

## ROUNDTABLE

# Diversity Update

### EXECUTIVE SUMMARY

Twenty-five years ago, diversity was not a topic of discussion in the legal profession. In our third annual diversity roundtable, our panelists of in-house and outside counsel discuss the evolution of the profession, how their companies and firms foster diversity, the effect of diversity initiatives, and challenges to growing and maintaining a diverse staff. Our panelists are Kevin Poloncarz of Farella Braun + Martel and his guest Henry Fong, director and corporate counsel at Gap Inc.; Teveia Barnes of Foley & Lardner and her guest Marci Rubin, deputy general counsel of Wells Fargo; and Joan Haratani of Morgan Lewis & Bockius and her guest Alex Vasquez, associate general counsel at Wal-Mart Stores, Inc. The roundtable was moderated by Custom Publishing Editor Chuleenan Svetvilas and reported for Barkley Court Reporters by Krishanna DeRita.

**MODERATOR:** How has diversity in the legal profession changed in the last 25 years?

**RUBIN:** In 1981, there really wasn't much diversity. There were few women and very, very few people of color.

The profession has changed significantly in terms of the number of women and minorities going to law school. But it's changing more slowly in terms of the composition of law firms and senior levels of corporate counsel. There still are concerns about diversity, or we wouldn't be here. Looking nationally I'm really amazed at how many lawyers of color you see and how many are moving up in their organizations. But the numbers remain small. The percentage of minority attorneys does not match the percentages of the various minority groups in our population.

**BARNES:** When I started almost 30 years ago, diversity wasn't a concept as we are discussing it today. It was a financial concept for diversifying portfolios. It certainly wasn't a hiring and promotion concept for law firms. It began to be an issue for law schools that actually were making more inroads into bringing students of color and women into law schools. My class was 50 percent women, which was amazing. What has evolved over the last 25 years is an acceptance and recognition of

diversity in the law as an important concept.

The willingness to have a dialogue about diversity is a relatively new phenomenon, I would say, within the last 10 to 15 years. But if you pull out "the choir," the profession still has a long way to go.

**HARATANI:** Alex [Vasquez] and I recently spoke at the State Bar Pipeline Conference, which presented pretty alarming graphics about the disproportionate representation of attorneys among the various ethnic groups in the legal profession.

When I started working as a lawyer 22 years ago, I was one of the very first women of color partners in my law firm. There is still a small group of us in the partnership ranks, which is a problem highlighted by the San Francisco Bar Association goals and timetables of last year. I spoke at the Bar Association of San Francisco Minority Bar Coalition's Annual Minority Summer Associates Reception. The entire room of 350 people was predominantly associates of color. I talked about how awestruck I was to be talking to a group that looked a lot like me except younger and hipper, and how 22 years ago, you'd have to round up everybody in the state of California and you still wouldn't have reached that critical mass. Young associates said, "You know what? I just assume that the law profession is diverse."

At the beginning of my professional life, diver-

sity was never a factor. Now I can't think of an example where diversity hasn't been a key factor for quite a few years now.

**VAZQUEZ:** I've been an attorney for 15 years. Since the time I was in law school, not only has the approach to diversity in the legal profession changed, but also the legal profession itself has changed. The evolving demographics should be reflected in the legal profession, at Wal-Mart, and throughout corporate America.

**FONG:** Not too long ago, when I began practicing law, a few law firms were already doing things to advance the cause of diversity, but many more were still operating under the assumption that it was enough to be "color-blind" and not discriminate against minorities and women. They felt that they didn't need to make any special efforts toward increasing diversity, and they assumed that as more minorities and women graduated from law schools, they would slowly but surely trickle up into leadership roles at law firms and corporate law departments. The problem of under-representation would just naturally "take care of itself" over time.

In the last few years, however, I've seen a significant shift in perspective among many of these law firms that once upon a time rested on claims of being "color blind" and nondiscriminatory. They

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are now taking much more proactive measures to encourage diversity and become more inclusionary.

