

The Shortage of Minority Partners in Law Firms: Economics Will Shatter a Weakening Glass Ceiling

Olivia Bullard
Jorge Espinosa
Geoffrey Ling
Jennifer Wang

I. Introduction

In 2005, the United States Census reported that the three largest minority groups, African-Americans, Asians, and Hispanics, cumulatively comprised 31.5% of the population in the United States.¹ In the same year, a study commissioned by the National Association for Legal Career Professionals revealed that minorities accounted for barely 5% of all partners in law firms.² This essay will examine the theories and reasons behind the dearth of minority partners and then proceed to make recommendations on how to increase diversity within the partner population.

II. Theories Explaining the Scarcity of Minority Partners in Law Firms

A. A Numbers Game

One theory posits that the lack of minority partners stems from the small pool of potential minorities upon which law firms can draw. Three main foundations underpin this theory. First, as a percentage, fewer minorities apply to and attend law school when compared to the general minority population. Second, minorities struggle with passing the bar. Third, minorities fall short in being hired as associates in law firms in relation to the percentage of minorities graduating from law school. Collectively, these three reasons

¹ U.S. Census Bureau, <http://quickfacts.census.gov/qfd/states/00000.html> (last visited April 7, 2007).

² Partnership at Law Firms Elusive for Minority Women — Overall, Women and Minorities Continue to Make Small Gains by Judith Collins, <http://www.nalp.org/press/details.php?id=64> (last visited April 7, 2007).

would significantly reduce the likelihood of minorities becoming partners. The ensuing paragraphs will examine each reason in turn.

While the minority population in the United States grew from 25% in 1980 to nearly 33% in 2005, the percentage of minorities attending law school hovered between 19% and 21% between 2000 and 2005.³ The explanations for this divergence can be traced to two main factors. First, a prerequisite to attending law school is an undergraduate degree, and minorities tend to graduate from undergraduate institutions at a lower percentage in comparison to their Caucasian counterparts. While Black and Hispanic students graduated from a four year institution at a rate of 51.3% and 53.9% respectively, Caucasian students graduated at a 68.1% rate.⁴ Although 71.3% of Asian students graduated from college, the lower total numbers of Asian students minimizes any numerical gains made by minorities.⁵ Second, scoring well on the Law School Admissions Test (“LSAT”) is another prerequisite to attending law school and minority students tend to score lower in comparison to Caucasian students. Asian, Black, and Hispanic students scored a mean of 152.02, 142.53 and 146.52 on the LSAT respectively while Caucasian students scored a mean of 152.47.⁶ The combination of fewer college graduates and lower test scores creates a negative synergy resulting in a decreased numbers of minority law school applicants and attendees, as demonstrated in the chart

³ ABA Presidential Advisory Council on Diversity in the Profession, The Critical Need to Further Diversity the Legal Academy and the Legal Profession, <http://www.abanet.org/op/pipelineconf/acdreport.pdf> (last visited April 8, 2007).

⁴ Digest of Education Statistics: 2005, http://nces.ed.gov/programs/digest/d05/tables/dt05_310.asp (last visited April 8, 2007).

⁵ Digest of Education Statistics: 2005, http://nces.ed.gov/programs/digest/d05/tables/dt05_310.asp (last visited April 8, 2007).

⁶ Susan P. Dalessandro, Lisa A. Stilwell, Lynda M. Reese: LSAT Performance with Regional, Gender, and Racial/Ethnic Breakdowns: 1997-1998 Through 2003-2004 Testing Years, <http://www.lsacnet.org/Research/LSAT-Performance-with-Regional-Gender-and-Racial-Ethnic-Breakdowns-1997%961998-Through-2003%962004-Testing-Years.pdf> (last visited April 8, 2007).

detailing statistics for the 2006 Fall academic year. Interestingly, the attrition rates for all races remained constant at approximately 18%.⁷

Fall, 2006	Asian	% of total	African-American	% of total	Hispanic	% of total	Caucasian	% of total	Total
Law School Applicants	7,220	8%	9,340	11%	5,770	7%	58,070	65%	88,700
Applicants Accepted	4,560	8%	3,920	7%	3,200	6%	39,850	71%	56,000
Law School Graduates	3,680	8%	3,300	7%	2,710	6%	32,780	71%	46,100

8

However, graduating from law school is only a preliminary obstacle to becoming a minority partner.

