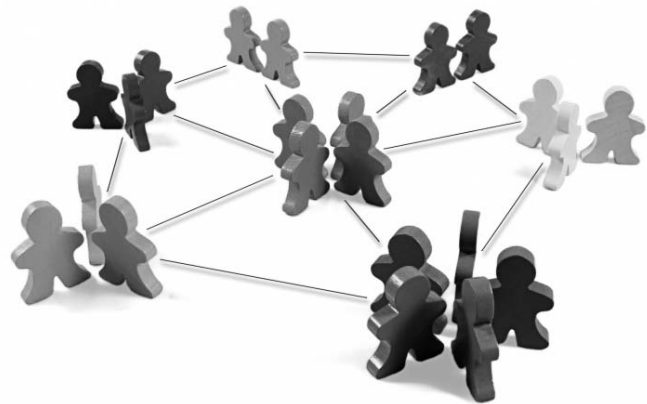


Expanding the Pipeline: The Key to Success

by Daphne Hyun-Jin Aronson and
Sherman P. Willis



Daphne Hyun-Jin Aronson



Daphne Hyun-Jin Aronson, an *of counsel* attorney in the Omaha office of Kutak Rock LLP, is the Director of Diversity for the firm nationally, focusing on recruitment, retention and advancement of attorneys from diverse backgrounds. Prior to joining Kutak Rock LLP, she was the Director of Global Procurement Services Department at Lehman Brothers in New York. At Kutak Rock,

Aronson focuses her legal practice in the area of public finance. She received her law degree from New York University School of Law and is admitted to practice in New York and Nebraska.

Sherman P. Willis



Sherman P. Willis is an associate with Fraser Stryker PC LLO. He received his B.A. degree in Political Science from Grinnell College and his law degree from the University of Iowa where he served as Senior Managing Editor of the *Iowa Law Review*. Prior to joining Fraser Stryker, Willis clerked for the Hon. Henry T. Wingate, Chief Judge, U.S. District Court for the Southern

District of Mississippi. Willis serves on the Omaha Community Playhouse Rising Star Committee, the Omaha Public Library Board of Trustees, is a member of the 100 Black Men of Omaha, and an associate with the Robert M. Spire American Inn of Court.

Introduction

This issue of the *Nebraska Lawyer* highlights the origins and work of the Nebraska Minority Justice Committee (“MJC”) and also identifies the three key areas on which the MJC focuses: (i) access to justice, (ii) criminal and juvenile justice, and (iii) diversity in the profession and court system. The MJC subcommittee to which we belong is responsible for the last area, which is also the focus of this article. In particular, the MJC diversity subcommittee has been tasked with and accepted the responsibility to develop a minority pipeline assistance program¹ that can serve as a platform for all of us, as members of the NSBA, to affect meaningful results. We hope that after reviewing this article, you will gain greater appreciation for the significance of diversity to the continued vitality of the Nebraska legal profession, learn what is currently being done about it and, most significantly, help shape existing and additional efforts for the future.

What Is Diversity, What Is a Pipeline, and Why Are They Important?

Diversity

The word “diversity” means different things to different people. Let us go to a fairly trusted and reliable source, the dictionary, for guidance:²

1 : the condition of being diverse : VARIETY; especially : the inclusion of diverse people (as people of different races or cultures) in a group or organization <programs intended to promote diversity in schools>

2 : an instance of being diverse <a diversity of opinion>

We adopt the foregoing definition here. Our society, both in the State of Nebraska and nationally, is becoming increasingly

diverse at a rapid rate, especially in its ethnic and racial composition.³ According to 2007 statistics from the U.S. Census Bureau, nearly one-third of the U.S. population, or over 100 million people, now belongs to a minority group.⁴ Hispanics make up the nation's largest and fastest growing minority group at close to 15%, followed by blacks, Asian/Pacific Islanders, and Native Americans. Four states and the District of Columbia now are "majority minority." In 2006, Nebraska's population exceeded 1.7 million people. Of those, nearly 86% were non-Hispanic whites, while people of color accounted for slightly more than 14%. Consistent with the demographic shift seen across the country, Hispanics are also the largest minority group in Nebraska, followed by blacks, Asian/Pacific Islanders, and Native Americans.

The composition of the legal profession, however, tells a different story. According to statistics compiled by the U.S. Census Bureau, people of color represent slightly more than 10% of the legal profession nationally.⁵ With respect to diversity in law firms, the National Association for Law Placement ("NALP") compiles one of the most comprehensive surveys and reports each year. Based upon NALP's 2006 survey,⁶ minorities account for 16.7% of associates and only 5% of partners at the nation's law firms (only three Nebraska-area law firms participated in the survey).

