Best Practices for Diversity Initiatives Among Corporate Counsel

Vol. 18 No. 1

By Shiva S. Hamidinia Briglia McLaughlin, PLLC, Vienna, VA; Division 3 Steering Committee Member

Over a decade ago, Richard Palmore published 2004 Call to Action, which argues in favor of in-house lawyers considering the racial, ethnic or gender backgrounds of prospective law firm candidates when selecting outside counsel. Several S&P 500 companies are now putting these words into action by offering creative and concrete incentives to staff their legal matters with attorneys who reflect the goals of increasing racial and gender diversity.

Although diversity has generally improved within corporate legal departments, the percentage of diverse partners at a majority of law firms is far below any measure of parity. According to recent statistics published by the National Association of Law Placement (NALP), only 17.1% of equity partners at the 200 largest law firms in the U.S. were women, and an even fewer 5.6% were members of a racial or ethnic minority. This flies in the face of increased client sophistication and demand that legal teams be comprised of attorneys that better reflect current demographics. According to Patrick Quinn, managing partner at Cadwalader Wickersham & Taft LLP, clients “look at teams of lawyers across the industry that are all white men and wonder what’s going on.” Quinn notes that, “Companies have been demanding more diversity from their outside counsel, but there are lots of great reasons for law firms to focus on diversity. We think firms that emphasize diversity will be able to recruit better talent and deliver more creative results for clients. There’s much more work to be done, but the legal industry is investing significant time and

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resources and, with determination and a little creativity, some firms are beginning to show real results.”

In a global business environment, companies are finding value in attorneys that are members of racial and ethnic minorities, who are women, LGBT, or military veterans, since this background provides them with innate skills to understand multiple cultures. As workforces and in-house legal departments are diversifying, general counsel are paying closer attention to diversity in making hiring decisions for outside counsel. Moreover, in-house legal teams now have the technological resources to track and measure the diversity of their outside counsel, along with tracking other performance metrics, such as results, efficiency and cost effectiveness.

Some of the leading in-house legal departments in the area of diversity and inclusion, such as Microsoft Corp., not only track outside counsel diversity, but hold outside counsel accountable by rewarding and penalizing both law firms and individual lawyers based on their diversity/inclusion “report card.” Microsoft, for example, provides an annual two-percent diversity bonus for the law firms it retains which satisfy certain diversity benchmarks. Law firms earn this bonus by selecting from one of five specific and objective targets designed to measure that firm’s diversity and inclusion progress annually. One annual target is whether a firm has achieved percentage increases in its overall U.S. diverse attorneys compared to the previous year, while another tracks percentage increases of diverse attorneys working on Microsoft matters. Senior Microsoft corporate counsel’s year-end bonuses are also tied to the diversity success of its outside counsel.

The legal departments of DuPont, General Mills, Verizon and Walmart also recently announced minority attorney inclusion programs specifically designed to engage diverse lawyers on significant matters and promote diversity in the major law firms that they retain. These programs require hiring diverse lawyers to be lead counsel on significant matters and require each firm to assign a diverse team to those matters. They also require the outside law firms they hire to certify that the diverse lead lawyers assigned to their matters receive financial credit as the originator of the matters.

Shell Legal has instituted external initiatives to increase the diversity of its outside counsel that not only help Shell meet the Legal Department’s own goals of hiring minority and/or women-owned law firms but also enable Shell to meet its U.S. corporate supplier diversity targets for using minority and women-owned businesses. The legal department periodically hosts Minority and Women-owned Business Enterprise Round Robin events

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where Shell in-house counsel invite and interview minority and women-owned outside law firms.8

Northeast Utilities (NU) distributes an outside counsel diversity policy statement that clearly communicates the company’s expectations concerning diversity from its outside counsel. This includes requiring its outside counsel to provide periodic reports that state: (1) the number of diverse attorneys, paralegals, and staff working on NU matters and the hours they billed; (2) a description of steps taken to enhance diversity within the firm; (3) a description of efforts made within the profession and community to further diversity; and (4) measurable successes in achieving supplier diversity and diversity among temporary employees.9

Mark Roellig, Executive Vice President and General Counsel of Massachusetts Mutual Life Insurance Company and Marc Walters, Senior Attorney of Microsoft Corp.’s OEM Licensing division recently provided a roadmap for implementing general counsel-driven diversity initiatives with an approach that focuses on three areas. First, they recommend that the general counsel’s office create an internal company environment encouraging diversity among legal professionals. Second, they encourage in-house legal teams to build their brand and reputation as being committed to promoting diversity in the legal profession. Third, they urge legal departments to create both an internal and external pipeline of talented and qualified diverse legal professionals.10

Roellig and Walters recommend accomplishing the first goal by obtaining a commitment from the company’s leadership to be actively and visibly involved in diversity initiatives. This may involve creating a task force or diversity committee and drafting a diversity policy statement that identifies the company’s strategies or initiatives to foster diversity. Diversity also needs to become an element of the performance review process with an impact on compensation and promotional opportunities – with specific rewards for effectiveness in recruiting and retaining diverse employees.

The second goal of building the brand for diversity must involve sponsorship and participation in diverse bar organizations. Microsoft, for example, encourages and pays for its legal team members to hold key leadership positions on committees and boards, such as the American Bar Association, the Minority Corporate Counsel Association (MCCA) and racial, ethnic and other minority bar associations.

To accomplish the third goal of establishing internal and external diversity pipelines and resources, in-house legal departments should perform annual internal satisfaction surveys directed to
legal professionals to promote and measure diversity, and implement programs that model those being implemented by Microsoft, Northeast Utilities, Walmart and Shell, described above.

Once the goal of diversity is embedded in the fabric of the in-house legal department, it could become a self-fulfilling prophecy. Diverse legal teams will prove their high performance and results over more homogenous teams, and internal legal department diverse demographics may be mirrored in the outside counsel selected. In turn, outside diverse counsel selected garnering business opportunities may be promoted to partnership levels and will in turn hire and internally promote diverse younger associates.

According to David Theising, Chair of the Diversity Committee of the ABA Forum on Construction Law, the Forum is also taking “aggressive steps to improve diversity in its membership, its leadership, and in all of its programs, publications, and other initiatives.” In the past year, the Forum Governing Committee has improved diversity in the leadership by appointing diverse individuals to be chairs of nine out of fourteen of the Forum's Divisions. The Forum also implements several outreach efforts to improve Diversity in the Forum's membership. These include its Diversity Scholarship Program, offering scholarships for the cost of registration to diverse individuals at the Forum's national meetings, regional meetings, and the Forum Trial Academy, as well as the Diversity Fellowship Program, the Forum's signature membership outreach initiative offering three-year Fellowships to diverse construction lawyers.

The Diversity Committee has also created three separate subcommittees devoted exclusively to identifying, mentoring, and actively promoting diverse members of the Forum for speaking and writing opportunities in the Forum. Finally, the Diversity Committee in the past year has created a subcommittee designated to maintain liaisons with other diverse bar organizations, such as the ABA Commission on Women in the Profession, the ABA Commission on Racial & Ethnic Diversity in the Profession, the ABA Commission on Hispanic Legal Rights and Responsibilities, the ABA Commission on Sexual Orientation and Gender Identity, the ABA Commission on Disability Rights, and the National LGBT Bar Association.

“In-house counsel is still going to make hiring the most qualified attorney, with whom they believe they will be comfortable working, their first priority,” says Jayne Czik, General Counsel for Citnalta Construction Corp., a New York-based general contractor. “That’s where the benefit of belonging to diverse bar organizations comes in to play. As general counsel, I’m able to
gain access to diverse attorneys when they speak on or author forum papers on issues of concern to Citnalta. Even more important, I get an opportunity to develop relationships with a diverse group of attorneys who I anticipate I will be comfortable working with,” adds Czik.

As in-house attorneys have noted time and again, general counsel hiring decisions are driven by the seminal three “Rs”: relationships, results and reputation. Therefore, it is critical that diverse attorneys participate in organizations, such as the Forum and national diverse bar associations, which welcome and encourage them to showcase their expertise and skills. Promoting diversity and inclusion will not happen without focus, time and effort. Implementing accountability systems, such as those discussed in this article, will assist the profession in making greater strides towards legal representation that reflects racial, ethnic and gender inclusion.

Endnotes


3. According to the U.S. Census Bureau, 44.2% percent of the millennial population (American youth born between 1982 and 2000) are a part of a minority race or ethnic group. See Millennials Outnumber Baby Boomers and Are Far More Diverse, Census Bureau Reports, June 25, 2015, available at https://www.census.gov/newsroom/press-releases/2015/cb15-113.html. The Census Bureau also estimates that over half of all children born in the United States will be non-white by the year 2020 and more than half of the entire U.S. population will be non-white by the year 2044. Id.


5. Id.


8. Id.

9. Id. at 20-21.

The Minority Corporate Counsel Association (MCCA) acknowledges the support of the following law departments whose participation and financial contributions have helped to advance the goal of furthering diversity progress in the legal profession.

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In Appreciation...MCCA extends its appreciation to the following law firms for their financial contributions in support of the production of this research report. Their support has been critical to MCCA’s ability to produce and distribute this valuable resource. It is our hope that this information will assist both in-house counsel and the law firms that work with them to continue to develop their diversity initiatives.

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Minority Corporate Counsel Association
1. Introduction

The Minority Corporate Counsel Association (MCCA) was founded in 1997 to advocate for the expanded hiring, retention, and promotion of minority attorneys in corporate law departments and the law firms that serve them. MCCA accomplishes its mission through the collection and dissemination of information about diversity in the legal profession. Over the years, MCCA has conducted a number of studies examining the state of diversity in corporate law departments and law firms, and identifying the best practices used by those who have been more successful with their diversity initiatives.

In 2000, MCCA published its first research report titled: Creating Pathways to Diversity® – A Study of Law Department Best Practices. In this report, MCCA postulated the “Pathways Concept” as a continuum for successful diversity programs. The first step is Compliance – bringing women and minorities into the organization to simply meet EEO goals and objectives. The second step is Diversity, in which an organization would demonstrate an appreciation for the differences in culture, perspectives, and approaches that diverse employees may offer. The third and final step on this continuum is Inclusion, which recognizes and values diverse employees’ skills and talents, and utilizes this diversity to the fullest advantage, thereby contributing to organizational success. (See the updated chart on pages 6 and 7.)

Since the 2000 Pathways Report was published, several important initiatives led by the General Counsel (GC) community have helped to bring the issue of diversity to the forefront as a priority among corporate counsel and the law firms that they retain. For example, between 2000 and 2005, more than 500 GCs signed a document entitled Diversity in the Workplace, A Statement of Principle, to show evidence of their commitment to diversity in the legal profession. (See the box below with the text of the Statement of Principle.) This was a noteworthy initial step. However, Roderick Palmore, the GC of Sara Lee, believed that more needed to be done to further the goals of the Statement of Principle. In 2004, he created a new Call to Action to go beyond the plateau that the Statement of Principle had reached. When chief legal officers sign the Call to Action, they do reaffirm their commitment to diversity goals, but they also agree to actively look for opportunities to work with law firms that distinguish themselves in terms of diversity and to end or limit their relationships with law firms whose track records reflect a lack of meaningful interest or progress in diversity.

To date, more than 90 GCs have signed the Call to Action and the list continues to grow. (See the box with the text of the Call to Action on page 8.) Between 1999 and 2005, MCCA also charted a rise in the number of minorities and women who have ascended to the position of GC at Fortune 500 companies, indicating much greater diversity among this elite sector of chief legal officers. A greater level of diversity in legal leadership positions confirms that the in-house sector is advancing in support of diversity at all levels.

