

Interview with Prof. Marc Firestone

Adjunct Professor of Law (Tulane University Law School),
Co-Founder of the Institute for Inclusion in the Legal Profession

Marc Firestone

- 1959** Born in Bryn Mawr, Pennsylvania, United States
- 1981** Washington and Lee University, Bachelor of Arts
- 1985** Tulane University Law School, Juris Doctor
- 1985** Arnold & Porter LLP, Washington, Associate
- 1988** Philip Morris Management Corporation, Counsel
- 1993** Philip Morris Europe, Regional Counsel and Chief Counsel
- 2001** Philip Morris International, Senior Vice President and General Counsel
- 2003** Kraft Foods, Executive Vice President Corporate & Legal Affairs and General Counsel
- 2010** Co-Foundation of the Institute for Inclusion in the Legal Profession
- 2012** Philip Morris International, Senior Vice President & General Counsel
- 2018** Philip Morris International, President External Affairs & General Counsel
- 2021** Tulane University Law School, Adjunct Professor of Law



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QFLR: You began your education with a Bachelor of Art in romance languages and philosophy. What then led you to the law?

Marc Firestone : I thought a bit about pursuing graduate work in romance languages and comparative literature. I was among others influenced by excellent professors. Nonetheless, I decided to take a year off after college, because I was interested in the advertising business. I tried to get a job in New York in that field. To that end, I almost literally knocked on doors – without success. Afterwards, I pursued another interest of mine, i.e., restaurants and hotels. I had a fascinating experience working as the maître d'hôtel in the dining room of the Waldorf-Astoria in New York. I was amazed by all the different people that would come and go. At that time, I was a 22-year-old kid. I did not know anything, only undertook to work hard. However, I was not sure that this would be a career for me and decided to go to law school. There, I had a general interest in international matters. I studied at

Tulane University in New Orleans, Louisiana, the one State in the U.S. that has a hybrid civil law and common law system. Therefore, I took the common law curriculum but also courses in civil law and studied the Louisiana Code of Obligations.

I never really tried career planning but endeavoured instead to work hard, learn as much as possible, and be open to new experiences.

QFLR: Your education seems not to involve any predefined path. Does this apply to your professional career as well?

It does. I am very grateful for the experiences that I had, and many were serendipitous. I never really tried career planning but endeavoured instead to

work hard, learn as much as possible, and be open to new experiences. After law school, I started working for a law firm in Washington, Arnold & Porter, which at that time was the largest in the city with 200 lawyers. I practised litigation and antitrust law and was part of a team representing Philip Morris (PM). The senior partner in charge of the PM account became General Counsel of Philip Morris Companies Inc., in New York. He had appreciated my work at the law firm and offered me to join him at PM Companies, which was at the time the holding company of tobacco as well as food, beer, financial services, and real estate businesses. It was the mid-eighties, an era of corporate diversification. I had not planned to leave Arnold & Porter but welcomed the chance to work with the General Counsel in setting the direction for the law department of what was then the largest consumer products company in the world. Periodically, there were opportunities that came up within the law department that enabled me to gather different experiences while staying within the same corporate group. After five years in New York, I received a promotion in 1993 to be regional counsel in Lausanne, where the company had its European (and now worldwide) operating headquarters.

QFLR: As a U.S. Citizen based in Europe, what was it like to work for a multinational company?

Almost thirty years later, those years probably remain the most formative experience of my professional career. I came to Lausanne right after the dissolution of the Soviet Union. It was the first wave of privatisation of former-state-owned monopolies and the transition to a competitive market for many consumer products. In New York, I had done work related to the European Economic Community but had had no exposure to central and eastern Europe. Within six weeks of arriving in Lausanne I was working on projects that took me to, for example, Vilnius, Budapest, and Almaty. Having had the opportunity to travel in sixty countries on business-related matters has been a blessing for me. In that sense, my career has been continuing education.

QFLR: Can you say a bit more about the work you did at that time?

Working there in the 1990's was fascinating. Many of the countries that were newly independent and transitioning to a free-market economy strategically

decided that former state tobacco companies would be among the first state companies to privatise and sell. The international tobacco sector had a strong cashflow and was looking to invest in countries that were opening their economies. In two years, I worked on seven transactions in these countries, where there was then very little applicable positive law in place for commercial activities.

