system that will furnish better lawyers to the profession.

\*\*\*\*

The complexity of our profession is becoming more evident everyday. Clinical training is essential in some form or another, and it is going to have to be required. The lawyer who is looking to be admitted to the Bar must have some kind of clinical training and "X" number of hours of some kind of experience in that area before he presents himself to the public. This may be accomplished before or after they sit for the Bar examination, but the system must regulate the practice of those who have not completed their training.

\*\*\*\*

The Board of Bar Examiners is directed to promulgate rules relating to clinical training as a condition for admission to practice, as set forth above in terms of

experience internships, and the like. These rules will be submitted to the Supreme Court for approval.

(3) Diploma privilege. There is no substantial or acceptable argument for retention of the diploma privilege. Its primary purpose has long since ceased to exist--i.e., incentive to gain recognition in the legal community or the common argument that the last quarter of law school must be devoted to preparing the student for the bar examination which is a detriment to their normal course of study.

There is, in fact, a double standard created by the diploma privilege and the Bar examination as it relates to admission to the Bar in Montana. This standard goes beyond the courses offered in the law school and given on the Bar examination. It is the fact that the diploma privileged person enters the job market in June, whereas a Montana resident forced to attend and out-of-state law school must wait until October to take the examination, and in some cases does not pass. Fairly enough, many people have selected to attend schools outside the State of Montana. It is also noteworthy that the University of Montana School of Law is no longer struggling. It is turning away many, many students who are Montana residents and who would like to remain here go to school. Also, we should be encouraging our young people to go to other schools outside the State of Montana for the diversity of educational background and the intellectual exposure which is essential in a free society. There is no doubt that the University of Montana School of Law is very good, but concentrating Montana graduates into the Montana Bar becomes dangerously parochial.

The effect of a diploma privilege on the student and on the faculty of a law school that extends the privilege is subtle but sometimes harmful. There exists the possibility of abuse and the standards of the law school may be affected by the fact that nobody really does his best until he has to. Knowing that these students are not to be examined, some professors may be prone not to put forth their best efforts, or at least a better effort than they did the previous year teaching the same course. Under some circumstances, the curriculum can be adjusted to teach the students what they want the students to know, and there is nothing in the world to prevent this.

\* \* \* \*

Further, the American Bar Association has taken a positive, clear and very hard stand against the diploma privilege in connection with the standards of legal education and A.B.A. approval of law schools. Further, there are very few jurisdictions left which permit this kind of privilege. The A.B.A. Section of Legal Education and Admission to the Bar is very strong in its opinion that graduation from a law school should not confer the rights of admission to the Bar and that every candidate should be subject to an examination by a public authority to determine his/her fitness.

The University of Montana School of Law has stressed that the Supreme Court members, or rather two of them, are on the Board of Visitors and can oversee and control the curriculum of the school. The A.B.A. says that this is not right, that there is no public officer or officers or departments who control the curriculum of any school. Their job is to see that the school turns out properly educated people who can adequately serve the public. Any attempt to control curriculum content would be an unfortunate limitation on the educational freedom of the school and could not be tolerated in the name of the diploma privilege.

\* \* \* \*

this Court orders the diploma privilege abolished in conjunction with the other changes to be made in our qualifications and admission to practice.

In summary, we have held:

(1) The Bar examination shall not be limited to those graduates of American Bar Association approved law schools, but rather the Supreme Court of the State of Montana under conditions set forth in this opinion will approve the law schools from which students may apply to sit for the examination in Montana.

(2) We have provided a grandfather clause in any changes in qualifications.

(3) We have retained the present rule on residency.

(4) We have authorized the adoption of the multi-state bar examination to be supplemented by an essay type examination recommended to the Supreme Court by the Board of Bar Examiners.

(5) We have authorized an increase in the minimum fee for taking the Bar examination to cover the additional costs required for the updating of the examination and for the multi-state bar service.

(6) We have authorized and ordered the Board of Bar Examiners in conjunction with the State Bar to investigate rising administrative costs and the effect of inflation, and to implement a plan and submit proposals to the Supreme Court.

(7) We have directed that the Bar Examination be given two times each year.

(8) We have made limitations on the number of times a person qualified can sit for the Montana Bar.

(9) We have provided for administrative review to be initiated by anybody who takes the Montana Bar.

(10) We have retained our six-month residency requirement for admission to the Bar in Montana.

(11) We have retained a reciprocity consideration for outside attorneys whose states grant the same privilege to Montana.

(12) We have provided and directed that a rule be drawn requiring experience in terms of internships and clinical training as a prerequisite to admission to practice; and that the Board of Bar Examiners is to promulgate rules relating thereto and submit them to the Supreme Court for approval.

(13) We have, for good reasons, abolished the diploma privilege.

(14) As said above, for all changes to be brought about by this opinion, we of course are extending a grandfather clause to those who are entitled.

Signed by the five Justices of the Supreme Court, March 24, 1980.

**U. S. COMMISSION ON CIVIL RIGHTS**  
**WASHINGTON, D C 20425**

**OFFICIAL BUSINESS**  
**PENALTY FOR PRIVATE USE, \$300**

**FOURTH CLASS MAIL**  
**POSTAGE AND FEES PAID**  
**U.S. COMMISSION ON CIVIL RIGHTS**  
**PERMIT NO. G73**