Then vs. Now: A Five Year Comparison of Some Diversity Measures in Large Corporations and Top Law Firms

- In 2005, minorities made up 5.6% of Fortune 500 General Counsel, up from only 1.8% in 2000*
- In 2005, women made up 15.2% of Fortune 500 General Counsel, an increase from 8.8% in 2000*
- At the top 250 law firms, the 4% of partners who were minorities in 2005 is only slightly better than the 3.5% in 2000. **
- Great strides have been made by Fortune 500 companies offering Domestic Partner Benefits, which increased from 13.8% in 1998 to 40% in 2003, the most recent year for which these figures were available. ***

* MCCA Annual Survey of Fortune 500 GC, Diversity & the Bar® Magazine
** Statistics are from National Law Journal List of Partners who are minorities at Top 250 Law Firms.
*** Information comes from the 2005 Corporate Equality Index, a survey done by the Human Rights Campaign (HRC) Foundation of Fortune 500 companies, Forbes 200 privately held most profitable companies, and other organizations that have over 500 employees and voluntarily submit a survey.

The Human Rights Campaign Foundation’s 2003 edition of the "The State of the Workplace” found that the number of Fortune 500 companies offering domestic partner benefits almost tripled in five years, from 69 in 1998 to 200 by the end of 2003. The trend among the Fortune 500 suggests that the higher a company’s rank, the more likely it is to offer domestic partner benefits. While 40 percent of the Fortune 500 companies provide the benefits, 86 percent of those in Fortune 50 do so.

Diversity in the Workplace - A Statement of Principle

As Chief Legal Officers, we wish to express to the law firms which represent us our strong commitment to the goal of diversity in the workplace. Our companies conduct business throughout the United States and around the world, and we value highly the perspectives and varied experiences which are found only in a diverse workplace. Our companies recognize that diversity makes for a broader, richer environment which produces more creative thinking and solutions. Thus, we believe that promoting diversity is essential to the success of our respective businesses. It is also the right thing to do. 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.
Compliance: Conformity in fulfilling requirement(s) as a federal, state or local government contractor to enact an Affirmative Action policy.

Affirmative Action (AA): Requires the company to take positive steps to increase the representation of women and people of color in its organization.

Equal Employment Opportunity (EEO): Requires that employers not discriminate on the basis of race, sex, religion or national origin in their employment practices.

Diversity: Seeking to know and valuing the difference of backgrounds, including ethnic, social, cultural, religious beliefs, education, parental status, sexual orientation and age group, to name a few.

At the organizational level, examining policies, procedures and structures to identify barriers that keep diverse groups or individuals from succeeding.

Improving relationships with diverse suppliers/vendors and outside organizations to enhance diversity initiatives.

Focus on increasing diversity among legal staff, including at management level.

Communication that diversity is an organizational/departmental goal.

Company-wide affinity or employee resource groups for different ethnicity, gender, sexual orientation, disability, management level, etc.

People of color may feel under utilized or unsure of career advancement/promotion path.

Articulated business case.

Commitment from General Counsel (GC) to promote diversity and provide funds to ensure diversity awareness and progress in law department.

Senior management works with human resources to produce company-wide diversity goals.

Person(s) within law department form committees/task force that is assigned responsibility for monitoring progress on diversity and reporting back to GC.

Written goals and objectives for diversity staffing and outside spend with diverse suppliers.

Law department participates in outside vendor programs and tracks spending with minority and women-owned law firms, as well as majority firms committed to diversity.

Diverse attorneys feel included in majority firms.

Define specific and articulate business case.

Succession plan includes diversity focus and identifies high-potential employees, ensuring they are offered leadership opportunities.

Programs to monitor and/or formal plan with measurable objectives.

Law Department Diversity Committee and/or formal plan with measurable objectives.

Recruiters reviewed regularly by senior management on diversity progress.

Compensation of senior management tied to results of diversity efforts.

Executive search firms are required to provide a qualified, diverse candidate slate for all open positions.

Market research to determine diversity/job market.

Provide training on diversity awareness and issues that affect minority, women and other diverse attorneys and legal staff.

Informal mentoring for new hires.

Work/life initiatives for family or other commitments.

Diverse attorneys feel included in majority firms.

Succession plan does not include emphasis on diversity.

Provide training on diversity awareness and issues that affect minority, women and other diverse attorneys and legal staff.

Informal mentoring for new hires.

Work/life initiatives to meet needs of attorneys with family or other commitments.

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Succession plan does not include emphasis on diversity.
A Call to Action:
Diversity in the Legal Profession

As Chief Legal Officers, we hereby reaffirm our commitment to diversity in the legal profession. Our action is based on the need to enhance opportunity in the legal profession and our recognition that the legal and business interests of our clients require legal representation that reflects the diversity of our employees, customers and the communities where we do business. In furtherance of this renewed commitment, this is intended to be a Call to Action for the profession generally, in particular for our law departments, and for the law firms with which our companies do business.

In an effort to realize a truly diverse profession and to promote diversity in law firms, we commit to taking action consistent with the referenced Call to Action. To that end, we pledge that we will make decisions regarding which law firms represent our companies based in significant part on the diversity performance of the firms. We intend to look for opportunities for firms we regularly use which positively distinguish themselves in this area. We further intend to end or limit our relationships with firms whose performance consistently evidences a lack of meaningful interest in being diverse. For additional information regarding the Call to Action, visit [www.CLOCalltoAction.com](http://www.CLOCalltoAction.com)

Given the myriad of changes that have taken place over the last five years, MCCA’s goal for this 2005 Report (from here on referred to as the Report) is to update and expand upon its first Pathways Report published in 2000 and to illuminate current diversity best practices of both large and small legal departments representing a diverse sector of business and industry. The 2005 research generally shows a positive change in corporate legal departments’ place on the Pathways continuum. A vast majority of those interviewed said that their diversity programs had changed in the last five years. (See the chart on page 21.) None of those reviewed were still in the Compliance stage. Most were in the Diversity phase and had goals, initiatives or programs that would lead them into the Inclusion phase. And there were several legal departments that clearly have reached an inclusive environment for attorneys and staff, and are using their influence to improve diversity within the legal profession.

The Research Team:

Crosby Marketing Communications (Crosby) to update the research from the first Creating Pathways to Diversity® study published in 2000. Crosby is an integrated marketing communications firm with many years of experience conducting research for corporate legal departments and diversity organizations.

Methodology

During 2005, Crosby undertook a research and analysis effort that started with Crosby’s research team conducting in-depth interviews with 25 corporate legal departments selected by MCCA. This body of knowledge was then combined with research and interviews completed by MCCA staff in its selection of 23 recent Employer of Choice (EOC) Award winning legal departments*, recognized for developing exceptional diversity programs. The interviews conducted with the EOC Award winners were based on MCCA’s award criteria and did not include the exact same set of questions and answers as the in-depth interviews with the group of 25 legal departments.

Secondary research included analysis of a 2005 report by the Association of Corporate Counsel, “Leading Practices in Law Department Diversity Initiatives: What Companies are Doing,” as well as recent print and online reports on corporate and legal diversity initiatives.

* MCCA recognizes outstanding law departments that are change agents in the legal profession. Its Employer of Choice (EOC) Award is designed to spotlight industry leaders who have a demonstrated commitment to diversity and successful results in creating and maintaining an inclusive corporate legal department.
## LEGAL DEPARTMENTS THAT PARTICIPATED AS INTERVIEWEES FOR THIS 2005 REPORT

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## MCCA’S EMPLOYERS OF CHOICE AWARD WINNERS FOR THIS 2005 REPORT

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Selection of Legal Departments

Great effort was taken in the selection of the legal departments for the in-depth interviews. Factors such as size of the law department, its corporate business or industry, and size of outside counsel budget were considered, with the goal of analyzing a diverse group.

Size of Law Department: Looking for a standard to use as a dividing point between large and small legal departments, the researchers turned to Corporate Legal Times’ (CLT)* annual review of the top 200 largest legal departments. CLT’s 2005 list ranged from departments with 1,500 attorneys to 38. So, for purposes of this Report, MCCA defined “Large legal departments” as those with 38 or more attorneys in the United States. The number of attorneys in departments researched for this Report ranged from 7 to more than 700, dividing the departments almost 50-50, large and small. (See the chart on pages 10 and 11.)

Range of Businesses and Industries: MCCA also sought for the legal departments selected for this study to represent a wide range of businesses and industries. See the sidebar on page 9 for a list of the industries represented by the 25 interviewed companies.

Law Department Budget: With such a broad range of industries represented and the varying size of the legal departments, the budget for the outside counsel legal spend of the 25 interviewed companies was equally varied, ranging from a low of $5 million to a high of more than $100 million. (See the pie charts below.)

The Legal Spend for Outside Counsel for the 25 Participating Corporations

One small legal department did not share its budget figure.

*On January 1, 2006 Corporate Legal Times became Inside Counsel.
II. **Summary of the 15 Best Practices: Diversity in Corporate Legal Departments**

Among the many best diversity practices of the 48 companies studied for this Report, a number of them stood out as the best of class. They are summarized here and discussed in detail in following sections. Many of these best practices are not new, but in fact were identified in MCCA’s 2000 Pathways Report. However, what the current research found is that these practices have been adopted by many more legal departments because they have proven to be successful. MCCA’s objective in this Report is to present best practices that all companies can undertake or use as guidelines. The Report strives to give examples that other law departments can emulate.

The first five practices below are current corporate diversity practices that have a direct impact on legal department diversity activities. The second 10 are current practices of the law departments themselves.

A. **Best Corporate Diversity Practices (that impact Law Department Diversity):**

1. Diversity is considered a strategic objective and is included in the company’s strategic plan.
2. Diversity goals, initiatives and accomplishments are communicated throughout the organization and the degree of attainment is measured, with many companies linking compensation of senior executives to diversity results.
3. Recruitment efforts have more of a diversity focus and include mandating top-level managers to consider a diverse slate of candidates.
4. The corporation has developed focused retention programs aimed at creating an inclusive environment and supporting the career development of diverse staff members.
5. Formal Outside Supplier/Vendor Programs encourage and track strong supplier relationships with minority, women and veteran-owned businesses.

B. **Best Diversity Practices of Corporate Law Departments**

**Internal Best Practices:**

1. The GC is committed to diversity and demonstrates that commitment through ongoing support and evaluation of internal and external diversity efforts.
2. Diversity is defined very broadly to include not only race and gender, but also ethnicity/national origin, age group, sexual preference, veteran status, disabilities, parental status, lifestyle and educational background.
3. The legal department has a diversity plan that includes metrics to measure progress, and the plan is implemented by a diversity committee or task force comprised of members of the department.
4. Innovative recruiting techniques are used to find talented minority and women attorneys and diverse legal staff.
5. Reducing the attrition rate of minority and women attorneys through focused retention and inclusion efforts—especially mentoring programs—is part of the department’s diversity plan.
6. The department’s succession planning includes a focus on diversity that ensures diverse attorneys are included among those identified for key promotion and career development opportunities.
7. The GC and his or her direct reports have a percentage of their compensation tied directly to diversity objectives and measurable results.

