

Competing Interests I:

To Be, Or Not To Be, A Large Law Firm Partner

Why Law Firms and Corporate Clients Need to Be Concerned About Declining Numbers of Diverse Partners





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Despite decades of effort to increase diversity within the legal profession, one of the more commonly accepted measures of success – the numbers of partners in large law firms – shows that not only are these efforts not achieving the levels of success that might be expected from a profession of problem solvers, in the case of racial/ethnic minorities, specifically African American lawyers, those efforts are failing. Of the 1.3 million practicing lawyers in the United States¹, some 51,419 of those lawyers are partners.² But only about 910 of those partners are African American/Black, which sadly translates to about 18 per state.³ The numbers are not much better for Asian American,⁴ Hispanic,⁵ Native American⁶ or women⁷ partners. This is not new information. Organizations such as the National Association of Law Placement (“NALP”), from which much of the best data on this subject comes, have been publicizing this for some time. Law firms remain the last bastion of socially accepted segregation.

This situation is unlikely to correct itself without targeted and purposeful intervention. The demographics of associate ranks in law firms suggest that there is a shrinking pool of future minority partners, particularly of African American/Black lawyers; representation of African American/Black associates has fallen every year since 2009 from 4.66% to 3.95% of all associates.⁸ And while the number of women associates has remained flat⁹ and the numbers of Asian American and Hispanic associates have slightly increased, those numbers are not such that there is any cause for celebration or reason to suggest that the challenge of diversifying the future ranks of the partnerships of large law firms in the United States is unique to African Americans/Blacks, only that their crisis is more obvious.

Historical Trends

In the post-Civil Rights Movement of the 1960s, when the mainstream legal profession first began to address its own diversity, or lack thereof, a primary goal was to increase the percentage and presence of diverse law firm attorneys in AmLaw 200 and those other NALP law firms that may not be part of the AmLaw 200. It was understood that in doing so, the legal profession would, in turn, increase the number of qualified diverse attorneys available to work as either outside counsel or in-house, and fully integrate the profession at all levels.

1. American Bar Association, *ABA National Lawyer Population Survey: Historical Trend in Total National Lawyer Population, 1878-2016*, Chicago: American Bar Association, 2016, accessed May 9, 2016, http://www.americanbar.org/content/dam/aba/administrative/market_research/total-nationallawyer-population-1878-2016.authcheckdam.pdf.

2. National Association of Law Placement, *NALP Bulletin*, January 2016, accessed May 9, 2016, <http://www.nalp.org/0116research>.

3. *Id.* This includes all partner categories. This number and the other numbers cited in the paragraph are calculated by taking the percentages of each minority group and multiplying it by the total number of partners.

4. *Id.*

5. *Id.*

6. *Id.*

7. Only 18% equity partners are women and 38% of non-equity partners are women. Lauren Stiller Rikleen, *Women Lawyers Continue to Lag Behind Male Colleagues: Report of the Ninth Annual Survey by the National Association of Women Lawyers*, National Association of Women Lawyers, Chicago: National Association of Women Lawyers 2015 Annual Review.

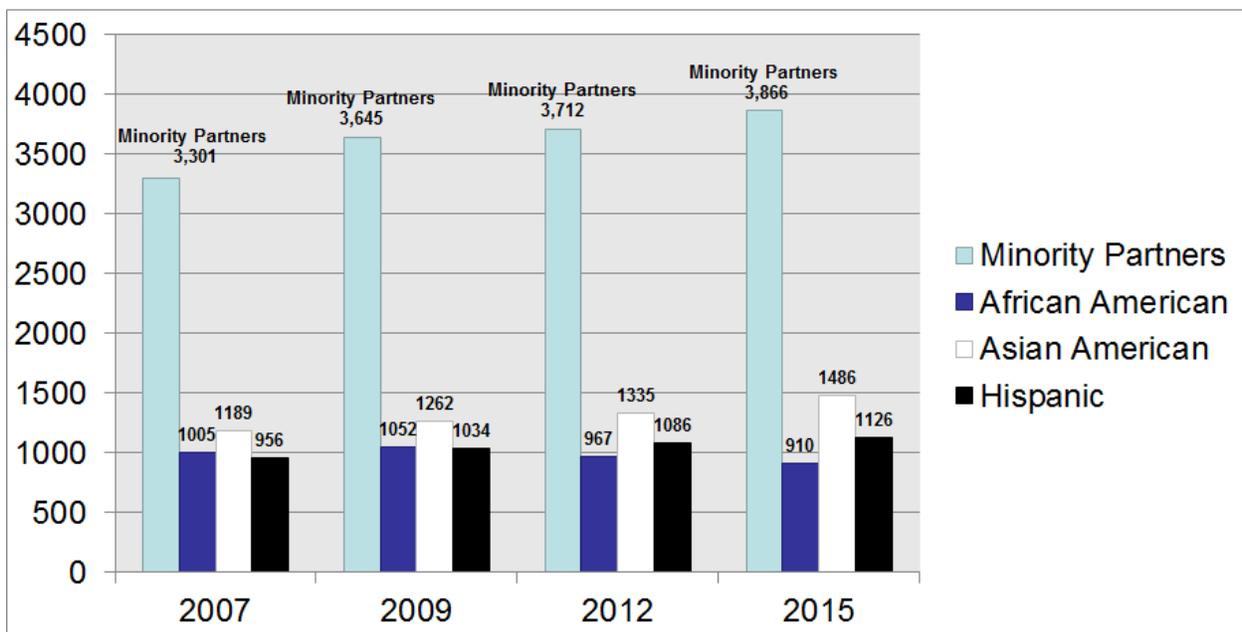
8. *Id.*

9. *Id.*

Table 1: Diversity Trends – All Attorneys						
Year	Attorneys	White	Black	Hispanic	Asian	Other
1960	285,033	99.0%	0.76%	0.0%	0.0%	0.24%
2010	1,203,093	88.1%	4.8%	3.7%	4.4%	
2014	1,281,423	84.3%	5.7%	5.6%	4.4%	

