

HITTING THE LEGAL DIVERSITY MARKET HOME: MINORITY WOMEN STRIKE OUT

By LeeAnn O'Neill*

In the 1990s, in-house corporate counsel began demanding greater diversity in their outside law firms, culminating in the 1999 Morgan Letter, a diversity manifesto signed by more than 500 corporate general counsels to consider diversity when hiring outside counsel.² General counsel at corporations began assessing whether women and minority lawyers were among the client relationship managers and their likelihood to be assigned to the company's work.³ Diversity provisions, including demographic data of the law firm as well as a demographic breakdown of lawyers working on a company's matters,⁴ became part of most competitive bidding for legal services. Later, in-house corporate counsel raised the stakes with the circulation of the 2004 Call to Action, which calls on in-house corporate counsel to fire firms that lack "meaningful interest in being diverse."⁵ Thus far, more than 100 companies have signed the Call to Action.⁶

In 2005, Wal-Mart shocked the legal community when it fired one of its outside law firms for failing to meet diversity goals for women and minorities.⁷ Looking at the sheer number of minority and women attorneys was not enough for Wal-Mart. Rather, Wal-Mart required the identification of at least one minority and one woman attorney to be among the top five relationship attorneys.⁸ As a result of Wal-Mart's actions, law firms are finally being forced to take the Call for Action seriously.

For women, the positive impact of these diversity initiatives is recognizable, but slow. In 1995, 14.2% of equity partners were women, in comparison with 17.2% in 2005.⁹ Based on current rates, it will take until 2115 to reach equal numbers of male and female partners.¹⁰ The future for minority¹¹ women looks even more dismal; they represent just 1.48% of all equity partners.¹² The numbers for minority women partners seem unlikely to rise, as the attrition rate for minority female associates has risen from 75% in the late 1990s to 86% in 2005, despite these diversity initiatives.¹³

Well-intentioned diversity initiatives based on the generic advancement of "minorities and women," however, may not produce a complete picture of diversity. By only targeting "minorities and women," law firms' diversity initiatives do not account for the vulnerable position of minority women attorneys as double minorities, nor do they account for unequal advancement of ethnic or racial groups, such as Asian American advancement over Latino or African American advancement.¹⁴ This article seeks to address the precarious status of minority women attorneys, who are particularly susceptible to being left behind in diversity initiatives. First, this article discusses the unequal treatment of women in the legal profession and the institutional barriers to advancement that all women face. Second, this article demonstrates how the combined effect of racial bias,

racial hierarchies, and gender bias disparately impact minority women within the current promotion paradigm. Third, this article analyzes how well-intentioned statistics-based law firm diversity initiatives entrench the existing two strikes against minority women while valuing female attorneys less than their male counterparts. Finally, this article proposes new ways to assess law firm diversity.

STRIKE ONE: PRE-EXISTING GENDER STEREOTYPING, COGNITIVE BIAS, AND LACK OF CHOICE FOR WOMEN IN THE LEGAL PROFESSION

The passage of Title VII in 1964, which prompted the American Association of Law Schools and the American Bar Association's adoption of equal opportunity policies for women in the early 1970s, coupled with the subsequent explosion of women law students in the 1970s and 1980s, flooded the market with woman attorneys.¹⁵ Although government and legal aid jobs were generally available to women attorneys, private law firms often refused to interview qualified women attorneys or offered lower salaries for positions with no promotion opportunities.¹⁶ One woman who graduated from law school in the 1970s recounted that she was hired because "they just thought it was time to have a woman, but not that work would be assigned to [her]."¹⁷ Once admitted, women were stereotyped by law firms into specialties considered appropriate for women, including "library work and research, brief writing, 'blue sky' work, and the specialties of trusts, estates, wills, and domestic relations."¹⁸ Because of the nature of these specialties, women flew under the clients' radars. Law firms justified this conduct by asserting that women "self-selected" these specialties, indicating their preference for that type of work.¹⁹ Women accepted work in these "appropriate" practice areas to gain acceptance within the law firm and to avoid antagonizing male lawyers, thereby sacrificing new client development, limiting existing client networking, and limiting development of legal skills in more prestigious practices in exchange.²⁰ Partnership selection relies heavily on inheriting an outgoing partner's clients and subjective assessments of client recruitment and networking.²¹ Rather than acknowledging the structural odds stacked against women, law firms reason that women "self-select" into "of counsel" positions or non-partner track careers to accommodate family or work-life balance and avoid the work of client recruitment and development.²²