Following matriculation, law school graduates must next pass the bar exam. Although all students presumably receive the same legal education, there is a wide disparity in bar examination passage rates between different races. In California's July 2006 bar examination, Asians, African-Americans, and Hispanics passed at a far lower rate than Caucasians.⁹

⁷ Susan P. Dalessandro, Lisa A. Stilwell, Lynda M. Reese: LSAT Performance with Regional, Gender, and Racial/Ethnic Breakdowns: 1997-1998 Through 2003-2004 Testing Years, <http://www.lsacnet.org/Research/LSAT-Performance-with-Regional-Gender-and-Racial-Ethnic-Breakdowns-1997%961998-Through-2003%962004-Testing-Years.pdf> (last visited April 8, 2007).

⁸ Data Volume Summary by Ethnic & Gender Group, <http://members.lsacnet.org/> (last visited April 8, 2007).

⁹ General Statistics Report July 2006 California Bar Examination Overall Statistics, <http://www.calbar.ca.gov/calbar/pdfs/admissions/Statistics/JULY2006STATS.pdf> (last visited April 8, 2007).

July, 2006	Asian	African-American	Hispanic	Caucasian
Pass Rate	65.1%	45.1%	52.2%	73.6%
Total Passers	631	114	252	2,824
% of total passers	15.67%	2.83%	6.25%	70.12%
Repeater Pass Rate	16.7%	6.1%	11.4%	18.3%

10

Thus, minorities' low bar passage rate further reduces the already small pool of potential minority partners. Although national pass rates are higher for all races, Caucasians still successfully pass the bar in greater percentages than minorities.¹¹ Lastly, though one may argue that all test takers can re-take the bar examination, the statistics for those who pass after repeating the bar exam further reduces the overall percentage of minority attorneys. The ultimate result is that as of 2005, only 10.2% of the nation's 1 million attorneys are of Asian, African-American, or Hispanic descent.¹²

One of the final impediments to making partner is being hired as an associate at a law firm. By 2006, minorities made progress by accounting for 16.72% of all associates hired, an increase from 13.7% in 2001.¹³ Nevertheless, minority partners made up only

¹⁰ General Statistics Report July 2006 California Bar Examination Overall Statistics, <http://www.calbar.ca.gov/calbar/pdfs/admissions/Statistics/JULY2006STATS.pdf> (last visited April 8, 2007).

¹¹ ABA Presidential Advisory Council on Diversity in the Profession, The Critical Need to Further Diversity the Legal Academy and the Legal Profession, <http://www.abanet.org/op/pipelineconf/acdreport.pdf> (last visited April 13, 2007).

¹² Goal IX Report – 2006-2007: The Status of Racial and Ethnic Diversity in the American Bar Association, <http://www.abanet.org/minorities/publications/g9/0607goalreport.pdf> (last visited April 13, 2007).

¹³ Partnership at Law Firms Elusive for Minority Women — Overall, Women and Minorities Continue to Make Small Gains by Judith Collins, <http://www.nalp.org/press/details.php?id=64> (last visited April 13, 2007).

5.1% of all partners.¹⁴ This discrepancy between the increasing number of associates and the stagnant number of minority partners makes clear that other than the relatively small base upon which to draw partners from and the difficulty in meeting the prerequisites to becoming a partner, additional reasons exist for the lack of minority partners. One potential reason for the lack of minority partners may be personal bias and stereotyping.

B. Personal Bias and Stereotyping

Many commentators believe that personal bias and stereotyping are leading contributors to the lack of minority partners, an obvious allegation to make when 95% of all partners are Caucasian.¹⁵ Whether or not this claim is true, what is evident is that the partnership process is vulnerable to personal bias and stereotyping.

The partnership track in most law firms involves an associate billing a predetermined amount of hours, generating business, and successfully being voted in as a partner of the law firm after a period varying between five and seven years. Given the growing number of minority associates and the stagnant number of minority partners, there are two primary hypotheses regarding how personal bias and indirect stereotyping may factor into why minorities are unable to achieve partner status. First, associates are dependent on partners training associates on the practice of law, assigning associates work, and providing associates with client development opportunities.¹⁶ Given the limited partner landscape and people's tendency to "prefer to work with, and to be able to see the value in, people who remind them of themselves," personal bias and stereotypes

¹⁴ Partnership at Law Firms Elusive for Minority Women — Overall, Women and Minorities Continue to Make Small Gains by Judith Collins, <http://www.nalp.org/press/details.php?id=64> (last visited April 13, 2007).

¹⁵ Partnership at Law Firms Elusive for Minority Women — Overall, Women and Minorities Continue to Make Small Gains by Judith Collins, <http://www.nalp.org/press/details.php?id=64> (last visited April 13, 2007).