**POLONCARZ:** About ten years ago, when I started looking at law firms, very few firms would identify the number of gay or lesbian attorneys in the NALP [National Association for Law Placement] guides. It was a very dicey question to ask about gay or lesbian attorneys at interviews because part of the “color blind” ethos was that being gay was just part of your private life and therefore wasn’t something that should intersect with the workplace or be of concern to the employer. Now there’s been a sea change, particularly with respect to LGBT [lesbian, gay, bisexual, transgender] issues. Young people are very adept at getting information or asking about gay or lesbian attorneys, and that color blind philosophy, at least with respect to LGBT issues, has fallen away or become unacceptable.

**RUBIN:** California law firms initially lagged behind the New York firms in diversity. Women graduating from California law schools in the early 70s had to go to New York to get jobs in major law firms.

In 1981, the law firms were not seeking minorities. They had a couple women. At that time in California the greatest opportunities for women, and then minorities or gay and lesbian attorneys, were in corporate legal departments—in jobs that weren’t prestigious then but which have now become coveted jobs.

Over time the West Coast and California became the diversity leaders in the legal profession.

**BARNES:** In the Bay Area, the California Minority Counsel Program really moved the diversity issue forward to not only keep pace with New York, but actually to outdistance New York by setting diversity goals and timetables in 1989. In 2000, San Francisco was being used as the model for other bars to emulate in terms of specific goals and timetables. That is certainly a change in the last 25 years of diversity in the profession, and CMCP has been a major catalyst for that change.

**MODERATOR:** For our corporate counsel, on a practical level, how do you foster diversity in your legal department?

**VAZQUEZ:** One practical step we took right away was to create a nexus between our recruiting and our diversity efforts. The very first activity Kerry Kotouc, my colleague who is in charge of attorney

recruiting, and I planned was an event where ten of our in-house attorneys attended a dinner in Dallas, Texas, and then stayed over to conduct interviews the following morning of candidates from the Dallas area. We hired three new attorneys from that effort, including two attorneys of color and one woman. We have, in fact, hired many of our attorneys over the last three to four years directly from a network of contacts we’ve developed through minority bar organizations. Today, we have 140 attorneys in our legal department, and 30 percent are attorneys of color and 40 percent are women.

**FONG:** Gap executive leadership has emphasized the importance of diversity and inclusion by embedding them into each department’s goals. In our legal department, we actively work with our company’s recruiting department to ensure that for every open position, we have a diverse group of applicants. Once a lawyer joins our department, we’re able to devote a lot of time and resources into developing and retaining that individual. It’s very difficult for a member of our team to fall between the cracks because our legal department is relatively small, with only 33 attorneys globally.

In addition, leadership training is available to our attorneys. We have opportunities to learn how to manage and develop people—skills those of us from law firms rarely had the chance to learn. As a result, we have a very diverse and inclusive department. At last count, 35 percent of our attorneys are members of racial minority groups and 57 percent of our attorneys are women.

**RUBIN:** At Wells Fargo, diversity is part of the company’s culture, vision and values. It starts at the very top with our CEO, our management committee and the Corporate Diversity Council. We also have a separate Legal Group Diversity Council to focus on issues specific to our group and to help communicate and celebrate our diversity.

The company developed a very strong training program on leadership in an inclusive environment. In the Legal Group, we’re having every employee, not just attorneys, go through that training. We also have diversity goals in our hiring and promotions, which include actively seeking a diverse applicant pool.

**MODERATOR:** And how are you fostering diversity with your outside counsel?



**KEVIN POLONCARZ** is a partner with Farella Braun + Martel, where he serves on the firm’s Diversity Committee, chairing its subcommittee on pipeline programs. He previously co-chaired the firm’s Professional Development Committee and moderated a panel at last year’s CMCP conference on mentoring. He represents clients in environmental compliance and enforcement matters involving air quality and toxics. He received his J.D. from the University of Chicago in 1998 and his B.A., summa cum laude, from Hobart College in 1995. [kpoloncarz@fbm.com](mailto:kpoloncarz@fbm.com)



**HENRY C. FONG** is a Director and Corporate Counsel at Gap Inc., where he serves as the primary employment law counsel for the company’s Banana Republic and Old Navy divisions. Mr. Fong also leads the Legal Department’s Diversity Strategy Team. Prior to joining Gap Inc., he practiced employment law at Farella Braun + Martel, where he co-founded and co-chaired the firm’s Diversity Committee.