"Self-selection," however, does not explain the disproportionate numbers of women attorneys denied partnership, with women attorneys accounting for 48% of all associates but only 17.2% of equity partners.²³ Rather, discriminatory evaluations, assignments of less important work, presumptions of incompe-

STRIKE TWO: PRE-EXISTING RACIAL STEREOTYPING, RACIAL HIERARCHY, AND LACK OF CHOICE FOR WOMEN IN THE LEGAL PROFESSION

tence, inadequate mentoring, and sexual personality stereotyping plague women in private law firms.²⁴ For example, in *Ezold v. Wolf, Block, Schorr & Solis-Cohen*, the law firm began with a presumption of incompetence by telling Ezold during her interview that she would have a difficult time because “she was a woman, had not attended an Ivy League law school, and had not been on law review.”²⁵ Once hired, the firm assigned Ezold to “small” actions in comparison to their standard cases. When later assigned to large, complex cases, the law firm rated her poorly for her analytical skills.²⁶ Finally, the law firm denied her partnership, citing her poor analytical skills, while advancing men who scored lower in the overall partnership evaluation.²⁷

Partnership decisions may also be influenced by implicit gender stereotyping or cognitive bias.²⁸ Cognitive bias is the unconscious interjection of gender expectations into decision making, including partnership review. For example, in *Price Waterhouse v. Hopkins*, Price Waterhouse did not refute expert testimony that the partnership selection process was likely influenced by sex stereotyping.²⁹ Hopkins was described both as being “extremely competent” and “forthright” as well as abrasive and “overcompensating for being a woman.” As a solution to aggressive interpersonal skills, one partner recommended Hopkins be more “feminine.”³⁰

Even though Title VII failed to provide a remedy for Hopkins and Ezold, women have used it with limited success as a remedy for discrimination on the basis of gender in partnership decisions at other private firms.³¹ Nevertheless, scholars criticize Title VII for the heavy evidentiary burden placed on plaintiffs and deference to the subjective partnership decision making process.³² Under the current McDonnell Douglas burden-shifting framework, a woman attorney must establish a prima facie case of discrimination by demonstrating: (1) that she belongs to a protected class under Title VII, or that she is a woman; (2) that the law firm was seeking partners, that she sought partnership, and that she was qualified for partnership; (3) that despite her qualifications, she was rejected; and (4) that after her rejection, the law firm continued to seek similarly qualified associates for partnership.³³ Once she meets this burden, the law firm must articulate a legitimate nondiscriminatory reason for the attorney’s rejection from partnership.³⁴ The highly subjective nature of partnership decisions and mixed motives for denying partnership make it easier to mask unconscious biases.³⁵ Once the law firm articulates a nondiscriminatory reason, the woman attorney has the “opportunity” to show that the stated reason is a pretext, but must demonstrate pretext with evidence of overt discrimination.³⁶ Once again, the subtle nature of unconscious bias creates a nearly insurmountable barrier to a successful remedy under Title VII.

Along with the explosion of women in law schools and law firms in the 1970s and 1980s came an increase of minority women in the legal profession. Upon graduating, minority women became over-represented in public defender positions or in other government jobs and often took on work helping minorities.³⁷ As with white women, private law firms often refused to interview qualified minority women attorneys or offered lower salaries for positions with no promotion opportunities.³⁸ To the extent that private law firms targeted minority women in their hiring, the underlying motivation was sometimes to satisfy both race and sex requirements for the price of one, or, if they were “lucky,” a black Latina attorney was three for the price of one.³⁹ Once admitted to private law firms, minority women were “ghettoized”⁴⁰ into certain practice areas much like their white counterparts.⁴¹ However, minority women attorneys further suffered under overt tokenism, as representatives of their gender and minority groups.⁴² One minority woman recalled that she “was always asked to attend functions and award ceremonies, speak to law students of color and pose for advertising publications. However, [she] never had contact with partners in power other than at these events.”⁴³

