

Designing Diversity

Law departments share their strategies to drive inclusion programs.

By Melissa Maleske

For those dwindling few general counsel who still don't grasp the business case for diversity, Veta Richardson, executive director of the Minority Corporate Counsel Association (MCCA), has one question: "Where do you work, under a rock?"

Although the business imperative may be clear, we'll summarize: It's the job of a lawyer and businessperson to evaluate a situation and develop a strategy. The more diverse the viewpoints and breadth of experience a team of lawyers has, the more likely it is to provide innovative ideas and solutions.

"If I include in my meeting four other women in their mid-40s who are white and grew up in the Midwest, I will develop a strategy and it may be good, but it won't be the best," says Lorene Schaefer, former general counsel of GE Transportation (who fits her own description). "Today, at a lot of companies we have 50-plus-year-old white men at the helm. And they surround themselves with people who look just like them and are educated just like them. When you have that kind of group, you tend to come up with the same results over and over. What you have is a stagnant business strategy."

Jim Bender, general counsel of Williams Co., adds another layer to diversity's importance: "In 2050, when the demographics are very different, if you don't have diversity you're going to be in the minority."

And already this is becoming more apparent: Customers are diverse, business associates are diverse, juries are diverse, and so on. So if legal departments want to stay relevant, the message from those closely attuned to in-house diversity issues is clear: Diversity must be a priority in your legal division, and if it's not, you have to make it one—now.

Illustration by Gordon Studer

Quod n. quon-
dam sed vestra
long. sentina
facit a unum
fuit in meae
principes mei
quiereo. hie.



Steady Strides If you don't already have a well-developed diversity program, take heart. While boosting diversity has been and remains a challenge and shortcoming in the legal profession, law departments have a few key advantages over law firms on this front. They are free from the limits the billable hour poses, and culture change trickles down naturally in the hierarchical structure of corporations once the top executives throw their support behind it. And with two clear focuses—in-house staffing and outside counsel diversity—launching a small-scale pilot program doesn't have to be a costly prospect.

Small-scale works in this economy, as well. The reality is that many businesses these days are just trying to stay afloat and avoid layoffs, not launching new programs. And the effects of current diversity programs might shrink a little—few departments are looking to bring on new lawyers, either inside or outside.

Law firms, at least, are holding steadfast. In a study sponsored by MCCA and the Association of Law Firm Diversity Professionals, more than 50 percent of the 200 largest law firms reported their diversity budgets would remain the same in 2009 as in 2008. In fact, 18 percent reported their diversity budgets will grow this year. So it's clear that lawyers who truly believe in the business case for diversity know the economy is no excuse to roll back or terminate programs.

"You don't want to send the message that when times are tough you cut fat and that this is fat," says Paul Chadha, an attorney and manager at Accenture. At his company, he says, the economy actually sharpens focus on diversity because of its benefits. "It's not fat—it's strategic, it's important and it's important that people recognize that."

Moreover, there are plenty of steps law departments can take to improve diversity that cost little or nothing, as *InsideCounsel* found when we asked departments with robust diversity programs how those with limited resources can approach the issue. Many provided helpful suggestions alongside some more advanced steps that can serve as inspiration and motivation.

OUTSIDE COUNSEL COMMITMENT

Microsoft made waves last July when it announced the launch of a legal department program that would pay out bonuses for outside counsel diversity, to both the firms and the senior in-house attorneys who work with them. The law firms can nab a 2 percent bonus for showing measurable results in diversity levels—either by increasing the hours worked by minority lawyers on Microsoft matters or by increasing the number of total U.S.-based diverse counsel within the firm. On the in-house side, 5 percent of the bonus that goes to senior Microsoft lawyers is contingent upon whether at least three-quarters of the firms that opted for the first bonus option meet their goal. The in-house component recognizes that matter staff-

ing and management is often jointly handled by outside and inside lawyers.

"[Microsoft General Counsel] Brad Smith challenged us to take a step forward and said if we have a goal we need to measure it, and that we should assume money does matter and it's crazy to think otherwise," says Mary Snapp, deputy general counsel for Microsoft, explaining the impetus behind the program.

It's clear that not everyone has the resources or the clout to roll out such an in-depth initiative—but legal departments can borrow and learn from many aspects of Microsoft's experiment.

"The important thing is to take a step. ... The idea would be for other companies to take the principle of what we're doing and find a way if possible to adapt for themselves," Snapp says. "For each law department, a different kind of thing may work."