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**VAZQUEZ:** One of the most effective steps we have taken is increasing the number of attorneys of color and women serving as Wal-Mart relationship partners for their law firms. For example, Joan Haratani is our relationship partner with her firm Morgan Lewis, and she is doing a great job of managing the relationship, including helping to drive diversity by making sure the law firm's attorneys and management understand our diversity expectations. This strengthens the partnership we have with the firm.

We also send a questionnaire to our law firms and ask for certain metrics such as: how many attorneys of color and women are associates and how many are partners, how many are in leadership positions, and how these numbers have progressed over a five-year period of time. Our aim is to gain insight not only into the hiring, but also the retention and promotion of attorneys of color and women.

We also ask about law firms' participation in and support of various diverse bar organizations and to report any other information the firm finds important to explain their own diversity. We do our best to employ a multifaceted and thorough review of our law firms.

**RUBIN:** Diversity is a component of our outside counsel engagement decisions. Every attorney reports monthly on all his or her outside counsel engagements, including a breakdown on diversity. We ask firms to include diverse attorneys to work on our matters, and we also send work directly to diverse attorneys. And we might say to a firm, "You are really good, but you need to get a diverse attorney on our team if we're going to continue to use you."

**MODERATOR:** How have efforts such as the Bar Association of San Francisco (BASF)'s goals and timetables for minority hiring and the 2004 Call to Action by Sara Lee's general counsel Roderick Palmore affected your firm's diversity efforts?

**BARNES:** As someone who participated in these national efforts, I sit here as a partner from Foley & Lardner and as the president of Lawyers For One America (LFOA). The initial Call to Action with Bell South and LFOA in 2000 forced law firms to at least put diversity on the agenda in their partner meetings, but it lacked effective accountability.

The new Call to Action through MCCA [Minority Corporate Counsel Association] and Rod Palmore at Sara Lee has an accountability feature. Now the

corporate signatories are sending a strong message to firms, "We really mean it. We are going to hold you accountable and we are going to ask you to report." At Foley, we are taking this very seriously. Most lawyers, including white heterosexual men at Foley, strive to have a diverse team; and that effort to foster diversity often occurs long before we have the client matter.

Lawyers For One America, CMCP, MCCA, and BASF are the inspiration, and leaders in shaping and moving the profession forward. They have inspired Foley to be a leader in making a difference through action. In 2000, 4 percent of the lawyers at Foley were lawyers of color. Today we are at 9.67 percent. We are moving in the right direction.

**HARATANI:** In all seriousness, Wal-Mart has affected my organization's diversity efforts because of its big move to demand that the relationship partner of their outside law firms be a woman or someone of color. When a client like a Wal-Mart, Gap or Wells Fargo adds the accountability component to its diversity goals, that it makes it very real to the law firm. If X happens, you get Y. But if X doesn't happen, you get null. Those formulas work very well for law firms.

Morgan Lewis recently had an Attorneys of Color Conference. Veta Richardson of MCCA was our keynote speaker. We house MCCA in our Washington, D.C., office, so we have a very close connection to MCCA. To have folks like Wal-Mart and MCCA constantly talking about and turning the volume up on the importance of diversity and inclusion in everything we do makes a huge difference.

There's nothing like a third-party endorsement from the work of BASF, Lawyers for One America, CMCP, or MCCA to build credibility and to make your case to management.

