

Diversity Gap A Growing Threat To BigLaw Bottom Lines

By **Gavin Broady**

Law360, New York (May 19, 2015, 8:58 PM ET) -- Despite progress over the last decade and a half, minorities remain woefully underrepresented in U.S. law firms at every level, and while experts say the problem is bigger than BigLaw, they warn that a failure to act now will have dire consequences in the long run for any law firm's financial future.

White lawyers make up nearly eight in 10 attorneys and nine out of 10 partners at the 289 firms surveyed in the 2015 Law360 Minority Report, which offers a clear portrait of the struggles racial minorities face in trying to break into the upper echelons of the country's top law firms.

"The current state of diversity and inclusion at top law firms is woeful," said Naomi McLaurin, the Philadelphia Bar Association's director of diversity. "Moreover, the number of diverse attorneys who are in leadership positions is miniscule."

Law360's findings in its first-ever review of legal industry diversity reveal that minorities make up just 8 percent of partners and only 7 percent of equity partners at major law firms. Those findings are especially dire for black attorneys, whose representation levels have been either flat or in decline for several years and are the least-represented racial group at every attorney level.

Less than 1 percent of black attorneys have reached the partnership level at the firms surveyed, while Hispanic and Asian lawyers fare only a little better, at just above 1 percent for each group. That's in stark contrast to white attorneys, over 42 percent of whom occupy partnership positions.

While the factors giving rise to this disparity are wide-reaching and part of larger, systemic problems in the United States, a share of the blame rests on the failure of law firm leaders to recognize the importance of diversity and inclusion in both a social and a business context, experts say.

"This may sound harsh, but I think there are very few strategic thinkers among the leadership of law firms, in the sense that it always seems to come down to this year's results and profits per partner," said Ballard Spahr LLP partner and former DuPont Co. general counsel Thomas Sager. "The case for business diversity is a compelling one for the likes of DuPont and others but law firms are not, for the most part, seeing this as a business imperative."

'Diversity Is Good for Business'

While minority representation remains disproportionately low in BigLaw, the legal industry has

nonetheless made great strides over the last 15 years.

Minority partnership representation, now at 8 percent, was just 3.5 percent at the turn of the century, while overall minority associate representation has grown from 13.7 percent to 21.6 percent over the same time, according to data from the National Association for Law Placement.

Experts say much of that positive momentum has slowed to a crawl in recent years as financial turmoil has wreaked havoc on law firms' diversity agenda.

"There are several studies that show the Great Recession had a disproportionate impact on the employment levels of racially diverse attorneys at BigLaw, and I don't believe this group has fully recovered from that event," said Jeremiah DeBerry, director of diversity and inclusion at Mayer Brown LLP.

Law firms responded to the recession by tightening their belts in all the wrong places, eliminating dedicated diversity director positions and slashing budgets for programs focused on recruitment, retention and the professional development of minority lawyers, according to McLaurin.

Many experts view this retreat from diversity initiatives for financial reasons as self-defeating, particularly in an environment where law departments are placing increased emphasis on the issue in choosing outside counsel.

"Clients are becoming more and more sophisticated and demanding in the area of diversity, and if you look at our financial institution clients and the teams they field, they're years ahead on diversity," said Patrick Quinn, managing partner at Cadwalader Wickersham & Taft LLP. "They look at teams of lawyers across the industry that are all white men and wonder what's going on."

Of course, the potential for lost work isn't the only reason law firms should get serious about emphasizing racial inclusion, according to Sager.

"Like no other profession, we interact with the world at large: judges, regulators, politicians and ordinary citizens through the jury process," Sager said. "There's a very compelling case for law firms and the legal departments they serve to become increasingly diverse to advance their interests before those constituencies."

What's more, in an era when competition to attract and retain top talent is at a fever pitch, firms that fail to address racial disparities are likely to find themselves at a decided disadvantage, according to Drinker Biddle & Reath LLP counsel Richard Lomuscio, a former in-house lawyer with Goldman Sachs & Co. and UBS Investment Bank.

"Clients want the best attorneys working on their matters, and emphasizing diversity is simply another way for firms to attract top attorneys and ensure high-quality client service in the long term," Lomuscio said. "The bottom line is that, in addition to the various social benefits, diversity is good for business."

Focus on Recruiting Smarter

Experts say law firms hoping to move the diversity needle must focus on more open-minded and aggressive recruitment strategies, whether it's shifting the focus of recruitment efforts to law schools with more diverse student populations or pressuring bar organizations to do better about encouraging

racial minorities to consider a legal career.

The challenges of recruiting diverse attorneys is further complicated by the fact that a law school is less and less viewed as a guaranteed path to financial success, and fewer overall law school graduates means a smaller pool of diverse talent for law firms to recruit from, according to Julie Locke, a director at Huron Legal.

"I think the legal profession is going to be struggling for the foreseeable future on this front just because of the fact there aren't as many jobs as there were before," Locke said. "Unless you can paint a picture that investing in the huge financial commitment of law school is going to pay off in the long run with work that's rewarding and fulfilling and financially stable, this will remain a problem."

There is at least some hope in that regard: Recent American Bar Association statistics show minority enrollment at law schools has risen by about 1 percent every year since 2009, to 27.5 percent in 2013.

It's obvious, however, that those law students aren't finding their way into BigLaw in equal numbers. Many experts suggest this problem is due to a sense that law firms are less inclusive than corporate America or the government, both of which are equally or more dedicated to boosting diversity representation in their ranks.

"There are real challenges to being competitive in the legal arena, and any good law firm must distinguish itself and show why it is different," said Duane Morris LLP partner and Chief Diversity Officer Nolan Atkinson. "And obviously young law students who are about to enter the legal profession are going to want to have a firm which is modern — and by that I mean diverse and inclusive, where there are plenty of opportunities."

Stay Aggressive to Retain Talent

Inclusive recruitment is only the first step, however, as experts say law firms must be more aggressive than ever in their efforts to retain talented minority attorneys.

"If you're just hiring folks for two or three years and then they're leaving, you're not really adding to any meaningful progress," Atkinson said. "In order to manage attrition, you have to also be focused on attacking structural barriers and implicit bias that exist in any large organization."

Implicit or unconscious bias has a nefarious effect on everything from what assignments associates are given to how their work is evaluated and whether they're considered for leadership positions, according to DeBerry.

He suggests that firms can combat implicit bias by not only monitoring the assignments being given to minority lawyers for equality, but also working to create opportunities for diverse attorneys to interact with firm leaders in a professional and social capacity.

Sager says incentives can also help, noting that in recent years, Nixon Peabody LLP has explored the idea of crediting diversity efforts in its hourly evaluations of attorneys for compensation purposes, in a similar way to how many firms construe pro bono work.

Firms must also ensure that their diversity efforts are overseen by a dedicated chief diversity officer or director of diversity, and "put their money where their mouth is" by providing budgetary support for

diversity initiatives, programs, training and marketing, according to McLaurin.

Firms like Cadwalader, which has recently launched a sponsorship program dedicated to pairing diverse associates with high-level firm leaders, are increasingly catching on that these efforts are not only part of a larger social good, but just plain good business.

"We had an epiphany, maybe two or three years ago, that if we continue to do the same things we've been doing — and, frankly, that most other firms are doing — then we can expect to have the same dismal results that the legal industry continues to have," Quinn said.

"Lack of diversity is an industrywide problem for big law firms," he added, "and what we're aiming to do is take what the industry views as a challenge and make it a distinct advantage for our firm."

--Editing by Katherine Rautenberg and Mark Lebetkin.