Mound City News

MOUND CITY BAR ASSOCIATION 1922

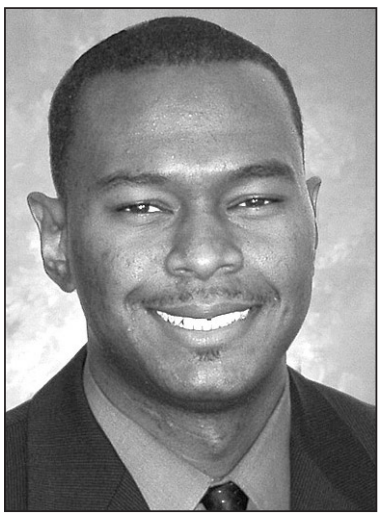
Mound City Bar Association Newsletter
February 2007
In Celebration of Black History Month

Inclusion or Illusion
MCBA Examines Law School Diversity

By William E. Dailey, Jr. Esq.

In its most basic sense, an *illusion* is something that deceives by producing a false or misleading impression of reality.[1] Sometimes, an illusion is the unintentional consequence of nature whereby one is inspired by a mirage during moments of trial or distress. At other times, an illusion is the purposeful manipulation of people or activities to reflect a portrait of circumstances that do not exist. This latter incarnation of an illusion often greets Black law students at schools that champion student body diversity in brochures and on websites, but claim limitations when asked to make those promises real.

Conversely, *inclusion* is where a sincere appreciation for diversity is fostered at all levels of a law school experience. Students of color are not only engaged to participate in law school life, but their contributions are embraced and their relevance reiterated by meaningful exchanges with faculty and administration. More importantly, inclusive classrooms are not merely "aesthetically correct" to the eye. Instead, Black law students are systematically set-up *to succeed*



William E. Dailey, Jr., Esq.

Executive Summary

by efforts that are responsive to the academic and social realities confronting students of color.

This study represents the first known effort to actively challenge the myth of inclusion in Missouri law schools. Of course, we did not begin with the presupposition that student body diversity at any law school was an illusion. Rather, in July 2006, the Mound City Bar Association (MCBA) set out to examine the diversity initiatives of Saint Louis University School of Law, Washington University School of Law, University of Missouri – Columbia School of Law, and University of Missouri – Kansas City School of Law (collectively, "the Missouri law schools") to determine whether their initiatives have successfully led to the recruitment, retention, and preparation of future Black lawyers. From its inception, the Education Commission operated in a genuine spirit of partnership with the law schools evidenced by the Commission consisting solely of alumni and professors of Saint Louis University, Washington University, and the University of Missouri — Columbia Schools of Law.[2] Notwithstanding, efforts at collecting data from the subject law schools were received with reservations and arguable suspicion.

Identifying the Issues

To accomplish its goal, the Education Commission employed a general process that Bar Associations have tried and tested in the past with much success.[3] Simply stated, the Commission was charged with (1) researching national trends in recruitment, reten-

See DAILEY page 8MC

Dred Scott Symposium

March 1-3, 2007

David Thomas Konig, Professor of History and Law
Washington University-Saint Louis

Thursday March 1, 2007 @ Washington University's Graham Chapel @ 4:00 pm
Honorable Michael A. Wolff, Chief Justice of the Supreme Court of Missouri — Keynote Address

Friday, March 2, 2007 @ Bryan Cave Moot Courtroom @ 8:30am — 5:00pm

Saturday, March 3, 2007 @ Bryan Cave Moot Courtroom @ 8:30am — 5:00pm

Speakers will be comprised of the nation's leading scholars on race and the law, including Jack Greenberg, who took part in arguing the case of Brown v. Board of Education for the NAACP.

The Symposium is jointly sponsored by the Washington University Law School and the Washington University School of Arts and Sciences.
All sessions are free and open to the public, but registration is suggested.

For more information, visit the Washington University Law School website http://law.wustl.edu or the Symposium site http://artsci.wustl.edu/~acsp/dred.scott.

Please remember the articles in this newsletter reflect the views of the authors and are not necessarily the views of the Mound City Bar Association. The information contained in this newsletter is not legal advice; if you want legal advice, you must consult your own attorney.

Questions? Concerns? Comments? E-mail: discovery219@charter.net

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The President's Column

As we celebrate Black History Month it is imperative that all of us began to evaluate the healthcare disparities that exist and create ways to eliminate the divide. Below is a reprint of the speech given at the Mound City Medical Forum Scholarship Dinner in 2006.

ELIMINATING HEALTHCARE DISPARITIES THROUGH COLLABORATIVE EFFORTS

Race-based disparities are a distressing fact in more than one aspect of American life. Medical research over the past decade has proven that the health care system is no exception to this rule. To that end, research has revealed that:

1. Racial and ethnic disparities are evident in cardiovascular care. For example, studies have found that minorities are less likely to be given appropriate cardiac medications or to undergo bypass surgery;
2. Several studies have shown significant racial differences in who receives appropriate cancer diagnostic tests and treatments;
3. Although African-Americans suffer strokes as much as 35 percent higher than European Americans, several studies have revealed that minorities are less likely to receive major diagnostic and therapeutic interventions;
4. Minorities are less likely to be placed on waiting lists for kidney transplants or to receive kidney dialysis or transplants;
5. Minorities with HIV infections are less likely to receive various state of the art treatments, which could forestall the onset of AIDS;
6. Asthmatic African Americans are less likely to receive appropriate medications to manage chronic symptoms; and
7. Although minorities have a much higher rate of death and illness from diabetes, the disease is poorly managed among minority patients. In a study of nearly 1,400 Medicare patients, diabetic African Americans were found less likely to receive key diagnostic tests. More importantly, minorities were also *more likely to receive certain less-desirable* procedures, such as lower limb amputations for diabetes and other conditions.