Additionally, minority women often met with clients only when their gender or race was an advantage – as when the client requests a diverse legal team or a partner assumes that minority clients want to see a “familiar face.”⁴⁴ In a recent incident, a Korean-American woman in her fourth year as an associate discussed how these assumptions can backfire:

[A managing partner] introduced me to the client who was Korean and he tells him that I’m Korean, too. He said, “She eats kim chee, just like you.” He said to me, “Talk to him.” I looked at the client and said, “It’s a pleasure to meet you. I’m sure you speak English better than I speak Korean.” The client’s face was so red. Then the partner left a message on my internal message system, and he was speaking gibberish, trying to sound like an Asian speaker.⁴⁵

Not only did this incident reinforce race matching, but it also implicitly marked the Korean-American woman as a Korean hostess to the Korean client, rather than establishing the woman as the client’s attorney.

In addition to cognitive bias against women, minority women may also suffer under unconscious racism.⁴⁶ For example, minority women attorneys are often mistaken for secretaries, court reporters, or paralegals.⁴⁷ The disparate impact of the “double negative” of being a woman and a minority is evident – nearly two-thirds of minority women attorneys compared to 4% of white men were excluded from networking opportunities; 44% of minority women compared to 2% of white men were

denied desirable assignments; 43% of minority women compared to 3% of white men were limited from client development opportunities; nearly one-third of minority women compared to less than 1% of white men felt they received unfair performance evaluations;⁴⁸ and 20% of minority women compared to 1% of white men felt they were denied promotions.⁴⁹ It is important to note that the “careers of white women attorneys and men attorneys of color were neither as disadvantaged as those of women attorneys of color.”⁵⁰ All of these biases culminate in the disparity of retention rates in law firms for minority women at 53% compared to 72% for white men.⁵¹ However, while white men often left to go to other large law firms, many minority women left for smaller or minority-owned law firms, accounting for the estimated 86% attrition rate for minority women.⁵²

Often overlooked is the nuanced difference between stereotypes of particular groups of minority women and their effects on women lawyers.⁵³ Asian-American women attorneys may be stereotyped as “hard-working, obedient, and compliant (a racialized and gendered stereotype), but also as sexually available in a particularly racialized way.”⁵⁴ Additionally, Asian-American women attorneys may be seen as too passive for litigation or other “bet the firm” type of work.⁵⁵ Interestingly, the very traits lacking in so-called passive and obedient Asian-American women attorneys are considered detrimental for so-called aggressive and combative African-American women attorneys, who are also considered “sexually available” and sexualized as “deceitful and promiscuous.”⁵⁶ African-American women attorneys are particularly susceptible to having their attorney status overlooked and mistaken as support staff.⁵⁷ Latina attorneys may be questioned about their immigration status or stereotyped as speaking Spanish.⁵⁸ Additionally, they may often be channeled into immigration work under the assumption that they would have a vested interest.⁵⁹ Finally, Arab-American women attorneys may be stereotyped as oppressed by their veils or as “passive victim[s] of Arab patriarchy.”⁶⁰ Although not exhaustive, these stereotypes demonstrate both overt and unconscious biases confronting minority women in the legal field.