Step-by-Step If you haven't yet broached the diversity subject with your outside firms, the first step is simple: Tell them your company values diversity. "The most effective requests are the ones that are simply making sure that outside counsel know it's very important and know it's a factor," says Fruqan Mouzon, a lawyer at Gibbons.

Measuring Success

Setting goals and having metrics in place are essential pieces of any diversity program.

While impromptu diversity programs work for some, Gap Inc. GC Michelle Banks finds that in this profession, formalizing your diversity plans and goals can help. "People who work in the legal field like structure and formality," she says. "They respond positively to it. They believe you are serious about it and more committed to it if you have it in writing. You also hold yourself more accountable if you have a written strategy and set written metrics."

Tracking diversity results not only shows commitment and measures success but shows where improvements are needed.

"I often see both companies and law firms putting these programs in place, but no one's really overseeing whether or not there's any impact, whether it's working," says Vanessa Vidal, president of ESQ Recruiting. "Monitoring the effectiveness of a program is just as important."

With something as complex as diversity—an issue that really needs a customized approach at each company—tracking what works and what doesn't allows you to adjust your strategy in response to its effectiveness.

Gay Tedder, chair of the diversity committee at Shook, Hardy & Bacon, is accustomed to meeting with clients to discuss diversity. And the firm, like most these days, is glad to do so. In fact, if the client doesn't reach out first, the firm will.

"Ongoing dialogue on diversity is extremely important to making progress and continuing to make progress on the diversity front," Tedder says. "I think the more focus generally that in-house counsel put on diversity with outside counsel, the better it is. It raises the level of consciousness within firms."

To ensure its attorneys' commitment, Shook, Hardy & Bacon obliges its partners and associates to commit to between five and 10 "action items" from a diversity checklist each year. Examples include helping to plan a firm diversity event or involving the firm's diversity committee in an RFP. The firm has found that clients are very interested in their lawyers' progress on the checklist, as it reveals levels of individual commitment.

Metrics Mechanics While many law departments craft their own diversity questionnaires or surveys for their firms, there are many resources out there to help you measure outside counsel diversity without creating your own tools.

Accenture had sent its own diversity survey to law firms since 2005, but when its corporate counsel would sit down with firm representatives to discuss the results, the consultancy heard over and over again that law firms were being inundated with such requests. So together with Microsoft, Wal-Mart, Sara Lee, PPG Industries and Bank of America, it worked in 2007 to streamline the survey process for outside counsel. About 280 firms are invited to complete the Vault/MCCA Diversity Survey, and results go into a database that is accessible at no cost to corporate counsel. For firms not included, the survey is available for corporate counsel either to distribute or adapt for their own needs. Since the survey doesn't cover diversity levels on a company- or matter-specific basis, legal departments have to get that information either through a separate survey or through billing mechanisms, which Chadha says is common. Most of the groundwork, however, is already done, leaving little excuse not to take advantage.

"There's a lot of great material out there that companies can leverage," Chadha says. "That shouldn't take too long at all, and if they use the Vault/MCCA survey and encourage their law firms to staff their matters with diverse attorneys, they are really doing half of what we're doing without investing a nickel."

Informal Initiatives Others take a less formal route for various reasons. There is scope, for one: Undertaking a mul-

tifaceted law firm diversity strategy wouldn't make sense for Vivian Tseng, general counsel of Welch's, whose three-lawyer, one-paralegal department has a limited need for outside counsel. Tseng therefore finds it sufficient to track diversity by asking her firms what they're doing in the diversity area.

"Every law firm is interested in our business, and every law firm is very responsive to queries about diversity," she says.

At Caterpillar, close relationships with law firms—many have had the company as a client for more than 20 years—mean the company can track diversity progress more informally. It doesn't ask for the statistics that most law departments request, such as the number of billable hours diverse attorneys put in on its matters.

"We just have not felt a need to force them to do more. They seem to be very active on their own, they're making progress," says Wes Blumenshine, associate general counsel. The company has seen an increase in diverse attorneys on Caterpillar matters.

And keeping your eyes open can reveal a lot about a firm's commitment to diversity, points out Silvio DeCarli, associate general counsel at DuPont. "If you talk to people, is it an inclusive kind of place? When I go to visit, do I see two senior partners who are Ivy Leaguers and white-shoe guys, or do I get the sense that this is an inclusive place that tries to push women and minorities in the practice of law? In hiring decisions, it's definitely possible to look for and retain law firms that share those values."

