

Early Exits

Women of Color at Large Law Firms Tell ABA Researchers They Are Being Overlooked and Undervalued—Maybe That's Why They Are Leaving in Doves

JILL SCHACHNER CHANEN

FROM HER OFFICE IN A CURVED-glass building in downtown Chicago, Tina Tchen has all the trappings of success: a view, positions in national bar associations and a partnership at one of the country's most prestigious law firms—Skadden, Arps, Slate, Meagher & Flom.

To those who know her, Tchen's success is no surprise. A graduate of a top law school, she's worked hard to earn her reputation as a bet-the-company trial lawyer.

What is surprising, though, is that Tchen decided to stick it out at a law firm at all.

According to a new study by the ABA's Commission on Women in the Profession, few women of color ever get the kinds of equal opportunities that Tchen received to put them on the road to partnership. As a result, most choose to leave their firms rather than stay and fight for equality.

The study, *Visible Invisibility: Women of Color in Law Firms*, explores the experiences of these women. And what it shows is not pretty.

According to the study, women of color

are leaving large law firm practices in droves because they are the victims of an uninterrupted cycle of institutional discrimination.

In some cases, these women say they also are subjected to blatant racism and unwanted critical attention, all of which combine to create an uneven and unwelcoming playing field. The commission plans to release the study at this month's ABA Annual Meeting in Honolulu.

SHADES OF THE '90s

"THE PICTURE IS STILL DISTRESSING," says Diane Yu of New York City, a past chair of the women's commission who helped spearhead the study during her tenure. "The main thing that jumps out [of this survey] is how strikingly similar what we are hearing in 2005 and 2006 is to what we heard in the 1990s," says Yu, who also chaired a now-defunct ABA committee that studied a similar issue then.

"We still hold ourselves out as a profession that values [the treatment of others]. But these reports are too frequent to be dismissed or not worth mentioning," Yu says.

Pamela Roberts, current chair of the Commission on Women in the Profession, says she hopes that publication of the study and all the unpleasant information it reveals about the experiences of women of color will prompt change. "The commission really believes [the study] is a catalyst for removing institutional barriers between women and the full opportunity to serve and succeed in the legal profession," says Roberts of Nelson Mullins Riley & Scarborough in Columbia, S.C.

Women of color say race and gender still carry a lot of baggage in the workplace. And nowhere is that baggage more of a burden for them than in large law firms where the good-old-boy network of white male leadership still predominates.

The issue has taken on heightened importance for law firms of late as corporate clients are starting to demand diversity—not just in the composition of their legal teams, but also in entire firms. But many women of color report that law firms in general continue to be unresponsive. Though most law firms are making efforts to diversify through recruiting, it seems few pay attention to what happens once women of color actually start working full time at the firm.

BEHIND THE FINDINGS

THE COMMISSION'S STUDY IS NOT THE FIRST TO SPOTLIGHT this situation. Study after study—including 1998 and 2000 studies by the NALP Foundation (a research group associated with the National Association for Law Placement)—show that minority female lawyers have exceptional attrition rates in large law firms, defined as 25 attorneys or more. By some measures, nearly 100 percent of these women leave law firms within eight years. Other studies put the number closer to 66 percent within five years. Either way, women involved with the study say the numbers and the reasons behind the attrition are unacceptable.

"There are very few women of color in law firms. We are basically invisible," says Paulette Brown, a lawyer with Edwards Angell Palmer & Dodge in Short Hills, N.J., who co-chaired the study for the women's commission.

Brown, who notes that she is one of just three African-American women partners in large law firms in the entire state of New Jersey, says that law firm leaders have been ignoring this problem for far too long.

"My guess is that most have not taken a serious inward look. I think that they think about it; they think about how many women they have and about how many people of color they have. But they have not given any particular thought to women of color."

The women's commission enlisted the National Opinion Research Center at the University of Chicago to explore the unique experience of female lawyers of color. Using data obtained from self-administered questionnaires and from focus groups, the study has produced one-of-a-kind qualitative and quantitative data highlighting the differences in the hiring, development and advancement of women of color when compared to their male and nonminority counterparts in law firms, says Arin Reeves, a Chicago lawyer and diversity consultant who served as a co-chair of the study for the commission.

