

Diversity in the Legal Profession: What's Working, What Isn't

A ROUNDTABLE OF EXPERTS SPEAKS UP

By Stephanie B. Goldberg

In the wake of the publication of the Commission on Women in the Profession's report *Visible Invisibility: Women of Color in Law Firms, Perspectives* asked a distinguished panel of practitioners and bar leaders to consider practical measures for increasing the retention of women lawyers of color.



Mark Curriden, a lawyer and member of the *Perspectives* editorial board, an award-winning legal journalist, author of several books including *Contempt of Court: The Turn of the Century Lynching that Launched a Hundred Years of Federalism* (Random House: 2003), and director of communications for Vinson & Elkins LLP in Dallas, Texas, moderated the discussion.

He was joined by the following lawyers:



Dennis Archer is chair of the law firm Dickinson Wright PLLC in Detroit, Michigan, a former mayor of Detroit, a former justice of the Michigan Supreme Court, and a former president of the American Bar Association.



Elaine Arabatzi is a former prosecutor and the diversity/pro bono counsel for the New York City-based firm of Dickstein Shapiro LLP. Her transition from senior associate in the firm's litigation and dispute resolution group to the role of diversity/pro bono counsel was preceded by her increasing involvement in the firm's diversity and pro bono programs. She regularly participates in activities sponsored by the Minority Corporate Counsel Association.



Teveia R. Barnes is a partner with Foley & Lardner LLP in San Francisco, California, and president and executive director of Lawyers for One America (LFOA), a national nonprofit organization responsible for a pro bono law office serving the working poor and providing business assistance to underserved communities. Barnes leads LOFA's Diversity Center, which seeks to increase diversity in all sectors of the legal profession. She is a 2004 recipient of the Commission's Margaret Brent Award.



Linda A. Klein is a managing partner of the firm of Gambrell & Stolz LLP in Atlanta, Georgia, a former chair of the ABA Tort Trial & Insurance Practice Section and former cochair of the section's Diversity Committee, a former president of the State Bar of Georgia, vice-chair of the Georgia Supreme Court's Commission on Access and Fairness in the Courts, and a 2004 recipient of the Commission's Margaret Brent Award.



Cathy Lamboley is senior vice president, general counsel, and corporate secretary of Shell Oil Company based in Houston, Texas, member and former chair of the board of directors of the Minority Corporate Counsel Association, and a 2004 recipient of the Commission's Margaret Brent Award.



Mark Curriden: Let's start by talking about some of the initiatives in which you personally are involved.

Teveia Barnes: At Foley & Lardner, we have diversity affinity groups in which diverse lawyers, like African American lawyers, for example, get together. The beauty of the affinity group is that very difficult issues can be candidly discussed in a safe setting. The affinity group also allows us to coordinate our efforts in recruiting and mentoring one another. We serve as a sounding board and a support group for each other.

Dennis Archer: We have a very aggressive and fully committed diversity initiative within Dickinson Wright. We come together as a group and listen to and seek out any concerns that our lawyers might have. Transparency and openness really help. We also make sure that when mentors are assigned to lawyers of color, they are truly committed. That makes a big difference.

Cathy Lamboley: At Shell, we have key law firms that we've identified and to whom we give most of our work. And we're very focused on diversity initiatives within those law firms. In addition to monitoring the diversity and the demographics of the law firms, we give them scorecards every year and have conversations with them about their diversity record. But one thing that we really focus on is opportunity for diverse associates.

Our view is that it's critical that these lawyers have the opportunity to

do our work and meet with our lawyers so they can build their competency and develop relationships. This will help them with business development as they go forward in their careers at the law firm.

Toward that end, we designate who will be on the Shell team within the law firm, and we pick those lawyers to ensure that there's diversity. At law firms with which I work closely, the successful mechanisms for advancing women lawyers of color are both formal and informal mentoring processes. Also critical is what I would characterize as sponsorship from powerful lawyers within the firm, be they section heads or lawyers who have a big book of business. They make sure the associates are known within the law firm and get good assignments. Then the likelihood of retention is much greater.

Curriden: Linda, you're a managing partner of a small to midsize firm. What is your experience?

Linda Klein: It's a different world. First of all, we're 35 lawyers in two offices in Georgia. We don't have enough people that we could say, oh, only the white men get the good assignments because, when a big piece of litigation comes in, all the bodies are going to be thrown at it.

And so everybody is going to have opportunities for really good work because even new lawyers will generally get client contact. Our problems really center around recruiting and retention. It's very difficult for us to be competitive for the best and the brightest talent and, particularly, the best and brightest talent in women of color. We know that when a woman of color joins our firm, chances are we're going to lose her, and we want to be sure that when she leaves, she leaves happy because that's the best we can hope for.

