





DEVELOPING GREAT MINORITY LAWYERS *for the next* GENERATION

While most corporate law departments and law firms recognize the benefits of diversity and inclusion, they continue to struggle with how to develop and retain minority attorneys, and how to make the profession more diverse. The issue is clearly back in focus following *The American Lawyer's* 2010 Diversity ScoreCard, published in March. The ScoreCard revealed a material drop in the number of minority attorneys working in Am Law 200/NLJ 250 law firms in 2009. General reductions and a decline in the minority headcount was not a surprise to anyone, given the prevailing economic conditions and cutbacks that most firms have weathered over the past 18 months. What is concerning, however, is that minority attorneys have been disproportionately impacted. Approximately 1,300 of the 5,834 layoffs between Sept. 30, 2008, and Sept. 30, 2009, were minority attorneys. They accounted for 22 percent of the layoffs but only 13.9 percent of the attorneys in these firms. The percentage of African American attorneys dropped by 13 percent (462); Asian Americans dropped by nine percent (556); and Hispanics also dropped by nine percent (282).¹

These developments are troubling and raise important questions. What happened to the commitment to diversity in the nation's top firms? Has the economic downturn destroyed the business case for diversity? How can we develop and expand the number of minority attorneys working in firms and law departments during troubling economic times? What should corporate law departments and law firms do about it, if anything?

By Brent L. Henry and E. Macey Russell

Law firms and corporate law departments must work together

The short answer to all of these questions is that law departments and firms must continue to address the diversity issue. Indeed, it is now more important than ever that significant progress be made — soon — on diversity. There is both a social and a business mandate for diversity in the legal profession. The United States is becoming more ethnic and racially diverse, and the consumer purchasing power of minorities is on the rise. In May 2009, the US Census Bureau reported that as of July 1, 2008, the nation's minority population rose to 104.6 million, or to 34 percent of the total population. A 2009 report by the Selig Center for Economic Growth (Terry College of Business, University of Georgia) estimates that the current buying power of minorities (African Americans, Asian Americans, Hispanics and Native Americans) is approximately \$2.3 trillion annually and will reach \$3.18 trillion by 2014. Not surprisingly, many companies are targeting products and services to meet the needs of these growing groups. Others have begun expanding into global markets, either in search of new cus-



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tomers or lower operating costs. For these clients, the business case for diversity is stronger than ever: Law firms with diverse talent pools are in a position to deliver greater value to clients with a diverse workforce and/or customer base.

Clearly, creative solutions are needed to address the diversity challenge in the legal profession. These solutions must include better use of talented minority attorneys with the necessary legal skills, life experiences and perspectives that add value to client service teams, and the development of diversity plans between law firms and corporate law departments that address the obstacles to success. Law departments and firms must resist the temptation to question whether diversity initiatives are still necessary today. Changing demographics and recent layoffs make it clear that there must be a continuing priority obligation to develop the next generation of successful minority attorneys.

Law firm and in-house diversity from 1993 to 2009

The October 2009 NALP report shows some progress from 1993 to 2009 in the number of



minorities at law firms (although some would argue that a 3 percent increase in minority partners and a 5 percent increase in minority associates is not enough). The percentage of minority “partners” was 2.55 percent in 1993, 3.55 percent in 2001 and 6 percent in 2009. The actual percentage of minority equity partners is not known, but according to a survey conducted in the summer of 2009 by the Minority Corporate Counsel Association (MCCA)/Vault with 248 law firms participating, the estimate is 6.05 percent.³ The overall percentage of minority attorneys was 7.7 percent in 1993, 9.1 percent in 2002 and 12.9 percent in 2009 before the layoffs.⁴ There also has been some progress over this period in terms of in-house diversity. ACC reports that the percentage of minority in-house counsel was 4 percent in 1993, 10 percent in 2000, 12.5 percent in 2001 and 16.5 percent in 2009. The in-house counsel progress is a positive sign, but may underscore the reality that law firms are not doing enough to develop and promote minorities. In any event, the percentage of minority attorneys overall continues to lag the percentage of the total population that minorities represent. If law firms have difficulty becoming more diverse and sustaining it, can they continue to provide effective trial teams to handle cases before diverse juries, or provide the best possible team to handle important transactions or deals?