According to Reeves, 1,347 attorneys were surveyed—including 632 women of color, 250 white women, 250 white men and 215 men of color—with an overall response rate of 72.2 percent. Some of the women of color who participated were ABA members, while the rest of the respondents were all ABA members, though they were chosen randomly to receive the survey, Reeves says.

All the lawyers surveyed opted in to receiving the survey. Reeves says that while this sampling is not truly random, it was necessary to ensure a statistically significant sampling of women of color because such low numbers are represented in the profession.

"It was a difficult decision we had to make," she acknowledges. "The choice was whether we had 1,000 people participate in the survey—and then generalize from those numbers—or have it be purely random and get only 300 surveys and generalize."

Reeves says she sees women of color slipping through the cracks of law firms. Others, she says, are pushed out, while still more read the tea leaves and jump. "We are losing incredible talent from our profession because we have not been able to value, integrate and respect women of color," she says.

"The attrition has different points of origination, but, I think for a lot of law firms, they really believe that the majority of the women of color are jumping. But if we can make any point through this research, it is that, even if you decide to jump, you are not making the decision to jump in an ideal world where you have the same opportunities," Reeves adds.

SKIRTING THE PERIPHERY

WHILE MANY LAW FIRMS HAVE DIVERSITY INITIATIVES THAT focus on either gender or race, few—if any—pay attention to the overlap of these factors known as "intersectionality," says Reeves. And that's where many of the problems lie. "Women of color often are twice removed," she explains. As a result, she says, they tend to feel isolated and operate on the periphery in law firms.

Though many of these women of color working in large law firms are recruited from top law schools and often are at the top of their class, many of the study's respondents said they feel they are denied the same opportunities to succeed as their male and nonminority counterparts.

According to the study, 43.5 percent of the women of color surveyed reported missing out on desirable assignments because of race or gender while working at the largest law firm where they've practiced, compared to 25 percent of men of color, 38.6 percent of white women and 1.9 percent of white men.

And 42.6 percent said they did not have access to client development and client relationship opportunities due to their race or gender, compared with 24.2 percent of men of color, 55.2 percent of white women and 2.5 percent of white men, according to the study.

Tchen of Skadden Arps says the opportunity to get good work and the opportunity to make a mistake or two are the most important factors for the success of a young lawyer. Yet she frequently hears that minority women are not given those chances.

Like others, Tchen suspects that minority women are inadvertently overlooked when work assignments are

made. It likely happens because of individuals' comfort zones. "The people handing out the work are more comfortable with others like themselves, and since the majority of the people handing out the work are white men it is just perpetuating itself."

Tchen, who joined her firm's Chicago office as its fourth lawyer in the litigation department, never had a problem getting work when she was a young associate. There was simply too much to be done, she says.

But that didn't mean she would not have to prove herself. Even now, she says, she still encounters the occasional look from clients who, upon meeting her for the first time, seem curious about her abilities because of her ethnicity and gender.

"It is true that if you are a minority and a minority woman and you walk into a room for the first time that is largely populated by men and they've got a bet-the-company case, there is this moment when they are like, 'Who is this?'" Tchen says.

But her years of experience have allowed her to get past awkward first impressions and cement the client relationship. "Once you get past that first five minutes and they understand that you are exactly the person they need, then it is over," she says.

For those who do not have the experience—and the opportunity to get it—the situation could be troublesome. "For young lawyers, it's difficult because they have not gotten to the place that they can get through those five minutes and know that, once they get through those five minutes, it is over and they've got themselves the assignment."

Other women lawyers of color says Tchen's positive experience is still a rarity, especially when it comes to getting good work. "There was definitely a difference between the work I got and what my colleagues got," says a Washington, D.C., lawyer who left a large firm for an in-house position. "I had to voice my concerns about that. But I felt that I did not have the same opportunity to work on cutting-edge deals. I was put on support roles even though my classmates were not doing that."

When the economy took a downturn in 2000 and prompted a drop-off in workload, she saw significant differences in the work assigned to minority women and white men.

"I went from billing 14 hours a day to at one point billing 15 minutes in one day. I was getting pressure to bill, and I'd go around and ask for work and no one was giving it to me. Yet my white counterparts were getting tons of work," she recalls. "It affects your self-esteem. You start wondering if you are not a good lawyer. You internalize it."

Yet, like Tchen and others, this D.C. lawyer isn't sure that the unequal distribution was necessarily deliberate or malicious—she says a lot of it was simply a result of the firm's pervasive good-old-boy network.

