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## Looking Back to Move Forward on Institutionalizing Diversity

**BY VERNON FRANCIS**

*Of the Legal Staff*

I wanted to write on what law firms should be doing to institutionalize diversity — that is, about how firms can make concerns relevant to diversity part of their regular institutional processes and planning. Whenever I think about this issue, I always come back to a story by Langston Hughes, one of my favorite authors. Although the story I'm thinking of is more than 40 years old, its message, at least to me, is as relevant to the issue of diversity today as it was to anyone interested in what African-Americans thought about integration in the early 1960s. The story reminds me that solutions to difficult problems are available to us, but people have to be willing to look and listen for them.

Among other works, Hughes wrote a series of stories about a character named Jesse B. Semple — nicknamed “Simple” — who was a voice for the many African-Americans who had migrated from the American South to Harlem in New York City after World War I and into the 1950s. Through the stories, Hughes commented on the civil rights movement and other aspects of African-American culture. Some scholars have described Semple as an “everyman,” but I've always believed that the term fails to adequately capture a character who seems so real you'd like to buy him the next round just to hear him talk.

The story I'm thinking of, “Coffee Break,” begins with Semple telling Boyd, his friend and bartender, about his white boss, who had been constantly asking him, “Just what does The Negro want?” Cornered by his boss during a coffee break, Semple first tries to avoid the question by explaining that he is not “The Negro” but “this Negro,” and suggesting that the boss direct his inquiries

to other targets. But the boss persists, claiming that he believes in integration and adds, “Now that you got it, what more do you want?” Semple ultimately responds that he wants “reintegration ... that you be integrated with me, not me with you.” Their conversation continued:

“Do you mean that I come and live in Harlem?” asked my boss. ‘Never!’

“I live in Harlem,’ I said.

“You are adjusted to it,’ said my boss. ‘But there is so much crime in Harlem.’

“There are no two-hundred-thousand-dollar bank robberies, though,’ I said, ‘of which there was three lately elsewhere — all done by white folks, and nary one in Harlem. The biggest and best crime is outside of Harlem. We never has no half-million-dollar jewelry robberies, no missing star sapphires. You better come uptown with me and reintegrate.’”

The story ends with this exchange between the two men:

“Negroes are the ones who want to be integrated,’ said my boss.

“And white folks are the ones who do not want to be,’ I said.

“Up to a point, we do,’ said my boss.

“That is what The Negro wants,’ I said, ‘to remove that point.’

“The coffee break is over,’ said my boss.”

Of course, a lot of things have changed since the 1960s. Not all bosses are white.

A former president of the United States has offices in Harlem, and not all black people necessarily believe that integration is the solution to the racial divisions that still exist in this country. Moreover, although battles continue to be waged over affirmative action — the U.S. Civil Rights Commission published a report critical of affirmative hiring in law firms a few months ago — there appears to be, at least for the time being, a consensus in the corporate world in favor of hiring and promoting more people of color.

Corporate diversity initiatives are the concrete expression of this consensus. The language of diversity allows people in the workplace to talk about racial and other differences among employees as institutional benefits rather than sources of discord. We talk about how to create an environment where everyone can do their best, rather than engage in more potentially divisive conversations about remedying past injustices. And in corporate America, viewing concerns about minority under-representation as “diversity” issues has helped many companies create more inclusive workplaces. The small but growing number of minority CEOs and general counsel is evidence that these initiatives have made a difference and suggests that even more change is possible.

But corporate law firms have not progressed as quickly. According to NALP's 2007 survey of the more than 1,500 law firms represented in their directory, only about 5 percent of the partners at these firms belonged to a racial minority group. Less than 2 percent of these partners were minority women. Thirty-nine percent of these firms had no minority partners at all, and two thirds reported no minority women partners.

As for associates, about 16.7 percent of these lawyers were minorities. Half of the associates were Asian, while black associates numbered fewer than 5 percent and Hispanics

fewer than 4 percent. Even now, in 2007, 21 percent of these firms had no minority associates at all.

These numbers have been pretty much the same for a long time, especially at the partner level, despite our clients' prodding and the amount of attention the organized bar has focused on diversity generally.

