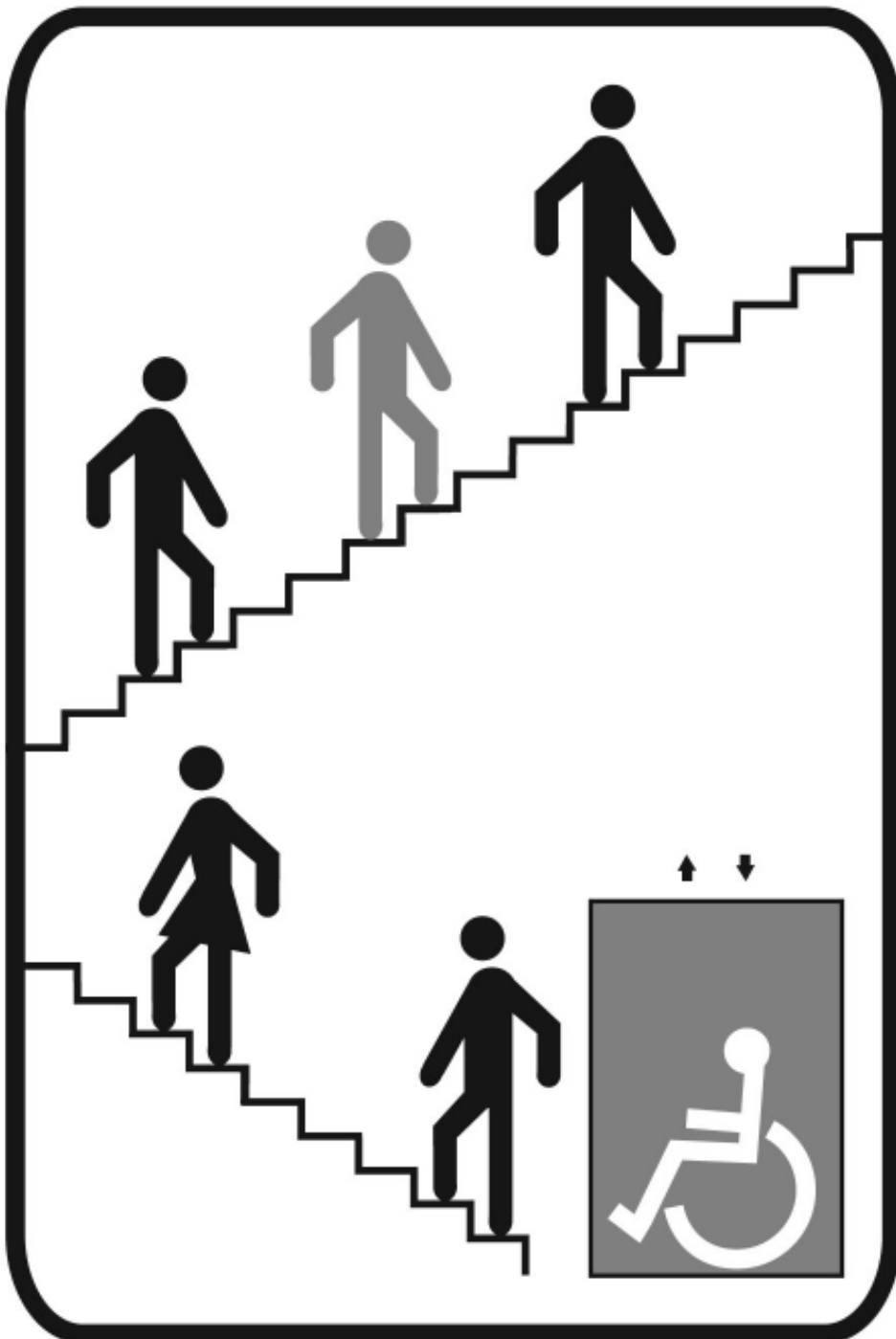


TRAVELING THE LONG ROAD: DIVERSITY WITHIN MISSOURI'S BENCH AND BAR



For nearly 150 years, women and minorities have fought to find a place within Missouri's legal community. How far have we come in realizing the goal of true diversity?

By Gary Toohey

In 1870, Brooklyn native Lemma Barkeloo passed a rigorous, day-long oral bar exam to become Missouri's first – and the nation's second – licensed female attorney. Additional new ground was broken a year later when John Johnson¹ became the first licensed African-American lawyer in the state.

Tragically, Barkeloo died less than six months after receiving her license to practice law after contracting typhoid fever, so little is known of her fledgling legal career. Even less is known about Johnson, but one can only imagine the challenges and struggles he faced in attempting to practice his chosen profession at a time when the nation was still

reeling from the bitterness and seething resentments of the Civil War, which had come to a close just six years earlier.

Barkeloo and Johnson were just the first in a long line of individuals who laid the foundation for women and minorities within Missouri's legal community. Indeed, women and minority lawyers are no longer a rarity within Missouri's law offices and courts, but are, in increasing numbers, assuming their rightful place within the state's justice system. Still, many women and minority lawyers – often joined by bench and bar leaders – wonder: *Could more progress be made in diversifying the state's legal system?*

Major bar organizations across the state – including The Missouri Bar – have been struggling to find an answer to that question for several years. And while leaders of women's and minority bar organizations are quick to acknowledge the importance of these efforts, many say more work needs to be done. Still others say that women and minority lawyers must take more personal initiative to get involved in the activities of the mainstream bar organizations.

Likewise, women and minorities say that election or appointment to judicial positions – even within courts under Missouri's Non-Partisan Court Plan – is limited for members of those groups because of gender stereotyping, inadequate support networks, and other disadvantages.

