

Diversity During the Downturn

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Introduction

As recently as a year ago, during the winter of 2008, the focus of diversity efforts within the legal profession was the traditional diversity agenda and not very different from that of the preceding two decades:

- Recruiting more diverse individuals into the “pipeline” leading into the profession;
- Encouraging and helping law firms to recruit, retain and promote diverse lawyers into the partnership;
- Supporting in-house counsel efforts to recruit diverse lawyers and retain their services as outside counsel;
- Educating solo and small firm practitioners as to the ways they could support and advance diversity through internships and on-the-job training for diverse law students;
- Diversifying the judiciary and legal academia;
- Diversifying the leadership of bar associations; and,
- Guiding diverse government lawyers in the ways they could secure promotions or transition into the private sector.

At the time, there were some rumblings about a few firms having some problems, but nothing that signaled the imminent economic turmoil that would engulf us. There did not seem to be anything of particular import to alert those of us pursuing our diversity goals and agendas that pursuit of those objectives might soon become something of a “luxury”. The presidential campaigns of Barack Obama and Hillary Clinton and the selection of Sarah Palin as the Republican candidate for Vice President seemed to signal a new benchmark for diversity efforts. Indeed, even as late as September, 2008, diversity efforts, if not barreling ahead, were at least maintaining a status quo, perhaps making a bit of progress here and there. And then, everything changed.

As the nation’s economy went into upheaval, so too has the diversity landscape continued to suffer the aftershocks. It is a lot harder to argue for increased hiring of diverse lawyers when law firms are laying off hundreds of lawyers and some well-known firms have collapsed. It is much more difficult to urge corporations to diversify their outside counsel when some of those same corporations are teetering on the edge of bankruptcy and their very ability to remain in existence seems in doubt. How do you persuade bright, talented young people that ours is a profession they should pursue when so many young lawyers struggle to find employment that will allow them to pay their law school loans? Why

should solo and small firm practitioners devote limited resources to internships, when now they can just as easily hire licensed lawyers to help them on a part-time basis? Is there any one of us – perhaps even we ourselves – who doesn't know other excellent lawyers who are out of work and not having much luck finding employment as a lawyer?

The Future of Diversity Efforts Within the Legal Profession

In such circumstances, it is understandable if many in the diversity arena are shaking their heads over the viability of efforts to diversify the legal profession. Now, may not seem the best, or even the most realistic time to pursue diversity goals and objectives that even during the best of times, too many decision makers in our profession viewed as a luxury or a pie-in-the-sky wish list. After all, consider that right now, many of those whom we have come to rely upon as being in the vanguard of diversity efforts are now, themselves struggling. Diversity consultants are finding it harder than ever to find law firms or corporate law departments that are in a position to retain their services. Law firm diversity professionals – chief diversity officers, diversity directors, and diversity managers – are facing the challenge of justifying their positions or finding ways to help their firms increase revenues through business generation (and for those who are lawyers, undertaking more billable hours doing legal work) or to reduce costs. Diverse law firm partners are finding themselves even more marginalized than before – if they are even able to survive at their firms. Corporate law departments have tightened the already very snug travel restrictions related to attendance at conferences and programs aimed at facilitating interaction between in-house counsel and diverse outside counsel. And the convergence efforts that increasing numbers of corporate law departments have initiated during the past five years (often to the detriment of diverse lawyers), continue to constrict their opportunities to send business to diverse lawyers who are already underrepresented in most law firms. For all too many lawyers, diverse and non-diverse, finding a job as a lawyer – any job – and earning a living has had to take precedence over any diversity goals or agendas that might ordinarily have been made a priority.

The reactions to all of this by many in the diversity arena have tended toward a “hunker down until the storm passes” mentality. Those who are adopting this strategy emphasize the need to maintain a diversity status quo: trying to keep diverse attorneys in their jobs; keeping the law firm diversity professionals' jobs intact; finding ways to keep “warm” those contacts and relationships with in-house counsel who are now less accessible; producing more modest diversity-focused programming; and seeking ways to keep diversity a priority, in word if not in deed. All of these are solid, rational strategies that ought to be implemented. The question, however, remains: In the current environment, is there more that realistically can and should be done?

