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**LEGAL SERVICES AS  
COMMERCIAL MARKETS:  
SCOPE, LIMITS?**

**WILL THERE BE A GLOBAL  
MARKET FOR DIVERSITY IN THE  
FUTURE OF THE LAW?**

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## **WILL THERE BE A GLOBAL MARKET FOR DIVERSITY IN THE FUTURE OF THE LAW?**

Few, if any, who study and opine on economic trends would dispute that the most important commercial markets in the future will be ever-more global. And as businesses around the world adapt to the economic imperatives of this new paradigm and adopt global business strategies, one of the oft-cited keys to remaining competitive is the prescient commitment and flexibility with respect to embracing these changing demographic realities of the marketplace. Thus, a fundamental question – and even harder challenge – which necessarily confronts lawyers around the world who advise and represent this increasingly diverse and global clientele is whether there will be a *global market for diversity* in the future of the law?

Although I devote my legal practice to litigation as a partner with a United States law firm which now boasts 30 offices worldwide, my true passion as a lawyer over the last twenty years has been devoted to the mission of advancing diversity in our profession.<sup>1</sup> I am therefore most honored not only to address this topic at my first UIA Congress, but to do so in a year where “[w]omen will occupy a predominant position” and “[o]ne main theme will be devoted

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<sup>1</sup> The author, in addition to being a litigation partner at Squire, Sanders & Dempsey, L.L.P. in Cleveland, Ohio in the United States, has served in multiple leadership positions within the American Bar Association (ABA) and other organizations, especially concerning the advancement of women in the law. Among her most recent involvements in this area are:

- One of twelve ABA Presidential appointments to the Commission on Women in the Profession;
- Member of the National Association of Women Lawyer’s Select Committee on the Review of U.S. Supreme Court Nominees;
- Steering Committee Member and Chair of Strategic Alliances of the new ABA DirectWomen initiative to advance the appointment of women lawyers to Fortune 1000 boards;
- Chair, national ABA *Summits on Women in the Law* in 2002 and 2003;
- Co-Chair, ABA Section of Litigation Leadership Women Advocate Committee, 2001-2004.

I would like to express my gratitude to the research and assistance contributed to this paper by Harvard Law School student, Class of 2009, Kyle Scherer. Kyle also earned his A.B. at Harvard College in 2005, in American Public Policy and American Indian Policies. He is President of the Native American Law Students Association and Line Editor of the *Harvard International Law Journal*.

entirely to women.”<sup>2</sup> Accordingly, this paper will address the prospect of international “diversity competition” in legal markets in the future, and from the perspective with which I have been most involved: the diversity record of the legal profession in the United States.

## **I. Diversity In The Law Is Now Embraced As A Virtually “Undisputed” Goal And Economic Imperative Of The Practice Of Law In The United States**

Just four years ago, the highest court in the United States involved the country’s citizenry in a debate over the value of institutional diversity. In *Grutter v. Bollinger*, 539 U.S. 306 (2003), the plaintiff sought to compel the law school at the University of Michigan to change its admissions process in a manner that would negatively impact applicants of color.<sup>3</sup> Of note to the topic of this paper, dozens of “Fortune 500” U.S. companies submitted *amicus curiae* briefs in support of the existing program, *extolling the importance of multicultural, multiethnic workforces*. As they informed the U.S. Supreme Court, their experiences have shown that diverse assemblages “facilitate unique and creative approaches to problem-solving . . .,” and lead to such other economic benefits as better service delivery, higher levels of consumer confidence, and employee retention.<sup>4</sup> And since legal practice is at its core a service profession, it is not surprising that the American lawyers who represent these leading U.S. corporations have endeavored to follow in their clients’ footsteps: by increasingly adopting within the legal profession growth-oriented business models which at least purport to endorse and embrace precisely the same economic benefits and imperatives of diversity.