**External Best Practices:**

8. The law department influences diversity in outside law firms by requesting and measuring diverse counsel representation on legal matters, and by developing preferred partner relationships based in part on diversity progress of outside firms.
9. The law department sponsors or invests in scholarship, internship and other “pipeline” programs aimed at helping develop the career path for a greater number of diverse attorneys.
10. Networking with other like-minded organizations, such as the minority bar associations and diverse business groups, is encouraged by the GC and seen as a way to advance the diversity principles of the law department and cultivate a network of diverse lawyers for future internal hiring or outside counsel retention.
III.A  DIVERSITY BEST PRACTICES AT THE CORPORATE LEVEL

Although the main focus of the research was to identify diversity best practices among legal departments, many of those interviewed credited their corporate-wide diversity initiatives as the catalyst for the progress their legal department has made on diversity issues. Some of those corporate key initiatives are:

1. A Greater Number of Corporations Include Diversity in Strategic Business Plans

For the 2000 Pathways Report, corporate legal departments were included in the study if they had one of the three common denominators:

1. Diversity was incorporated into the strategic plan of the corporation;
2. Reports from the diversity committee were reviewed regularly by senior management of the legal department; or
3. The legal department was a recipient of MCCA’s Diversity Award or was recognized by other respected groups for its internal and/or external diversity initiatives.

The current research shows that most corporations studied would qualify simply because they had strategic plans that included diversity. Of the 48 corporations studied for this report, 41 had included diversity objectives as part of their strategic plans. In these companies, diversity is now a business imperative, not just a social justice initiative. (See the chart on the next page.) Also, all of the 48 legal departments have at least one, if not both, of the other two common denominators.

Most legal department leaders interviewed see diversity as a business imperative for two main reasons:

1. The need to bring diverse thinking and representation into the legal department and to reflect the growing diversity of their corporation’s employees and customers, as well as the judges, juries, and government agencies the legal staff interacts with; and
2. The need to deal with diverse populations in a global economy, especially with the growing focus on emerging markets in Asia and South America.

These leaders say having diverse professionals working on legal matters is a competitive advantage, especially when facing the globalization of business.

As one diversity consultant put it, “As diversity has been redefined as a strategic business advantage, metrics have become more sophisticated with quantitative and qualitative measurements tied to business goals. In many corporations, diversity is now being measured with the same kind of scrutiny that business operations have always used.”

In that vein, some of these companies go directly to their minority employees to help determine diversity strategies. One GC from a smaller legal department discussed some of the steps her company had just taken for including diversity in its strategic plan. It hired outside consultants to conduct numerous corporate-wide focus groups made up of minority affinity groups. The focus group participants discussed what they liked and did not like about the working environment within the corporation and within their divisions. They also shared what makes them feel included or excluded as part of the company and how these things could be improved.

These results were used as the starting points for the company’s new diversity section of its strategic plan.

2. Communicating About Diversity Goals and Initiatives

MCCA’s 2000 Pathways Report identified communication throughout the organization as a potential best practice in a company’s diversity success. In this 2005 Report, 90% of the legal departments interviewed this year said that they had experienced vast improvements in the company’s communications regarding diversity. (See the chart above.)

Some companies posted their diversity goals, statements and/or visions on their external Web sites to show their commitment. Others have released information on their goals, actions and accomplishments only on their intranets. Many discuss initiatives and progress at company-wide meetings, in internal newsletters and e-newsletters and also make them part of initial employee training programs.

One corporation with a large legal department uses its Web site to promote diversity policies and accomplishments to both internal and external audiences. One section of its in-depth Web site shows diversity progress over the decades. It articulates the corporation’s diversity goals and accomplishments, including management’s diversity message, vision, policies, and practices, plus it lists awards won.

Another company holds regular “Intercompany Diversity Best Practice Meetings” where managers from different divisions share diversity strategies, e.g., interfacing with human resources to recruit diverse employees and ways to enhance supplier diversity programs. Outside diversity experts are often invited to speak at these meetings.

A number of those interviewed said that their corporations use employee surveys to help evaluate many of their corporations’ internal programs, including the effectiveness of diversity initiatives. These surveys create a dialogue between the employees and the corporation’s leadership. Many of the corporations do annual surveys, a few were every other year, and one of particular note conducts the survey every six months. The interviewee of this large legal department said that of the 30 questions on the survey, five of them are diversity-related. The corporation’s Diversity Committee reviews the questions and the responses. The survey responses provide a snapshot of how the company is progressing as...
a whole. However, the survey results can also be sorted by the business unit, division and even down to any manager who has five or more direct reports. The Diversity Committee is able to determine if a selected group or manager is not doing well, and it has the responsibility to work with the group or manager to improve the situation for all those involved.

3. Focused Recruiting

Interviewees agree that how well a company manages its recruitment, hiring and retention programs affects its competitive edge and may be a deciding factor in its sustainability. When it comes to achieving diversity, focused recruitment programs are critical parts of the mix.

A best practice in corporate diversity recruiting includes mandating that search firms, human resource departments and managers with hiring capabilities consider a diverse slate of candidates for all open positions. Many companies have designated a “recruiter of choice” or an internal team dedicated to diversity recruiting that understands the company’s commitment to a diverse workforce and is held accountable for finding top-level talent from diverse backgrounds.

One interviewee from a large legal department noted that his company holds an annual “Diversity Recruiting Liaison Conference” to help managers and recruiters share ideas and expand their recruitment tactics beyond traditional resources to include targeted colleges and universities, employment Web sites, job fairs and professional associations for people of color and those with disabilities.

Another key recruitment tactic is to post all jobs internally and continually look for promotional opportunities for diverse staff from within the organization. Leading companies require managers to identify potential candidates from within their departments, as well as to develop external relationships that foster recruitment opportunities.

4. Retention and Inclusion Programs

While finding and recruiting diverse talent remains a priority, many companies have shifted more emphasis to their retention programs. Creating a culture of inclusion where employees’ differences are valued and respected has proven to be one of the best ways to retain a diverse, productive workforce.

Some of the best practices in retention and inclusion programs noted by interviewees include:

- Formal and informal mentoring programs that provide networking and career development opportunities for diverse staff.
- Diversity training for all employees and ongoing dialogue about the value of diversity.
- Employee Network or Resource Groups that allow employees to share like experiences and provide feedback to the company on inclusion and other issues.
- Alternative work schedules including job sharing, telecommuting and other flexible arrangements that allow employees to meet family/life commitments.
- Leadership development programs that help groom high performers for promotion/management opportunities.

Law departments have adopted many of these initiatives, particularly mentoring programs and work/life programs, to retain minority attorneys and legal staff.

5. Supplier Diversity

Many corporations have had successful Supplier/Vendor Diversity Programs in place for well over a decade. These programs set goals for and track corporate spending with minority suppliers and have a positive impact on women-, minority- and veteran-owned businesses.

Some of the corporations researched for this study detail their Diverse Supplier programs on the corporations’ Web sites and encourage diverse suppliers that meet the criteria to apply. One interviewee explained his corporation’s goals for its program are to place at least 10% of the corporation’s outside vendor budget with enterprises owned by minorities and women. He called this initiative a “win-win” for the corporation and the minority- and women-owned businesses. “By sharing our business knowledge, values and best practices, we can help minority- and women-owned businesses develop the tools for economic growth and sustainability. The benefits to our company include stronger relationships with diverse suppliers, better products and services and an enhanced image and reputation.”

Law departments have increasingly become part of corporate supplier diversity programs or have begun to set individual departmental goals for spending with diverse legal service suppliers, including diverse outside counsel at majority and minority-owned law firms.
III.B **Best Diversity Practices of Corporate Law Departments**

**Internal Best Practices**

While corporate diversity programs have impacted progress in law department diversity, many law departments have adopted, or spearheaded, their own diversity best practices to meet specific internal and external goals for their departments. The major best practices identified by participants in this 2005 Pathways Report are the following:

1. **Commitment from Senior Management and the GC**

   A best practice for a successful move from Compliance to Inclusion identified in the 2000 Pathways Report was commitment from senior management. In the current research, many stated that the level of diversity leadership was one of the defining elements of their success. For legal departments, the commitment of the GC is essential. It is clear that the higher up in the organization the commitment to diversity, the more pervasive it becomes throughout the organization. A driving force for this is the growing diversity of the corporation’s C-suite and Board of Directors. They have a positive impact on diversity initiatives for the entire organization. For many corporations, this has been a change in the last five years. Successful diversity initiatives happen because top leadership commits to making them happen, corporate-wide and within the legal department.

   One interviewee from a large legal department said, “In the last five years our Executive Committee has become very diverse and this has energized our diversity efforts throughout the corporation. Our CEO is an African American, one division head is Japanese and our General Counsel is a woman. And they provide advice and oversight to our Diversity Advisory Board.”

   Many GCs serve on their corporation’s Diversity Leadership Team and drive the diversity principles down into their department. For example, one GC explained, “Diversity has to be part of the fabric of the department, part of the everyday commitment and the way of doing business. It cannot be a separate program just about diversity that you plan. It won’t work. It has to be communicated from the GC as a core value and brought into every aspect of the department’s planning.”

2. **A Broadened Interpretation of Diversity**

   As reported in the first Pathways Report in 2000, the interpretation of diversity at the time was often limited to mean only bringing “women and people of color” into the organization for a company to meet Affirmative Action and/or Equal Employment Opportunity criteria, referred to as the “Compliance” or first stage of the Pathways Diversity Continuum. In the current research, 100% of the corporations now interpret diversity very, very broadly – to include race and gender, but also including ethnicity/national origin, age and age group (Boomers and Gen X, for example), religion, lifestyle, veteran status, sexual preference, parental status, and disabilities. In fact, many corporations now post their interpretations of diversity on their external Web sites as a testament to their awareness of the many factors that constitute our 21st Century culture.

   The most diverse corporate legal departments seek out those with different backgrounds, perspectives and experiences beyond just race and gender differences. As one GC from a large legal department explained it, “We really want to employ and work with people with a wide variety of life experiences and backgrounds. That means diversity beyond women and ethnic/racial minorities. Even when looking at the so-called ‘white male’ population that dominates the legal profession, we need to look at their diverse backgrounds. On my staff I have white males who are West Point graduates, Yalies, those with public school educations, and several with non-legal experience – each brings a valuable, diverse perspective to the table.”

   One interviewee likened his legal department’s definition of diversity to an iceberg. He explained, “To have true diversity is a maturing process. First comes representation within the department – what you can see, the tip of the iceberg. And as true diversity evolves into inclusiveness, you get the full value of the diversity – what’s below the surface.”

3. **Measuring Diversity in the Legal Department**

   The ability to measure diversity progress in the legal department is best achieved through a diversity plan with metrics. The majority of law departments interviewed have developed some form of written “diversity action plan” that includes diversity initiatives, goals and metrics in key areas, such as staffing and outside spend.

   For 85% of the large legal departments interviewed, oversight and the measurement of improvements as a result of diversity initiatives are the responsibility of the Diversity Committee or Office of Diversity. And many of these groups have very structured measurement tools. Many of the smaller legal departments that were interviewed have informal ways of measuring their improvements on diversity initiatives. For example, if you have 10 attorneys on staff, it’s pretty easy to measure the staff’s diversity. For some of these small legal departments, the measurements are usually the responsibility of the GC. (See the chart below.)

   Many of those interviewed had diversity committees with designated subcommittees that were tasked with specific functions. Interviewees identified in the 2000 Pathways Report were tasked with specific functions. Interviewees...
said that this layered structure enabled many staff to be involved in the department's diversity initiatives, which helps to reinforce diversity goals and objectives throughout the department and for the legal staff to be in contact with other internal business entities. For example, the Diversity Committee in one large legal department has five subcommittees that oversee and track progress on these diversity areas:

1. Diversity Strategy
2. Recruitment & Hiring
3. Workplace Culture & Retention
4. Diversity Education & Training
5. Outside Law Firm Diversity Initiatives

Another large legal department interviewed has specific diversity goals for staffing including placement rates, new hires, movement of individuals, growth opportunities and promotions. Statistics on these goals are reported to the GC quarterly and then to the Executive Committee. The interviewee added, "We also have specific metrics on our spend with outside counsel. This dollar amount is evaluated very carefully by all business units within the company. In addition, members of the law department are evaluated on diversity as part of the performance assessment process."