In order to explore these important issues, *Precedent* interviewed a number of leaders of Missouri's bench and bar, including representatives from the largest majority bar organizations, representatives of women's and minority bar organizations, former bar presidents, judges, and practitioners. During the course of those interviews, four central questions emerged:

- How diverse is Missouri's bench and bar?
- What are courts and majority bar organizations doing to improve diversity?
- How effective are those efforts?
- What more can – and should – be done to promote diversity?

It should come as no surprise that the answers to those questions from the interview subjects were as diverse as the individuals themselves. As with society as a whole, Missouri's legal community continues to struggle with ways to address issues of ethnicity and gender. But all agreed that the effort to come to terms with differences among people should continue.

"To me, the biggest barrier that we have is that we're all afraid to be really honest," said Thomas M. Lang, a solo practitioner from St. Louis and a member of the board of governors of The Missouri Bar. "If we're ever really going to address this issue of diversity, with all of us really trying to respect the other person and where they come from, that would be the way. If we could ever get to the point where we could really accept and respect our differences, and focus more on our humanity and our common calling and our goals in life, it would be a lot easier.

"If we, as lawyers who are trained to understand complex issues and make persuasive arguments on behalf of an issue, can't break down the barriers that hold us back from peace and harmony, there's not much chance that the general population could do it," he added.

Or, as Angela S. Yee, president of the Missouri Asian-American Bar Association, puts it, "To create more awareness of how the mosaic of different cultures needs to be represented in the landscape of the practice of law in America begins with an open dialogue."

A DIVERSITY TIMELINE

1863 Abraham Lincoln signs the Emancipation Proclamation

1870 Emma Barkeloo becomes Missouri's first – and the nation's second – licensed woman attorney.

1871 John H. Johnson becomes the first licensed African-American attorney in Missouri.

1871 Phoebe Couzins becomes the first graduate of a Missouri law school (Saint Louis University) – and only the third nationwide.

1920 The 19th Amendment to the U.S. Constitution is passed, giving women the right to vote.

1924 Cora Lee Bagby, a non-lawyer, becomes the first female judge in state history (Howard County Probate Judge).

1925 Women are admitted to the Missouri Bar Association, the state's voluntary bar organization.

1942 Dorothy L. Freeman becomes the first licensed female African-American lawyer in Missouri.

1953 The Bar Association of Metropolitan St. Louis admits its first African-American member.

1955 The Kansas City Metropolitan Bar Association changes its constitution to allow membership by females and African-Americans.

1956 Theodore McMillian joins the circuit court for the City of St. Louis, becoming the state's first African-American judge.

1972 Theodore McMillian becomes the state's first African-American appellate judge (Missouri Court of Appeals-Eastern District).

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1978 Ellen S. Roper (Boone County) becomes the state's first female circuit judge.

1983 Judge Evelyn Baker becomes the state's first female African-American circuit judge (City of St. Louis).

1985 Sandra L. Schermerhorn becomes the first female president of The Kansas City Metropolitan Bar Association.

1987 Ann K. Covington becomes the state's first female appellate judge (Missouri Court of Appeals-Western District)

1989 Ann K. Covington becomes the state's first female Supreme Court judge.

1990 Doreen D. Dodson becomes the first female president of The Missouri Bar.

1991 Mary-Louise Moran becomes the first female president of The Bar Association of Metropolitan St. Louis.

1995 Ronnie L. White becomes the state's first African-American Supreme Court judge.

1995 William T. Session becomes the first African-American president of The Kansas City Metropolitan Bar Association.

1998 Reuben A. Shelton becomes the first African-American president of The Bar Association of Metropolitan St. Louis.

2001 Lisa W. Hardwick becomes the first female African-American appellate judge (Missouri Court of Appeals-Western District).

2007 Charlie J. Harris, Jr. becomes the first African-American president of The Missouri Bar.

A TRAIL THROUGH THE WILDERNESS

The path cut by Barkeloo and Johnson has been a difficult one for women and minorities to follow. Indeed, progress in the area of racial and gender equality has come very slowly. For example, the Bar Association of Metropolitan St. Louis did not admit its first African-American member until 1953; the Kansas City Metropolitan Bar Association did not admit women and African-Americans until two years later.

Likewise, the then-voluntary Missouri Bar Association did not admit its first woman member until 1925. And historical information does not confirm African-American membership in the state bar until the creation of the mandatory Missouri Bar in 1944.

A similar scenario developed in the state's courts. It was 1956 before Theodore McMillian became the state's first African-American judge. It would be another 16 years before an African-American held a state appellate court position, when Judge McMillian was appointed to a seat on the Missouri Court of Appeals for the Eastern District. In 1995, Ronnie L. White became the first African-American appointed to the Supreme Court of Missouri.

Women faced a similar challenge within the state judiciary. Although female non-lawyers had previously served as probate judges, it was 1978 before Ellen S. Roper became the state's first female circuit judge. Nine years later Ann K. Covington became the state's first female appellate judge and, in 1989, the first woman to serve on the Supreme Court of Missouri.

Today, it is estimated that minority lawyers make up 8-10 percent of the 28,000 members within The Missouri Bar, while women are believed to represent some 35-40 percent of the total state bar membership. Those numbers are not precise, however, because there

is no mechanism whereby lawyers may indicate – either voluntarily or otherwise – their ethnicity or gender.

“I think our committee would be in support of at least voluntary collection of racial and gender information,” said Sara Rittman of Jefferson City, co-chair of The Missouri Bar's Gender & Justice Committee. “We don't really know with any precision the numbers of [women and minorities] who are in the profession.”