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In Kazakhstan for instance, in 1993, PMI was acquiring 100% of the former tobacco monopoly via a stock acquisition of the state-owned company, when a last-minute challenge arose: the government had been working on a law for the issuance and acquisition of securities but had not yet promulgated it. I will never forget a Saturday in a Ministry office with the government's representatives and western counsel and us and our outside counsel; the Ministry officials working with an electric typewriter to prepare the Kazakh Decree Number 1 on the issuance of securities to ensure the basic legal mechanisms necessary to proceed with the transaction. We had to collaborate on the transaction while negotiating but also plunging into the uncertainty of a multimillion-dollar transaction knowing that we could not form a crystal-clear legal assessment.

We were doing our best to be thoughtful while being pragmatic. Both sides needed to accept a degree of uncertainty and to avoid the fallacy of seeking perfect certainty. That is a lesson I tried my best to carry with me throughout my career. Mastering the details, whether of fact or of law is part of our work, and lawyers often seek greater and greater degrees of certainty. But that curve is asymptotic. It is essential to be meticulous, but also accept that the curve starts to

flatten and will never reach certainty.

QFLR: What are the characteristics of In-house legal work as opposed to working in a law firm?

Companies, especially those operating in dozens of jurisdictions around the world, rely on law firms for deep expertise and skills to handle specific legal issues. The work of outside and in-house counsel is complementary, with different perspectives combining to provide insights and capabilities for the full palette of projects, from M&A to litigation. The combination of a strong law department that is close to the business with a network of first-rate outside counsel can even be a competitive advantage. In my time in-house both at Philip Morris International and Kraft Foods, I tried to apprehend in-house practice as itself a specialty area. For example, I identified areas of expertise from outside the law that we did not study in law school, at least in America, such as statistics and probabilities, game theory, behavioural economics, and other related fields of social science. I found those disciplines especially helpful in formulating principled advice in unclear situations. Many topics I studied in law school, such as the civil procedure rules on filing a motion for a summary judgement, might be substantively complex, but they usually came with four corners. This does not apply to decision-making in a broader, perhaps fuzzy, setting – such as whether it is reasonable to proceed with a transaction in a country that does not yet have a law on the issuance of securities.

It falls to in-house counsel to provide guidance while also recognising that ultimately legal and business decisions require a qualitative judgment.

You need to study the law in depth, but that is different from assessing a situation and making a “go/no-go” recommendation – a decision whether to proceed or not. Even after you have done the legal due diligence and the factual due diligence, uncertainty often remains. It falls to in-house counsel to provide guidance while also recognising that ultimately legal and business decisions require a qualitative judgment. I became interested in the theory and science of decision-making precisely because game theory and other

quantitative tools can improve such qualitative judgments. This is much of the value that in-house lawyers are providing to their business colleagues – support in sound, timely decisions – and there is much to gain from applying the best possible methodologies, including from fields of expertise outside the law.

QFLR: Many law students feel that they are facing a dilemma between their moral convictions and personal ambitions. The tobacco industry being a frequent target of social criticism, have you ever considered your career under the light of this dilemma?

Certainly. We have to be willing to ask ourselves hard questions, and an organisation’s leadership and ethos should encourage people to ask about the status quo... about *idées reçues*... and insist on a set of strong, enduring values to guide – and that do guide – conduct. The tobacco sector is certainly controversial, and the work can be difficult. Views might be polarized, and perseverance – especially in listening – is essential in working towards, for example, changes in regulatory policy and business practices to address the interests of adult consumers and societal concerns.

QFLR: You are the proud father of four children. Has your family life been difficult to reconcile with these professional activities?

Absolutely. There were many times where I was at the limit. Burn out is a real phenomenon. One has to recognise the tradeoffs, where there is a mix of expectations and desire to merge oneself fully into a career and yet be present for one’s family. Some things in life are priceless. Being now retired, I take great pleasure in taking the kids to school or helping them with their homework. Every day, my kids tell me something interesting, I meet somebody new, or I practice piano. Those moments are precious. I would not be able to do so if I were not retired. I am truly thankful to be in Switzerland, in Europe, with multilingual children who go to school in Düringen. I never stop getting a kick at the views in the train and hearing my kids speaking in German or French. It is fantastic.