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<sup>2</sup> Welcome Message to the 51<sup>st</sup> Congress of the *Union Internatiale Des Avocats*, by Paulo Lins E. Silva, UIA President, 2007.

<sup>3</sup> After briefing, oral argument, and two months of deliberation, a decision was returned affirming the State’s “compelling interest” in providing educational access to students of color. *Grutter v. Bollinger*, 539 U.S. at 321.

<sup>4</sup> Brief for M3, et al as Amici Curiae Supporting Respondents at 7, *Grutter v. Bollinger*, 539 U.S. 306 (2003) (Nos. 02-241 and 02-516); Brief for General Motors Corp. as Amici Curiae Supporting Respondents at 14-22, *Grutter v. Bollinger*, 539 U.S. 306 (2003) (Nos. 02-241 and 02-516).

A particularly poignant example occurred in 1999, when the leadership of a few, outspoken “in-house” General Counsel led to the drafting of “Diversity in the Workplace: A Statement of Principle.” Approximately 500 corporations signed this self-styled “Call to Action,” which committed them to seeking out diversity in their legal representation.<sup>5</sup> Indeed, these most influential consumers of legal services publicly declared their intention to “give significant weight” to a firm’s diversity record when making “decisions concerning selection of outside counsel.”<sup>6</sup>

More recently, in 2004, more stringent goals in this regard were adopted in a second Call to Action.<sup>7</sup> This reinvigorated Statement called for more punitive responses to an outside firm’s failure to exhibit a “meaningful interest” in recruiting and retaining persons of color and women, including the ultimate consequence of all: “the reevaluation of existing relationships.”<sup>8</sup> Thus, leading examples of corporate commitments to these principles include:

- Wal-Mart Stores, Inc., an annual consumer of over \$200 million in legal services: In 2005, Walmart instituted a far-reaching program to make representation decisions on demonstrated commitments by outside counsel to diversity.<sup>9</sup> Recently, this retail giant took the step of dismissing two of its outside counsel for “failing to meet statistical recruitment and retention goals for minority and women attorneys.”<sup>10</sup>

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<sup>5</sup> A list of signatories, as well as the complete text of the so-called Diversity Statement is available online, at <[www.acc.com/gcadvocate/diversitystmt.html](http://www.acc.com/gcadvocate/diversitystmt.html)>, the website of the American Corporate Counsel Association.

<sup>6</sup> *Id.*

<sup>7</sup> This second Call to Action, as well as a list of signatories, is available online, at <[www.cloCalltoAction.com](http://www.cloCalltoAction.com)>.

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

<sup>9</sup> See Edgardo Ramos and Lynn Anne Baronas, *How to Increase Diversity at Law Firms in Four Steps*, THE NAT’L LAW JOURNAL, Jan. 20, 2006; Virginia Grant, *Words into Action: Five Strategies Law Departments Should Use to Assist Their Outside Counsel Firms in Increasing Diversity*, LAW PRACTICE TODAY, Nov. 2005. In recognition of Walmart’s affirmative steps in seeking out progressive firms, the American Bar Association recently honored the corporation’s General Counsel with the prestigious “Spirit of Excellence Award,” meant to celebrate the “efforts and accomplishments of lawyers who work to promote a more racially and ethnically diverse profession.” Information on the Spirit of Excellence Awards, as well as a list of previous honorees, is available online, at <[www.abanet.org/minorities/spirit/home.html](http://www.abanet.org/minorities/spirit/home.html)>.

<sup>10</sup> See Karen Donovan, *Pushed by Clients, Law Firms Step Up Diversity Efforts*, N. Y. TIMES, July 21, 2006, at C6.

