Minority-Owned Law Firms and Corporate America's Diversity Crucible

By Herbert A. Igbanugo, Esq.

When it comes to law firms, we often hear the terms "leading law firms," "major law firms," "large law firms," "best law firms" and "top-ranked law firms." Several publications purport to rank law firms but there is no easy way to determine which law firms have been the most successful in all aspects of law practice. No one statistic can gauge which firms, majority- or minority-controlled, have done the best job for their clients. Notable black lawyers, such as Willie E. Gary and the late Johnny Cochran, have memorably established that size does not matter all the time. However, size-wise, there are a few minority-owned law firms with a nationwide practice that can service large corporations as well as their majority-owned counterparts.

The genesis of the diversity discourse is the 1999 letter by Charles Morgan, then Executive Vice President and General Counsel of BellSouth Corporation, commonly known as "The Statement of Principle." The statement was signed by more than 500 General Counsels over a period of two years and advocated the importance of diversity in the workplace both from a business perspective and because it is the right thing to do. In 2004, Roderick A. Palmore, Executive Vice President, General Counsel and Secretary of Sara Lee Corporation, authored "A Call to Action," which represented a sharp escalation from the previous high-profile diversity manifesto created by Charles Morgan.

This was followed shortly by a study commissioned by Stacey Mobley, Senior Vice President, General Counsel and Chief Administrative Officer of Dupont Corporation, "The Study on the Status of Minority-Owned Law Firms in Today's Legal Environment." This study sadly confirmed that the number of minority-owned law firms serving Corporate America has declined significantly over the last decade and a half. The study suggested that minority-owned firms face obstacles, such as competition from silk stocking firms, limited access to corporate counsel decision-makers, the good old boy network, perceived inexperience, insufficient resources and racial bias, among others. Also noteworthy in this debate are the efforts of E. Christopher Johnson Jr., Vice President and General Counsel of GM North America, and determined corporations like Wal-Mart and Prudential Insurance Company of America that are truly committed to diversity.

But it remains a struggle for minority-owned and/or minority-controlled law firms nationwide to get to first base with major corporations. Many minority-owned firms are compelled to lower their fees, making the work they get barely profitable. In certain situations, this amounts to practicing law with little or no dignity. The necessity to ensure long-term survivability of minority-owned law firms is a crucial one. First, it provides an alternative career path for graduating minority lawyers. The career path provided by minority-owned law firms exists both because large law firms were not always an option for lawyers of color and because many outstanding lawyers of color opt to practice law in this environment. It is therefore imperative to maintain minority-owned law firms both as a viable career option for future lawyers of color and as a continued source of exceptional legal services to corporations and government agencies around the nation.

Much has been said or made of minority attorneys in majority-owned law firms being able to fill the minority gap in the legal profession, but lessons of the past show that the answer does not lie with this erosive alternative. Diversity scorecards kept by organizations, such as the National Minority Law Journal, say nothing about how well a firm performs among each minority group. Blacks compose 3.1% of all lawyers at scorecard firms, Hispanics 2.4% and Asians 4.7%. In comparing individual firms to these national averages, a pattern emerges: at the vast majority of firms, diversity is concentrated in just one or two ethnic groups. Overall, almost 11% of the lawyers at the top twenty firms are Asian-American, 4% are Black and 4% are Hispanic.[1] Therefore, the success in recruiting and retaining lawyers from one ethnic group can obscure the fact that the numbers from other groups are lacking substantially.

Extensive research failed to produce any comprehensive or credible ranking of minority-owned law firms by any national or regional organizations, publications or entities. The Minority Law Journal, however, does maintain a National Directory of Minority Attorneys. Its listing is not as detailed as Martindale Hubbell's but you can glance through and easily pick out the larger firms of 10 or more lawyers, as well as a handful of firms of 20+ and 30+ lawyers. It also describes their areas of practice but doesn't tell you anything else about the firm. I imagine one would have to go on individual websites of the firms to see what they say about themselves and their achievements in the legal field.

To the extent that size matters, one cannot ignore the international law firm, Adorno & Yoss LLP. In the early part of 2006, the firm merged with one of New England's largest minority-owned firms, Fitzhugh, Parker & Alvarado LLP of Boston. With its 23 lawyers, Fitzhugh, Parker & Alvarado became Adorno & Yoss' New England office and conducts business locally under the name of Adorno, Yoss, Fitzhugh, Parker & Alvarado LLP. The combined firms have 270 lawyers and 20 U.S. and international offices according to Adorno & Yoss' website. Adorno & Yoss LLP also spearheaded the formation of the National Minority Law Group (NMLG) and maintains that it is the largest certified minority-owned law firm in the nation ranked number 169 among the National Law Journal 250 in 2005. According to a March 28, 2006, Minority Corporate Counsel Association article entitled *"The National Minority Law Group; Debate for Corporate America's Business Heats Up,"* approximately three years ago, the firm began a massive expansion effort merging with other minority-owned firms to open offices in New York, New Jersey, Dallas, Atlanta and, most recently, Boston. The firm avers that it is the only law firm member of the National Minority Supplier Development Counsel's Corporate Plus Group and that it has been ranked in the top 300 law firms in the country according to American Lawyers Rankings.