"I learned from being at firms that it is not a meritocracy," she says. "And that is one of the biggest surprises when you go to a firm. A lot of things are not based on excellence but on who you are buddies with or who you are like."

MENTORING MATTERS

SEATTLE LAWYER JACQUELINE PARKER, NOW FIRST VICE

IN SEARCH OF BILLABLES

The *Visible Invisibility* study found some differences in billable hours for women of color.

- Different expectations: Women of color who left large law firms reported having had lower billable expectations for associates by about 100 hours annually when compared to white men and white women, and by 56.3 hours when compared to men of color. Billable-hour expectations were not significantly different, though, for women-of-color associates still working at large law firms.

- Disparate opportunities: Only about 46 percent of women of color were able to meet billable-hour requirements, compared to nearly 60 percent of white men and white women, and 53 percent of men of color.

president and counsel of Washington Mutual Bank, came to work at a large law firm with several years of experience in banking and finance and still found herself being denied opportunities. "I wanted to do financial services work, and if the partners and senior associates were not willing to give it to me, that is when I knew that it was time to find another opportunity," she says.

It was not until Parker approached a black partner at her firm and asked why she was not being given the opportunities she wanted that she was introduced to a senior white lawyer with substantial business in her preferred practice area.

Parker says the relationship she developed with these two lawyers helped her not only at the firm, but also in her law career. "I got absolutely invaluable feedback about what I did right and wrong," she says. But she wonders what would have happened without the support of these lawyers who took her under their wings.

Indeed, Parker's experience points to another issue raised by the surveyed women of color: the lack of mentoring. The survey found that 67.3 percent of the women of color would have liked more and/or better mentoring by senior attorneys or partners, compared with 52.3 percent of men of color, 54.6 percent of white women and 31.8 percent of white men.

Terri Ann Motosue, who once practiced with large New York City law firms, believes the lack of mentoring is the No. 1 reason people leave law firms regardless of race or gender.

Finding a mentor is difficult enough, she says, but it's tougher for minority women lawyers because there are so few senior women of color in law firms to whom they can relate.

"Mentoring goes to having a common ground with people, and there are very few minority women partners who can walk you through the process and groom you. But the white males, they had lots of mentoring opportunities," says Motosue, who is now with Carlsmith Ball in Honolulu.

But the degree to which a firm values mentoring also can be influenced by the firm culture, rather than the

ethnicity or gender of its lawyers.

One associate practicing at an Am Law 100 firm says the problem is worse at her firm, where minority partners have no interest and feel no obligation to mentor young minority attorneys. “We just had a new black woman lawyer start here, and I went to meet her,” says the associate. “The lawyer said I was the only other black lawyer to come to meet her, and I found that disturbing because there are four of them at the firm.”

And unfortunately, she says, she has since fallen in step with the office’s standoffish atmosphere. She no longer tries to befriend other young black lawyers at her firm because she knows they will be gone within a year. Yet she acknowledges that “a big reason why they are gone is

FOCUSING ON TREATMENT

The ABA Commission on Women in the Profession convened focus groups in five major cities as part of its study on minority women lawyers leaving large law firms. The goal was to explore the unique experiences of minority women lawyers. What the focus groups revealed were countless stories of disparate treatment at large law firms. Below are excerpts from the transcripts:

“The way we were treated is markedly different. For instance, I’m a second-year, and a first-year Caucasian male was immediately assigned to cases. ... He’s already getting a chance to take a deposition, and I still haven’t taken any depositions yet.”

“We also have a lot of large document reviews, and we always notice that [the African-American associates] ... are always all on the large document reviews. ... Sometimes you’ll see more senior minority associates doing document review and we’ll be thinking, aren’t you a little senior for this?”

“At my law firm ... first-years share an office. And my office mate was a white male. ... That was really an eye-opening experience in terms of, you know, people don’t just take assignments that are given. ... There’s a whole back-and-forth; there’s a whole give-and-take, and oftentimes the white men were much more aggressive about saying, ‘Oh no, no. I’m not working with that person’ or ‘Get me something like this’ or ‘This is the kind of deal I want to work on.’ And minority women, generally, ... would acquiesce and want to be helpful and be there to do their job and be accommodating, ... which made them prone to get work assignments with difficult partners, difficult clients, the less interesting work, or work that was not particularly relevant or involved.”