- Royal Dutch Shell PLC (Shell), the third most profitable company in the world: Shell was also one of the early diversity leaders in specifically requiring its outside legal representatives to submit billing invoices that record the actual time spent by women and minorities on their matters. This information is analyzed and compared with the performance of similarly-situated firms.<sup>11</sup>
- E. I. du Pont de Nemours and Co. (DuPont), the fourth largest chemical company: Dupont was also one of forerunners in requiring firms in its “primary network” to submit self-critical analyses of efforts taken to promote diversity.<sup>12</sup>

A similar gauge of the real economic influence of diversity in the U.S. legal market is the relatively-recent publication of the “A-list” rankings of U.S. law firms by *The American Lawyer*, one of the premier national trade journals for lawyers in the U.S. Specifically, *The American Lawyer* now publishes annually a list of the country’s “top twenty” firms, and notably, among the *objective* criteria it claims to measure, takes into account considerations of minority attorney percentages.<sup>13</sup> Given this journal’s wide distribution and influence, firms in the U.S. are inclined to expend considerable time, money, and other resources to improve their performance in categories where deficiencies have been noted: indeed, U.S. firms not only strive to make the list, but even get a better “grade” -- *i.e.*, higher ranking -- on the list.

Also noteworthy is the clear commitment to diversity by the leadership of the largest bar association in the United States: the American Bar Association (ABA). With more than 400,000 members, this influential professional organization expressly and unqualifiedly aspires to an associational goal of the promotion of “minorities, women, and persons with disabilities”<sup>14</sup> A

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<sup>11</sup> Virginia Grant, *Words into Action: Five Strategies Law Departments Should Use to Assist Their Outside Counsel Firms in Increasing Diversity*, LAW PRACTICE TODAY, Nov. 2005.

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

<sup>13</sup> *E.g.*, *The A-List*, THE AMERICAN LAWYER, July 2007, at 81, 91. The other “objective” criteria include revenue per lawyer, per capita pro-bono commitments, and associate satisfaction.

<sup>14</sup> General information about the ABA can be found online, at <[www.abanet.org/about](http://www.abanet.org/about)>, and its associational goals at <[www.abanet.org/about/goals.html](http://www.abanet.org/about/goals.html)>.

separate pronouncement further describes the import of attorneys of color in *absolute* terms: “full participation of all racial and ethnic groups in the legal profession . . . preserves the legitimacy of our legal system, and safeguards the integrity of our democratic government.”<sup>15</sup> And this diversity mission – not only within the profession, but *also as to the ABA itself* – is evident in its multiplicity of commissions, task forces, committees, programs and awards.<sup>16</sup> What’s more, the ABA specifically measures on an annual basis its own internal progress.<sup>17</sup>

Finally, whether purposeful or not, diversity has also been an attendant consequence, at least in part, as U.S. law firms have literally followed their clients abroad, and become increasingly “international.” Whether through acquisition of foreign offices or international mergers, U.S. law firms have extended their footprints outside of the U.S. at record rates.<sup>18</sup> By virtue of these expansions abroad, the composition of U.S. firms has necessarily been affected.

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<sup>15</sup> The quote here is from an introductory website note written by ABA President Karen Mathis: <[www.abanet.org/legresource/minority](http://www.abanet.org/legresource/minority)>.

<sup>16</sup> See, e.g., information on the web as to each of the ABA’s Commission on Racial and Ethnic Diversity in the Profession, <[www.abanet.org/minorities/home.html](http://www.abanet.org/minorities/home.html)>, the Commission on Women in the Profession, <[www.abanet.org/women/home.html](http://www.abanet.org/women/home.html)>, the Council on Racial and Ethnic Justice, <[www.abanet.org/randejustice](http://www.abanet.org/randejustice)>, and the Presidential Advisory Council on Diversity in the Profession, <[www.abanet.org/op/councilondiversity/home.html](http://www.abanet.org/op/councilondiversity/home.html)>.