Honor Rolls There are also ways to adapt Microsoft's bonus structure to give outside counsel nonfinancial awards for their steps in diversity. Exelon tracks its outside counsel diversity through a company-developed survey. Law firms and other vendors that have made measurable increases in diversity based on the company's suggestions and are attuned with Exelon's diversity goals are recognized at the end of the year through an honor roll system.

"For those companies that don't make the honor roll, we certainly communicate with them and let them know that they can make the honor roll, and we give them suggestions based on what some of the [honor roll] companies are doing," says Angel Higareda, an Exelon e-discovery specialist who sits on the law firm diversity committee.

Law departments also can create incentives for law firms through a little healthy and positive-minded competition. The legal department at Williams Co., headed by General Counsel Jim Bender, notifies its law firms of its diversity goals along with the fact that it will anonymously share their results, which it measures based on percentages of minorities and women in



their firms. Williams then tells the firms how they ranked, recognizing those that made the most progress and had the best overall statistics. "At the end of the year, for law firm 'Smith & Jones,' we'll say, you're ranked fourth, and here are the numbers for the other [unnamed] firms," Bender says.

Once the gates of communication are open with your firms—and because they are also trying to gain momentum on tackling these issues—it may be a natural next step to begin a true collaboration on diversity efforts. Microsoft, for instance, didn't come up with its law firm diversity program on its own. It worked closely with its preferred provider firms to tailor the initiative, thereby ensuring that several points of view were represented in its development—a varied set of viewpoints is the underpinning of diversity, after all—and also that the firms were on board.

In other areas, Microsoft makes diversity a team effort with its firms. Its mentoring program, for example, matches in-house Microsoft attorneys with outside counsel. DuPont co-sponsors job fairs with its firms. Accenture and others have teamed up with their law firms on mentoring programs for students from elementary through law school. One corollary benefit has been that cooperation on such initiatives can strengthen and deepen relationships.

"You can see now, looking back five years, all of the terrific things that have come from the decision to survey our firms: The close relationships that we have with our large law firms, the relationships that have been forged with woman- and minority-owned firms, the work that we're doing in the community in conjunction with these firms and on our own, and just the relationship of all of our individual companies working together on promoting diversity in the legal industry," Chadha says.

THE PIPELINE

There is a less immediate—but equally important—impact from encouraging outside counsel diversity. Considering the typical law firm-to-in-house pipeline, pushing law firms to be diverse now will have a later effect on in-house recruiting, widening the diverse pool of qualified in-house candidates—which is the second major piece of most corporate legal diversity pushes.

Law firms are focusing on diversity, but the progress is slow. The most recent Vault/MCCA Diversity Survey results for 2007 show that minorities represented 20.7 percent of law firm associates but only 5.6 percent of equity partners. Similarly, women made up 44.7 percent of associates but only 16.1 percent of equity partners, and minority women represented 11.6 percent of associates but just 1.6 percent of equity partners. Chadha points out that 10 years ago, about 20 percent of law school graduates were minorities and 50 percent were women—so he wonders why we aren't seeing similar increases at the partner levels.

Subtle Slights

In 1973, MIT Adjunct Professor and Ph.D. Mary Rowe—charged with improving inclusion at MIT—coined the phrase "micro-inequities" to describe the subtle, tiny and unintentional acts of disrespect in which discrimination can rear its head. The phrase is still apt, says Lorene Schaefer, former GE Transportation general counsel who settled gender discrimination claims with GE and left the company in January. Terms of the settlement are confidential. "Discrimination has gone underground," she says. "Most folks have taken down their girly photos and don't take customers for lap dances, but the micro-inequities continue."

Schaefer cites examples such as omitting the minority from a meeting invitation list or introducing everybody in a meeting except the women. "It's the little bits of sand that are unintentionally corroding relationships," she says.

In 2008, Rowe wrote a follow-up to her 1973 paper, offering another term—"micro-affirmations"—as a counterbalance to micro-inequities. Micro-affirmations come by paying attention to the small things and reinforcing and rewarding good behavior that replaces the unwanted behavior. "Attitudes may follow behavior just as behavior may follow attitudes," she wrote. Rowe says consistent, appropriate affirmation can spread, raising morale and productivity in the workplace.

What's the takeaway for law department leaders? "Go out of your way to chat with the minorities in the office," Schaefer concludes. "[Ask yourself,] 'What am I doing so everyone feels included?'"

"If we lose our focus, and stop encouraging law firms to do what's right, three years from now you'll see the ripple effect." Chadha says. "If law firms were ever to lose their focus it would have a disastrous effect on corporate counsel in terms of their ability to bring in minority and women attorneys."