The disproportionate layoffs of minority attorneys in 2009 make it clear that law firms must now do even more to retain, mentor and develop the minority attorneys still with them. The NALP’s *2008 Associate Retention Study* shows that 52 percent of minority attorneys leave their first law firm by the third year, and 85 percent leave by their fifth year. The study further reveals that 12 percent leave to pursue another legal job. In either case, this is before many law departments begin to consider them for in-house counsel positions. The NALP 2009 layoff statistics for minority attorneys will likely show even a higher percentage of attorneys who have left by their third or fifth year. Perhaps some of these attorneys will land in other law firms or in-house, but it is too soon to tell. The “tea leaves” suggest they will have difficulty finding new employment as law firms both continue to deal with a choppy economy and make room for recently “deferred” law school graduates.

The critical question is: Why is it so difficult to achieve meaningful and lasting diversity in the top law firms? What prevents most law firms from achieving a “critical mass” of minority attorneys who are evenly distributed from first year associates to the partnership ranks, rather than a high concentration of minority attorneys in the lower associate ranks and fewer minority equity partners? For years, bar associations including the American Bar Association, National Bar

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Association, National Asian Pacific American Bar Association and Hispanic National Bar Association, have developed committees and task forces focused on how to increase diversity, yet law firms disproportionately laid off minorities in 2009. Law firm retention studies are too numerous to count, but the common thread for minority attorneys across all studies is the importance of mentoring, teaching and full integration into the firm. Law departments and firms can do a better job in these areas.

Diversity solutions require a “meeting of the minds”

Law firms need to think strategically about the benefits of a diverse workplace at all levels of their organizations. This requires them to address pipeline (hiring) and retention issues. Firms should have candid conversations with their most important clients about the value of diversity. If a firm has Fortune 1000 companies as clients, it is likely that these clients value diversity and can help firms demonstrate the business case to their partnerships.

There is no “one-size-fits-all” strategy for achieving lasting success in diversity. Each firm should start with a plan tailored for its organization. Generally, the plan includes a vision statement and a series of specific action steps. The goal should be the hiring, retention and development of minority talent at all levels of the organization. The action steps often include mentoring, team building and other strategies that fully integrate minority attorneys into the firm. To execute the plan, the firm needs buy-in from the most influential partners (usually the “rainmakers”), in addition to the managing partner and the executive committee. The “buy-in” often can be more difficult to accomplish than you might expect. Some partners are indifferent to diversity plans because they have already built successful

Law Firm Recruitment Now Impacts In-house Counsel Later

Each year, law firms recruit the nation’s top legal talent out of law school to work in their firms. Several years later, and after the students have received significant training and experience, law departments often begin to hire some of the “best and brightest” from law firms to join their in-house teams, as many in-house law departments do not hire students out of law school. Many of today’s minority general counsel started their careers at AmLaw 200 law firms. Law firms play a vital role in the recruitment and training of would-be in-house counsel. From a law firm’s perspective, the business case for diversity includes the ability to have alumni join important institutional clients and prospects.

practices without a diverse team, while other partners see no real need or pressure (either internally or from clients) for their group to become more diverse. When putting a plan together, firms also need to be realistic about the anticipated pace of progress, and which partners and practice groups to focus on initially. The goal is to maximize the firm’s overall chance for success, and experience shows that it is better to have some early victories. Plans that are too ambitious in the short run tend to lose momentum and die on the vine. Delivering reasonable and sustainable progress is important. The key is integrating the objectives and concerns of the clients, firm, select partners and minority attorneys, and getting real buy-in rather than head nodding from the partnership. There are many potential tactics for fulfilling this objective.

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Develop a first year diversity clerkship: One place for a firm to start is with the grass roots development of minority associates. It is easier to hire young talent than it is to find minority senior associates or partners with a sufficient portable book of business to hire as laterals. Law firms and corporate law departments would work together to launch a First-year diversity clerkship program. Each year, they would agree to hire one or two minority first-year law students for the summer. Under the program, students would split time working between the firm and the law department. This ties the diversity objectives of the law firm and client together and strengthens the overall firm/client relationship.

An example of such a program is the citywide diversity clerkship program launched by the Boston Lawyers Group (BLG) in 2007, with the support of major institutions and some of the city’s major law firms. Under the program, BLG supplies first-year resumes to corporations and law firms who then team up to interview and select students. This program introduces minority attorneys to practice areas important to significant firm clients. Companies such as Bank of America and State Street Bank & Trust Co. have participated in the program each year, and in doing so have introduced minority law students to the world of banking, finance and investments. Massachusetts Mutual has instituted a similar program with one of its outside law firms.