Regardless, those statewide estimates would seem to be in line with national figures. For example, “A Current Glance at Women in the Law,” a 2006 study undertaken by the American Bar Association's Commission on Women in the Profession, reports that women make up 30.2 percent of all lawyers nationally. However, the same study indicates that women make up only 17.3 percent of law firm partners and hold only 16.6 percent of the general counsel positions among Fortune 500 corporations.

Likewise, according to the American Bar Association's Commission on Racial and Ethnic Diversity in the Profession, total minority representation among lawyers nationwide is approximately 9.7 percent. Nationally, African Americans are the best represented minority group among lawyers (3.9 percent), followed by Hispanics (3.3 percent). “The pace of African American entry into the profession has slowed in recent years, however, and currently is significantly slower than that of Hispanics or Asian Americans. Asian Americans are the fastest growing minority group in the profession,” the ABA commission reports.

Overall, the commission indicates, total minority representation among law students is on the decline, with

most of that attributable to a drop in the number and percentage of African American law students.

The decrease in African American law students is mirrored here in Missouri, where a Mound City Bar Association study found that three of the state's four law schools showed a drop in admissions for African Americans. Only Washington University in St. Louis showed an increase in African American law students, and that was only up by 0.4 percentage points.

According to the ABA's National Database on Judicial Diversity in State Courts, minorities compose approximately 10.1 percent of all state court positions nationally. The Office of State Courts Administrator reports that 26 (6.9 percent) of Missouri's 373 state court judges are minorities (African American, Hispanic or Asian).

Meanwhile, the Office of State Courts Administrator indicates that women hold 75 (20 percent) state court positions.

"Until we can diversify the entire legal profession, then we're going to have problems diversifying the bench," said former Kansas City Metropolitan Bar Association President Sylvester "Sly" James, Jr., "because that's where a member of the legal profession often ends their career."

THE MAINSTREAM BARS REACH OUT

Each of the largest majority bar organizations in the state – the Bar Association of Metropolitan St. Louis, the Kansas City Metropolitan Bar Association, and The Missouri Bar – have sponsored a variety of ongoing initiatives designed to promote membership, participation and leadership within their ranks.

The Bar Association of Metropolitan St. Louis

The 6,000-member Bar Association

of Metropolitan St. Louis (BAMSL) has developed a number of programs designed to promote greater diversity within its membership and leadership over the years. However, BAMSL President Gen Frank says the organization needs to do more.

"The biggest overall challenge we face when we're recruiting anybody as a member is the question of, 'What will I get out of membership?'" she said. "When most [minority lawyers] look at us, the answer they're going to come up with is, 'Not very much.' The challenge for us is to find out why they come to that conclusion and see what we can do to change that. We have a responsibility to meet the needs of all members of our legal community, and obviously right now we are not doing that."

Regardless, BAMSL has a long history of programs focused on diversity. For example, in 1989 the organization formed the Minorities in the Profession Committee "to increase the role, participation, and advance the interest of, minorities in the legal profession." In 1999, the committee joined forces with the Mound City Bar Association – the oldest black bar association west of the Mississippi River – to co-sponsor a two-day Conference on Minorities in the Legal Profession. That conference resulted in a draft report summarizing issues, discussions, recommendations and conclusions, but the report was never formally adopted nor the recommendations systematically implemented, although some were implemented ad hoc.

BAMSL's Minorities in the Profession Committee has been inactive for several years; however, in 2002 the committee implemented one of the conference's recommendations, which

was to evaluate the diversity efforts of area law firms with a focus on the firms' efforts to recruit and retain attorneys of color. The results of that study – informally known as a "diversity scorecard" – were revealed in the 2002 report, "A Look Beyond the Numbers."

In addition, in 2005 BAMSL held the grand opening of "The Gallery of St. Louis Legal Pioneers," which celebrates



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—Gen Frank

the diversity of those who, through their professional accomplishments and public service, have promoted the honor and dignity of the legal profession and inspired members of the bench and bar.

Along with these programs, BAMSL has developed and/or participated in such diversity outreach programs as: Teens Speak Out; tutoring at Mathews-Dickey Boys and Girls Club; various activities with law schools; mock trials; the St. Louis Internship Program; and the St. Louis Minority Clerkship Program.

Last year, the Mound City Bar Association (MCBA)² issued a study, *Bar Association Inclusion or Illusion: The Examination of Fact or Fiction*, that offered a critical analysis of diversity initiatives within select bar associations. In that report, MCBA was critical of some of BAMSL's past efforts in this regard. For example, noting that BAMSL's Minorities in the Legal Profession Committee had become inactive due to its inability to find a minority lawyer from one of the minority bars to chair the committee, the report said BAMSL "could have either appointed

one of its own minority and/or majority members or a Board member to serve as chairperson. Thus, BAMSL's efforts were illusive and not reflective of the fact that diversity benefits all, not just minorities."

In addition, MCBA was critical of BAMSL for turning over administration of the St. Louis Minority Clerkship Program to the career services offices of the law schools at St. Louis University and Washington University. MCBA cited this development as resulting in no method by which to evaluate the program's effectiveness.

Based in part on the criticisms found in the MCBA study, BAMSL is developing a two-year initiative designed to promote diversity within the profession. "It is the conclusion of the current BAMSL Executive Committee that neither BAMSL nor the St. Louis legal profession as a whole has made adequate progress in the area of diversity," a draft of the initiative's action plan reads. "Therefore, it is incumbent upon BAMSL to develop a long-term strategic plan that will result in development and implementation of systemic diversity awareness and initiatives across all Association activities."