These racial biases are compounded by a hierarchy in white America’s prejudice and stereotyping toward different racial groups – with African Americans at the very bottom of the racial hierarchy, followed by Latinos, and with Asian Americans often scoring positively.⁶¹ Social stereotyping often manifests itself in hiring and partnership decisions in private law firms.⁶² For example, although Asian Americans accounted for 11.3% of the top 20 law school graduates in 2005, they accounted for 15% of large law firm associates.⁶³ Compare this to African Americans accounting for 7.4% of law school graduates and just 5% of associates, as well as Latinos accounting for 6.9% of law school graduates and just 4.7% of associates.⁶⁴ Between 1998 and 2005, the growth of Asian-American attorneys (nearly doubling from 8.7% to 15%) at large law firms dwarfed the growth of African-American attorneys (marginally growing from 4% to 5%) and Latino attorneys (marginally growing from 3.7% to 4.7%), suggesting that societal racial hierarchies trans-

late to private law firms.⁶⁵ However, once allowed to move up the power structure, it seems that all minorities are left out, with Asian Americans as 11.8% of the pre-partner pool and 3.7% of the new partners; African Americans as 4.2% of the pre-partner pool and 1.2% of the new partners; and Latinos as 2.9% of the pre-partner pool and 1.6% of the new partners.⁶⁶ The gender and racial hierarchies represented in the studies were also evident in Jenner & Block LLP’s summer associate class, which was the largest reported summer associate class in 2001 - there were 90 white summer associates (61 men and 29 women), 10 Asian-American summer associates (6 men and 4 women), 4 Latino summer associates (2 men and 2 women), and 1 African-American summer associate (0 men and 1 woman).⁶⁷ Consequently, minority women are subject to three levels of subjugation in preference: first, subjugated as women; second, subjugated as minorities; and third, subjugated within their own minority status.

While Title VII provides an available remedy for discrimination against minority women, the burden-shifting framework presents some practical difficulties for proving discrimination based on the intersection of gender and race.⁶⁸ First, there are no cases to date challenging a partnership decision in the legal profession on the basis of gender plus race, perhaps for the very reason that Title VII is not an effective remedy for minority women. The current framework for challenging partnership decisions may require that a woman choose to litigate as a woman or as a minority, but not as both.⁶⁹ Thus, minority women risk the catch-22 of courts bifurcating their female self from their minority self, finding that separately they have not been discriminated against as a woman or as a minority, and ignoring that the permutation of both was the basis of their discrimination.⁷⁰

There are, however, a growing number of cases recognizing intersectionality of protected classes under Title VII.⁷¹ The Fifth Circuit found that African-American women constituted a separate protected class under Title VII in *Jeffries v. Harris County Community Action Ass’n*.⁷² Additionally, the Ninth Circuit found in *Lam v. University of Hawaii* that treating race and gender discrimination separately did not adequately assess the form of discrimination leveled against an Asian-American woman.⁷³ In particular, the Ninth Circuit found that Asian-American women experience a different set of stereotypes than do Asian-American men and white women.⁷⁴ However, even after proving all of the elements of prima facie discrimination, a minority woman attorney may have difficulty demonstrating the nuanced discrimination faced by her sub-class in proving pretext for denial of partnership. Moreover, the relatively small numbers of women and minorities in private law firms makes it difficult to find an appropriate “similarly situated” attorney for comparison. In *Moore v. Hughes Helicopter*, the court used intersectionality of protected classes against an African-American woman, holding that she was not similar enough to all women to be certified as a class representative.⁷⁵ Additionally, there were no “statistically significant” numbers of Afri-

can-American women employed by the defendant company, barring her from bringing a claim as an African-American woman.⁷⁶ Given that the *Moore* court found that an African-American woman was significantly different than white women and African-American men, should Arab-American women be compared with Arab-American men, other minority women in general, or white women?⁷⁷ In law firms, finding an appropriate “similarly-situated” person is complicated further by the small numbers of other minorities available for comparison.

STRIKE THREE: THE NEW DIVERSITY MARKET, MARKET DYSFUNCTION, AND DIVERSITY QUEUES

The lack of an effective remedy under Title VII, the massive attrition rates for minority women in large law firms, and the lack of law firm commitment to diversity drove the rapidly diversifying general counsel of corporations to take action. The Morgan Letter and the Call to Action brought forth a flood of diversity initiatives based on the number of minorities and women in law firms, creating a new market for diversity.⁷⁸ Top law students also prioritize diversity when conducting job searches, forcing law firms to at least address the issue to attract the most qualified candidates.⁷⁹ In June 2005, Wal-Mart sent a letter to its 100 largest outside counsel requesting a list of three to five potential partners who would manage the case with the general counsel, requiring at least one minority and one woman.⁸⁰ Oracle asked “that the first person [a law firm] consider for assignment to the case be a woman or a minority employee of your firm with appropriate experience.”⁸¹ Large corporations, including Dupont and General Motors, track and monitor the number of hours worked by minority and women lawyers on their matters by their outside law firms.⁸² Large corporations also require demographic breakdowns of minority and women associates and partners.⁸³