### 4. Targeted Recruitment Efforts

Recruitment of talented women and minority attorneys has been a fundamental aspect of diversity efforts. Increasing the percentages of minorities or women in their legal departments was a goal for 92% of interviewees in this Report. Why not 100%? Because of economic changes, some legal departments have downsized, or have not hired staff in recent years, so these legal departments have not had opportunities to increase female or minority staff. And, others have become better at retention, meaning less need to recruit as a result of turnover.

Most legal departments interviewed this year require their HR Departments to use search firms that specialize in diversity recruiting to ensure a broader mix in the candidate pool.

The Senior HR Director of a large legal department interviewed said, “One strategy of our law department diversity staffing plan includes requiring all managers to proactively identify, on a quarterly basis, external women and minority ‘stars’ with legal expertise to ensure diverse candidate slates for future positions. These names are submitted and kept in a database to refer to when recruiting. It’s been a very successful strategy for us.”

An EOC Award winner from a large legal department said, “We view our diverse employee base as one of the cornerstones of our success and key to our competitive advantage.” This company has put several recruitment programs in place to help find the best talent. Two of note are:

1. It partners with minority associations, colleges and universities to recruit people with diverse backgrounds.
2. It lets employees know it is “a company of recruiters” and that every staff member is responsible for diversity recruiting and recruiting in general.

Many of those interviewed do expect all members of their staff to help recruit. Some said they ask the women and minorities in their departments to play active roles. Two interviewees, one from a large and one from a small legal department, explained their rationale for this, saying, “Once you have women and minorities on staff, it is much easier to attract others.”

5. A Greater Focus on Retention

In the 2000 Pathways study, legal departments were concentrating mainly on recruitment of women and minorities as a key diversity strategy. Today, there is a greater emphasis on retention. Of those interviewed this year, 77% said reducing attrition rates for diverse attorneys was a key element in their diversity initiatives. Most of these people mentioned “inclusiveness” as the way to keep talented staff, i.e., creating an environment in which people want to stay. This was defined as: feeling secure and accepted, being included as part of the team, having others like them in leadership positions as role models, and having mentors who were interested in their success. In fact, mentoring has become a best practice in retention. (See chart on page 25.)
One GC of a small legal department that was interviewed told about a “Reverse Mentoring Program” her corporation sponsors, in which legal staff members are participants. Senior level people are paired up with diverse junior staff. This program’s goals are for the senior person to gain more cultural and “younger-age” awareness, while providing traditional mentoring advice to the junior staffer.

At one EOC Award winner, younger attorneys have been selected to participate in a “Mentoring Up” program in which they share their unique perspectives with the company’s officers. This legal department also supports professional growth and mentoring of its attorneys via an Executive Shadowing Program. Recently hired women and minority attorneys have the opportunity to observe first-hand a senior officer’s business responsibilities. In this program, young attorneys shadow higher-level executives, perhaps from a business unit, as part of the younger lawyer’s grooming for his or her career development.

As part of its retention and employee development program, one interviewee from a small law department described a “culture management” program created by its Office of the General Counsel (OGC). Launched four years ago, the program’s goal has been to enhance access to different ideas and perspectives in the company, as well as to create an atmosphere where individuals and their opinions are valued. Action teams made up of legal staff of different ranks and backgrounds monitor the diversity efforts in the department, encourage open dialogue of issues, and make suggestions to the GC about ways to make the department’s culture more inclusive. Changes instituted by the action teams have positively impacted employee satisfaction in the legal department. Results from annual employee surveys give the OGC high marks around teamwork, valuing individuals, and supporting diversity.

**Work/Life Programs Impact Retention**

Nearly all corporations whose legal departments were part of this Report offer work/life programs for their employees. In today’s hectic culture, with the majority of households having two full-time workers, there are demands on employees’ schedules during the normal workday hours. Many companies try to assist their workers to meet these needs by offering programs that allow the employees more flexibility. These programs include: flexible starting and stopping times, telecommuting, job sharing, maternity and paternity leave and leave options to care for aging parents.

One interviewee in a small legal department believes that her corporation is at the forefront of offering work/life programs. For example, she has legal staff that work on alternate work schedules and job share. “Our commitment to understanding the diverse set of individual needs and creatively staffing for them helps us to recruit and retain good people. It shows them we are serious about supporting our staff, while demanding good performance.”

An interviewee in a large legal department said, “I think a significant change in the last five years has been our corporation’s commitment to offering our staff alternative work arrangements. We have people working flexible schedules, telecommuting, job sharing – some very creative, alternative work schedules.”

Time is the new currency. With all of today’s advanced technology, corporations can offer new work arrangements to meet lifestyle and life situations. These, in turn, benefit a diverse staff, especially those with family responsibilities.

**6. Inclusion in Succession Planning**

To retain talented staff, most companies understand that they must train and promote from within the company, as best as they can. In fact, 88% of those interviewed said that their legal department’s succession planning has a focus on diversity. Some GCs from smaller departments said that including diversity in succession planning is their responsibility. (See chart below.)

For some of the larger departments, succession plans were very structured. One interviewee from a large legal department said, “Annually, each manager meets with the GC and HR and must identify who is in line for his/her position. The percentages of women and minorities in line are reviewed. If women or minorities are not in line, questions of why or why not are asked of the manager and plans are outlined so that higher percentages can be achieved. These percentages are matched up to our diversity goals for the department.”

An interviewee from another large legal department that has been an early adopter and a leader of diversity initiatives explained that, “Many of these women and minorities hold key positions that place them in line for promotions. This is a major goal of our succession planning.”
Creating Pathways to Diversity

7. Compensation Tied to Diversity Efforts

A potential best practice suggested in the 2000 Pathways Report was that the GC and his or her direct reports have a percentage of their compensation tied directly to their efforts to increase diversity in the law department. That practice has become more prevalent in 2005. Among those interviewed, this was a more accepted practice in the larger legal departments than the smaller ones. One GC said his direct reports are required, as part of their annual review, to discuss what they have done to improve the department’s diversity, e.g., hire a diverse candidate or work with diverse outside counsel. “I want to know if they are making a legitimate effort to enhance our diversity. make-up and culture,” he said. (See chart on page 25.)

Another GC interviewed said, “By tying diversity to bonuses, you say this is such an important issue that I want to make it affect compensation.” He felt that if diversity goals are not linked to compensation, the company is sending a mixed message. “You’re saying meeting your budget is more important, which has the effect of reducing diversity concerns to a tertiary position. Within my legal department, if diversity percentages don’t get better, my staff knows there will be significant financial consequences.”

External Best Practices

8. Influencing and Measuring Diversity of Outside Law Firms

Influencing and measuring diversity of outside law firms has been adopted by more legal departments, large and small. This was one of the most notable changes found in the current research. Many legal departments view their dollars spent with outside firms as a major way to increase legal work done by minorities and women. Many smaller departments with low staff turnover and large departments that are in hiring freezes or downsizing said that sending work to outside minorities and women is the only way that they can make a positive impact on increasing the diversity of legal minds that are focused on doing the corporations’ work. (See the chart on page 26.)

Convergence Programs or Preferred Provider Relationships

Some of the large legal departments interviewed said that in their law firm convergence programs they used the diversity of firms as one factor to decide which firms to retain as preferred providers. Some of these departments, as well as a number of small departments in the research, said they award more work to their preferred firms that show improved diversity.

Many of the large legal departments said they are making inroads by gathering metrics on who works on cases. Eighty-five percent of the larger legal departments track the work done by minorities and women at majority-owned firms. This compares to only 50% of the small departments who track these figures. Having the legal department tracks the information and sends a report showing the percentages of women and minority lawyers, as well as billings by those lawyers, in those key partner law firms a report showing the

MEASURING DIVERSITY OF OUTSIDE LAW FIRMS

Among the 25 Study Participants

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<th>Percentage (%)</th>
<th>Track Work Sent to Minority- and Women-owned Law Firms</th>
<th>Track Work Done by Minorities and Women at Majority-owned Law Firms</th>
</tr>
</thead>
<tbody>
<tr>
<td>100%</td>
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<td>85%</td>
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<td>0%</td>
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</tbody>
</table>

Small Legal Departments

Large Legal Departments

One large department GC said that he and his attorneys meet with their top firms annually to review how they’re doing in terms of diversity. They get data on hours spent and roles played on their cases by minorities and women. It is important to them that women and minorities are included in the group of lawyers that are managing and leading their accounts. They want to see progress on each firm’s diversity efforts. He said, “If we don’t see progress, we will consider pulling our business. We have held work from firms that have showed no progress. Some will only change if you play hardball.”

Another of the large legal departments interviewed asks its key law firms to include on invoices the time spent by women and minorities on work done for the corporation. The legal department tracks the information and sends a report showing the percentages of women and minority lawyers, as well as billings by those lawyers, in those particular firms. It also provides blind comparative data informing the firms about how they compare to other similarly-sized partner firms in the area of diversity.

The above content is the natural representation of the document as if you were reading it naturally.
In the 2005 ACC study, one corporate legal department detailed its preferred partner program. Each year, the outside law firms are measured on a list of diversity factors. The results are compared with information submitted by the firm from the preceding two years. The department evaluates overall performance during the three-year period, looking for progress in the firms.

Questions asked of the firms include:

- Number of minority and women lawyers
- Number of minority and women partners (equity and nonequity)
- Number of minority and women partners promoted from within
- Information on women and minorities in leadership positions
- Information on attrition of women and minority lawyers and comparisons to overall law firm attrition rate

Taking a three-year look at progress and performance of its law firms, the in-house legal staff then ranks the firms in three tiers:

- **Top Tier:** Firms in this category have positively distinguished themselves in the area of diversity; they are considered Preferred Providers; and the department intends to give more work to them.
- **Middle Tier:** Firms in this category demonstrate average performance in the area of diversity, with the possibility of enhanced performance. Work amounts to these firms stay unchanged.
- **Bottom Tier:** Firms in this category fall below average expectations for diversity. These firms should expect less work from the corporation. Diversity performance must improve within one year to place firm in the Middle Tier, or the firm will be eliminated from the approved outside counsel list.

Information on the performance of each firm is communicated throughout the law department. Individual firm performance is communicated directly to each firm. At the culmination of this evaluation process, the law department issues a press release announcing its Preferred Providers.

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### Legal Departments That Have Signed the Call to Action

Among the 25 Study Participants

One way that corporate legal departments are influencing diversity in outside law firms is by signing the “Call to Action.” In Fall 2004, Roderick Palmore, the GC of the Sara Lee Corporation, authored “A Call to Action: Diversity in the Legal Profession.” This document commits its signatories – corporate GC or chief legal officers – to reaffirm their departments’ commitment to diversity in the legal profession through internal and external efforts, including moving legal work from law firms whose diversity performance is unsatisfactory. Mr. Palmore has been quoted as saying, “Its purpose is to take the general principle of interest in advancing diversity and translate that into action – into a commitment to act on – to make decisions about retaining law firms based in part on the diversity performance of those law firms.” Of those we interviewed, 77% of the GC at large legal departments had signed the Call to Action and 50% of the GC at small departments had signed the document. A few of those interviewed who have signed the Call to Action said that they have taken action against law firms that have not made positive steps towards a more diverse staff working on the companies’ cases.