¹⁶ David B. Wilkins, *Five Reasons Why Law Firms are not Making Progress on Diversity*, 13 CBA Record 20, 20 (1999).

may be a factor in contributing to the lack of minority partners.¹⁷ Second, even if minority associates successfully work at least five years at a law firm, depending on the particular law firm, associates must still receive at least a majority approval of the firm's partners in order to become a partner. Many firms require at least two thirds or an even higher percentage of partner approval to being admitted as a partner. Zi Wong¹⁸, a partner at Knobbe, Martens, Olson, and Bear LLP, explained that his firm requires unanimous approval for admission as a partner. Wong further relayed that on at least two occasions, associates were denied partnership based on a single vote of one of the 96 partners at the firm. Thus, even if an associate maintains a positive working relationship with most partners, a single partner can exert a powerful influence in determining whether or not an associate becomes a partner. Nevertheless, despite claims that bias and stereotyping are primarily responsible for the status of minority partners today; the fact that minority associates are hired into firms at increasing percentages leads one to conclude that there are other more influential reasons for why minorities rarely become partner.

C. Lack of Role Models/Mentors

Ambitious minority attorneys aspiring to move up the law firm ranks are often handicapped by an unfortunate lack of role models and mentors among their more senior colleagues. As the statistics illustrate, law firms generally have not done a good job in “retaining and promoting minority attorneys,” that is to say, the successes in hiring minority associates have not been matched by promoting a significant number of those

¹⁷ *Id.*

¹⁸ Telephone Interview with Zi Wong, partner, Knobbe, Martens, Olson, and Bear LLP (April 6, 2007).

associates to partners.¹⁹ This glaring disparity in numbers creates a perilous situation for junior attorneys of color because (1) “[s]tudies of cross-racial...mentoring relationships in the workplace repeatedly demonstrate that white men feel more comfortable in working relationships with other white men.”²⁰ and because (2) “[i]n order for any lawyer to win the modern tournament of lawyers, he or she must develop relationships with partners who will give the associate meaningful work, training, and career support,”²¹ Thus, “[i]n a world in which 97% of all partners are white and partners have considerable discretion to choose with whom they will work,”²² it is unsurprising that “many minority associates face social and professional isolation in law firms nationwide [and] have difficulty gaining access to influential mentors and quality work assignments,” according to the American Bar Association.”²³

Many attorneys of color agree that they face a difficult climb to the top of the law firm hierarchy. For example, Angel G. Gomez, a former president of the Hispanic National Bar Association commented that the best work “is given to those people whom the partner likes most,” often to the detriment of minority attorneys trying to build a successful career.²⁴ An unnamed African-American female associate conceded that all lawyers entering firms exhibit a “degree of dissatisfaction” over their prospects for career advancement in law firms, regardless of ethnic background. However, she went on to say that, “[a]s a black female associate, I’m less willing to ride it out because I don’t feel

¹⁹ THE BAR ASSOCIATION OF SAN FRANCISCO, DIVERSITY: GOALS AND TIMETABLES FOR MINORITY HIRING AND ADVANCEMENT, iii (November 2005), available at http://www.sfbar.org/forms/announcements/diversity_report_2005.pdf.

²⁰ David B. Wilkins, *Legal Ethics: Partners Without Power? A Preliminary Look at Black Partners in Corporate Law Firms*, 2 J. INST. STUD. LEG. ETH. 15, 7 (1999).

²¹ *Id.*

²² Wilkins, *supra* note 16.

²³ THE BAR ASSOCIATION OF SAN FRANCISCO, *supra* note 19 at 19.

²⁴ Jonathan D. Glater, *Law Firms Are Slow in Promoting Minority Lawyers to Partnerships*, N.Y. TIMES, August 7, 2001, at A1.

confident that there's a light at the end of the tunnel," namely a partnership.²⁵ Another African-American attorney who left his firm bluntly stated that "senior members of [his] law firm [felt] more comfortable mentoring white men."²⁶

Why do relatively few attorneys of color rise to become partners?

According to a recent study by the National Association for Law Placement, minority lawyers leave their firms earlier than their white peers. Whereas 9.2% of all associates leave during their first year, the attrition rate for minority men and women during that same period is 11.5% and 12.1% respectively. By year four, when lawyers typically begin to assume senior associate duties, fully 66.5% of minority men and 66% of minority women have left as compared with 55.6% of associates as a whole.²⁷

The numbers illustrate that relatively few attorneys of color remain at firms for long enough periods of time in order to be deemed sufficiently experienced and acclimated by his or her superiors for a promotion to partner. The phenomenon has been called a "continuing revolving door;" where a "number of minority associates comes [in], and they're gone four years later, with the net result being a continually small number of minority senior associates and an even smaller number of minority partners."²⁸ Many minority junior associates decide to leave the firm earlier instead of later because there are no senior minority mentors to provide them with guidance.²⁹ In turn, "partners are less likely to mentor junior associates who[m] they suspect will not be with the firm long enough to become productive senior associates, thereby encouraging minority junior associates to invest in an exit strategy rather than in succeeding at the firm."³⁰ This frustrating dynamic is catastrophic to the career advancement prospects of a junior

²⁵ *Id.*

²⁶ Harvey Rice, *Racial Gaps Common at Top Firms; Black Lawyer's Suit Claims Promotion Bias*, HOUSTON CHRON., July 30, 2003, at A19.