Although diversity statistics have not been compiled for Nebraska law firms, we are aware of only two partners of color and only a handful of minority associates among all the major non-solo practitioner law firms. Similarly, according to the statistics compiled by the 2003 Nebraska Minority and Justice Task Force, only 2.8% of the state's judges and none of the federal judges were minorities. Overall, about 4% of the active in-state attorneys registered on the Nebraska bar roll identified themselves as belonging to a minority group in 2006, lagging behind the 14% minority population in Nebraska.

To analyze these discrepancies in the ethnic and racial composition of the overall population and the legal profession, it also is important to understand the composition of our law schools. Nationally, minority enrollment at law schools has hovered around 20% for the past two decades.⁷ Here in Nebraska, from 1992 through 2002,⁸ the range of students of color has fluctuated between 6% and 11%. Both nationally and locally, these statistics demonstrate the underrepresentation of people of color in the law school enrollment compared with the overall population as well as in the number of attorneys of color who stay in the practice of law compared with the law school enrollment.

In 2003, the Nebraska Minority and Justice Task Force stated the following:⁹

Legal Profession

- Nebraska's legal profession is not reflective of the state's racial and ethnic diversity.
- Too few Nebraska minorities and minorities from other states apply to and matriculate at Nebraska's law schools.
- Minority and white lawyers have noticeably different perceptions of career opportunities in the state, including those related to mentoring, retention, and promotion.
- Racial and ethnic minorities are underrepresented in Nebraska's judicial system.

Pipeline

For the purposes of this article, we have adopted the following dictionary definitions of the term "pipeline":¹⁰

1. a direct channel for information
2. a process or channel of supply <an arms *pipeline*>
3. a state of development, preparation, or production <several projects in the *pipeline*>; also : the system for such processes <a strong product *pipeline*>
4. a course of individual advancement or development especially to fill organizational needs

The Importance of Diversity in the Legal Profession

Why should you care about the discrepancy between the ethnic and racial composition of our society as a whole and the legal profession? In order to preserve respect for the rule of law, it is imperative to foster public trust and confidence and to maintain open and equitable access to the legal system. To do so, the legal profession must reflect the diversity of its client base. When it does not, as reported by the Minority and Justice Task Force in 2003, people of color perceive, to a greater degree, actual and/or perceived bias in the legal and justice systems. This "client base" could be in the form of one individual (or a group of people) seeking access to the court system, or it could be a Fortune 500 corporation serving a diverse customer base, competing in the global market place, or headed by a person of color. We need the "client base" to feel that it can have a fair day in court or have a legal solution that best addresses its diverse needs. Indeed, in 1999, the general counsel of approximately 500 major U.S. corporations signed a document entitled "Diversity in the Workplace—A Statement of Principle," which, among other things, called for a mandate for law firms to make improvements in the diversity of their workforce.¹¹ In 2004, this pledge was renewed in "A Call to Action—Diversity in the Legal Profession."¹² This document,



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which was endorsed by the Board of Directors of the Association of Corporate Counsel and signed by many of the nation's largest corporations, spells out the signatory companies' intention to "end or limit relationships" with law firms that fail to demonstrate commitment to diversity.

To be sure, underrepresentation of diverse legal professionals does not necessarily suggest racism. As the Nebraska Minority and Justice Task Force noted,

[u]nderrepresentation in and of itself does not necessarily suggest overt bigotry or discrimination. Instead, it suggests a more subtle, but a no less significant, barrier to full participation—specifically a lack of opportunity. Underrepresentation of racial and ethnic minorities in the legal community, as compared to their percentage in the population, is a concern for several reasons. Most importantly, a diverse community is more likely to be an accepting community, sensitive to racial and ethnicity issues and the unrecognized biases of those in the majority.¹³

Thus, regardless of your level of participation in improving diversity within the Nebraska legal profession, the lack of diversity affects us all. Given the changing demographics, we need to act—and soon.

In charting a course of action, we need to understand that the diversity problem in the legal profession does not begin at the employer level or even at law school, where the enrollment fails to reflect the composition of the society as whole. In fact, contrary to the demographic shifts, recent statistics suggest that the educational pipeline to the legal profession may be becoming less diverse for certain groups, namely for African Americans and Mexican Americans. In November 2005, the American Bar Association held a conference to focus specifically on the pipeline issues. The final report from the conference identifies that students of color are dropping out at disproportionately high rates at every point of the educational pipeline beginning as early as pre-kindergarten, through high school and college, and all the way to law school.¹⁴ The ABA noted that these statistics in the pipeline continuum, when taken together, indicated the "pervasiveness of the problem."¹⁵ Failure to address these pipeline leaks may very likely lead to even greater discrepancies between the legal profession and the constituency it serves. For the reasons stated above, it is an outcome we can ill afford.