<sup>17</sup> As mentioned above, Goal IX of the ABA promotes “the full and equal participation of women, minorities and persons with disabilities” in the legal profession. To ensure that the ABA itself lives up to this institutional standard, the organization calls on the Commission on Racial and Ethnic Diversity and the Commission on Women to each publish annually a “Report Card” on diversity participation in leadership positions throughout the ABA. The most recent Commission on Racial and Ethnic Diversity report is available at the following site: <[www.abanet.org/minorities/publications/g9/0607goalreport.pdf](http://www.abanet.org/minorities/publications/g9/0607goalreport.pdf)>. The three most recent Commission on Women reports are available online, at <[www.abanet.org/women/goalix.html](http://www.abanet.org/women/goalix.html)>.

<sup>18</sup> Ward Bower, *Law Firm Mergers: What’s the End Game?*, N.Y.L.J. (2005); Bruce E. Aronson, *Elite Law Firm Mergers and Reputational Competition: Is Bigger Really Better?* THE CREIGHTON LAWYER, Spring 2007. A prime example is DLA Piper, LLP: DLA began with the merger of two small regional firms; within five years, it is now the third largest legal services entity in the world, with 3,400 lawyers in 63 offices. <[www.dlapiper.com](http://www.dlapiper.com)>. See also Neil Irwin, “Piper Rudnick to Merge with Big British Firm” *The Washington Post*, December 6, 2004, at E1.

## II. Reality, Or Just Rhetoric?

The connection between law and power in the U.S. cannot be overstated. Particularly poignant is the fact that law school graduates account for nearly 58% of U.S. Presidents, 50% of U.S. Governors, 53% of U.S. Senators, 38% of U.S. Representatives, and nearly 100% of judges.<sup>19</sup> And yet, despite – or maybe because of – this direct connection, and despite the economic imperatives for diversity, and further despite a virtually undisputed commitment by the U.S. legal profession to diversity, the reality of actual advances in the law in the United States falls far from the “undisputed” rhetoric.

Decades ago the initial approach in the U.S. to advancing women and minorities in the profession was a “bubble up” strategy that assumed imbalances in the profession could be cured over time: if U.S. 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 to be sure, significant strides were in fact made in the last several decades in increasing women and minorities in law school.<sup>20</sup> Women, for example, now enter and graduate from U.S. law schools in comparable numbers to their male counterparts.<sup>21</sup>

Yet, research since on the expected corollary overwhelmingly demonstrates that the assumed rise of minorities and women up through the profession has not been borne out, and falls well short of any approximately “proportionate” representation. Examples of the statistical disparities include:

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<sup>19</sup> ABA PRESIDENTIAL ADVISORY COUNCIL ON DIVERSITY, PIPELINE TO LAW LEADERSHIP AND JUSTICE 2 (2007).

<sup>20</sup> Timothy L. O’Brien, *Why Do So Few Women Reach the Top of Big Law Firms?*, N.Y. TIMES, March 19, 2006, at Business Section 1.

<sup>21</sup> *Id.*

- Minority representation in the legal profession in the U.S. has notably lagged behind other U.S. professions: 9.7% among lawyers; 24.6% among physicians; 20.8% among accountants; and 18.2% among university professors.<sup>22</sup>
- U.S. law schools have recently noted a *marked drop* in the percentage of incoming minority students, particularly African-Americans,<sup>23</sup> and women.<sup>24</sup>
- Those who fail to pass the bar – prerequisite tests in the U.S. for admission to practice law – are disproportionately persons of color.<sup>25</sup>
- Of those minorities who do earn J.D.’s, only 53.3% succeed in securing firm jobs.<sup>26</sup> The percent of non-minority women entering the private practice was recently reported at 53.9%, with the percent of minority women entering private practice at 46.5%.<sup>27</sup>
- As to the overall percentage of associates at U.S. law firms, women represent 44.3%, and minorities only 16.72%.<sup>28</sup>

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<sup>22</sup> ELIZABETH CHAMBLISS, AMERICAN BAR ASSOCIATION COMMISSION ON RACIAL AND ETHNIC DIVERSITY, MILES TO GO: PROGRESS OF MINORITIES IN THE LEGAL PROFESSION 7 (2004).

