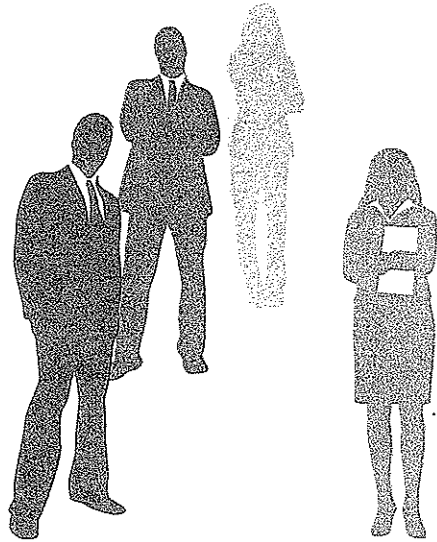


WHERE ARE THEY?

DIVERSITY



Despite the hype, progress proves elusive

Diversity committees, mentoring and social events are failing to diversify legal profession.



BY KAREN SLOAN

Five years ago this month, Roderick Palmore wrote "A Call to Action"—a pledge signed by the general counsel of some of the country's largest corporations vowing to make diversity a major consideration in their selection of outside counsel.

Palmore, now the general counsel of General Mills Inc., wanted companies to put more business pressure on law firms to improve the diversity of their attorney ranks, where racial minorities long have been woefully underrepresented.

Diversity efforts across the profession mushroomed after the Call to Action was issued. Nearly every major law firm has created a diversity committee tasked with boosting minority and female representation. More scholarships for minority law

students were established, affinity groups were formed and more so-called pipeline programs popped up to encourage minority students to pursue the law. Nary a week passed, it seemed, when a firm wasn't unveiling a fresh diversity initiative or trumpeting an award received for its efforts.

Still, real progress in diversifying the profession has been painfully slow. Since 2004, the percentage of minority attorneys at U.S. law firms has crept up from 10% to just 12.6% in 2009, according to the National Association for Law Placement (NALP).

"Our narrative over time has been that change has been infuriatingly slow," said James G. Leipold, executive director of NALP, which has been publishing minority attorney statistics for years in hopes of drawing more attention to the wide

disparities that exist in the profession. "I think there is burnout, frustration and a feeling that, for all our efforts, the results are disappointing."

STALLED RESULTS

While recognizing that attitudes toward diversity have improved over time and that minority representation has improved slightly, a sample of diversity advocates, law firm partners, general counsel and law school leaders generally agreed that the legal profession needs to make deeper, more collective changes to jump-start the stalled diversity movement.

"Although we have these initiatives, they are done very much on the surface level," said Pamela Edwards, director of the Center for Diversity in the Legal Profession at the City University of New York School of Law. "Just increasing the

number of minority attorneys is not the same as trying to significantly change the profession. That takes introspection, not a just a race to get to better numbers."

The *Minority Law Journal's* Diversity Scorecard, which includes statistics from the largest and most profitable law firms in the United States, shows that the proportion of minority attorneys grew from 10.4% in 2005 to 13.9% in 2009. The publication is an affiliate of *The National Law Journal*.

"Am I satisfied with where we are? No," Palmore said of diversity efforts during the past five years. "Do I think we've made some progress? Yes."

Palmore cautioned that reported law firm figures on minority attorneys are sometimes inflated and don't provide a full picture. For instance, most reports

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lump together all partners and all associates without breaking out the racial makeup of nonequity partners and staff attorneys.

The demographic of attorneys filling those less influential positions is a telling sign of whether law firms are truly embracing diversity, Palmore said. (Data about the diversity of staff attorneys is scant, but the 2008 Vault/Minority Corporate Counsel Association Law Firm Diversity Survey found that minorities made up 5.6% of equity partners and 8.5% of nonequity partners at large firms.)

FEWER AT THE TOP RUNGS

Although the available statistics oversimplify the diversity picture, they demonstrate that change has been significantly slower at the top rungs of the law firm ladder. The percentage of minority associates at firms increased from 15.1% in 2005 to 19.7% in 2009, up by 4.6 percentage points, according to NALP.

That increase far outpaced the growth among minority partners, which ticked up from 4.3% to 6.1% during that time. The dearth of minority partners is a problem that firms need to address to get more young minorities interested in the profession, said Fred W. Alvarez, a partner at Palo Alto, Calif.-based Wilson Sonsini Goodrich & Rosati and the chairman of the American Bar Association's Commission on Racial and Ethnic Diversity in the Profession. The strong presence of minority partners—18%—

has helped Wilson Sonsini recruit young minority attorneys, he said.

"We need to create more success stories so that it isn't such a leap of faith to say a diverse lawyer can be a general counsel of a law firm partner," Alvarez said. "We've been suffering from a lack of role models in a whole lot of places."