What Is Currently Being Done to Improve Diversity?

Other Parts of the Country

Over the years, many bar associations and law firms around the nation have undertaken significant diversity initiatives. For instance, the New York City Bar Association, the Kansas City Metropolitan Bar Association, the Columbus Bar

Association, the Colorado Bar Association, and the Chicago Bar Association each has facilitated a diversity action plan among its area law firms. Moreover, these action plans are making a difference. For instance, take a look at the Columbus¹⁶ Bar Association's 2006 diversity progress report, which includes survey results from the 24-area participating law firms.¹⁷ Comparing 2000 statistics with those from 2006, the percentage of minority partners increased 100%, from 14% to 28%.

Likewise, aimed at improving the diversity pipeline, many law schools, non-profit organizations, and minority bar associations have also implemented numerous programs around the country. Some are aimed at kindergarten through grade 12, and others target college and law students. ABA now maintains a nationwide directory of pipeline initiatives collaborative programs. Examples include programs that offer at-risk high school students introduction to the study of law, which are run by the William Mitchell College of Law, Just the Beginning Foundation, National Bar Association ("NBA"), and the Hispanic National Bar Foundation. Organizations that offer programs for college students include the University of Baltimore, Georgetown University, Council on Legal Education Opportunity ("CLEO"), University of Texas-El Paso, and St. Mary's University (in San Antonio, TX). These programs offer a variety of assistance to help students prepare for law school, such as LSAT test preparatory tutorials, career counseling, job shadowing opportunities, and sampling of the law school experience. There are also programs aimed at the law school level. Examples include the Colorado Bar Association's "Pledge to Diversity" program that started in the early 1990s¹⁸ and the NBA's pipeline development program in Arizona, which was implemented in March 2006.¹⁹ The Colorado program is a collaborative effort by the major law firms in the Denver area in providing summer clerkship opportunities to diverse first year law students. The NBA Arizona pipeline program offers a four-phase series of educational and career training over a three-year period to diverse students who have been accepted into an Arizona law school.

Nebraska

1. MJC Diversity Subcommittee

The MJC Diversity Subcommittee, as we have referenced earlier, is responsible for assessing diversity within the court system and legal profession and proposing suggestions to facilitate improvement. The Diversity Subcommittee has sought to attain this goal in several ways. For instance, for the past two years, the MJC has sponsored the annual Legal Diversity Summit that has allowed Nebraska-based employers to meet and interview law students of color from Nebraska, Iowa, South Dakota, Minnesota, Missouri, and Kansas. Also in 2005, with the approval of MJC, the Diversity Subcommittee

created the Nebraska Legal Diversity Web site, www.nelegal-diversity.org, to raise diversity awareness and to provide resources and networking tools for legal employers and employees in Nebraska. Currently, the Diversity Subcommittee is working on developing several pipeline assistance programs, such as scholarships for LSAT preparation courses.

2. Private Industry and Law Firm Efforts

a. INROADS—Founded in 1970, INROADS is an international not-for-profit organization that provides career development services to minority college students. INROADS recruits talented students of color and provides internship opportunities through its business partners. Leadership and professional development training is also offered to INROADS interns. Along with more than 20 companies in the Omaha and western Iowa regions that have participated in the local office of INROADS, there are also two law firms in Omaha that offer pre-law internship opportunities through this program, Blackwell Sanders and Kutak Rock.

b. St. Peter Claver High School (Cristo Rey)—This fall, the St. Peter Claver High School, which is an affiliate of the Cristo Rey Network, will open its doors in Omaha. Established approximately 10 years ago in Chicago to assist economically disadvantaged youth, Cristo Rey high schools offer a unique work-study curriculum that includes an internship component for all its students through corporate partners in the community. The law firm of Koley Jessen in Omaha has signed up to be a corporate partner in this endeavor.

c. Fraser Stryker Diversity Scholarship Program—In the fall of 2006, the Fraser Stryker Law Firm launched its Diversity Scholarship Program. The purpose of the Scholarship Program is to provide college tuition assistance and paid internships at the firm for students of African-American, Asian, Latino, and Native-American origins from low-income families in the Omaha metro area. Scholarships are for students who are interested in a career in law. Each scholarship is in the amount of \$2,500 per academic year.

d. Kutak Rock Diversity Scholarship Program—The law firm of Kutak Rock has established diversity scholarships at the University of Nebraska-Lincoln College of Law and the Creighton University School of Law. These scholarships are awarded to incoming students at each of the law schools starting the fall of 2007. Each Kutak Rock Scholar receives a financial stipend of \$10,000 towards the tuition and expenses for the first year of law school.

