

An Exercise in Limiting the Pipeline: How the Application of the Standard of Excellence in Large Law Firm Diversity Initiatives Eliminates Black Attorneys

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The rigid application of supposedly race-neutral hiring and performance review criteria only to minority law students and associates enhances the likelihood of their attrition from the very law firms seeking to retain them. Harper and Lomax explore how this happens and suggest strategies to address it.

Diversity in the legal profession, and the lack thereof, has been the topic of many studies, articles, and initiatives. In particular, many diversity initiatives implemented at large law firms have focused on the firms' commitment to hiring, promoting, and retaining diverse attorneys who embody a standard of excellence. And while no one would disagree that large law firms should always aspire to recruit and retain attorneys of varied backgrounds who embody a spirit of excellence, it appears that the way the excellence standard is being applied to black attorneys serves to limit the diversity pipeline by only seeking black attorneys of a certain pedigree. Conversely, it appears that the same pedigree and excellence standards are more loosely applied to white attorneys, which results in little to no growth in the number or promotion of black attorneys at large law firms. This thought piece posits that if large law firms truly want to see movement and growth where black attorneys are concerned, then diversity initiatives will have to be broadened to seek candidates who embody excellence in areas beyond traditional markers of pedigree, which is similar to how these law firms seek nondiverse candidates.

Prior to the 2008 economic recession, the discussion surrounding the lack of diverse attorneys at large law firms centered around a theory that large law firms were relaxing or eliminating their hiring standards in an effort to recruit and retain more minorities and meet the diversity demands of corporate clients. In fact, one 2006 study found that the pool of black lawyers with excellent law school grades is so small that firms must relax their standards if they are to have new associates who resemble the pool of new lawyers.¹ This debate continued up until the point of the recession with much discussion focusing on the perceived double standard for black attorneys who did not meet large firms' hiring criteria with regard to class rank and grade point average.²

1. Richard H. Sander, *The Racial Paradox of the Corporate Law Firm*, 84 N.C. L. REV. 1756, 1819 (2006) (concluding that aggressive racial preferences in law firm hiring undermines young attorneys' careers and contributes to the large numbers of white partners); see Adam Liptak, *Lawyers Debate Why Blacks Lag at Major Firms*, N.Y. TIMES, Nov. 29, 2006, at A1.

2. See Liptak, *supra* note 1.



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Subsequently, the United States economy was thrust into an economic recession that nearly eradicated years of diversity progress at large firms. Large firms quickly shed attorneys in an effort to reduce costs, but this reduction overwhelmingly and disproportionately impacted attorneys of color, especially black attorneys. According to a study by the National Association of Law Placement, diverse attorneys were displaced at much higher rates than their white counterparts despite law firms' alleged commitments to diversity.³ It appears that large firms' commitment to diversity was conditioned upon a stable economy and became nonexistent when economic concerns increased.

Now, the economy is on the rebound; however, it does not look like large firms have returned to their perceived pre-recession hiring practices where standards seemingly were relaxed in an effort to maximize the number of attorneys of color. Instead, large firms have recommitted to diversity initiatives and hiring diverse attorneys with one caveat—these attorneys must be the *crème de la crème* of attorneys. These candidates must increasingly come from top-ranked law schools, have high grades and class rank, and have all of the markers of a top-pedigree attorney—law review, CALI awards, substantive and relevant work experience prior to attending law school, and an Ivy League, or similar, undergraduate education. The number of black attorneys with these credentials pales in comparison to majority students, and while many would applaud large firms for sticking to their guns and refusing to relax hiring standards for diverse attorneys, a comparison between the pedigree of diverse and nondiverse attorneys at large law firms in 2014 would likely reveal a stark reality—not all white attorneys are being held to these high pedigree and excellence standards before landing a job at a large firm. To the contrary, some white attorneys are being hired at large firms from third-tier schools, with mediocre grades, and no markers of excellence to show for themselves. And while this might have always been the case to some extent, the impact of requiring standards of excellence from diverse attorneys, and black attorneys in particular, but not adhering to the same standard for all white attorneys severely impacts the diversity pipeline in a number of ways.