The lack of minority partners also hampers retention efforts because minority associates often leave their firms when they don't see a clear path to partnership, said Helise Harrington, diversity partner at Sonnenschein Nath & Rosenthal.

"You can recruit associates like crazy, but if you don't have any minority partners who are role models, you wonder how you can be successful in keeping them," she said.

In addition to concealing the gap between the percentages of minority associates and partners, focusing on the overall percentages of minority attorneys at law firms masks some troubling trends among individual racial groups, Leipold said. The percentage of Asian attorneys increased slightly and has offset a loss of African-American attorneys, while the percentage of Hispanic attorneys stagnated in recent years, he said.

The legal profession lags behind nearly every other white-collar profession when it comes to diversity, statistics from the U.S. Census Bureau show. Blacks, Asians and Hispanics made up 11.8% of all U.S. attorneys in 2007. By contrast, those groups represented 19.9% of dentists, 25.5% of accountants and auditors and 27.7% of physicians and surgeons,

although Asians accounted for a disproportionately high percentage of the doctors and dentists.

"We're way behind other professions," said Thomas M. Cooley Law School professor E. Christopher Johnson Jr., who spearheaded a number of diversity programs when he was general counsel for North America at General Motors Corp. "If these other professions can do it, we should be able to do it."

DASHED EXPECTATIONS

Veta T. Richardson counts herself among those underwhelmed by the recent progress the legal profession has made on diversity. She took over as executive director of the Minority Corporate Counsel Association in 2001, expecting swift results because of the heightening interest in diversity.

"I optimistically thought I'd work hard for five years and things would have improved so much that we wouldn't need to talk that much about it," she said.

Eight years later, Richardson is still talking about diversity, although she conceded that most firms have moved past asking why they should change and now want to know how they can show better results.

For their part, a number of law firm partners insisted during interviews that firms have made meaningful changes even if the proportion of minority attorneys hasn't shot up across the board. The biggest gains have been in improving attitudes about diversity, they said.

"The environment of law firms has

become a lot more inclusive," said Keith Vaughan, chairman of Womble Carlyle Sandridge & Rice. "There's significant progress being made, but it's a slow evolution."

According to the *Minority Law Journal's* Diversity Scorecard, most firms improved their diversity numbers between 2005 and 2009. But more than 12% of firms saw their percentage of minority attorneys stay the same or decline during those years, including Sonnenschein; Womble Carlyle; Greenberg Traurig; New York-based Simpson Thacher & Bartlett; and Lowenstein Sandler of Roseland, N.J. (although some of those firms still maintain minority attorney percentages higher than the national average).

RECRUITING PATTERNS HURT NUMBERS

"Our percentage of minority partners has gone up slightly, but overall there has been a decline," Harrington said of Sonnenschein. "We did very well at first, then a lot of firms caught up with us."

Harrington attributes Sonnenschein's dip in minority attorneys to several factors, one of which is the firm's strategic plan to move higher up the AmLaw 100, *The American Lawyer's* ranking of the nation's top 100 law firms based on financial data. *The American Lawyer* is an affiliate of the NLJ.

To improve its financial ranking, Sonnenschein is recruiting laterals with large books of business—a category traditionally comprising mainly white men and excluding many minorities or

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women—Harrington said. In addition, the firm has relied heavily on its summer program to bring in minority associates. Smaller summer and incoming associate classes have left the firm with fewer spots to offer minority candidates, she said.

Vaughan couldn't point to a specific reason why the percentage of minority attorneys at Womble Carlyle remained steady at 6% on both the 2005 and 2009 scorecards. The firm has strengthened efforts through its diversity committee and its Womble Carlyle Scholars Program, which offers scholarships and summer jobs to diverse students. But it still grapples with recruiting from the fairly limited pool of minority law graduates, Vaughan said.

"My perception is that you have a certain number of minorities coming out of law school and everybody is trying to recruit them," he said. "In a sense, we need to work on the supply side.

The so-called pipeline issue has become a greater focus of the legal diversity movement. It's not clear how effective pipeline programs are in funneling minorities into law schools and on into firms, however.

The percentage of minority students enrolled at American Bar Association-approved law schools has barely budged during the past five years. Minorities made up 21% of Juris Doctor enrollment in 2004, compared to 21.9% in 2008, according to figures from the ABA.

The narrow pipeline is only part of the problem. Law firm recruiting prac-

tices are another major factor in the lack of diversity, according to academics and firm leaders.

"Yes, there is a relatively small number of people of color who go to law schools, but the top firms only interview at the most elite law schools, and then they only want the top of the class," said Edwards. "The number only gets smaller and smaller. Law firms need to broaden their search."