"[Bar associations] come up with a lot of initiatives, programs and ideas, but too often we miss the crucial first step: going to the people whose needs we are targeting and talking to them," Ms. Frank said. "We can have all the great ideas in the world, but if I don't go to the people we are targeting and ask them what their needs are, we haven't accomplished anything."

The diversity initiative now being formulated also includes consideration of changes in the way BAMSL conducts its election of leadership, as well as "purposeful, strategic recruitment of candidates" for BAMSL leadership positions. Currently, three members of

BAMSL's 37-member board of governors (two of whom serve on the executive committee) are persons of color, while 11 are women.

"One of the key pieces of the action plan will be doing focus groups to determine what the bar association is doing right and what it is doing wrong," Ms. Frank said. "We need to seek out the folks that we think we need to get information from so that we can focus on that information. Nobody wants anyone else telling them what they need; I'm the best source of information for what my needs are.

"It would be so easy to do something cosmetic by calling [minority and women lawyers] and begging them to serve on a committee," she continued. "I really think we need to do something more systemic that becomes part of our culture."

The Kansas City Metropolitan Bar Association

The 4,200-member Kansas City Metropolitan Bar Association (KCMBA) has a number of initiatives focused on the improvement of diversity within its membership and leadership, as well as the area's legal community.

In 2004, KCMBA adopted a "diversity statement" that reads:

In principle and in practice, the Kansas City Metropolitan Bar Association values and seeks diverse and inclusive participation within the legal profession. KCMBA promotes involvement and access to leadership opportunity to all members regardless of race, ethnicity, gender, religion, age, sexual orientation, nationality or disability. KCMBA will continue to provide leadership and commit time and resources to advance this objective. KCMBA

will develop strategies and initiatives to promote and welcome diversity within the board, staff and membership of the association and provide tools for its members' organizations regarding diversity.

As one of those initiatives, KCMBA this year organized its fourth annual Leadership Academy. Designed to facilitate the development of emerging leaders of the legal profession in the Kansas City area, this year's Academy featured 22 participants nominated by law firms as well as public entities. The Academy was sponsored by the Association of Corporate Counsel (Mid-America Chapter), the Eastern Jackson County Bar Association, the Hispanic Bar Association, the Jackson County Bar Association and KCMBA.

"Through a planned curriculum of leadership training, the graduates of the Academy will have the persistence, expertise, courage, vision, and passion to excel at leadership positions in Bar Associations, community and civic organizations, law firms, and/or public service entities," a KCMBA press release said. "A broad range of attorneys are selected representing geographical, racial, gender and private/public law practice."

Graduates of the Leadership Academy are given preference for leadership positions within KCMBA, according to Executive Director Rae Jean McCall.

KCMBA's board of directors consists of 31 members, including six women and four minority lawyers.

In December 2003, as part of KCMBA's Diversity Initiative, 27 Kansas City-area law firms met to sign a "Commitment to Diversity." A Diversity Committee created shortly thereafter met regularly to lay the groundwork for implementing policies, plans and "best practices" which were considered,

approved, and adopted by the managing partners of the 27 firms. Accomplishments of the committee include creating a survey instrument to determine the levels of diversity in firms, holding several diversity training sessions, and planning the Heartland Diversity Legal Job Fair (see the accompanying article, *Clients: Changing the Face of Missouri's Law Firms*).

"The pledge essentially committed them to follow through on working toward achieving more diversity in their firms," said James, who served as president of KCBMA at the time and was a driving force behind the effort. "That was followed up later by an action plan. The law firms who joined in on the initiative and then signed onto the plan have taken a number of steps, I think, to improve diversity within their firms.

"There were several firms that were looking to diversify . . . , but the trick was to stop getting this firm to do one thing and another firm doing something different, and to get a cooperative effort and use joint resources and economies of scale," James said. "And that is the thing that I think is the best deal of all."

The Missouri Bar

As with the two largest metro bar associations, The Missouri Bar has made the pursuit of diversity a key component of its activities.

In 1990, the Supreme Court of Missouri created the Gender & Justice Task Force, whose members were jointly appointed by the Court and The Missouri Bar, to conduct a major research project on gender bias in Missouri. The task force held hearings throughout Missouri and also conducted an extensive survey of lawyers, court officials and judges. The task force then issued its report detailing the discrimination that was found relating to both women in the pro-

fession and women in their interactions with the justice system. The state bar distributed 18,000 copies of that report.

To follow up on the recommendations made by the task force to reduce and eliminate gender bias, the Supreme Court and The Missouri Bar appointed the Gender Fairness Implementation Committee. Between 1993 and 1996, this committee served as an advocate for reform and was successful in achieving statutory amendments, rule changes, education programs for lawyers and judges, as well as other actions.

Upon the completion of its work in 1996, responsibility for gender-related issues was transferred to a standing committee, The Missouri Bar's Gender & Justice Committee. That committee continues to monitor and address gender issues.

"The committee's charge is somewhat limited to following up on the task force findings and the implementation committee's recommendations," said Sara Rittman, co-chair of the Gender & Justice Committee. "It is actively under discussion that the committee may propose a modification and broadening of its scope. The primary activity that we're engaged in right now is doing a follow-up to the survey that was done in the early 1990s to see what progress the various actions that have been taken since then have made."

The proposal to conduct a follow-up survey was approved by the Board of Governors of The Missouri Bar at its July 2007 meeting.

Meanwhile, the state bar has been actively involved for several years in seeking ways to encourage active bar participation among minority attorneys. In 2000, the Special Committee on Women & Minorities was made a standing committee and re-designated the Committee on Minority Issues to further define its mission. The committee was charged

with considering issues affecting and involving minority members of the bar, developing Missouri Bar programs to address those issues, and serving as a liaison between The Missouri Bar and the various minority bar organizations throughout the state.