First, the standards of excellence are inherently injected with underlying biases such that while they might appear to be race-neutral on their face, when applied across the board they have a disparate impact on black law students and attorneys. This notion that all attorneys are created equal and should be held to the same standards is antiquated and ignores cultural differences that are the cornerstone of diversity. It ignores the challenges faced by the first-generation law students and others who come from backgrounds that are different from the status quo. Additionally, due to the cautionary tape placed

3. Press Release, Nat'l Ass'n of Law Placement, Law Firm Diversity Among Associates Erodes in 2010, (Nov. 4, 2010), available at <http://www.nalp.org/uploads/PressReleases/10NALPWomensMinoritiesPressRel.pdf> (determining that the overall representation of minorities in large firms declined significantly between 2009 and 2010).

on open and honest discourse about racial stereotypes and cultural differences, law firms are not applying real analysis to correct their inability to recruit, maintain, and promote minority attorneys. If large firms are going to seriously address the diversity pipeline, they must endeavor to think differently about the way diverse attorneys are hired and the criteria set forth for each attorney should bend to account for the subtleties that make us all different. Large firms should eliminate the “one size fits all” approach when formulating hiring standards for attorneys and law students, especially diverse attorneys.

Second, black attorneys who do meet these excellence standards are often isolated and alone at the top, making them much less likely to remain and grow at large firms when other options become available. Law firms take a position of checking off the proverbial box once a black attorney is hired without recognizing there is no system in place to nurture and develop the attorney into a law firm partner or rainmaker. Further, these attorneys often struggle to receive meaningful and substantive work assignments due to underlying biases, despite the fact that they meet the very excellence standards set forth by the firms. It still holds true that partners often unconsciously staff projects with attorneys who resemble themselves, instead of the *crème de la crème* diverse attorneys that the firm has recruited. The result is black attorneys biding their time in large firms until a better opportunity arises rather than being incorporated into the firm fabric, culture, and tradition like their white counterparts.

Finally, and similarly, the diversity pipeline for black attorneys depends on large firms having a fundamental understanding of what it takes to make a successful, diverse attorney who can serve clients well. Despite firms’ readiness to boast about hiring Ivy League graduates and law review editors, if the hiring of white attorneys tells the story, attorneys who are successful at large firms do not necessarily have all of the top-pedigree attributes. Studies have consistently shown that using diverse perspectives to solve legal problems is mutually beneficial. The client benefits by the development of a solution that is functional in this multicultural society, while the firm benefits from increased profitability. Diverse attorneys bring different experiences and outlooks which allow for a varied approach to legal and business impasses. Without a solid understanding of the diverse attorney’s value beyond grades, law review, and law school rank, law firms will continue to miss the mark.

In conclusion, large law firms should be challenged to redefine the recruitment and retention process in relation to their stated diversity initiatives. Value should be placed on an individual’s life experience, the ability to overcome the difficult transition into the rigorous routine that is law school, and the ability to think critically and rationally about problems the clients are facing. Surely, the candidate who received low marks during the first semester of law school, but problem solved and raised his or her GPA by learning to think critically can be an asset for large law firms. Firms must also re-evaluate their mentor programs and assignment procedures to account and allow for an attorney’s diversity, taking into consideration the varied, yet valuable, experiences that each attorney brings to the table. Most importantly, the criteria used to determine excellence and suitability for a large law firm career must be rewritten. The current standards limit the access to capable black candidates and reinforce stereotypes and biases which must be shattered if firms seek to obtain and maintain a thriving legal practice which resembles today’s society and global economy. There must be more than a surface concern and commitment to diversity. And honestly, as two minority attorneys who have been quite successful to date in our legal practices, we can attest that there are very good minority attorneys despite what their law school transcripts and class rank may suggest.