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ADDRESSING THE LACK OF DIVERSITY IN THE LEGAL PROFESSION, AT THE UNDERGRADUATE LEVEL

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ABSTRACT

The study and practice of law is among the most respected and well-regarded pursuits; unfortunately, it is also among the least diverse. The persistent and alarming lack of diversity is prevalent in the industry regardless of the culture. In the United States and in Europe, statistics show that lawyers are overwhelmingly comprised by white males, especially in the higher ranks of the profession. Several factors contribute to this lack of diversity, including access to legal professionals and costs associated with pursuing a legal degree. Several strategies have been initiated to increase diversity in the field, including increasing awareness of the issue in the legal world and actively recruiting diverse populations, yet the lack of diversity persists. This paper will review some of the factors that contribute to the lack of diversity in the legal profession and strategies considered to increase diversity, and ultimately highlight a program that initiated one such strategy – a pre-law program developed to increase knowledge of the legal profession, access to legal professionals, and financial and academic support for the pursuit of a legal career for undergraduate students. The remainder of this paper will outline specifics of the pre-law program, including its student demographics that include over 60 students with very diverse backgrounds, its law-related activities/programming that include presentations from law students and professions, law school visits, and workshops on applying for law school and writing personal statements, and its achieved outcomes since its inception in 2009 that include formative partnerships with regional law schools and legal organizations, student scholarships, and graduated attorneys.

Keywords: *Education, Knowledge Management, Diversity, Legal Profession, Undergraduate*

1. INTRODUCTION

It has been well established that the legal profession is in need of diversity. In fact, it has been claimed to be the least diverse white collar profession (4, 13). The U.S. Census Bureau corroborated this claim on several fronts with a report in 2017 (2). They compared demographics in the legal field from 2007-2017 and found that the percentage of White lawyers was significantly high, as high as 81% in 2013. While this number has improved recently (66.6% of the attorneys are White in 2017), fewer than 40% of the total number of lawyers are represented in the polling sample. The percentage of minorities has increased among associates over the last few years, but this is mostly attributed to the increase in the Asian population (11). In fact, from 2007 to 2017, there has been little change among the percentage of African American and Hispanic attorneys (3.2-4.1% and 3.1-3.9%, respectively; 2). The discrepancy is even larger among the higher ranks of the profession; only 7.52% of the partners of the major U.S. law firms are minorities, and only 5.6% are equity partners (11). The lack of diversity is not just along ethnic lines. The percentage of women attending law school has been increasing over the last two decades, and, according to the American Bar Association (1), last year women made up the majority of law students in

the United States for the first time ever. Despite the increasing number of women in the profession, women remain considerably underrepresented, making up only 35.3% of the attorneys (7), 24% of the general counsels among Fortune 500 companies and only 22% of equity partners in major law firms are women (7). As would be expected, women of color are face the double bind, which is reflected their representation in the legal field. In fact, only 10.5% of African American women and 5.7% of Hispanic women were general counsel for Fortune 500 companies (6), and only 1.5% of minority women are partners in major U.S. law firms (10). The factors listed above are not unique to the United States. According to Swain (15), there are several similar, if not identical, factors that lead to the same persistent lack of diversity in law in the UK. In fact, in *Elitist Britain*, a report commissioned by the the Social Mobility and Child Poverty Commission (14), it is reported that that 71% of senior judges went to independent schools while 75% went to Oxbridge, as compared to 7% and 1%, respectively, of the general population. Similar to the U.S., more women than men are attending law school and becoming solicitors, and minorities comprised only 32% of law students in the UK (9), still they are under represented among senior lawyers. According to a QCs Geoffrey Bindman and Karon Monaghan (16) report found that women account for no more than 38.3% of legal positions, with the lowest percentages among the higher level positions (e.g., women only account for 25.3% of the judicial posts, 17.3% of senior judiciary, and 15% of the high court judges). The data on ethnicity from the same report acknowledged that the results are unreliable for many reasons (e.g., ethnicity was requested voluntarily, so not all individuals provided the data; there was no set template for which to categorize ethnicity, so there are inconsistencies in profiles, etc.). However, with that said, that data that was provided indicates that, similar to women, minorities are better represented among lower levels of the profession. 5.8% of the judicial office holders are minorities, just 1 out of 106 of the high court judges identified as a minority (0.94%), and there were zero current or past minority members in the Supreme Court, Court of Appeal, or Head of Division.