Recruitment Perspectives As with outside counsel diversity efforts, there are very simple and often free ways to recruit diverse lawyers to in-house jobs. "All of the ethnic bar associations have job sites on their Web pages, and I just find that to be a really easy way to recruit," Tseng says. "It saves me from really needing to do anything on an individual or company-specific basis."

Diversity in recruiting won't work, however, if a department merely thinks of such goals as quotas to meet. Such practices may increase diversity in terms of raw numbers, but they don't go far to creating change in the overall corporate mindset and

culture—or attracting minds that think differently.

“You have to approach it not from the perspective of meeting a quota, but from the perspective that it will make you better,” says Richard Silver, general counsel at AXA Equitable Life Insurance Co. “From our experience, we have improved diversity while at the same time increasing the standard of getting hired into our department. The diverse talent we have added has been among the best and the brightest we have ever hired. To increase diversity, do it by hiring up.”

Hiring diverse employees is hard, of course, when avoiding layoffs seems closer to the economic reality of today. “This is a rough time for everyone, so it’s not that I’ve heard from legal departments saying we’re not recruiting diverse candidates—they’re just not recruiting, period. It’s hurting everyone,” says Vanessa Vidal, president of ESQ Recruiting.

Rather than dropping the focus on a diverse in-house legal team, corporate counsel may find it more relevant at this time to focus on the pipeline and look to the in-house lawyers of the future. And that can often work even when resources are scarce or hiring is stagnant or nonexistent.

Mentor Momentum Bertha Whatley, chief legal counsel for the Fort Worth Independent School District, is accustomed to this situation even in a healthy economy. One of only two lawyers in the legal department, Whatley doesn’t have many opportunities to recruit diverse lawyers. She can mentor, but when there’s only one other attorney the effects are limited. Instead, she decided to turn her energy outward and make a bigger impact.

“Mentoring is one of my passions at the moment,” Whatley says. “I’m at the age now where I think I need to do that and so I take every opportunity that I can to reach out to young lawyers. I try to give them tips on office politics, general legal practice tips—because often you don’t learn how to practice law until you’re actually out there and being responsible for a case, so I try to reach out and give them the benefit of my experience.”

Whatley has already been doing one of the simplest, most effective and likely most personally enjoyable steps that a lawyer can take on her own to foster diversity in the profession.

“I don’t think you need a big diversity budget,” Schaefer says. “You don’t need a strategy or plan that is 25 pages long. If you don’t have the money to budget toward it, every leader should challenge themselves to find two or three minorities. Seek them out, hunt them down, find the good ones and mentor them over time.”

Many companies are starting even earlier, going back to law school, high schools, even elementary schools to encourage minorities to learn more about the legal profession when they are young and to help them through the transition to law school and into their careers as they get older.

Mouzon says that as a boy he didn’t have that—Matlock was the only lawyer he knew growing up. (Whatley cites Perry Mason.) “I knew I wanted to be a lawyer but had no idea what that meant or what it would take—not even how many years of school it took,” Mouzon says. Now he volunteers with a program that mentors inner-city high school students, and he’s planning a trip to the office to show them what a lawyer does.

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Gap’s legal department has adopted a local high school, and about 20 of its lawyers mentor 20 students. It is also embarking on a co-sponsorship of the MCCA Kan Do! Mentoring Program, an online mentoring program focused on minority law students and junior attorneys.

Importance of Inclusion Focus on current employees, as well. Be certain all of your employees, minorities included, feel a sense of inclusion and are getting the support they need. If your company doesn’t have employee network groups or affinity groups, consider launching them, either within the legal department or, working in conjunction with other senior management, for the company as a whole. Small steps like that can ensure a happy workforce more committed to the company.

At Exelon, Higareda is involved in both the Latino and GLBT employee network groups. The fact that they exist and get support from senior executives is a point of pride for him. Exelon’s general counsel is the executive sponsor of the Latino group, and its CEO sponsors the GLBT group.

“From the moment that I joined the company I felt very comfortable and very much respected for who and what I am,” Higareda says. “In my previous company, I didn’t feel the same comfort or acceptance. I did my work, and I was happy with the work I did, but here I really feel like I have more to contribute, and I feel like I can really make a difference, so it’s wonderful being here.”

Legal departments focusing on inclusion can count such success stories as their own—after all, the in-house bar is in this together, and the cumulative effects of an industrywide drive for diversity will come sooner and faster than a few lawyers making the push. For an issue this big, teamwork is essential. So buckle down and push forward, because there’s work ahead. n

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