Among the committee's major initiatives have been development of Annual Meeting programming focusing on diversity, and a Leadership Conference, which provides a forum for leaders of the state bar to brainstorm and plan with leaders of various minority bars on issues of diversity and leadership.

Another byproduct of the Committee on Minority Issues is the Leadership Academy, which emphasizes diversity in recruiting attorneys who have shown leadership skills in their local communities for leadership positions in The Missouri Bar. Each summer 8-10 attorneys are selected to participate in a year-long program focusing on leadership, bar service, and public service. At the end of that year, each graduate of the program commits to two years of active service with The Missouri Bar in some capacity. Alumni of the program are currently bringing diversity to bar leadership by serving as volunteers in many different roles, including as active members of substantive law committees, serving on the Young Lawyers' Section Council or Legal Education Committee, writing or reviewing CLE publications, or serving as speakers and moderators at CLE programs.

As with the Bar Association of Metropolitan St. Louis, The Missouri Bar was also criticized in the Mound City Bar Association's 2006 report, *Bar Association Inclusion or Illusion: The Examination of Fact or Fiction*. The MCBA commission that drafted the report wrote:

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The Long Road

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Generally, with the exception of the [Leadership] Academy, the Commission concluded that MoBar was satisfied with its current diversity initiatives and has not actively sought ways to measure their effectiveness. MoBar's failure to identify the activities that its diversity committees have accomplished and its lack of statistical data concerns this Commission. To that end, the absence of this information raises the concern, at least for this Commission, that said initiatives are more illusive than inclusive.

Currently, the 42-member Missouri Bar board of governors includes two African Americans and five women. No woman from outside of St. Louis or Kansas City has ever been elected to the board in a contested election.

"Many bar organizations within the state, including The Missouri Bar, have made strides and efforts. But the proof is in the pudding," said Charlie J. Harris, Jr., who is about to become the first African American president of The Missouri Bar. "If we can look out at our bar organization and say that our membership is not representative of our citizens or the people in the profession, and more importantly if the leadership does not reflect the profession, then we have to say to ourselves that we must do more."

As part of that effort, at the May meeting of the Board of Governors, the bar's executive committee introduced a proposal to add three appointed members to the board – "members who would represent women, blacks and other minorities whose overall Bar membership isn't mirrored by the current board members."³ The proposal

has split members of the board over three issues: the process by which groups deserving of greater representation are identified; the authority of current board members to tell members of minority groups who should represent them on the board; and giving the new, appointed board members the same voting rights as board members elected by their constituencies.

"The proposal is based upon a simple concept, and that is that if we're going to talk about diversity in the bar, it only seems natural to me that the leadership of our bar should reflect a divergent and diverse group of lawyers who have diverse ideas and life experiences," said Harris. "That simply makes the bar better because we have more people and more input.

"The focus [of this proposal] is simply not on African Americans," he continued. "One of the biggest issues we are facing is the lack of women in our leadership. We need to make sure that we provide a board that reflects the lawyers whom we represent."

"I support the notion of having appointed board members to bring perspective and diversity to the board," said Dana Tippin Cutler of Kansas City, the only African American woman currently serving on the board. "Diversity is really about having broad access and perspective, whether that's based on gender or color or religion or sexual orientation, or whatever it is. For example, if you are not Hispanic, and have never been Hispanic, and never been involved in the Hispanic community, I don't expect you to have perspective on issues affecting the Hispanic community. That's not an indictment of you, but you don't have the perspective to speak on issues affecting the Hispanic community.

"The more perspectives and life experiences you bring to the board, the better the decision process," she added.

"No one can tell someone else's story as well as that person can tell that story."

While board members agree that diversity within the group is highly desirable, some say the mechanics of the proposal pose a problem.

"I think the idea of getting more voices is a great idea. In fact, I couldn't be more for it," said John J. Johnston, a board member from Kansas City. "Involvement almost always leads to more involvement, and hearing more voices from underrepresented groups.

"But I operate on the presumption that when you interfere with the democratic process, then you are making a mistake," he stated. "It makes me uneasy that we, as a board, select somebody, and then those people get to vote when they have no constituency that they report to, except us as a board. I don't think we should be selecting anybody. I'd be much, much more interested in who the women of the state of Missouri think should be added, than who the board of governors of The Missouri Bar think should be added."

Another board member from the Kansas City area, Patrick B. Starke of Blue Springs, agrees.

"The concept is so anti-democratic that there can't be an adequate set of mechanics," he said of the proposal pending before the board. "Suddenly, you have two mechanisms for people who become members of the board of governors. I'm glad to hear their perspective, I'm glad that they've gotten involved, but I think it is unfair to the bar membership and to those who have been elected to represent their colleagues.

"I suspect there are people on the board who feel they are perfectly competent to represent females if they are males, or to represent males if they are female, or to represent white people if they are African American," Starke added. "I don't think that disadvantag-

ing one group to encourage involvement by some other group is right. It's an artificial constraint that really doesn't accomplish anything."

The Missouri Bar's board of governors is expected to further consider the proposal during its September meeting.

WHAT MORE CAN BE DONE?

The Mound City Bar Association has been the only specialty bar organization to formally examine the diversity efforts of the larger, mainstream bars. And while representatives from several other specialty bars⁴ said they find the mainstream bars to be welcoming and inclusive, they – along with some leaders of majority bars – also agree that more can and should be done to promote diversity.