²⁷ Wilkins, *supra* note 16 at 21.

²⁸ Glater, *supra* note 24.

²⁹ Wilkins, *supra* note 16 at 21.

³⁰ *Id.*

attorney of color just entering the law firm work environment and seeking a mentor relationship to jump-start his or her career. Faced with slim chances for advancement within the firm, young attorneys of color predictably follow in the footsteps of other minority lawyers and find employment in business, consulting firms, accounting firms, government law jobs, or corporate legal departments where better opportunities for success are available.³¹

D. Lack of Business Contacts

A significant reason that firms are reluctant to promote minority associates to partnership is that “minority lawyers are less likely to have relationships with important clients or to have landed a significant amount of business for the firm.”³² This is an issue for all attorneys of color, but the African-American experience is illustrative:

...for black partners the problem with generating new business is that: We don't sit in the corporate boardrooms, and our mothers and fathers don't sit in the corporate boardrooms. We're not members of the \$ 40,000-a-head country club and neither are our mothers and our fathers. We're just not naturally networked - because of the history of our country, quite frankly - into the kinds of business opportunities or avenues that our white counterparts are networked into. To be sure, there are many white partners whose mothers and fathers don't sit on corporate boards either...Nevertheless, it remains true that blacks are less likely than whites to have the kind of contacts from which important business relationships are developed.³³

Not only are minority attorneys less likely to already possess business contacts going into the firm, they are also disadvantaged when building a roster of clients once they get there. In his study of the experience of African-American lawyers in corporate law firms, Harvard law professor David B. Wilkins points out that “[l]aw firms distribute partner work for existing clients in three ways: inheritance, referrals, and cross marketing.”³⁴

³¹ Glater, *supra* note 24.

³² *Id.*

³³ Wilkins, *supra* note 16, at 8.

³⁴ *Id.* at 11.

First, African-American partners are less likely to inherit business contacts from more senior peers because they are perceived to be isolated within the firm and hence powerless in protecting these interests from other attorneys in the firm who are aggressively trying to build their own stable of clients. Second, African-American partners are less likely to be referred by their colleagues because they are isolated and lack the rich network of relationships within the firm that often generates “significant referral business.”³⁵ Third, African-American lawyers often lose out in the firm’s cross-marketing efforts, that is, when the firm proactively goes out and seeks new business. Once work is secured, the firm will usually neglect assigning African-American attorneys to the work.³⁶ Although Wilkins points out that “Black partners appear to face significant obstacles in each of these arenas,” it is arguable that all minorities in the law firm context encounter the same or similar difficulties.

III. Recommendations to Increase Partner Diversity in Law Firms

A. Promote Diversity Awareness

To optimize the career prospects of attorneys of color, comprehensive diversity training should be implemented firm-wide. Firms which adopt diversity training “for the support staff as well as attorneys at all levels” are more successful at retaining minority attorneys.³⁷ For large firms, increased retention of minority attorneys goes hand in hand with boosting the firm’s profitability because important corporate clients are increasingly demanding more diverse legal teams in exchange for their business. With these interrelated benefits in mind, law firms can no longer risk merely implementing

³⁵ *Id.* at 12.

³⁶ *Id.* at 12-13.

³⁷ THE BAR ASSOCIATION OF SAN FRANCISCO, *supra* note 19 at 21.

lackluster diversity training characterized by a lack of participation by leaders in the firm, irregular meetings, and an unclear mission beyond diversity recruitment.”³⁸

To be sure, firm-wide diversity training is not an idle exercise in political correctness. It is vital because it helps rid subconscious bias against minorities, which is the underlying cause of much of the dissatisfaction among attorneys of color. A recent report indicates:

Minority partners and associates believed that stereotypic assessments of the abilities of minority attorneys went unchecked in the absence of diversity training. According to a minority partner at his firm, “White associates ‘get the halo’ and get mentored. Minority associates generally do not because of deeply entrenched assumptions that minorities are not up to the work.”³⁹

Thus, one can argue that diversity training leads to more cross-racial mentoring relationships and has a positive consequence on minority attorney retention.

