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PRESENCE IS NO PRESENT: FROM “BEING” TO “EATING” AT THE TABLE

Amiel B. Harper, Esq.

I. AT THE TABLE: OUR PRESENCE BY THE NUMBERS

An assessment of the hard numbers is critical to beginning any discourse regarding racial and gender equity “at the table.” In my home state of Illinois there is no question that racial minorities and women are present “at the table” in terms of political power. The State of Illinois has six constitutional officers. Of the six, only two are by white men (Governor and Treasurer). The other 4 are held by 2 Black men (Attorney General and Secretary of State), one is a Latina woman (Comptroller), and one is a Black woman (Lieutenant Governor). The land of Lincoln’s constitutional officers are 1/3 white men, 1/3 Black men, and 1/3 women. Illinoisans have put racial and gender diverse candidates in the highest positions possible.

Following the 2019 election in Chicago, the Mayor joins the Cook County Board President, City Treasurer, County Clerk, City Clerk, and Cook County State’s Attorney as Black and Latina women holding elected office. We also have a Black man appointed as Chief of Police and a Black woman appointed as CEO of Chicago Public Schools. Across the board, following the 2019 election, Chicago’s City Council will have the highest percentage of Hispanics and fewest of whites in its history.

With all of these positions of power, one would think Illinois, and Chicago in particular, would be a haven for Black and Hispanic success. However, a closer look reveals quite the opposite. While the national unemployment rate is 4.8%, the unemployment rate for Black males in Chicago is 21% with white Chicagoans experiencing a 7% unemployment rate.¹ Moreover, more than half of Black men in Chicago are not in the labor force.²

Outside of politics, at the national level our presence “at the table” is even less. Since 1999 there have only been 16 Black CEOs of Fortune 500 companies.³ In 2017, women filled 38.3% of new independent board seats at Fortune 500 companies, the highest percentage since Heidrick & Struggles started tracking the statistic in 2009.⁴ However, almost all of those women were replacing other women, yielding only a 1.2% increase in new women directors. Indeed, the stories of fantastic leaders like Ursula Burns (former CEO of Xerox), Indra Nooyi (former CEO of PepsiCo), and Ken Chenault (former CEO of American Express) read more as improbable fiction than cultural change and progress. It is worth noting that none of the aforementioned CEOs was

¹ Maya Miller, *Data: Upward Battle for African-American Males in Chicago*, CHI. PBS, Feb. 20, 2017, <https://news.wttw.com/2017/02/20/data-upward-battle-african-american-males-chicago>

² *Id.*

³ Ellen McGirt, *raceAhead: Only Three Black CEOs in the Fortune 500*, FORTUNE, Mar. 1, 2018, <http://fortune.com/2018/03/01/raceahead-three-black-ceos/>

⁴ *After high-profile exits, fewer non-white CEOs in US*, France 24, Aug. 8, 2018 at 5:52 pm, <https://www.france24.com/en/20180808-after-high-profile-exits-fewer-non-white-ceos-us>

HARPER: PRESENCE IS NO PRESENT

replaced by a racial minority or woman. Ninety-five percent of the S&P 500 companies are run by men as of May 2019.⁵

While senior leadership in corporations seems dismal, the numbers in the practice of law are even weaker. Today, there is only one Black woman equity partner at a majority-owned law firm. Moreover, there is only one Black woman named partner at a majority-owned law firm. Spoiler Alert – she’s the same person, Patricia Brown-Holmes of Riley, Safer, HOLMES, and Cancila. A survey published in December 2018 showed that the gender pay gap among law firm partners had increased 9% from 2016 to 2018.⁶ Racial diversity in earnings was also shown to be a problem with white partners making 15% more than their Black counterparts. These statistics illuminate how Patricia Brown-Holmes singular status can exist in 2019.

This tradition of disparity has not gone unnoticed. For twenty years in-house counsel groups have been beating the drum for change. In 1999, “Diversity In The Workplace – A Statement of Principle” was signed by nearly 500 corporations asserting that diversity in the legal profession was important. In 2004, “A Call to Action” was authored by Rick Palmore which pledged to “make decisions regarding which law firms represent our companies based in significant part on the[ir] diversity performance...”. In January of 2019, The American Lawyer published “the letter,” signed by 170 in-house counsel and chief legal officers swearing to directly spend toward law firms that ‘manifest results’ in improving diversity in partnership.⁷

With significant influence in politics and twenty years of declarations for change in business and law, our current circumstances raise an uncomfortable question. “How can we have such a stark disparity where one half of the state’s constitutional officers are Black, but more than half of Black men are not in the workforce?” Simply put, presence at the table is insufficient power to participate at the table.