QFLR: You have co-founded the Institute for Inclusion in the Legal Profession (IILP). What is the aim of the project?

We founded IILP twelve years ago in order to advance

inclusion in the U.S. legal profession as a matter of social justice. It reflected strong commitment from the IILP board members and founders, who have been people from various background, including corporate practice, large law firms, but also – and this is something we aimed for at IILP – other parts of the profession: judges, practitioners, etc. We made a point of including both the private and the public sectors. We wanted to have a broad perspective to delve into challenges, to ask the hard questions, to come up with concrete ideas for change. For instance, we organised a two-day event in Lausanne several years ago so that U.S. lawyers could share views with people based in Europe. We went through different statistics and did case studies on explicit and implicit bias in court proceedings, among other topics. I was excited to see several state judges and federal circuit court judges participating in the event.

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QFLR: In addition to organizing events and conferences, what are typical activities of the IILP?

A significant amount of the work of IILP has been empirical and based on capturing and discussing data. We worked with statisticians and published the results. They illustrate the issues well. In the US, there are slightly more women than men coming out of law school. Yet, statistics show that the presence of women in law firms decreases over time, leaving very few women making it to the top lanes. IILP has also looked at the ownership of the largest 200 (US) law firms. The equity partnership representation among women is remarkably low. And that is without mentioning the question of African American partners and, even worse, African American women equity partners. If you break down the data on total number of partners, by the time you get to African American women, it is shockingly low.

QFLR: Why is that?

Let's try to be empirical and present it through

hypothesis testing. Hypothesis A: these statistics actually reflect market phenomena and choices among potential participants. Hypothesis B: something is wrong here. The probability of both scenarios is obvious to me. As lawyers, we stand for, or should, equity and fairness and justice. How can we be comfortable with these statistics? In addition, the evolution of these numbers is a disappointingly slow process. It is due to many structural biases, including within large law firms. A comparison with other parts of the legal profession provides evidence of this phenomenon. There is, for instance, a much greater gender representation and diversity in the U.S. Congress.

One of the often-heard hypotheses about lawyers is that practicing law takes so much time and dedication that a lot of women are going to distance themselves from it. IILP published a few comparative studies on different sectors. One striking example is medicine. From personal experience, I have seen first-hand a remarkable neonatal intensive care unit (NICU), where many of the doctors were women. I have spent time in many high-pressure litigation environments in the tobacco sector, but I could not for a second compare anything I have done, or any lawyer does – except maybe representing somebody in a capital punishment case – to being a NICU doctor or nurse. Another interesting study concerns veterinarian medicine, which used to be dominated by men in the U.S. In the last ten years, the opposite trend has occurred. Such an evolution is based on a cascade of different factors. The approach to the question should be empirical and pragmatic, while also be willing to put on the table some of the issues of an economic model.

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QFLR: What has been your experience of women's representation in the corporate world?

It was fairly good. At one point, for example, when I was vice president of PMI Europe's legal department, eight of nine of my direct reports were women. When I was at Kraft Foods, the Chairman & CEO, the head of HR, the head of R&D and the head of marketing,

among other senior leaders, were women. I do not remember what the percentage was, but it was certainly balanced. In law, there is a pretty good gender diversity when it comes to in-house practice. I do not want to quantify it to avoid overstating it, but the gender balance is, I believe, better when looking at top positions in in-house practice compared to top positions in large law firms.

Nonetheless, there certainly is a glass ceiling in the corporate world. In addition, there is a glass wall. There are women reaching an executive team, but the statistics, at least when I last looked, are that women more often fill positions in certain areas, such as law, corporate affairs, communications, and human relations, as opposed to, say, finance, manufacturing operations, marketing or R&D. CEOs tend to have backgrounds in the latter areas, and members of boards of directors are often current or former CEOs, CFOs, or other senior operating officers. When looking at certain sectors, it is not hard to find starker inequalities.

Whether a man or a woman, if you are in an environment where you have an in-group bias, where you have a strong in-group culture, it is hard for others to break in.

QFLR: How would you explain this?

