

Toward Inclusion OF DIVERSE LAWYERS IN PROVIDING CORPORATE LEGAL SERVICES

By Marcia B. Goffney



Overall efforts to increase the diversity of lawyers in the legal profession have produced limited results. This article explores past inclusion initiatives and suggests strategies and tools that might hasten achievement of total inclusion of lawyers from all races and ethnicities in providing legal services to corporate clients. The discussion will be confined to inclusion of racial and ethnic groups because the historical and socio-cultural stereotypes impairing their inclusion are unique. However, the suggestions presented here may add value in furthering the inclusion of all diverse lawyers.

As of December 2010, there were 1,225,452 resident and active lawyers in the United States. The 2010 United States Census reported that 4.8 percent were African American or black, 3.4 percent were Asian/Pacific American, and 3.7 percent were Hispanic. The number of lawyers of color in the U.S. has remained relatively unchanged during the past decade. Michigan has 33,370 attorneys listed as active or resident. The number of Michigan lawyers of color has not been officially calculated but is thought to be equivalent to the national percentage.

When we look back at the first decade of the twenty-first century, we can see some progress in including more diverse law-

yers on law firm teams representing large corporate clients. This has occurred, in part, because of pressure from corporate counsel to diversify outside counsel teams. However, when we view the percentage of lawyers of color responsible for corporate matters, the progress remains inadequate. Few comprehensive statistics are kept on the race and ethnicity of firm lawyers or the nature of the corporate legal work they perform. However, based on observation, lawyers of color in many mid-size and large outside firms are not typically serving as lead counsel or are frequently not involved in complex corporate matters.

There are several possible explanations. Historically, the reluctance to assign racially or ethnically diverse outside counsel to handle complex corporate assignments was often fueled by the perception that attorneys of color lacked intellectual capability. Other rationales for exclusion were that these lawyers lacked lengthy experience in corporate and transactional matters, sophistication, and social skills for interacting and building trust with business clients. Some of these perceptions persist today even though they are factually unsupported. It is time to recognize and utilize the entire talent pool of lawyers and benefit from their diverse perspectives and knowledge in serving corporate clients.

FAST FACTS:

Diversity advocates continue to request signed commitments to further inclusion of all lawyers. Action will move the needle.

Your actions speak loudly. Live inclusively.

A recent survey shows that 80 percent of the corporations imposing diversity targets for their outside counsel do not impose consequences if the goals are not met.

History

During the 1970s, some lawyers began to embrace the concept that inclusion of all lawyers was a laudable goal for a profession charged with a high degree of honor and integrity. Harry Pierce, then general counsel of General Motors, issued an early call to action. He sent a letter to GM's outside law firms asking them to adopt inclusive policies and use diverse lawyers on GM matters. The letter was considered revolutionary for its time.

In the 1980s, many companies were still reluctant to use lawyers of color for corporate work, reasoning that minority-owned firms were inadequately staffed and minority lawyers lacked relevant experience. Under the leadership of Dennis W. Archer, the American Bar Association launched the Minority Demonstration Project to counter this perception and show that minority firm lawyers were capable of doing corporate legal work. A series of speed interviews between minority lawyers and corporate in-house counsel followed. Most corporations sent their attorneys of color to the meetings, resulting in the formation of the Minority-in-House Counsel Group (MIC). Subsequently, MIC members became instrumental in encouraging firms to diversify the teams providing legal services to large corporations.

Several small minority-owned firms responded to corporate concerns about inadequate staffing by merging with each other. A few were able to obtain corporate clients. The Minority Partners in Majority Firms organized and, with backing from their large firms, were more successful in obtaining corporate legal work. The Minority Corporate Counsel Association and Charting Your Own Course, a career development program, were formed and hosted meetings to enable networking between corporate in-house counsel and firm attorneys of color. In the mid-80s, the National Bar Association formed the Commercial Law Section to further the retention of African-American lawyers as outside counsel.

By the following decade, the number of diverse lawyers handling corporate matters had increased slightly. During the 1990s, law firms and corporations were asked to demonstrate their commitment by signing publicized diversity statements. Some law firms hired diversity managers. Numerical diversity metrics were developed by leading companies such as DuPont, Sara Lee, Wal-Mart, and General Motors to measure the progress made by their outside counsel in diversifying staff. Today, diversity advo-

cates continue to request signed commitments in an effort to further inclusion.