<sup>23</sup> African-American representation among law students fell to 6.6% in 2005 - its lowest level in 12 years. Ursula Furi-Perry, *Minority Enrollment Falls: Law Schools See Decline in Representation*, 11 THE NAT’L JURIST 14 (2005).

<sup>24</sup> The National Association for Law Placement (NALP), has recently reported that, in addition to a decrease in women’s presence at summer associate programs, there has been a “small decrease in the percentage of women enrolled at law schools nationwide.” Rochester Daily Record Staff, *New Survey Looks Into Women, Minorities, Partners and Large Firms*, Rochester Daily Record, Jan. 12, 2005.

<sup>25</sup> Specifically, for African-Americans, the failure rate has recently been recorded at 22.4 percent; for American Indians, 17.8%; for Hispanics, 11%; for Asian Americans, 8.1%; and for Whites, 3.3%. GITA Z. WILDER, LSAC RESEARCH REPORT SERIES, THE ROAD TO LAW SCHOOL AND BEYOND: EXAMINING CHALLENGES TO RACIAL AND ETHNIC DIVERSITY IN THE LEGAL PROFESSION 21, 25 (2003).

<sup>26</sup> *Id.* This figure is in contrast to the 60.5% of White law school graduates who are afforded the opportunity to enter the private sector.

<sup>27</sup> ELIZABETH CHAMBLISS, AMERICAN BAR ASSOCIATION COMMISSION ON RACIAL AND ETHNIC DIVERSITY, MILES TO GO: PROGRESS OF MINORITIES IN THE LEGAL PROFESSION (1999).

<sup>28</sup> NALP 2006 demographic data collection, available online, at <<http://www.nalp.org/content/index.php?pid=448>>. These figures were compiled from surveys of over 132, 000 attorneys at 1,524 offices/firms.



- Attrition rates in law firms for women, minorities, and particularly women minorities far outpace those for men and Whites.<sup>29</sup>
- Since 1995, the number of female attorneys elevated to partner rose only slightly, from 13 to still a mere 17.9%.<sup>30</sup> Over a comparable time period, minorities experienced only a 2% increase, from only 3.7% to just 5.7%.<sup>31</sup>
- Minority representation among Fortune 1000 General Counsel is merely 9.1%.<sup>32</sup> Women representation in positions of General Counsel is currently at only 14%.<sup>33</sup>

In fact, even the corporate community's renewed 2004 Call to Action met with less enthusiasm, with only 115 signatories willing to adopt more stringent goals, and consequences for their legal providers as opposed to the 500 corporations which originally committed to the principles of diversification.<sup>34</sup>

Concerns with the slow pace of overall advancement reflected in these statistics are aggravated by other noteworthy trends in the U.S. legal profession that appear to cut further against progress. For example, the U.S. legal services market is now marked by a huge boom in lateral partner hiring – with significant financial incentives associated with such lateral

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<sup>29</sup> The comparable rates are 28.5% for women and 26.7% for men; 30.5% for Hispanics, 29.5% for Blacks, 29.1% for Asian Americans, and 26.9% for Whites. When comparing overall attrition, women of color have a turnover rate of 30.1%, compared to 25% for minority men. See NEW YORK CITY BAR ASSOCIATION, 2006 DIVERSITY BENCHMARKING STUDY: A REPORT TO SIGNATORY FIRMS, 16-17, 25 (2006); see also Jill Schachner Chanen, *Early Exits*, ABA JOURNAL, August 2006, at 32. An especially unsettling and comprehensive report about advancement and retention issues with respect to women attorneys of color was also recently released by the ABA Commission on Women in the Profession: *Visible Invisibility: Women of Color in Law Firms* (2006).

<sup>30</sup> Timothy L. O'Brien, *Why Do So Few Women Reach the Top of Big Law Firms?*, N.Y. TIMES, March 19, 2006 at Business Section – 1.