Elaine Arabatzis: Well, you may be losing people on the early side of the equation, but I suspect that as people gain experience, you're probably going to see a lot of laterals who

are looking to go to a place like yours.

At Dickstein Shapiro, diverse associates can take advantage of a mentoring group if they want to; if they don't, that's fine, too. It's a panel composed primarily of heavy-hitter partners. They are there to help facilitate the associates' transition into the firm and give them client development opportunities. And that seems to work pretty well. We too have affinity groups, but we don't want anyone in those groups to feel that we have too heavy a hand. If they choose to report back to us on issues that they think are relevant, we're more than happy to hear what they have to say. But we really let them do whatever it is that they choose to do.

The Invisibility Factor

Curriden: Turning to the statistics on women of color in *Visible Invisibility*, they are very discouraging. Women of color make up about four percent of the partnership in the firms that were studied. Are we just not trying hard enough, or are we trying the wrong things?

Arabatzis: One of the most important things to keep in mind is that people's ability to integrate into the firm is very important. I think there's so much pressure perceived or real on the part of women of color to assimilate. We all need to be doing a better job of embracing differences. We have to give them what they need in order for them to feel that they can be themselves and not have to adopt a white-male sort of outward behavior. I think that's critically important.

Archer: I think we need to be more appreciative of being flexible in allowing women to embrace motherhood, to allow them to stay connected with their families and yet still give them every opportunity to move toward partnership. Often women make a very conscious decision to forgo the kind of relationships that mature into marriage and children. Or they decide to have children and

lose the opportunity to become partners. So we lose outstanding women in our law firms.

Women of color have a unique challenge. When they enter a firm, they're sometimes not encouraged or allowed to meet with a firm's client even if the client comes into the office. They're left in their office while the billing partner or the partner assigned to manage the matter meets with the client. When women of color learn that they're not given an equal opportunity to compete, their motivation of wanting to become a part of the firm begins to diminish.

Lamboley: We see that ourselves. We know that people who are working on our matters are of color or are women, and yet, you know, the traditional middle-aged white guys get trotted out. I don't understand why law firms continue to do this because it's totally unimpressive. I've commented on this to some firms that have tried to do work for us. Women of color are not getting credit for the work they are doing.

I also see that women of color still are not getting a chance to have the critical types of work experiences that will grow their skills because work goes from white male to white male. Until that model changes, I don't see that we're going to significantly increase the numbers that we all have been talking about and that are so disappointing.

The billable hour contributes to the problem in that it does not reward efficiency. Women have become incredibly adept at being extremely efficient because of all the balls—including family—that they juggle. There is simply not enough recognition and reward for that.

Klein: The idea that clients want efficient lawyers and that law firms can make more money and that their clients can be better served by putting the most efficient people on the project, in my opinion, is really the future—where law firms are going. That's one structural change we're seeing.

Another structural change is that business generation is much more important to compensation for partners in a firm of my size. And so in order to move younger lawyers—I call it from labor to management—we give our lawyers money to spend on business generation.

We find that lawyers coming out of larger firms have never had the opportunity to try to develop business on their own. Or, if they have an idea, it's kind of micromanaged or somebody more senior comes in and steals the idea. We found that giving people several thousand dollars a year to use as they see fit really helps them turn that corner to try to develop their own clients.

Barnes: As a woman of color who has been in the legal profession for nearly 30 years, I was not at all surprised by the findings of the

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Commission's report. It is a sad confirmation of negative experiences that exist for so many women of color in the legal profession.

I agree with Cathy about white men passing on their clients to other white men. I believe it occurs because some men do not see women as having the authority and the credibility to be their successor. These men may be more comfortable with successors who look like them. Firms will not have a real commitment to diversity until women lawyers of color are brought to the attention of all clients for whom they

have the appropriate skill set, regardless of whether the client has a diversity initiative.

Women of color who leave the law are not stupid. They understand the lack, or low likelihood, of real opportunities. When they look around and don't see successors that look like them, they often decide to direct their time and talent into an endeavor that is more likely to lead to success.

The other issue for women lawyers of color is that we are often invisible. We are an asset that is often highly sought but then ignored or forgotten. Until women lawyers of color are nurtured and cultivated as any other valued asset, women of color will leave the law.

Curriden: I saw a report recently that just over 50 percent of all lawyers being recruited will end up leaving their firm by the end of the fourth and fifth years.

