THE BUSINESS CASE FOR DIVERSITY
Who Is This White Guy?

- Practicing employment attorney for more than 25 years
- Legal marketing attorney coach
- Member of Minnesota State Bar Association’s Task Force and Implementation Task Force on Diversity in the Profession
<table>
<thead>
<tr>
<th></th>
<th>WOMEN</th>
<th>MINORITIES</th>
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<tbody>
<tr>
<td>Graduates</td>
<td>50%</td>
<td>22%</td>
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<tr>
<td>Attorneys - US</td>
<td>34%</td>
<td>13%</td>
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<tr>
<td>Associates - US</td>
<td>45%</td>
<td>21%</td>
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<tr>
<td>Partners - US</td>
<td>19% (1993-12%)</td>
<td>6% (1993-2.5%)</td>
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Success in Private Practice

“You want to see people make partner. That is where the rubber hits the road.” Gen. Counsel - Pitney Bowes
Is There a Problem?

• Is the playing field level and the numbers simply reflect personal choice to jump off the traditional law firm track?
• Is there a glass ceiling?
• Debate continues, but arguments have changed
What are you complaining about? It’s a level playing field.
From The “Right Thing” to the “Bottom Line”

“Diversity preserves the legitimacy of our legal system and safeguards the integrity of our democratic government.”
- Robert J. Grey Jr., former ABA President

“Law firms that only pay lip service to diversity may pay a stiff economic price. Law firms that do not take diversity seriously are already losing money.”
- Minority Corporate Counsel Association study
What It’s About

• Talent war
• Turnover
• Quality
• Strategic
• Relationship marketing
• Client demand
Disclaimers

• Not about whether a more diverse profession is the right thing
• No blueprint about how firms can achieve diversity
• Most relevant to large corp. firms, but can still be applicable to small firms
• Valuable to those who simply want to know what’s going on in the legal profession
Talent War

- Law students - shrinking pool of white male applicants
  - 23% are minorities
  - 50% are women
- Recruiting tool
Turnover Costs

• Lost return on investment - impact exaggerated when profitable associates leave ($250,000 - 2^{\text{nd}} \text{ yr. assoc.})

• Additional recruiting and training costs

• Discrimination suits
  ▪ Expense and distraction
  ▪ Publicity
Quality

Innovative ideas and solutions

“Lawyers of color have a demonstrated ability to work across cultural boundaries because they do it all the time.” - Gen. Counsel, Cargill

“Today, at a lot of companies we have 50 plus-year-old white men at the helm. And they surround themselves with people who look just like them and are educated just like them. When you have that kind of group, you tend to come up with the same results over and over. What you have is a stagnant business strategy.” - former Gen. Counsel of GE Transportation
Strategic

- Diverse jury pools
  - “Using firms with lawyers of a different race, sex, and age may allow them to better connect with juries, who also are more diverse.”
- Discrimination suits
  - Smart advocacy or exploitation?
  - Expands or limits opportunities?
“It’s the Relationship, Stupid!”

Once competency threshold is passed:

- Subjective
- Comfort and chemistry
- “Business leaders tend to hire, promote and reward people that look, think and behave like them.” - study as reported in the Wall Street Journal
Old Boys Network Is Getting Old

“Just like there’s an old boys network, there’s a network of people of color and women. Nowadays at the large corporations, it’s a person of color or a woman who is making the decision and for some it’s not appealing to deal with an all-white firm.”
Marketing Dynamics Working In Favor of Women/Minorities

General Counsel – Fortune 500

- Women – 17%
  - Abbott Labs, Amazon.com, Nash Finch, Tennant
- Minority – 8.6%
  - Dell, General Mills, McDonald’s, Proctor & Gamble

In-house counsel

- 20% women
- 10% minority
Handicaps

Networking – ABA Study
Excluded from Opportunities

- 62% - minority women
- 60% - white women
- 31% - minority men
- 4% - white men
Handicaps - Minorities

Mixing business with pleasure - a white thing?

- “Social events as an extension of business or work is a white phenomena.” L. Williams, It’s the Little Things

Informal network not as large

- “Minorities come into the legal profession with fewer contacts that are likely to ripen into important business contacts.”
Handicaps - Women Typical or Stereotypical?