Why is this program important? The law department and firm develop diverse talent in areas of law and busi-

ness important to the client. The program helps minority law students learn of the ins and outs of a client's business and about law firm life early in their careers. This could enhance their chances of getting an offer to return to the same firm for the following summer and/or offers to join full-time after graduation. When interviewing for law firm jobs at other firms, the students can discuss their clerkship. This is a great way for them to break the ice at the interview. The summer experience supplements the student's law school grades, which for some students can be a barrier to being hired; provides the student with writing samples and references that can speak to the student's true talents and abilities; and gives the student a better chance for success as an associate because she now understands what is expected.

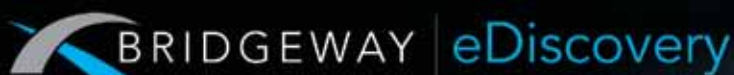
Remove internal law firm barriers to success: Firms must remove systemic barriers to success. Two of the leading barriers are inadequate mentoring and the failure to promptly address any partner concerns on work performed by minority attorneys. Many firms are structured and managed in such a way that partners can run their own practices. Partners control who works on matters for their clients and are protective of their client relationships on a number of levels.

The success of an associate depends on the strength of

her internal market. Associates who do work for partners are in demand. If an associate has uneven work (or just has some trouble with the initial assignment), she may not be requested to handle future assignments for the partner. When this occurs, questions can sometimes arise for other partners about the associate's performance, and word gets out. Though this dynamic may exist for all associates, many minority associates are concerned that once they are tagged in this manner, it may be harder for them to get second opportunities to impress and redeem themselves in the eyes of the partner or firm. Minority associates in this position sometimes believe they have no option other than to leave the firm and start over elsewhere.

It's not uncommon to hear from laid-off minority attorneys who believed they could not afford to make any mistakes, and thus appeared less confident on the job. Many also say they never received a fair chance to compete and never really connected with anyone at the partner level. Some believe that firms unfairly minimized their accomplishments and magnified their mistakes. These perceptions (accurate or not) are consistent with survey findings about why minority attorneys often leave law firms — a lack of mentoring.

Intentionally or not, partners may avoid using a tagged minority associate, due to concerns about damaging the



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relationship with their client. If this is true, can anything be done about it? Partners will not fully participate in a diversity plan if they perceive that it may adversely affect their client relationships. Thus firms and law departments need to address how partners really feel about this issue, as well as about training and mentoring minority attorneys.

It is well documented that minority associates leave their law firms at a higher rate than their white counterparts and for reasons other than just “job performance.” At the same time, no one should be surprised if a minority attorney has a more difficult adjustment to life at a major law firm than many of her white counterparts. The reality is that many minority attorneys are learning law and business for the first time, and without proper mentoring and training it may take time to get up to speed. This may frustrate some partners working with them and may cause those partners to look elsewhere for assistance with the next assignment. Law firms tend to be great at formal training programs, yet not as effective with hands-on mentoring and training. Partners and associates must work together to generate the client work product. This should continue until the associate is able to handle matters with little or no partner supervision.

To address potential partner concerns, the client and firm would agree to write off the partner’s billable time spent mentoring and teaching, and the associate’s billable hours incurred learning the client’s business and substantive law. Such write-offs would have no negative impact on partner compensation. Indeed, the firm would reward the partner for the mentoring and training. A client can help in this process by arranging conference calls or informal meetings at the company with minority associates so they can learn more about the company. Clients can also reward the partner by sending him more business.

The benefits are threefold: a better work product enhances the value the firm brings to the client; the associate feels like part of the team; and the relationship between the partner, associate and client is strengthened.

Minority Corporate Counsel Association

The Minority Corporate Counsel Association (MCCA) was founded in 1997 to advocate for the expanded hiring, retention, and promotion of minority attorneys in corporate law departments and the law firms that serve them. MCCA accomplishes its mission through the collection and dissemination of information about diversity in the legal profession. Find out more about ACC’s partner in general diversity outreach at www.mcca.com.

Corporate law departments’ role

Law departments must also do more to demonstrate to law firms that diversity is, in fact, important to the client. So far, the use of the carrot-and-stick approach, which threatens firms that do not improve diversity with losing the company’s business, has not been particularly effective. There are firm partners who have received work from corporate clients for years without a diverse team. They know the client’s business and provide high quality services. Neither the partner nor the in-house counsel is willing to change what has been working very well for a long time, since the company’s number one priority is achieving a great outcome or result. Therefore, law departments must do more to convince a partner who has been receiving their business for years to adhere to the diversity movement and create opportunities on the client team for minorities.