While the current economic climate may not seem the best in which to try to push an aggressive diversity agenda, the potential ramifications if we take cover and simply try to protect what gains we have made, can be equally unrealistic for our ultimate goals. Diversity is a topic that if it does not keep moving, runs the risk of stagnating and dying. Diversity proponents in the legal profession sometimes become so accustomed to the ignorance of, and lack of commitment by, the masses of lawyers, they forget that an essential part of it is, and always has been, “missionary work” – continually educating the rest of our profession about why diversity is important, and showing them the many paths to diversity.

Merely proselytizing diversity has always been insufficient; over the years we have seen that new and revised or enhanced diversity efforts are what allow us to keep diversity fresh and enable us to continually co-opt more allies in our efforts to diversify the profession. We need to remember that many of our colleagues who do not yet make diversity a priority, simply haven't been educated enough or educated properly about it so as to be converted to the cause. And even the most non-persuaded lawyer, the one who has never really seen a compelling reason for diversity beyond its feel-good benefits or solely to humor the whims of a particularly important client – even those lawyers are capable of benefiting from a teachable moment. After all, when we stop to think about it, some of the most celebrated advocates of diversity within the legal profession came to their “conversion” relatively late in their careers. For how many of the corporate general counsel and chief legal officers of major corporations have we watched as they were educated about why diversity is important and the benefits that it confers, their dawning recognition of their own and their company's responsibility to value, promote and advance diversity, and their realization and willingness to implement strategies to make diversity a reality?

If, due to the current economic climate, we remain on the same path and either promote a diversity agenda that is at odds with the reality of the current economic situation, or if we simply keep quiet for a few years, we lose traction. We lose those teachable moments, and the allies and converts we might have had, and whom we shall need for those times in the future when a more traditional diversity agenda will once again be compelling and appealing. No doubt, it will prove challenging to maintain the status quo, but we cannot and should not remain satisfied with that. Instead, we need to look at the legal profession as a whole and consider new ways to advance diversity that will strike a resounding chord in the current economic environment. Doing so is the only means by which we can keep diversity in the forefront of priorities in corporate law departments, law firms, law schools, government agencies, and bar associations.

Diversity Strategies in The Brave New World

So, what sorts of things can, and should, we be doing to keep the momentum for diversity going during the economic downturn? What strategies can we implement so as to will keep diversity relevant during a time when so many lawyers, law firms, corporations and even bar associations are focusing upon basic survival?

- **Increase Research and Data Collection Efforts**

One of the most basic ways to keep diversity relevant during the economic downturn is to focus efforts on increasing research and data collection. Historically, one of the challenges facing diversity proponents has been a lack of research and data. Now, at a time when diversity resources are severely restricted, there remain creative yet inexpensive ways to undertake meaningful research that will help keep diversity efforts current. For example, one area in which diversity data has always been sketchy is on statistics and demographics that would allow comparisons from city to city. Using simple online data collection tools such as Survey Monkey or Zoomerang, it would be useful to begin to see the diversity numbers of partners and associates at major firms (especially in light of all the recent layoffs) and among

the law departments in corporations and state and local government agencies in different parts of the country. Certainly some effort has to be made to make sure that terminology and definitions in such research are either consistent or clarified in such a way as to allow meaningful comparisons – for instance, terms such as “Hispanic” versus “Latino” or disaggregation of the ethnic groups that comprise the Asian Pacific American community – but that should not prove an insurmountable obstacle. Indeed, although plagued with some problems, even adopting terms and definitions as used by the US Census would at least allow for meaningful comparison, even if it fails to satisfy the political sensitivities of some.

The collection and dissemination of such data would be of tremendous import in allowing us to track progress, identify weaknesses, and continue to make a case for why diversity is so crucial within our profession.

- **Re-Work (But Don’t Eliminate) Mentoring and Support Programs**

Another casualty to the economic downturn has been a gradual disappearance and even outright elimination of or a reduction of support for formal mentoring and other support programs, such as affinity groups. These programs have been ostensibly aimed at promoting a more harmonious and hospitable workplace environment but in most cases were intended to help law firms, corporations and government agencies better recruit and retain diverse lawyers. In the current economy, many of those who might have been doing the mentoring or were being mentored, have been laid off. And in the current economic climate, can anyone be faulted if they choose to emphasize saving jobs over what might be perceived as special requirements or needs by a few? Historically, formal mentoring programs and affinity group programs have had uneven levels of success – and in the case of mentoring programs, generally a good deal less effectiveness or success – so that their reduction or loss might not be perceived to add any particularly negative impact to overall diversity efforts.