- Masculine mystique
  - Male tribal leader/ritual dance by male warriors
- Lack of time- UW study
  - Working spouses
    - 28 hours v. 16 per week (housework)
    - 11 hours v. 3 (child care)
Typical or Stereotypical Obstacles

• “Women do not self-promote well. They worry that they will be seen as overreaching, overeager and egotistical.”

• “Woman are more aware of their limitations and are more up front about them.”
  - Harvard law school study – “Do you consider yourself in top 20% in legal reasoning?”
    • 33% - males
    • 15% - females
Typical or Stereotypical Obstacles

• “Women feel uncomfortable leveraging a personal relationship for business development reasons.”

• “Men know how to network but not how to make friends; women know how to make friends but not how to network.”
Why It Doesn’t Work All The Time

- Little reward - expected to hire good counsel
- Change is always risky; now with added dimension
  - Fear of favoritism accusation
  - “Sure thing” - easy to second guess
- In-house more concerned with own company’s diversity
Corporate Client Demands

Companies committed to diversity expect their suppliers to be - law firms are visible vendors

- “Diversity in our workplace and supplier base strengthens our company and our performance in the global marketplace.”
  - Gen. Counsel - Delta Airlines
- “Our goal is to ensure that … we have a diverse group of lawyers internally and externally.”
  - Gen. Counsel - Sears
Differentiator

Former Merck Gen. Counsel - “We are in the fortunate position of having many highly capable law firms lining up to work with us. And it was hard in some ways to differentiate among these firms. But we found that diversity was something that would allow us to make that differentiation.”
Charles Morgan Letter

Former Bell South Gen. Counsel

- 500 G.C.s sign
- “We expect the law firms which represent our companies to work actively to promote diversity within their workplace. In making our respective decisions concerning selection of outside counsel, we will give significant weight to a firm’s commitment and progress in this area.”
“A Call to Action”

- Initiated by Rick Palmore (former Sara Lee - Gen. Counsel – now at General Mills) in the fall of 2004
- “We will make decisions regarding which law firms represent our companies based in significant part on the diversity performance of the firms. We further intend to end or limit our relationships with firms whose performance consistently evidences a lack of meaningful intent in being diverse.” - 100 signators

- Leadership Council on Legal Diversity created spring, 2009
  - 19 companies and law firms; chaired by R. Palmore
  - Identify strategies and best practices
It’s Not Just About Large Law Firms

“Inclusion Initiative”

• 30 million committed to minority and women-owned law firms
• Brainchild of Susan Blount, Prudential GC
• Partnering with National Association of Minority and Women-Owned Law Firms (NAMWOLF)
• Companies include Accenture, American Airlines, Comcast, DuPont, Exelon, General Mills, GlaxoSmithKline, and Microsoft
Show Me Your Numbers

Who?
- Cargill
- General Mills
- US Bank
- Xcel Energy
- General Motors
- DuPont
- Coca-Cola
- American Airlines
- Intel

How?
- Martindale – Diversity Profiles
- Website of minority owned firms
- Directory of firms used by Du Pont, Shell and Wal-Mart
Money Talks

Shell Oil

- Factors - quality, cost, professionalism, diversity
  - Invoices broken down by race, ethnicity and gender
  - Origination credit
  - Diversity policies
  - Is progress being made?
- “We no longer do business with [some] firms because they were simply giving lip service to diversity.”

Microsoft

- Offers bonuses to law firms who increase hours or %’s
- Offers bonuses to in-house counsel whose firms improve
- “If we have a goal we need to measure it, and that we should assume money does matter and it’s crazy to think otherwise.”
More Walking the Talk

- **Wal-Mart**
  - 200 million spent on outside legal
  - 82 of top 100 relationship partners were white males
- **Solution**
  - Top 100 law firms must have at least one person of color and one woman among the top five relationship attorneys
  - Four firms terminated; 60 million dollars of business moved
  - “Don’t confuse efforts with results. We’re looking for results.”
  - “This is not a fad or the politically correct thing to do. Diversity has become a part of who we are.”
- “Walking the talk” in action
What Law Firms Are Doing

Recruitment
- Job fairs
- Expand pool of law schools
- Scholarships
- Reevaluate criteria
“In many cases [at my firm], female associates, associates of color are not treated as well as male associates. This doesn’t seem intentional. It just that the partners do not feel comfortable with associates who are unlike them…[and these] associates feel very marginalized. The firm is probably wondering why it can’t keep female and minority associates – well, this is the answer.” – ALM Associate Survey
Improve Mentoring

