

Minority lawyers
still have to
outperform white
lawyers to be
judged equal.

‘The Unqualified’ Myth

BY VETA T. RICHARDSON

My apologies for not responding sooner to Stuart Taylor Jr.’s June 19 commentary attacking what he claims are lower hiring standards in favor of minority attorneys at top law firms [“Doomed to Fail?” Page 76]. Over the summer I had more interesting fiction competing for my attention. But his flawed analysis cannot go unanswered.

Taylor’s column restates three basic points from an equally flawed paper titled “The Racial Paradox of the Corporate Law Firm,” written by UCLA law professor Richard Sander and published in the July issue of the *North Carolina Law Review*: (1) Large law firms seek to become diverse by lowering their standards to hire more minority attorneys, particularly black attorneys. (2) Minority lawyers, particularly blacks, end up leaving these firms at alarmingly high rates because they are not qualified to be there. (3) All blacks are adversely affected by diversity-hiring programs because the few qualified blacks are tainted by the overwhelming number of unqualified ones. Taylor cites data collected by Sander as the basis for these assertions. Taylor also suggests that corporate clients are placing enormous pressure on law firms to become more diverse.

I agree with Taylor’s point about corporate clients but disagree with everything else. The perspectives that Taylor and Sander push risk immeasurable damage to countless minority attorneys, particu-

larly African-Americans, who already bear the stigma of negative stereotypes. It’s time to set the story straight.

HIGHLY PRIZED CREDENTIALS?

First, law firms may claim to have consistent hiring criteria, but their ranks are actually filled with exceptions to the rule. These exceptions are far more likely to be white lawyers, both male and female, than they are to be minorities. Moreover, the firms’ semicon-sistent hiring criteria bear little relationship to the factors that actually lead to law firm success, defined as making partner. Contrary to Sander’s hypothesis, law school grades are largely irrelevant indicators of law firm success.

Quantitative research by the Minority Corporate Counsel Association, supported by both formal and informal interviews with numerous partners and rainmakers, reveals that making partner is a matter of good judgment, business savvy, ability to prioritize, leadership, aggressiveness, and willingness to put in long hours. None of these attributes have been linked to associates’ law school grades or (more on this later) the prestige of their law school.

Law firm managers admit that associate retention has more to do with the chemistry of the work environment, opportunities to develop skills, the availability of mentoring relationships, and assignments that expose young lawyers to important clients and increase their visibility. So how can Taylor and Sander conclude, on the basis of law

school résumés alone, that minority lawyers are less qualified to succeed at big law firms?

In fact, the flaw in Sander's hypothesis begins when he assumes that top law firms hire based on grades. He discounts the opinion of a member of a law firm hiring committee who told him that grades do not matter as much as the prestige of the law school attended. Instead, Sander asserts that employers prefer an A student from a regional school over a C student from a national school. He's got it almost exactly backward.

MCCA research shows that hiring committees are choosing elite law schools over high law school grades. Law firms may not take a C student from an elite school over an A student from a regional school, but they would surely select a B student from an elite school before an A student from a second- or third-tier school. My own conversations with many top executive-search firms further support this preference for graduates of top schools.

More important, there is cold, hard data demonstrating that most partners at large law firms did not attend elite law schools or earn high grades. The MCCA explored the definition of "qualified" in our 2003 report, "The Myth of the Meritocracy: A Report on the Bridges and Barriers to Success in Large Law Firms," by analyzing the résumés of 1,833 partners at elite law firms.

We found that 48.2 percent attended a top-10 law school, 25.9 percent graduated with honors (*summa, magna, or cum laude*), 20.2 percent were on a law review, 13.9 percent completed a judicial clerkship, and 8.7 percent were inducted into the Order of the Coif. Hardly a picture of "highly qualified" if qualification is measured by prestigious credentials.

Yet interestingly enough, there was evidence of a double standard for minorities, particularly African-Americans. The MCCA study showed that 83.3 percent of minority partners had attended a top-10 law school, and an astounding 70 percent had graduated from a top-5 law school.

According to an earlier study by Harvard law professor David Wilkins, more than 50 percent of all African-American associates in 1995 had graduated from either Harvard or the top schools in the firm's local market—for example, Columbia University and New York University in New York or Georgetown in Washington, D.C. By contrast, only 40 percent of white associates in New York and 23 percent in Washington, D.C., held the same elite credentials.

