

# **Storm on the Horizon: Implications of the Growing Diversity Disparity Between Corporate America and their Law Firms**

by Mark Roellig and Catherine Simes

## *Diversity Within General Counsel and Big Law Equity Partners*

The practice of law is currently one of the least diverse professional occupations.<sup>1</sup> This is especially a concern since lawyers are not only advocates for people, but they also have historically been recognized as leaders of organizations and countries. To be respected and remain relevant, the legal profession needs to better reflect the population it serves.

In this article, we summarize the current data on gender and racial diversity among the 2015 Fortune 500 general counsels and significant law firm equity partners, and analyze a survey of law firms engaged by MassMutual. We then comment on the critical implications of these findings.<sup>2</sup>

## *Gender and Racial Diversity is Increasing Among General Counsels but Making Little Gains Among Equity Partners at Large Law Firms*

Almost one-third of the Fortune 500 general counsels appointed this past year were women. The number of female general counsels among Fortune 500 companies continues to grow and has increased from 21% in 2014 to 23% in 2015 (an increase of 10 general counsels, representing a 10% growth this past year). And among the S&P 200, where significant expenditure on outside counsel occurs, 26% are women.<sup>3</sup> In contrast, the representation of female law firm equity partners in the 200 largest law firms inched up less than 1% in the past year to 17%.<sup>4</sup> Despite their failure to reach the equity partner status, females are not underrepresented at law firms as a whole. Recent data shows that 47% of associates are women, 38% of counsel are women, and 29% of non-equity partners are women.<sup>5</sup> In other words, a disproportionate number of women are not rising through the ranks.

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<sup>1</sup> Deborah L. Rhode, *Law is the least diverse profession in the nation. And lawyers aren't doing enough to change that.*, WASH. POST (May 27, 2015), <https://www.washingtonpost.com/posteverything/wp/2015/05/27/law-is-the-least-diverse-profession-in-the-nation-and-lawyers-arent-doing-enough-to-change-that/>.

<sup>2</sup> We believe that many diverse attorneys will choose not to join or to remain with the larger law firms due to, among other reasons, the lack of progression opportunities outlined in this article. It is at smaller, diverse and alternative providers where innovation and change often will occur. We do not address opportunities at those providers in this article as the data summarized relates to the recent Fortune 500 release and the data available on large law firms.

<sup>3</sup> The S&P 200 was calculated by using the Financial Times June 2015 ranking of the top 500 U.S. companies.

<sup>4</sup> *Despite Small Gains in the Representation of Women and Minorities Among Equity Partners, Broad Disparities Remain*, NALP BULLETIN (June 2015), <http://www.nalp.org/0615research> (hereinafter *Small Gains*).

<sup>5</sup> Stephanie A. Scharf et al., *Report of the Eighth Annual NAWL National Survey on Retention and Promotion of Women in Law Firms*, NAT'L ASS'N OF WOMEN LAW (Feb. 2014), <http://www.nawl.org/d/do/150>.

Again, general counsels among the Fortune 500 are also more racially diverse than law firm equity partners. From 2014 to 2015, racial diversity remained largely flat both among Fortune 500 general counsels (an increase of one) and law firm equity partners. The percentage difference is, however, notable: 10% attorneys of color among the Fortune 500 but only 5.6% among law firms. In the S&P 200, 15% of the general counsels are people of color.<sup>6</sup> Among the Fortune 500 general counsels, 25 (5%) were African-American, 14 (3%) were Asian, and 10 (2%) were Hispanic. These numbers are significantly better than the odds of making equity partner at a large law firm. Among major law firms positions generally, minority representation has largely plateaued since 2008, when lawyers of color constituted 13.9%, rising to only 14.4% today.<sup>7</sup> Law school admissions are not the cause. People of color constitute almost 27% of law school students according to the American Bar Association's most recent statistics.<sup>8</sup>

### Fortune 500 General Counsel Diversity Summary

	2013		2014		2015	
<b>GCs*</b>						
Women	103	21%	106	21%	116	23%
Men	390	79%	390	79%	381	77%
Diverse	44	9%	48	10%	49	10%
African American			27	5%	25	5%
Asian	n.a.		12	2%	14	3%
Hispanic			9	2%	10	2%
	<b>493</b>		<b>496</b>		<b>497</b>	
<b>GCs appointed in the last year**</b>						
Women	20	29%	12	23%	22	30%
Men	49	71%	41	77%	51	70%
Diverse	7	10%	5	9%	9	12%
African American			4	8%	4	5%
Asian	n.a.		1	2%	2	3%
Hispanic			0	0%	3	4%
	<b>69</b>		<b>53</b>		<b>73</b>	

\*Unable to find information on some GCs, and some companies do not have a GC

\*\*Approximate dates. Full year, rather than calendar year

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### *The Billings from the Law Firms Engaged by MassMutual Mask the Lack of Diversity in the Leadership Positions at these Firms*

<sup>6</sup> *Small Gains*, supra note 4.