I do not know, and I am not sure there is a clear answer to it. Some of the answers are in my personal view unsatisfying. Such as the one according to which women tend to gravitate to some functions more than others. If that is accurate statistically, it does not answer the question of why. Neither does it answer the question of whether there are other structural barriers in certain fields. There are some areas where you will have a more, to put it bluntly, “macho” environment than others. I think there is a good deal of empirical evidence that an existing high concentration of men in a field does make it proportionally harder for women to enter it. For many reasons. I am hardly the only person to have been in environments that were uncomfortable because people were saying things that were problematic just as a matter of proper behaviour

and respect for others. Whether a man or a woman, if you are in an environment where you have an in-group bias, where you have a strong in-group culture, it is hard for others to break in. Too often, and whether consciously or not, a group of decision makers that is mostly men will treat lightly or just disregard for no apparent reason the views of a highly credentialed and capable woman.

Putting aside the heinous constellation of knowing discrimination, I think many situations simply fall within the category of just not caring enough as an organisation to figure out what can be changed in order to make a difference.

I am hard pressed to believe some of the sweeping statements one sees about women’s disinterest for certain sectors. I think much more often than not, it is simply false. A factor often cited – that people unconsciously hire and promote people who are like themselves – may perpetuate the problem. It often comes down to a matter of awareness and a genuine, shared interest in change.

QFLR: A significant difference between the U.S. and Switzerland is the social and legal perception of quotas and positive discrimination. What is your opinion on this matter?

It is a complicated topic. It is also one on which emotions can run high. I certainly heard directly from people who were troubled by things I was saying with respect to increasing diversity as, essentially, advocating for quotas. This included people not wanting others to misperceive them as the beneficiaries of different standards. I have also heard from many people advocating for quotas as necessary to increase representation. Which is why it strikes me that beyond the specific topic of quotas, the overall effort is about a very systematic analysis and using methodologies such as systems dynamics. This is what we were doing at IILP, to look at what is, again, a market failure. What are the reasons explaining low diversity in a

particular sector? Putting aside the heinous constellation of knowing discrimination, I think many situations simply fall within the category of just not caring enough as an organisation to figure out what can be changed in order to make a difference. Some change will be incremental, and quotas might sometimes be too limiting. It comes back to a basic element, however: Organisations need to recognise that there is something unacceptable about being completely out of balance and then direct their energies and skills to real change as a strategic imperative.

Legal education trains people to ask the hard questions and to advance concrete strategies in areas ranging from the Code of Obligations to the UN Charter, it would be wonderful if it also trained people to do the same with respect to the composition of the profession itself.

QFLR: Various studies suggest that there is a correlation between diversity on executive teams and companies' outperformance. What do you think of this argument?

The business case for inclusion is often discussed at IILP. Reasonable minds differ, but I have not been a huge fan of having to show the economic upside in a more diverse and inclusive environment, at least as the lead off point, when you are dealing with skewed numbers. To me, the starting point should be the question of whether we are comfortable with the status quo. As a concrete example, consider a meeting of thirty people in a management team, of whom twenty-eight are men and two are women. What percentage of the twenty-eight men are aware that only two of the thirty are women? And of that percentage, what percentage wonders how that can be when society overall is roughly split in half, with a slightly higher percentage of women than men in law school? The answer will be troublingly low. I think most men, because of in-group bias, are probably going to find themselves in a group of other people with whom they, for instance,

went to school and they do not notice, and hence do not ask the question. And this is unacceptable as such.

QFLR: What can we do as law students to foster diversity and inclusion?

A starting point is to see that inclusion is important to the profession... especially given the nature of the profession. The rule of law is about fairness. About equality. It is about ideas and about social progress. Across the many substantive specialties, there is huge benefit in starting to see a professional commitment to inclusion already in law school. Concretely, for example, a strong education in legal ethics, a topic that also cuts across specialty areas, could include a component about promoting diversity and inclusion in the profession. Today's students will become tomorrow's leaders. What preparation today will help law students become lawyers who will speak thoughtfully and forcefully about hiring and mentoring practices, about advancement in a fair and inclusive environment, about the specific structural obstacles in different parts of the profession? Legal education trains people to ask the hard questions and to advance concrete strategies in areas ranging from the Code of Obligations to the UN Charter, it would be wonderful if it also trained people to do the same with respect to the composition of the profession itself.