

OPINION

■ LAW FIRM DIVERSITY

What the study didn't say

By R. Bruce McLean SPECIAL TO THE NATIONAL LAW JOURNAL

The subject of law firm diversity touches on one of the rawest nerves of leaders of large law firms and others in the U.S. legal industry. There is perhaps no other topic that can match the level of intensity with which it is discussed, debated and, in some circles, bemoaned. Research by University of California at Los Angeles Law Professor Richard H. Sander examining the diversity efforts of firms with more than 100 lawyers ("The Racial Paradox of the Corporate Law Firm," *N.C. L. Rev.* May 2006), which was featured in a provocatively titled *Legal Times* piece (Stuart Taylor Jr., "Doomed to Fail?," June 19, 2006), is the latest catalyst to reignite the debate.

Sander argues that by lowering the grade requirements for black and Hispanic law students, large law firms end up hiring unqualified minority lawyers and then quickly discarding them when they cannot perform. According to Sander, firms are abandoning their tradition of hiring only the top students from elite law schools in favor of ushering in more ethnically diverse classes of young lawyers. The result of these very large hiring preferences is a marginalized group of dissatisfied and unsuccessful non-white attorneys leaving big law firms in droves.

Like many others, I take issue with the sweeping conclusions and hurried recommendations that Sander offers at the end of his detailed data analysis. Ironically, Sander's critique of firms' diversity efforts as being uniformly harmful and self-defeating is also counterproductive and ineffective. To say—as Sander does—that diversity initiatives have been a failure is simply not true. While we are not where we need to be, lawyers, law firms and their clients have unquestionably benefited from firms' diversity efforts; the success of many attorneys of color in law firms cannot be so easily brushed aside. Nonetheless, the study serves as a call to action for large firms: It is time to reflect on the progress made in our minority attorney recruiting and socialization efforts, and to

examine where we can continue to improve.

According to Sander's study, nearly 20% of law firms' incoming first-year associate classes are minorities who have been recruited using significant hiring preferences and have been set up to fail. This implies that every year, firms knowingly engage in a thoughtless, expensive and time-consuming numbers game that pays no mind to the ultimate success or failure of 20% of its incoming talent.

Hiring lawyers who can succeed at a firm—regardless of their skin color or gender—is not only more complex than a simple grade-point average (GPA) bell-curve analysis, it is an endeavor that requires a large commitment of time and resources. The costs associated with recruiting and training a first-year associate are roughly twice his or her annual salary, which is six figures for large corporate law firms. Akin Gump Strauss Hauer & Feld is just one example of a large corporate firm that considers grades in conjunction with other indicators of success. The overall academic performance of our lawyers is strong; however, we do not use GPA as the sole benchmark for hiring new associates. We hire individuals who we believe have shown that they possess the desired characteristics and skill sets necessary for success at the firm.

Sander is correct when he notes that the attrition rate of mid-level women and minority attorneys at big law firms is an issue. But frankly, he does not delve deeply enough into the subject to form a rational argument as to why this is the case and what firms can do about it. It is hard to believe that attrition is solely a diversity issue when turnover rates have reached epidemic proportions, regardless of race, gender or experience.

Signs of progress

Although more improvements are needed, it is worth acknowledging that firms are making

progress in this area. *The Minority Law Journal's* 2006 Diversity Scorecard found that 11.4% of lawyers at the 240 law firms that completed the survey belonged to an ethnic minority, up slightly from 10.4% in 2005. Further, a Minority Corporate Counsel Association and Altman Weil Inc. survey of the 200 highest-earning law firms found that 93% of responding firms had a diversity committee, and nearly half had a diversity manager. Six large law firms made *Fortune's* 2006 "Best Places to Work" list, up from two in 2005. Some quick research reveals that at least 10% of attorneys at the six firms are minorities; roughly 30%, at minimum, of the attorneys at these firms are women. And while Sander's research shows that less than 4% of partners are minorities, there are still more minority partners today in large law firms than ever before, in both absolute and percentage terms.

Without question, racial diversity throughout all levels of a law firm is a good thing for everyone. Despite Sander's negative prognosis, we can see that there are a few signs that progress has been made, and is continuing, with regard to diversity at all levels in large corporate law firms. Firms are recognizing that diverse client teams ultimately provide better service. Clients know this too, and select their outside counsel accordingly. Most, if not all, leaders of major firms agree that striving for a diverse mix of associates and partners integrated into the firm is more than just the right thing to do; it's good business. **NLJ**

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