The 2006-2009 *Chief Legal Officer Surveys* conducted by Altman Weil, Inc., suggests that many corporations ultimately do not consider diversity an important or key factor when selecting outside counsel. In 2006, the top four reasons for firing outside counsel did not include the firm’s lack of diversity. When indicating the reason for selecting outside counsel, 13.7 percent selected the “other” category. This category includes responses such as personal chemistry, location, beauty contests and “we don’t use preferred provider lists.” Diversity did not score high enough to warrant its own category. When asked about the reason for hiring counsel for a new matter in a new area of expertise, the “diversity” response again fell into the “other” category (7.5 percent). In 2008, when ranking the reasons for firing a law firm on a scale of 1 (least important) to 10 (most important), failure to meet diversity objectives is 3.2 (up from 1.5 in 2007) and the lowest of all reasons. The highest rating of 7.5 is for mishandling one or more critical matters. The 2009 survey does not mention diversity.

Law departments must meet with managing partners and rainmakers to discuss how best to identify concrete goals and implement specific strategies. They should consider establishing a position of chief legal diversity officer or minority counsel liaison, which would send a clear message to the corporation and outside counsel about the importance of diversity. Law departments should do a better job networking with minority attorneys, maintaining or establishing a diversity committee, hosting in-house conferences, and establishing programs with law firms to assist in removing barriers to success.

Promoting diversity at law firms benefits law departments because they will have access to diverse teams and, ultimately, an increased pool of potentially diverse in-house counsel. Historically, law firms provide the best training for in-house counsel candidates because they understand their

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clients' business and legal needs, and train attorneys to specialize in the clients' practice areas. With limited exceptions, law departments do not hire attorneys directly from law school or out of clerkships. Instead, they recruit associates after they have received training and experience at a major firm. Law departments need diverse in-house counsel, and investing in minority attorneys at the firms is the best way to build a strong pipeline.

Here are some specific ideas:

- **Create a minority officer or liaison:** Each law department should have an officer or liaison who is the key contact with minority outside counsel. The officer or liaison should follow up with minority attorneys after bar association events; keep the lines of communication open and clear; and create an internal data bank of minority attorneys by state and practice areas for in-house counsel. The officer or liaison should make it easy for minority attorneys to communicate with the law department and for in-house counsel to identify minority outside counsel when the need arises. Having a person in this role is crucial if corporations truly want more diversity in the firms they use as outside counsel.
- **Engage minority outside counsel:** Developing business is not easy, and many minority attorneys struggle to develop a book of business and become partners. That is why they are always looking for ways to network with in-house counsel. In-house counsel should make time to attend bar association events that provide minority attorneys networking opportunities, give them the chance to make their pitch and follow up with a formal business presentation.

Minority partners know that creating business translates into power and respect, but it also proves the value of diversity to their firms. Moreover, a minority partner with power can often serve as a magnet to attract or retain other minority associates. This contributes to improving the pipeline problem since it is much easier for firms to recruit minority talent if they have minority partners.

Law departments should use diversity as a means to narrow the list of potential firms, or to break a tie among equal firms when giving out business. The

"diversity tipping point" should be used by law departments at either the inception of the law firm relationship when awarding business, or to enhance a client relationship with an existing law firm. Either way, the department should make clear to the firm that diversity is a meaningful factor in determining new or increased business with outside counsel.

- **Conduct minority outside counsel conferences:** Law departments should invite minority counsel to an annual in-house diversity conference. The conference strengthens the relationships between minority counsel and the corporation. It also provides a platform to discuss everything from billing rates to substantive issues and how to efficiently handle company matters.
- **Monitor diversity statistics:** The liaison or officer should be responsible for requesting diversity information from law firms and measuring progress. The officer should work with the firm to address any issues with the diversity agreement or plan.

Show Me the Numbers

There are several sources for statistics on the number of minority attorneys practicing in this country. The 2008 US Census reports that minorities represent 11.3 percent of all attorneys, which includes law firms, government and small/solo law firms. The National Association for Law Placement (NALP) maintains data on the number of men, women and minorities working for its 1,514 member law firms; minorities represented 12.9 percent of all attorneys for these firms in 2009.² *The National Law Journal* maintains similar information on the country's top 250 law firms. According to *The American Lawyer*, minorities represent about 13.4 percent of attorneys in those firms as of Sept. 30, 2009, based on the 191 firms that responded this year and last year. Minority in-house counsel working for the nation's top corporations and businesses fare somewhat better with 16.5 percent representation, according to the Association of Corporate Counsel (ACC).

