THE MUCH NEEDED AND LONG OVERDUE BROADENING OF THE LEGAL PROFESSION: AN ADDRESS FROM THE BAR

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INTRODUCTION

Walk into almost any established law firm anywhere in the country. Whom will you see there? White middle class males, a few women and hardly any racial minorities. You almost certainly won't see anyone who is handicapped and a quick scan of the partners' names will probably tell you what religious or ethnic group is predominant.

Try this same game with the faculty of almost any accredited American law school or the judicial rosters of the state and federal benches. You'll find about the same results.

It has been nearly a generation since the civil rights movement forced public attention to the disgraceful institutional racial discrimination which prevailed in the nation. It has been more than a decade since women began protesting widespread discrimination against them. Recent years have seen similar protests by many other groups including the handicapped, Hispanics and other ethnic minorities. Many aspects of American life have changed dramatically in response to these protests and demands for a more just society.

Ironically, I fear, we lawyers who have helped spearhead so many of these changes through court battles and legislation have been woefully lax in cleaning our own house. Our legal system is still overwhelmingly operated by white males from middle and upper middle class backgrounds.

All of this is so obvious that it would not seem to warrant repetition here. However, the blunt fact is that this unmistakable situation goes largely unnoticed by the legal profession, particularly its leadership. This may not be due to conscious racism or sexism, but to a simple lack of awareness of the narrowness of our profession.

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My discussion here will address these questions: (1) What are the facts about the underrepresentation of women, racial minorities and the handicapped in the legal profession? (2) Why should the profession be broadened? (3) What would result from broadening the profession? and (4) How do we go about accomplishing this goal? After analyzing these questions, I shall conclude by describing how this broadening of the profession gives us some different perspectives on the profession itself, and what responsibilities this issue places on each of us as a practicing attorney.

WHAT ARE THE FACTS ABOUT UNDERREPRESENTATION IN THE LEGAL PROFESSION?

You might ask what facts support my assertion that women, racial minorities and the handicapped are not represented in adequate numbers and equal status in the legal profession? I will examine the current situation of each of these groups in detail.

WOMEN IN THE PROFESSION

When the American Revolution was getting underway, the nation's first feminist, Abigail Adams, wrote to her husband John about her hopes that the new nation he was developing would not neglect women. More than 200 years later all of Abigail's hopes have still not been achieved.

It has taken women many years to gain a foothold in the legal profession. In 1910, only one percent of the nation's lawyers were women. In 1970, the proportion was only three percent. Since then, due largely to the feminist movement, there began the dramatic movement of women into the legal profession. Currently thirty-seven percent of American law students are women, up substantially from a decade ago, and the percentage is steadily increasing. Today there are 94,000 women among the 606,000 lawyers in the nation, or about fifteen percent of the total. If current trends continue, about one-third of American lawyers will be women by the year 2000.

In 1971 less than 200 women lawyers were judges in state courts. By 1980 this number had nearly tripled, reaching 549. Un-

2. Id.
5. Women on the Bench, supra note 1, at 43.
6. Id.
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til the late 1970's only eight women had served as federal district
court or appeals court judges in the entire history of our country.7
President Carter alone appointed forty-one women to the federal
bench and President Reagan has named the first woman to the
United States Supreme Court.8 I am optimistic that this trend will
continue. As more women become lawyers, it necessarily follows
that more of them will be judges.

How does Nebraska compare with the rest of the nation? My
research shows that we are fairly consistent with the nation as a
whole. About ten percent of Nebraska's 4,267 attorneys are wo-
men.9 Our judiciary, however, is less representative. There are
only three women among the 120 state court judges and none in
the eleven federal court judicial positions.10 Nationally, slightly
less than four percent—some 1,053 of the 27,000 federal and state
judges—are women; the figure in Nebraska is 2.3%.11

Having started the discussion of women in the law with an his-
torical allusion, I will close it with a regional anecdote. Wyoming
Territory, which in 1869 granted women's suffrage (the first state or
territory in the nation to do so), claims the honor of the nation's
first woman judge.12 In 1870, the territorial governor appointed Es-
ther Morris, a nonlawyer, to the position of part-time justice of the
peace in the intriguing location of South Pass Mining Camp.13 Lit-
tle else seems to be known of her tenure or her reception by the
local bar!14

RACIAL MINORITIES IN THE PROFESSION

Like women, members of racial minorities have increased
their representation in the profession but not nearly as dramati-
cally. In the past ten years, their representation has risen from
1.3% to 4.2%, less than one-fifth of the percentage of racial minori-
ties in the nation's population.15 Stated another way, of all lawyers
practicing in the United States, fewer than three percent are black

7. Id.
8. Id.
10. Id.
11. Id.
12. Women on the Bench, supra note 1, at 43.
13. Id.
14. This little-known story is contained in an unusual United Technologies
public service advertisement. In the advertisement United Technologies describes
and praises the fact that increasing numbers of women are becoming judges now.
Pollack, former dean of Antioch Law School, pleads for the allocation of greater
legal resources to the poor. He asserts the need for more minority lawyers as a part
of this process.
and even fewer are Hispanic, Native American or from other such groups.\textsuperscript{16}

