

In February more than 1,100 lawyers lost their jobs during a two-day period. While the economy continues on a downward spiral, job security in the corporate world is shaky at best, and soon-to-be graduates preparing to launch their legal career wonder what opportunities exist after law school. What's more, in these uncertain times, corporate budget constraints have nudged aside important issues such as job parity, retention, work/life balance, and diversity in the legal workplace.

Even though diversity no longer is the politically correct buzzword that it was in the 1990s, it is good business sense in today's global economy and multicultural marketplace. Corporations from Microsoft to Wal-Mart continue to reward diversity measures in-house and have made diversity of outside counsel staff a condition of doing business with them.

But have the initiatives and measures launched for in-house counsel during the 1990s taken root, or will diversity fall by the wayside during these economically challenging times?

### **Progress and Process**

The Minority Corporate Counsel Association (MCCA) reports that in 2008, one in five general counsel for Fortune 500 companies was a woman, while minorities made up a mere 7.9 percent.

"When looking at statistics, progress is incremental at best," says Tom Sager, general counsel and senior vice president for DuPont. "Statistically, it's not comforting or backslapping news, but we have to celebrate successes and recognize those trying to make a difference."

For 25 years, DuPont has made the lists of best companies because of its broad range of diversity initiatives and inclusiveness policies. Driven by changing demographics, DuPont began to raise awareness through seminars and workshops focusing on diversity issues.

# Sign of the Times: Will Corporate Budget Restraints Affect In-House Diversity Initiatives?

By Hannah Hayes

Sager, who sits on MCCA's board of directors, joined DuPont in 1976 and witnessed the evolution of policies that have contributed to the company's reputation as a trailblazer in the diversity arena. "At first we focused on education, and as these things sunk in, we took it to a different level," Sager says.

He adds that DuPont's senior executives were then sent to five days of intensive training so they could connect with colleagues emotionally and would be more likely to embrace diversity initiatives. "[The training] had a tremendous impact on me and my colleagues," Sager notes.

From there, the focus changed to how diversity or a lack of it impacts a company favorably or unfavorably. As assistant general counsel, Sager developed a model to cut costs by setting high standards such as contracting with fewer law firms that met diversity standards, forming a women's network and minority network, and sponsoring conferences and minority job fairs to achieve these same goals in-house.

### **Looking Outside and Inside**

In 1999, BellSouth issued its Statement of Principle on diversity in the workplace. In 2004 a corporate Call to Action took it a step further, as chief

legal officers nationwide who joined the initiative authored by Sara Lee's then-chief legal officer, Rick Palmore, vowed to "end or limit relationships with firms whose performance consistently evidences a lack of meaningful interest in being diverse."

Using a strategy similar to DuPont's, Shell Oil developed a strategic partnership program, limiting the number of law firms with which it conducted business from more than 100 to just 44. Led by General Counsel Catherine Lamboley, the initiative required firms to meet diversity benchmarks.

Lamboley joined Shell in 1979 when "it was definitely white and male," she recalls. Throughout her 28-year career at Shell, Lamboley advocated for the advancement of women and minorities and spearheaded diversity efforts. "The leadership at Shell decided diversity was imperative both in terms of getting the necessary talent as well as [maintaining] the customer base. I think it's very important that diversity be viewed as important for business."

Microsoft took a new approach and in July 2008 unrolled its Pay for Performance Plan, which offers cash bonuses to outside counsel who either

increase the number of women and minorities in their firm overall by 0.5 percent or increase the number of those who work on Microsoft matters specifically by 2 percent.

“We are trying to be responsible and absolutely committed to making a positive difference,” says Mary Snapp, corporate vice president and deputy general counsel at Microsoft and an MCCA board member. “We all need to do more, so we look at our own numbers too. We can’t ask our law firms to do more if we’re not willing.”

In-house, Microsoft sets specific goals each year and reviews their progress quarterly. “We don’t have enough women and minority lawyers practicing anywhere, not just in-house,” Snapp says. “The baseline question is: How do you continue to increase the pipeline? And we try to approach it from a near-term as well as a long-term perspective.”

In addition to conducting ongoing events and surveys and a formal mentoring program, Microsoft promotes flex-time and job-share policies as a recruiting tool, particularly in areas where the pipeline is quite small. “The number of women who are patent lawyers is much smaller than in other areas, and we’d love to see it expand,” Snapp notes.

### How Can GCs Advance Diversity?

While many companies have made diversity a corporatewide priority, general counsels can do much to promote inclusion within their own departments. “Typically, managers have their individual diversity goals, and it’s helpful if the overall corporation has the same goals,” Shell’s Lamboley says.

Clorox, for example, made increased diversity in hiring part of its companywide 2008 strategy. The legal department followed suit, says Clorox General Counsel Laura Stein. “It is important for general counsel to seek to have a diverse in-house legal leadership team and department and a culture of inclusion—the tone at the top about the importance of diversity matters.”

Conversely, some general counsels have implemented policies that spread throughout the company. Tom Mars, former general counsel for Wal-Mart,

led the way in integrating diversity and inclusion into the goals of Wal-Mart’s legal department.

“Tom’s commitment to diversity demonstrated to other corporate executives at Wal-Mart that we could attract high-quality, diverse talent from across the country and resulted in a recognition that Wal-Mart could use its scale to advance diversity within corporations that do business with Wal-Mart,” says Susan Kloonz, senior vice president and general counsel at Wal-Mart. “Tom’s leadership affected Wal-Mart’s corporate culture and positively impacted the cultures of other corporate legal departments and law firms across the country.”