The efforts in support of the Call to Action are ongoing since its launch in 2004, and the number of GC who have signed continues to increase. For the latest information on this effort, visit: www.CLOCalltoAction.com.

Off-site Diversity Conferences

Another best practice that is gaining momentum is for legal departments to host off-site diversity conferences for their in-house and preferred law firm attorneys. Some legal departments invite all of the in-house and outside minority attorneys to attend, not just those who work on litigation. This enables the law firms’ minorities to network with in-house decision makers. Other legal departments have hosted diversity conferences for the outside attorneys who manage the company’s docket, impressing on them the importance of diversity to the legal department.

Minority- and Women-owned Law Firms

Minority- and women-owned firms get special emphasis by many of the interviewees. Of the large legal departments interviewed, 100% track the amount of business they send to minority- and women-owned firms. Only 50% of the small legal department interviewees said that they track this amount. (See the chart on page 26.) Again, e-billing
was credited with the increase in enabling this practice. When asked if the departments had goals for the dollar amounts or the percentage spent with minority- and women-owned firms, some of those interviewed shared that they were active members of NAMWOLF (National Association of Minority and Women-Owned Law Firms), which asks its corporate members to send at least 5% of their outside counsel work to minority- and women-owned law firms. For more information on NAMWOLF, visit its Web site: www.namwolf.org.

One legal department has a list of preferred minority-owned firms that is shared with everyone in the department. They all know that there is a percentage of the department’s budget that must be spent with minority firms, and progress is reviewed quarterly. In just the second year of this program, the department is offering a bonus incentive for those who help meet the percentage goal by working with minority-owned firms. The senior-level attorneys in this legal department also have an additional percentage of their budgets that must be spent with outside minority suppliers.

In an attempt to learn more about the status of minority- and women-owned firms, five corporate GC sponsored a meeting in November of 2004, with representatives from the minority bar associations, in-house counsel associations, minority- and women-owned law firms, and minorities at majority-owned firms. The discussion focused on why minority- and women-owned firms have not been flourishing. The five GC continued the dialogue begun at this meeting and have now pledged to place an aggregate of at least $16 million dollars of business with minority-owned law firms in 2006. The GC are from DuPont, General Motors, Sara Lee, Shell Oil, and Wal-Mart.

Another result of the above 2004 meeting, was the development of the National Minority Law Group (NMLG). Begun by a few of the attendees from minority-owned firms, the goal of this alliance is to assist in-house counsel to identify minority-owned firms. The NMLG now consists of 18 minority-owned law firms from across the country and helps promote business development and exposure among its members. All members of the alliance must have received LexisNexis Martindale-Hubbell’s highest rating by peers (i.e., an AV rating); they must primarily represent corporations; and they must maintain the latest technology that today’s corporate clients require. For more information on the NMLG, visit its Web site: www.nmlg.org.

9. Pipeline Programs

Even though most corporate legal departments do not hire directly out of law school, many realize that increasing the number of young minorities and women who are interested in careers in the legal profession will increase the pool of talented, diverse attorneys for the future. Many of the corporations researched sponsor or invest in programs that help fill the “pipeline” to careers in the legal field with diverse candidates. Some of those interviewed have made financial commitments to the MCCA Scholarship Fund and other scholarship funds as a means to keep minorities in the pipeline to a legal career. Many interviewed said that they participate with local high schools and speak about their jobs at Career Day functions, such as the one sponsored by the National Youth Leadership Forum on Law: www.nyf.org/law.
One corporation has its internship program exclusively with a Historically Black College. This does not guarantee that the internships are only given to minorities or women, but it does allow for the pool of intern candidates to be very diverse. Some of these internships have been in the legal department. The corporation also promotes the internship program through its network of professional organizations for minorities.

One small legal department sponsors a summer internship program for minority law students with a law school in the same city. The GC is actively involved with this program and encourages his legal staff to become involved and believes that this helps minority students better understand the corporate legal environment.

One large legal department sponsors a summer program for 100 diverse law students interested in IP law as a specialty.

Another small legal department has developed a pipeline program for high school students aimed at teaching them about law, democracy and human rights while at the same time helping them envision themselves in a legal career. “Through this program, we introduce young students to the notion that law can be a career for them. It’s had a great impact on our local community schools, and has generated lots of enthusiasm within our department,” said the company’s litigation counsel.

Corporate counsel support of similar programs is not unusual. In fact, the Association of Corporate Counsel (www.acca.com) Corporate Legal Diversity Pipeline Program is one successful example. Organized in coordination with Street Law, Inc. the program strives to encourage high school students of color to pursue law as a career by forming lasting partnerships between corporate legal departments and local high school law classes. Other examples of corporate pipeline efforts include summer internship programs, and support of scholarship programs such as the MCCA Lloyd M. Johnson, Jr. Scholarship Program, through which incoming law students receive financial assistance, job placement support, mentoring and professional development while in law school.

10. Networking with Minority Bar Associations, Organizations and Universities

Many of those interviewed said that they support their legal staff’s involvement with like-minded organizations and the various minority bar associations because they believe that this advances the company’s diversity principles. They encourage staff not just to join, but to become active members. Many noted that specific staff held leadership roles in these organizations and help direct the diversity initiatives of the organizations.

One large legal department interviewee described an External Relations Subcommittee of its Diversity Committee. The stated objective of the Subcommittee is: “To develop and maintain external relationships that assist the Law Department in advancing its diversity principles.” The Subcommittee annually identifies and evaluates external diversity-oriented organizations using such standards as: available learning opportunities, networking, recruitment potential, and leadership opportunities.
IV. The Outlook for Legal Department Diversity

A. Trends in Legal Department Diversity that will Impact the Future

While many leading corporate law departments have established formal diversity and inclusion programs, and made significant strides in achieving diversity both among their internal staffs and external representation by law firms, most interviewees of this study acknowledge that more needs to be done to achieve true diversity in the profession. Most agree that corporate law departments must remain committed to diversity and lead the way to change.

Some of the trends identified that will continue to impact legal department diversity in the future are:

- Globalization.
  As many corporations continue to grow internationally, some feel that diversity will become a natural outgrowth of having staff of all different backgrounds participate in the corporate environment and network more closely with each other. That being said, corporate legal department leaders understand that they still need to provide more management opportunities for attorneys of color and other diverse backgrounds. There are still not enough diverse attorneys in management positions in corporate law offices and as partners in law firms. Several interviewees of this study commented that this lack of diversity among leadership in law departments makes it harder to attract and retain other diverse attorneys.

- Improved Retention and Career Development.
  Retaining the diverse attorneys and employees on the legal staff has received greater attention over the last several years. Where legal departments once put emphasis on recruiting and hiring diverse staff, they have come to realize that unless those attorneys are made to feel valued, have mentors to help them on their career path, and are given promotional opportunities, they will not stay with the company. Continued focus on retention programs and finding opportunities for minority and women attorneys to interface with management and other business units within corporations will continue as strategies for achieving greater diversity.

- Stronger Requirements of Relationship with Outside Counsel.
  One of the major trends identified in this study compared to the 2000 Pathways Report is the influence corporate legal departments have exerted on their outside counsel to provide more diverse representation and leadership on corporate matters. More and more law departments are requiring their firms to report specific metrics on diverse representation and progress in diversity, and this trend will continue to build in the future. Many corporate legal leaders see their outside firms as partners in the commitment to diversity and for investing in relationships with minority-owned firms and other diverse legal suppliers. Many feel that law firms will become more proactive in their hiring and representation assignment of diverse counsel and this will trickle down to other legal service suppliers.

- Targeted Pipeline Programs.
  The effort to fill the pipeline for legal jobs with diverse attorneys has received more attention from the legal departments that participated in this study. Companies are offering internships, scholarships and other opportunities not only to diverse law students and college-level students, but in many cases to those as young as high school-age, with the goal of exposing young people to the career of law and opportunities available to them. Looking toward the future, some law department leaders claim that investing in pipeline programs will be one of the most important strategies of their diversity initiatives.

- Continued Networking of Diversity-Minded Organizations and Law Departments.
  The value of networking with national organizations, both legal and diversity-focused, and with other “like-minded” law departments, colleges and universities and other business groups, cannot be underestimated according to interviewees of this study. Whether for recruitment opportunities, shared scholarship programs, recognizing best practices or other diversity-centered strategies, GC and other law department leaders identify networking with other diversity leaders as a key strategy for improving diversity within their own companies and also in the legal profession as a whole.

B. The Pathway to Inclusion

1. Achieving “Natural Inclusion”

Interestingly, a few of the major companies researched have found that they no longer need structured, measured programs to achieve diversity inclusion. Their years of experience and effort have produced an inclusive environment. Some early adopters of formal diversity programs five years ago now have less-formal programs. Quantitative measurements were necessary as the first stage of their diversity continuum, but now the emphasis is on the quantity of their diversity initiatives.

In the late 1990s, when MCCA’s first Pathways research was being conducted, some corporations had been early adopters of diversity as part of their core values. These corporations had already instituted diversity initiatives and had structured, formal goals, objectives and metrics. These were reasons that they were diversity leaders and included in the original research. Unlike many newcomers to diversity planning, some of these corporations have seen their programs evolve and become less rigid about numbers and percentages. Though, while less rigid, these corporations still have Offices of Diversity or Diversity Councils that monitor and assist departments to foster an inclusive work environment for all people. At these companies, diversity has become
more of a natural inclusion of different people, cultures, perspectives and ideas being valued and utilized. Some referred to this as diversity becoming embedded within the corporation. Diversity has become a natural part of the corporate culture in these companies, and is not just viewed as another corporate project. Leaders of these companies believe this “natural inclusion” will become more prevalent as diversity initiatives mature.

2. The Best Practices Pathway To Success

Those legal departments that have undertaken many if not all of the best practices determined in this research have clearly reached an inclusive environment for attorneys and staff. To reiterate, those best practices are:

1. The GC is committed to diversity, supporting both internal and external diversity efforts.
2. Diversity is defined very broadly to include more than race and gender.
3. The legal department has a diversity plan that includes metrics and is implemented by a diversity committee or task force.
4. Innovative recruiting techniques are used to find talented minorities.
5. Focused retention and inclusion efforts are part of the department’s diversity plan.
6. The department’s succession planning includes a focus on diversity.
7. The GC and his or her direct reports have a percentage of their compensation tied directly to diversity objectives.
8. The law department influences diversity in outside law firms by requesting and measuring diverse counsel representation.
9. The law department sponsors or invests in minority scholarship, internship and other “pipeline” programs.
10. Networking with other like-minded organizations, such as the minority bar associations and diverse business groups, is encouraged by the GC.

The interviewees in this study not only agreed on which actions were best practices, they concurred that the more legal departments that undertook these actions the greater the opportunity to achieve diversity throughout the legal profession.
V. Case Study – Measuring the DuPont Legal Model’s Diversity Impact

Development of the DuPont Legal Model

The DuPont Legal Model is the culmination of a process that began in late 1992. The Model has evolved into an integrated approach for managing the delivery of legal services to DuPont by both in-house and outside counsel. Among its central goals is improving the quality, efficiency, creativity and cost-effectiveness of those services.

Among the drivers leading to the adoption of the Model was DuPont Legal’s perception that its use of more than 300 law firms was both costly and inefficient. During a three-and-a-half-year “convergence” process, DuPont selected a number of strategic partners to form a network of Primary Law Firms (PLFs) and Primary Service Providers (PSPs). While the composition and size of the Network has varied over time as required to accommodate changes in DuPont’s needs, it now includes 42 law firms and nine service providers. Eleven of the PLFs have been part of the Network since its creation.