The Value of Diversity

Although numerical metrics kept the issue of diversity on the radar, the downside was that many firm lawyers and corporate in-house counsel focused on increasing the number of diverse attorneys rather than the value of diverse perspectives gained from being more inclusive. Further, the metrics did not address the manner in which associates of color are developed through assignment to complex corporate legal matters. Diversity non-believers challenged advocates to justify the business case and dollar value of inclusion—being “the right thing to do” was not enough justification.

Opponents to diversity metrics have argued that the inclusion of diverse lawyers on legal teams will happen naturally if all lawyers perform capably. Capable performance cannot occur if individuals are not given opportunities to demonstrate their skills.

Diverse lawyers are a necessity for supporting global business in an economy that, by most predictions, will be driven less by the United States and more by Brazil, Russia, India, and China. There are demonstrable business, operational, economic, and strategic reasons for having a diverse legal team working on corporate

legal matters. Improved communications with global customers and employees, creative problem solving, and conflict resolution are just a few of the benefits.

Unique viewpoints are derived from unique life experiences. A diverse team of lawyers brings diverse assessments, analyses, and options. My experience has been that solutions from these teams are more comprehensive and customized to corporate legal situations. Inclusivity reduces the likelihood that potential legal solutions will be overlooked. The result of a legal debate between minds developed within different cultural environments is frequently of greater utility to corporate counsel than conclusions derived from monolithic views and beliefs. There is value in the robust discussion that evolves from different perspectives.

As U.S. and foreign law firms expand, there will be increased global competition for capable lawyers to perform corporate legal work. Many foreign corporations and law firms are now recruiting and advertising for lawyers through world media. These companies are located in countries where a person who is a *minority* in

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the U.S. is a *majority* group member. Corporations will need lawyers capable of providing the best legal service to a business world without borders. Firms will need to reflect the world businesses they serve. Firms and corporate law departments that inappropriately use race and ethnicity as a basis for deselecting or excluding lawyers will likely see their reputations and profits decline.

What Now?

Show Your Commitment

Live inclusively. What you do speaks loudly. Firm and corporate lawyers should interact with diverse populations. Trust is an important basis for assignment decisions. Familiarity builds trust. Inclusiveness is a mindset. Attorneys' beliefs won't change by just counting numbers.

Support the Pipeline

Increase the talent pool. Support initiatives that expose diverse high-school and college students to the legal profession.

Recruit from Diverse Sources

Consider the law school diversity breakdown before beginning firm recruitment. Set targets for recruitment and retention that support diversity.

Demystify Practices

Review your policies to ensure they promote inclusion. Appoint lawyers of color to the executive committee. Your management committees should have input from diverse representatives. Criteria for advancement should be transparent.

Reward and Recognize Diversity Champions

Don't just reward attorneys for bringing in a new client or winning a case. Reward and recognize those who uphold and demonstrate corporate and firm commitments and beliefs.

Measure Progress

Planned initiatives and metrics can aid in ensuring that lawyers are not overlooked. Perform a quarterly review of results to target. Share the data.

Develop All Lawyers

Firm associates become partners based on their ability to perform and retain corporate clients. Corporations frequently recruit senior lawyers and general counsels from the ranks of firm partners. Provide equal opportunities to all lawyers so that success is possible. Hiring diverse lawyers is not enough. Firms must develop them and assign them to complex corporate matters.

Demand Accountability from Yourself and In-House and Outside Counsel

A recent survey reports that many large corporations do not hold themselves or their outside firms accountable when they do not meet diversity goals.¹ Dialogue alone will not move the needle. Action will. ■



Marcia B. Goffney, president of Shared Vision Associates, LLC, is a former vice president, secretary, general counsel, and adjunct professor of ethics and social responsibility. She served as a director of the 35,000-member Association of Corporate Counsel and co-founded Charting Your Own Course career development programs. She is a frequent corporate and law-firm speaker and has been recognized for her work by numerous organizations, including Crain's Detroit and the Association of Corporate Counsel.

FOOTNOTE

1. Institute for Inclusion in the Legal Profession, *The Business Case for Diversity: Reality or Wishful Thinking?* (2011) <<http://www.theilp.com/resources/Documents/ILPBBusinessCaseforDiversity.pdf>> (accessed December 13, 2011).