<sup>31</sup> Emily Barker, *Trickle-Up Theory*, THE MINORITY LAW JOURNAL, Apr. 2007, at 21-26; ELIZABETH CHAMBLISS, AMERICAN BAR ASSOCIATION COMMISSION ON RACIAL AND ETHNIC DIVERSITY, MILES TO GO: PROGRESS OF MINORITIES IN THE LEGAL PROFESSION EXECUTIVE SUMMARY (2004); NALP 2006 demographic data collection.

<sup>32</sup> ELIZABETH CHAMBLISS, AMERICAN BAR ASSOCIATION COMMISSION ON RACIAL AND ETHNIC DIVERSITY, MILES TO GO: PROGRESS OF MINORITIES IN THE LEGAL PROFESSION 38 (2004).

<sup>33</sup> Lisa H. Nicholson, *Making In-Roads to Corporate General Counsel Positions: It's Only a Matter of Time?* 65 MD. L. REV. 625 (2006).

<sup>34</sup> See footnotes 5, 7, *supra*.

recruitment.<sup>35</sup> Yet, diversity is conspicuously absent from this new, rich demographic. In 2005 for example, more than 75% of lateral partner hires were White men.<sup>36</sup> 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 color.<sup>37</sup> Given the already-low representation of women and minorities in U.S. law firm partnership pools – from which such recruits are largely drawn – these imbalances are aggravated all the more by such dramatic reliance of the profession on lateral hiring.

Similarly, deequitization of equity partners is another trend, used to boost “profits per partner,” and also the attractiveness of firms to merger partners. For example, Mayer Brown dismissed or demoted 45 attorneys – approximately 10% of its equity partners – so as to, in the words of its Chairman James Holzhauser, “drive up our “stock price.”<sup>38</sup> But again, the impact 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 de-equitization.<sup>39</sup>

Indeed, the high “price” of diversity can virtually be calculated by comparing *The American Lawyers*’ prestigious “A-list” of American firms, with its list of those U.S. firms which generate the most “profits-per-partner.”<sup>40</sup> Only *one firm* in the U.S. makes the top ten in

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<sup>35</sup> Ross Todd, “*Growing Sideways*,” THE AMERICAN LAWYER, Feb. 2007 at 98, 101.

<sup>36</sup> NEW YORK CITY BAR ASSOCIATION: COMMITTEE TO ENHANCE DIVERSITY IN THE PROFESSION. PRELIMINARY PROPOSALS ON LATERAL HIRING 3 (2007).

<sup>37</sup> *Id.*

<sup>38</sup> Nathan Koppel, *Partnership is No Longer a Tenured Position*, WALL STREET JOURNAL, July 6, 2007 at B1.

<sup>39</sup> David B. Wilkins, *Partner, Shmartner!: EEOC v. Sidley, Austin, Brown & Wood*, 120 HARV. L. REV. 1264, 1271-72 (2007).

<sup>40</sup> The term “profits-per-partner” refers to the amount of money equity partners at a given firm receive over the period of one year. This information is published and made available by The American Lawyer. *The Profits Picture*, THE AMERICAN LAWYER, June 2007.

both.<sup>41</sup> As the chart below<sup>42</sup> graphically demonstrates, there appears to be almost an inverse relationship between firms that are “diverse” versus those that are profitable:

Firm Name	PPP Rank	A-List Rank	Diversity Rank	Lawyers	Equity Partners	Non-equity Partners
Wiley Rein	1	53	160	268	61	59
Wachtell, Lipton, Rosen & Katz	2	84	100	193	77	0
Boies, Schiller & Flexner	3	81	35	235	28	50
Cravath, Swaine & Moore	4	18	9	406	87	0
Cadwalader, Wickersham & Taft	5	79	62	555	76	23
Sullivan & Cromwell	6	41	70	575	164	0
Cahill Gordon & Reindel	7	74	161	242	63	6
Simpson Thacher & Bartlett	8	13	10	667	162	0
Paul, Weiss, Rifkind, Wharton & Garrison	9	6	1	573	109	0
Quinn Emanuel Urquhart Oliver & Hedges	10	79	31	292	68	16
Kirkland & Ellis	11	39	60	1104	212	268
Milbank, Tweed, Hadley & McCloy	12	11	8	487	117	19
Schulte Roth & Zabel	13	70	62	398	76	1
Cleary Gottlieb Steen & Hamilton	14	7	3	835	181	0
Skadden, Arps, Slate, Meagher & Flom	15	22	29	1690	392	0
Willkie Farr & Gallagher	16	40	75	518	123	0
Dechert	17	60	90	898	169	94
Weil, Gotshal & Manges	18	2	21	1071	200	91
Latham & Watkins	19	4	17	1766	411	120
Devis Polk & Wardwell	20	14	34	541	147	0

<sup>41</sup> Paul, Weiss, Rifkind, Wharton & Garrison.

<sup>42</sup> This table was created from the data sets compiled by *The American Lawyer*. The “A-List” rankings can be found in the July, 2007 edition of the magazine, the “Diversity Rankings” in the *Minority Law Journal*’s Summer 2007 issue, and the “Profit-Per-Partner” from the Am Law 100 and 200 reports appearing in the May and June issues of *The American Lawyer*, respectively. Information regarding the number of equity and non-equity partners was taken from the complete, available-for-purchase Am Law 200 rankings, accessible through the magazine’s website, <[www.americanlawyer.com](http://www.americanlawyer.com)>.

### III. The Future of Diversity

If “money is what makes the world go round,” the relevant progress demonstrated to date in the U.S. legal marketplace with respect to diversity -- and more, the apparent profits reaped in return for diversity reticence – at least call into serious question the virtually undisputed promise of globalization: whether recruiting, retaining and promoting diversity *is necessary to competing* successfully in ever-more global markets, including the law? So far, the statistics of the performance by the U.S. legal market suggest that perhaps diversity is too expensive because “it pays” profits-per-partner to stay White and male.

Yet, this empirical data does not eviscerate the business case *for diversity*. There must be more than just empty good-will or the mere picture of virtue which accounts for the extraordinary extent to which corporate America and the legal profession not only give voice to the economic imperatives of diversity, but also spend considerable resources in attempting to implement and achieve them, however unsuccessfully to date.

And more, limited success has been achieved. Although all but one of the top ten most profitable firms in America score poorly with respect to diversity, a look at the next tier is more promising: 7 of the most profitable law firms in the U.S. appear on *The American Lawyer's* top 20 “A-list.”<sup>43</sup> Further, given that no profession extols the principles of equality, justice, and fairness more than the legal profession, some real truth must underlay the economic imperatives of diversity . . . since other professions have made real diversity strides at a much more significant pace than U.S. lawyers.<sup>44</sup>

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<sup>43</sup> See the explanation in footnote 42, *supra*, and related chart in text. The firms are Cravath, Swaine & Moore; Simpson Thacher & Bartlett; Paul, Weiss, Rifkind, Wharton & Garrison; Milbank, Tweed, Hadley & McCloy; Cleary Gottlieb Steen & Hamilton; Weil, Gotshal & Manges; Latham & Watkins; and Davis Polk & Wardwell.

<sup>44</sup> See footnote 22, *supra*.

Thus, the international legal marketplace can rightfully ask whether the same statistics about the diversity reticence of the U.S. legal market prove the opposite: that is, are U.S. lawyers just reaping short-term profits at the risk of long-term losses? Indeed, if diversity really is an economic imperative with respect to competition in the global markets, then the U.S. 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” – may be facing the most ripe of commercial opportunities: that is, to meet the true 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 U.S. counsel who refuse to change their colors.

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