Table 2: Minority Partners				
	2007	2009	2015	Difference (2009-2015)
All Partners*	61,297	61,572	51,419	-10,153
Minority Partners	3,301 5.4%	3,645 5.92%	3,866 7.52%	+221
African American	1,005 1.64%	1,052 1.71%	910 1.77%	-141
Asian American	1,189 1.94%	1,262 2.05%	1,486 2.89%	+224
Hispanic	956 1.56%	1,034 1.68%	1,126 2.19%	+92

Chart1: Minority Partner Growth 2007-2015



All Partners: 61,297

61,572

56,599

51,419

Table 3: Minority Women Partners

1,081 NALP Law Firm Offices	Jan. 2009 1,572	Feb. 2014 1,127	Change from 2009 to 2015
Minority Women Partners	1,113 1.84%	1,311 2.55%	+198
African American	344 0.56%	329 0.64%	-14
Asian American	473 0.71%	550 1.07%	+77
Hispanic	258 0.42%	323 0.63%	+65

Some four decades later we have seen broad, but not particularly deep attention and uneven amounts of resources devoted to this goal. While some progress has been made, much remains undone to the frustration of many. Consider: In 2007, 3.49% of the attorneys promoted to partnership were African American/Black.¹⁰ That number decreased by 0.46% so that in 2014, only 3.03% of all attorneys promoted to partnership in 2014 were African American/Black.¹¹ And when one factors in partnership attrition – where the attrition of African American/Black equity partners grew from 1.69% in 2007 to 2.70% in 2014 – it cannot help but be noted that attrition of 2.70% effectively offsets the 3.03% promotion to partnership. The issue is further compounded by the decrease in the lateral hiring of African American/Black lawyers at all levels by law firms.

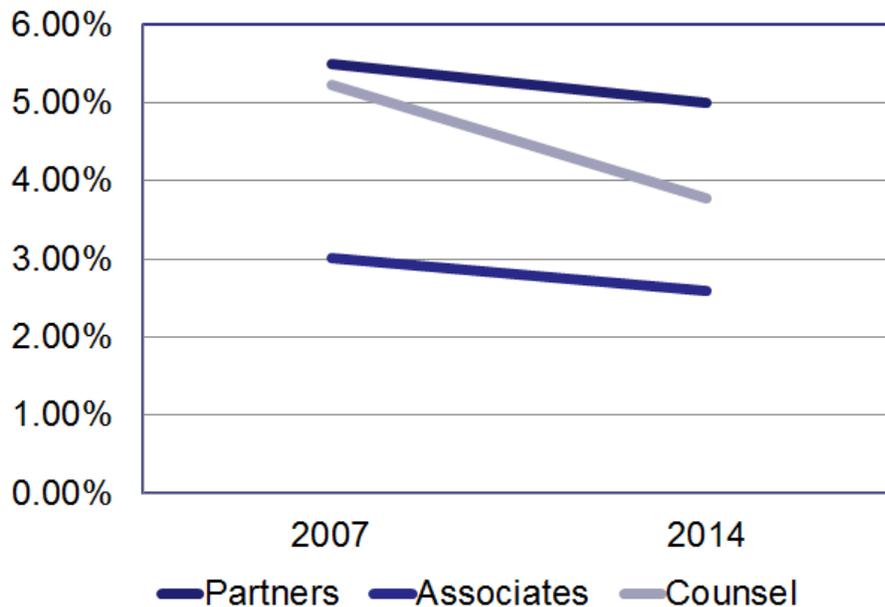
Figure 1: Net Impact

- African American Attrition:
 - 16% of all African American attorneys in law firms left their firm last year.
- Partnership Promotion:
 - 3.03% of all attorneys promoted to partnership last year were African-American
 - down from 3.49% in 2007.
- Partnership Attrition
 - Attrition of African American equity reached 2.70% - up from 1.69% in 2007
 - Attrition 2.70% offsets promotion 3.03%

10. Minority Counsel Corporate Association and Vault, *Vault/MCAA Law Firm Diversity Survey Report*, Washington, D.C.: Minority Corporate Counsel Association and Vault, 2015, 12, accessed May 9, 2016, http://www.mcca.com/data/global/downloads/research/reports/VaultMCCA_Survey-2015-v03.pdf.

11. *Id.*

Chart 2: Lateral Hiring of African Americans is Down



Source: 2016 Vault/MCCA Law Firm Diversity Report (December 31, 2014 Statistics)

The Effectiveness of the Legal Profession’s Response to Date

- The legal profession’s intuitive response has been to:
- Emphasize a renewed commitment to scholarship and internship programs addressing the pipeline into the profession;
- More actively promote and expand fellowship and secondment programs to build professional relationships for young lawyers;
- Encourage corporate clients to apply increased pressure on outside counsel to achieve greater success in hiring and retaining minority lawyers, promoting them to partnership, and helping sustain them as partners; and,
- Enhance the celebration of role models who inspire the rest of us.

Those are all logical strategies. Still, they are not achieving the level of success needed to counter the disturbing decline in the number of African American partners and the challenges continuing to confront the other groups of partners – women, Asian Americans, Native Americans, Hispanics, lawyers with disabilities, and lawyers who are openly LGBT – who bring the diversity to which our legal profession has been aspiring.

Why is that?