How Can We Improve Diversity Here in Nebraska?

Ok, you ask, what else can we do to improve diversity in Nebraska? There are no simple answers; yet at the same time,

there are many answers. The key is to understand that we cannot nibble at the edges of the problem and expect miraculous results. Systemic change requires change at all levels, and the multiplicity of its cause necessitates a multi-faceted approach. Without proactive measures, the problem will not resolve itself but may even get worse.

For starters, as noted in the Final Report by the Nebraska Minority and Justice Task Force in 2003, there are too few people of color either from Nebraska or other states who apply to and matriculate at Nebraska's law schools. This result is the cumulative effect of pipeline leaks that occurred long before law school, possibly before college, and perhaps as early as pre-kindergarten. The depth and breadth of its causes require collaborative effort along all the points in the educational pipeline, each effort feeding into another in a continuum. In fact, the MJC Diversity Subcommittee has adopted this "pipeline continuum" approach with emphasis on collaborating with existing programs that provide assistance to our disadvantaged youth, ranging from kindergarten to college. There are so many opportunities to take part in this process especially given the large number of organizations that provide such programs in Nebraska. To name a few, they include Girls Inc., All Our Kids, Talent Plus, Wesley House, and Hope Center for Kids. Without investing in the pipeline, we will continue to lose our home-grown kids of color who might have had the potential and interest in becoming attorneys and staying in Nebraska. We must invest in finding and supporting those young individuals who show promise.

Second, according to a recent article in the *Omaha World Herald*, even those—especially blacks—who survive the pipeline challenge oftentimes opt to leave Nebraska for other states that offer greater professional and cultural opportunities. For sure, some of the businesses and law firms in Nebraska have initiated diversity programs in their recruiting and retention. Yet, the perception among many professionals of color is that the opportunities are scarce, suggesting that, at a minimum, the diversity commitment should be communicated better along with greater outreach efforts on both sides.


Finally, where diversity begets more diversity, the opposite is also true. It means that while we invest in the pipeline for future results, we also need to undertake measures that will make an impact on the face of the legal profession today. For instance, many prominent law firms using managing partners' diversity action plans elsewhere in the country have agreed to hold themselves accountable for (i) analyzing and questioning the member firm's hiring criteria to determine if they disproportionately preclude diverse candidates, (ii) publicizing the member firms' commitment to racial and ethnic diversity, (iii) recruiting more racially and ethnically



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diverse attorneys as lateral hires, and (iv) increasing the retention and promotion rates for racially and ethnically diverse law clerks and attorneys.

Conclusion

The diversity challenge in the legal profession is not unique to Nebraska. Many understand that its causes are complex, which has led to a myriad of initiatives and programs around the country and here in Nebraska. It is clear that we must mobilize the entire community. By investing in the educational pipeline to provide opportunities to our disadvantaged youth and establishing firmer roots among prospective law students, current law students, and attorneys of color, we might be better able to create and keep the minority talent pool in Nebraska so that they can contribute meaningfully to the profession. Furthermore, better communication and collaboration among the Nebraska attorneys of color, the other attorneys at large, legal employers, and the Nebraska State Bar Association can only lead to desired results for everyone. 