“When I was hired I was a lateral hire, and I’d had significant experiences as a trial litigator. [Yet] they sent the partner who was a judge to go interview the judges that I had tried cases before, and they’d never done that with any other person that they’d hired—black, white, men, women. ... They still put me through the ropes, and then it took another year before they gave me a trial. So I’m sitting here with more trial experience than anybody in the firm, 200 attorneys ... and I sat for a year before they gave me a trial.”

because there is no one to support us.”

Women of color interviewed for this story say the dearth of senior minority women sends a loud and clear message to them about their futures at large law firms.

Another young lawyer who left an East Coast firm for government work says she chose to leave her six-figure job doing corporate litigation because she felt the writing was on the wall. Though she had several white men who acted as mentors to her, she noticed that the firm had no minority women partners who also were married with children. “I didn’t want to take the gamble of altering the course of my life for these people—and if they didn’t make me partner, then what did I do? That, coupled with the fact that I am black and female, I thought it made my chances for being partner less, and I didn’t want to take that risk,” the lawyer says.

Chicago lawyer Nina Fain cringes when she hears these stories. A partner at two large firms who eventually went out on her own to combine her interests in law and real estate, she says mentoring is not an option for any lawyer who wants to succeed—it is more like a requirement.

Although she believes in mentoring as a concept, Fain does not believe the potential of this valuable practice is being realized because of the way most firms are structured. The law firm business model penalizes workers for engaging in intangible—ergo unproductive—activities, which effectively reduces the time and effort lawyers can afford to devote to mentoring efforts.

Yet Fain says it is incumbent on law firms to figure out how to mentor young lawyers, and especially women of color, because the firms will lose business if they do not have truly diverse ranks of attorneys at all levels. “How this is managed in the context of profitability is a challenge. But the corporations who have done this tell you that there is a benefit to social responsibility,” she says.

REPORTS OF OVERT RACISM

PERHAPS THE MOST NOTEWORTHY FINDING OF THE WOMEN’S commission study, however, was that nearly half of minority women lawyers reported that they are experiencing frequent and blatantly racist behavior in the workplace.

According to the study, some 49 percent of the women of color surveyed reported experiencing demeaning comments or other types of harassment, compared to 34.1 percent of men of color, 46.9 percent of white women and 2.5 percent of white men. More than 45 percent of women of color also reported experiencing one or more forms of discrimination, compared to 28 percent of men of color, 39.2 percent of white women and 2.5 percent of white men.

Reeves says the level of reported incidents is surprising. “There is a tendency in most workplaces to say we are past the overt and now into the more subtle forms of discrimination,” she says. “I was expecting to find a lot more in the gray zone. Instead, I was surprised to find a lot of black-and-white discrimination.”

For young lawyers who have come through life without previously experiencing the burdens of race, confronting it at a large law firm is shocking, according to the study and to women interviewed for this article.

Countless women in both the study and in interviews for this article tell of their experiences with racism, about fellow lawyers not recognizing them as professionals, and about degrading assumptions being made about them because of their ethnicity.

Among the anecdotes:

- Many minority women lawyers of the same ethnicity were often addressed with the same name.

- Several Latina attorneys say it was a given that they could speak Spanish and liked spicy food; other Hispanic women lawyers say that they were often asked about their immigration status, even though they were United States citizens.

- Asian-American women reported confronting stereotypes about being subservient or willing to work nonstop.

- African-American women often found themselves confronting old stereotypes about affirmative action or having quick-to-flash personalities.

Meanwhile, many Native American women reported experiencing little or no discriminatory behavior, according to the survey. Many suspected it was because they were too light-skinned for their ethnicity to come into play or because their majority counterparts found their heritage to be “cool.” Others also reported working in American Indian-related practice groups where their heritage was considered a benefit. Nonetheless, many still reported accounts of racist remarks, including being referred to as “Pocahontas” or being subjected to jokes about scalping people.

The Am Law 100 associate says many women she knows have found that, no matter how well-educated they are, they cannot endure the treatment they suffered at these law firms because of racism. “It breaks my heart because their spirits were broken here,” she says.

This lawyer says she does not know why she has put up with the discrimination she personally has experienced, but she now is enjoying seeing senior lawyers be solicitous to her after she developed a substantial book of business. “I’ve learned that black does not matter; green does.”