"My perception is that [minority and women lawyers view the mainstream bar associations] as a microcosm of society," said Harris. "There are an awful lot of well-meaning people, but the process is painfully slow. The fact of the matter is that it is a fairly long process from being tangentially involved to becoming fully engaged, and then mov-



"I think all of us who are not white males need to do our time in the trenches, if you will. You can't really aspire to go from sitting at your desk to being president of some organization."

—Doreen D. Dodson

ing up through the ranks. That involves a certain commitment, regardless of whether they are minorities or not, but it also involves a commitment on the part of the bars."

At least part of that commitment, many say, means that the larger bar organizations have to do a better job in not only *communicating* the opportuni-

ties available, but *emphasizing their desire* for a diverse membership and leadership.

"It is not for lack of want or commitment," said Harris. "I believe that making our profession better involves putting us in a position where more people get a chance to sit at the table by way of a proper invitation and the feeling that you are wanted."

"We're not coming up with good reasons why different folks should pursue those opportunities," said BAMSL President Gen Frank. "Part of it is just human nature – people are more inclined to join groups and become more active in groups with people who are like them. If you see the cover of our newspaper at the beginning of each bar year and all of our officers are white, or they are all men, you may read the paper and see what the opportunities are but come to the conclusion that this is a group that doesn't fit me."

"Sometimes I think we don't do a good enough job in telling people that it is easy to break in" to bar work, said St. Louis practitioner Doreen D. Dodson, who in 1990 became the first female president of The Missouri Bar.

"In terms of getting into the officer ranks [of larger bars], I think many [minority lawyers], and many non-minority lawyers, feel that you have to be a part of the clique and within the inner circle," said Keith Cutler, president of the 240-member Jackson County Bar Association. "When their publications come out where there are photos of events, and there are not a lot of minority faces, people get the feeling that there are a lot of minorities who didn't participate in that function."

"I think there has been, and may still

be, a perception [among minority lawyers] that the majority bar is not relevant or responsive to issues that they care about," James said. "I think that perception is based, to a large extent, on a lack of involvement and interaction with the majority bar. But it is also based on the traditional belief that the only real way to address issues related to being Asian, or being Hispanic, or being African American, is to do so with other people of the same persuasion who know what you are talking about.

"I know that . . . the managing partners of all the firms [involved in KCMBA's Managing Partners' Diversity Initiative] are white males," James continued. "When minority bar members look at that, they don't really see a whole lot to model – they don't see a whole lot of room for them. Because of that, when making a choice of where to spend their dollars when making a choice of organizations, they spend it on an organization where they think, 'Hey, I could be president.'"

"There is still the perception that it is a 'good old boys' system [within the majority bars]," agreed Ms. Rittman. "I have heard that opinion expressed by members of the bar."

To battle these perceptions, some say, the majority bars need to pursue cooperative efforts with specialty bars in order to encourage an exchange of ideas and foster a spirit of inclusion.

"The best thing you can do is a cooperative effort – a joint seminar, a joint dinner, a joint party, or a joint something, where both parties are participating," James said. "All of a sudden, you've got all of these people mixing and intermingling, working toward a common goal, and alliances are created."

"The more opportunities the bars have to communicate and brainstorm, the more effective we can be in

mentoring and fostering a more enthusiastic relationship,” said Ms. Yee.

An alternate view was offered by Lynn Ricci, president of the Women Lawyers Association of Greater St. Louis. She said the majority bars could motivate more involvement from women and minorities by occasionally distributing “a short informational blurb on the statistics regarding the makeup of their governing bodies. When I see that kind of stuff, that motivates me.”

ROADBLOCKS ON THE JOURNEY

While there is consensus among all bar leaders that the majority bars need to continue their efforts to reach out to minorities and women, some also concede that other factors work to limit diversity. One of these factors is the numbers game.

“I think there is a correlation between increased minority participation in the non-minority or majority bars that relates to the number of diverse lawyers practicing,” said James. “The more people there are practicing, the more people you have participating. As there is more participation, that will lead to further participation, because you have people out saying, ‘Hey, this is something you ought to consider or do, and here’s why.’ But until the numbers get up there, I think it’s always going to be a problem.”

Another aspect of this situation, according to Johnston, is the demands upon the time of minority and women lawyers interested in bar work.

“Since diversity is and should be the goal of most organizations, there are many, many demands on somebody who is willing to give time to the bar, and those are the same people who are willing to do something for the community, [and] that are willing to volunteer for charitable work,” he said. “There are just so many demands on people who

will give that time that the pool gets cut down in a hurry.”

Another obstacle to diversity, others say, is a lack of personal initiative among some minority and women lawyers.

“My problem is that I am really frustrated about conversations I have with women and minorities about participation in the bar,” said Dana Tippin Cutler. “People are frustrated, for example, that all the presenters at CLE programs

“At some point we have to be responsible for our own condition. You can’t continue to use the same excuse for not participating. If you feel that [the bar] is not doing the thing you want to do, you need to get involved in changing that.”

—Dana Tippin Cutler



are white. But when I call someone who I think would be a good presenter, they say, ‘No, I don’t have the time.’ At some point we have to be responsible for our own condition. You can’t continue to use the same excuse for not participating. If you feel that [the bar] is not doing the thing you want to do, you need to get involved in changing that. Folks are constantly saying, ‘No, I don’t like this,’ but they aren’t willing to do whatever it is to help and make it better.

“It’s a ‘Catch 22,’” she continued. “If no one but all white males run, what are you going to do?” she added. “I think there is a responsibility on the individual to make that change. My overwhelming experience has been that if I step up and meet someone and shake their hand, no one has ever withdrawn. If you step up, no one rejects you. In fact, they’re glad that someone finally broke the ice.”