- “Human nature being what it is people tend to be drawn to, want to nurture, or are more tolerant of people just like them.”
- “Generally, people mentor those who look like them. It’s very difficult for a 55 year old white guy to look at a young African-American male or female and think ‘I want to make this person like me.’ It is a lot easier for them to mentor someone that looks like their kids.”
- Too few available women or minority partners
- Mentoring by white males may take more effort and success rate may not be as high. Some hesitate with higher failure rate.
Improve Work Assignment

- Reputation dependent upon quality of work which is dependent upon quality of assignment
- “Varied experiences and opportunities lead to a successful law practice, particularly opportunities with clients.” Managing Partner, Dorsey & Whitney
- Eliminate
  - “buddy system”
  - “No one tells me” partner
Retention

Work Assignment – ABA Study
Passed over for a Desirable Assignment

- 44% - minority women
- 39% - white women
- 25% - minority men
- 2% - white men
What It Takes To Succeed

• Biggest obstacle - indifference
  ▪ “No one has time to sit down and talk about [diversity]. There is no one to bill the time to.”

• Committed leadership

• Long term commitment
Leaving Money On The Table

- Progress has been made
- Should continue at a faster pace
- How successful do law firms want to be?
- Trend is not a passing fad
Diversity Makes Cents: The Business Case for Diversity

By Roy Ginsburg

The representation of women and minorities in major U.S. law firms, especially at the partnership level, remains abysmally low. The numbers indicate that relative to the overall population (half women; one-third minority) and the profile of today’s law graduates, women and minorities continue to be underrepresented in the partnership ranks at major law firms. According to the latest statistics from The National Association for Law Placement (NALP), approximately 17 percent of partners in such firms are women, while minorities account for slightly more than 4 percent. In the Twin Cities, almost 19 percent of partners are women and slightly more than 2 percent of partners are minorities.

Since the 1980s, almost half of law school graduates have been women. During that same time frame, the percentage of minority law school graduates has doubled: from 10 percent to 20 percent. Perhaps in consequence, women and minority lawyers are better represented at the associate level than among partners. Nationally, approximately 43 percent of associates are women and 15 percent of associates are minorities; their placement thus lags roughly 5 percent below their representation among law school graduates. Locally, 47 percent of associates are women and 9 percent are minorities at Twin Cities law firms.

Progress has been slow. In 1993, nationwide, 12 percent of partners were women, while 2.5 percent of partners were minorities. There has been considerable debate within the profession about what these numbers mean. One camp believes that the playing field is not level and never has been for women and minorities; in their view, a “glass ceiling” inhibits their success. Others maintain that the statistics reflect a personal choice to jump off the traditional law firm partnership track.

Why is Diversity Important?

This debate continues relatively unchanged today. What has changed dramatically over the past decade are the arguments about why diversity in law firms is important. Traditionally, diversity proponents have contended that diversity is the “right thing to do.” This school of thought is reflected in remarks by Robert J. Grey Jr., the current ABA president, who says he believes that “Diversity preserves the legitimacy of our legal system and safeguards the integrity of our democratic government.”
More recently however, many diversity proponents instead talk about diversity in terms of the “business case” or that diversity enhances the bottom line. As stated in a study by the Minority Corporate Counsel Association (MCCA), “Law firms that only pay lip service to diversity may pay a stiff economic price. Law firms that do not take diversity seriously are already losing money.”

**Diversity Enhances Business**

This shift in the debate has been welcomed by many involved in diversity initiatives. Instead of lawyers in firms arguing about whether there is in fact anything “wrong” at their firm that needs correcting, they now discuss how improving their representation of women and minorities may enhance their business. That debate is usually a far less controversial one since, not surprisingly, it is easier for lawyers to reach a consensus about activities aimed at enhancing revenue and profits as opposed to achieving social justice.

Diversity helps the bottom line in a variety of ways. First, diverse law firms attract and retain better lawyers. The pool of available white male law school graduates continues to shrink. As noted above, approximately half of law school graduates today are women and 20 percent are minorities. Firms that recruit solely through the “old boys network” are finding that this network is becoming smaller and smaller. As a result, these firms lose out on many talented lawyers.