It may help if we first understand the shifting challenges facing diverse¹² law firm partners. Although the outcomes for different types of diverse lawyers may be similar – lesser compensation, fewer opportunities for leadership roles, low numbers in partnership ranks – the underlying reasons for those outcomes are not necessarily the same. For women lawyers, it has been a question of proving their commitment to large law firm practice, the presumption being that their loyalties, and thus their time and energy, would be divided between career and family. For lawyers of color, it has been a question of demonstrating competence¹³ in the face of assumptions to the contrary and proving that they have the intellect, discipline, cultural competency, temperament, and personality to handle complex legal work. For openly LGBT lawyers it has been a matter of disproving biases about their morality and suitability for the profession of the law. For lawyers with disabilities it has been a question of proving that they have the physical or mental ability to practice law successfully. Thus, in the late 1980s, we saw programs such as the American Bar Association’s Minority Counsel Demonstration Program and similar state programs that still exist today such as the California Minority Counsel Program and the Texas Minority Counsel Program come into existence as a means of providing minority lawyers a chance to meet and build relationships with corporate in-house counsel who were willing to provide the opportunity for minority lawyers to prove their competence.¹⁴

But that was decades ago. Enough women have returned to the practice of law after becoming mothers to demonstrate that they have as much commitment to their practices as their male colleagues. Enough racial/ethnic minorities have successfully handled significant legal matters to demonstrate their legal competence. The legal profession continues to see firsthand that lawyers who are openly LGBT, or those who have disabilities, are effective and successful lawyers. These diverse partners have dressed for success. They have acculturated to the social norms and expectations of their firms. They have billed their hours. Additionally, they have taken on the roles of diversity ambassadors for their firms in recruiting, pitching for business, and mentoring the next generation of diverse lawyers. Yet still they remain underrepresented within their firms’ partnership ranks.

How Can Firms Retain Their Diverse Talent?

Why then do women and minority partners leave their law firms? There are myriad reasons. But perhaps we are better served if we ask instead, “What might have made them stay?” Few would willingly leave a highly-compensated position with interesting work in a pleasant environment. For the right amount of compensation, they might even remain if the work were less interesting or the environment less pleasant. And since most law firms can offer pleasant office surroundings, and a mix of pleasant or less pleasant personalities, it might be reasonable to say that no partner leaves a firm because of a dislike of the office décor, the size or location of his or her office, or that the receptionist has a disagreeable personality.

Women and lawyers of color at private law firms earn less, on average, than their white male counterparts.¹⁵ Compensation in law firms, and the assignment of work, however, is tied to business and relationships with clients and within the firm. Again, this is not new information. Lawyers become

12. Throughout this paper, we refer to “diverse lawyers”, “diverse partners” and variations of both. We use this as a shorthand way to refer to a group that includes women, racial/ethnic minorities, lawyers who are openly LGBT, and lawyers with disabilities.

13. We credit Anna L. Brown, Special Attorney/Director of Global Diversity & Inclusion, Shearman & Sterling, for identifying the contrasting pressures placed upon women lawyers – commitment – versus racial/ethnic minorities – competence.

14. They also focused on providing minority attorneys with advice on how to “make it” in their organizations. The programs rarely focused on the individuals running major law firms and law departments and whether they have the skill sets to make minority attorneys “feel at home” and free of implicit and unconscious biases impacting their training, mentoring, and development.

15. Douglas E. Brayley and Eric S. Nguyen, *Good Business: A Market-Based Argument for Law Firm Diversity*

But, as IILP discovered through its research, the quality and quantity of the work that diverse partners receive based upon diversity considerations is generally insufficient to sustain the career of partners in large law firms.

partners, and are better able to remain as partners, if they can generate business so as to keep themselves (and possibly a few other lawyers) billing the hours that result in the firm's revenues. Partners with business generally are not asked to leave the firm. Partners with business are better compensated and can usually expect to handle the more interesting aspects of that work or choose to assign it to others. People in firms are generally nicer and more deferential toward those partners who generate business. So, if one is a law firm partner who can generate a good amount of business, one's professional life can be expected to be quite pleasant and not one where the partner is looking for the next opportunity to leave. Thus, if we distill the reasons why a partner might choose to stay at a firm (or at least not be asked to leave), it comes down to one primary reason: Business generation. Other than professional sports, does any other profession keep score on who makes the most money?

The legal profession has been grappling with the issue of business generation by diverse partners for decades. Programs have been started to foster business development by women and minorities, and some, like the California Minority Counsel Program ("CMCP"), the Texas Minority Counsel Program ("TMCP"), the National Association of Minority and Women Owned Law Firms ("NAMWOLF"), and the National Association of Women Lawyers' ("NAWL") Challenge Club,¹⁶ are proving effective in connecting in-house and outside counsel for the purpose of business development. But, as IILP discovered through its research, the quality and quantity of the work that diverse partners receive based upon diversity considerations is generally insufficient to sustain the career of partners in large law firms. Among the more disheartening findings from that research was that African Americans, while generally receiving more of the corporate business earmarked for diversity, were discovering that much of this work was the low-margin, less profitable work that was unlikely to make or sustain a partner in a large law firm. And Asian Americans were less likely to get any business earmarked for diversity.¹⁷

So does that mean we have reached a stalemate? Perhaps, but only if we assume that this is the only business available for diverse partners and their law firms.

According to the Association of Corporate Counsel ("ACC"), 40% of the average Chief Legal Officer's budget comprises outside counsel spending.¹⁸ For those companies whose law department budget exceeds \$1,000,000, that percentage rises anywhere from an additional 4% – 6%.¹⁹ One would think that with this much money being directed to outside counsel, surely there is enough to support the careers or more diverse outside counsel. And, if diverse partners were to be able to generate some of this business for their firms, wouldn't it have an impact upon their departures – willing or reluctant – from their law firms? So, the easiest solution would simply be for diverse partners to generate more business. Yet that is not happening and we need to find ways to address the situation.