Corporate counsel diversity initiatives may not actually generate change in private law firms, however. First, law firms may be resistant to change or do not have effective diversity policies.⁸⁴ Some law firms have responded to diversity initiatives by substituting exclusionary discrimination of women and minority attorneys with tokenism and “mascoting,” reminiscent of law firms’ reactions to the affirmative action policies of the 1970s.⁸⁵ Furthermore, law firms such as Venable LLP, Womble Carlyle Sandridge & Rice LLP, and Sonnenschein Nath & Rosenthal LLP have circumvented actual change in their partnership structure by forming alliances with minority-owned law firms.⁸⁶ Although their motive may not have been to circumvent change, these alliances were prompted by a lack of qualified minorities and women in their firms.⁸⁷ Not only does this allow big firms to “outsource” diversity, but it denies their own minority and women attorneys the opportunity to pursue these cases.⁸⁸

Additionally, diversity initiatives may actually entrench minority stereotypes. A danger implicit in diversity initiatives is a tendency to assume clients of a particular racial background prefer to work with attorneys of the same background or for clients to request an attorney of a particular background.⁸⁹ By

demanding diversity, general counsel may be intentionally or unintentionally calling for race or gender matching.⁹⁰ This reinforces race and gender essentialism and assumes that an African-American male client prefers an African-American male attorney or that an Asian-American woman client prefers an Asian-American female attorney.⁹¹ “Race matching” by private law firms, however, is prohibited under Title VII. For example, although employers may engage in affirmative action to remedy past discrimination, basing job assignments on racial stereotypes violates Title VII.⁹²

Furthermore, if assigned to a case by virtue of race, gender, or a combination of both, minority and women attorneys may not be able to turn down assignments without detrimentally impacting their partnership opportunities. For example, in *King v. Phelps Dunbar*, an African-American male attorney claimed that partners at the firm withheld work and unfairly criticized his work after turning down assignments made because of his race.⁹³ Additionally, King refused to return to a trial after the opposing counsel made a racially insensitive remark.⁹⁴ Although it was undisputed that King’s evaluations were positive prior to these incidents and sharply declined until his resignation several years later, the court found that King lacked evidence tying the critical evaluations to these incidents.⁹⁵ Consequently, when diversity initiatives prompt “race matching,” minorities may not realistically be able to turn down an assignment. This has implications for career development for minorities who may have an interest in particular practice areas, but are channeled into work where a particular client wants a minority. The relatively small number of minorities in law firms greatly increases the likelihood of this phenomenon. For example, in the Jenner & Block LLP example, if a client had requested that an African-American summer associate work on his case, only one summer associate would qualify, forcing her to take the case.

Finally, numbers-based diversity initiatives put a stigma on women and minorities as “affirmative action hires.”⁹⁶ Attorneys hired to meet general counsel diversity standards may lead to the dominant white male partners further questioning their abilities and qualifications.⁹⁷ For example, preferences for hiring African Americans may be viewed as counterproductive in large law firms and as evidence that African Americans are not as qualified as their white counterparts.⁹⁸ This is the same type of rationale used in discussing why minorities leave large law firms in droves.⁹⁹

Even if private law firms do not side-step changes in their diversity initiatives, the “minorities and women” standard set forth by the general counsel may entrench the existing marginalization of minority women. Continued use of a vague “minority and women” category may allow law firms to hide behind their existing diversity marketing. For example, a survey of the top ten ranked law firms, ranked by associate satisfaction, diversity, hours, pay, associate/partner relations, formal and informal training, and pro bono commitment,¹⁰⁰ demonstrates that even the best law firms utilize the generic diversity standard of “women and minorities” on their recruitment websites. The