Simply having a diversity training program is not enough. It is imperative for management to clearly communicate its diversity efforts to minority attorneys. Without active, regular, and consistent promotion of what the firm is doing in diversity matters, the firm risks creating an impression that they do not care about attorneys of color.⁴⁰ But, “if the minority associates at the firm know what the firm is doing to enhance diversity, they will feel that they are at a firm that values diversity and them.”⁴¹

In its study of diversity efforts among legal employers, the Bar Association of San Francisco recommends that firms should “[i]nclude diversity activities, notably retention and recruitment activities, as part of the formal annual review process.”⁴² Activities can include “informational interviews for minority candidates, speaking to minority student

³⁸ *Id.* at 22.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.* at 31

associations, attending minority law student job fairs, membership in minority-focused conferences, bar associations, and dinners, and so on.”⁴³ Pairing each attorney’s personal career advancement in the firm with his or her individual efforts at promoting diversity seems a surefire method.

Finally, and perhaps more importantly to firms ever conscious of the bottom line, increasing diversity awareness through firm-wide training is crucial because it ultimately affects the organization’s profitability. These days, corporate clients are demanding more and more that their legal work be done by a diverse team of lawyers. This is because many companies are trying to “present a face that reflects the diversity of their customers” and “are keen not to have their lawyers undermine that public image.”⁴⁴ For example, the general counsel at Sara Lee, has pledged along with other large companies such as Boeing, American Airlines, and General Motors to “end or limit our relationships with firms whose performance consistently evidences a lack of meaningful interest in being diverse.”⁴⁵ DuPont also “requires law firms that work for it to complete an annual survey showing how diverse they are and whether they are successful in becoming more so.”⁴⁶ In the past, law firms could get away with having a token minority attorney on a team servicing a corporate client. But now, law firms are beginning to understand that “[i]f you don’t have a meaningful role for every attorney, you are doing yourself a disservice. Clients are off put by that. They see through it so quickly.”⁴⁷

⁴³ *Id.*

⁴⁴ Karen Donovan, *Pushed by Clients, Law Firms Step Up Diversity Efforts*, N.Y. TIMES, July 21, 2006, at C6.

⁴⁵ *Id.*

⁴⁶ Glater, *supra* note 24.

⁴⁷ Donovan, *supra* note 44.

Promoting diversity awareness can thus be beneficial on two levels. First, by enhancing possibilities for career advancement within the firm, more minority attorneys will choose to remain at a firm. Second, by retaining more minority attorneys, a law firm can better adapt to the demands of its corporate clientele and increase profitability.

B. Increase the Law Community's Involvement in the Education Process

In order to increase diversity in law firms, and in the overall legal profession, law schools and law firms should become more involved in the pre-law school educational process. Dean Elizabeth Rindskopf Parker of McGeorge School of Law argues that the lack of diversity in law firms and in the overall legal profession can be attributed to various factors that come into play along an individual's pre-law school education.⁴⁸ These include ignorance of the possibilities of what a legal career can offer to minority groups and the low aspiration to the legal profession that results from this lack of knowledge, inadequate preparation in high school and college for a legal profession, poor performance in law school, and low minority bar passage rates.⁴⁹ Although local bar associations have been active in reaching out to college and high school students about the possibilities of a legal education, their efforts oftentimes lack a systematic approach and fail to create awareness over a sustained period of time, leading to small bursts of interest that diminish over time.⁵⁰ Law schools, on the other hand, have very little interaction with high schools and colleges since they have "traditionally seemed too remote of a concern for a law school's attention."⁵¹ As a result, law schools depend on

⁴⁸ Elizabeth Rindskopf Parker, *Increasing Diversity in the Legal Profession: A Model for Collaboration with Schools of Law, Education, Liberal Arts and High Schools and Bench, Bar and Corporate Counsel*, ABA / LSAC Pipeline Diversity Conference (2005), available at <http://www.abanet.org/op/pipelineconf/papers/parker.doc>

⁴⁹ *Id.*

⁵⁰ *Id.* at 3.