According to Arin Reeves, a Chicago lawyer and consultant specializing in diversity strategies for the legal profession, general counsels generally have a large amount of leeway. “When the general counsel is committed [to the issue], there is a lot more focus on training and development internally,” she explains.

Many programs that work successfully in law firms, such as mentoring and diversity committees, work equally as well in corporate legal departments. Some companies give a bonus for diversity referrals or as incentives for reaching diversity benchmarks, Reeves says.

### Filling the Pipeline

Reeves points out that many corporations prefer to hire experienced lawyers from law firms rather than recent law school graduates. If a job transfer is involved, experienced women with families are less likely to relocate. The potential for advancement for young, single women may not be as attractive at corporations as in law firms where the career track is clearly spelled out.

This is why diversity initiatives must be tied in with work/life balance programs that focus on more flexible work arrangements, says Joan Williams, director of WorkLife Law at the University of Hastings and codirector of the Project for Attorney Retention (PAR).

“A diversity program without an effective flexible component is a failure,” Williams says. PAR recently

launched the Diversity and Flexibility Connection, which brings together in-house counsel who have been successful in these areas with law firms struggling to meet the newer diversity standards.

Successful flexibility programs in corporations often differ from those in law firms. According to Williams, job sharing is a popular choice for companies, yet few law firms offer job sharing as an alternative. Conversely, it’s often difficult to get a part-time schedule in-house, and while many lawyers choose an in-house career to achieve work/life balance, they often end up working just as many hours.

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Williams also points out that for women of color, the issues are slightly different. Some reports indicate women of color feel they are not able to ask for work/family arrangements given routinely to white women. “The diversity discussion is primarily about race, and the flexibility discussion is primarily about gender,” Williams says.

“But we have seen a group of employers who have begun to create environments that are conducive and open to nonstigmatized flexibility,” Williams says. PAR will announce its findings in a report this spring.

Work/life issues and flexibility also serve as recruitment and retention tools that can be helpful in maintaining a diverse workforce. Last October, Coca-Cola rolled out a flexible work arrangement program. “While it was driven by our Global Women’s Leadership Council in response to the work/life balance we all struggle with, many people are not doing it for child care,” says Leslie Turner, general

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counsel of Coca-Cola North America.

In addition to a flex-time schedule, Coca-Cola's legal department offers a compressed work week as well as the option of telecommuting. "It's important both in helping our current associates while attracting and retaining talent," Turner says.

### Hiring in Hard Times

In today's economic climate, many companies are not hiring, and budget restraints are causing some departments to scale back. According to Vanessa

Vidal, president of ESQ Recruiting, a national service specializing in the placement of in-house lawyers, hiring will most likely be very selective and in recent months has come to a halt. The slowdown, however, may be an advantage for women and minorities.

"All of my clients say they would like to see diversity candidates," Vidal says. "There's just an awareness and a desire to see diversity and women in their legal ranks."

It remains to be seen whether corporate budget restraints will affect diversity initiatives. "I think we broadly think of the economy and how we

prioritize in the legal department when it comes to budget adjustments, but we have to absolutely sustain the core mission," Microsoft's Snapp says. "We cannot be a quality, first-class legal department without diversity, and while we don't know if there will be a reduction in programs, we do have to sustain the core."

DuPont's Sager agrees. "New initiatives tend to suffer, but our job is to keep it fresh and alive," he says. "What we invest in now will pay us back in the years to come." ☞

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## GENERAL COUNSELS KEEP THEIR DEPARTMENTS GOING

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and taught her alternative dispute resolution, highly useful in her current position. She's always worked hard. Finishing one assignment, she'd run to her boss for another. She sought leadership roles because she likes to solve problems. "Someone said I'm resilient. If I make a mistake, I learn it and move on."

When she was offered the general counsel job in 1999, it was right after she'd adopted a child at age 48. It wasn't perfect timing, but she says she took the position because "opportunities in terms of career advancement don't always come at the best times."

Although her task sounds Herculean, she always takes time to issue thank yous and small acknowledgments to her workers across the country. "I ask my staff to let me know when someone won a case, passed the bar, got married, or ran a marathon," she says. "That's a way to keep your department going and functioning well, especially in tough times." ☞

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## FOCUS ON THE PERFORMANCE EVALUATION PROCESS

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personal biases do not influence a written performance evaluation.

*Assign an individual or a committee to review all completed evaluations before they are finalized.* Ideally, one person should be assigned to review all completed evaluations because patterns of bias may be difficult to identify without reading every evaluation. However, it may not be feasible for one person to review all evaluations for a large firm. In that case, a committee of reviewers is the next best option. Suggestions for possible reviewers include members of the management committee, the firm administrator, the professional development officer, or members of the firm's diversity committee. The reviewer(s) should look for consistency in the application of competencies and indications that the evaluators were influenced by bias.

### Tips for the Evaluators

Law firms can't do it alone. The evaluators have to share the firm's commitment to eradicating gender bias. Evaluators can do their part by taking advantage of these suggestions:

- Get educated about gender bias and examine your own biases.

- Base your comments on actual performance and not potential.
- Comment only on performance during the period under review.
- Base your assessment on factual examples of behavior.
- Weigh individual competencies similarly for all evaluatees regardless of gender.
- Avoid using derogatory, disrespectful, or overtly biased comments.
- Avoid basing comments or scores on the evaluatee's adherence or failure to adhere to traditional gender stereotypes.
- Review completed evaluations for consistency and objectivity.

Focusing on eliminating gender bias in the performance evaluation process is a beginning. The greatest impact on women's advancement, however, will come from raising lawyers' awareness about their biases and making clear the firm's intolerance for bias in the workplace. ☞

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