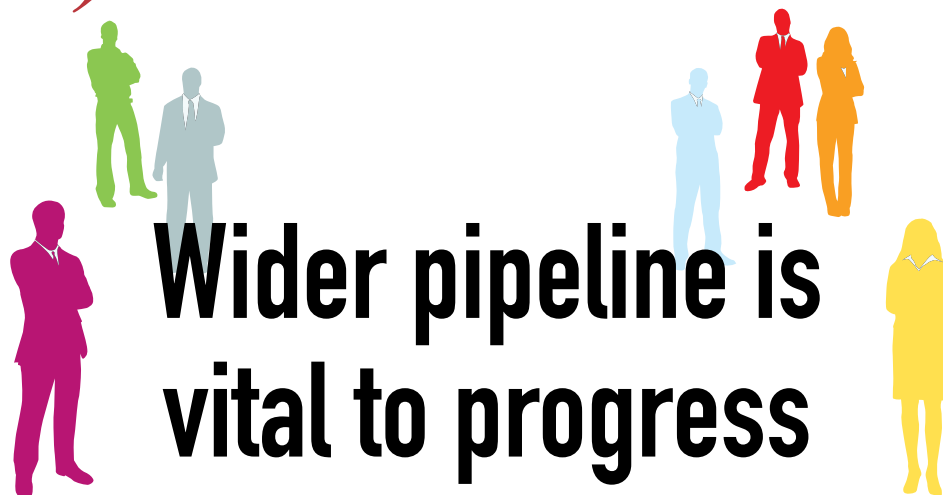


| A SPECIAL REPORT |

| DIVERSITY |



Wider pipeline is vital to progress

As other professions outpace law in diversity efforts, future generations need tending.

BY E. MACEY RUSSELL

Diversity in the legal profession is an important issue for policy, societal and business reasons. Yet corporate law departments and law firms are not as diverse as they should be, and there is a risk that the problem will get worse rather than better during the next decade.

The United States is becoming more diverse, but the legal profession is not. The present lack of diversity among lawyers only exacerbates the problem by prompting talented African-American students to go elsewhere.

To reverse this trend, corporations and law firms need to do a better job supporting and mentoring the African-American attorneys now in our profession. Their success will pave the way for greater success and more diversity in the future.

The 2008 U.S. Bureau of Labor Statistics, Household Data, estimates that there are 1,014,000 attorneys, of whom 4.6% (46,644) are African-American, 2.9% (29,406) are Asian-American and 3.8% (38,532) are Hispanic. Minority attorneys represent about 11.3% of all attorneys. The data also show that there are an estimated 54,000 judges, magistrates and other judicial workers and that, of this group, African-Americans account for about 6.8% (3,672); Asian-Americans 0.3% (162) and

Hispanics 3.2% (1,728). In May 2009, the U.S. Census Bureau reported that, as of July 1, 2008, the nation's minority population was 104.6 million, or 34% of the total population, and the African-American population was 41.1 million, or about 13.6% of the population.

Notwithstanding the wide disparity that already exists between the number of minority attorneys and the percentage of minorities in the population, fewer minorities are choosing to pursue a law career. The American Bar Association (ABA) reports that the total enrollment of African-American law students in the 2008-2009 school year was 9,822 out of 142,922 students overall, or about 6.8%, compared to 7.5% in 1994-1995.

Why aren't more African-Americans attending law school and entering the legal profession? First, talented African-Americans have other employment options. Many professions are trying to become more diverse and, in the resulting competition, the law is losing ground.

Second, the legal profession has not done a very good job supporting and promoting African-American lawyers who already are in the profession. For years, there has been a steady exodus of African-American attorneys from law firms at rates higher than their white colleagues. According to National Association for Law Placement (NALP) and

ABA information, about 99% of all African-American women lawyers leave their first law firm within eight years. One cannot underestimate the resulting frustration felt by African-American attorneys and the negative effect that this exodus has on other prospective African-American attorneys. At bar association events, African-American attorneys frequently express understandable concerns that they lack the support necessary to develop a book of business and become a partner—and that there are better ways to make a living. It is difficult for African-Americans to promote the legal profession when they've had bad experiences and have no reason to believe that the situation will get better.