Ms. Dodson said her experience indicates that there are always people happy to lend a hand in breaking into bar work.

“I have always been encouraged by men to run for offices in the bar,” she said. “When I talk to women’s groups, and when I talk to any minority bars, I tell them that it has always been helpful to me that someone in the majority bar reached out to me. The main thing is you have to respond. I think all of who are not white males need to do our time in the trenches, if you will. You can’t really aspire to go from sitting at your desk to being president of some organization. You develop credibility by taking on projects and issues and work that you care about a lot, giving time and energy to them and getting to know people.

“There’s an old saying that women and minorities have to work twice as hard to get where they’re going,” she continued. “I don’t know if I’d ever estimate what that is. I do know that you have to be willing to do some hard work. Nobody is guaranteed anything.”

SHOW ME THE MONEY

One very powerful motivator of greater involvement by women and minority lawyers in the majority bars is the economic factor.

“The bottom line is that you look where your business come from. If I perceive that I’m getting most of my business from other African American lawyers, then I’m going to spend most of my time with a lot more African American lawyers than I am with non-African American lawyers,” James said. “The younger kids and the younger associates are starting to move back and forth,” he added, “and one of the reasons is because they recognize that there has to be that sort of social interchange in order to develop business. So the mar-

keting aspect is a huge factor in some of the movement. And everybody needs to market in order to survive in this climate right now. They're looking at that to some extent as a marketing opportunity, a networking opportunity that might not ordinarily be available.

"I really think if people can see an economic benefit to being members of different bar associations and organizations, then that is an added factor in joining those organizations," he added.

"I can't point dollar for dollar how the bar has helped me. I can't point and say, 'This client came because of that,'" said Ms. Cutler. "But I do know that so many opportunities have occurred because of bar participation. There's an intrinsic value in literally having colleagues around the state and being able to talk to judges outside the courtroom. But I can't tell you what the value is. I had a case in southern Missouri and a person that I met through bar activities basically housed me for a week and acted as local counsel. How do I put a price tag on that?"

While economic factors may enter into the picture when one is pondering involvement in bar activities, Ms. Dodson cautions that money shouldn't be the only consideration.

"I have really enjoyed bar work, because it's been an adjunct to the legal work I did," she said. "I would recommend that they go into it because they're very interested in bar work or projects that relate to them in upholding things like legal services or fair and impartial courts. If they go into it because they think it's just a way to get business, I don't think that works very well."

COURTING A MORE DIVERSE JUDICIARY

As with its largest bar organizations, the composition of the state's courts is an issue of concern for women and minority lawyers. While all of those interviewed in connection with this story

readily admit that progress has been made in diversifying the judiciary, they also say that more work must be done to ensure that the face of the state's courts is not always that of a white male.

A key element of this concern is the clear discrepancy in the makeup of those courts served by Missouri's Non-Partisan Court Plan – where judges are appointed by the governor after nomination by a review commission – versus those in which a judge is elected.

Indeed, information from the Office of State Courts Administrator shows that, while women represent 20 percent of all state judges, only 14 percent of judges in trial courts outside the St. Louis and Kansas City metropolitan areas are female. And, of the 25 minority judges within the state judiciary, all have reached the bench on courts served by the Non-Partisan Court Plan.

"We have discussed the statistics regarding women in judicial positions," said Ms. Rittman, chair of The Missouri Bar's Gender & Justice Committee, "and the fact is that there seems to be less diversity in judicial positions where the judge is selected by election than by the Non-Partisan Court Plan. Certainly from the perspective of a woman who needs to run a judicial campaign and that woman is also trying to be a homemaker and run a practice – the multiple roles that some women are expected to fulfill – it might make it more challenging to devote the time to a campaign."

"There has been a lot of progress in increasing diversity in Missouri courts since I began my career as a law clerk back in 1979," said Chief Justice Laura Denvir Stith of the Supreme Court of Missouri. "Back then, there were no women on the Supreme Court, and no women on the court of appeals. I think the extent of the disparity became apparent with the [1993] report of the Gender & Justice Task Force. At that time,

the survey showed that 9 -10 percent of judges were women. That percentage has since doubled in the non-partisan courts, but progress has been slower in other courts.

"I think that partially reflects the fact that the [non-partisan] plan is in effect in urban areas, where more women and minorities work," she added. "In many rural areas, there are excellent women and minority lawyers who would be excellent candidates [for a judicial post]. In other areas, there are simply not sufficient numbers."

Even the Non-Partisan Court Plan, which is responsible for the majority of women and all minorities currently serving on the bench, carries some built-in disadvantages for women and minorities interested in seeking a judicial position, bar leaders say.

"The statistics would seem to indicate that [the non-partisan plan] is a better system for gender diversity on the bench," Ms. Rittman said. "But there is no perfect system when human beings are involved."

"I don't know that I personally see that connection," said Tracy Bornman, president of the Association for Women Lawyers of Kansas City. "I think it just helps in general to keep stability in the judiciary, regardless of gender or race. I don't know that it necessarily helps diversity."

"I believe the non-partisan plan has assisted this state in putting diverse lawyers, in terms of gender and color, on the bench," Harris said. "Ultimately, the decision on who gets on the bench under the non-partisan plan rests with the governor, and the governors of this state – from both sides of the aisle – should be applauded for making an effort over the years on the diversity issue. However, the numbers bear out that we simply don't have enough women or people of color on the bench.

“There are very talented minorities and women who could serve in that capacity and do a great job,” he continued. “We just need to do a better job in identifying those people.”