II. BEYOND PRESENCE TO POWER (EATING)

Non-whites have been at the table in the legal profession for at least 50 years.⁸ However, our economic position over the same timeframe has been drastically behind our white counterparts. We have not experienced the same economic growth as we have in politics and cultural stature. In 2016, median incomes for Black American and Hispanic American households had not reached 1970 median incomes for white Americans.⁹ In the same timeframe the median household income of white and Asian Americans has grown by more than twice that of Hispanic Americans.¹⁰

“Power concedes nothing without a demand. It never did and it never will.”

⁵ Catalyst, *Women CEOs of the S&P 500*, Sep. 1, 2019, <https://www.catalyst.org/research/women-ceos-of-the-sp-500/>

⁶ Jeffrey Lowe, *2018 Partner Compensation Survey*, Major, Lindsey & Africa, Dec. 6, 2018, <https://www.mlaglobal.com/en/knowledge-library/research/2018-partner-compensation-report>

⁷ *An Open Letter to Law Firm Partners*, GCs for Law Firm Diversity, https://drive.google.com/file/d/1EfzrIJ_nxOpaZTSAdVu_ercVGcbLEZpU/view

⁸ Thurgood Marshall joined the US Supreme Court in October 1967.

⁹ Rakesh Kochhar & Anthony Cilluffo, *Incomes of whites, blacks, Hispanics and Asians in the U.S., 1970 and 2016*, Pew Research Center, July 12, 2018, <https://www.pewsocialtrends.org/2018/07/12/incomes-of-whites-blacks-hispanics-and-asians-in-the-u-s-1970-and-2016/>

¹⁰ Asian Americans have held higher median incomes than White Americans from 1970 through 2016; see also *Id.*

- *Frederick Douglass (August 3, 1857)*

To transition beyond ‘being’ to ‘eating’ at the table demands a strategic refocus on economics. Having people in positions of authority within government is insufficient if their authority is not focused on economic equity. Reversing centuries of coordinated institutional destruction will require a coordinated institutional effort. That means putting shifting the diversity conversation from positions to payments. If are position ‘at the table’ is to have any value then it must be where we make our demands and ensure that they are met. Our demands must be made across several tables.

A. Conference Table

Planning and thought leadership happen at this table. This is where our demands must begin. With a structured ask that brings the best of business, ethics, legal, and moral principles together. At this table we demand to be a part of each process that will impact the physical, economic, and environmental wellness of our people. That is to say, having representation is the critical. In Illinois a bill that would require any corporation in Illinois to have a woman, Black and Latino on its board of directors or face fines is being debated. The bill (HB3394) has passed the House and is sitting in the Senate. This bill is the type of demand that will begin the work of more equity. However, being in the room, even if it’s the boardroom, is insufficient on its own.

B. Kitchen Table

Paying bills happens at this table. Our demands must also include economic parity. To do so, each institution that we engage with must be assessed to determine whether, and to what degree, its spend adequately reflects its constituencies. That is to say, for an institution with nearly one third of its population as Black people, like the City of Chicago, its spend should be at parity with that one third. To the extent that is impracticable because of gaps within that community, it is the duty of that institution to reach that one third by building the capacity of those communities. The lack of capacity of those communities arose from concerted action, and their rehabilitation must be met with concerted action. When spending is directly focused in a particular community the economic effects are transformative.

C. Operating Table

This is where we put diversity into each institution’s DNA. Singular actions are going to be required to reverse the inertia of historic discrimination, however, it’s the transformation of practices that will engrain equity in our institutions. At this table, we will engage to evaluate all of the processes that make our institutions function to identify the equity gaps. From there new processes must be instituted to create the change. Organizations should begin with each form of capital that they steward to determine the optimal equitable means of acquiring, maintaining, distributing, and disposing of the capital. This includes more traditional areas of diversity, like human capital (hiring, promotion, etc.) through financial capital and how institutions choose the sources and deployment of funding. Each institution must have a full review of its processes to create better equity.

III. CONCLUSION

Eating at the table is the only way to create valuable diversity, equity, and inclusion. Eating at the table means inclusion in planning, payment, and processes of our institutions. If these demands are not met, then the only recourse is to flip the table and build our own. As the learned Frederick Douglass noted, “Find out just what any people will quietly submit to and you have found out the exact measure of injustice and wrong which will be imposed upon them, and these will continue till they are resisted with either words or blows, or with both.” Demanding to eat at the table is resistance with words...

“A riot is the language of the unheard.”

- *Martin Luther King, Jr.*