Such an opinion, however, misses the point. While many formal mentoring programs may not have lived up to the hopes and expectations of those who designed and tried to implement them and those who should have benefited from them – mentors, mentees, and the firm or law department or agency – allowing these programs to disappear as a consequence of a poor financial situation also allows an institution, whether it be a firm or a corporate law department or a government agency, to disassociate itself from responsibility for the career success of the diverse lawyers who work there. When there is no formal mentoring program, whose responsibility is it to make sure that diverse lawyers receive the mentoring that all lawyers know that they need if they are to have any hope of truly being successful in a particular institution or organization?

So, too, with affinity group efforts. Now, more than ever, diverse employees need the option of an internal support network to help them navigate the now frequently changing internal politics of their firm or organization. When an employer curtails the amount of resources and support it is willing to provide for these efforts, it becomes another way to abdicate responsibility for the professional development of its diverse resources.

Therefore, it becomes important during the current economic challenges to understand that while monetary support for these sorts of efforts may indeed be severely curtailed, diversity advocates need to find other ways to prevent budget cuts from translating into an excuse for lessened responsibility. Since the programs themselves were often of questionable effectiveness, we need to balance our valuation of the programs themselves with the ramifications of their disappearance. A firm may not feel it can fund an internal mentoring program; senior partners can still be urged to participate in a weekly brown bag lunch with diverse associates or junior partners. A corporate law department or government agency may no longer have a budget sufficient to provide for social events for affinity groups; law department or agency leaders can still encourage that sort of networking, albeit in a more budget-conscious manner. And who knows, such efforts might result in improved mentoring or affinity group efforts without a loss of organizational or institutional responsibility for the outcomes.

- **Increase Social Networking**

Social networking under the current economic conditions is not just for those seeking employment or dates. Even if you are one of the fortunate ones whose continued employment appears steady and secure, social networking among everyone desirous of preserving diversity accomplishments is crucial. There are a few corporate law departments that are actually hiring. Several have said that the recent spate of lawyer layoffs has given them an opportunity to hire people who otherwise might never have considered an offer from them, perhaps due to a less desirable geographic location. It behooves all of us to keep apprised of those limited employment opportunities and pass that information on to diverse lawyers and allies. In doing so we can help them better position themselves to advocate for diversity now and in the future.

- **Support Diversity in Other Manifestations**

When we address diversity within the legal profession, we have traditionally looked at diversity among lawyers. At a time when the legal media is reporting more layoffs of lawyers almost daily, it still behooves us not to overlook the diversity in our firms, law departments, government agencies or judiciary, but to also consider other ways and means to advance a diversity agenda. These are ways and means that might have been of less import just a year ago, but that today would allow diversity allies, especially diversity professionals in law firms and corporations, to address a legitimate need and demonstrate measurable improvement, thus keeping diversity efforts alive.

One strategy that a number of corporate law departments and law firms have begun pursuing is to focus on supplier diversity. Typically falling into the province of more traditional goods, some corporate law departments have begun to look for ways that they can utilize diverse service providers beyond the retention of minority or women-owned law firms. This can range from court reporting services, staff attorneys, document review services, printers, caterers, and the like. In some law firms, similar efforts are afoot and client entertainment might now occur in less expensive ethnic restaurants and clubs, all in the name of diversity.

Conclusion

The economic upheavals that are creating such turmoil around the world are also leaving the legal profession in disarray. Venerable law firms and corporate institutions have disappeared. Who can say what the landscape will look like in the future? Nevertheless, we can likely expect that the need for continued, and even greater, diversity efforts will be warranted. We cannot be content to simply maintain the diversity status quo or we risk allowing diversity to slip into irrelevance and possibly obsolescence. Our challenge is to keep diversity alive: meaningful, achievable and very relevant. We have to be willing to shift our priorities within diversity, celebrate the small accomplishments, find ways to meaningfully help our diversity allies, and, above all, never lose sight of the need to always reach out to another ally.

While traditional diversity efforts may need to be altered due to the current economic climate, the commitment to diversity must remain steadfast. Many believe that these current economic times will actually service to separate those in the legal community, both law firms and corporations, who are truly committed to advancing diversity in the legal profession from those who view diversity as a trend and provided lukewarm support for political correctness. Essential to our survival is the understanding that the marketplace we serve is global one. We must continue to preserve, promote and advance the diversity agenda. Equality of opportunity and economic success are inextricable; our commitment should be nothing less.