⁵¹ *Id.*

high school and college level institutions to prepare minorities for a potential legal career, and given the dismal figures of minority passage rates, law schools are not going to be able to recruit from a diverse body of potential students. For example, a study conducted by the California Research Bureau found that 22 percent of Latino and 25 percent of African American high school graduates were prepared for four-year university studies.⁵² Law schools typically focus on the students once they have been admitted into school in order to address issues like poor preparation and performance, but oftentimes this last minute measure comes too late since it is an attempt to make up for years of inadequate preparation.⁵³

Dean Rindskopf Parker suggests that one way to remedy the situation is to create a concerted effort between law schools, bar associations, colleges and high schools in order to provide a more ample “supply” of students that are better prepared for the rigors of a legal education.⁵⁴ The Dean argues that law schools and their alumni hold a very powerful position in society due to their ties to politics, business and the community in general, and that this privileged position should be used to participate in the actual formation of a strategic vision and as well as the day-to-day issues that face the current educational system.⁵⁵ She also points out that law schools have an excellent resource in their current and former law students and that these can be used to help high school students aspire to a legal education as well as help provide help in regards to their academic performance.⁵⁶ The Dean also suggests that the programs backed by bar

⁵² PATRICIA L. DE COS, CALIFORNIA STATE LIBRARY, HIGH SCHOOL DROPOUTS, ENROLLMENT, AND GRADUATION RATES IN CALIFORNIA 1 (2005), *available at* <http://www.library.ca.gov/crb/05/08/05-008.pdf>.

⁵³ Rindskopf *supra* note 48, at 3.

⁵⁴ *Id.* at 4.

⁵⁵ *Id.*

⁵⁶ *Id.*

associations should become part of a structured, systematic approach tailored to fit into the educational system in such a way that it can be replicated and evaluated over time.⁵⁷

Increasing the involvement of law schools and bar associations with high school and college level educational institutions better helps address the issue of the lack of diversity in law firms at the source. Law schools, law students, alumni and bar associations can use their influence in politics, the community and business in order to help create programs that will reach minority students at the high school level and help create a pool of students that will be inspired to pursue a legal education and be better prepared to handle the academic requirements of such an education.

C. Implement Mentoring Programs

Mentoring programs within law firms are critical at retaining and helping minority lawyers make progress up the law firm hierarchy. One of the most salient obstacles that minority lawyers face is getting access to “important assignments and training opportunities that every associate needs to develop sophisticated lawyering skills and to showcase those skills to partners who are in a position to advance their careers.”⁵⁸ There are various factors that keep minority lawyers from getting access to the right people within a law firm, like the fact that “minority attorneys are less likely to develop significant mentor relationships with powerful white male partners who affect careers and promotion opportunities...[and] minority attorneys often do not have business contacts” which can help steer big clients to the law firm.⁵⁹ The lack of an adequate mentorship program creates a feeling of isolation for minority lawyers in law firms because they

⁵⁷ *Id.*

⁵⁸ Wilkins, *supra* note 16.

⁵⁹ Holly E. Loiseau and Anant Raut, *Firm Diversity: Effectuating Change from the Outside*, DIVERSITY & THE BAR, May / June 2006, available at <http://www.mcca.com/index.cfm?fuseaction=page.viewpage&pageid=867>.

sometimes feel like they are the only minority or one out of a small group, and as a result, often times feel excluded from the camaraderie and peer support which makes the first few years at a law firm tolerable.⁶⁰

As a result of these conditions, minority lawyers tend to leave law firms at a larger rate than their white counterparts.⁶¹ In order to address the issue of retention, it is suggested that law firms should make a serious commitment to implementing mentoring programs for minority lawyers beyond the hiring of first year associates. One key recommendation is that the law firm should develop plans that make the business case for diversity, that is, senior management at law firms should understand the “needs and economic potential of an increasingly diverse marketplace” and the positive effects that diversity will have on increasing the firm’s market share.⁶² Another important practice is to develop effective mentoring programs that are accessible to all attorneys, not just the first year associate that the law firm is attempting to hire into its ranks.⁶³ In order to bolster up the mentoring programs, law firms should focus on lateral hiring of lawyers at a senior level in order to provide a diverse pool of mentors from which the law firm’s attorneys can draw upon.⁶⁴ Lastly, law firms should ensure that there is wide participation of senior management in the mentoring program since it will ensure the allocation of adequate resources in order to implement and monitor the effectiveness of the program.⁶⁵

⁶⁰ MINORITY CORPORATE COUNSEL ASSOCIATION, A SET OF RECOMMENDED PRACTICES FOR LAW FIRMS 17, available at <http://www.mcca.com/index.cfm?fuseaction=page.viewpage&pageid=613>

⁶¹ See *supra* note 58.

⁶² MINORITY CORPORATE COUNSEL ASSOCIATION, *supra* note 60, at 20.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.* at 11.

Adequate mentorship programs within law firms are extremely important in the effort to retain and advance minority lawyers. Without an adequate mentorship program, a law firm faces the chance that their minority lawyers will decide to leave the firm in order to seek out other opportunities where they feel that they will receive better support from their peers, thus resulting in draining the law firm of the pool of minority lawyers from which they can draw upon to mentor new hires. Mentorship programs are also critical since they provide the networking resources that will help the lawyers expand their clientele and, as a result, provide more work for the law firm.