DuPont Legal selected PLFs after extensive interviews with each firm. In addition to considering whether each firm’s practice matched the mechanisms required to achieve it relative to both its in-house staff and its outside counsel.

A demonstrated commitment to diversity was one of the criteria used to select firms when DuPont Legal implemented its convergence strategy in the early Nineties, and continues to be an indispensable requirement for firms wishing to do business with the Company today. DuPont Legal insists that its PLFs staff women and attorneys of color on its matters. The Legal Function also encourages its firms to make women and minority attorneys the stewards of their relationships with DuPont by appointing them as engagement partners and account managers.

DuPont’s efforts relative to diversity have unquestionably born fruit. Among their measurable impact:

- Competence, excellence and getting results,
- Mutual financial success,
- Technology and work process re-engineering,
- Taking risks and advancing creativity,
- Being innovative and progressive, and
- The recruitment, retention and promotion of minority and female lawyers and their integration into the teams representing DuPont.

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DuPont Legal selected PLFs after extensive interviews with each firm. In addition to considering whether each firm’s practice matched DuPont’s needs and standards for high-quality service, DuPont Legal selected firms based on their commitment to:

- Competence, excellence and getting results,
- Mutual financial success,
- Technology and work process re-engineering,
- Taking risks and advancing creativity,
- Being innovative and progressive, and
- The recruitment, retention and promotion of minority and female lawyers and their integration into the teams representing DuPont.

DuPont’s efforts relative to diversity have unquestionably born fruit. Among their measurable impact:

- More attorneys of color and women attorneys are employed by the PLFs (and more are there as partners);
- A more diverse group of attorneys now represent DuPont;
- Three quarters of DuPont’s PLFs have engagement partners or account managers who are women or minorities or both; and
- All of the PLFs have a demonstrable interest in diversity and most have active diversity programs.

Measuring and Rewarding Diversity Efforts

To evaluate the effectiveness of the Legal Model, DuPont Legal developed a sophisticated and comprehensive metrics program aimed at measuring the processes and elements that influence key ultimate outcomes such as total costs, total recoveries, and total payouts. Its own internal diversity and the diversity of its PLFs and PSPs are among the key components DuPont tracks each year to ensure accountability.

DuPont Legal uses a variety of means to both encourage and monitor diversity among the PLFs. For example, each year the Company hosts a one-and-a-half-day conference for female PLF attorneys to gather with female in-house counsel to discuss issues and to network. A similar annual conference is held for attorneys of color. These conferences allow DuPont professionals to get to know the women and minority attorneys at the PLFs and to ensure, through informal discussions, that their firms’ commitment to diversity is real and that they are not being overlooked relative to the staffing of DuPont matters.

Each year, DuPont Legal asks each of its PLFs to provide specific data concerning its diversity performance through a computerized “Benchmark Survey” that includes questions designed to elicit information about the recruitment and retention of women and minorities and the extent of diverse lawyers’ work on DuPont matters. When, as is usually the case, DuPont knows the background of timekeepers, it can also monitor minority and female staffing through its invoice payment process.

To convert the skeptics among its firms and ensure their commitment to diversity, collaboration, and the other principles underlying the DuPont Legal Model, as well as to encourage innovation and to drive continuous improvement, DuPont Legal created its Challenge Awards Program. Under that Program, DuPont Legal allocates up to $2 million per year to be used for monetary awards to PLFs and PSPs in recognition of extraordinary accomplishments. Challenge Award winners are selected based in large measure on the responses to the Benchmark Survey. PLFs and PSPs have received monetary awards for:

- Innovations in the legal work done by the firm for DuPont;
- Collaborating with other PLFs and PSPs to effectively and efficiently serve DuPont’s interests;
- Referring non-DuPont matters to other PLFs;
- Incorporating technology into the practice of law; and
- Volunteering time and resources to develop and maintain core programs of the Model, with diversity initiatives within the individual firms and their impact on the legal profession being one of the key core programs.

Each spring, DuPont Legal convenes an Annual Meeting to bring together the DuPont Legal staff and the engagement partners and account managers from each of its PLFs and PSPs. The group is presented a snapshot of the Network members’ total progress, including the PLFs’ aggregate performance on diversity initiatives. It is
at this meeting that the winners of the Challenge Awards are announced and identified for their achievements.

**Diversity Section of the Benchmark Survey**

As the DuPont Legal Model has grown and developed, so has the Benchmark Survey. DuPont Legal has added, deleted, or reformulated questions each year as required by changes in DuPont's goals and priorities. For example, after DuPont Legal implemented Six Sigma, it began to query the PLFs and PSPs about their involvement in and contributions to Six Sigma projects.

Questions about diversity, however, have always been part of the Survey. Indeed, the 2005 Benchmark Survey asked more questions about diversity than about any other subject, and asked each PLF to:

- Provide the number of equity partners at the firm in 2004 and 2005 who were women, African American, Asian American, Hispanic American and Native American;
- Provide the number of non-equity partners at the firm in 2004 and 2005 who were women, African American, Asian American, Hispanic American and Native American;
- Provide the number of “counsel,” “of counsel,” and “senior counsel” at the firm in 2004 and 2005 who were women, African American, Asian American, Hispanic American and Native American;
- Provide the number of associates at the firm in 2004 and 2005 who were women, African American, Asian American, Hispanic American and Native American;
- Provide the firm’s retention rates in 2004 and 2005 for associates who were women, African American, Asian American, Hispanic American and Native American;
- State whether the firm experienced increases in attorney attrition in 2005, and to explain the reasons why;
- Describe any program the firm had to increase attorney retention;
- Provide the number of women, African American, Asian American, Hispanic American and Native American attorneys who left the firm in 2004 and 2005;
- Identify steps DuPont Legal could take to help the firm retain women attorneys and lawyers of color;
- Provide the number of permanent offers of employment extended to female, African American, Asian American, Hispanic American and Native American lawyers;
- Provide the number of summer associate offers extended to female, African American, Asian American, Hispanic American and Native American law students;
- Provide information concerning the number of female, African American, Asian American, Hispanic American and Native American firm attorneys working on DuPont matters and the value of their billings;
- Describe any significant breakthrough the firm made in 2005 relative to diversity;
- Specify whether the firm’s engagement partner and account manager are female or members of a minority group or both;
- Identify what affirmative steps the firm took in 2005 to ensure that a diverse team serves DuPont in relationship management roles.

- Indicate whether or not the firm is satisfied with the current level of participation of female and minority attorneys on DuPont matters;
- Identify the strategies the firm employed in 2005 and will employ in 2006 to improve and/or maintain the opportunities for attorneys of color and women to perform substantive work on DuPont matters handled by the firm;
- State whether or not female, African American, Asian American, Hispanic American and/or Native American lawyers served as lead counsel on DuPont matters in 2005;
- State whether the firm has experienced any resistance from DuPont Legal when staffing cases with female or minority lawyers and to provide specific examples;
- Indicate whether or not DuPont Legal is supportive (in practice) of firm efforts to staff female and/or minority attorneys in lead or high profile roles on DuPont matters;
- Indicate whether the firm had collaborated with or referred work to minority-owned or woman-owned firms on DuPont and non-DuPont matters.

As in the past, in 2005 DuPont requested input from female and minority attorneys at the PLFs when developing the diversity questions in the Benchmark Survey.
Enhancing diversity at all levels has been a part of our Firm’s Strategic Plan since 2002, and this goal is supported fully by Dickstein Shapiro’s leadership. The Firm’s Diversity Committee—comprised of partners, attorneys, and staff—develops and implements programs and policies designed to embrace and increase Firm diversity through recruiting, mentoring, advancing, and retaining diverse employees and attorneys.

The Firm’s recently recognized diversity efforts include the addition of a full-time position of Diversity/Pro Bono Counsel, and the expansion of its Diversity Speaker Series, in which high-profile, diverse leaders speak to the Dickstein Shapiro community about their work to foster diversity appreciation and understanding through education. Our commitment to building a diverse workforce is yielding positive results. We recognize that by continuing to incorporate diversity into the Firm’s culture, we are in the best position to capitalize on our differences in order to deliver innovative solutions to our clients.

**CASE STUDY: Client Partnerships to Advance Diversity**

As part of its innovative “DuPont Legal Model,” DuPont consistently sets high standards for the corporate world by implementing forward-thinking business practices. In the DuPont Legal Model, Primary Law Firms (PLFs) and service providers are carefully selected to serve as “strategic partners” with DuPont on the basis of competence, technology, contribution to women and minorities, creativity, financial costs and rewards, innovation, and more. Through Dickstein Shapiro’s sustained contributions to the DuPont Legal Model, including its demonstrated record to advance diversity, the Firm was honored with DuPont’s “Meeting the Challenge” award. We embrace DuPont’s commitment to diversity and excellence, and continue to build our diversity-related programs, as well as support the initiatives of other organizations such as MCCA to positively impact the legal industry.

**At Dickstein Shapiro,** we know that **innovative solutions** to legal challenges are born of diversity – diversity of attorneys, diversity of practice areas, diversity of clients, and most importantly, **diversity of thought.**

Dickstein Shapiro, founded in 1953, is a multiservice law firm with more than 375 attorneys in Washington, DC, New York City, and Los Angeles. Clients include more than 100 of the Fortune 500 companies, start-up ventures and entrepreneurs, multinational corporations and leading financial institutions, charitable organizations, and government officials in high-profile investigations. The Firm’s five core practice groups—Corporate & Finance, Energy, Intellectual Property, Legislative & Regulatory Affairs, and Litigation & Dispute Resolution—involve the Firm in virtually every major form of counseling, litigation, and advocacy.

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Additional resources from MCCA’s Creating Pathways To Diversity® series.

A Set of Recommended Practices for Law Firms

Measurement in Diversity Initiatives

The Myth of the Meritocracy: A Report On the Bridges and Barriers to Success in Large Law Firms

From Lawyer To Business Partner: Career Advancement in Corporate Law Departments

Perspectives From The Invisible Bar: Gay & Lesbian Attorneys in the Profession

A Guide to Cross-Gender and Cross-Race Mentoring
Companies Use Diversity Data to Hold Law Firms Accountable

By Stephanie Russell-Kraft - Bloomberg Law
April 3, 2017

Corporate diversity programs have come a long way since 1999, when Charles Morgan, then-GC of BellSouth Corp., led a group of his peers to sign a statement promising to consider law firm diversity when hiring their outside counsel. Today, legal departments aren’t just asking firms to field diverse groups of attorneys — they’re asking those firms to put attorneys in leadership positions, and they’re asking for data to back it up.

On Saturday, Facebook began requiring outside counsel to field teams with at least 33 percent women and ethnic minorities and show they are actively creating “clear and measurable leadership opportunities for women and minorities” in the company’s legal matters, the New York Times reported.

The changes have coincided with corporate demands on in-house legal teams to track their spending with greater precision, indicating that the use of data to hold law firms accountable for diversity initiatives will only increase.

Until recently, corporate legal departments have been hesitant to put specific metrics around diversity expectations, despite the fact that they’re already using metrics to track the business aspects of law firm performance, according to HP Chief Legal Officer and General...
Counsel Kim Rivera. “The concept is not alien,” she said. The only thing changing is that diversity and inclusion are now being measured alongside project budgets, open litigation matters, and staff productivity.

Facebook’s new policy comes on the heels of HP’s announcement in February that it would start withholding fees from law firms that don’t meet diversity requirements. As part of its new policy, the technology giant will withhold up to 10 percent of invoiced amounts from law firms that don’t field at least one “diverse relationship partner” or at least one woman and one “racially/ethnically diverse” attorney each performing at least 10 percent of the billable hours on HP matters. Rivera said she has been contacted by in-house counsel from several other Fortune 500 companies who are interested in implementing similar programs.