“women and minorities” standard is evidenced in diversity initiatives that boast of recruitment of “25% persons of color”¹⁰¹ to “hosting diversity events”¹⁰² to “diversity scholars programs.”¹⁰³ Some tout advancement of women attorneys, but reviewing the ethnic and racial backgrounds of their female partners reveals that advancement of women attorneys really means advancement of *white* women attorneys.¹⁰⁴ When firms list their diversity statistics on their recruitment websites, they generally do not provide a breakdown of minority women and minority men.¹⁰⁵ However, a review of the gender of their minority partners reveals advancement of minority male attorneys, rather than minority women attorneys.¹⁰⁶ Additionally, most of the law firms’ recruitment websites clumped the diversity statistics for all their offices together, rather than providing an office-by-office breakdown. Others did not make mention of diversity programs at all.¹⁰⁷ These were just a few of the generalized images of diversity presented by the top ten law firms, none of which provided a clear picture of the actual diversity of their law firm.

Minority women may also be denied access to the prestigious large corporate cases because of their current position within the “diversity queue.”¹⁰⁸ Barbara Reskin and Patricia Roos discuss job queues as the ordering of a group of employees in the order of preference, where employers will choose the employee in the highest position on the job queue as possible. Historically, employers created “gender queues” in their hiring practices, hiring men before women.¹⁰⁹ An updated version of the “gender queue” would be the “diversity queue,” or the ranking of minorities and women in the order of most preferred to least preferred. Thus, female attorneys are not only valued less than male attorneys, but they are also placed lower in the job queue by virtue of being assigned less important work and presumed to be incompetent. Additionally, the existence of a racial hierarchy caused by cognitive bias and stereotyping, may elevate Asian Americans over Latinos and African Americans in the job queue. Therefore, minority women may be lowered within the job queue by virtue of being a woman and a minority.

Although this phenomenon has not been studied before, the current composition of law firm diversity, especially among the partners of law firms, supports the hypothesis that minority men and white women are more successful in their law firm careers than minority women.¹¹⁰ It is worth noting that minority male partners outnumber their female counterparts more than two to one, despite the fact there are more minority woman associates than minority male associates.¹¹¹ For example, using Jenner & Block LLP’s 2001 summer associate class composition reflecting 111 attorneys, a requirement of assigning a minority or woman attorney to a particular case could create a queue with 44 eligible attorneys to fulfill the diversity requirement - 29 white women, eight minority men, and seven minority

women.¹¹² If the diversity queue really does exist, the odds are stacked against the seven minority women at the bottom of the queue. Although there is no direct evidence of a diversity queue, the current composition of law firms certainly implies there could be, and that it would be worth further inquiry in the future.

MAKING IT TO HOME: THE FINAL SCORE

Current diversity initiatives, while well-intentioned, are fraught with loopholes and problems such as the lack of a uniform diversity amongst general counsel, implicit race matching, and lack of transparency in diversity programs at the law firms. Moreover, the new push by corporate general counsel for increasing the numbers of women and minorities will simply entrench the current problems, resulting in the continued marginalization of minority women. By targeting only “minorities and women,” diversity initiatives do not account for the vulnerable position of minority women attorneys as double minorities, nor do they account for unequal advancement of ethnic or racial groups, such as Asian American advancement over Latino or African American advancement, within law firms.¹¹³

Uniform diversity standards should replace the haphazard diversity reporting requirements established by corporate general counsel for their outside law firms. Instead, an ABA diversity certification program for law firms could create one uniform standard and yearly renewal and oversight over law firm diversity initiatives.¹¹⁴ Currently, the ABA offers Continuing Legal Education (CLE) courses on diversity and has the institutional knowledge from its comprehensive reports on diversity.¹¹⁵ The ABA has already worked in conjunction with corporate general counsel to discuss diversity strategies and could continue to do so in creating a new diversity certification program.¹¹⁶ Although these types of programs have always been voluntary, corporate general counsel could agree to only use and retain law firms who are certified by the ABA as meeting their diversity requirements. Therefore, while diversity certification would not be mandatory, the corporate signatories to the “Call to Action” could simply consult the ABA to verify law firms in compliance with their diversity objectives, creating a business case for law firms to obtain their diversity certification.