“First of all, you’re looking at a numbers game. When you’re looking at 1,000 lawyers, and 100 of them are minorities and 900 are not, then you’re at a disadvantage,” said James. “Secondly, there’s always the issue of credentials. What are you going to put on your application when you apply to be a judge? Are you going to be able to put on there that you were a partner at Bryan Cave, and that you graduated in the top 10 percent of your law school at Michigan when you’re a minority? Not often.

“The non-partisan plan is a good plan if it is used correctly,” he added. “If it is being used to make a political statement to get rid of ‘activist judges’ – whatever that means – then that is going to cut against minorities in some respects. It certainly narrows the number of people from whom to select – assuming they would even apply to be a judge If you only have a handful of conservative African American Republicans from whom to pick, then you have to rely on that group to apply for the judgeships and, if they do, then they may have a shot at being picked.”

“The Non-Partisan Court Plan, because you have a commission that selects the candidates to be sent to the governor, is dependent on knowing the right people, because those people then have to contact the members of the commission to get them to support you,” said Keith Cutler. “Oftentimes when a system is based on knowing the right people, minorities tend not to do well under that system. To the extent that you need to know the right people to contact commission members, that type of system historically tends to disfavor minority attorneys.”

“I observe the strength in the mentoring and the networking relationship among men that women need to work on,” said Ms. Ricci. “I think that goes very far in men being successful and obtaining some of these judicial positions.”

“I think there’s just a problem with the commissions themselves,” said James. “I don’t care who it is – people tend to gravitate toward people who look like them, think like them, live in their neighborhoods. The commissions themselves aren’t very well diversified, and when the commissions aren’t very well diversified, that in and of itself leaves a voice out of the discussion as to whom might be a good candidate to select. I think it is a systemic problem in that there needs to be, among the various commissions, at least an opportunity to have a different sort of discussion. . . . I think it will help more in terms of diversifying the bench if the commissions themselves are more diversified.

“I have nothing but respect for the process and the commissions,” he added. “But I think we sometimes need to expand our credentials. We need to get out of the box a little bit in terms of what we’re looking for.”

“From the perspective of the Non-Partisan Court Plan, I think one of the challenges may be that women often choose practices that don’t involve a lot of courtroom litigation or, even if it involves litigation, doesn’t involve jury trial-type litigation,” Ms. Rittman noted. “There seems to be a focus on that kind of experience in the Non-Partisan Court Plan process.”

Whether it be judicial positions filled by appointment under the Non-Partisan Court Plan or via direct election, the consensus among leaders within the jus-

tice system is clear: Everyone must do more to encourage interested candidates – regardless of race or gender – to work toward a more diverse state judiciary.

“I think that there are few higher rewards in our profession than serving on the judiciary,” Harris said. “Many of the same obstacles that are there for



“Many bar organizations within the state . . . have made strides and efforts. But the proof is in the pudding.”

— Charlie J. Harris, Jr.

people who are not of color are there for people who are of color, and for people who are women. You have an extremely talented pool of people and a limited number of positions. We need to make everyone understand how the Missouri [non-partisan court] plan works for those who are in those areas, and then have access to those people who can help and mentor them. The ABA has a mentoring program for people who have an interest in serving on the federal bench. There is nothing that says we couldn’t do something like that here.

“We have tremendous women and young people of color,” he added, “who simply need to be told that this is attainable – to be a lawyer, to be a judge, to be president of the bar, or whatever they want to be.”

“I think the doors are slowly opening, but we are not quite there yet,” said Veronica Chang-Peshoff, president of the Asian-American Bar Association of Kansas City. “I’m not too much for affirmative action; I still think you need to have qualified people. I am not one who would propose race over qualifications. I think if you look hard enough, there are eligible candidates out there.”

FEATURE ARTICLE

“I see a lot of excellent candidates for judges’ positions within the Asian community,” said Mrs. Yee. “I have complete confidence in the power of intention within our membership. The challenge I see is for our members to have passion and commitment to the larger purpose of lasting leadership.”

“I never think that people should be appointed because they fill a niche,” Chief Justice Stith stated. “But qualified people come in both genders and all nationalities.”

WHERE DOES THE ROAD LEAD FROM HERE?

So where does Missouri’s legal community go from here in pursuing the dream of diversity within its ranks? No one can provide a definitive answer, but all agree that efforts to improve communication and interaction, while pro-

moting available opportunities for involvement, must continue.

“I don’t know what it’s like to be Asian or black, but that doesn’t mean I can’t listen or try to understand in some way what it’s like,” said Lang. “If people can understand that it’s coming from my heart and I’m trying to get there, help me find the right way to say it and get it out there. Let’s work on things.”

In 2005, *KC Counselor*, a publication of the Kansas City Metropolitan Bar Association, marked the 50th anniversary of the integration of that organization. The closing words of that article are still appropriate today:

“This story serves as a reminder to the legal profession – for social progress and chance to occur within the boundary of law, a commitment to action, individually and collectively, will be required. After all, if we look around and

are honest with ourselves, we know that we are still on the road to tolerance, equality, fairness and, ultimately, justice. We have not arrived.”

ENDNOTES

1. Just the Beginning Foundation: First African American Lawyers.
2. Representatives of the Mound City Bar Association were contacted in connection with this article, but declined requests for an interview.
3. *Bar Board to Study Its Own Diversity*, MISSOURI LAWYERS WEEKLY (May 21, 2007).
4. These include the Jackson County Bar Association, the Missouri Asian-American Bar Association, and the Association for Women Lawyers of Kansas City. Attempts to contact officials from the Hispanic Bar Association of Kansas City were unsuccessful.

Gary Toohy is The Missouri Bar’s Director of Communications.