The ‘Front-End’ of Diversity

According to Robert Grey, president of the Leadership Council on Legal Diversity, programs like HP’s are the “front-end of what is becoming a much more analytical, data-driven approach to understanding how to develop a more diverse talent pool.” Corporations now have far more data analytics tools at their disposal to track the work and leadership opportunities given to otherwise under-represented outside counsel.

Alan Bryan, senior associate general counsel at Walmart, says his work in legal operations — a role designated to managing the company’s legal matters — has transferred seamlessly to the work of holding the company’s outside counsel accountable to diversity targets.

“Legal Ops is created to address spend, and you do that with the data you have in your system,” said Bryan. “But you can also address diversity at the same time and make it just as imperative as the spend, with the same tools.”

Instead of relying solely on law firms for their reporting of diversity statistics, in-house law departments can now see which attorneys are doing what kind of work. For example, a GC can easily check if a young woman of color is staffed for short amounts of time on document review, or if she’s taking on a leadership role and logging significant hours on more complicated work. Walmart monitors diversity data within its legal matter management system, which can track race, gender, and ethnicity or hours worked per attorney, according to Bryan.
Measuring the Data

Though a representative for Walmart was unable to provide any data on firms that have adjusted their ranks based on the company's program, Kim Koopersmith said she wouldn't have become chair of Akin Gump without the retail giant's intense focus on recruiting women and people of color relationship partners. Koopersmith was the company's relationship partner from 2009 to 2012, at which point she was elected chair. “There is a gravitas that comes from having significant client relationships,” she told Big Law Business.

Kim Koopersmith speaks about diversity and inclusion at the 2015 Big Law Business D&I Summit.

Indeed, one of the most powerful tools corporations have in the effort to increase law firm diversity is their ability to demand who gets leadership roles on their legal matters.

Microsoft, which has had a law firm diversity program since 2008, announced in 2015 that it would pay an annual bonus of up to 2 percent to firms that meet specific diversity targets in their leadership ranks. Last year, Microsoft deputy general counsel David Howard said the company's law firms had increased “diverse representation” in their management committees from 31.2 percent to 34.4 percent. In particular, he singled out the progress
made by K&L Gates, Orrick and Perkins Coie. “Each firm shared with us that the newly refocused [diversity program] provided a real push to expand and refine their efforts,” he wrote in a blog post.

The approximately 50 firms on AT&T's so-called Preferred Counsel Program, which receive the bulk of the company's work, are held to high diversity standards as tracked by an annual law firm survey, according to David McAtee, the company's senior executive vice president and general counsel. “We do hold back some compensation for our outside firms, and the survey — including the diversity element of the survey — is a factor in whether the firms ultimately receive those funds,” he said. McAtee declined to elaborate specifically on the holdback policy.

At NBCUniversal, GC Kimberley Harris takes a similar approach. She said her team generates diversity statistics on pending matters on a quarterly basis, not only to hold law firms accountable but to hold her senior in-house lawyers accountable as well. Harris said NBCUniversal hasn't talked about withholding fees or providing bonuses based on that data, but she hasn't ruled it out.

A representative for NBC declined to provide any concrete statistics about the company's outside counsel diversity, but Harris said she plans to use the data to prevent young women and attorneys of color from leaving law firms before they ever have a chance to move up the ranks. “Law firms usually do a good job of bringing in diverse classes,” she said. “But when you get to mid-level and people who could be considered for partner, there are very few people left.” Harris plans to work with law firms to identify fourth, fifth and sixth year associates, put them on NBC matters, and develop the kinds of relationships that will put them in a strong position to become partner.

MetLife, similarly, is requesting law firms develop promotion and retention plans to foster diversity, but isn't requiring specific data or benchmarks.

Skepticism Among Legal Scholars

While there is some indication this new generation of corporate diversity programs might have a greater impact than past pledges, law professors who have studied the history of corporate diversity initiatives remain skeptical.
Stacy Hawkins, who teaches diversity courses at Rutgers Law School, said many such in-house programs have existed over the past ten to fifteen years, and yet law firms have only achieved marginal gains in expanding their rosters and leadership positions beyond white men. “I’m not sure how much these efforts standing alone have generated the kinds of results we want to see more broadly in the legal profession,” Hawkins said.

Deborah Rhode, a law professor at Stanford University, said one problem in-house programs have historically encountered is a lack of enforcement. In a 2015 survey of diversity initiatives at Fortune 100 companies, Rhode found one managing partner out of 23 who reported losing business over a failure to meet a client’s diversity demands. Walmart cut a few firms loose when it began its diversity program in 2005, but hasn’t since then.

Paul Weiss partner Claudine Meredith-Goujon told Big Law Business that only a minority of the firm’s clients audit its diversity statistics after it is engaged. Just a few clients, including HP, have truly robust auditing programs. Corporate diversity programs are “most effective when they demand specific accountability,” including clear benchmarking and regular feedback, she said.

**Risks of Tokenism**

Without a commitment to developing junior talent, firms also run the risk of tokenism, according to Vernā Myers, a diversity and inclusion consultant who studies unconscious bias. “You can’t just put people in places because they have a certain demographic identity,” said Myers. “You have to do all the stuff that is required to make those people ready for those opportunities.” Hawkins said she has heard from Big Law lawyers whose firms staffed them on projects just to satisfy client diversity demands.

The general counsel who spoke with Big Law Business said they are aware of the risk of tokenism and take it seriously. These days, large companies are aware that younger attorneys are only benefiting from diversity programs if they are given real opportunities for advancement, they said.

Kim Rivera said she plans to weed out tokenism in HP’s new initiative.

“If you have a tokenistic approach, you will have that problem but you won’t have it with us, because we’ll throw you off the project,” she said. “If you don’t have diverse teams that are up to the task and engaged and excited about doing the work, we’re going to know that.”
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Corporate Departments Are Taking The Lead In Creating A More Diverse Legal Industry

The legal profession has a dismal record on diversity—especially large law firms. Between 2007 and 2015, there was a *decline* in the number of black attorneys in big firms. And, per the same study conducted by the Minority Corporate Counsel Association and Vault.com, the number of Asian-American lawyers receiving promotions in 2014 was *less* than in 2007.
Women, who now comprise about half of the entering US law school population, have fared only slightly better. While the gap in pay disparity between female and male attorneys has narrowed during the past decade, the playing field is not level for them, either. Female attorneys still make only 87% of their male counterparts, and women comprise only 20% of partners at large firms according to ‘The Glass Slipper Report.’ Just 4% of large firms have female managing partners. Why are law firms so behind the societal curve?

**Firm Structure And Culture Are Inimical To Diversity**

Large law firms share a common organizational structure and performance/reward system. The traditional law firm partnership model is decentralized; each equity partner is a separate profit center—a tent in the bazaar. That militates against adoption of broad initiatives, especially those that disrupt the status quo. The law firm performance/reward system is tipped heavily in favor of business origination, and rainmakers—especially older ones—have no financial incentive to build for the future of the firm. The absence of residual ‘equity’ (as opposed to law firm partner profit sharing mistakenly referred to as ‘equity’) has been one reason why law firms have been so slow to adopt change that threatens its model. Those at the top of the pyramid are running the table, not worrying about the next rack. And while diversity and other shifts in firm culture are no doubt good long-term, firms are disinclined to undertake initiatives they view as dilutive of year-end profit (PPP). Diversity is a long-term investment, and the traditional partnership model is a short-term for all but a handful of elite firms.

True, many firms have launched diversity initiatives. But diversity—like other cultural commitments— is more than a policy to hire candidates from different backgrounds, ethnicities, genders, and sexual preferences. Diversity requires an ongoing organizational resolve to identify high-potential diverse candidates; to provide them with mentorship; to encourage and enable them to acquire a sound understanding of the client’s business, objectives, and risk tolerance; provide them client interaction; and meaningful periodic review intended to drive the individual’s success within and outside the organization. Mentorship takes time
and commitment—from mentor and mentee. Bottom line: don’t expect traditional partnership model law firms to become diverse institutions any time soon.

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Corporate Legal Departments Reflect Enterprise Commitment To Diversity

Corporations understand that diversity pays many dividends. Corporate legal departments, in turn, have adopted the enterprise commitment to diversity, and that’s a big reason why diversity candidates fare better in large corporate legal departments than in law firms. The delta can be explained by two key differences: (1) enterprise culture; and (2) performance/reward criteria. Corporate America sees the long-term benefits of diversity; law firm leaders tend to take a short-term view due to firm structure. Likewise, in-house lawyers are incentivized to identify, mentor, and promote young talent. Law firm partners—especially older ones—have little incentive to do so. That’s changing because corporate legal departments are insisting outside counsel get serious about diversity.

Diversity In A Buyers’ Market: In-House Counsel Are Pushing Firms

The legal industry is a buyers’ market, and corporate legal departments are exerting leverage on law firms beyond taking more work in-house, exacting steep discounts, and sourcing more work to well-capitalized, tech and process savvy legal service providers with corporate models that more closely resemble their own. They are also insisting that law firms deploy a diverse workforce for their matters. That’s taking on different forms.

Microsoft has adopted a ‘carrot’ approach, offering annual bonuses to its outside law firms intended to increase diversity in partnership and firm leadership roles. Hewlett-Packard (HP) takes a ‘stick’ approach to the diversity issue with its outside law firms. Kim Rivera, HP’s chief legal officer, recently announced the company’s new get-tough-on –diversity policy that applies to all US-based law
firms with 10 lawyers or more retained by HP. After a one-year phase-in period, HP will impose up to a 10% hold back of firm fees if certain firm diversity requirements are not met. To comply, firms must have at least one diverse firm relationship partner regularly engaged on billing and staffing issues or at least one woman and one racially/ethnically diverse attorney, each performing or managing at least 10% of hours billed to HP.

MetLife is about to unveil a new diversity initiative with outside counsel, one the corporate legal department has spent the last few years developing internally. MetLife’s ‘Talent Stewardship Initiative’ is largely the creation of Ricardo Anzaldua, the company’s Executive Vice President and General Counsel. Ricardo’s commitment to diversity runs deep, dating from his teenage years in South Texas. During the course of his illustrious legal career, he has rued—and sought to rectify—the legal profession’s lamentable record on diversity. It’s little surprise that he’s a good fit at MetLife, a company where diversity, in his words, “is a part of how we do business.” He has built on that corporate culture by creating the stewardship program—part of a larger, multi-pronged approach to the diversity issue.

The Talent Stewardship Initiative creates sponsor relationships where senior leaders are accountable for providing experience, exposure, training, and leadership guidance to employees with potential for advancement. The program is intended to identify and nurture the professional development of promising young lawyers and compliance professionals by pairing them with senior management who ‘have been in their shoes’—and succeeded providing hands-on guidance. Both sides are vested in the other’s success. Selected participants have no guarantee of staying in the program—they must demonstrate a commitment to succeed with demonstrable results. Their ‘stewards,’ likewise, have ‘leadership skills’ as part of their job description, and their success in the program is one way their leadership is measured. The program is a long-term commitment to the success of the enterprise and an outstanding succession planning tool. It is also has a salutary impact on the legal profession, ensuring that the next generation has more diverse leadership.

**Conclusion**
At a time when public confidence in lawyers and the legal system has ebbed, a more diverse legal profession is not just an aspiration but also a necessity. It’s unlikely that change will come from law firms—it seldom does. The best hope for a more vibrant, diverse legal industry is that legal consumers like MetLife lead by example—and leverage—to change the industry’s cultural stasis. That will open the leadership doors to a wider pool of worthy candidates better equipped to restore public confidence in lawyers and faith in the legal system.