Additionally, general counsel should stop utilizing diversity quotas, which could serve to perpetuate “affirmative action bias” and disproportionately disenfranchise minority women attorneys. Rather than focusing on statistics, which tends to promote race or gender matching, a diversity certification program could provide measures resolving or redressing institutional biases against women, minorities, and minority women. For example, the ABA certification program could require equity partners to attend a certain number of diversity CLEs as part of their certifi-

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cation requirements.¹¹⁷ Consequently, for law firms whose clients are part of the “Call to Action,” this would create a business case for attendance in order to secure the ABA diversity certification and retain their client’s work. Additionally, diversity inclusiveness and environment could be assessed through yearly surveys of each law firm’s associates and partners, with reports generated back to each law firm to identify particular areas of concern. The ABA already has the resources to put together an effective questionnaire and could include factors such as associate/partner relations, experiences of discrimination, availability of work, and others.¹¹⁸ To allow for personalized diversity programs within each law firm, renewal of certification could be tied to closing the gap between associate and partner perceptions of work environment. Although numbers may be important to assess the medium and long term success rates of diversity certification, they should not be the primary focus as they are now.

Each law firm’s diversity statistics at the associate and partner level should be made publicly available through the ABA, with the breakdown of women (and each sub-category of minorities) and men (and each sub-category of minorities) to avoid the double counting of minority status as well as identify the advancement of each particular minority group. Furthermore, the ABA could follow the National Association for Legal Professionals example of reporting by office to avoid double counting or blurring the numbers of one firm across several offices which could mask diversity problems one particular branch of-

fice.¹¹⁹ The availability of detailed statistics will force law firms to deal with the realities of their numbers rather than hiding behind idyllic diversity brochures and allow prospective employees to assess the environment of the law firm independently.

Finally, partnership requirements should be more transparent, with clear requirements and benchmarks for associates to rely on in their career development. The subjective nature of partnership decisions makes it difficult for women and minority associates to determine and prove the reason for failing to make partner, since law firms can easily point to other motives.¹²⁰ Transparency would help relieve the evidentiary burden on minority attorneys making claims under Title VII and help make Title VII a more effective remedy.

The future success of diversity initiatives promulgated by corporate general counsel will depend on their ability to coordinate with each other to leverage their influence to make the business case for diversity in law firms. Law firms must feel the financial impact of not meeting diversity standards. In particular, this will require more corporations to act like Wal-Mart has done and fire law firms that do not meet their diversity goals. By making the bottom line money and shifting the focus from merely increasing the number of women and minorities to evaluating a firm’s environment of inclusiveness, senior equity partners will be more likely to commit to diversity.

ENDNOTES

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¹ Learning to Give, available at http://www.learningtogive.org/search/quotes/Display_Quotes.asp?subject_id=113&search_type=subject (last visited Mar. 7, 2007).

² Jeremy Fieler, *Law Firm Diversity gets Closer Scrutiny*, PHIL. BUS. J. (May 20, 2002), available at <http://www.bizjournals.com/philadelphia/stories/2002/05/20/story5.html?t=printable> (last visited Mar. 7, 2007); Jill Nawrocki, *GCS Put on the Pressure*, MINORITY L.J. (May 1, 2006), available at <http://www.law.com/jsp/mlj/diversityScorecard.jsp> (last visited Mar. 7, 2007) [hereinafter *Nawrocki*].

³ Nawrocki, *supra* note 2; Raymond L. Ocampo, Jr., *On Hiring Women and Minority Attorneys: One General Counsel’s Perspective*, FindLaw.com, available at <http://careers.findlaw.com/diversity/articles/onhiring.html> (last visited Mar. 7, 2007).

⁴ Fieler, *supra* note 2.

