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## The “Casablanca” Theory of Diversity

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If there’s any take-away from the election, it’s this: The face of America is changing, and any institution that wants to be a part of the future needs to embrace an increasingly diverse population.

### ON THE LEVEL

Whether it’s a political party, a business, a sport or a profession, the future belongs to those who accept that the world no longer looks like it did in 1950. In many cases, the underrepresented groups (usually women and minorities) are the ones pursued for their votes or their dollars. In those examples, it’s not hard to make a case for incorporating underrepresented groups into a marketing plan or election campaign. To do otherwise means either electoral or financial ruin.

The GOP is in the midst of figuring out how it can close the gender and racial gap by the next election, and just about every major business spends exorbitant sums targeting the growing purchasing power of minorities. Sports like tennis, golf and lacrosse have major outreach programs designed to grow their sport in historically underserved communities. (I’m the chairwoman of the U.S. Tennis Association’s Diversity and Inclusion Committee, so I spend a lot of time on this issue.) All of these institutions have a vested interest in being inclusive.

In other cases, though, it’s the underrepresented groups doing the pursuing. This is, unfortunately, the case with the legal profession. I have lost track of the number of panels on which I’ve spoken regarding how women and/or minority lawyers can shatter the

glass ceiling that seems to be holding them back. But I haven’t seen any evidence of an undue amount of stress among Big Law over the lack of diversity at the highest levels of the profession.

After all, what does the legal profession have to lose by not doing everything it can to recruit and retain talented women and minorities? There’s no election it can lose. Corporate America, for the most part, seems willing to continue hiring firms with lackluster diversity statistics, so it doesn’t appear the profession’s financial well-being is at stake. Some major clients, I should note, have made diversity a priority. But there aren’t enough of them yet to have made much of a difference.

While there have been studies showing that publicly held companies with more diverse boards of directors have better financial performance, the same doesn’t appear to hold true for firms.

A glance at the nation’s largest, most profitable firms illustrates this quite well. *The American Lawyer* publishes a Diversity Scorecard each year charting the racial/ethnic diversity of large firms. Unfortunately, there doesn’t appear to be much of a correlation between diversity and profitability. Only one of the 10 highest-



grossing firms, White & Case, is also in the Diversity Top 10. The rest of the 10 highest-grossing firms rank between Nos. 40 and 98 on the diversity chart.

**BigLaw may not be hurting today, and they may not be hurting tomorrow. But they will be, and probably sooner than they realize.**

Wachtell, Lipton, Rosen & Katz has the nation's highest profits per partner and highest revenue per lawyer, but it ranks No. 113 on the diversity scorecard. So, clearly, the firm's lack of diversity isn't causing any financial strain.

But is that lack of diversity at the country's largest firms sustainable? Can the elite of the profession continue to look like a country club while the rest of the country increasingly resembles a neighborhood recreation center?


Let's hope not. First off, the legal profession is a launching pad for a disproportionate number of the nation's political leaders, from the state house to the White House. If women and minorities aren't on that launching pad, it does not bode well for the "representative" part of a representative government.

I'd like to say that the profession is about to be flooded with new women and minority lawyers who will give firms no choice but to increase the diversity in their rank. But the truth is that members of both groups seem to be increasingly avoiding law school. The causes of that trend are, no doubt, complicated and ambiguous. But the trend itself is undeniable, and the eventual consequences of it are not positive.

But the question remains, if firms aren't financially hurt by maintaining their homogeneity, why would they change? The only answer I can come up with is what I like to call the "Casablanca" theory, inspired by Humphrey Bogart's eloquent speech to Ingrid Bergman, when he wouldn't let her stay in Casablanca with him while her resistance-fighter husband escaped the Nazis: "If that plane leaves the ground and you're not with him, you'll regret it. Maybe not today. Maybe not tomorrow, but soon and for the rest of your life."

BigLaw may not be hurting today or tomorrow. But it will be, and probably sooner than its leaders realize. For now, the pressure to become more inclusive is a persistent, but only mild, annoyance. Those firms may not look great on diversity scorecards, but overwhelming financial success easily overcomes that discomfort.

The legal profession won't be able to dodge the diversity bullet forever, though. The homogenous talent on which it relies no longer will be the majority, and the pressure from clients (who are more quickly subject to demographic forces) will increase.

The rest of the world has already boarded the diversity plane. It's time for the legal profession to join them. 



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