

Is Your Firm Suffering Diversity Fatigue?

By Hannah Hayes

In 1999, BellSouth issued its Statement of Principle on diversity in the workplace, leading more than 250 companies to commit to working with law firms with a proven record of promoting diversity in the workplace. DuPont and Sara Lee followed with similar actions, and in 2005, Wal-Mart upped the ante by threatening to “end or limit relationships with law firms who fail to demonstrate a meaningful interest to the importance of diversity.”

In July, Microsoft took a new approach and offered cash bonuses to outside counsel who increased the number of either women and minorities in their firm by 0.5 percent or those who work on Microsoft matters specifically by 2 percent.

Whether these companies use a carrot or a stick to get what they want, the message is clear: Law firms still struggle to keep up with the changing face of the profession and population as a whole.

The numbers of minorities and women in law firms have increased steadily during the past two decades, yet the pace of advancement is undeniably and painfully slow. Since 1993, when the percentage of female law school students hit 50.4 percent, women have waited for the pipeline effect to reflect a similar increase at the decision-making level in law firms.

However, a recent report by Catalyst, a nonprofit organization focusing on workplace equity, estimates that at the current rate women will not achieve parity with men in law firm partnerships until 2088. This apparently leaky pipeline has heightened concerns and raised questions.

The answer, some say, is diversity fatigue.

What Is Diversity Fatigue?

According to Word Spy, a Web site that tracks terms as they are picked up and used by the media, “diversity fatigue” entered the lexicon in 1996. It became more widely used two years ago when newspaper editors acknowledged their failed efforts to diversify their newsrooms and scaled back their targets, citing diversity fatigue.

“Diversity fatigue means different things to different people,” says Melanie Harrington, director of the Atlanta-based American Institute for Managing Diversity Inc. (AIMD). “It’s been discussed in the wider community and the corporate arena for a while, but it’s a rather new conversation in the legal profession.” AIMD sponsors a Diversity Management Series for Law Firm Leaders and works with an alliance of local large law firms that want to increase minority representation.

For those leading diversity initiatives, the fatigue is a very real measure

of the efforts falling on too few individuals. Janet Love, a managing partner at Chicago-based Lord, Bissell and Brook LLP, is a cochair of the firm’s diversity committee, which was started in 2001. In addition to her regular workload, Love says she has put in 200 to 300 hours a year on diversity efforts and related very much to diversity fatigue. “There’s a feeling that others have absorbed all they can on the topic and start rolling their eyes if they have to go to another event, which means you constantly have to invent new approaches,” Love explains.

After a merger in 2006, Lord, Bissell and Brook hired a full-time director of diversity, a route chosen by many law firms that are frustrated with lack of progress and are very conscious that clients want a team representative of the general population.

Consider that more than half of the 200 firms surveyed in the yearly Diversity Scorecard published by the *Minority Law Journal* say they have a full-time director of diversity. But this may not be the silver bullet they hoped for, says Sandra Yamate, director of the ABA Commission on Racial and Ethnic Diversity in the Profession.

“Part of the problem is that on the outside diversity looks really simple, but people don’t understand how complex it really is,” Yamate says. “Firms try to institutionalize their methods and do it poorly without a sense of really understanding the issues.”

Underlying Causes

Many firms actively work toward diversity in hiring with educational programs and targeted recruitment, but they haven’t responded to the growing alarm over the small numbers of women and minorities advancing into leadership. Furthermore, in a challenging economy the issues of diversity tend to take a backseat, according to Arin Reeves, J.D., Ph.D., a consultant specializing in diversity in the legal profession.

“Budgets are being cut and people are saying, ‘I don’t want to hear about diversity right now’ and ‘Does it make sense to be sponsoring

different things when we're trying to avoid layoffs?" Reeves says.

Reeves points to the underlying bias and stereotypes that many people assume are in the past. A 2006 study coauthored by Reeves examined reasons women of color were leaving the legal profession in large numbers. "The more stark bias may be gone, but subtle bias is more active and the hardest for law firms to recognize. It's easier to throw up your hands in frustration."