In a quest to explain away these disparities and to eliminate the need for self evaluation, many within and outside of the medical community have attempted to relegate this to a patient driven problem. Some have argued these disparities exist mainly because African Americans simply do not avail themselves to the health care system - they refuse recommended services and delay seeking healthcare.

In 1999 Congress charged the Institute of Medicine (IOM) with assessing the quality of healthcare for various racial and ethnic minority groups. After reviewing over 100 studies, the IOM study committee discovered:

1. Even when researchers have controlled for insurance, income, disease stage and age, studies revealed that African-Americans received lower quality healthcare and clinical services than European Americans; and
2. African-Americans are more likely than European Americans to receive less desirable services.

More importantly, the IOM study committee revealed that the sources of these disparities are:

1. Complex;
2. Rooted in historic and contemporary social inequities; and
3. Involve many participants at several levels, including but not limited to health systems, their administrative and bureaucratic processes, utilization managers, healthcare professionals and patients.

The committee found that the bias, stereotyping, prejudice, and clinical uncertainty on the part of healthcare professionals may contribute to the problem. Testing this theory, in 2000, Van Ryn and Burke conducted a study in actual clinical settings. Their study revealed that doctors, like everyone else, are more likely to ascribe negative racial stereotypes to their minority patients. Furthermore, these stereotypes were ascribed to patients even when differences in minority and non-minority patients' education, income and personality characteristic were considered.

Another factor which may contribute to disparities in health care is the difference in patient behavior. The IOM study committee found that some African American patients are more likely than European Americans to refuse recommended services and often delayed seeking healthcare. Although it remains unclear why these behaviors and attitudes exist, some researchers have speculated that they exist as a result of:

1. A poor cultural match or mistrust between the patient and doctor;
2. Misunderstanding of instructions provided by the health care provider;
3. History of poor or negative experiences with the healthcare systems; or
4. A lack of knowledge or access to healthcare resources.

Finally, the IOM study committee concluded with other factors which may contribute to health care disparities are:

1. Organization and financial structures;
2. Location of healthcare institutions;
3. Efforts by States to enroll Medical patients into managed care services which may disrupt traditional community-based care and displace providers who are familiar with the culture and values of ethnic minority communities; and

President Pamela Meanes

4. Fragmented health care systems due to resource constraints which may result in different types of qualities of treatment and provider choices.

If Americans seriously reviewed the IOM Unequal Treatment Report, one would have to concede three undeniable facts:

1. As a society, we have a serious problem on our hands. For African Americans, health disparities can mean earlier deaths, decreased quality of life, loss of economic opportunities, and injustice. For the general population, these disparities translate into less than optimal productivity, higher health-care costs, and social inequity;
2. Contrary to popular belief, this problem was not solely created by the medical community. If we are honest with ourselves, the racial and ethnic disparities which exist in the health care system do not exist in a vacuum, but are an extension of the broader historic and contemporary social inequalities that African Americans encounter every day.

   For decades, African Americans have been fighting to overcome the negative perceptions which have followed us from our motherland to the shores of America. Negative perceptions which were deliberately created to imprison, oppress and enslave a race. And sometimes, intentional but often unintentional decision makers, in various disciplines, have allowed these perceptions to cloud their thinking when dispensing justice, making laws or decisions. As a result, minorities are often the recipients of unfair treatment.

   Similar to the disparities experienced in the healthcare community, many have concluded that one of the reasons minorities experience racism in America is directly linked to certain behavior and choices they have made. Thus, if race relations are ever going to improve, it will require change on the part of both minorities and non-minorities.
3. The medical community did not create this problem alone, and we can not expect them to fix it alone. If we have any hope of eliminating health care disparities, it will require the collaborative efforts of doctors, lawyers, politicians, clergy, social workers and others who are willing to lay aside their differences and develop a comprehensive strategy that includes:

A. Attending to the needs of healthcare providers and patients;
B. Improving the conditions of health care facilities which regularly service minority patients;
C. Broadening policies and practices of health systems; and
D. Implementing state and federal policies that govern the operation of health systems.

COLLECTIVELY WE CAN

1. Increase awareness of racial and ethnic disparities in health care among the general public and key stakeholders, and increase healthcare providers awareness of disparities; and
2. Implement and support existing patient education programs to increase patient knowledge of how to best access care and participate in treatment decisions.

LAWYERS & POLITICIAN CAN

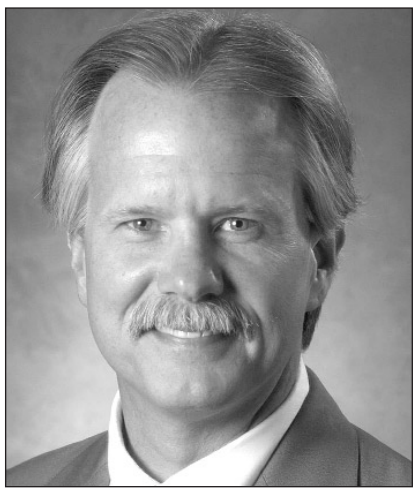
1. Work hard to eliminate and campaign against the fragmentation of health plans along socioeconomic lines, and take measures to strengthen the stability of patient provider relationships in publicly funded health plans;
2. Sponsor legislation that increases the proportion of underrepresented racial and ethic minorities among the health professions;
3. Lobby for the application of the same managed care protections to publicly funded HMO enrollees that apply to private HMO enrollees;
4. Provide greater resources to civil rights organization to enforce civil rights laws;

THE HEALTHCARE SYSTEM CAN

1. Upon graduation, doctors must continue to dedicate their time, service and resources to low income communities;
2. Campaign for the integration of cross-cultural education into the training of all current and future health professionals;
3. Promote the consistency and equity of care through the use of evidence-based guidelines;
4. Structure payment systems to ensure an adequate supply of services to minority patients, and limit provider incentives that may promote disparities; and
5. Enhance patient-provider commutation and trust by providing financial incentive for practices that reduce barriers and encourage evidence-based practices.