16. The Institute for Inclusion in the Legal Profession, IILP Business Case for Diversity: Reality or Wishful Thinking

17. *Id.*, 58, 63.

18. ACC Chief Legal Officers 2016 Survey at page 63.

19. *Id.*, 64.

Why the Legal Profession Needs to Intervene

Upholding Our Professional Responsibility for Diversity and Inclusion

Lawyers in law firms and corporate law departments are not merely business-people operating as best they can for the sustainability, growth and profit of their firms and companies. As lawyers, we have professional responsibilities. As set forth in the “Preamble: A Lawyer’s Responsibilities” of the Model Rules of Professional Conduct, which generally serves as a model for most states’ own rules of professional responsibility and conduct,²⁰ in paragraph [7], it states:

Many of a lawyer’s professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. **A lawyer should strive** to attain the highest level of skill, **to improve the law and the legal profession** and to exemplify the legal profession’s ideals of public service.²¹ [*Emphasis added.*]

Yet even if we dismiss this as being an aspirational rather than truly a professional responsibility, logic dictates that a profession charged with monitoring itself should, in fact, do just that. If diversity has come to be recognized as something that improves the law and the legal profession, then our responsibility is clear and we should not carve out exceptions for law firms.

Addressing Implicit or Unconscious Biases

Moreover, there is an abundant body of research examining the notion of implicit or unconscious bias and its manifestations within and impact upon the legal profession and the justice system. This research amply disputes and refutes any belief that lawyers, by virtue of their intelligence or their advanced education, are somehow immune to influence by their own implicit biases. Did anyone miss Nextions’ “Written in Black & White”²² research study where law firm partners asked to review and critique identical writing samples from an associate found more “errors” and graded the sample more harshly when they believed it to have been written by an African American associate as opposed to a Caucasian associate? Recognizing that, as a profession do we not have a professional obligation to take steps to counter this?

Investment in the Future of the Profession

The media has been full of stories about how Silicon Valley and the tech industry is concerned with its lack of diversity. For example, Fortune magazine reported that only about a third of the workforce in technology is comprised of women.²³ As a result, many of the largest and most powerful organizations in that industry have taken leading roles to recruit more diverse talent to technology, support diversity among their employees, and adopt programs and implement policies aimed at fostering greater diversity among both their current and future employees. The most recent media reports suggest that this is paying off, that the tech industry is seeing significant and measurable improvement in its diversity numbers.²⁴ If the leaders in the tech industry are able to do this, couldn’t the legal profession?

20. According to the American Bar Association website at http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preamble_scope.html, California is the only state that does not have professional conduct rules that follow the format of the ABA Model Rules of Professional Conduct.

21. American Bar Association, *Model Rules of Professional Conduct: Preamble and Scope*, Chicago: American Bar Association, 2000.

22. Arin N. Reeves, et. al, *Written in Black & White: Exploring Confirmation Bias in Racialized Perceptions of Writing Skills*, Yellow Paper Series, *Nextions* (2014), accessed May 9, 2016, http://www.nextions.com/wp-content/files_mf/14468226472014040114WritteninBlackandWhiteYPS.pdf

23. Stacy Jones and Jaelyn Trop, “See how the big tech companies compare on employee diversity,” *Fortune*, July 30, 2015, accessed May 9, 2016, <http://fortune.com/2015/07/30/tech-companies-diveristy/>.

24. Joan C. Williams, *Hacking Tech’s Diversity Problem*, Harvard Business Review (October 2014), accessed May 9, 2016, <https://hbr.org/2014/10/hacking-techs-diversity-problem>; Aarti Shahani, “Intel Discloses Diversity Data, Challenges Tech Industry to Follow Suit,” *National Public Radio: All Tech Considered* (February 3, 2016), accessed May 9, 2016, <http://www.npr.org/sections/alltechconsidered/2016/02/03/465270938/intel-discloses-diversity-data-challenges-tech-industry-to-follow-suit>; <http://www.informationisbeautiful.net/visualizations/diversity-in-tech/>; <http://graphics.wsj.com/diversity-in-tech-companies/>

In America's largest law firms, the number of women partners falls far short of the one-third in tech and the numbers of racial/ethnic minority partners is smaller still. The numbers are no better elsewhere in the world. And unlike the tech industry, sadly the legal profession's largest and most powerful organizations – large law firms and the corporate law departments of the largest companies – have proven far less successful at marshaling the leadership and resources necessary to affect this sort of change.²⁵ But to allow the situation to persist and simply maintain the status quo, heralds the onset of increasing challenges and future difficulties for large law firms and their corporate clients. And for those law firms and clients who do not plan to shut their doors and go out of business in the very near future, this should be a concern.

Greater Diversity and Inclusion is in the Firm's and Their Clients' Best Interest

There has been ample research to demonstrate that diverse teams will usually provide better outcomes.²⁶ Indeed, there are market-based arguments in favor of law firm diversity.²⁷ A firm with little or no diversity will be less able to put forward a diverse team of lawyers and, in failing to do so, less likely to achieve the best results, to their own and their client's detriment. It does not mean that they will be unable to achieve good results, but it suggests that it might be more difficult or take longer or require greater effort – all things that inevitably cost the client more.

There is also a growing body of research that shows that firms with greater diversity generally outperform their peers financially.²⁸ Greater diversity drives up revenues and profits from those corporate clients who value diversity among their outside counsel. And research suggests that employees in more diverse firms

25. Renwei Chung, "Americans Rank Law Firms Dead Last in Commitment to Diversity" *Above the Law*, April 8, 2016, accessed May 9, 2016, <http://abovethelaw.com/2016/04/americans-rank-law-firms-dead-last-in-commitment-to-diversity/>.