- **Establish an in-house clerkship:** Law departments and firms can offer an in-house clerkship position to minority associates for a designated period after they start full-time at a firm. This will enhance the associate's development of legal skills and business knowledge while working on-site with their client. It also should strengthen the client relationship when the associate returns to the firm.
- **Develop institutional knowledge of outside counsel:** To enhance the learning process of minority attor-

neys at the firm, law departments should coordinate periodic luncheons that discuss company objectives and challenges with their diverse outside counsel legal teams. This would help minority counsels gain a greater understanding of the business imperatives that drive their client's legal concerns.

- **Work with interested law firms and the local bar association to help build a "diversity brand:"** Consider mechanisms to recognize law firms and law departments who have demonstrated sustained success in their diversity initiatives, and establish vehicles to share the best practices. Annual diversity recognition events coupled with meaningful exchanges of ideas can help raise awareness of the importance of diversity in the broader legal community.

ACC Extras on... Diversity

ACC Docket

- *Collaborating with Outside Counsel to Promote Diversity Change (June 2009).* Based on Accenture's system, it's possible to take diversity in law departments and firms from an idea to an action. Read how the company's global legal network developed an inclusive internal environment and how that had a domino effect on their external relationships.
www.acc.com/docket/promt-diversity_jun09
- *Priming the Pipeline to Diversity in the Legal Profession (June 2001).* If you want a diverse legal department, you must start at the source. Learn how to reach out to the children of your community, and give them a dream they can use to help themselves and strengthen society.
www.acc.com/docket/pipln-diversity_jun01

InfoPAKSSM

- *Affirmative Action Compliance (Sept. 2009).* This InfoPAK provides an overview of OFCCP methods and suggests steps a company can follow to determine if it is subject to federal affirmative action regulations and, if so, ensure compliance.
www.acc.com/infopaks/affirm-act_sept09
- *Achieving Diversity (June 2006).* This InfoPAK is intended to provide in-house counsel with information on establishing and maintaining a diverse law department.
www.acc.com/infopaks/diversity_jun06


Program Material

- *When Does Diversity Influence Law Department Retention Decisions? (Feb. 2003).* View this presentation on how diversity affects retention decisions.
www.acc.com/diver_ldept-ret_feb03

ACC has more material on this subject on our website. Visit www.acc.com, where you can browse our resources by practice area or use our search to find documents by keyword.

Improving diversity is not for the fainthearted


Improving diversity at law firms and in corporate legal departments will not be easy. The first step is for law departments and firms to reach a clear and common understanding of their diversity goals and objectives. There are still many inherent challenges to be addressed. But change can happen if law departments and law firms work together, and are committed to developing and maintaining a sustained diversity program.

This isn't just a field of dreams. If you build it, they will come. 

Have a comment on this article? Email editorinchief@acc.com.

NOTES

1. This represents a 9 percent drop overall in minority attorneys in these firms compared to a 6 percent drop overall of all attorneys.
2. See NALP Oct. 21, 2009 report, "*Law Firm Diversity Demographics Show Little Change, Despite Economic Downturn, Representation in Some Markets Declines While Others Show Small Gains.*" NALP reports that in its 1,514 member firms, there are 61,821 partners and 63,168 associates. Minority partners represent 6.05 percent (3,740) and associates represent 19.67 percent (12,425), totaling 16,165 minority attorneys. The total number of NALP attorneys is 124,989 and minorities represent 12.9 percent. The NALP statistics include the AmLaw 200 and NLJ 250 firms.
3. The firms participating in the survey include 98 percent of AmLaw 100, more than 80 percent of AmLaw 200 — including 70 percent of the NLJ 250 — and 80 percent of the participants are in the NALP directory. The total number of equity partners in the survey is 32,017. The breakdown is as follows: African American 1.63 percent (522), Hispanic Latino 1.82 percent (583), Asian 2.17 percent (695) and other minorities 0.42 percent (136). In this survey an equity partner is defined as someone who is a member or shareholder with the right to share in the profits of the firm and does not include non-equity partners, who are law firm employees and do not share in the profits as partners.
4. NALP has not provided its report of 2009 minority layoffs at its member firms.



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