There is something that we all can do and together we can save lives in the process.

Missouri Tort Reform Changes to Consider: Venue & Liability Provisions



James L. Stockberger

Brian E. Kaveny

Jovita M. Foster

On March 29, 2005, Governor Matt Blunt signed into law **House Bill 393**, which applies to causes of action filed after August 28, 2005 alleging at least one tort. The statute incorporates changes to include: (1) limiting venue to the plaintiff's place of first injury; (2) changing the required percentage of fault for joint and several liability; and (3) limiting punitive damages. The new law is designed to place the burden on the plaintiff in an effort to lessen the occurrence – and the affects – of venue shopping.

VENUE

"Venue" refers to the location in which a court of competent jurisdiction may adjudicate an action. Formerly, the venue statutes provided various special rules for proper venue based on the defendant's status—as a motor carrier, a corporation, not-for-profit corporation, or railroad company—or on the defendant's residency. Under those rules, venue was proper even if the court was located in a county that had little contact with the plaintiff or the plaintiff's injury.

Today, the statute defines the plaintiff's place of first injury for certain specified torts, and the definition varies according to the type of tort involved. In latent injury cases, for example, the place of first injury is the location where the alleged trauma or exposure actually took place rather than where symptoms were first manifested.

WHEN THE ACTION OCCURS OUTSIDE MISSOURI

Missouri Businesses are rarely confined to doing business only within Missouri's borders, and as a result, House Bill 393 makes special note to address procedure for these case situations. If the plaintiff was first injured outside Missouri, venue depends on the nature of the defendant. In situations where the defendant is an individual and the location of first injury is outside Missouri, venue is determined by whether (1) the county of the individual defendant's principal place of residence is in Missouri, or if the plaintiff's principal place of residence was in Missouri at the time of the first injury, or (2) in the county of the plaintiff's principal place of residence.

When the situation involves a corporation as the defendant, venue is proper (1) in any county where the defendant is a registered agent or (2) in the county of the plaintiff's principal place of residence at the time of the first injury. For example, assume the plaintiff is a Missouri resident who resides in Cole County, and the plaintiff alleges a personal injury tort where the first injury occurred in Arkansas. The defendant is a corporation with an office in Warren County and is a registered agent in St. Louis County. The plaintiff may sue the defendant in one of two places: (1) St. Louis County, where the defendant's registered agent is located (location of the office does not affect the venue), or (2) Cole County, where the plaintiff had his residence at the time the first injury occurred.

In addition, it is important to note that if you wish to file a motion to transfer venue, it must be filed within sixty (60) days service on the party seeking transfer. Overall, the new venue provisions should provide more certainty regarding the proper forum for actions with at least one count alleging a tort. The new venue provisions prevent the use of a defendant with remote connections to the forum to establish venue. Instead, the amended venue statutes should limit the occurrence of venue shopping.

JOINT & SEVERAL LIABILITY

Prior to the enactment of House Bill 393, a plaintiff could recover all or part of his or her damages from any defendant, regardless of the defendant's proportion of fault. The apportionment of fault between defendants had no effect on a plaintiff's right to collect the full amount of a judgment from any one of the defendants. The new law provides that joint and several liability applies to a defendant only if that defendant is at least fifty-one percent at fault. In such circumstances, the defendant is liable for the amount of the judgment rendered against the defendant(s). The new law eliminates joint and several liability for a defendant found by the trier of fact to be less than fifty-one percent at fault unless the other defendant is an employee or the party's liability arises out of the Federal Employer's Liability Act. Thus, if a defendant is found to be less than fifty-one percent at fault, then that defendant is only required to pay his proportionate share of liability.

The new joint and several liability provisions will significantly impact cases in which a plaintiff or co-defendant is attributed fault. For example, if a defendant is found twenty-five (25) percent at fault, and others, including the plaintiff, are found seventy-five percent at fault, then that defendant is responsible for only twenty-five percent of the judgment. The joint and several liability provisions of the new law protect a deep-pocketed defendant whose proportionate fault is relatively small and reduces the incentive to join such defendants.

PUNITIVE DAMAGES

The new law adds an additional hurdle for a plaintiff seeking punitive damages by requiring, prior to any discovery of a defendant's assets, a preliminary finding by the court that the plaintiff is more than likely able to present a submissible case to the trier of fact on the plaintiff's claim of punitive damages. Additionally, the new law limits punitive damages to $500,000 or five times the compensatory damages. As such, a defendant is now only liable for the percentage of punitive damages based on its percentage of fault. As in the case of actual damages, a defendant shall only be liable for the percentage of punitive damages that corresponds to the percentage of its fault.

However, there are some exceptions when the damages cap is not applicable, such as to cases in which the defendant pled guilty to or was convicted of a felony arising out of the acts or omissions pled by the plaintiff.