Minority enrollment in accredited law schools is estimated at eight percent, of which one-half is made up of black students with the remainder consisting of Hispanics, Native Americans and other groups.\textsuperscript{17} The number of minority group students being accepted by accredited law schools has risen by only nine percent since 1976 (after having more than tripled between 1969 and 1976).\textsuperscript{18} In the fall of 1981, the actual number of minority students enrolled in law schools was 11,134 and 11,611 a year later.\textsuperscript{19} The number of minority law students has risen only 1,050 since 1976 after increasing by 6,500 from 1969 to 1976.\textsuperscript{20}

There are few minority faculty members in law schools. For example, in the fall of 1982 Harvard Law School's full-time tenured faculty of sixty included just one female professor and one black.\textsuperscript{21} At the same time about thirty percent of the students were female and ten percent were black.\textsuperscript{22} When Professor Carl E. Singley was recently appointed Dean of Temple University Law School, he became only the third black to hold such a position at a major law school.\textsuperscript{23}

Minority group members also haven't fared very well in the large law firms. For example, San Francisco's ten largest law firms have among them one black partner, one Asian partner and one Hispanic partner.\textsuperscript{24} Four of the firms have no minority partners at all.\textsuperscript{25} Nationwide, less than three percent of the lawyers in the largest law firms are black.\textsuperscript{26} More than two-thirds of the firms have no black partners and one in six (including two very prominent New York City firms) have no black attorneys at all.\textsuperscript{27}

\textsuperscript{16} There Needs To Be A Better Balance (on file with CREIGHTON L. REV.. This is a small brochure designed to encourage and assist minority students to enter law school.). See generally Smith, The Invisible Lawyer, BARRISTER, Fall 1981, at 42-49.

\textsuperscript{17} Professor Smith, a distinguished member of the University of Pennsylvania Law School faculty, presents here an accurate, thoughtful and challenging analysis of the position of minorities in the legal profession. His article is must reading for anyone who is concerned with this important issue.

\textsuperscript{18} Smith, supra note 16, at 44.

\textsuperscript{19} The Daily Record (Omaha), July 2, 1982, at 1, col. 3; Id. at 10, col. 1.

\textsuperscript{20} The Omaha Star, Feb. 24, 1983, at 2, col. 5.

\textsuperscript{21} The Wall St. J., Jan. 12, 1982, at 1, col. 5.

\textsuperscript{22} N.Y. Times, Nov. 26, 1982, at 17, col. 2.

\textsuperscript{23} Id.

\textsuperscript{24} Christian Science Monitor, Jan. 19, 1983, at 13, col. 7.


\textsuperscript{26} Id.

\textsuperscript{27} Id.
Hispanic lawyers do even worse. Hispanic lawyers hold only 0.61 percent of the jobs in big firms.\textsuperscript{28} Well over three-fourths of the large law firms have no Hispanic partners and more than half of the firms have no Hispanic lawyers at all on their rosters.\textsuperscript{29}

I would be unfair to the legal profession if I failed to put these statistics in context by comparing them with how minorities have fared in corporate management. Although blacks constitute almost twelve percent of the American population, in 1981, they accounted for only 4.2\% of the nation's corporate officials and managers.\textsuperscript{30} No black heads any of Fortune magazine's listing of 1,000 major companies.\textsuperscript{31} Otis M. Smith, general counsel of General Motors, is the only black who heads a major corporate law department and thus is in a position of substantial corporate power.\textsuperscript{32} The addition of women and ethnic minority directors to the boards of publicly held companies has peaked.\textsuperscript{33} While the ten-year trend was up dramatically, that trend is now flattening.\textsuperscript{34}

The movement of blacks into the legal profession is to some extent a reflection of what is happening in society as a whole. In this respect, the trends are not very encouraging. The leveling off of the number of blacks in law schools stems from the situation in the colleges. Blacks are now a shrinking presence on the nation's university campuses.\textsuperscript{35} Economic problems are forcing blacks into two-year colleges (where more than half of the nation's 1.2 million black students are currently enrolled) with the result that fewer blacks are preparing for law or any other graduate school.\textsuperscript{36} In 1960, 6.4\% of the students in American colleges and universities were nonwhite.\textsuperscript{37} That rose to 13.8\% by 1977.\textsuperscript{38} However from 1977 to 1982, the increase stopped and overall minority enrollment has held steady at about thirteen percent and black enrollment at about ten percent of all students.\textsuperscript{39}

Economics has been a crucial factor in the decline in minority enrollment but there also has been a lessening of affirmative action

\begin{footnotes}
\item[28] Id.
\item[29] Id.
\item[34] Id.
\item[36] Id.
\item[37] N.Y. Times, Nov. 28, 1982, at 1, col. 1.
\item[38] Id.
\item[39] Id.
\end{footnotes}
effort. Apparently much of the public feels that nothing further needs to be done. There also appears to be a widespread perception by minority students and their teachers that a college education is not as realistic a possibility for them as it once was. Needless to say this affects the number of potential law students.