26. Scott E. Page, *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools, and Societies* (Princeton: Princeton University Press, 2007).

27. Douglas E. Brayley and Eric S. Nguyen, Good Business: A Market-Based Argument for Law Firm Diversity, *The Journal of the Legal Profession*, 34:1 (2009-2010): 1-38, accessed May 9, 2016, <http://heinonline.org/HOL/LandingPage?handle=hein.journals/jlegpro34&div=4&id=&page=34>

28. *Id.*



CMCP commends the work of the Institute for Inclusion in the Legal Profession and its leadership in helping to make diversity and inclusion a reality.

CMCP – The California Business
Attorney's Diversity Partner



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are more productive and solve problems more efficiently.²⁹ That means that the longer talent is retained, the greater the benefits to the firm and its clients. Therefore, if African American and other diverse partners find it increasingly less compelling to spend time in law firms we can expect to see them leave. They take their talents elsewhere. They take their different perspectives, their new ideas, their innovative approaches, and their unanticipated but insightful questions and leave. This depletes the talent within the partnership and decreases the recruiting pool of diverse candidates for corporate law departments.

But beyond that, we need to also consider what happens to all the diverse law firm partners who leave their firms. We recognize that some diverse lawyers who are partners or prospective partners may decide, for whatever reason, to retire or to become a caregiver to children, grandchildren or elderly family members. We are left, then, with all the diverse lawyers who leave to either pursue a perceived better career opportunity or those who are, subtly or not, encouraged to depart, possibly for lack of work or business. In the case of the former, those who depart for better career opportunities, it should be noted that unless the departure is for another similarly situated firm, many of these better opportunities include a decrease in income or a reduction in the status of the firm. At the same time, some lawyers leave to escape the pressure of billable hours and possibly the endurance of micro-inequities and micro-aggressions about which is heard anecdotally from so many diverse partners. In any event, whether these partners depart their firms willingly or reluctantly, it is fair to assume that most will end up either in-house, in government or public service, on the bench, or at another firm. This is not the best outcome for law firms or their corporate clients.

Departing African American/Black law firm partners and associates are often recruited by major corporations, making them current or prospective clients of firms. The number of diverse corporate general counsel and corporate counsel continues to increase.³⁰ Do the diverse lawyers who leave their firms desire to retain the services of the law firms they left or firms like them?

Others join the government,³¹ as the public sector has long had a reputation for being a more hospitable environment for diversity. They join the Securities Exchange Commission, the Department of Justice, the Federal Trade Commission, their state Attorney Generals' offices, and a host of other government agencies at the federal, state and local levels, prepared to be the future adversaries of law firms and their clients. Indeed, federal regulatory agencies actively recruit African American and other diverse lawyers.

29. See: Katherine Phillips, "How Diversity Makes Us Smarter," *Scientific American* (October 1, 2014), accessed May 9, 2016, <http://www.scientificamerican.com/article/how-diversity-makes-us-smarter/>.

30. Ass'n of Corporate Counsel, *ACC 2001 Census of U.S. Inhouse Counsel*, Ass'n of Corporate Counsel (2001), <http://www.acc.com/legalresources/resource.cfm?show=16320> (for 2001 figures); Ass'n of Corporate Counsel, 2011 Census Report 72 (2012) (for 2004, 2006, and 2011 figures). 2001 figures are based on a survey of 12,674 in-house lawyers, with 929 (7.3%) responding. 2006 figures are based on a survey of 49,259 in-house lawyers, with 3,426 (7.0%) responding. See Ass'n of Corporate Counsel, *Profile of In-House Counsel*, Ass'n of Corporate Counsel (2006), <http://www.acc.com/v1/public/Surveys/loader.cfm?csModule=security/getfile&pageid=16297>. 2011 figures are based on responses from roughly 5,000 in-house counsel. See Ass'n of Corporate Counsel, *ACC's 2011 Census Report: Overview*, Ass'n of Corporate Counsel (2012), <http://www.acc.com/legalresources/loader.cfm?csModule=security/getfile&pageid=1307039>.

31. Kay Coles James, U.S. Office of Pers. Mgmt., *Demographic Profile of the Federal Workforce*, U.S. Office of Pers. Mgmt. (2003), <http://www.opm.gov/feddata/demograp/02demo.pdf> (for 2002 figures); U.S. Office of Pers. Mgmt., *Demographic Profile of the Federal Workforce: Table 3*, U.S. Office of Pers. Mgmt. (2008), <http://www.opm.gov/feddata/demograp/table3mw.pdf> (for 2006 figures); U.S. Office of Pers. Mgmt., *Demographic Profile of the Federal Workforce: Table 3*, U.S. Office of Pers. Mgmt. (2013), <http://www.opm.gov/policy-data-oversight/data-analysis-documentation/federal-employment-reports/demographics/2010/table3mw.pdf> (for 2010 figures) (figures for 2010 represent women and men combined).