CONCLUSION

While the effects of House Bill 393 are already evident in Missouri courtrooms as attorneys argue motions to transfer for improper venue, the long-term consequences of tort reform will not be clear for some years. Although insurance companies, businesses, and politicians may anticipate this new legislation will reduce insurance rates and attract businesses to Missouri, it will likely take years to assess the impact in regards to the legal landscape on business interests. Additionally, the plaintiff's bar anticipates constitutional challenges to some of the provisions of House Bill 393. Yet, for now, business owners, managers, and employees must have a heightened awareness and understanding of these changes as they may (and should) affect the strategy and decision-making processes long before trial.

For further information, or a complete copy of the article "Missouri Tort Reform," please contact Jim Stockberger, Brian Kaveney or Jovita Foster:

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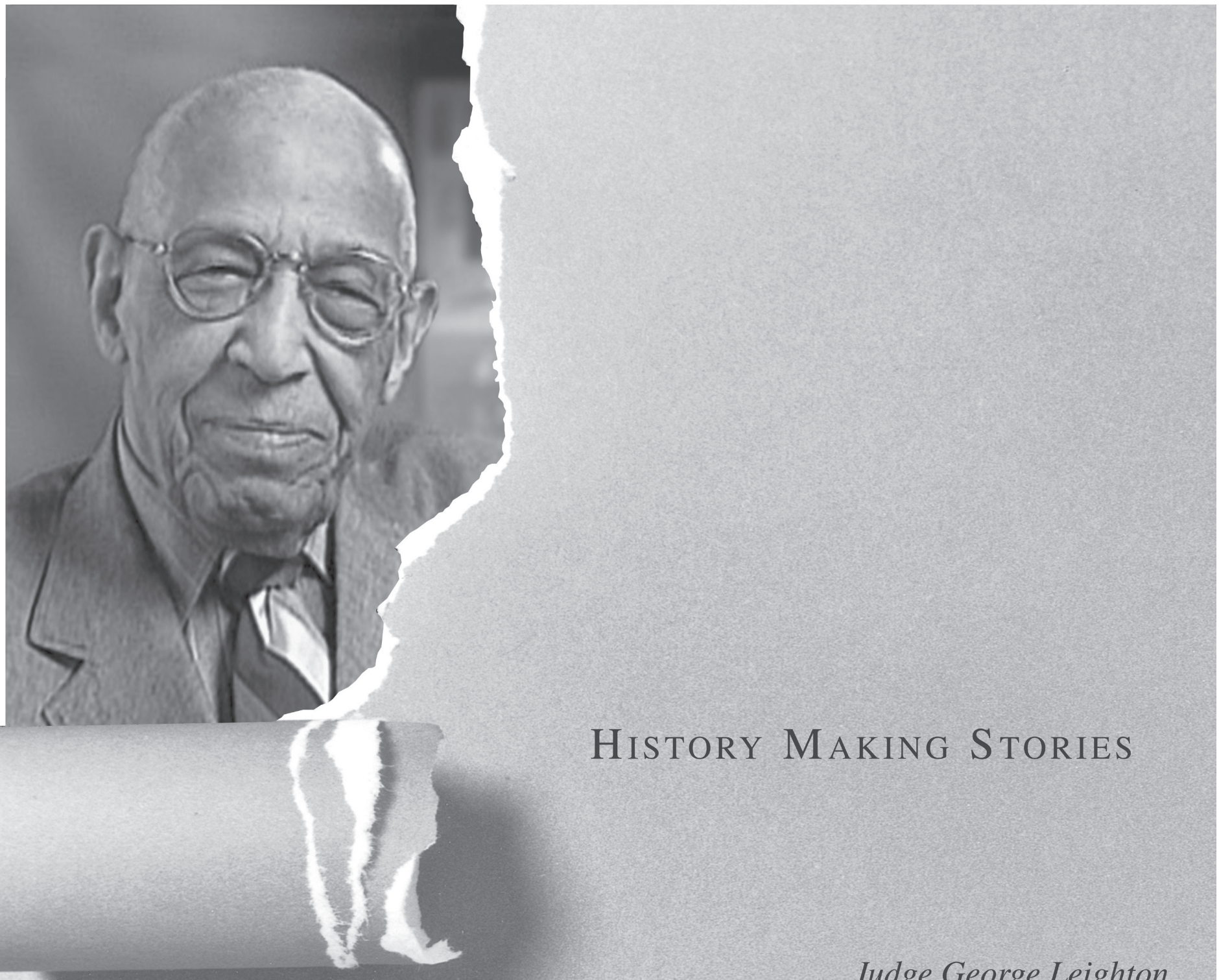

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Judge George Leighton

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THOSE WHO ARE *MAKING* HISTORY

Peter Bynoe

Born of a West Indian father and an American mother, Peter Bynoe credits his parents with instilling in him the exemplary work ethic that has made him a leading entrepreneur. He received his bachelor's, master's and law degrees from Harvard University before entering the business world in 1976 as a Citibank executive intern. The following year, Bynoe became vice president of James Lowry and Associates, a position he held until 1982, when he founded Telemat Ltd., a business consulting firm.

In 1989, Bynoe broke ground as the first minority owner of an NBA franchise, a goal he accomplished through a partnership with fellow Chicago entrepreneur Bertram Lee, tennis legend Arthur Ashe and Democratic National Committeee Chairman Ron Brown. This collective purchased the Denver Nuggets for $65 million. As the first African American owner, he set a precedent that has opened the doors of sports management for all minorities. In 1992, after designing and supervising the complete reorganization of the team, he sold his interest in the franchise.