⁵ Rick Palmore, *Call to Action: Diversity in the Legal Profession*, available at <http://www.acca.com/resource/getfile.php?id=5748> (last visited Mar. 7, 2007).

⁶ Minority Corporate Counsel Association, *Call to Action Corporate Signatories: Diversity in the Legal Profession*, available at <http://www.mcca.com/CTA/signatories-print.shtml> (last visited Mar. 7, 2007) (including companies like Coca-Cola, Wal-Mart, and Microsoft).

⁷ Edgardo Ramos and Lynn Anne Baronas, *What Works: Ways to Increase Diversity at Law Firms*, 1/16/2006 NAT’L L.J. 13.

⁸ Meredith Hobbs, *Wal-Mart Demands Diversity in Law Firms*, Law.com (July 6, 2005), available at www.law.com/jsp/law/LawArticleFriendly.jsp?id=1120579809481 (last visited March 7, 2007).

⁹ WOMEN’S BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA, CREATING PATHWAYS TO SUCCESS: ADVANCING AND RETAINING WOMEN IN TODAY’S LAW FIRMS at 11 (May 2006), available at <http://www.wbadc.org/associations/1556/files/Creating%20Pathways%20Report%20PDF.pdf> (last visited Mar. 7, 2007) [hereinafter *Pathways to Success*].

¹⁰ *Id.*

¹¹ This article uses “minority” or the phrase “of color” as an umbrella term for persons of Latina, African-American, American Indian, Asian-American, Arab-American, and multiracial descent. Due to a lack of information on the impact of diversity initiatives on lesbian women or other women who could be considered diverse (e.g. handicapped, deaf, etc.), this article focuses solely on diversity in a racial context.

¹² National Association of Legal Professionals, *Percentage of Women and Minorities at Law Firms Up Slightly in 2006; Only 1.48% of Partners are Minority Women*, available at <http://nalp.org/content/index.php?pid=448> (last visited Mar. 7, 2007).

¹³ ABA COMMISSION ON WOMEN IN THE PROFESSION, AMERICAN BAR ASSOCIATION, VISIBLE INVISIBILITY: WOMEN OF COLOR IN LAW FIRMS at 9 (2006), [hereinafter *ABA Report*], available at <http://www.abanet.org/women/VisibleInvisibility-ExecSummary.pdf> (last visited Mar. 7, 2007); see also CATALYST, WOMEN IN LAW: MAKING THE CASE (2001) [hereinafter *Catalyst Report*], available at http://www.catalyst.org/knowledge/titles/title.php?page=lead_wlmkcase_01 (last visited Mar. 7, 2007) (noting similar phenomenon from the 1970s to the 1990s).

¹⁴ See Emily Barker, *Not all Diversity is Created Equal*, MINORITY L.J. (Summer 2005), available at <http://www.townsend.com/files/Diversity%206%20page.pdf> (last visited Mar. 7, 2007) (discussing that the strong showing of Asian Americans at private law firms masks the lack of hiring and retention of African Americans and Latinos); ABA Multicultural Women Attorneys Network, American Bar Association, *The Burdens of Both, the Privileges of Neither - Summary*, available at <http://www.abanet.org/abastore/index.cfm?section=main&fm=Product.AddToCart&pid=4520003> (last visited Mar. 15, 2007) (identifying that the combination of being an attorney of color and a woman is a double negative).

¹⁵ Nancy Farrer, *Of Ivory Columns and Glass Ceilings: The Impact of the Supreme Court of the United States on the Practice of Women Attorneys in Law Firms*, 28 ST. MARY’S L.J. 529, 542-43 (1997).

¹⁶ *Id.* at 547-49; Paula Patton, *Women Lawyers, Their Status, Influence, and Retention in the Legal Profession*, 11 WM. & MARY J. WOMEN & L. 174, 184-85

ENDNOTES CONTINUED

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- ⁴⁸ ABA Report, *supra* note 13, at 10 (noting that unfair performance evaluations includes ignored accomplishments, exaggerated mistakes, and "soft" evaluations which made it difficult to correct mistakes).
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- ⁷⁴ *Id.*
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