Table 4: CFPB Attorneys

African American	7%
Asian American	9%
Two or more Races	3%
Hispanic/Latino	3%

Source: Office of Minority and Women Inclusion of the Consumer Financial Protection Bureau 2014 Annual Report

Table 5: SEC Attorneys 2014

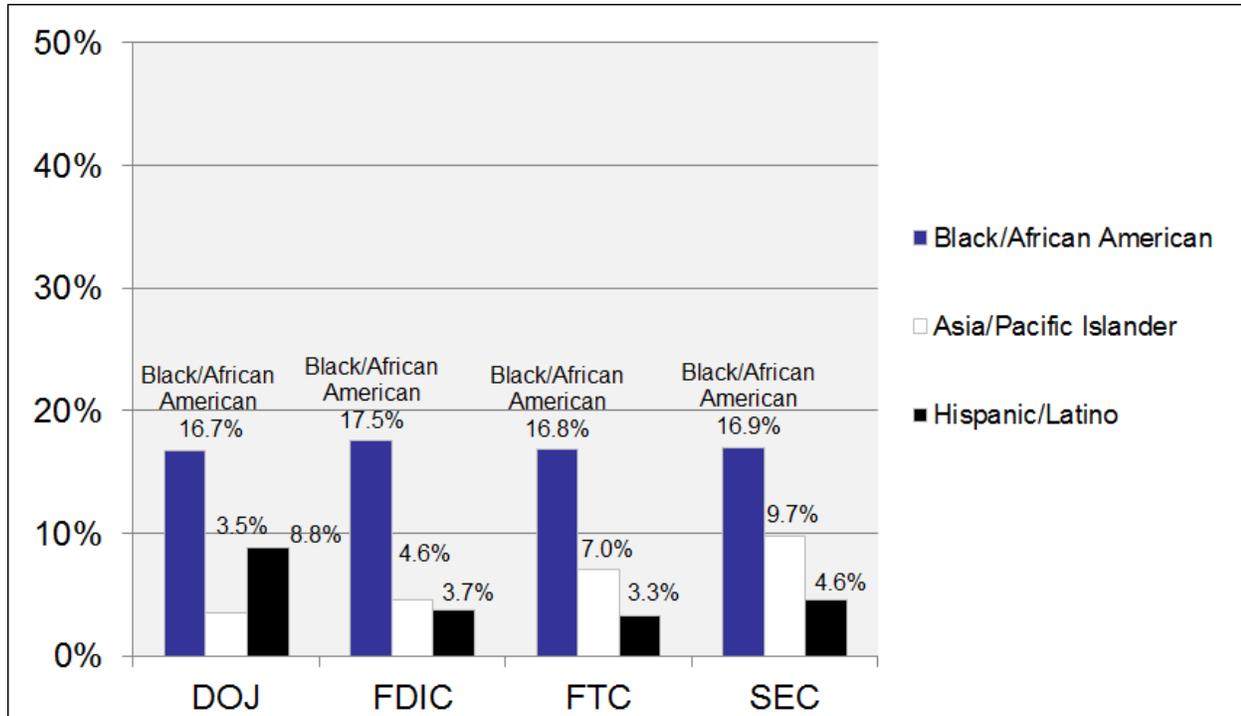
African American	6.9%
Asian American	9.3%
Hispanic/Latino	3.2%

Source: Securities and Exchange Commission Office of Minority and Women Inclusion 2014 Annual Report to Congress

Table 6: High Percentage of African American Regulatory Executives

Federal Workforce/Executive Department (2012*)				
	Department of Justice	Federal Deposit Insurance Corporation	Federal Trade Commission	Securities and Exchange Commission
Black/African American	16.7%	17.5%	16.8%	16.9%
Asian/Pacific Islander	3.5%	4.6%	7.0%	9.7%
Hispanic/Latino	8.8%	3.7%	3.3%	4.6%
Totals	29.0%	25.8%	27.1%	31.2%

Chart 3: African American Executives Working for Executive Organizations



And diverse lawyers who depart law firms join the judiciary, prepared to be the future decision makers and finders of law in disputes involving law firms and their clients. Indeed, the percentage of African American judges is now higher than the percentage of those who are in law firms. In the federal judiciary, 11% of the U.S. Federal District Court judges are African American and 20% are counted as being diverse.³² In the U.S. Court of Appeals, 9% of the judges are African American and 17% are counted as being diverse.³³ Even the U.S. Supreme Court has greater gender and racial diversity than the partnerships of large law firms.³⁴

And let us not forget career opportunities offered by minority- and women-owned law firms.

There were very few minority- and women-owned law firms 30 years ago. The general assumption was that the lawyers who formed the firms ‘couldn’t make it in big law’. The change since then is enormous, with the proliferation of large numbers of boutique law firms – some now quite large – and highly specialized and highly regarded. The vanguard of this movement has been women and minority partners departing large law firms – those whom the law firms did not want to lose. It must be a good working model, as we now see white male partners leaving large law firms to form boutique firms. Lawyers follow the money.

If the numbers of women and minority partners in large law firms are mostly static, given increasing corporate use of minority-owned law firms for ever-increasing law matters – we note that Walmart recently retained a minority-owned litigation firm to handle a class action – should we be looking at where the money is going? If more money is directed by corporations to women and minority

32. Minority Corporate Counsel Association, MCCA/Tracking the Integration of the Federal Judiciary – Information through July 31, 2015, accessed May 9, 2016, <http://mcca.com/index.cfm?fuseaction=Page.ViewPage&pageId=2540>.

33. *Id.*

34. At the time of this writing, three of the eight justices are women; one of eight is African American and one of eight is Hispanic. Even were the Court to have its full complement of nine justices, the diversity percentages for women, African Americans and Hispanics would still exceed that of large law firm partnerships.

attorneys than ever before, but just not via the same firms, might that not attract the notice of large law firms? This is not to say that large law firms should not be forced to change, but it may be important to understand that women and minority partners (and associates) are leaving for reasons other than not being partner or getting credit, e.g., better lifestyles, better work, and better work environments.

And, it is not uncommon to hear leaders from large law firms to bemoan the corporate clients who demand greater diversity from these firms only to turn around and hire the most promising minority associates and partners away from these firms. Certainly, corporate clients are wise enough to hire exceptional talent when that talent is dangled before them but large law firms need to recognize that the competition for these lawyers is not limited to corporate clients but also includes minority- and women-owned law firms who can select the best and brightest minority and women attorneys and hire them for less money by offering better training, more responsibility, and more family friendly workplaces. And who can blame these minority- and women-owned law firms if they market their pool of large law firm-trained lawyers who are prepared to continue to handle the same types of matters they previously handled at significantly higher billing rates?