Adorno & Yoss LLP confirms that it canvassed the nation looking for top-tier minority-owned law firms, on the corporate defense side in metropolitan areas, and their selective search uncovered just 25 qualifying firms, with a number of those unwilling to lose their autonomy by undergoing a merger. What subsequently emerged from this effort is the National Minority Law Group (NMLG), a consortium of minority-owned law firms that work in concert, complimenting each other's practice areas with a network of offices and talent across the country. The NMLG website, www.nmlg.org lists

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the following member firms: Atkins & Evans LLP (www.atkinsevans.com), Blackwell Igbanugo P.A. (www.blackwell-law.com)[2], Brown & Hutchinson (www.brownhutchinson.com), Brown & Sheehan, LLP (www.brownsheehan.com), Escamilla & Poneck, Inc. (www.escamillaponeck.com), Fields & Brown, LLC (www.fieldsandbrown.com) and Fitzhugh, Parker & Alvarado (www.fitzhughlaw.com).

The National Directory of Minority Attorneys published by Minority Law Journal lists minority-owned firms. Sizeable ones include: Gonzalez, Saggio & Harlan of Milwaukee, Wisconsin with 35 lawyers; Sanchez & Daniels of Chicago, Illinois with 34 lawyers; Harris, Kardstaedt, Jamison & Powers of Englewood, Colorado with 30 lawyers; Lewis & Munday of Detroit, Michigan with 28 lawyers; Armienti & Brooks of New York with 25 lawyers; Miller, Alfano & Raspanti of Philadelphia, Pennsylvania with 22 lawyers; Reichard & Escalera of San Juan, Puerto Rico with 20 lawyers; Antonelli, Telly, Stout & Kraus of Arlington, Virginia with 18 lawyers; Pugh, Jones & Johnson of Chicago, Illinois with 14 lawyers; Brown, Diffenderffer & Kearney of Baltimore, Maryland with 14 lawyers; Ferguson, Stein, Wallas, Adkins, Gresham & Sumter of Charlotte, North Carolina with 14 lawyers; Wilson, Petty, Kosmo & Turner of San Diego, California with 12 lawyers; Carro, Velez, Carro & Mitchell of New York with 11 lawyers; Rollin Wong of Irvine, California with 10 lawyers; Greene & Letts of Chicago, Illinois with 10 lawyers.

This is certainly not a qualitatively or quantitatively exhaustive list. To claim otherwise would be offensive to many and explosive at best. Prudential Insurance, Wal-Mart, Dupont, Shell and numerous other corporations that have conducted extensive research in their diversity reengineering efforts are usually tight-lipped about the selection process for their preferred minority counsel.

In the past few years, many minority-owned law firms have moved into majority-owned law firms or corporations. This does not yet spell extinction for the minority-owned law firms in the United States nor does it necessarily bode well for them. A trend that started in the 1980s is the partnering of minority-owned and majority-owned law firms to service major U.S. Corporations. This is fueled in this globalization era environment by the easily understood principle that corporations operate in a multicultural world so that their law firms must field a multicultural team to better represent them overall.

In January 2005, Venable formed an alliance with Brown & Sheehan, which made it the third Am Law 200 firm. That pairing followed similar partnerships between Womble, Carlyle, Sandridge & Rice and Molden, Holley, Fergusson, Thompson & Heard, and between Sonnenschein, Nath & Rosenthal and Pugh, Jones, Johnson & Quandt. The most notable advantage of this trend is that smaller firms gain access to resources and clients that might otherwise be out of reach. This seems like a win-win for all, but critics say it is merely an attempt by majority firms to outsource their diversity.[3]

However, after all is said and done, the real key to the survival of minority-owned and/or minority-controlled law firms is for major corporations around the country to double their efforts and maintain fidelity to their diversity vision. The diversity visionaries of Corporate America must take another step or two forward if diversity is to no longer be a footnote. Nothing will get the attention of the majority-owned law firms like major U.S. corporations becoming "real stakeholders" in minority-owned law firms by committing to building their foundational and formative blocks from the bottom up. Pillars could be found amongst minority law firms or minority lawyers in majority law firms. Legal architects and builders are not lacking in the minority legal community and many are poised to create responsibly managed law firms if major corporations are willing to commit significant dollars of legal work in specific areas that will permit minority-owned law firms to build credible practices in those areas. This is how the majority law firms came to be where they are today and there is no secret to it, nor is it nuclear science. This is no longer the time to plead with majority-owned firms to meet diversity goals to which equal opportunity corporate clients aspire.

Initiatives like Sara Lee's General Counsel Rick Palmore's "Call to Action" are evidence of some corporations' re-born commitment to diversity in the legal profession. Some are really "walking the walk" by boldly crossing the line from "talk shops" to "work shops." This is quite commendable, and I'm sure that these efforts

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judgment was affirmed by the Sixth Circuit Court of Appeals, the *en banc* panel differed as to the applicable standard for analyzing retaliatory action. 364 F. 3d 789.