D. Encourage Involvement with Minority Bar Associations

The number of minorities at law firms can be increased through participation with local minority bar associations. The Bar Association of San Francisco reports that law firms are able to raise their profile with minority students and lawyers through their support of these organizations and the legal activities that are of interest to minority groups.⁶⁶ These activities can range from paying their minority lawyers' dues in minority bar associations, co-sponsoring receptions and other events separately or jointly with minority bar associations, and sponsoring scholarships for minority law students, among other activities.⁶⁷ Law firms can also help raise awareness among their young lawyers about the several minority bar associations in their local area. As pointed out in the Bar Association report, law firms are in an excellent position to facilitate access between their lawyers and the bar association members.⁶⁸ Either through formal or informal activities with bar association officials, law firms are able to help create the link

⁶⁶ THE BAR ASSOCIATION OF SAN FRANCISCO, DIVERSITY: GOALS AND TIMETABLES FOR MINORITY HIRING AND ADVANCEMENT, 23 (November 2005), *available at* http://www.sfbar.org/forms/announcements/diversity_report_2005.pdf

⁶⁷ *Id.*

⁶⁸ *Id.*

between their lawyers and bar association officials, thus providing them with the necessary contacts within those bar associations that will allow them to network, find mentors, and learn of activities that they might be interested in outside of the firm.⁶⁹

Increasing the involvement of law firms with minority bar associations helps both the law firms and the minority groups. The law firm is able to project an image that it is committed to hiring and retaining minority lawyers through active and consistent participation with the minority bar associations. As a result, the law firm is able to create good will among the groups with which it participates, as well as create a positive image of the firm through word of mouth among other lawyers and potentially law students. Minority bar associations are able to benefit from the increased networking possibilities and enjoy greater backing of activities that are of interest to the various associations. Lastly, and most importantly, lawyers within the law firms will be able to find mentors and a support group outside of the law firms.

E. Creating Networking Opportunities

Part of a lawyer's success depends on his or her ability to generate a profitable client base; however, minorities often have a difficult time accomplishing this.⁷⁰ Minority partners have reported that "they face important obstacles in their attempt to compete in each of the three markets that determine partner success: the *external* market for new clients, the *internal* market for work from existing clients, and the *labor* market for associates."⁷¹ As a result, a "surprising number of minority partners have left their prestigious posts for positions that either do not require them to compete for clients (such

⁶⁹ *Id.*

⁷⁰ James W. Pearce, JoAnn S. Hickey, Debra D. Burke: *African Americans in Large Law Firms: The Possible Cost of Exclusion*, 42 *How. L.J.* 59, 62 (1998).

⁷¹ Wilkins, *supra* note 16.

as in-house legal departments), or where they believe that they will be able to do so more effectively (for example, small minority-owned firms).”⁷²

There are several reasons why it is more difficult for minorities to generate clientele than their white counterparts, but one of the greatest obstacles to building clientele is the lack of access to affluent social circles. Because of the history of our country, minorities generally do not have access to high-powered, wealthy individuals.⁷³ Most minorities don't sit in the corporate boardrooms, nor do their parents sit in the corporate boardrooms.⁷⁴ Minorities are also usually not members of a \$40,000-a-head country club where CEOs and other prosperous members of society congregate.⁷⁵ Lawrence Otis Graham, a black associate at New York's Weil, Gotshal & Manges, spoke of how his white counterparts, many who attended Harvard Law School with him, had told him stories of “how they were at their country club over the weekend and [how they] had the opportunity to meet a senior vice president at a company they're trying to groom as a client for their firms.”⁷⁶ Graham decided to take a break from his \$105,000-a-year job to bus tables at Connecticut's posh Greenwich Country Club for \$7 an hour “[just] to see what life was like at clubs that don't admit people like him.”⁷⁷ After his experience he concluded that he “[did not] know where [he] would meet people like that.”⁷⁸

Many minority partners in this situation complain of being “trapped in this catch-22: They're required to get their own clients, but when they do, they are the wrong *type* of clients. But they can't get the right kind of clients because they don't have access to

⁷² *Id.*

⁷³ Pearce, Hickey, and Burke, *supra* note 70.