Endnotes

- ¹ The pipeline assistance program focuses upon ethnic and racial diversity in the legal profession. We understand that there are other members of the legal profession such as paralegals, legal secretaries, and other personnel who help keep the legal system working. Also, while the term “diversity” encompasses many aspects of humanity, this article focuses on ethnic and racial diversity, which reflects the mission of the MJC.
- ² Merriam-Webster’s Collegiate Dictionary (11th ed. 2003).
- ³ The U.S. Census Bureau defines race as “a social definition . . . recognized in this country” that does “not conform to any biological, anthropological or genetic criteria.” U.S. Census Bureau, *Questions and Answers for Census 2000 Data on Race*, available at www.census.gov/Press-Release/www/2001/raceqandas.html (last revised Jan. 25, 2002). The Bureau “defines ethnicity or origin as the heritage, nationality group, lineage, or country of birth of the person or the person’s parents or ancestors before their arrival in the United States. People who identify their origin as Spanish, Hispanic, or Latino may be of any race.” *Id.*
- ⁴ Press Release, U.S. Census Bureau News, *Minority Population Tops 100 Million* (May 17, 2007), available at www.census.gov/Press-Release/www/releases/archives/population/010048.html. Specifically, 66.4% of the national population is white (non-Hispanic), 14.8% is Hispanic, 13.4% is black, 1.5% is American Indian, and 5.3% is Asian/Pacific Islander. In Nebraska, 85.8% is white, 7.4% is Hispanic, 4.2% is black, 1.7% is Asian/Pacific Islander, and 0.8% is American Indian. *Id.*
- ⁵ U.S. Census Bureau, *Census 2000 EEO Data Tool*, www.census.gov/eo2000/index.html (last visited June 27, 2007) (select “Employment by Census Occupation Codes”; then select “US Total”; then select “Sort by Codes,” “Lawyers,” and “Show Detailed Race/Ethnicity Categories”).
- ⁶ NALP, *Women and Minorities in Private Practice—Additional Perspective* (citing NALP *Bulletin*, February 2007), available at www.nalp.org/content/index.php?pid=484 (last visited June 27, 2007). Among associates, 8.1% are Asian/Pacific Islander, 4.5% are black, and 3.4% are Hispanic. At the partner level, 1.8% are Asian/Pacific Islander, 1.6% are black, and 1.4% are Hispanic. *Id.*
- ⁷ See *Embracing the Opportunities for Increasing Diversity into the Legal Profession: Collaborating to Expand the Pipeline (Let’s Get Real)* [hereinafter “*Embracing the Opportunities*”] 15, available at www.abanet.org/op/pipelineconf/PipelinePostReport.pdf (last visited June 27, 2007). For the 2006-2007 academic year, the percentage of first-year enrollment of law students of color was 22.3%, and the percentage of total enrollment of law students of color was 21.6%. See American Bar Association, Section of Legal Education & Admissions to the Bar, *Legal Education Statistics*, available at www.abanet.org/legaled/statistics/charts/stats%20-%208.pdf (last visited June 27, 2007). However, note that between the 2004-2005 and 2005-2006 academic years, the national percentage of black students dropped from 7.5% to 6.5% and that Hispanic enrollment dropped in a similar fashion at the same time. See *Embracing the Opportunities*, *supra*, at 10.
- ⁸ Butch Mabin, *Law Schools Recruit Minority Students*, LINCOLN JOURNAL-STAR, Apr. 23, 2006, available at www.nelegaldiversity.org/includes/downloads/noritystudents.pdf.
- ⁹ Nebraska Minority Justice Task Force, *Final Report*, January 2003, at xviii, available at www.nelegaldiversity.org/includes/downloads/ity_task_force.pdf.
- ¹⁰ Merriam-Webster’s Collegiate Dictionary (11th ed. 2003).
- ¹¹ Association of Corporate Counsel, *Diversity and the Legal Profession, Diversity in the Workplace: A Statement of Principle*, available at www.acc.com/public/accpolicy/diversitytstmt.html (last visited June 27, 2007).
- ¹² Association of Corporate Counsel, *A Call to Action—Diversity in the Legal Profession*, available at www.acca.com/resource/getfile.php?id=5748 (last visited June 27, 2007); see also *A Call to Action – Diversity in the Legal Profession*, <http://www.clocall-toaction.com/> (last visited June 27, 2007).
- ¹³ Nebraska Minority Justice Task Force, *supra* note 9, at 109 (citing Idaho Supreme Court Fairness and Equality Committee 1992).
- ¹⁴ See *Embracing the Opportunities*, *supra* note 7, at 14-15.
- ¹⁵ See *id.* at 15.
- ¹⁶ According to the U.S. Census Bureau’s 2005 population estimate, Columbus, Ohio, had over a population of over 730,000 that was 62% white, 26.2% black, 0.2% American Indian, and 3.9% Asian/Pacific Islander, and 3.5% Hispanic/Latino. See U.S. Census Bureau, *Census Bureau Home Page*, www.census.gov/ (search “Population Finder”).
- ¹⁷ Press Release, Columbus Bar Association, *Historic Managing Partners Diversity Initiative Extended Through 2010* (May 2006), available at www.cbalaw.org/projects/diversity/2006press-release.php.
- ¹⁸ See Colorado Bar Association, *Diversity in the Legal Profession Committee*, www.cobar.org/group/index.cfm?category=541&EntityID=CMIP.
- ¹⁹ See NBA Arizona Diversity Pipeline Program, Inc., www.nbapipeline.org/.