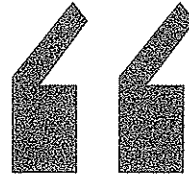
REASON FOR HOPE

Despite the disappointing progress on diversity in the legal profession—the slow increase in minorities at law firms, the stagnant number enrolled in law schools and the lack of diverse attorneys in top positions—there is reason for optimism.

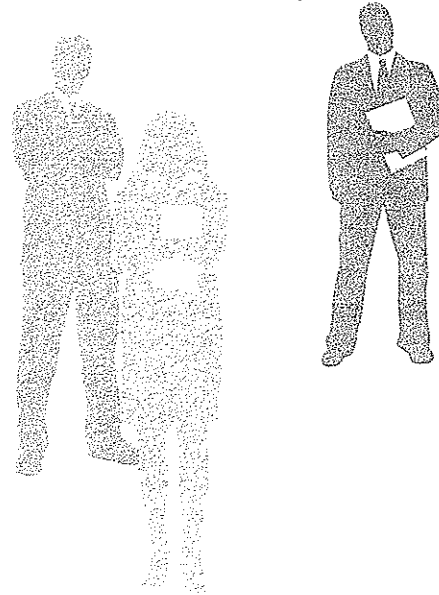
Law firms are making gains in the diversity of summer associates and first-year associates, Leipold said. For example, more than 24% of summer associates in 2009 were minorities, compared to slightly more than 20% in 2004, according to NALP.

Several advocates said that the legal diversity movement is poised for another surge following the formation in May of the Leadership Council on Legal Diversity (LCLD) and other initiatives from the ABA and elsewhere.

The LCLD, led by Palmore and Hunton & Williams managing partner Wally Martinez, brings together law firm managing partners and general counsel from major companies to hold legal leaders accountable for their minority numbers. The previous strategy, in which corpora-



The narrow pipeline is only part of the problem. Recruiting practices are another major factor in the lack of diversity.



tions and law firms tackled their diversity problems separately, didn't yield the desired results, Palmore said.

"[Diversity programs] have been going on for a long time, and the results speak for themselves," Palmore said. "They've been marginally successful, at best. That indicates a new approach is warranted."

The key to making real progress in minority representation within the legal profession is to create broad, consistent professional-development programs for all young attorneys, not just minorities, he said. Attrition will decline when all associates believe that firms are investing in them and believe that they have true mentors—greater diversity will then follow.

"Right now, it's almost accidental who gets developed and who doesn't," Palmore said. "You have talented people who don't feel invested in, and they leave. I think that's the biggest obstacle."

Richardson views the new collaborative efforts as a pivotal third act in the legal diversity movement—the first two being the recognition that diversity makes business sense and the movement of firms and companies to address that issue on their own.

Like Richardson, Alvarez senses renewed momentum on the diversity front. So where does he see legal diversity in another five years?

"I'm hoping we're going to be better than we are now, but I'm realistic enough to know that we won't be done," he said.

Contact Karen Sloan at ksloan@alm.com.

DIVERSITY

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 attor-

neys. 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

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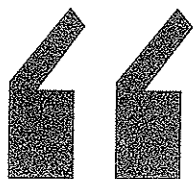
in this nation—from Microsoft Corp. to Wal-Mart Stores Inc.—have made it clear that they want diverse outside counsel. In 1999, about 500 major corporations endorsed “Diversity in the Workplace,” a statement of principle that showed their commitment to diversity in the legal profession. In 2005, 90 corporations 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.

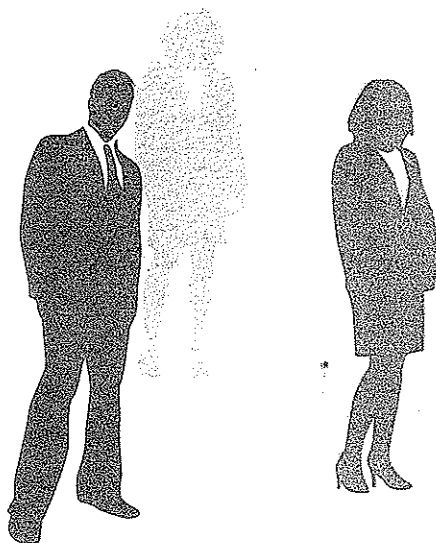
Should corporations and law firms be responsible for ensuring that the profession keeps pace with these changing demographics? Yes. Corporate law departments and law firms need to become more diverse, not less.

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 deci-



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sion-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 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.

E. Macey Russell is a partner in the major commercial litigation group at Choate, Hall & Stewart in Boston, where he co-chairs the firm’s diversity committee. He can be reached at mrussell@choate.com.