

Is There a Nexus Between a Lack of Diversity in Corporate Law Departments and Law Firms?

The Metropolitan Corporate Counsel by Deborah Howard

Law firms and corporations have long been expressing their support for increased staff diversity. We are all familiar with the Association of the Bar of the City of New York's Statement of Goals to which nearly 150 law firms and over 40 corporations have become signatories. To see how well Tri-State area corporations are doing in terms of the number of counsel of color in their legal departments, a survey of in-house corporate counsel of color was recently conducted. Among other questions, each counsel was asked: (1) the number of attorneys in their legal department; (2) the number of those attorneys who are of color; (3) the number of attorneys in their legal department who manage or supervise other attorneys; and (4) the number of attorneys who manage or supervise other attorneys who are of color.

Surveys were distributed to 187 corporate counsel of color. 90 counsel (almost 50%) responded to the survey and 67 counsel (almost 36%) answered these specific questions completely. The survey responses show that of the 2,389 attorneys in the corporate legal departments represented by these surveys, 213 (8.9%) are of color. And, of the 473 managing and supervisory attorneys in these corporate legal departments, 42 (8.9%) are of color.

At first blush, these numbers may not look too bad. However, a closer look shows a different picture. Of the 67 legal departments represented by these respondents, 27 of them (more than 40%) have only one counsel of color, and 35 of them (slightly over 52%) have no managing or supervisory attorney who is of color. These numbers indicate that corporate legal departments need to increase both the number of attorneys of color, and the number of managing and supervising attorneys of color in their legal departments.

While the number of attorneys of color in Tri-State area corporations could be better, the percent of counsel of color who move up into management ranks in corporations is better than the percent of attorneys of color seen in the partnership ranks of most law firms. Law firms nationwide have been somewhat successful in recent years in increasing the number of associates of color who they recruit and hire.¹ However, these same law firms are failing to retain the associates of color they recruit and hire as indicated by the small number (about 3%) of partners of color in these firms. In addition, of the small number of partners of color, 46.2% are non-equity partners, leaving them with much less income and clout than equity partners.² The numbers are even lower for New York City law firms. According to a recent *New York Law Journal* article, an average of only 2.4% of

¹ A recent survey of the nation's 250 law firms conducted by the *National Law Journal* indicated that 10% of associates in the nation's 250 largest law firms are of color (up from 6.8% in 1991). See, "Big Jump in Minority Associates, But..." *National Law Journal*, Monday, April 29, 1996.

² See Footnote #1.

partners in New York City's largest 25 law firms are of partners of color.³

It is clear that law firm efforts in the area of recruitment are not sufficient to result in successful retention. What can corporate counsel do to assist law firm associates of color to advance and make the partnership ranks? Real change in the area of diversity comes about only when businesses (and law firms are businesses) feel that creating true diversity will affect their bottom line. Corporations have been able to do somewhat better than law firms because their client base and increasingly diverse markets are leading to their seeing the business benefits of a diverse staff at all levels. Law firms have not yet faced enough business incentives to create real change in their upper ranks. Corporate counsel, however, as buyers of legal services, have the power to have real influence on law firms.

Those in-house counsel in the position to send work to outside counsel need to follow the lead of counsel in corporations such as American Express, which has instituted a "Minority Counsel Program" designed to increase diversity in law firms. According to Ronald A. Gray, Managing Counsel of American Express in New York City, their Minority Counsel Program was established in 1993, with the support of the General Counsel, in an effort to take more concrete action than merely becoming a signatory to the City Bar Statement of Goals. American Express concluded that, as a buyer of outside legal services, they could make a significant impact in the area of increasing diversity in law firms by making clear to their current outside counsel (and law firms seeking their business) that diversity is important, and will be a factor they consider in selecting and evaluating their outside counsel.

Pursuant to this Program, law firms are told by American Express that in evaluating them to determine if they will be sent legal work, they are judged on three factors: (1) cost effectiveness; (2) quality; and (3) attention to diversity. All firms are asked on an annual basis to submit information on the diversity of their staff.⁴ The information received is considered and used each year to determine if a firm is making progress in recruiting and retaining attorneys of color. It is clear from the tracking and analysis conducted by American Express that even firms that do well with recruitment, do not do as well with retention.

Thus, to help enable associates of color to successfully climb the partnership ladder, American Express Practice Area Coordinators are told to request that outside counsel have attorneys of color work on their projects. This demand creates opportunities for attorneys of color that might not otherwise be available. If attorneys of color are able to work directly with a client on a project and develop a strong relationship with that client, they can thereby become more attractive to the firm as a potential partner.

Not all in-house counsel can determine which attorneys and which law firms will handle their corporation's outside legal work. Nonetheless, there is another avenue for them to assist attorneys

³ "Firms' Minority Hiring Benefits Asian-Americans", the *New York Law Journal*, April 18, 1996.

⁴ This is accomplished by asking them to submit their National Association for Law Placement (NALP) Forms which list the number of associates and partners and details how many are members of minority groups.

of color in law firms to succeed. Wanda Denson-Low, Vice President and Assistant General Counsel at Hughes Electronics in Los Angeles took just such action. Denson-Low handles Hughes' intellectual property matters. As Assistant General Counsel, she was able to ensure that the work she sent outside the corporation was handled by an attorney of color. She found a young African American intellectual property lawyer in Chicago and gave him the opportunity to make a presentation to her with one of his firm's partners. Based on the presentation, Denson-Low gave the attorney \$100,000 of work. In addition to giving this attorney work, however, Denson-Low took an extra step. She became his mentor, providing him with advice to enable him to better serve corporate customers. This attorney eventually ended up handling \$1 million of Hughes' work, enabling him to leave his firm and join another Chicago firm taking this account along with him.⁵

Even corporate counsel who are not able to hand out legal work can provide essential assistance to their associates of color in law firms. They can help them develop relationships with those counsel who do send legal work outside the corporation, and can coach them on how to make appropriate presentations when given the opportunity. In this way, corporate counsel can take action that can have far-reaching effects and a significant impact on law firms. Without action on the part of in-house counsel, law firms may not otherwise have the necessary incentive to bring about real change in their partnership ranks.

⁵ See, *Diversity and the Bar*, Volume 1, Issue 2, September 15, 1996.