The New Standard

The core provision of Title VII of the Civil Rights Act of 1964, forbids employment discrimination against an individual with respect to "compensation, terms, conditions, or privileges of employment," based on "race, color, religion, sex, or national origin."[6] Title VII's anti-retaliation provision forbids employer actions that "discriminate against" an employee for "opposing" a discriminatory practice or for "participating in" a hearing or other proceeding related to Title VII prohibited conduct.[7] The Court analyzed the linguistic differences between the core provision and the anti-retaliation provision and determined that Congress' intention was that the provisions served different purposes and provided different protections. While the substantive provision serves to secure employment-related opportunities, "an employer can effectively retaliate against an employee by taking actions not directly related to his employment or by causing him harm *outside* the workplace." *Id.* at 2412.

The Court explained its reasoning by citing to a case where the FBI retaliated against an agent by refusing to provide protection after the agent received death threats from a prisoner. Another example involved an employee who filed false criminal charges against an employer who complained of discrimination. Though the FBI's refusal to investigate and the employer's filing of criminal charges, were not directly work-related, such actions could effectively deter an employee from reporting discrimination. The Court's finding explicitly rejected the rationale applied by most Courts of Appeal, which had long limited actionable retaliation to workplace harms. *Id.* at 2415.

While explaining how courts are to evaluate retaliatory actions, the Supreme Court specifically limited actionable conduct to that which is '*materially* adverse.' Employer liability will not arise

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constructing tenant improvements. Issues that arise in connection with this consideration revolve around determining the point in time when the premises are "substantially complete" and what penalties are associated with late delivery. In order to define "substantial completion," the parties may need to engage an architect to certify "substantial completeness" for the purposes of determining the commencement date.

C. Rent and Operating Expenses

Regardless of whether your client is the landlord or the tenant, issues arising in connection with rent are always critical and worthy of adequate consideration. It is important from a landlord's point of view to ensure that the tenant's obligation to pay rent is unconditional without any right to set-off or abatement. A landlord also will need to decide how to structure the rental terms for the lease transaction in a manner what will not only allow the landlord to recoup its investment, but also realize some profit. In this respect, the landlord will need to be certain that it has adequate rental income to cover the operating expenses, which include taxes, insurance, utilities, maintenance and any debt on the property. This is typically done by providing for "base" rent supplemented by "additional" rent. Also, "percentage" rent will routinely be utilized which allows the landlord to share in a percentage of the tenant's profit over a specified threshold income amount.

The tenant will want to carefully analyze and negotiate which expenses will be included, as well as excluded, from the "additional rent" or "operating expense." Special attention should be given by both parties when crafting the definition of "operating expenses" and tenant's "proportionate share." From a tenant's perspective, the tenant will want to make sure that the denominator includes all leaseable areas and not just the leased areas. The tenant will not want to pay for more than its share, and, thus will want the landlord to pay the operating costs for any unoccupied space. From a landlord's perspective, the landlord will want the trusting tenant to stipulate to the percentage that represents tenant's proportionate share of operating expenses. This approach is beneficial to the landlord since it does not require the landlord to justify how the tenant's "proportionate share" is determined.

Most well-drafted commercial leases, at least, will provide the widely accepted definition of tenant's "proportionate share," which typically is calculated as a fraction, whose numerator is the total rentable square footage of the leased space and whose denominator is the total rentable square footage of the project. Some landlords, however, will want to set the denominator as the total square footage of the occupied portion of the project. In this situation, landlords will argue that such a method of calculation is fair because it is based on the actual square footage leased.

With regard to costs that are excluded from the definition of operating expense, tenants will desire exclusions for costs incurred in connection with the construction, improvement or remodeling of the property, including the cost of resurfacing parking areas, correcting design or construction defects, repairing things that are beyond the scope of routine repairs that tenants regularly performed, and any other costs that are capitalized under GAAP. Tenants also will desire that the costs of selling, syndicating or mortgaging any interest in the property be excluded from operating expenses.

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are appreciated very much by the entire minority legal community.

If the United States of America can go into Iraq to build a democracy, U.S. Fortune 500 companies certainly can help minority-owned law firms become as large and as capable as majority-owned law firms. If the signatories to the "Call to Action" make a commitment to help build several of these types of firms around the country, it will bring to fruition the desire of minority-owned law firms to service corporations that express a continued commitment to working with a first-class group of diverse lawyers on a national basis. Again, the ultimate key to and/or measure of success in this worthwhile endeavor is fidelity to the vision.*

[1] Emily Barker, *Not All Diversity is Created Equal*, The Minority Law Journal (June 1, 2006).

[2] Blackwell Igbanugo dissolved on November 1, 2006 and reconfigured into two new firms: Blackwell Burke P.A. (www.blackwellburke.com) and Igbanugo Partners Int'l Law Firm, PLLC (www.igbanugolaw.com).

[3] Dimitra Kessenides, *Outsourcing Diversity*, The Minority Law Journal (May 1, 2005).

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