2. CHAPTER – FACTORS CONTRIBUTING TO THE LACK OF DIVERSITY

Identifying the contributing factors for the lack of diversity in the legal profession is difficult, mostly because there are several overlapping elements that work together to create a composite result. Bell (8) outlined three factors. First, she stated that while most firms have a structure in place to promote diversity (i.e., diversity committees, recruitment and retention programs, etc.), there is still bias (implicit or otherwise) in assigned work and performance evaluations that hinder the development and advancement lawyers with diverse backgrounds. This factor is supported by Swain (15), who states that the success of recruitment strategies is not readily present, particularly among the top echelon of the profession. Second, the lawyers who tend to have the most influence in firms are those with the largest »books« and their success in their career allows them the latitude to pick with whom they work. Their motivation to continue their success will be more influenced by what they believe will lead to success and choose to work with lawyers who reflect their own values – the goal of different viewpoints and diversity may not be a focus. In fact, it is not easy to convince people to not recruit people who look different than them (15). Third, the lack of diversity in firms can lead to a »downward spiral,« an idea that the current lack of diversity suggests a lack of opportunities for those with diverse backgrounds, which ultimately affects hiring and retention. The landmark study from the American Bar Association Commission on Women in the Profession, *Visible Invisibility: Women of Color in Law Firms* (3) surveyed lawyers, which included women and men of diverse ethnic backgrounds, and identified several issues that undoubtedly are contributing factor to the lack of diversity as it pertains to women in the field. For example, compared to white males, significantly higher percentages of women of

color felt their career commitment were doubted after having children, wanted more/better mentoring, had been denied desirable assignments, received unfair performance evaluations, were denied promotions, etc.

The sentiments of the participants in the above study are supported by Swain (15), who suggests that both an unfair playing ground as well as the institutionally influenced lowered aspirations of minorities and women in the legal field affect their confidence and actual outcomes.

3. CHAPTER – STRATEGIES TO INCREASE DIVERSITY

Despite the persistence of the problem, several strategies have been developed or suggested to counteract the lack of diversity in law. A review of the literature suggests three general strategic approaches. First, implement the critical organizational practices that create and sustain the workforce. These practices include seeking and cultivating relationships with organizations from which diverse applicants can be accessed, recruited and hired (e.g., Black and Hispanic law school and bar associations)(4, 12, 15); have a CV-blind recruitment and selection process (15); develop a top-down, zero-tolerance policy of workplace bias (4, 5); create an effective and supported diversity committee, develop concrete measurement tools to track, analyze and measure progress, and develop a succession-planning strategy that integrates inclusion (4), etc. The second general strategy is to create and cultivate a culture of inclusivity. Elements of this strategy include communicating the importance diversity (5, 12) and actively develop and encourage minorities and women to join formal and informal groups, such and formal and informal networks and mentor programs (4). A third general strategy is to build the personal locus of control among diverse individuals. As mentioned above, one of the factors that may contribute to the lack of diversity is the institutionally influenced lowered aspirations and confidence of potential lawyers, so building upon the personal wherewithall of the burgeoning lawyer is important. Several strategies for women of color in law firms were provided in the ABA (4) report, which included self-promoting statements such as »Believe in yourself, and do not let anyone shake your belief in yourself«, »It takes a village to raise a lawyer« and »Network, network, network«. Interestingly, the target of these strategies are law firms or lawyers just starting their legal career. However, not much time has been taken to evaluate strategies that target the issue earlier. Thus, the focus of the rest of this paper is to highlight a program that initiated one such strategy – a pre-law program developed to increase knowledge of the legal profession, access to legal professionals, and financial and academic support for pursuit to legal career for undergraduates.

4. CHAPTER – THE UNIVERSITY OF NEBRASKA-OMAHA PRE-LAW PROGRAM

The need to diversify the profession overall, which has been outlined above, was clearly identified by the American Bar Association as evidenced by its Diversity Plan. Locally, at least to the authors of this paper, the Nebraska State Law Association and the Nebraska Minority Justice Committee led a call of action to increase the diversity of Nebraska, which resulted in a collaborative effort to create the University of Nebraska–Omaha (UNO) Pre-Law Support Program. The program was organized to assist and advocate for students, focusing on but not limited to students with diverse backgrounds, of UNO in becoming more knowledgeable about the legal profession (i.e., evaluating the varying occupations available in the profession, understanding and navigating the process of getting into law school, paying for law school, preparing for law school, and so on), and it held its first official meeting on July 9, 2009. Since its inception, the program has served over 60 students with very diverse backgrounds, including ethnic, gender, and geographic diversity. While all students are

welcome to participate in the program, most of the participants were recruited from two areas: the Goodrich Scholarship Program and Project Achieve. Both programs are similar in their missions are to provide resources to at-risk students in their pursuit of a bachelor's degree. The Goodrich Scholarship Program is a state-funded program that selects approximately 65 students a year from a pool of over 600 applicants based on financial need and academic merit; recipients of the scholarship receive what is almost equivalent to a full-ride scholarship (more about the Goodrich Scholarship Program can be found at <https://www.unomaha.edu/college-of-public-affairs-and-community-service/goodrich-scholarship-program/index.php>).