According to the report, it's 50 percent worse for women of color—75 percent will leave by [the fourth or fifth] years. Are we overpromising them things in the recruiting process, or is there something else that's happening to make them invisible? What happens in those years two to four?

Arabatzi: I don't think things that are promised during the recruiting process are not being delivered.

I think there are a lot of different forces at play. My firm has lost a number of very qualified, very talented minority women who opted to do public interest work.

But I also think if minority lawyers look upward and see people who resemble them, they might be more determined to stick it out over the rough patches than to say that this is not how I want to spend the next 30 years of my working life.

Commitments to Diversity

Curriden: Cathy, what things have the firms that work for you done to retain women of color?

Lamboley: One development is

the growth of diversity counsels, which has been noted. There's a real effort on the part of law firms to try to understand why lawyers leave and to put effort into keeping them. But I still hear from women and women of color who are afraid to take advantage of those policies because they think they are going to be viewed as second-class citizens and not tough enough.

So, while firms are making some efforts, it's still going to take a lot of continuous effort so associates believe that the partnership is serious and in it for the long run.

Barnes: Foley recently promoted to partner several women who were part-time senior counsel. That one act demonstrated a true commitment. When diverse lawyers see meaningful actions like promoting women of color to significant positions, the message from the firm is that it is serious about its commitment and willing to address the issues raised through the affinity groups.

I think when lawyers see that type of action taking place—having women of color promoted to very significant positions—then it looks like we're being heard and that the issues raised through our affinity groups are being acknowledged.

Lamboley: I think there is huge fear of taking a risk when your firm isn't there to support you. So, some women will say, "I'm going to leave as opposed to take that risk and have it fail."

I want to share with you a story that I recently heard from a senior associate woman of color. She told me that she had been up for partner in a large law firm, and the head of her section had a very candid conversation with her. He said that he would really prefer she not go forward with being up for partner this year because she really had not had the experiences and developed fully the competencies that were expected of someone at the partnership level.

He asked whether she would wait a year, and he acknowledged

Shell Oil Company's Diversity Scorecard

Shell Oil Company has been recognized for its aggressive efforts to implement diversity throughout the company and among its vendors and service personnel. For the past three years, its legal department, headed by Cathy Lamboley, general counsel and senior vice president, has issued an annual diversity scorecard, rating the 26 law firms that it has designated strategic partners and the 10 minority and women business enterprises (MWBE) with which it conducts the most business.

The scale has four possible ratings: exceeds expectations, meets expectations, below expectations, and unacceptable. Every Shell lawyer who has worked with the firm or MWBE provides input to the scorecard. The results are circulated within the legal department and reviewed by the company's diversity committee. At an annual conference, the results are shared with the firm or small business, which is given a written set of expectations for the following year, and corrective steps, if needed, are discussed. "The conversations are very frank," says John Esquivel of Shell's legal department. "The firms genuinely appreciate the feedback, even when it's not good news."

—Stephanie B. Goldberg

that he had failed her. Then he asked if they could work a year on developing the skills and competencies that she needed. Ultimately, she agreed to stay and to work with that section head on the skills and the competencies.

Curriden: Does it in any way compensate that the partner recognized right up front, "I screwed up"?

Lamboley: Well, you know, it's a tragedy that it took place. But I thought it was a very positive thing that it hit him in the face, and I know that he has renewed his efforts to tell other lawyers of color in that section.

Barnes: Ordinarily that lawyer of color would not have been given another chance. The fact that both the partner and the firm were willing to have her deferred for a year and sincerely considered the following year bodes well for that firm.

Curriden: Final thoughts?

Archer: I think the biggest challenge is to make the business case to our colleagues who happen to be white males.

White males need to understand that money available for merit

increases and bonuses will be much larger if diverse people are recruited, given challenging assignments, and promoted to partnership. All that's being done in the name of providing a level playing field. No one is trying to take away their "book of business." They need to know that at the end of the day, the law firm benefits, and the partners benefit; their salary is going to increase, and so will their bonus. If they don't feel threatened, then you will see an enthusiastic group of lawyers who suddenly see the light.

Barnes: No more excuses. Firms must be held accountable for their actions and inactions. In a service business, human capital is as important as the clients we serve.

Lamboley: In my view, change has not been broad enough or fast enough. Economic realities speak very loudly. I think partners have to be held accountable for their efforts in creating a diverse and inclusive law firm culture. ☺

Stephanie B. Goldberg is a legal affairs journalist based in Chicago and is a former member of the Perspectives editorial board. Her work has appeared in the New York Times, BusinessWeek, the Chicago Tribune, and many legal publications.