After his involvement with the NBA, Bynoe joined the prestigious law firm of Rudnick & Wolfe, where he has served on the firm's policy committee since 1995. For Bynoe, sports have served as a staging ground for race relations and African American advancement. He uses his position as a lawyer to facilitate the construction of professional sports stadiums, including venues for the Milwaukee Brewers, San Francisco 49ers and Washington Redskins. Bynoe also manages some of Rudnick & Wolfe's most important clients, including Bank of America and the city of Chicago.

Bynoe is heavily involved in the Chicago civic community as director of the Chicago Economic Club, chairman of the Chicago Planning Commission and director of the Illinois Sports Facilities Authority. Bynoe also serves as a director of the UniRoyal Technology Corporation.

Honorable Sophia Hall

Sophia Hall was born in Chicago on July 10, 1943. After attending a parochial school, she went on to the University of Chicago Laboratory School, a high school program for gifted students. Hall attended the University of Wisconsin, earning a B.A. in history in 1964, and then attended Northwestern University School of Law, earning a J.D. in 1967.

After completing her law degree, Hall joined the firm of McCoy, Ming & Black in Chicago, and remained there until 1976. During that time, she was also an administrative assistant to Stanley Kusper, Jr., former Clerk of Cook County, and was an adviser on election law. Hall joined Mitchell, Hall, Jones & Black in 1976, and she remained with them until her election to the bench in 1980. In 1983, she moved to criminal court, becoming the first woman to serve in that capacity in twenty years. She remained in that capacity for three years. By 1992, Hall was the presiding judge of the juvenile division, and today she is the presiding judge of juvenile justice and child protection and is also assigned to the Chancery Division. Former President Bill Clinton appointed Hall to the Board of the State Justice Institute in 1998, where she continues to serve today.

Hall is active on a wide variety of committees, including the Supreme Court Rules Committee and the Illinois Judicial Ethics Committee. She is active with a number of professional organizations, including the National Association of Women Judges, and is currently the chairperson of the National Conference of State Trial Judges of the Judicial Division of the American Bar Association. Hall is a life member of the NAACP and has served in various capacities at both state and local level. She has been inducted into the Today's Chicago Woman Hall of Fame, received a Civil Rights Award from the Cook County Bar Association, and appeared in Who's Who of America 46th Edition. Hall has written numerous articles for various publications, speaks at a wide number of venues each year and has appeared on a number of television and radio broadcasts.

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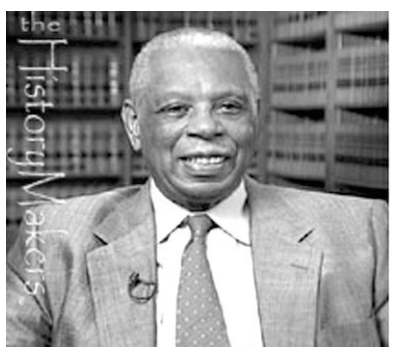
Patricial Mell

John Marshall Law School Dean Patricia Mell was born December 15, 1953 in Cleveland, Ohio. Her father, Julian Cooper Mell, was one of Cleveland's first black homicide detectives and her mother, Thelma Webb Mell, was a school principal. Mell attended Doan Elementary School on the East Side. She graduated from Collinwood High School in 1971. Mell chose Wellesley College and graduated with an A.B. degree with honors in 1975. Going immediately to Case Western Reserve Law School, she earned a J.D. in 1978.

Mell worked for the Ohio Attorney General's Office as a trial lawyer and assistant attorney general in the Regulatory Division from 1975 to 1982. She was the corporation counsel for the Ohio Secretary of State from 1982 to 1984. At Capital University Law School in Columbus, Ohio Mell served as visiting assistant professor in 1984 and 1985. She was assistant professor at University of Toledo Law School and associate professor at Widener University by 1986. In 1989, Mell participated in the Economics for Law Professors, George Mason University Program at Dartmouth. Mell joined the legal firm of Lewis, White and Clay in Detroit in 1991 and taught as an adjunct at Wayne State University. Joining the faculty of the Michigan State University – Detroit College of Law in 1992, Mell was associate dean for academic affairs from 1998 to 2001. She was visiting professor at the University of Memphis Cecil C. Humphreys School of Law before her appointment as dean of John Marshall Law School in Chicago in 2003. Mell is the first woman and first African American dean in the school's 104-year history.

Mell's expertise lies in the area of criminal law, the legal aspects of commerce, corporations and partnerships. Interested in privacy and computers and constitutional rights she has written about the U.S. Patriot Act. Mell also authored a textbook entitled *Criminal Law: Cases, Commentary and Questions* (2005). Married to Dr. Michael Ragland, Mell has three stepchildren.

Honorable Damon Keith



Judge Damon J. Keith has had an illustrious career. Born on July 4, 1922, he has served as a U.S. Court of Appeals judge for the Sixth Circuit since 1977. Keith was the youngest of six children born to Annie and Perry Alexander Keith and the first to attend college. He graduated from West Virginia State College in 1943 and was then drafted into the military. His experiences in the segregated Army strengthened his conviction to the cause of civil rights. Keith received a J.D. from Howard Law School in 1949, passed the Michigan bar exam in 1950, and earned an L.L.M. from Wayne State University School of Law in 1956.

