



“What Diversity Means to Clients: Benchmarks to Track Diversity Initiatives & Successful Workplace Practices.”

Diversity Makes Cents: The Business Case for Diversity

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DIVERSITY MAKES CENTS: THE BUSINESS CASE FOR DIVERSITY

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 that of the demographic makeup of law students, women and minorities continue to be under-represented among the partnership ranks at major law firms. According to the latest statistics from The National Association For Legal Placement (NALP), women account for approximately 17% of partners in such firms, while minorities account for slightly more than 4%. 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 increased from 10% to 20%. Compared to partnership levels, women and minority lawyers are better represented at the associate ranks. Approximately 43% of associates are women and 15% of associates are minorities, indicating a 5% lag in their representation compared to law school graduating classes.

Is There A Glass Ceiling?

Progress has been slow. In 1993, women accounted for 12% of partners, while 2.5 % 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 and that 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. However, 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 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) study, "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."

From a financial standpoint, coaching can be a wise and prudent investment. Consider practice development coaching: if coaching support helps bring in just one additional piece of business, it has already paid for itself and then some.

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.

How Diversity Enhances Business

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% are minorities. Firms that seek candidates 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 can also lose out on talented lawyers if they do nothing to retain them. Those who do nothing to retain them experience substantial turnover costs. It is estimated that the cost of the loss of a second year associate can be as much as \$250,000 when one factors in the lost return on the investment incurred

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.

Diversity Can Foster Better Solutions

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."

Diversity: A Good Strategy At Trial

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. Says one minority attorney, "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 think such use of women and minority attorneys to be 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 sex or race discrimination employment lawsuit. The response to the critics is that as long as the attorneys are competent and their presence does not run the risk of being viewed as "window dressing" by the jury, the strategy is simply smart advocacy.

Diversity Can Open the Door to New Business

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 noted by one general counsel that clients "want people who reflect their backgrounds." According to the most recent MCCA survey, today, 14% of general counsels are women and 5% are minorities. In-house counsel are 20% women and 10% minority. Twenty-five percent of business owners are women and 15% are minorities. Says one minority attorney, "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 and for some it's not appealing to deal with an all-white [male] firm."

Corporate Clients Demand Diversity From Firms

Not only is business being developed by the relationships established by women and minority lawyers and clients, some corporate clients today are demanding that their law firms have respectable diversity statistics. If they don't, they won't get their 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 Airlines' General Counsel.

Corporate Clients Demand More Than Lip Service to Diversity

Two major companies that have garnered a considerable amount of 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. This data goes well beyond simply stating the number of women and minority attorneys at the firm. They 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, these companies want to know what the firm plans to do to make them stronger. Most importantly, they 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."

Diversity Can Work in Your Favor to Differentiate You From the Pack

A number of other blue chip corporations evaluate diversity data (though less exhaustively than Shell) 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."

Diverse In-House Counsel Develop an Underground Network

In addition, 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 their existing law firms with good diversity records 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.

Take Diversity Seriously and Watch Your Business Grow

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.



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Client Demands Strengthen the Business Case for Law Firm Diversity

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CLIENT DEMANDS STRENGTHEN THE BUSINESS CASE FOR LAW FIRM DIVERSITY

LOS ANGELES - As the face of corporate America becomes increasingly diverse and gender balanced, the smart money at law firms is working to reflect that diversity within their own ranks.

Robin Cohen and Linda Kornfeld, managing partners of the New York and Los Angeles offices of Dickstein Shapiro Morin & Oshinsky, respectively, argue in a new white paper that "the business-oriented analysis of why women should be a significant presence in corporate America is compelling: gender diversity increases financial performance."

One of the ways diversity can increase that bottom line is to help firms attract diverse clients who want to see representation that looks like them, and corporate clients who have diversity initiatives.

"Law firms are looking less and less like the clients they work for. Those firms that recognize they need diversity will be ahead of the pack," said Susan Hackett, senior vice president and general counsel of the Association of Corporate Counsel.

"If your firm doesn't recognize this now, in a few years you will find other firms already at the table eating your lunch," said Hackett at a recent Legal Marketing Association luncheon in Los Angeles, "The Demand for Diversity - A View from Corporate Counsel."