Wilkins also found that 77 percent of the black partners listed in the 1993 edition of the American Bar Association's Directory of Minority Partners in Majority Firms went to an elite law school. Harvard or Yale was the alma mater of 47 percent. In Wilkins' study, only 33 percent of all lawyers at those same majority law firms had gone to Harvard or Yale.

These facts suggest that law firms are insisting on higher, not lower, standards for African-Americans. Firms appear much more willing to advance whites who lack prestigious credentials, probably because whites are generally better able to fit into the culture of these majority establishments, and those in power (i.e., white males) are more likely to view other white males as reflections of themselves.

Attempts to increase the numbers of minorities (and women) are then seen as a departure from this merit standard, permitted only to satiate the politically correct diversity police. The prevalence of this view is a contributing factor to the failure of many diversity initiatives. Minority associates can face an uphill battle

trying to prove themselves to skeptical white partners who doubt these associates' intelligence and legal acumen and therefore do not invest the time to develop their careers.

WE UNHAPPY MANY

Second, Taylor and Sander posit that attrition rates are high in law firms because the attorneys who leave can't cut it, and Taylor cites the high rates of departure for minority lawyers as evidence of their inferior qualifications.

The basic ingredients for success are the same for all lawyers. Along with education, the three keys are: (1) whether you like what you do, (2) whether you like where you do it, and (3) whether you have the support of people who can help guide and shape your career. None of these factors are adequately addressed by Taylor in his commentary or Sander in his research. In fact, neither offer data to show whether minority attorneys are pushed out the door for incompetence or leave voluntarily.

It is true that the attrition rates from large law firms are alarming, particularly for minority women (surprise, surprise), who are the most demographically dissimilar from the white male majority's image of success. Minority women report the greatest difficulties in fitting in. Nearly 86 percent leave their first law firm by their seventh year.

And yet the numbers are not much better for any other group: 76.6 percent of men of color, 72.4 percent of all men, and 77.6 percent of all women leave their first firm by their seventh year. Half of minority men have left their first firm by their *third* year.

In short, a sizable number of highly credentialed, intelligent lawyers, of all ethnicities and races and of both genders, don't stick around at large law firms long enough to make partner. It's ridiculous to suggest that most of them were unqualified. Most leave because they see a new opportunity that looks better than their existing job. (Surely Taylor can relate, having himself left what was then Wilmer, Cutler & Pickering after only a brief stint. Was he unqualified? Or did he simply choose to pursue a more attractive career path?) Yet only in the case of minority departures do Taylor and Sander perceive a link between hiring standards and attrition rates.

Law firms tell story after story about losing talented minority lawyers to other employers, especially to corporate law offices. Why do minorities in particular exit big firms? Negative stereotypes still play a significant role. African-Americans and Hispanics suffer from stereotypes about lack of intelligence and linguistic skills that may unduly influence the opinions of supervising partners, thereby limiting associates' networking and mentoring opportunities from the onset. Asian-Americans are often stereotyped as highly intelligent but passive and lacking leadership ability. Thus, they may be passed over for plum assignments that require aggressive representation.

Law firms may also be losing legal talent because of inflexible attitudes that reward single-minded devotion to the workplace, clients, and revenue production. Many young attorneys say their firms do not address work-life imbalance in a meaningful way. The lack of alternative work schedules or other ways to balance professional and domestic commitments drives scores of lawyers, of all races and ethnicities, to leave large firms. They want different lives.

Yet this inflexibility is not necessary to the operation of a top-tier firm. One major firm in Washington, D.C., supports its lawyers practically (with on-site day care and six months of paid parental leave) and professionally (with affinity groups for minority, women, and gay and

lesbian attorneys). Since management instituted this serious commitment to diversity, the firm has seen a 400 percent increase in the number of minority lawyers and a 200 percent increase in the number of women partners. Moreover, at this firm retention rates for minorities have even surpassed retention rates for white males in many years—a sharp contrast to the experience at most elite law offices.

IT'S A PRIVILEGE

Third, Taylor and Sander discount the impact of ongoing racial and gender bias.

To succeed in any workplace, it is essential that one fit in with the majority culture. In the case of large law firms, that culture is white and male—78.9 percent of the partners in the nation's leading law firms are white men. But that does not prove that all the nonwhite, nonmale lawyers are any less intelligent, hard-working, or capable.