Though many women of color believe the burdens of both race and gender account for their law firm experiences, others believe it is strictly a gender issue.

One Latina lawyer in Dallas believes the biggest problem women face is work-life balance. “You have to be superhuman as a woman to make it,” she says.

Indeed, the commission’s study shows that the single biggest reason women of color reported leaving firms was to obtain greater work-life balance. That was also the most frequently cited reason for all other groups surveyed.

The Dallas lawyer left her large law firm to go in-house primarily for work-life balance issues. But she also questioned whether, as a Latina, she would ever have been able to develop the kind of business that she saw the white men bringing in to make partner at the firm where she previously worked. “For one reason or the other, it is easier for them to do it because the people in the positions of power are still men,” she says.

While her company is making efforts to ensure its outside counsel are diverse in gender, race and ethnicity, she still sees little progress in the way that work is assigned to outside counsel. The general counsel there still directs most of the firm’s business to his law school buddies—

white men.

Frances Gauthier of Stradley Ronon Stevens & Young in Wilmington, Del., also relates much of the challenges she’s faced to being a woman. Most of the men she has worked with had wives who didn’t work. She believes that these men are often valued more than women who choose to work because the men are seen as supporting families, while it is assumed that the women are providing only for themselves or earning secondary incomes.

SUCCESS, DESPITE THE ODDS

THOUGH THE PATTERN OF ATTRITION FOR WOMEN LAWYERS of color is unmistakable, there still are those who have broken through the barriers, leaving observers to wonder what it is about them that distinguished their careers.

Some, like Tchen, feel they were fortunate enough to work in a true meritocracy. And others like Motosue say they were prepared to come up against racial and gender barriers and simply ignored them.

While in law school, Motosue recalls, she attended a recruiting presentation given by a large investment bank. At the presentation, one of the recruiters told the Asian-American audience members that they might find clients who do not want to work with them because of their ethnicity. “He told us if your boss tells you to leave the room because the client does not like Asians, just do it and don’t take it personally. That set the tone for me,” she recalls.

Other women of color say they are actively fighting to grab hold of what is rightfully theirs. “I have worked too hard and spent too much time away from my family to let them take it away from me,” says an African-American partner in the Washington, D.C., office of a large national firm. “For me, the test is, ‘Do you like what you are doing?’ I do. Some little thing, some stupid person—I won’t let them take it away from me.”

Gauthier is the only woman of color at her five-lawyer satellite office in Wilmington (although the firm in general is much more diverse). Regardless, she feels an obligation to stay—to start forming that critical mass for younger women of color. She is hopeful that more women of her age will act similarly; Fain believes women like Gauthier are the first step in getting real change in law firms for women of color.

Female lawyers of color interviewed for this story uniformly stressed the need for firms to move beyond merely appointing diversity committees—which may do little more than churn out newsletters or tout recruiting statistics—and start making serious institutional changes such as promoting women of color to management positions.

“There is a lot of lip service about diversity, and that is more alienating than anything else,” says the Washington-D.C. based partner of her experience with law firm management. “When they talk about it but do not actually deal with you about what it actually means to be an African-American woman at a law firm, it is more alienating.”

Fain says, “At the end of the day you have to have a commitment to something more than just marketing and cosmetics.”

Clients also can be effective motivators. The African-American partner at the D.C. law firm credits her success—

ful career to a forward-thinking client who demanded diversity from her outside counsel long before it was in vogue to do so. The client also was willing to foot the bill for the training required to get these young minority lawyers brought up to speed on its matters.

She believes law firms can learn an important lesson from this client. "Firms have to have a willingness to make the effort. It costs money," she says.

Law firms "need to make it a mandate that the diversity effort does not stop at recruitment," she says. Too often, the attitude is focused on hiring a "critical mass" of attorneys of color in the belief that "as long as we get a whole bunch of them here, then more will come. Not too many firms are serious about training and development issues until the clients are serious."

Tchen acknowledges that no one has yet to hit on the right solution for women lawyers of color. But she also cautions other minority women to think carefully about

whether women of color actually need solutions specially tailored for them. "It's a delicate balance: What do you do to attack the problem because you don't want to make it worse?" she says.

For Brown, the answer is not about special treatment for women of color. "It's about equal treatment," she says. "It's putting them on a level playing field." ■

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For more information on the *Visible Invisibility* report, please contact the Commission on Women in the Profession at www.abanet.org/women.