The message that diversity hiring is good business has gotten less attention than messages that encourage hiring women and minorities to redress their status as "victims" of a white, patriarchal system.

When Kornfeld and Cohen studied published articles for their paper "Women Leaders and the Bottom Line," they found "95 percent of the articles were negative. There is lots of talk about women opting out, but no one has taken the studies that show hiring women is good for business and run with them."

Their firm has represented DuPont, which has diversity requirements for the outside counsel it hires.

Other big corporations, including Wal-Mart Stores Inc., the Sarah Lee Corp., Epson America Inc., the Hilton Hotels Corp. and Shell Oil Co. also have focused on diversity issues.

While corporations have developed diversity initiatives fairly quickly, building diversity in a firm can take much longer.

Tom Mars, general counsel of Wal-Mart, told the audience at "Demand for Diversity" that "When I joined Wal-Mart four years ago, I was a novice at all of this. We had 50 lawyers in house and no meaningful diversity. Today 26 percent of the lawyers in our home office are people of color and 40 percent are women."

Mars said outside hiring has followed suit. "Of the top 100 firms that we hired, 82 of the relationship partners were white men," he said. "In the last four years, we have transferred \$60 million worth of business to other partners."

If one is looking to cash in on some of the diversity-chasing money, there are a number of practical strategies. First, get some diversity in the firm.

Cohen said the right attitude needs to start at the top.

"If management of the firm appreciates the kind of pressures women face, that goes a long way with the associates," she said. "As people see we are a liberal firm, we're not only attracting women, we're also attracting minorities."

Attracting diversity is sometimes difficult for recruiters, said Patrick J. McDonough, a litigation partner with Howrey, a firm that provides outside counsel for Hilton.

"News travels very slowly to law school students that firms are friendly environments for women and minorities," McDonough said.

Judith Bain, vice president of legal affairs and general counsel at Epson, warned firms against hiring women and minorities just for appearances.

"I used to be offended when I would go into Request for Proposal meetings and I would see the token woman or person of color," Bain said. "It's pretty easy to see right through that."

According to Madeline A. Kleiner, executive vice president and general counsel for Hilton, "Success in recruiting minorities and women depends a lot on promoting and retaining the existing women and minorities in your firm, even if it is initially a very small pool."

Once you have diversity in your firm, the second step is to keep it.

Kleiner told the "Demand for Diversity" audience that her legal department has a diversity performance program that evaluates mentoring as part of its bonus criteria.

Kornfeld highlighted ways that her firm has worked to attract and retain talented women lawyers who were frustrated with the traditional lawyer track.

"We have a real part-time track, we have virtual attorneys - basically contract attorneys that work from home," she said. "We recognize the value a woman brings to the firm, which is more than just the number of billable hours she works, and we have emergency child care available for women."

Making work flexible for women is a worthwhile investment for Kornfeld because "losing a third- or fifth-year associate is expensive for firms."

Often corporations with diversity initiatives keep track of diversity retention within firms and can see if women or minority lawyers cycle quickly out of the firm. Some corporations even will help firms with diversity.

"We don't write firms off if they don't perform in using diversity," Kleiner said. "We try to work with them to see if there are ways they can commit resources to diversity issues. That way we can have an impact."

For Bain, "it's very gratifying to see inclusion."

The next step for firms is to make sure that potential clients see that inclusion.

One way to do that is to participate in diversity events.

"Make sure you really go, don't just sponsor an empty table," Mars said. "There will be networking opportunities."

He warned firms not to "waste your money on magazine advertisements or fancy brochures. We told firms that if they exceed our expectations in terms of diversity, we will take out full-page ads endorsing them in national legal publications."

Cohen said her firm has sponsored networking opportunities for women. "We started with a spa day of general counsels. We have also had a cooking event and a trunk show at a Ralph Lauren store. It has created real business for the firm," she said.

Hackett asked Mars if Wal-Mart's policy meant the company was essentially "mucking about in internal law firm policies."

"We may be," Mars replied. "But we're the customer, and we can shop anywhere."

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