PHYSICALLY HANDICAPPED PERSONS IN THE PROFESSION

People with serious physical handicaps are beginning to enter all professions, including law, in greater numbers. This trend began in the 1970s when larger numbers of handicapped persons began enrolling in college and getting the preparation they needed for professional schools. From 1978 to 1983 the number of handicapped undergraduates doubled. Today 7.5% of disabled Americans have completed college compared with 16.2% of the nonhandicapped population.

This progress reflects the nation's determined efforts to remove the barriers which once kept many handicapped people from an elementary or secondary education let alone anything higher. Federal law, for example, now requires public buildings, such as those at universities, to have fewer physical barriers and the handicapped are now entitled to "free appropriate public education" in the least restrictive environment.

New technology enables handicapped persons to practice a profession. For example, a computerized video display screen allows deaf lawyers to communicate during arguments in court by reading the statements of witnesses and then responding to them.

It is symbolic of this progress that there is now an American Blind Lawyers Association. Its president, John P. Nelson, notes that there are many ways that a handicapped individual can overcome his or her difficulties. "If a blind lawyer has to do lots of library research, he can hire a secretary to read to him, and the lawyer in a wheelchair can have his office designed to meet his

40. Id. at 32. This article contains a wide-ranging analysis of possible reasons for these minority enrollment declines.
41. Id.
42. N.Y. Times, July 18, 1983, at A1, col. 3.
43. Id.
44. Id.
45. Id.
47. N.Y. Times, July 18, 1983, at A10, col. 3.
48. Id.
49. Id.
Handicapped lawyers, like women and minority lawyers, have found their greatest opportunities in corporations, banks and the government. They still face problems breaking down stereotypes. However, progress is being made, according to Mary Conrad, a quadriplegic who is senior counsel of the Attorney Registration and Discipline Committee of the Illinois State Supreme Court, who noted: "Ten years ago, physically handicapped lawyers rarely got to try cases because their employers were afraid that a handicapped person would prejudice the jury. . . . Today the handicapped are in all areas of law, including the judiciary."

Of 1,620 persons recently taking the New York State Bar examination, 30 were physically handicapped. Fourteen who were unable to write were authorized to type their examinations. One blind student took the test in Braille. One quadruple amputee managed to write it out, pencil in mouth, and a victim of cerebral palsy who was incapable of writing and barely able to speak was assisted by two amanuenses, one to discern what he said and the other to transcribe it. This is encouraging indeed. It is almost impossible to imagine it having happened a decade ago.

SUMMARY

As can be seen from the statistics, the problems and prospects of women, minority group members and the handicapped differ somewhat and stem from somewhat different historical roots. Not all will be equally easy to solve and not all can be blamed totally on simple discrimination by the legal profession. However, a number of comments can be made. Women, racial minorities and handicapped persons are still severely underrepresented in the legal profession. Once in the profession they are disproportionately likely to work for the government, as corporate counsel and in positions other than in private practice and they are disproportionately relegated to the lower levels of the profession. This is evidenced by the paucity of women, racial minorities and handi-
capped persons among law firm partners, on the bench, as law professors and as heads of corporate law departments. However, as more of today's young female, minority and handicapped attorneys gain experience we can hope for change.

WHY SHOULD THE PROFESSION BE BROADENED?

The American legal profession has been getting along fine. It has been growing rapidly in essentially its present form. So why should anyone get excited about the facts I have just presented? I think the same question could have been asked by just about any segment of American society these past twenty years. Often it is we lawyers who have answered it. It comes down to a word which is the cornerstone of our profession. Justice.

I could, but will not, take valuable time to sermonize on this point. I suspect that most of those reading this piece have heard similar sermons in their classrooms and places of worship most of their lives. In addition to morality, however, there are a number of practical reasons why the legal profession should be especially sensitive to the importance of including representatives of all segments of society throughout all levels. It is these points on which I will concentrate here.

First, legal representation is not adequate unless it is competent. Competence requires a lawyer to truly understand and be sensitive to his or her clients. In our multiracial and multicultural society, we must have lawyers who are themselves from all parts of society in order for us as a profession to gain this sensitivity. Only blacks can truly understand some concerns and issues confronting blacks and so it goes with other groups. In our pluralistic society, we cannot shut out any significant voices and expect to do a competent job of meeting the needs of society for legal representation.

Second, the American nation has lasted for two centuries because it has developed a system in which people of fundamentally different views can coexist. In the long run, our system of justice will last only if it retains the confidence of substantially all people. Groups and individuals who are kept out of meaningful participation in any activity, including leadership, tend to have no confidence in the activity. We cannot afford to allow this to happen to the justice system in which the legal profession plays such an important role. Until racial minorities, for example, become significantly involved in the legal profession, they will not have genuine confidence in it. There is thus a direct relationship between minor-
ity participation in the legal profession and continuation of our present system of law and justice.