<sup>7</sup> MP McQueen, *Minority Ranks at Large Firms Show Little Growth*, AM. LAW. (May 28, 2015), <http://www.americanlawyer.com/id=1202726915938/Minority-Ranks-at-Large-Firms-Show-Little-Growth?sreturn=20150622230229>.

<sup>8</sup> *Id.*

<sup>9</sup> The data for this list was gathered through a multi-step process, which included accessing company websites, company profiles from Bloomberg and Reuters, SEC filings, and subscription company profiles through Lexis Advance. If the relevant information was not available through these channels, press releases and news articles were used. The diversity of the general counsel was primarily determined through biographies or news articles that referenced ethnic origin, or by photographic identification. If the diversity of the general counsel was unclear, the individual was not designated as diverse.

Based upon demands for more diversity representation, MassMutual tracks in its e-billing system the diversity of outside counsel who work on MassMutual matters. In the last year, of the attorneys who bill to MassMutual, approximately 45% were female and 24% were attorneys of color. On first glance, this would appear to be very positive data.

In early 2015, MassMutual surveyed six law firms that represent over 80% of its billings to capture relevant demographic information among the firms. Unfortunately, the desire for increased billings by diverse attorneys has not translated into overall diversity and has apparently had little impact on the leadership of the firms. The data reflects that of the equity partners at these firms, 20% are female and less than 8% are attorneys of color. And these numbers are worse among those whom have engagement partner responsibility at these law firms, with just 12% female and 7% attorneys of color.

That the diversity of the billing attorneys is not aligned with the diversity of the equity or engagement partners raises a concern. To mask the limited real progress of diverse attorneys, firms are “rotating” the diverse junior associates. Astute in-house counsels are alert to this possibility, however, and the strategy will not be effective long term.

### ***Implications for Law Firms – Watch Out – the Thunder Clouds are Gathering!***

Corporate America is becoming well aware of the need for diversity. It allows the enterprise to attract superior talent and to better understand and reflect our customers. It also results in better decisions and helps establish an environment of innovation and creativity. All of this drives engagement and increases productivity.<sup>10</sup> As a result, in making leadership selections, statistics show that Fortune 500 companies increasingly are selecting diverse attorneys as their general counsel. And their law departments are accelerating in their diversity. For example, 40% of MassMutual’s attorneys are women, 16% are people of color and 24% are people of color or openly LGBT. And many law departments now have women as a majority of their attorneys.

Diversity also continues to increase among the directors at these major corporations. The Spencer Stuart Board Index reflects that 19% of S&P 200 boards are women and approximately 15% are African-American, Latino or Asian. Of the Spencer Stuart searches for new board members in 2014, 64% looked for people of color and 71% included searches for females.<sup>11</sup> Yet law firms are not keeping pace. These sellers of legal services may not fare well when they do not reflect the demographics of their buyers.

This demographic disparity is likely to become more pronounced, given that the leadership of corporate legal teams can diversify more quickly than those of law firms. A

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<sup>10</sup> Mark Roellig, “*WHY*” *Diversity and Inclusion is Critical to the Success of Your Law Department*, PLI CORPORATE COUNSEL INSTITUTE COURSE MATERIALS (2012).

<sup>11</sup> Mark Roellig et al., *Fixing What’s Broken: Strategies for Increasing Diversity in Law Firms*, ACC DOCKET (2015).

new general counsel or other high level lawyers in an in-house organization can be appointed essentially instantaneously. And in the last year, of the new general counsel appointed in the Fortune 500 selected from within the law department, approximately 25% were women. However, at many large law firms, it takes more than 10 years to become an equity partner.

This gap between the buyers of legal resources and those providing the resources is likely to only widen. Law firms may try to emphasize their diversity by using associates of color to bill its clients, but clients are learning the right questions to determine what is really happening, behind the scenes, at law firms. Either independently, or at the direction of their boards, general counsel will continue to ask for this data and demand improvement.<sup>12</sup>

Achieving gender and racial diversity is a stated priority for many law firms. But results have not followed. Firms, in fact, acknowledge that there has been more success in recruiting than in promotion and retention.<sup>13</sup> Some law firms believe this is due to the pipeline,<sup>14</sup> but, as mentioned above, diversity among law students is simply not the reason. What is clear is that corporate America wants and values diversity in its entire team, both in-house and among the outside counsel that they engage.

Where does this all lead? Based upon fast changing demographics and the clients' demand for diversity, law firms that do not diversify more systemically are likely to alienate their clients and ultimately lose business – or go out of business!

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<sup>12</sup> *Id.*

<sup>13</sup> Deborah L. Rhode & Lucy Buford Ricca, *Diversity in the Legal Profession: Perspectives from Managing Partner General Counsel*, 83 FORDHAM L. REV. 2483, 2491 (2015).

<sup>14</sup> *Id.* at 2492.