

# A GLOBAL MARKET FOR DIVERSITY IN LAW: THE US REALITY, OR JUST RHETORIC?

*Posted on 07/01/2008*



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The failure of US law firms to become truly multicultural and international in their scope is an opportunity for other legal markets says Charna E. Sherman, Squire, Sanders & Dempsey, LLP.

En base a un estudio realizado por Charna E. Sherman, del despacho Squire, Sanders & Dempsey, L.L.P, en un mercado cada vez más globalizado, las empresas estadounidenses son

reiteradamente más exigentes y reclaman los beneficios de los equipos de trabajo con mujeres y multiétnicos. Por consiguiente, no es de extrañar que estos bufetes consideraran en sus estrategias de crecimiento estas demandas, pero en momentos de reducción de socios de capital, estos grupos minoritarios han sido los primeros en ser excluidos. El fracaso en EEUU permite a otros países lograr una ventaja competitiva si logran este equilibrio interno.

As markets become ever-more global, U.S. businesses have become ever-more vocal in extolling the benefits of multicultural, multiethnic workforces. Thus, it is no surprise that the American lawyers representing them have adopted growth-oriented business models which at least purport to endorse and embrace precisely the same imperatives and economic benefits of diversity.

Decades ago, the US legal profession sought initially to advance women and minorities in the profession with a 'bubble up' strategy that assumed imbalances in the profession could be solved over time: if US law schools were just to open their doors to a more diverse student body, then – the assumption followed – those new, more diverse graduates would in turn rise through the profession and ultimately proportionately populate all of its ranks, including the highest levels.

And in fact, significant progress was made in increasing women and minorities in law schools. Yet, research since demonstrates that

the assumed corollary of a rise of women and minorities up through the profession did not occur, and falls well short of any approximately 'proportionate' representation.

Minority representation in the legal profession in the US has in fact fallen notably behind other professions, eg, 9.7% among lawyers and 24.6% among doctors. Particularly alarming is a marked drop in recent years in the percentage of incoming minority students in US law schools. In turn, those who fail to pass the bar exams are disproportionately persons of colour and, of those minorities who do earn JD's, only 53.3% succeed in securing firm jobs.

Concerns with the slow pace of advancement are aggravated by other trends. For example, the US legal services market is now marked by a huge boom in lateral partner hiring – with significant financial incentives associated with such lateral recruitment. Yet, diversity is conspicuously absent from this new, rich demographic. In 2005 for example, more than 75% of lateral partner hires were white men. And from 2004 to 2006, the percentage of minority lateral hires declined from 5.5% to 3.2%, with less than 1% of lateral hires accounting for women of colour.

Similarly, the impact of a fast-paced trend toward 'de-equitisation' of equity partners – to boost 'profits-per-partner' – is even greater on already underrepresented women and minority equity partners. Harvard Professor David Wilkins speculates that, for a host of reasons, it will be women and minority partners who are most likely to face deequitisation. Indeed, the high 'price' of diversity can virtually be calculated by comparing The American Lawyers prestigious 'A-list' of American firms – which uses minority attorney percentages as one of multiple 'objective' measures – with its list of those U.S. firms which generate the most 'profits-per-partner.' Only one firm in the U.S. makes the top ten in both. In fact, there appears to be almost an inverse relationship between firms that are 'diverse' versus those that are profitable.

## **The future of diversity**

The lack of progress on diversity – and more, the apparent profits gained in return for diversity unresponsiveness – at least call into serious question the virtually undisputed promise of globalisation: whether recruiting, retaining and promoting diversity is necessary to competing successfully in ever-more global markets, including the law. So far, US statistics suggest that perhaps diversity is too expensive because 'it pays' profits-perpartner to stay white and male.

But, the international legal marketplace can justifiably question whether US lawyers are just seeking short-term profits at the risk of long-term losses. Indeed, if diversity really is an economic imperative with respect to competition in global markets, then the US legal profession has taken formidable risks in not sufficiently investing in what it will take to compete. And more, other markets in the world – far more diverse, arguably by definition as 'international' are positioned to parlay such reticence into a commercial opportunity: to satisfy the real demand for diversity, and in turn, secure the representation of the world's ever-more diverse clients of the future . . . perhaps even at the expense of shortsighted US counsel who refuse to change their colours.

In addition to being a litigation partner at Squire Sanders & Dempsey, LLP. in Cleveland, Ohio, Charna E. Sherman has held many leadership positions within the American Bar Association (ABA) and other organisations, especially concerning the advancement of women in the law (e-mail [cesherman@ssd.com](mailto:cesherman@ssd.com)). She is grateful to the Harvard Law School for their assistance with her research.