⁷⁴ Steven Keeva, *Unequal Partners: It's Tough at the Top for Minority Lawyers*, 79 A.B.A.J. 50 (1993).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

them.”⁷⁹ To mitigate these circumstances, law schools should create and encourage minorities to attend networking events so that they will have the opportunity to develop contacts. These networking events should not only include minority professionals, but they should also include non-minority professionals. It is important for minority professionals to be present so that minorities may be able to gain insight on challenges and obstacles in the legal profession from someone who is similarly situated to them. However, it is also important for non-minority professionals to be present because in addition to advising minority students on the ways of the legal profession, but they can also give minorities access to resources they previously had little access to. Furthermore, law firms should also make a conscious effort to extend to minorities the same networking opportunities they provide non-minorities. For example, when going on missions for client development, firms should include both minority and non-minority lawyers in the process.

F. Prevent Tokenism

The lack of retention of minority lawyers may be due to practice of tokenism. “Tokenism refers to a policy or practice of limited inclusion of members of a minority group, usually creating a false appearance of inclusive practices, intentional or not.”⁸⁰ According to the National Association for Law Placement, minority lawyers leave their firms earlier than their white peers.⁸¹ Some “Hispanic attorneys indicated that they had experienced a sense of tokenism that they attributed to being a minority,” and as a result chose to leave that firm for a firm they believed would give them an equal opportunity to

⁷⁹ *Id.*

⁸⁰ *Wikipedia Encyclopedia*, April 16 2007, <http://en.wikipedia.org/wiki/Tokenism>.

⁸¹ Wilkins, *supra* note 16 at 21.

be successful.⁸² Regardless of whether the firm sees the individual as a token minority, the feeling of tokenism can be demoralizing and can affect the minority's performance, thus impeding his or her advancement.⁸³

To prevent tokenism, firms should follow the following recommendations. First, firms should attempt to create more than a token group of minorities within the firm. Such effort will help convince minority lawyers that the firm is sincerely committed to racial equality and will encourage minorities to remain with the firm.⁸⁴ Law firms should also refrain from assigning minorities work in "traditional" minority areas of law such as civil rights, employment discrimination, or community relations promotes feelings of tokenism, and instead, give minorities and non-minorities comparable assignments and opportunities (i.e., not limiting assignments of major clients and mainstream matters to white attorneys).⁸⁵ If firms do not rotate minorities in all areas of law, then minorities in these positions will choose to leave their firms because they experience frustration due to their limited assignments and the feeling of tokenism.⁸⁶ Instead of abandoning minority associates upon hire, firms should extend meaningful training and mentoring to minorities.⁸⁷

IV. Conclusion

Under-representation of minorities in the legal profession can be attributed to various factors. First, there is small pool of potential minorities upon which law firms can draw upon. Compared to non-minorities, fewer minorities apply to law school, and

⁸² Linda E. Davila, *The Underrepresentation of Hispanic Attorneys in Corporate Law Firms*, 39 Stan. L. Rev. 1403, 1417-18 (1987).

⁸³ *Id.* at 1418.

⁸⁴ *Id.* at 1434.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Wilkins, *supra* note 16 at 22.

out of those who do obtain their J.D. degrees some may still have to struggle passing the bar. Collectively, these factors significantly reduce the likelihood of minorities entering the legal profession. For those who do overcome these hurdles and become lawyers, they are faced with additional remaining obstacles. For example, in a profession where 95% of partners are Caucasian, personal bias and stereotyping can prevent minorities from becoming partners. Minority associates also have a more difficult time finding mentors who will give the associate meaningful, work, training, and career support. In a world where an overwhelming majority of partners are white and partners have considerable discretion to choose with whom they will work, it is unsurprising that minorities are less likely to be chosen over their white counterparts who may remind the partner of a younger version of themselves. Furthermore, minorities have a more difficult time gaining access to affluent business contacts than their white peers. Because of the history of our country, minorities have generally been excluded from elite social circles, and therefore will have fewer opportunities to make the *right* contacts.

Although there is presently an under-representation of minorities in the legal profession, there are steps that law firms and law schools can take to help optimize the career prospects of minorities. First, firms can implement a comprehensive diversity-training program to increase diversity awareness. Second, law firms can become more involved in the pre-law education process instead of relying on high schools and undergraduate schools to prepare and encourage these students to become lawyers. For example, firms can show minorities what a legal career can offer to minority groups, give them adequate information on how to prepare for a legal career both during high school and in college, etc. Third, firms can implement mentoring programs since success in the

profession is largely dependent on getting the right training opportunities so that associates can develop sophisticated lawyering skills. Fourth, minorities should be encouraged to join minority bar associations. Fifth, law schools and law firms should create diverse networking opportunities and also encourage minorities to participate in them. In addition, firms should extend the same networking opportunities that they give to their non-minority associates to their minority associates (e.g., grooming high-profile clients). Lastly, firms should avoid creating or fostering an environment of tokenism to help reduce the turnover rate of minority lawyers.