A third reason for opening up the legal profession is because any unreasonable overt restrictions upon admission to a profession are clearly antidemocratic. These include any conditions and traditions related to race, religion or sex which have the practical result of causing actual restrictions on admission. In an egalitarian society we cannot, as a matter of political and social philosophy, maintain professions which, because of history and institutionalized traditions, in practice keep women and racial minorities in an underrepresented and disadvantaged position. We must stress the only qualification which counts—the ability to compete. It is interesting what happens when people get a chance.

Fourth, the legal profession, like most others, is largely self-governing. It is a licensed monopoly. Professions are entitled to remain self-governing only if they govern themselves in the public interest. We must define and understand this public interest as the public perceives it.

An organized elite (predominately white, male and middle class) is not broad enough to recognize and understand all aspects of the public interest. All professionals, particularly lawyers, at times appear dangerously out of touch with the everyday world. This is one of our profession's major shortcomings today. We lawyers frequently fail to understand what the public thinks about the law and about us. We seem blinded by our own views of the law and its practice. We could better understand the public perceptions if we included a broader spectrum of the population among our members. And I'm not speaking only about minorities. Ethnic working class whites suffer many of the same problems as racial minorities and women.

Fifth, professions, particularly the law profession, must lead the way in getting rid of the "we-they" syndrome of racial or economic privilege versus non-elites. Churches, social workers and organizations officially concerned with promoting brotherhood cannot do it alone. All persons in a position of influence should be assisting in this effort. Certainly the legal profession from its position of leadership ought to be involved.

Another reason for broadening the legal profession is because even a casual understanding of history tells us that social change is inevitable. It is now inevitable that women and racial minorities will gain power and prestige in the years ahead. I welcome this. However, whether one welcomes it or not, it makes sense for the established legal profession to assure that it has a strong influence
in the design and implementation of this and other inevitable social changes. If we do not, others will do so. And those who would do so might very well be extremists of one type or another whose activities are divisive and create chaos. We must make sure that we are involved in helping bring constructive change. We must do so in an open manner which involves the public at large, not just lawyers. As Justice Louis Brandeis said, "Sunlight is the best of disinfectants."\(^{59}\)

In addition to the reasons listed above, lawyers more than anyone else, with the possible exception of the clergy, ought to be aware of moral issues. Bringing women, racial minorities and handicapped persons into our professions in greater numbers is a matter of decency. Institutional discrimination is utterly immoral.

Finally, the law oppresses some people. Although our legal system is the best in the world, it still works much better for some than for others. The system obviously will be less oppressive to such people if it is run by people who understand this oppressiveness and will do something about it. Sensitivity to oppression requires exposure to it. It requires contact with a broad range of people. When white male attorneys from middle class backgrounds work with women, racial minorities or white male attorneys from working class or rural backgrounds, they will become more sensitive to the needs and problems of those groups.

WHAT WILL RESULT FROM BROADENING THE PROFESSION?

In general, the legal profession will become more responsive to the legal needs of the various groups which have not been in the mainstream of either the profession or life generally. This will be a stabilizing influence on society because it will cause the legal profession to be more sensitive to and mindful of the disadvantaged.

Greater social sensitivity in our crucial profession will lead to more legislation and social measures of benefit to the poor and other disadvantaged persons. We can help make the "American dream" a reality for more people. Let us be clear about the implications of this. We are talking about a form of orderly social revolution because it will result in transferring some power, privilege and property from rich to poor and also will serve as a racially equalizing factor. This is conservative, not radical, because it is designed to nurture and thus preserve our magnificent legal system.

In addition, bar associations will become much more constructive entities. With input from women and racial minorities the organized bar will be influenced to address important legal social issues as well as legal problems of the poor. There will be considerably less emphasis on just fun and games. There may also be less concern about bar association unity. If a bar association is doing a good job for the public as well as its own interest, it will survive as a viable institution whether unified or not. A bar association’s long-term credibility and strength is based upon the wisdom of its goals and the constructiveness of its activities, not upon whether or not it is technically unified.

The public often sees the unified bar as a closed shop operating primarily for the benefit of lawyers and not the public. Once people view the bar in a more public oriented role they will lose interest in trying to change our form of organization. Once we lose some of our concern for bar unity, leaders can devote greater attention to more important tasks than arguing about whether or not the bar ought to be unified.

Another result from broadening the profession would be the effects upon the youth of our nation, which will be profound. The new women and racial minority lawyers will provide effective role models for young people. The new generation will cease picturing the legal profession as upper class white males. This will help make the American ideal of equality a reality, not just empty words, and thus strengthen loyalty to our system of government. Also, life as a lawyer will be more interesting because we will be exposed to more points of view. And finally, we white males will be better lawyers. We can use our new colleagues to help us understand the problems and needs of our female and racial minority clients.

