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Driving Diversity in Large Law Firms

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Most diversity advocates who purport to focus on the business case believe unwittingly – actually, they assume – that the drivers for diversity’s business case are the same within large law firms as they are for most businesses in corporate America. Mis-armed with such beliefs and assumptions, these advocates blindly focus primarily on hiring and mentoring policies as the principal strategies.

Everyone talks about the business case for diversity, but when it comes to large law firms, very few understand the business forces that are driving diversity. Even fewer know how to galvanize those forces to achieve transforming changes within such firms.

In rushing to join the politically correct position about the value of diversity, even the most well-intentioned advocates—whether in law firms, major corporations, or Bar organizations—miss completely or fail to account for the real business driving factors. As a result, they also fail to recognize an opportunity to use a fundamental empowerment concept that could transform diversity strategies and lead to the results they want.

Most diversity advocates who purport to focus on the business case believe unwittingly—actually, they assume—that the drivers for diversity’s business case are the same within large law firms as they are for most businesses in corporate America. Mis-armed with such beliefs and assumptions, these advocates proceed directly to the law firms themselves and blindly focus primarily on hiring and mentoring policies as the principal strategies.

Strategies to improve hiring and mentoring are important for most law firms to increase the numbers of minorities and women they hire and retain for an initial period. However, most of those strategies miss completely the foundational component that is necessary to drive large law firms to a commitment that both achieves such results initially and

sustains them over the long-term. As a result, many firms are genuinely frustrated and puzzled when their erstwhile good faith efforts eventually fail. They should not be, however, for their efforts were destined to fail because of the flawed foundation upon which they proceeded.

Consider, for example, Coca-Cola, General Motors, Sara Lee, Nike, and virtually any other large company whose goods or services must be sold to large numbers of individual consumers if its business is to be successful and profitable. When such a company looks out upon the landscape of its marketplace, it sees diversity as a direct and immediate factor for its potential customers. That company's business interests are immediately engaged by the recognition that its current and future products, its sales strategies, and its customer relations policies must reflect the diverse interests, needs and preferences of the diverse customers in its marketplace. So, too, must the company's internal personnel profile and related policies, if its business messages are to have the best chances for resonating among the diverse members of that marketplace.

Now, consider the landscape of clients and perspective clients that the typical large law firm see when it looks upon its marketplace. It is not nearly so diverse, if it is diverse at all in any meaningful way. Very few large law firms target legal services to a clientele that is diverse, or for whom diversity is obviously important as a direct and immediate matter. As a result, there is no obvious and direct business driver for such a law firm to pursue diversity within its ranks.

The large law firm primarily sees the large companies and wealthy individuals whom it has or desires as clients. Very few of those companies are owned or controlled by women or minorities, just as very few of the wealthy individuals are likely to be minorities or women. Without an intervening factor, such a firm will not see a real business driver for diversity. Any commitment it makes to diversity that is purportedly based on the business case will be unstable at best, and most likely tenuous and subject to marginalization.

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The business case for diversity for large law firms is primarily derivative from the concerns of the clients and prospects that dominate the landscape of such firms' marketplace. As a result, it will exist if, and only to the extent that, those business clients and prospects extend their diversity commitment to such law firms, by insisting upon diversity within the ranks of the large firms that they use for outside legal services.

Conversely, if those business clients and prospects do not believe (or do not convey the message) that diversity within the law firms that they use is important to them, then no real and compelling business case for diversity will evolve within such firms. All that will exist, if anything exists at all, will be a social (or perhaps even a moral) belief in the imperative of diversity, which may have led to a politically correct concurrence in the existence of a business case. Neither of those, however, is sufficient to drive transforming diversity initiatives within large law firms whenever the firms' financial bottom line suggests a potential conflict.

There are very few social or moral imperatives (as opposed to legal or professional duties) that stand as the determinative factor, at the end of the day, for a decision that a large law firm perceives as having countervailing financial implications.

Such a realpolitik discussion of the business case for diversity in large law firms is disturbing for many diversity advocates. Some believe it may compromise unnecessarily the social or moral imperative of diversity for such firms. They proclaim that promoting diversity is "the right thing to do," and they insist that such an imperative alone should be sufficient to drive a commitment to diversity. Others believe that a derivative business case for diversity—taking its cue from initiatives in the business community—takes the pressure off law firms to proceed proactively, because it implies that they need not act in absence of pressure from the business community.