Which brings me back to Hughes' "Coffee Break." I have to admit that when I see how little progress there has been, I often wonder whether the real problem with some law firms and diversity is this: that these firms may be interested in diversity, but only "up to a point," and no more. And I also wonder what causes some firms to not work as hard at diversity as they do at other things we lawyers at big firms clearly value, like generating new practice areas or increasing profitability.

I don't claim to have the answers to these questions. But I would encourage anyone who's truly interested in making their law firm more inclusive to look beyond what's popularly called "the business case for diversity" — that is, the set of market-based assumptions that consultants and others ask us to embrace as philosophical justifications for moving forward on diversity initiatives — to other areas of inquiry that have not received as much attention as they should.

The first area to think about more seriously is history. We forget because we don't talk about it, but it is important to remember that for most of our nation's history, the legal profession actively sought to exclude lawyers of color from its ranks. African-American lawyers were barred from membership in the American Bar Association until 1943. The country's more prestigious firms were uninterested in hiring minority lawyers, regardless of their credentials, and the few lawyers of color who were hired were hidden from clients. African-American lawyers with Ivy League degrees and Supreme Court clerkships couldn't get jobs with firms here in Philadelphia in the 1950s and 1960s. Indeed, it wasn't until the 1970s that corporate law firms slowly began to recruit minority lawyers.

Once they actually arrived, the new minority lawyers were expected to assimilate. They weren't supposed to raise questions about their status in the profession or at their firms. As Harvard Professor David Wilkins has

explained, "Black lawyers were welcome, the clear message seemed to be, so long as they were functionally indistinguishable from the white lawyers that these institutions have always hired." These pioneers had to fight being thought of as tokens, although they probably were regarded as such by many of their colleagues.

Law firms should ask themselves whether they are really all that much different from the kinds of places they were for minority lawyers in the 1970s. I would argue that given our profession's exclusionary history, this is a question our firms have to ask and answer — as honestly as possible — before we can really improve. I would guess that, around the edges, most firms probably are better for people of color to some degree. But have our firms changed enough? Indeed, are they really "our" firms, or does my phrasing of the previous question assume a commonality of interests that has yet to actually materialize? Are minority lawyers full partners in these enterprises, or just part of the marketing machinery?

## Look Ahead

Firm managers are not going to get useful answers to these complex questions unless they are willing to engage in candid dialogue with their minority lawyers about their experiences and expectations. Although I think every lawyer in the firm ultimately should be engaged in diversity discussions, the firm has to start by listening to its lawyers of color. What's needed is something like Hughes' concept of "reintegration" — managers should be willing to attempt to step into the shoes of their firm's minority attorneys, to put aside their natural defensiveness and try to see the enterprise as their minority lawyers see it. Assessments by diversity consultants and exit interviews can provide a place to start this immersion, but they are only a start and they are no substitute for a manager's attention and personal involvement.

"Reintegrating" means not relying solely on intermediaries for information about how minority lawyers experience law firms. It means managers themselves should talk to minority lawyers, do it often, and do it before these lawyers make the decision to leave the firm for greener pastures. It means walking the halls, finding these lawyers and engaging

them in actual conversations, rather than making them find you.

It also means that managers should understand that it will take time for them to get access to the information they need and presumably want to hear. Establishing the kind of trust needed to have candid but constructive discussions about law firms and race will take some time. Managers have to remember that all of us have known bosses like the boss in "Coffee Break" — a guy who says he wants to have a conversation on a topic supposedly of interest to both parties, but only on his terms, and only if he gets to decide when the conversation is over. If they want to know the truth, the onus is on the managers to establish that what they want to talk about is more than platitudes or business as usual.

I'm not trying to understate how difficult these issues are. Nor am I questioning anyone's good faith or ignoring the work that many firms have already put into addressing these issues. I am suggesting that the real work of diversifying a law firm will take more than full-color brochures, photographs of attractive people on Web sites, and donations to events held by minority bar associations. Lines of communication within our firms have to be built, and issues have to be surfaced and resolved. This kind of bridge building is hard and time-consuming, but that's true of most objectives we consider worthwhile.

The coffee break really is over, and it's time to get back to work.

*Vernon Francis is a partner in Dechert's litigation department and co-chair of its diversity committee.*