Project Achieve is a federally funded program that provides additional support to students who qualify as first-generation college students, have financial need, and/or have a disability (more about Project Achieve can be found at <https://www.unomaha.edu/project-achieve/index.php>). Because of the qualifications of the two programs, the student population of the pre-law program is rich with diversity. In its first year, the program started with one participant and had limited programming, consisting mostly of workshops coordinated by the co-directors/authors of this paper. However, since its inception, the program has grown in several way. The activities and programming of the pre-law program have been specifically designed to reach its desired goals and can be summarized in six categories. These categories and specific examples of each category are illustrated in *Table 1*.

Table 1: Pre-Law Programming – (Ends on the next page)

Presentations from current law students	<ul style="list-style-type: none"> • Legal Study Abroad (Lucia Marquez, Esq.) • The Law School Experience from Start to Finish (Jacob Stodola, Esq.)
Presentations from visiting scholars/lawyers	<ul style="list-style-type: none"> • Law and Activism, Constitutional Law, Environmental Law, and Labor Law (Gamelyn Oduardo Sierra, JD, from the University of Puerto Rico) • Ins and Outs of Law School (Erica Buenrostro, Esq. & Yvonne Sosa, Esq.) • Tribal Law and the Environment (Leonica Charging, J. D.) • A lecture on <u>Tinker v. the Des Moines School Board</u>, by plaintiff Mary Beth Tinker • A presentation by U.S. Circuit judge of the U.S. Court of Appeals for the Eighth Circuit Jane Kelly
Professional/Practicing Lawyer Panels	<ul style="list-style-type: none"> • A panel on immigration law at the offices of Justice for Our Neighbors, including Emiliano Lerda, Esq., Sean Ellison, Esq., Jose Lopez, Esq., and Raul Guerra, Esq. • A program on <u>Gideon v. Wainwright</u>, co-sponsored by the U.S. Courts Library and the Creighton University Klutznick Law Library
On-Site Events	<ul style="list-style-type: none"> • Mock <i>voir dire</i> (witness selection) at Dornan, Lustgarten, and Troia, LLO • Honors receptions and panel discussions at Baird Holm • Practice LSAT administration and workshops at UNO, coordinated with Dr. Laura Grams, UNO pre-law advisor • Several events at Creighton University, including Moot Court Competition visits, the Pre-Law Expo, NSBA's

	<ul style="list-style-type: none"> • Diversity Summit, and meeting of the NE Supreme Court • Law School presentations from Drake, Washburn, Creighton, and UNL at UNO • Law School visits and tours (e.g., annual NU trip)
Workshops	<ul style="list-style-type: none"> • Application Workshops for scholarship and law school applications • Résumé and Personal Statement Workshops for scholarship and law school applications
Liaisons	<ul style="list-style-type: none"> • Phi Alpha Delta (PAD), UNO's pre-law fraternity • UNO Pre-Law Advisement, housed in College of Arts & Sciences • TWC (Thomas W. Carroll) Pre-Law Support Initiative

In addition to the expanded programming, the pre-law program has cultivated partnerships with local law firms who provide guidance and mentorship to our students. Currently, one of the partnering firms has collaborated with the program to provide financial awards to support active and distinguished members of the cohort in their pursuit of a legal career. To date, over \$15,000 have been raised to support students. The program has also developed inroads to other programs that are dedicated to the same or similar mission. Specifically, this program has leveraged the support and resources of the Nebraska State Bar Association (NSBA). The NSBA annually provides a scholarship that covers the cost of the LSAT preparatory courses. In the last seven years, 12 members of the cohort have earned NSBA LSAT Preparatory Scholarship. Probably the best measure of success for a pre-law program is the number of participants who successfully enrol and graduate from law school. Since 2011, the program has grown to between 15-24 participants annually. Because the focus of the program is to assist and advocate for students interested in law, it should not come as a surprise that some students find that pursuit of a legal career is not for them. For these students, we feel our program has been successful because our intent it to give our students »access« so that they can make an informed decision – if this decision leads them away from law, it is a win. However, if that informed decision continues them on their path, then applying for, being accepted to, and ultimately graduating from law school is a clear success. In this respect, the program has had 19 students accepted into law school, 13 of which have already successfully graduated with their Juris Doctorate.

5. CONCLUSION

Although the UNO Pre-Law Program is still a work in progress, it has made significant head way in addressing the lack of diversity in the legal profession. Its strategy is different than many that are suggested in the legal literature, but the early results are promising. While the fruits of this labor will take some time to be seen, we are proud of the immediate impact the UNO Pre-Law Program has had. In fact, last year, the program was recognized for its efforts by the Nebraska Bar Association with the 2016 Diversity Award.

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