Both positions have some merit, but each is misguided and somewhat naive, if one's objective is for diversity to be taken seriously by large law firms. There are very few social or moral imperatives (as opposed to legal or professional duties) that stand as the determinative factor, at the end of the day, for a decision that a large law firm perceives as having countervailing financial implications. And, for similar reasons,

a misunderstood business case as the basis for a firm's commitment to diversity will lead inevitably to diversity objectives being marginalized when other real business drivers for the firm are clearly presented in opposition. No good comes, when key decisions are made, from having masked the real business drivers for diversity. Not even if the unmasking is disturbing or uncomfortable.

Only a clear-eyed recognition of the derivative nature of the business case for diversity at large law firms can lead to the development of effective strategies to achieve tangible and sustainable diversity results at such firms. This is because those strategies must reflect an empowerment concept that I refer to—perhaps a bit crassly—as making minority and women attorneys "business assets" of the law firms. That means positioning minority and women attorneys to be perceived as incremental contributors to positive business results for the firms, so that their value becomes unique and non-fungible with that of other personnel.

That is where the role of major business clients comes in. By extending their diversity commitment to outside law firms in tangible ways, major business clients can lay the foundation for those strategies. For example, general counsel of over 400 major companies are now signatories to "**Diversity in the Workplace: A Statement of Principle**," led by Charles Morgan of BellSouth Corporation. Pursuant to that initiative, each of those general counsel (on behalf of his or her company) informs outside law firms of the company's commitment to diversity; inquires about what the firms are doing to achieve diversity; and indicates that the company will consider how the firms are doing with diversity in making engagement decisions.

That initiative and its message serve the very important function of raising diversity as an issue within large law firms. However, they are not having a transforming impact on the firms. They do not penetrate deeply enough to be the compelling driver that diversity needs within the firms; they do not make diversity's business case truly real for the firms.

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The signatory companies, along with others in corporate America who are the clients and perspective clients of large law firms, must go further in helping to lay that foundation. They must both insist upon, and assist in, a process of making women and minority attorneys "business assets" at those firms. It is a short step, but an essential one, that they must take.

The step involves these companies going beyond the above—which many law firms perceive as largely perfunctory and not a direct charge to action—to inquire about more revealing diversity indicators and to institute proactive programs along the lines of what some signatory companies have done—Sara Lee, DuPont, Ford, and General Motors are splendid examples. They should inquire about matters such as:

- the nature of responsibilities for such companies' legal matters that are assigned by the firms to their minority or women lawyers;
- the level of responsibilities for significant matters generally that are assigned to minority or women lawyers within the firms;
- the positions of authority and influence within the firms to which minority and women lawyers have been appointed; and
- how diversity is reflected in the firms' systems for promotion and remuneration of all its lawyers.

When such inquiries are coupled with a clear statement that a law firm's diversity results can be the decisive factor in engagement decisions by the company, they will drive home the point that the companies mean business – that they will put their money where their commitment is. Firms will then get the message and see the business case as it really exists for them.

Each of these inquiries probes whether women and minority attorneys are perceived and being valued as important business assets within those firms. When such inquiries are coupled with a clear statement that a law firm's diversity results can be the decisive factor in engagement decisions by the company, they will drive home the point that the companies mean business. They will say that the companies will put their money where their commitment is. Firms will then get the message and see the business case as it really exists for them. Tangible diversity results—and not politically correct diversity rhetoric and apologies for poor results—will then become the order of the day.

It is important to note, before dismissing, a counterpoint that some may raise. It is akin to the types of slippery slope arguments that lawyers love and advance much too frequently. It begins with the

noble precept that law firms must not allow clients or anyone else to lead them to behave improperly with respect to their personnel or professional responsibilities. For example, a firm should not accede to a suggestion or dictate from a client or prospect that the firm not hire or promote or assign important matters to attorneys because they are women or minorities. We are not too far removed from an era when that happened, and so one should acknowledge that perverse possibility. That being done, however, it should be sufficient to state simply that no risk of such perversity is created by these suggestions for advancing diversity. If a law firm seriously suggests otherwise, then it is reflecting a fundamentally insincere commitment (if not affirmative hostility) to diversity itself. It is looking for an excuse not to act, rather than for strategies to be successful. Such a firm is not my concern here.