In 1964, Keith established his own law practice, Keith, Conyers, Anderson, Brown, & Wahls, with four other African American attorneys. Keith was also very active in the Democratic Party and used his political connections to help his community. He served as the chairman of the Detroit Housing Commission and the Michigan Civil Rights Commission. In 1967, President Lyndon Johnson appointed Keith to the U.S. District Court for the Eastern District of Michigan, where he served as chief judge from 1975 to 1977 before President Jimmy Carter appointed him to the Court of Appeals for the Sixth Circuit. Keith took senior status in 1995.

In 1993, the Damon J. Keith Law Collection, an archival resource devoted to the substantial historical accomplishments of African American lawyers and judges as well as the African American legal experience, was created at Wayne State University and named in his honor. Keith has received numerous awards and honors, including: thirty-eight honorary degrees from various colleges and universities; the NAACP's highest award, the Spingarn Medal; the 1997 American Bar Association's Thurgood Marshall Award; the Detroit Urban League's 1998 Distinguished Warrior Award; the Distinguished Public Service Award for the National Anti-Defamation League of B'nai B'rith; the prestigious Edward J. Devitt Award for Distinguished Service to Justice; the Pinnacle Award at the 2000 Trumpet Awards in Atlanta; and the American Bar Association Spirit of Excellence Award in 2001.

Keith has also received the lifetime achievement award from the National Black College Alumni and was inducted into its Hall of Fame. Keith is married to Dr. Rachel Boone Keith. They have three daughters.

Incusion or Illusion
MCBA Examines Bar Diversity

By Leslie Wallace

Diversity has become a household word and its complexity continues to evolve. Nationally, there is a perception and a reality of continued racial discrimination in the legal profession.[1] Many states have found that the legal profession remains largely segregated in practice.[2] "Despite improvement during the 1990s in the number of people of color entering the legal profession, the disparity between the legal profession and the general population is increasing.[3] Currently, the legal profession is more than 90% white, while the general population is about 70% white.[4] In the next 50 years, the general population is projected to be about 50% people of color, while current American law school enrollment is less than 20% people of color."[5]

While alarming, these statistics indicate "the legal profession faces no greater challenge in the 21st century than the critical need to diversify its ranks. People of color continue to be woefully underrepresented in the bar and on the bench, while American society becomes increasingly diverse." [6] Without question, diversity is essential to the legal profession. To that end, "a more diverse and more representative legal profession will not only foster greater public trust and confidence in the law, but fundamentally, it will help to ensure fairness in the justice system."[7] Thus, as America becomes "more culturally diverse, it is imperative that the … legal profession find ways to become more representative of the diverse constituency that [it] serves and keep pace with the rapidly changing ethnic and racial demographics of the county."[8]

In an effort to address this concern, many state, local, and specialty bars have established diversity initiatives to encourage minorities to enter the legal profession and become active in bar leadership.[9] For instance, the American Bar Association ("ABA") established a task force to examine diversity issues in the legal profession. These efforts eventually led to the formation of three ABA entities specifically devoted to racial and ethnic diversity.[10] Thereafter, the ABA sponsored a Diversity Summit to develop an ABA-wide strategy to increase ethnic diversity in its leadership.[11] Likewise, other bar associations, such as Washington State, Nebraska and the City of New York have implemented similar initiatives. However, if these associations' initiatives have any hope of succeeding, minorities must be present and their voices respected, supported, and embraced from the inception to the implementation and evaluation of said initiatives.

The Mission

The MCBA Commission ("Commission") was charged with evaluating the diversity initiatives of and

Leslie Wallace

Executive Summary

African-American participation in The Missouri Bar Unified (MoBar), The Bar Association of Metropolitan Saint Louis (BAMSL), The Lawyers Association of St. Louis, and Women's Lawyer's Association (WLA) (collectively referred to herein as "Bar Associations"). In addition to manageability issues, these four Bar Associations were selected either because of its large membership, historic commitment to diversity, and/or specific gender representation.

The central question before the Commission was whether the diversity initiatives of the Bar Associations have led to the inclusion of African-Americans in critical decision making positions and/or offices. In essence, this Commission was charged with measuring, the progress of these Bar Associations' diversity efforts, identifying areas of concerns, and proposing recommendations to assist in establishing sustained diversity initiatives. To accomplish its goal, the Commission: 1) researched and analyzed the associations' diversity efforts; 2) drafted and distributed a survey to the associations; 3) moderated a panel discussion with the Bar Associations' Presidents (or other leadership) in November 2006; and 4) drafted its findings and recommendations (Report).

About the Title

Mr. William E. Dailey, Jr., during his position as Chair of MCBA's 2006-2007 Education Commission, stated *illusion* in its most basic sense is "something that deceives by producing false or misleading impressions of reality."[12] "Sometimes, an illusion is the unintentional consequence of nature whereby one is inspired by a mirage during moments of trial or distress. At other times, an illusion is the purposeful manipulation of people or activities to reflect a portrait of circumstances that do not exist."[13] The Commission further postures that, *inclusion*, is also defined as an addition, enclosure or insertion, which depicts the phenomenon in which not just diversity, but the *appreciation* and *utilization* of that diversity is fostered at all levels, and at the forefront, within our legal profession.

Assessing Diversity

Despite the inquiries regarding the number of African-American attorneys serving in various capacities, the Commission's task was not to establish or recommend a minority quota, as some may think, but rather to assess existing numbers, establish a benchmark study, develop and implement initiatives, commit to sustained efforts to measure their effectiveness, discard initiatives that are not effective, and implement other initiatives to maintain successful results.