**POLONCARZ:** Clients commonly demand diversity in RFPs. Sometimes we hear back from them that they were very impressed with our diversity efforts and that they were a substantial component in their decision to hire us for a particular matter. The greatest thing you can bring back to the firm to demonstrate that diversity matters is when a straight white male partner says, "This is a bet-the-company case and the client told us that it gave us the matter in part because of our strong diversity efforts." There's often a belief that some companies will allow their bet-the-company cases to go color blind, if you will, but then look to fulfill their diver-



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**MARCI RUBIN**, Deputy General Counsel of Wells Fargo, manages the legal work for small business, middle-market, equipment leasing, corporate, and international commercial lending activities, and related credit policy and regulatory work. Ms. Rubin is an active speaker on commercial lending law and diversity. She is also Board Chair of Freight & Salvage Coffee House, a nonprofit arts organization, past member of the California State Bar UCC Committee, and past Board Chair of Equal Rights Advocates.

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sity needs with more commodity-like work. It's really great that we now see diversity taken into account, even for the bigger ticket items.

**MODERATOR:** What are the challenges to growing and maintaining diversity in the legal profession?

**BARNES:** We are still a long way from diversity nirvana. For Foley, getting the diversity that we would like in some offices is much more difficult. Milwaukee, for example, has diverse lawyers but not at the numbers we would like. Retention is also an issue.

There are certainly clients where diversity is an imperative. But we still face an incredibly competitive profession, where having enough work for every talented woman, person of color, gay, lesbian, disabled, and white male lawyer is difficult. We need the clients who signed the Call to Actions to hold firms accountable. Not every signatory is as serious about diversity as Wal-Mart, Gap and Wells Fargo, which make the tough decisions to take work away from firms that have made no effort to promote diversity.

**RUBIN:** Another challenge is at the law school level. The number of minorities graduating from law schools today is nowhere near their percentage of the population. In fact, the number of minorities enrolled in law schools has been declining. Part of the challenge for everybody is to figure out how to increase the number of diverse candidates who apply to and attend law school. We are all convinced that the talent is there, but they are not going into the law schools.

**POLONCARZ:** Including pipeline projects as a

goal and a commitment for firms is a really important move. It helps attorneys in firms justify efforts to go out into the community and provide more opportunities to young people, which may sometimes seem attenuated from the goal of increasing the number of minorities who will ultimately enter law school and the legal profession. So now we are looking at programs in grammar schools and junior high schools. We are not just looking at law students themselves. By then, it's already too late.

**HARATANI:** If you look at the dropout rates on the education curve, it's alarming how many diverse kids drop out of high school and then drop out of college. So by the time you get to the graduate school level, the pool has really shrunk, and that's not the American dream. That's not what I thought would be happening in 2006, and it's something we really need to take a hard look at.

**BARNES:** Lawyers for One America has actually started our diversity efforts in the middle schools.

**FONG:** One of the challenges we all face is ensuring that people understand that the end goal is not simply to meet numeric targets. There will never be a point at which numbers alone are going to get you to where diversity has been "achieved" and you can stop. While one measurable output of diversity efforts is the increased representation of legal professionals from traditionally underrepresented groups, that is not our sole objective. Rather, the end goal is to achieve a shift in mindset to one that embraces and values an inclusive working environment for legal professionals of all stripes. ■



**JOAN HARATANI**, a litigation partner in Morgan Lewis's San Francisco office, has an extensive trial practice with an emphasis on product liability and complex commercial disputes. In her 21 years of practice, Joan has received numerous awards for both her practice accomplishments and service on behalf of minority practitioners. Ms. Haratani has twice been recognized as one of the "Top 75 Women Litigators" by the *Daily Journal* and she is the first female minority president of BASF in its 134-year history.

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#### CALIFORNIA MINORITY COUNSEL PROGRAM

is a membership organization with the central mission of maximizing opportunities for attorneys of color. Our membership consists of attorneys from majority and minority owned firms, corporations and public agencies. Founded in 1989, CMCP is the most successful minority counsel program of its kind in the nation. CMCP promotes diversity in California's legal profession. [www.cmcp.org](http://www.cmcp.org)

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