The business community could be even more impactful if it were to become proactive in two other areas. First, major companies and other highly sought-after business clients could take the lead in identifying specific minority or women lawyers in the firms they use (or are considering for use) whom those clients or prospects want the firms to designate as the lawyers "responsible" for some of the important legal work that would be handled by the firms. Second, the general counsel and key executives of such companies could use their influence with others who do business with their companies to urge that they similarly provide opportunities for minority and women lawyers in firms to be responsible for some of their legal work.

Both of these approaches are utilized every day to accomplish other objectives that are important to such general counsel, executives, and their respective companies. They are legitimate business practices, as long as the objectives sought are legitimate. The question then becomes simply this: Is promoting diversity within large law firms a sufficiently important objective for those companies to use these approaches to help achieve it?

As more women and minorities ascend to key decision-making positions within large companies (both within legal departments and the executive ranks where decisions to engage outside law firms are made), one might expect (and hope) that these types of initiatives will be taken by an increasing number of companies.

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positions within large companies (both within legal departments and the executive ranks where decisions to engage outside law firms are made), one might expect (and hope) that the above initiatives will be taken by an increasing number of companies. Some law firms will recognize that likelihood and its implications for women and minority attorneys as "business assets." If so, they should be motivated to proactive strategies to improve their diversity profiles.

To some extent, such proactivity will require a "build it and they will come" philosophy for some hiring and promotion decisions with respect to women and minorities. It may require such firms to make an early investment in these attorneys, but the returns to the firms will include getting ahead of the curve relative to other firms in addressing the diversity concerns of those clients and prospects. Moreover, the early results of their proactivity will make it easier for those firms to achieve even better results later.

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That level of enlightened vision, however, may be too high to expect that many (and certainly not most) firms will ascend to it on their own. Most will take a more cautious, "wait and see" attitude, perhaps unwittingly again. They will wait for an increasing number of major companies and prospective clients to connect the dots for them and apply the type of pressures suggested above. It is imperative, therefore, that such clients and prospects turn up the pressure in the above tangible ways.

For law firms whose leaders do see clearly the derivative, but real and growing, business case for diversity at their firms, there are proactive things they can do as well in order to develop their women and minority attorneys as business assets. For example, internal decisions are made daily at such firms that have career transforming potential for their lawyers. These include which attorneys to make responsible for leading important client relationships, or if not for leading them, then assuming a key and high profile role on the client service team; and which attorneys will be allocated a portion of the internal "credit" for the firm's financial results deriving from important client matters.

Each of those situations presents opportunities to develop women or minority attorneys as important business assets. As such, they should not be made without considering that opportunity to advance the firm's diversity agenda. I do not suggest that quality services to clients be compromised to any extent; or that other deserving attorneys be unfairly treated. Rather, in situations where all other truly important factors are equal (or sufficiently near equal so as not to matter), then a firm that is truly committed to achieving tangible and meaningful diversity results will seize the opportunity to advance its business asset diversity strategy.

Other necessary elements of a successful diversity strategy—such as creative and proactive hiring and mentoring programs, and an enlightened focus on the retention of minorities and women—will fall in line if the "business assets" empowerment component is part of its foundation. Indeed, it is essentially tautological. What law firm, after being focused on the tangible incremental value that its women and minority attorneys are adding to its bottom line business interest, would not commit itself with real purpose and ingenuity to hiring, mentoring, retaining, and promoting more women and minorities?

Programs that previously focused on those matters, but that failed because they were not based on the real business drivers for diversity at the firms, will begin to succeed. They will succeed because the firms will finally recognize that they have no practical choice but to do whatever is necessary to make their diversity program succeed.

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Discussion Leaders:

1. Hundreds of Chief Legal Officers have signed the **Statement of Principle** circulated by Charles Morgan, General Counsel of BellSouth. By signing, the Officers agreed that when deciding whether to retain a law firm, they will give “significant weight to a firm’s commitment and progress” in promoting diversity in the workplace. Does your organization have a policy specifically addressing the engagement of law firms? Specifically aimed at any other service industry? Why did your organization feel it necessary to do so?

2. According to the author, until firms are “squeezed” financially, they will not make any serious strides toward increasing diversity. That was exactly the point that Morgan was trying to make with the **Statement of Principle**: that a diverse legal profession has become a business issue that will eventually affect everyone’s bottom line. Can you think of any other ways that corporations committed to diversity can leverage their power by making a unified stand for change?