UNWELCOMING CULTURES

The fact is that our nation's major law firms are not easy places for minorities to work. The January 2009 NALP Bulletin, "Women and Minorities in Law Firms by Race and Ethnicity," reports (based on 2008 data) that only 12.5% of attorneys working in the 1,572 NALP-member law firms are minorities. Minority associates represent just 19.1% of the 62,939 associates working in these firms, and the numbers are even more stark when it comes to partnership. Of the 61,572 partners at NALP-member firms in 2008, only about 6% (3,694) were minorities and only about 1.8% (1,132)

were minority women. More than 33% of the firms reported having no minority partners and approximately 60% reported having no minority women partners. The same study reveals that African-Americans represent only 1.71% (1,052) of the partners and 4.75% (2,989) of the associates at the reporting firms, and collectively constitute only 3.2% (4,041) of all attorneys working at these firms. The chief legal counsel for the biggest corporations in this nation—from Microsoft Corp. to Wal-Mart Stores Inc.—have made it clear that they want diverse outside counsel. In 1999, about 500 major corporations endorsed “Diversity in the Workplace,” a statement of principle that showed their commitment to diversity in the legal profession. In 2005, 90 corporations signed an additional commitment, in “A Call to Action,” to hire law firms as outside counsel that are diverse or making strides to become more diverse, and to stop using firms that are not.

There are at least two major obstacles to meeting this objective: not enough minority students attending law school and lack of a critical mass of successful minority attorneys at law firms to support them.

Should corporations and law firms be responsible for ensuring that the profession keeps pace with these changing demographics? Yes. Corporate law departments and law firms need to become more diverse, not less.

POSSIBLE SOLUTIONS

One possible solution involves high-level buy-in. If a company’s board, top management and general counsel don’t agree that diversity is a core value, nothing will change. General counsel must treat diversity as a priority and drive decision-making internally to identify and engage minority counsel. General counsel should discuss their established diversity objectives during regular staff meetings, set clear objectives for those inside and outside the organization, explain the decision-making process and listen to in-house attorneys’ concerns regarding internal client and external counsel preferences.

Another solution is to create a hiring directory. General counsel should develop a national directory of minority attorneys who are capable, with proper training and experience, of handling their work. Peer references are one valuable resource. Various bar association initiatives are available to help connect general counsel with



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capable minority attorneys. In-house counsel should use them strategically. They work.

Another is to invest in teaching. Minority counsel may not have the same history and institutional knowledge as a company’s traditional outside counsel, and this may make a business client uncomfortable with the thought of working with a new outside attorney. Just as when new counsel is retained, it will take time for minority counsel to match the knowledge and experience of past preferred counsel. However, in-house counsel should not equate questions or inquiries from minority counsel about the business or assignment with an inability to grasp the concepts or handle the work. Corporate in-house legal education seminars are a good way for minority counsel to learn about an organization and meet staff and clients. For new relationships,

corporations can engage minority counsel to handle transactions or litigation matters described as “low-hanging fruit” so that they can gain experience and move up the ranks.

Flexibility is key. Law firms need to be flexible and allow minorities within the firm to bring in new clients and handle low-hanging fruit on an interim basis, or even at lower than normal hourly rates. They should not charge their clients for time spent by minority counsel learning the business or acquiring valuable institutional knowledge. Law firms need to make an up-front investment in their minority attorneys and the client relationships that they develop to allow those relationships to take root and grow.

Mentoring should be a priority. Law firm partners must provide minority counsel with the support to meet clients’ needs. Partners need to understand that the learning curve for minority attorneys in a new area may not be the same as their own. They need to schedule set times to meet and explain projects or litigation cases, and to discuss key client issues. Law firms should reward partners for these efforts because they are in the best long-term interests of the firm and the client.

Minority attorneys cannot drive change alone. Corporations and law firms must help alter the way things traditionally have been done. Diversity not only is good policy; it is good business. The companies and law firms that take the long-term view and succeed in driving lasting change will find future growth and prosperity, and simultaneously leave a meaningful and long-lasting mark on the legal profession.

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