*I am the CEO of Legal Mosaic, a legal business consultancy; speaker; author; and Distinguished Fellow at Northwestern University Pritzker School of Law. I was recently appointed by the Singapore Academy of Law to serve as their inaugural LIFTED Catalyst-in-Residence.* The ... MORE
Facebook Pushes Outside Law Firms to Become More Diverse

By Ellen Rosen

April 2, 2017

Like other Silicon Valley giants, Facebook has faced criticism over whether its work force and board are too white and too male. Last year, the social media behemoth started a new push on diversity in hiring and retention.

Now, it is extending its efforts into another corner: the outside lawyers who represent the company in legal matters.

Facebook is requiring that women and ethnic minorities account for at least 33 percent of law firm teams working on its matters.

Numbers alone, however, are not enough, under a policy that went in effect on Saturday. Law firms must also show that they “actively identify and create clear and measurable leadership opportunities for women and minorities” when they represent the company in litigation and other legal matters.

Those opportunities “include serving as relationship managers and representing Facebook in the courtroom,” Facebook’s general counsel, Colin Stretch, said in an interview. The legal department, he said, has for the last few years been working on increasing diversity at all levels.

“Firms typically do what their clients want,” he said. “And we want to see them win our cases and create opportunities for women and people of color. We think the firms are ready — our articulation gives not just permission but a mandate.”

For Facebook, the move on outside lawyers is happening even as the company’s efforts at improving diversity in its own work force have so far shown little progress.

According to statistics released last year, blacks and Hispanics last July accounted for only 3 percent each of senior leadership, and women made up an additional 27 percent. Hiring for the 12 months beginning with July 2015 showed something of an improvement: Of those newly recruited
to senior leadership posts, 9 percent were black, 5 percent were Hispanic and 29 percent were women.

To improve those numbers, Facebook announced last year that it would focus on recruiting and retention. The company is also establishing programs to help underrepresented college students, as well as younger students in public schools nationwide, develop interests in coding and engineering. In addition, Facebook is reaching out to families who want to learn more about programming.

And when it comes to improving diversity among its outside lawyers, Facebook is part of a growing trend.

A number of general counsels across corporate America are pressing their outside firms to make their teams more diverse — in terms of ethnicity, gender, sexual orientation and even disability — at all levels of seniority, not just among junior associates.

MetLife says it is announcing a new policy this month; HP in February adopted a more stringent program. The moves are an acknowledgment that the numbers of women and minorities at law firms have barely budged over the past 20 years.

“Law is the least diverse white-collar profession,” said Jean Lee, the chief executive of the Minority Corporate Counsel Association, an organization that focuses on the hiring, retention and promotion of diverse lawyers. “A lot of companies made a concerted effort to increase diversity internally, and now they are demanding diversity at the firms they use.”

“One of the challenges in the legal profession is that, despite all of the focus, the lack of diversity is a stubborn and persistent problem,” said Kim Rivera, HP’s general counsel. “We think we can help if we can be clear and unambiguous and hold firms financially accountable.”

HP now requires its outside law firms to have at least one diverse so-called relationship partner or at least one “woman and one racially/ethnically diverse attorney each performing at least 10 percent of the billable hours worked on HP matters.” (A woman who is also a minority will cover the requirements as long as she bills the requisite 10 percent.)

Failure to comply, under the policy, would result in a 10 percent “diversity holdback” of fees, but with a one-year grace period.

Ms. Rivera said the reaction to the new policy had been positive. “I’ve gotten dozens of calls and meeting requests largely asking how to partner with us to have the program succeed,” she said.

Zakiyyah Salim-Williams, the chief diversity officer for Gibson, Dunn & Crutcher, which counts both HP and Facebook among its clients, said she was not fazed by the new requirements.
“We have a large number of diverse lawyers and we always try to staff our teams to reflect that,” she said.

Mr. Stretch of Facebook says its legal department will work with outside law firms in their efforts, tracking results, not surprisingly, through a variety of metrics.

It’s not just tech companies that are pushing their outside counsel. MetLife’s general counsel, Ricardo Anzaldua, will meet this month with representatives of some of the 50 firms the company retains to review an initiative to spur retention and sponsorship of women and diverse lawyers.

Under the program, the firms “must make sure that the junior diverse talent has sponsorship among the senior lawyers and that they get the best coaching and nurturing they can provide.” MetLife will evaluate the results in 2018; underperforming firms will have six months to improve or be dropped.

Mr. Anzaldua's mandate echoes his own in-house initiatives. “A few years ago we began to identify and coach those with high potential to become the future leadership pipeline,” he said. “While the initiative doesn't exclude white men, the proportion of women and people of color in that pipeline is more than 60 percent, reflecting the fact that we have an influx of talented women and people of color in the lower ranks.”

Some companies take a more fluid approach. While Verizon Communications has no numerical target, its general counsel, Craig Silliman, said, “diversity of the team is one of the specific criteria we use when we bid out a matter,” in addition to strategic approach, cost and other factors.

Morgan Stanley’s chief legal officer, Eric Grossman, in addition to encouraging diverse teams, also annually names one of its outside law firms as the recipient of a leadership award in diversity and inclusion. Firms vie for the award, which depend on a variety of factors.

“We put a lot of weight not just on the diverse and female attorneys who work on Morgan Stanley matters, but also on how many diverse lawyers they have in the firm and the depth of their sponsorship programs they have to promote overall diversity. We recognize that it just doesn’t happen on its own,” he said.

The possibility of a fee reduction or being dropped from the roster of approved firms could be an effective tool to make it happen.

“Companies are now using a carrot and stick approach because the carrot approach alone didn’t work,” said Ms. Lee of the Minority Corporate Counsel Association.
The past few years have seen an unprecedented transformation in the diversity policies and initiatives of corporate legal departments and law firms. While there is hope that such policies, which are more data-driven than ever before, will help accelerate minority representation, the attrition rate among minority attorneys, particularly junior attorneys, continues to be high. How can legal departments collaborate with outside counsel to ensure diverse talent is supported and provided equitable opportunities to succeed?

A rising tide lifts all boats, but does it really?

According to a 2017 law firm diversity survey (https://www.mcca.com/wp-content/uploads/2017/12/2017-Vault-MCCA-Law-Firm-Diversity-Survey-Report.pdf), conducted by Vault and the Minority Corporate Counsel Association, minority representation in law firms is at a record high, with minority lawyers representing 16% of law firm associates, partners and counsel. Progress is most evident among incoming associate classes; 31% of second-year law students who summered at law
firms in 2016 and accepted offers to return as full-time associates in 2017 were members of racial or ethnic minority groups, up from 25% a decade ago. About half of all summer associates in 2016 were women, who also made up 44% of entering law firm associate classes, and 4.6% identified as LGBTQ, compared to the 2.5% of all law firm attorneys. Data and reporting constraints still hamper effective tracking and reporting of attorneys with disabilities.

While we have hit a stride, true change takes time, and nowhere does this ring truer than in the legal profession. Minority representation in law firm partnerships, for example, has increased on average 2% since 2007. However, equity partnership – the long-lauded brass ring of private practice – remains stubbornly whitewashed. More than 90% of all equity partners are white. Only one in five equity partners is female. While Asian-Americans are the highest represented minority in equity partnership, they clock in at just 3%. Latino partners make up less than 3%, and African-Americans less than 2%. Women of color comprise only 3% of equity partners, and multiracial partners constitute just .5%. As of 2016, less than 2% of equity partners were openly LGBTQ.

Although many firms have made laudable steps toward attracting diverse talent, they often struggle with retention. While diversity in overall attorney headcount is on the rise, the gains are often uneven, and attrition among minority attorneys is higher now than it was during the recession. In 2016, 22% of all attorneys and 27% of associates leaving firms were minorities, exceeding figures reported in any of the previous 10 years. Not only do these departures choke the pipeline for diverse representation in leadership roles, they limit the number of role models and mentors available to junior associates, further accelerating the cycle.

Diversity programs must focus on junior attorneys

Despite being sincere in their commitment to advancing diversity and inclusion, many law firm leaders are unfamiliar with the barriers that minority attorneys face. Often, the easiest approach is to write a check to sponsor a table at a minority organization gala or sponsor a couple of attorneys to attend a diversity event. However, these efforts are not substantial enough to provide minority junior associates the support they really need. So, what can be done to prevent minority attorneys from leaving firms, and how can legal departments take a more active role in encouraging outside counsel to move the needle on diversity?
Here are three ways that corporate legal departments can collaborate with their outside counsel to ensure minority attorneys are supported and given equitable chances to succeed:

1. **Work with firms to identify minority mid-level associates in their third through sixth year of practice to place directly on company matters.** Ensure minority junior attorneys staffed to your teams have meaningful opportunities to contribute and that they are not victims of tokenism. Demand these junior attorneys take a lead in pitching your work and ensure they receive credit for their efforts. Within firms, establishing formal or informal mentoring programs with the goal of developing strong, one-on-one relationships with associates is also important, provided it leads to substantive, skill-building assignments designed to place associates in a stronger position to become partner.

2. **Put money on the line.** Reward or discipline outside counsel for exceeding or failing to meet your diversity goals. There are numerous examples of companies that have doubled down on firms by withholding portions of invoiced fees or paying bonuses based on ability to meet diversity goals. Others have begun using surveys and other data to rank firms on their outside counsel list against one another, adding or removing firms according to their scores. Such policies have the potential to become truly impactful because they encourage firms to increase diversity or risk a hit to their bottom line. If you disengage with a firm or diminish workload based on such data, make it clear that they did not meet your diversity expectations.

3. **Commit a portion of your legal spend to hiring ethnically diverse or LGBTQ outside lawyers to serve as lead counsel on select matters and require that minority associates participate in pitching work.** Companies can require firms to certify that the lead lawyers, and particularly associates, receive some kind of credit as originators of the matter, in addition to being staffed to the matter going forward.

It's important to reiterate that one of the most powerful tools companies have is the ability to demand outside counsel take measurable actions to increase representation of minority attorneys who work on their legal matters. Companies can and should track their outside counsel's progress with the same dedication they would put into tracking a litigation budget, delegating work accordingly to firms that meet or exceed targets and withholding work from those that fall below expectations. If your legal department doesn’t have the resources or legal operations capacity to develop and
track diversity programs in-house, partner with legal organizations that have programs directed at mentoring high-potential diverse associates, such as the Leadership Council on Legal Diversity’s Pathfinder and Fellows programs.

At the end of the day, clients should rely on their outside counsel as partners in making a positive impact on the legal profession. Clients are in the best position to influence firm diversity by requiring minority attorneys have a seat at the table, both in the courtroom and during important corporate transactions. Despite recent baring of more teeth in diversity programs, many firms and corporate legal departments run a high risk of falling prey to tokenism if those programs do not focus on developing and retaining a more robust cadre of talented, diverse lawyers. Younger attorneys only benefit from diversity programs if those programs provide them with meaningful opportunities to lead, encourage them to stay, develop their own practices through meaningful billable opportunities, and advance within their firms and the profession.

My advice for corporate legal departments looking to move the needle on diversity? Demand that diverse junior attorneys take a lead in pitching your work. Demand that they receive credit for their efforts. Put money on the line: reward or discipline outside counsel for exceeding or failing to meet your specific diversity goals. Track and follow up on diversity data and hold firms accountable; if you disengage with a firm or diminish their workload based on such data – tell them. If you pull work from a firm because the team did not meet your diversity expectations, make this point clear. Do not simply mentor junior associates. Give them meaningful, billable work, then demand they take a leadership role in your success.

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