It is so tempting to believe that those who depart the fictional meritocracy of large firms do so because they are not qualified. Those who believe this need not feel any guilt about their own privileged status or harbor any insecurity regarding their own abilities. But what if the reason they succeeded has a lot less to do with personal superiority and a lot more to do with the greater willingness of powerful people to help them succeed?

Taylor argues that because minorities are not bringing more discrimination suits against law firms, there must be less discriminatory bias or disparate treatment. Here's another thought: Maybe people in a profession where so much rests on personal reputation are choosing to leave for more interesting, still lucrative jobs rather than stick around to beat their heads against the wall while others label them trouble-makers.

The system of white-male privilege that largely excluded women and minorities for centuries has only started to improve within the past three decades. The vestiges of privileged status are still ingrained in the culture. Ongoing efforts to level the playing field should not be considered so much anti-American as a part of a national tradition.

But even if you do not accept the moral imperative presented by diversity efforts, there is an equally compelling business case.

WHAT THE CLIENT SAYS

Taylor is correct that over the past 10 years, top corporations have increased the pressure on outside counsel to diversify the lawyers who handle the company's work. From the 1998 statement of principle set forth by Charles Morgan, then general counsel of BellSouth, to the 2004 call to action initiated by Roderick Palmore, senior vice president and general counsel of Sara Lee, corporations have increased their commitment to advancing diversity.

And wisely so. Consider the following:

- Harvard Business School studies demonstrate that diverse work teams consistently outperform nondiverse teams. Diverse teams take longer to reach results, perhaps because communication across differences is required, but their results are superior.

- A study conducted by the George Harvey Program on Redefining Diversity at the University of Pennsylvania's Wharton School came to the same conclusion: At least initially, homogeneous teams complete assignments faster than diverse ones—they are more efficient. But diverse teams develop more innovative solutions—they are more effective.

- Companies in the Standard & Poor's 500 that actively pursued

diversity programs performed more than 200 percent better than companies that did not. According to a study issued by Amalfi & Lewis in 2001, over the preceding five-year period those companies that pursued diversity reported a return on investment of 18.3 percent, while those that did not had a return on investment of only 7.9 percent.

- *DiversityInc* magazine publishes an annual list of the Top 50 companies for diversity. The 2005 list constitutes just 7 percent of Fortune 500 companies, yet this 7 percent generates 22 percent of total gross revenue for the Fortune 500. Also, the 43 publicly traded companies in the *DiversityInc* Top 50 reported 24 percent higher returns than the S&P 500.

Big business increasingly understands that a focus on diversity is more than just a feel-good program. Corporate cultures are enhanced by diversity. Corporate bottom lines are improved through diversity. Shareholders' pockets are enriched by diversity.

So don't expect that corporate clients are going to ease up. And law firms have little choice but to respond. When profitable relationships with clients are at stake, it behooves lawyers to get serious about diversity, too.

NO SHORTCUTS

The good news is that many law firms are trying to take the issue much more seriously. According to a survey of the top 200 law firms conducted by Altman Weil Inc. and the MCCA, 93 percent of responding firms had a diversity committee and nearly half had a diversity manager.

Contrary to Taylor and Sander, law firms are not settling for the biased and ultimately ineffective tactic of lowering hiring standards. My own observation has been that firms are employing more aggressive tactics to recruit diverse attorneys precisely because they wish to maintain high standards.

Many firms are also engaging in intensive self-analysis to discover the barriers that limit minorities' ability to contribute fully and advance fairly in the workplace. For example, firms interested in diversity are interviewing at law schools with higher percentages of minority students. They are offering scholarships to support economically disadvantaged minorities at local law schools. They are establishing formal mentoring and retention programs to encourage more inclusive work environments. In their lateral hiring, they are seeking to recruit minority attorneys with proven track records and impressive accomplishments.

The fact that law firms are stepping up their efforts to recruit and retain minorities and women does not mean that all the old barriers have broken down. Nor does it mean that former outsiders have gained equal access to the opportunities that flow to their majority peers. But savvy firms won't accept the easy option that Taylor and Sander offer them—just say good riddance to the minorities they hired and then lost, because they didn't have the right stuff in the first place.

Law firms that embrace this comfortable excuse will eventually fail because they won't go about the hard work of building a more inclusive workplace and thereby meeting corporate expectations. And from my bird's-eye view at the MCCA, I look forward to watching those foolhardy firms lose market share to their smarter competitors.

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