These are all excellent career alternatives to large law firm practice. While these careers may be less highly-compensated or may lack the day to day autonomy, support services and resources, and other benefits associated with being a large law firm partner, in the eyes of diverse partners, these may be acceptable trade-offs to escape the daily instances of bias, micro-inequities and micro-aggressions, and an infrastructure designed to make it harder for them to experience the same levels of success as their peers.



Lawyers can change the world

I met Roza when she received a California Bar Foundation scholarship. After immigrating to the US, Roza worked hard to make it to law school. She never gave up.

That's why I'm proud to call her a California Bar Foundation Scholar.

-Eric Casher
VP California Bar Foundation

For all Californians
California Bar Foundation
calbarfoundation.org | @CABarFoundation

But now these regulators, prosecutors, judges, decision-makers and the like can be expected to have implicit biases that are not the implicit biases of Caucasian males. Rather, they might be expected to have the implicit biases of lawyers whose experiences and attitudes are likely to be significantly different from Caucasian males.

What the Absence of Diverse Partners in Large Law Firms Heralds for Those Firms and Their Corporate Clients

For a number of years now, implicit bias has been the hot topic in diversity and inclusion. And, as mentioned earlier, there is an abundant pool of research about implicit bias within the legal profession. Law firms, corporations and bar associations have all been presenting programs on implicit bias to their lawyers. By now, most lawyers have heard of, even if they are not completely familiar with, Harvard University's Implicit Association Test. UCLA law professor and now Vice Chancellor for Equity, Diversity and Inclusion Jerry Kang has become the legal profession's version of a rock star as he has translated scholarly research about implicit bias into practical implications for lawyers, examining among other things how implicit bias impacts perceptions about who should be litigators.³⁵ So implicit bias exists. And, as everyone is quick to point out, we all have those biases. All.

Now let's go back to what we noted earlier about where so many diverse partners who depart large law firms end up: government agencies, the judiciary, other firms and clients. They arrive in these new positions with their own implicit or unconscious biases, because we all have such biases. But now these regulators, prosecutors, judges, decision-makers and the like can be expected to have implicit biases that are not the implicit biases of Caucasian males. Rather, they might be expected to have the implicit biases of lawyers whose experiences and attitudes are likely to be significantly different from Caucasian males. Mind you, we are talking about implicit or unconscious bias, and not overt bias. Will these different implicit biases be neutral to predominantly Caucasian male law firms and their clients?

Conclusion

Some positive steps are being taken. We take encouragement from programs such as the Inclusion Initiative, CMCP and TMCP, the NAWL Challenge Club, and others that seek to address head on the root causes for the declining numbers of diverse partners. Yet so much more needs to be done. That "more" – things that can and should be done – is detailed in "Competing Interests III: Taking Action to Make Diversity & Inclusion a Reality."

35. Jerry Kang, *Implicit Bias: A Primer for Courts*, prepared for the National Campaign to Ensure Racial and Ethnic Fairness of America's State Courts (August 2009), accessed May 9, 2016, http://www.americanbar.org/content/dam/aba/migrated/sections/criminaljustice/PublicDocuments/unit_3_kang.authcheckdam.pdf

About IILP

The Institute for Inclusion in the Legal Profession (“IILP”) is a 501 (c) (3) organization that believes that the legal profession must be diverse and inclusive. Through its programs, projects, research, and collaborations, it seeks real change, now, and offers a new model of inclusion to achieve it. IILP asks the hard questions, gets the data, talks about what is really on people’s minds, no matter how sensitive, and invents and tests methodologies that will lead to change. For more information about IILP, visit www.TheIILP.com.

About “Competing Interests”

Each year, IILP presents Symposia on the State of Diversity and Inclusion in the Legal Profession around the US, based in large part on our *Review* of the State of Diversity and Inclusion in the Legal Profession. These symposia have given us a unique opportunity to observe geographic differences in attitudes toward and perspectives on diversity and inclusion within the legal profession. As a result, we’ve seen firsthand that where one stands has profound impact upon one’s perspective. The *Review* and Symposia are different from traditional diversity and inclusion publications and programs in that they bring together a cross-section of diversity issues which allows us to challenge preconceived notions about diversity and to offer an examination of intersectionality and diversity within diversity and inclusion.

Adding yet another dimension to our thought processes was our joint program with the Chicago Bar Association, “Diversity, Equality and Inclusion in a Global Legal Profession” which we presented in Lausanne, Switzerland in March, 2016. To the best of our knowledge, this was the first conference devoted to discussing diversity, equality and inclusion in the profession to be held outside the U.S. or the U.K. There, we found ourselves engrossed in conversations among our American and European participants that when synthesized resulted in a basic question: Given competing demands, declining resources, institutional barriers, implicit biases, and outright prejudices, are we as diverse a profession as we can ever hope to be? If the answer is, “no,” then can anything still be done? If so, what? When? And by whom? The discussions were thought-provoking to say the least.

Publications like the *IILP Review* and programs like the symposia and the Switzerland conference afford IILP a non-traditional perspective because we do not look at or think about diversity and inclusion issues from only one vantage point. We consider race and ethnicity, gender, disability and LGBT status as well as generational, religious, and geographic concerns. This creates unique opportunities and perspectives from which to examine and think about diversity and inclusion. The three “Competing Interests” papers are an example of that.