Law firms that do hire women and minorities, but fail to retain them, experience substantial turnover costs. It has been estimated that the cost of losing a second year associate can be as much as $250,000 when one factors in the lost return on the investment in training the associate. Law firms that are able to retain their diversity hires reap the benefit of their investment in training. And of course, law firms that lose such associates, on occasion, face discrimination litigation with its attendant expense and distraction, as well as adverse publicity.

Another argument in favor of diversity relates to the quality of lawyering. Many corporate clients want diverse perspectives when seeking legal advice. As expressed by Catherine Lamboley, the general counsel of Shell Oil, “When you use people of diverse backgrounds and different ways of looking at things, you get a better solution.”

A more controversial reason supporting the business case for diversity concerns the strategic
use of women and minority attorneys in litigation. Jury pools today are more diverse. According to the chairman of the National Association of Minority and Women Owned Law Firms (NAMWOLF), “Using firms with lawyers of a different race, sex and age may allow them to better connect with juries, who also are more diverse.” Critics contend such use of women and minority attorneys is tantamount to exploitation. This criticism is frequently heard when companies intentionally seek out law firms that have women or minority attorneys available to help defend a lawsuit involving race or sex discrimination. The response to the critics is that as long as the attorneys are competent and their presence does not risk being viewed as “window dressing” by the jury, the strategy is simply smart advocacy.

**New Business Through Diversity**

Perhaps the most compelling argument underlying the business case for diversity relates to marketing and business development. The legal profession is a relationship-driven business. Once the competency threshold is passed, selection of counsel is often subjective and is frequently driven by the comfort and personal chemistry between lawyer and client. It is therefore not unusual, as a minority female partner at a major national law firm noted, that clients “want people who reflect their backgrounds.”

According to the most recent MCCA survey, 14 percent of general counsels today are women and 5 percent are minorities. In-house counsel are 20 percent women and 10 percent minorities. Twenty-five percent of business owners are women and 15 percent are minorities. Says the chair of NAMWOLF, “Just like there’s an old boys network, there’s a network of people of color and women. Nowadays at the large corporations, it’s a person of color or a woman who is making the decision [of whom to use as outside counsel] and for some it’s not appealing to deal with an all-white [male] firm.”

Not only are women and minority lawyers developing new business relationships with clients, some corporate clients today are demanding that their law firms have respectable diversity statistics. If the firms don’t, they won’t get the company’s business. As more and more companies have become committed to diversity, they in turn, expect their vendors to be. “Diversity in our workplace and supplier base strengthens our company and our performance in the global marketplace,” observes Delta Airline’s general counsel.

**More Than Lip Service Needed**

Two major companies that have garnered much recent publicity about their efforts to use diverse law firms are Shell Oil and Sara Lee. Both corporations gather extensive information
from the law firms already doing business with them and those seeking to do business with them. These data go well beyond the number of women and minority attorneys at the firm. The companies want to know if women and minorities are actually doing the work and/or getting business development credit. They also examine the law firm’s diversity policies. If the numbers are weak, what does the firm plan to do to make them stronger? Most importantly, the corporations are holding the law firms accountable. Says Shell Oil General Counsel Catherine Lamboley, “We no longer do business with [some] firms because they were simply giving lip service to diversity.”

A number of other blue chip corporations evaluate diversity data (though less exhaustively than Shell and Sara Lee) when considering who to retain as outside counsel. The list includes Coca-Cola, American Airlines, Wells Fargo, Bank of America, Baxter Healthcare, and Merck. This trend is best summed up by Merck’s general counsel, Kenneth Frazier, who said, “We are in the fortunate position of having many highly capable law firms lining up to work with us. And it was hard in some ways to differentiate among these firms. But we found that diversity was something that would allow us to make that differentiation.”

As the list of companies formally seeking diversity data continues to grow, there are also companies and individual in-house counsel who informally solicit such data before selecting counsel. Furthermore, an “underground network” of women and minority in-house counsel routinely recommend law firms with good diversity records that they have retained to others within their network. Under these circumstances, many law firms do not even get a seat at the table, thus losing potential business without ever knowing it.

**Growing Your Business**

In summary, law firms that do not take diversity seriously have already started to or may soon begin to lose business. Many believe that the progress made by women and minorities in the legal profession has been too little, too late. As more law firms take notice of the business case for diversity, the progress is not only likely to continue, but should do so at a faster pace than previously experienced.