Expectation, Aspirations & Proposals

From its inception, the Commission's motives have been genuine, and its members and supporting MCBA general body have operated in a spirit of partnership while seeking to further address diversity issues within the legal community and other bar associations. While the Commission did receive supportive responses and timely cooperation from some bar associations, our efforts were also met with hesitation and skepticism from participants and others in the legal community.

Despite the above, this Commission hopes this Report will serve as the first step toward an in depth examination of: 1) the current diversity initiatives of these Bar Associations; and 2) whether said initiatives have led to a meaningful inclusion of the African-American voice, or merely the "presence" of an invisible African-American. Finally, the Commission hopes this Report will ultimately trigger a meaningful and substantive dialogue between all bar associations regarding the necessity and value of sustainable diversity initiatives and an understanding that diversity beyond the establishment of programs, committees and/or commissions benefits all.

The Findings

The Commission's study revealed a dichotomy between African-American and white attorneys' perceptions of diversity in the legal community. In most instances, the predominately white Bar Associations viewed their governance as reasonably diverse, whereas African-American attorneys found no significant improvement or inclusion in these Bar Associations when measured against their stated diversity initiatives. The diversity initiatives of the Bar Associations appeared fragmented and focused on specific events and activities rather than on sustained programming and evaluation. Over the years, there have been numerous surveys, panel discussions, job fairs and formal dinners focused on diversity. While the Commission commends those efforts, a majority seemed to either lack the endurance necessary to influence change, or the statistical data necessary to measure its progress. This being said, it was not the goal of this Commission to undermine or belittle those efforts that have successfully increased diversity awareness and minority participation. Nonetheless, it was the Commission's objective to critically examine efforts which were utilized to achieve diversity and evaluate their impact, if any, upon the African-American legal community.

Though none of the Bar Associations maintain statistics regarding the racial background of its members (do in part to the request of some of its minority members) both MoBar and BAMSL had the largest percentage of self-reported minority participation in its governance, as well as the majority of programs aimed at diversity, as further detailed herein. Of noteworthy significance, the WLA reported that it had an African-American woman serve as Executive Director or co-Executive Director for the last three years.

Finally, regarding the panel discussion (discussion), the Commission's original intent was to engage in a meaningful discourse with the current presidents of these Bar Associations. However, none of them were in attendance, for reasons known and unknown. Instead, the panelists consisted of executive members of the respective Bar Associations. The discussion was attended by members of the MCBA General Body and the Executive Board, and was open to the legal community. While each panelist offered responses to general questions, some of the responses appeared to err on the side of political correctness and at times a bit non-responsive. Only a few appeared to really tackle the issues. More detailed information regarding the panelist response can be found in the full report.

Footnotes

1. http://www.ncbar.org/about/commissionsTaskForce/raceRelations.aspx.
2. *Id.*
3. http://members.mobar.org/pdfs/about/minority.pdf.
4. *Id.*
5. *Id.*
6. *See*, Michael S. Greco forward to Embracing the Opportunities for Increasing Diversity Into the Legal Profession, Collaborating to Expand the Pipeline (Let's Get Real), A.B.A. Post-Conference Report is available at http://LSACnet.org.
7. *Id.*
8. *Id. See* Executive Summary.
9. http://members.mobar.org/pdfs/about/minority.pdf.
10. *Id.*
11. http://members.mobar.org/pdfs/about/minority.pdf.
12. William E. Dailey, Jr., et al, *Educational Inclusion or Illusion: The Examination of a Fact or Fiction*, Mound City Bar Association, p. 11 (2006).
13. *Id.*

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Upcoming Events

President James Shrewsbury and Alderman Lewis Reed Public Forum – Sunday, February 25, 2007, 3:30 p.m.

Reed

PRESIDENT JAMES SHREWSBURY AND ALDERMAN LEWIS REED, candidates for the Presidency of the Board of Alderman for the City of St. Louis, will participate in a public forum hosted by the Mound City Bar Association and the "Show Down" on February 25, 2007 in Beaumont High School Auditorium located at 3836 Natural Bridge Avenue, St. Louis, MO 63107. This forum will feature a moderator and a four person panel. The panelists include: Mark Kasen and Onion Horton of the "Show Down" and MCBA Attorneys Robert Kenney and Ruby Bonner. Appropriate questions will be taken from the audience. Students from Beaumont High School between the ages of 15 to 18 will assist with presenting this forum. You would not want to miss the opportunity to educate yourself regarding the candidates.

Shrewsbury

Dred Scott Symposium March 1-3, 2007

Dred Scott Symposium
March 1-3, 2007
David Thomas Konig,
Professor of History and Law
Washington University-Saint Louis

On March 1-3, 2007, Washington University will host a national symposium on "The *Dred Scott* Case and its Legacy: Race, Law, and the Struggle for Equality."

One hundred and fifty years ago the Supreme Court handed down a decision that stated African Americans could never be true and full American citizens. After living in free territory, Dred and Harriet Scott put their faith in the rule of law and sued for their freedom in a St. Louis courtroom in 1846. Based on centuries-old principles of liberty under law, and decades of Missouri precedent, a St. Louis jury awarded them their freedom. However, this decision was reversed by the Missouri appellate court, and again in March 1857 the United States Supreme Court denied them their freedom and further declared as blacks, they had no rights that whites were bound to respect. Abraham Lincoln assailed the decision and pointed out that if such a decision were to stand, then the Court might eventually say that Catholics could not be full citizens, or immigrants from other countries could never enjoy the rights of Americans. Although a bloody Civil War produced three Constitutional Amendments to reverse that decision, the achievement of full racial, religious, and ethnic equality in this country, 150 years later, still remains an unfinished project. The symposium will address the struggle the Scotts began in St. Louis, and serve as the focal point for reflection and a recommitment to racial equality.