**HOW DO WE GO ABOUT BROADENING THE PROFESSION?**

Having accepted the assumption that our profession needs broadening, how do we do so? I would suggest we examine what some other professions and what the legal profession already have done.

For example, in 1969 the American Institute of Certified Public Accountants recognized a similar problem and set out to encourage racial minorities to become accountants and then to encourage their hiring. The Institute appointed a Minority

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60. *American Institute of Certified Public Accountants, Minority Recruitment and Equal Opportunity Committee, the First Decade* 5 (1980).
Recruitment and Equal Opportunity Committee to develop a program to carry out the goals of its resolution on equality.\textsuperscript{61} Institute President Ralph E. Kent said that the AICPA members should seek "to obtain entry to the profession of members of minority groups until it is clear that equality of opportunity in the accounting profession is a fact as well as an ideal."\textsuperscript{62} At the time he spoke, there were only 150 black CPAs practicing in the entire country and only 704 minority persons (including American Indians, Asians, blacks and Hispanics) employed by public accounting firms.\textsuperscript{63}

The program developed by the Institute consisted primarily of efforts to improve the educational and employment opportunities of minorities. The committee established a number of minority scholarships. From 1970 to 1979 it awarded $1.29 million in scholarships to minority accounting students.\textsuperscript{64} It also established an extensive program for faculty fellowships in accounting for professors teaching at traditionally black and minority colleges and universities.\textsuperscript{65} A program was begun to increase the number of minority Ph.D.'s in accounting and to improve the research and teaching competencies of faculty members in traditionally black and minority colleges and universities.\textsuperscript{66} These doctoral fellowships provided the financial assistance necessary for minority faculty members to pursue doctoral study and for visiting scholars to replace those on leave.\textsuperscript{67}

In the area of employment, the AICPA Code of Professional Ethics Rule 501 was interpreted by the Ethics Executive Committee to mean:

"Discrimination based on race, color, religion, sex, age and national origin in hiring, promotion and salary practices is presumed to constitute an act discreditable to the profession in violation of Rule 501."\textsuperscript{68}

The committee also held seminars aimed at encouraging minority employment and upward mobility.\textsuperscript{69} It also encouraged state societies of CPAs to establish and support the Institute's own Minority Recruitment and Equal Opportunity Committee by sug-
suggesting program such as: (1) high school career programs for minority students to encourage interest in accounting as a college major; (2) internships for minority accounting majors; (3) additional scholarship funds for minority accounting majors and activities to acquaint them with AICPA scholarships and to furnish them with applications; and (4) programs to increase employment and promotion opportunities in organizations not then participating. 70

Since these programs were begun, progress has been dramatic. More than 150 minority accounting firms have been established and substantial numbers of minorities have been integrated into traditionally white firms. 71 It is estimated that the percentage of minorities in major accounting firms has risen from 4.3% in 1979 72 to six percent today. This past year, the AICPA awarded 343 scholarships totaling $174,500 to minority accounting students. 73

Another interesting effort is one currently run in Nebraska by the Omaha Board of Realtors. 74 It provides three annual scholarships to minorities for two thirty-class hour courses necessary to fulfill the educational requirements to take a real estate examination. 75 Each scholarship also includes a prelicensing course, application filing fees to the Nebraska Real Estate Commission and one year's membership dues payment for each licensee entering the real estate business who associates with a member firm. 76

Another worthwhile program is that undertaken by the University of Nebraska Medical Center which established a Minority Student Affairs Office in 1976 to help increase the number of ethnic minority students entering the health professions. 77 Since the office was established, minority enrollment has increased by 86 percent. 78 It encourages interest in health careers, pre-enrollment and other academic assistance and encourages scholarships. 79 Recently five minority students received awards for their academic performance in a summer educational program at the medical

70. Id. at 17.
71. Id. at 16.
72. Id.
75. Id.
76. Id.
77. Nelson, Minority Student Affairs Experiences Growth, THE UNMC NEWS 4 (July 8, 1983). This University of Nebraska Medical Center program has been most capably directed by Anece McCloud since it began and clearly has established itself as a constructive endeavor. See id.
78. Id.
79. Id.
The legal profession also is at work. In 1982 the Law School Admission Council, which represents 173 law schools, appropriated $1.2 million to encourage minority enrollment during the years 1983 through 1986. The LSAC Minority Enrollment Task Force, which was formed in 1980 to study the question of minority access to law school, developed the proposal approved by the council.

Rennard J. Strickland, Task Force chair, has stated:

More and more we hear that minority people think that those in authority do not care about them. . . . They feel that they are being abandoned. But the legal education community wants to send a different message. . . . We do care, and we are committed to getting more minority people into law school.

This LSAC campaign has developed a series of radio and print ads to encourage minorities to enter the legal profession and is preparing a financial assistance directory to assist minorities in obtaining financial aid. It also intends to work with the American Bar Association to gather definitive data on minorities in the legal profession.

