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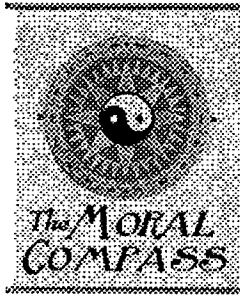
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What is the Moral Compass?

The Moral Compass

South Carolina Flag Flap Continues to Grow

 By **Richard Zitrin and Carol M. Langford**

The debate over whether to lower the confederate flag that now flies over South Carolina's statehouse has some lawyers from outside that state weighing in on the implications of venerating Old Dixie's "stars and bars." The flag flap heated up last year with demonstrations outside the statehouse and a lot of argument inside. The NAACP stoked the flames when it called for a boycott of tourism in South Carolina starting January 1. Recently, the New York Knicks announced that they will no longer train at South Carolina's College of Charleston. Charleston's annual Spoleto Festival U.S.A., considered the premier artistic festival in the Southeast, has begun to lose performers; last week, famed dancer/choreographer Bill T. Jones withdrew his dance company.

That lawyers, always politically astute and often politically correct, have voiced opinions on the subject is not surprising. In early February, Kilpatrick Stockton, one of Atlanta's largest firms, decided to move its annual retreat to the Florida gulf coast. This week, Philadelphia-based Dechert Price & Rhoads decided to move its retreat from South Carolina's Wild Dunes Resort. Not only was Dechert moving to the decidedly less glamorous New Jersey seashore, but the firm took pains to point out that its action cost roughly \$100,000 in non-refundable reservations.

In some eyes, the decisions of these two law firms of almost 500 lawyers each elevated the issue from mere debate to throwing down the gauntlet to other firms. Pro-flag-flying South Carolinians would argue that the flag is merely a symbol of the War Between the States and of the lives lost in that war. No one questions that the Civil War is an important piece of South Carolina's history. Most now recognize that it was a war about money and power as much as it was about slavery. But one can't deconstruct the Civil War by extricating the issue of slavery, especially in the minds of black South Carolinians.

So taking sides on the flag flap is laudable. But it prompts the real question: What are law firms doing inside their own walls about the biases facing minority, and especially African-American, attorneys? Interestingly, the two law firms that took public positions have different racial profiles, as well as different reasons articulated for staying from the Palmetto State. Kilpatrick claims that 30 to 35 percent of its lawyers are ethnic minorities, but maintains that its change of plans did not mean it was joining the boycott or even taking a stand on its neighbor state's flag. From far-away Philly, a Dechert spokesman did tie his firm's actions to both the flag and the boycott. Yet published reports indicate that only two of Dechert's 170 partners are black.

We have no way of knowing whether distance factored into the "official" positions taken by these two firms. We do recall how easy it seemed some years ago for Hollywood big shots to stand up against South African apartheid, and how difficult it was for those same folks to do something to improve conditions closer to home, in South Central L.A. But law firms are not Hollywood studios, and we have no facts to accuse or even imply that they behaved the same way here.

We do know, though, that the confederate flag flying over the Carolina statehouse, as important as it may be, remains a symbol. Taking a stand on taking it down won't reinvigorate affirmative action, increase job opportunities for people of color, or affect the policies of law firms on hiring, promoting, or retaining African-American lawyers.

For years, most large law firms have given at least lip service to increasing opportunities for minority lawyers. Few if any of these firms exhibit overt racism. Yet issues of subtle bias still permeate virtually every law firm. These biases are hard to pin down, but they become apparent in examining the statistics on the paucity of minority, and especially black, lawyers who stay with their firms, make partner, and then remain as partner, even in cities as diverse and supposedly enlightened as our own San Francisco. The numbers are shockingly small. No matter how lawyers justify these figures, only denial of considerable magnitude can shrug them off as a mere coincidence or aberration.

When asked why minority associates in one medium-sized San Francisco firm did not make partner, one of the firm's lawyers stated, "It's not bias, they just move on to other -- sometimes better -- things." But how often is that because the law firm has simply ceased to be one of those "better" options? With few real mentors and, on average, far fewer of the kinds of social connections that lead to new business than their white counterparts have, minority associates, particularly African-

Americans, face an uphill battle.

Even when black lawyers do make partner, the struggle is not over; indeed, it may just be beginning. Elvin Charity is an African-American Yale and Harvard Law alum who left his partnership in a large Chicago law firm several years ago. "Being a minority lawyer," he told the ABA Journal at that time, "you have to take more risks as far as reaching out to small clients who may or may not make it, because you have such slim chances with big corporations." Charity found it "humiliating" to be continually in jeopardy of coming up short on hours billed or fees realized. At the same time, he felt "abandoned" by his law firm when he was left out of client-development missions while still being expected to develop his own book of clients.

Things haven't changed since Charity left his big firm to join a small minority-owned shop. Harvard law professor David B. Wilkins (we must carefully distinguish him from South Carolina house speaker and staunch flag defender David H. Wilkins) has been studying the employment opportunities of African-American lawyers in large firms for some time. Professor Wilkins discovered strong evidence on several points: even when black lawyers made partner, they were far more likely to remain non-equity partners; black equity partners were far more likely to be at the bottom rungs of the pay scale than their white counterparts; and black partners seem to leave their firms in significantly higher numbers, particularly in times of changed economic and political circumstances.

Elvin Charity was part of what has been reported as a broad exodus of black partners from large Chicago firms in the early 1990s. Professor Wilkins believes that this exodus was due in part to the death of Chicago's first black mayor, Harold Washington, whose ascension had at least leveled the playing field for African-American lawyers seeking to do business with the city: "Having ridden in on the coattails of an emerging black political leadership, the expectation was that many of these newly-minted partners would ride out when that leadership was replaced." Wilkins reports one extraordinary incident: The day after Washington's death, one Chicago managing partner called in the firm's only two black partners and asked how they intended to support themselves now.

In most firms, the issues faced by African-American attorneys are far more subtle. But those who are trying to make it in America's large corporate firms face far from a rosy picture. How can this change? The issue is not so much a question of hiring minority associates, but rather, as Suzanne Baer, a diversity consultant to the New York bar put it, a matter of "maintaining an open, supportive environment, even after one makes partner. And it requires mentoring and helping."

Even more than that, it requires opportunity. Wilkins refers to "inheritance" -- the process by which senior partners "bequeath" their best institutional clients to favored junior colleagues. Early in his ongoing study of black attorneys at Chicago's largest firms, Wilkins interviewed a black partner who challenged him to find a single African-American lawyer "who had either assumed a leading role for one of the firm's important institutional clients or was being groomed to do so." As of last year, and after over sixty interviews, Wilkins had yet to find one.

So boycotting South Carolina is fine. But whatever the symbolic and psychic benefits, it has little if any practical, economic, or professional value to black attorneys trying to make it in the still largely white and unchanged world of a major corporate law firm. Taking a position on the flag flap should be easy. Making America's large law firms truly level playing fields will be far more difficult.

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