Diversity fatigue may just be part of a cycle that takes a law firm to the next level. "People look at the representation of their talent pool and realize they have some problems and try to address it," Harrington says. "They usually work only on representation, and once they bring that into the organization, they declare victory and stop. Then the people brought in hit the glass ceiling and other walls and the numbers are right back where they started."

Veta Richardson, executive director of the Minority Corporate Counsel Association (MCCA), Washington, D.C., believes that diversity fatigue is natural when an organization is focused on achieving results and those results are not coming as quickly as they like. "Advancing diversity and increasing inclusion can take three steps forward. Then people leave and it feels like a step back, but it's just evolution," she explains. "With any attrition, you have to look at why."

Achieving Success

Firms successful at maintaining diversity at all levels recognize that it is an ongoing process and must become part of the culture.

Cleary Gottlieb ranks consistently in the top ten firms both on the Diversity Scorecard and *Working Mother/Flex-Time Lawyer's* list of 50 Best Law Firms for Women. When Carmine Boccuzzi joined the New York law firm as a summer associate in 1993, it was known as a "funky" or "quirky" place to work. "Even if diversity was not yet on the radar screen, it was known as a unique place to work," says Boccuzzi, who along with five other new associates sent a letter

requesting domestic partnership benefits. "It was already in the works."

"With our firm it's just a reality," Boccuzzi says. "You have a lot of people of different backgrounds who care about diversity and workplace equity and doing the right thing, and it's not just one person crying out in the wilderness. It's part of the culture."

Fenwick & West LLP, a San Francisco law firm specializing in technology and life sciences, also lands at the

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top of most diversity lists. "Our efforts have been vibrant, but I do think you need to evolve," says Kate Fritz, a managing partner who also chairs the Santa Clara County Bar Association's diversity committee. "It took a little while to reach a place where we were candid and open, and then new people rotated in and former people who were active [on the diversity committee] went on the executive committee."

Despite their evident success, attrition is a problem, as it is with many law firms. "Some of it is around work/life issues, particularly on the gender side," Fritz says. "Institutionally, law firms are still trying to figure out how to address this, but individual lawyers are as well. It's hard to say whether it's a gender issue or a generational issue."

Recognizing that maintaining a diverse law office is an ongoing process, Fenwick & West reached out to the Center for WorkLife Law at the University of California Hastings College of the Law to examine why lawyers might be leaving. While they actively promoted a part-time

program, they soon saw they made a lot of assumptions surrounding the program.

"Research has shown that unless you have a nonstigmatized part-time program, you aren't going to retain women," says Joan Williams, director of the center at Hastings. "The logical approach is to analyze what is creating the stigma using objective measures that tie directly to best practice and adopt the solutions. This is an efficient way that the research shows how to make change."

Changing the Tools

Williams recently authored a study on performance evaluations and hidden bias that keeps women from advancing. She advocates changing the way we measure diversity. "For many law firms, the classic approach to measuring diversity has been measuring bodies." She says a better measure—and less frustrating for law firms—is to measure best practice as well as the numbers.

"Measuring how many doesn't tell law firms how to get there," Williams points out. "Don't leave it to them to try and figure out the problems and the subtle ways that hidden assumptions are subverting their efforts. You need to give it to them. Tell them, 'Here are the following best practices, and we're going to measure them because we know that when an organization does adopt them, it's an effective cultural change.'"

Despite disturbingly low numbers and the slow pace of progress, many law firms genuinely desire to replace the fatigue with progress. Reeves equates it to weight-loss strategy. "It's a day-by-day process," she says. "You do it over and over again, and once you achieve some success, you still have to work to maintain it."

When firms make diversity a value, Reeves says, they will prioritize accordingly. "You don't just drop a primary value because of the economy," she observes. "When it gets hard, it's an opportunity to ask yourself why you're doing it." 🍷

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