Another effort within the legal profession has been the establishment of conferences on the "Practice of Minority Lawyers in the Future" sponsored by the American Bar Association Young Lawyers Division Minorities in the Profession Committee. For example, such a conference was held at Howard University Law School in Washington, D.C. on May 15, 1982. This conference was attended by over 300 minority lawyers and dealt with a wide range of topics about the problems encountered by minority lawyers in the legal profession, including:

1. Hiring, retention, affirmative action and career mobility in governmental agencies;
2. Problems minority lawyers experience in discipline areas, avoiding common pitfalls and ethical considerations;
3. Realistic considerations/employment opportunities for minority law students;

80.  _Id._
81.  The Daily Record (Omaha), July 6, 1982, at 1, col. 5.
82.  _Id._ at 10, col. 4.
83.  _Id._
84.  _Id._
85.  _Id._
87.  _Id._
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(4) Alternatives to minority lawyers interested in establishing a practice which deals with involvement in Legal Services Programs, Judicare, court appointments, prepaid legal plans and guardian ad litem projects; and
(5) Law office economics for the sole or small firm practitioner.\(^\text{88}\)

The most extensive and interesting effort to increase minority enrollment in the legal profession has been that conducted by the Oregon State Bar Association. In 1973 the Oregon State Bar Committee on Civil Rights took official notice of the fact that while approximately five percent of the population of Oregon consisted of minority persons, there was less than one-half of one percent active minority membership in the Oregon Bar (only nineteen minority members of a Bar of 4,000).\(^\text{89}\) Since the Oregon Bar also was a unified Bar where membership is a prerequisite to practicing law in Oregon, the committee recommended that the Bar do something to increase minority participation in the profession.\(^\text{90}\) The committee then developed an affirmative action plan which, after some revisions, was modified to state its basic goals as follows:

1. To increase the awareness of all qualified minority students of the possibility of a legal career;
2. To increase the number of minority students enrolled in pre-law programs and in Oregon's three law schools; and
3. To increase the number of minority students enrolled in the legal profession, especially in private practice, over the course of the next fifteen years so that such number equitably reflects the proportions of minorities in the overall population of the state.\(^\text{91}\)

This Oregon program has primarily addressed two concerns: recruitment and financial aid.\(^\text{92}\) The program is based on a special dues assessment to Bar members ($15 per active attorney in practice two years and over and $9 per active attorney in practice for less than two years) and is operated by a full-time staff program director.\(^\text{93}\) Its total 1982 budget was $115,000, of which $95,700 came from Bar dues.\(^\text{94}\) The remainder came from loan repayments, interest on investments and carry-over of funds.\(^\text{95}\)

\(^{88}\) *Id.* at 3-4.

\(^{89}\) OREGON STATE BAR ASSN. REPORT, HISTORY AND DESCRIPTION OF OREGON STATE BAR’S AFFIRMATIVE ACTION PROGRAM 61 (1982).

\(^{90}\) *Id.*

\(^{91}\) *Id.* at 63.

\(^{92}\) *Id.* at 64.

\(^{93}\) *Id.* at 62.

\(^{94}\) *Id.* at 65 n.20.

\(^{95}\) *Id.*
The program does many things: For example, the program director visits both in-state and out-of-state colleges to recruit and counsel minority students who plan to enroll in law school.\textsuperscript{96} These efforts annually result in contacts with over 250 interested students.\textsuperscript{97} Lawyers also visit elementary, junior high and high schools to speak about the role of the lawyer in society and tell interested students how they can prepare for a career in law.\textsuperscript{98}

In addition, since its inception the program has awarded $130,000 to a total of sixty-two minority law students through a conditional student loan program.\textsuperscript{99} It has established a separate Oregon State Bar Minority Scholarship Program, Inc. and obtained for it Internal Revenue Service Sec. 501(c)(3) approval so that grants to it are tax deductible to donors.\textsuperscript{100} This scholarship program now seeks grants from charitable foundations on a nationwide basis.\textsuperscript{101} There are many other aspects to this Oregon effort, including a minority summer law clerk placement program, an emergency student loan fund and a bar-sponsored continuing legal education program on discrimination law.\textsuperscript{102}

The results of this program have been profound. The number of practicing minority lawyers in Oregon has increased from 19 in 1975 to 92 in 1982.\textsuperscript{103} The percentage of law students has increased from 4.54\% to 7.09\% between 1974 and 1982 (from 70 to 121).\textsuperscript{104} Among these minority students are blacks, Hispanics, Native Americans and Asian Americans.\textsuperscript{105}

Oregon lawyers are pleased with these results, but have concluded that the task needs further attention.\textsuperscript{106} Consider this statement from a recent report of the State Bar's Affirmative Action Program:

(1) Notions that the time for programs such as the Affirmative Action Program has passed hold little weight. The number of the minorities in the legal profession both in Oregon and nationwide is still far from parity with either that of white males or white females. There is still the need for, and the bar still has a responsibility to give

\begin{itemize}
  \item \textsuperscript{96} Id. at 64.
  \item \textsuperscript{97} Id.
  \item \textsuperscript{98} Id.
  \item \textsuperscript{99} Id. at 65.
  \item \textsuperscript{100} Id.
  \item \textsuperscript{101} Id.
  \item \textsuperscript{102} Id. at 66-67.
  \item \textsuperscript{103} Id. at 65 n.29.
  \item \textsuperscript{104} Id. at 67, 68 n.29.
  \item \textsuperscript{105} Id. at 61 n.1.
  \item \textsuperscript{106} See id. at 68.
\end{itemize}
assistance to the members of the minority community who seek entry into the legal system. It is only through the legal system that the chains of extreme poverty and oppression associated with ghetto, barrio, and Indian reservation can be broken. . . .

(2) The impetus toward defederalism and the push toward greater local control further bolster the idea that if adequate minority representation is ever to become a reality, that reality must begin at the local level. Oregon's Affirmative Action Program serves as a paradigm for other states, including state and local bar associations.107

This effective effort is the direct result of a genuine commitment by the Oregon State Bar Association to recruit more minority law students in the Oregon law schools and to increase the number of minority attorneys practicing in the State.

Other than Oregon the only other state doing anything in an organized fashion is Nebraska. In 1982, the Nebraska State Bar Association established a special Access to the Legal Profession Committee and charged it with the responsibility of devising ways and means to encourage greater participation by women, racial minorities and handicapped persons in the profession. This committee is now actively working. It is a determined, competent and well respected group.108

Using these efforts of others for guidance and being willing to design some procedures of our own, what precisely should we do? First an foremost, we must adopt positive attitudes about women, racial minorities and handicapped persons and make them feel welcome in the profession. Unfortunately, the attitude of some attorneys towards these persons is one of just bare tolerance. No one likes to be in a situation where he or she does not feel welcome.

The unfortunate fact is that a large law firm, for example, can be intimidating to a woman or member of a racial minority. It is not easy for a black law student seeking a position as a clerk or associate to walk into a 100 person law firm dominated by "Ivy League" white males. Nor would it be easy for the same black law student to walk into a one or two person all white male office in a small community.

107. Id.
108. This Nebraska committee currently is developing specific educational materials and programs to (a) acquaint minorities with the legal profession, (b) advise them as to how best to prepare for law school, and (c) encourage them to enter the profession. It also is preparing written materials which will inform practicing attorneys of the importance of expanding opportunities in the profession for women, racial minorities and handicapped persons.
Without being patronizing, we simply must convey a receptive attitude. How do we do this? For starters, ask to meet with groups of minority and women law students. Listen attentively to their views and inform them directly that you want them in the profession, in your community, in your law firm. Don't be neutral. Strike a blow for freedom.

Second, lawyers must take affirmative measures to attract racial minorities to the legal profession. It is not enough just to sit back and say we will not discriminate. We need to seek out racial minorities and encourage them to enter the profession. Once they are in law school we must seek them for clerkships and positions in our firms. It is a fact that a number of black law graduates have left Nebraska because of lack of job opportunities here.

This effort will require a number of specific projects. For example, it is necessary to identify racial minorities who might be interested in law early in their educational training. It may be important to meet with these students when they are in junior high school to (a) encourage them to become lawyers, and (b) advise them as to how to arrange their academic careers in order to be adequately prepared for a legal education and able to meet law school admission requirements.

It is also important to avoid any tokenism either in fact or appearance. This means that law firms must involve women and racial minorities in all kinds of law positions and not treat them as different in any respect. For example, women and racial minorities should be involved as much in litigation and tax matters (traditionally legal areas handled only by males) as they are in other types of legal work.

Financial help must be provided where needed. This is particularly true with regard to racial minorities. Those state bar associations which have bar foundations should encourage their foundations to provide scholarship help for minority law students. Lawyers can also encourage clients and others to provide scholarships and financial aids for minority students both at law schools and in undergraduate prelaw studies.

In addition to the steps already mentioned, specific affirmative efforts must be taken to recruit women and racial minorities for appointment to law school faculties, to positions of leadership in the organized bar, as partners in law firms and as judges. We emphatically must understand this reality: in order to bring these persons into positions of leadership in the legal profession, we must seek them out and encourage them. I am not talking about quotas. Nor am I suggesting any lowering of standards. Quite the opposite:
I simply suggest that we must be absolutely sure that qualified persons, irrespective of sex or race or physical handicap, will be encouraged and given appropriate opportunities. This requires a conscious effort.

We should remember that a major difficulty today in recruiting women and racial minorities as law partners or judges is that there are too few of them with substantial legal experience. The obvious reason for this lack of experience is that women and racial minorities historically have been discriminated against at the entry level in the profession. When a group has been discriminated against at the entry level, that group necessarily will not have as proportionally many experienced representatives as will other groups (i.e. white males) who have suffered no entry level discrimination. However, because this situation is changing it will be harder to claim a lack of qualified lawyers in the future.

