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Diversity Makes Cents: The Business Case for Diversity

By Roy Ginsburg

The representation of women and minorities in major U.S. law firms, especially at the partnership level, remains abysmally low. The numbers indicate that relative to the overall population (half women; one-third minority) and the profile of today's law graduates, women and minorities continue to be underrepresented in the partnership ranks at major law firms. According to the latest statistics from The National Association for Law Placement (NALP), approximately 17 percent of partners in such firms are women, while minorities account for slightly more than 4 percent. In the Twin Cities, almost 19 percent of partners are women and slightly more than 2 percent of partners are minorities.

Since the 1980s, almost half of law school graduates have been women. During that same time frame, the percentage of minority law school graduates has doubled: from 10 percent to 20 percent. Perhaps in consequence, women and minority lawyers are better represented at the associate level than among partners. Nationally, approximately 43 percent of associates are women and 15 percent of associates are minorities; their placement thus lags roughly 5 percent below their representation among law school graduates. Locally, 47 percent of associates are women and 9 percent are minorities at Twin Cities law firms.

Progress has been slow. In 1993, nationwide, 12 percent of partners were women, while 2.5 percent of partners were minorities. There has been considerable debate within the profession about what these numbers mean. One camp believes that the playing field is not level and never has been for women and minorities; in their view, a "glass ceiling" inhibits their success. Others maintain that the statistics reflect a personal choice to jump off the traditional law firm partnership track.

Why is Diversity Important?

This debate continues relatively unchanged today. What has changed dramatically over the past decade are the arguments about why diversity in law firms is important. Traditionally, diversity proponents have contended that diversity is the "right thing to do." This school of thought is reflected in remarks by Robert J. Grey Jr., the current ABA president, who says he believes that "Diversity preserves the legitimacy of our legal system and safeguards the integrity of our democratic government."

More recently however, many diversity proponents instead talk about diversity in terms of the "business case" or that diversity enhances the bottom line. As stated in a study by the Minority Corporate Counsel Association (MCCA), "Law firms that only pay lip service to diversity may pay a stiff economic price. Law firms that do not take diversity seriously are already losing money."

Diversity Enhances Business

This shift in the debate has been welcomed by many involved in diversity initiatives. Instead of lawyers in firms arguing about whether there is in fact anything "wrong" at their firm that needs correcting, they now discuss how improving their representation of women and minorities may enhance their business. That debate is usually a far less controversial one since, not surprisingly, it is easier for lawyers to reach a consensus about activities aimed at enhancing revenue and profits as opposed to achieving social justice.

Diversity helps the bottom line in a variety of ways. First, diverse law firms attract and retain better lawyers. The pool of available white male law school graduates continues to shrink. As noted above, approximately half of law school graduates today are women and 20 percent are minorities. Firms that recruit solely through the "old boys network" are finding that this network is becoming smaller and smaller. As a result, these firms lose out on many talented lawyers.

Law firms that do hire women and minorities, but fail to retain them, experience substantial turnover costs. It has been estimated that the cost of losing a second year associate can be as much as $250,000 when one factors in the lost return on the investment in training the associate. Law firms that are able to retain their diversity hires reap the benefit of their investment in training. And of course, law firms that lose such associates, on occasion, face discrimination litigation with its attendant expense and distraction, as well as adverse publicity.

Another argument in favor of diversity relates to the quality of lawyering. Many corporate clients want diverse perspectives when seeking legal advice. As expressed by Catherine Lamboley, the general counsel of Shell Oil, "When you use people of diverse backgrounds and different ways of looking at things, you get a better solution."

A more controversial reason supporting the business case for diversity concerns the strategic use of women and minority attorneys in litigation. Jury pools today are more diverse. According to the chairman of the National Association of Minority and Women Owned Law Firms (NAMWOLF), "Using firms with lawyers of a different race, sex and age may allow them to better connect with juries, who also are more diverse." Critics contend such use of women and minority attorneys is tantamount to exploitation. This criticism is frequently heard when companies intentionally seek out law firms that have women or minority attorneys available to help defend a lawsuit involving race or sex discrimination. The response to the critics is that as long as the attorneys are competent and their presence does not risk being viewed as "window dressing" by the jury, the strategy is simply smart advocacy.

New Business Through Diversity

Perhaps the most compelling argument underlying the business case for diversity relates to marketing and business development. The legal profession is a relationship-driven business. Once the competency threshold is passed, selection of counsel is often subjective and is frequently driven by the comfort and personal chemistry between lawyer and client. It is therefore not unusual, as a minority female partner at a major national law firm noted, that clients "want people who reflect their backgrounds."

According to the most recent MCCA survey, 14 percent of general counsels today are women and 5 percent are minorities. In-house counsel are 20 percent women and 10 percent minorities. Twenty-five percent of business owners are women and 15 percent are minorities. Says the chair of NAMWOLF, "Just like there's an old boys network, there's a network of people of color and women. Nowadays at the large corporations, it's a person of color or a woman who is making the decision [of whom to use as outside counsel] and for some it's not appealing to deal with an all-white [male] firm."

Not only are women and minority lawyers developing new business relationships with clients, some corporate clients today are demanding that their law firms have respectable diversity statistics. If the firms don't, they won't get the company's business. As more and more companies have become committed to diversity, they in turn, expect their vendors to be. "Diversity in our workplace and supplier base strengthens our company and our performance in the global marketplace," observes Delta Airline's general counsel.

More Than Lip Service Needed

Two major companies that have garnered much recent publicity about their efforts to use diverse law firms are Shell Oil and Sara Lee. Both corporations gather extensive information from the law firms already doing business with them and those seeking to do business with them. These data go well beyond the number of women and minority attorneys at the firm. The companies want to know if women and minorities are actually doing the work and/or getting business development credit. They also examine the law firm's diversity policies. If the numbers are weak, what does the firm plan to do to make them stronger? Most importantly, the corporations are holding the law firms accountable. Says Shell Oil General Counsel Catherine Lamboley, "We no longer do business with [some] firms because they were simply giving lip service to diversity."

A number of other blue chip corporations evaluate diversity data (though less exhaustively than Shell and Sara Lee) when considering who to retain as outside counsel. The list includes Coca-Cola, American Airlines, Wells Fargo, Bank of America, Baxter Healthcare, and Merck. This trend is best summed up by Merck's general counsel, Kenneth Frazier, who said, "We are in the fortunate position of having many highly capable law firms lining up to work with us. And it was hard in some ways to differentiate among these firms. But we found that diversity was something that would allow us to make that differentiation."

As the list of companies formally seeking diversity data continues to grow, there are also companies and individual in-house counsel who informally solicit such data before selecting counsel. Furthermore, an "underground network" of women and minority in-house counsel routinely recommend law firms with good diversity records that they have retained to others within their network. Under these circumstances, many law firms do not even get a seat at the table, thus losing potential business without ever knowing it.

Growing Your Business

In summary, law firms that do not take diversity seriously have already started to or may soon begin to lose business. Many believe that the progress made by women and minorities in the legal profession has been too little, too late. As more law firms take notice of the business case for diversity, the progress is not only likely to continue, but should do so at a faster pace than previously experienced.

ROY GINSBURG is an attorney coach and CLE provider (www.RoyGinsburg.com). He can be reached at Roy@RoyGinsburg.com