Symposium Details:

Thursday March 1, 2007 @ Washington University's Graham Chapel @ 4:00 pm

Honorable Michael A. Wolff, Chief Justice of the Supreme Court of Missouri – Keynote Address

Friday, March 2, 2007 @ Bryan Cave Moot Courtroom @ 8:30am – 5:00pm

Saturday, March 3, 2007 @ Bryan Cave Moot Courtroom @ 8:30am – 5:00pm

Speakers will be comprised of the nation's leading scholars/commentators on race and the law, including Jack Greenberg, who took part in arguing the case of *Brown v. Board of* Education for the NAACP.

Panels on Friday and Saturday at the Bryan Cave Moot Courtroom will examine the case and its legacy, from the Civil War to the present. Speakers include the nation's leading scholars on race and the law, and commentators include Jack Greenberg, who took part in arguing the case of *Brown v. Board of* Education for the NAACP. Saturday will also feature a session devoted to the theme of "From Scholarship to Citizenship," where K-12 educators will meet and interact with the panelists on how scholarship can be integrated into school curricula. Following that session, a panel of judges – including several from the Supreme Court of Missouri — will hold a judicial roundtable to discuss the issues raised by the case and the lessons to be learned about the entry of politics into the judicial process. The Symposium will conclude with a reception at the Washington University Library, where the State Archives will display the original petitions signed by Dred and Harriet Scott to commence the suit.

The Symposium is jointly sponsored by the Washington University Law School and the Washington University School of Arts and Sciences. **All sessions are free and open to the public**, but registration is suggested.

For more information, see the Washington University Law School website (http://law.wustl.edu) or the Symposium site (http://artsci.wustl.edu/~acsp/dred.scott).

Dailey

Continued from page 1MC

tion, and preparation at law schools; (2) drafting and distributing surveys to the Missouri law schools; (3) inviting the Deans of the Missouri law schools to a MCBA meeting for a discussion of survey results and to identify partnership opportunities; and (4) preparing a final report summarizing its findings and associated recommendations. In an effort to track the recruitment, retention, and preparation of an identifiable group, we limited our questions to the academic years 2002 – 2005. The General Body of the MCBA was made aware of each step and authorized the Survey and subsequent Panel.

In spite of the Education Commission's transparent process and carefully worded Survey, the Commission's request for information from the Missouri law schools was initially met with unanimous rejection. In a joint letter, the Deans shared their belief that "a conversation on these issues would be much more productive." The letter continued by stating that much of the data, including the "racial breakdown of law school scholarships, research assistants, and moot court members is not collected" by the law schools. Moreover, the Deans asserted "to attempt to compile this and other data (such as the law school and bar examination performance of our students broken down by race) would run the risk of personally identifying individual students and possibly violate federal privacy laws." Rather than respond with information that did not violate any privacy concerns, the Deans referred the Commission to data that is publicly available in the *ABA-LSAC Official Guide to ABA Approved Law Schools*. Conclusively, because of a scheduling conflict, the Deans were unable to participate in the MCBA Deans' Panel and refused to respond to the Survey.[4]

After failing to receive responses from all four Missouri law schools, the Education Commission submitted a second request for information. There, the Commission reiterated the cooperative and constructive spirit of the Survey and Deans' Panel. More importantly, it emphasized the limited insight provided by research of national trends. To that end, it offered the law schools an opportunity to identify questions that may violate privacy concerns so that the Commission could remove them from the Survey. Because the Education Commission's goal was to look beyond the numbers provided by NALP, at a minimum, it requested a statement describing the respective diversity initiatives or efforts the law schools employed in creating a diverse student body. If nothing more, a response to this second request would lessen the perception that the Missouri law schools were practicing an illusion. Initially, none of the Missouri law schools responded to our second letter. However, after discussions with the MCBA President, each school eventually provided feedback.

Confronting the Illusion

The American Association of Law Schools ("AALS") sensibly notes that "diversity means more…than expanding access to those historically underrepresented and underserved by legal education and the legal profession. … It also implies changing the culture of educational institutions—making learning, the curriculum, and pedagogy more responsive to the needs of a changing student population and a changing world. "[5] Believing that a change is inevitable, this study seeks to assist the Missouri law schools in addressing perceptions and problems faced when attempting to promote diversity.

Footnotes

1. "illusion." Random House Unabridged Dictionary, © Random House, Inc. 2006.
2. MCBA made several requests for faculty participation from the University of Missouri – Columbia to serve on the Commission; however, due to many factors, we were unable to obtain a representative. *See correspondence in Appendix.* Accordingly, participation from MU was limited to an alumnus. Further, due to concerns expressed by law school administrators, the law students were removed from the Commission. Finally, neither the professors nor law students originally on the Commission participated in the drafting of the final report.
3. See, e.g. Embracing the Opportunities for Increasing Diversity Into the Legal Profession, Collaborating to Expand the Pipeline (Let's Get Real), A.B.A. Post-Conference Report is *available at* http://www.LSACnet.org
4. The Deans of all four Missouri law schools eventually provided information on their respective diversity efforts, after completion of the Commission's independent research and the Law Students' Panel. Their letters are reproduced in the Appendix.
5. AALS Statement of Diversity, Equal Opportunity, and Affirmative Action.