Finally, lawyers must recruit others in this effort. Our greater goal is not just more women and racial minority attorneys but rather more women and racial minority business leaders, architects, physicians and everything else. This is how we make a democratic society work. And so, we should encourage our clients to (a) hire and promote women and racial minorities, (b) make bequests of financial aid for minorities in school and (c) take other measures which will broaden the participation of women and racial minorities in the professions, business and life generally.

Let us remember that we can best influence others by the example of our own recruitment of women, minority and handicapped attorneys. We should remember what the great medical missionary, organist and Bach scholar Albert Schweitzer once said: "Example is not the best teacher in the world; it is the only teacher."109

WHERE DOES ALL THIS LEAD US?

In George Bernard Shaw's "Man and Superman" there is this acid statement:

The reasonable man adapts himself to the world; the unreasonable one persists in trying to adapt the world to himself. Therefore, all progress depends on the unreasonable man.110

From Shaw's quotation must we conclude that an effort to broaden the legal profession somehow means that we must be un-

110. G. Shaw, Man and Superman — (1952), quoted in Saturday Review 30 (May 1, 1965).
reasonable? Clearly not. Shaw is simply telling us that you have to be willing to try something different (and thus appear different) in order to accomplish anything which changes the status quo. And so, at the risk of being called unreasonable, we ought to address this question of broadening the profession forcefully. This requires us to examine our profession's meaning, its goals and its future from a number of different perspectives. What are these perspectives?

Too often we lawyers tend to ignore truly important issues and devote our energies to pedestrian matters. The legal profession should attack social issues, particularly those relating to law, such as recruiting women, racial minorities and the handicapped to the profession. We should not seek complete unanimity as to what the legal profession should do in these areas. We just ask for adequate concern. We should be guided by a recent wise statement of Professor Paul A. Freund, who said, "The critical spirit is simply a recognition that the pursuit of excellence is not a quest for the bird in hand, that it is marked by a tension between tradition and change, between heritage and heresy."\(^{111}\)

Bar associations tend to spend time on shallow issues, some of which are of a very limited economic or legislative nature.

The organized bar needs to free itself of these narrow concerns, but history shows that the bar in its present form is not likely to do this. Bringing women and racial minorities into active participation and leadership in the organized bar is necessary to help bring about the rejuvenation of the bar itself. A broadening of the spectrum of people in leadership roles in bar associations will force a broadening of concerns plus livelier dialogue on the problems and needs of society. It will result in creative suggestions for what lawyers can do to help society change. The organized bar cannot afford to continue in its traditional, narrow role. It must be prepared to change with the times and be prepared to play an active role in law reform efforts. I repeat, it is unlikely to do so unless the membership and leadership of the law profession are significantly broadened.

Members of the legal profession must also become more concerned with public service and less with making large sums of money. We must place more stress on meeting the needs of the poor and disadvantaged. When service becomes a higher priority than earning enormous fees, our ethics will improve. I hope that

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women and minorities in our profession, and especially in leadership roles, might help make this dream a reality.

Even now the most respected attorneys are those with well-deserved reputations for helping others, not those who are just big fee chasers with expensive lifestyles. These service-oriented lawyers have learned that their profession becomes much more satisfying when helping others is a primary goal.

CONCLUSION

In summary, I submit that broadening the legal profession will serve many useful and indeed crucial purposes. These include:

—The need to gain the contributions which women, racial minorities and the handicapped can make to the legal profession;
—The need of the legal profession to be more responsive to the nation's legal and social needs; and
—The need to free bar associations from trivial, defensive concerns so that constructive efforts can be devoted to more important matters.

Our eventual goal is a profession in which race, sex, ethnic backgrounds, religion and physical handicaps are not issues. We will know we have succeeded when the presence of blacks in the courtroom is no more remarkable than their presence on the football field—and when women head bar committees as readily as they chair charity fundraisers. Broadening the profession ultimately will result in the elimination of such unneeded adjectives as “women” lawyers or “black” lawyers or “Italian” lawyers. Someday perhaps we shall have just plain “lawyers.”

This will not happen, however, unless the legal profession takes concrete steps such as those I have outlined in this paper. The well known VISTA motto is instructive: “If you’re not part of the solution, you’re part of the problem.” Each of us must take some tangible action and support the efforts of others. By working together and refusing to give up when difficulties arise, we can and will have an impact on the future of our profession. We must go beyond the minimal legal obligations which are placed on us by legislation and the courts to avoid race and sex discrimination. We must view those requirements as minimums and consciously seek to broaden the opportunities our profession offers qualified individuals of whatever background.

The legal profession has a tradition of leadership. Let us build on this leadership by developing a profession made legitimate by its significant inclusion of persons from all elements of our pluralistic society.