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E. Macey Russell

E. Macey Russell is a partner at Choate Hall & Stewart LLP, where he practices in the area of complex commercial litigation and is listed in Best Lawyers in America. He is a member of the firm's Hiring and Diversity Committees. Russell is a member of the Trial Lawyer Honorary Society of the Litigation Counsel of America and The Fellows of the American Bar Foundation. He serves on the Boston Lawyers Group's executive committee. Advisory Board of the Institute for Inclusion in the Legal Profession. He is a nationally recognized speaker on diversity and inclusion in corporate law firms. From 2011 until 2014, Russell served as chair of the Massachusetts Judicial Nominating Commission. His honors and awards include: the 2011 Burton Award for Exceptional Legal Writing from The Burton Foundation and the Library of Congress for his co-authored article "Developing Great Minority Lawyers for the Next Generation." In 2009, he was named "Diversity Hero" by Massachusetts Lawyers Weekly. Before joining the Board, he served on the dean's advisory committee for Suffolk University Law School. Russell received a JD from Suffolk University Law School in 1983 and a BA from Trinity College.



Marci Rubin

Marci Rubin has a long history of diversity advocacy within and outside the legal profession. From December 2009 through July 2015, she served as Executive Director of the California Minority Counsel Program. In 2013, Marci was named one of the National Diversity Council's Most Powerful & Influential Women in California.

Prior to joining CMCP, Marci was Deputy General Counsel at Wells Fargo where she practiced law for 29 years & managed the company's commercial credit legal work. While at Wells, Marci served on the CMCP Steering Committee from 1998-2005, & 2 terms on the California State Bar, Business Law Section UCC Committee. She has been, and continues to be, an active speaker for a wide variety of organizations on diversity, inclusion & women's issues in the legal profession.

Marci currently is on the California Bar Foundation Board of Directors, The Institute for Inclusion in the Legal Profession Advisory Committee, and the Beyond Law Advisory Board. She is a past Board member & Board Chair, and current Emeritus Director, of Equal Rights Advocates, Inc. fighting for economic equality & justice for women & girls, and the Freight & Salvage traditional music venue in Berkeley.



David Douglass

David Douglass is a partner in Sheppard Mullin Richter & Hampton's Washington, D.C. office. He is an experienced trial attorney who has won trials as a prosecutor, plaintiff, and defense counsel. David has represented numerous companies and individuals in criminal and civil, investigations and litigation. A large portion of David's practice consists of representing companies and individuals in criminal and civil fraud investigations and litigation, including False Claims Act litigation.

A distinguishing feature of his practice has been working on behalf of the government, as well as private companies. In 2013, David was appointed by the U.S. District Court for the Eastern District of Louisiana as the deputy federal monitor over the New Orleans Police Department. David has also led two high-profile government investigations. In 1994, he served as executive director of the White House Security Review, which resulted in the closing of Pennsylvania Avenue in front of the White House. In 1993 he served as assistant director of the Treasury Department's investigation of the raid on the David Koresh compound in Waco, Texas.

David earned his J.D. from Harvard Law School, 1985, cum laude and his B.A. from Yale University, 1981. He is admitted in the District of Columbia, the Commonwealth of Massachusetts and the U.S. Court of Federal Claims.



Martin Greene

Martin Greene has represented many private and public corporations in a variety of matters including: employment law, civil rights, municipal law, commercial and contract litigation, construction litigation and contract negotiations. He has extensive experience trying federal cases, especially employment discrimination cases. Martin served as a member of the presidential transition team for President-Elect Ronald Reagan and on the transition team for Chicago Mayor-Elect Harold Washington. Included among the awards he has received are: 2016 NAMWOLF Yolanda Coly Advocacy Award, 2015 Leading Lawyer - Leading Lawyers Magazine, Saint Ignatius College Prep Alumni Award for Excellence in the Field of Law 2014, Listed in the 2006 inaugural edition of Who's Who in Black Chicago, and Recipient of the Rainbow/PUSH Coalition Scales of Justice Award, 2001



Sandra S. Yamate

Sandra S. Yamate is the CEO of the Institute for Inclusion in the Legal Profession. Previously, she spent ten years as the Director of the American Bar Association's Commission on Racial and Ethnic Diversity in the Profession. She was the first Executive Director of the Chicago Committee on Minorities in Large Law Firms. Prior to that, Sandra was a litigator in Chicago for ten years.

Outside the legal profession, Sandra is best known for her interest in multicultural children's literature. She and her husband are the founders of Polychrome Publishing Corporation, the only company in the country dedicated to producing children's books by and about Asian Americans. Sandra authored Polychrome's first two books, *Char Siu Bao Boy* and *Ashok By Any Other Name*. Polychrome books have been described as exemplary examples of anti-bias children's literature by *Teaching Tolerance Magazine*, a publication of the Southern Poverty Law Institute, and are included in the Anti-Defamation League's World of Difference Program bibliography of recommended children's books.

Sandra was a founding member of the Asian American Bar Association of the Greater Chicago Area and the National Asian Pacific American Bar Association, where she served as the first Central Region Governor. She is a former president of the Japanese American Service Committee, the oldest Asian American social service agency in the Midwest and the Harvard Law Society of Illinois. She is a former member of the boards of the Japanese American Citizens League, the Asian American Institute, the National Women's Political Caucus of Metropolitan Chicago, the Girl Scouts of Chicago, Friends of the Chicago Public Library, the Asian Pacific American Women's Leadership Institute, and Asian Americans for Inclusive Education. Sandra is a member of the Board of Trustees of The National Judicial College, an organization that offers courses to improve judicial productivity, challenge current perceptions of justice and inspire judges to achieve judicial excellence. She has written and spoken extensively on diversity in the legal profession and on multicultural children's literature.

Sandra earned her AB in Political Science (cum laude) and History (magna cum laude) from the University of Illinois at Urbana Champaign where she was elected to Phi Beta Kappa. She received her JD from Harvard Law School.

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