

Consilio Institute: White Paper



FROM RHETORIC TO REALITY: BUILDING A CULTURE OF DIVERSITY IN THE LEGAL PROFESSION

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FROM RHETORIC TO REALITY: BUILDING A CULTURE OF DIVERSITY IN THE LEGAL PROFESSION

Legal professionals give a lot of lip service to the importance of diversity and inclusion (D&I), yet moving the needle in those areas has been challenging. Fortunately, there are law firms and multinational corporations breaking new ground in diversifying their teams and their leadership. These organizations' experiences illustrate some of the ways you can erase biased hiring and professional practices, in order to transform your organization into a more inclusive and prosperous business.

What Does Diversity in the Legal Profession Look Like Right Now?

Despite progress in more women and minorities becoming lawyers, the legal field is still falling short in diversity and inclusion, especially in positions of leadership.

Legal Lacks Diversity

- ▶ More than 88% of lawyers in the U.S. are white, a worse representation than among other professions such as architects, engineers, and surgeons
- ▶ Only 4% of managing partners at law firms are women
- ▶ Some 96% of law firms state that their highestpaid partner is male
- ▶ Although Blacks, Latin Americans, Asian Americans and Native Americans make up a third of the U.S. population and a fifth of law school graduates, they make up less than 7% of firm partners and 9% of general counsels at large corporations

Why is Diversity Important?

In order to foster change, leaders of organizations need to know the importance of diversity and inclusion to business outcomes. Beyond being the right thing to do, what are the benefits of diversity and inclusion to work quality and profitability? Knowing the benefits may motivate more executives in organizations to buy into a concerted effort to make the workplace and

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4% of law firm managing partners are women

96% of law firms' highest paid partners are male

its leadership more inclusive of people of differing backgrounds.

Making the Case for Inclusion: Innovation, Profitability

Research has proven time and time again that diversity enhances creativity. Teams with a diversity of race, ethnicity, gender, and sexual orientation are more innovative than homogenous groups, according to decades of research distilled by Katherine W. Phillip in an article in Scientific American in 2014.

What may be more attention-grabbing to leaders with goals tied to financial performance, however, is how a lack of diversity can affect a corporation's bottom line. A more diverse makeup can generate greater revenue for your organization.

Among the top organizations in Standard & Poor's Composite 1500 list, female representation in top management positions led to an increase of \$42 million in company value on average, according to a study by business professors at University of Maryland and Columbia University. Racial and ethnic diversity can deliver the same kinds of benefits.

“Simply not having diversity on your team and in leadership can lead to both a significant loss of revenue and reputational damage that could be difficult to shake.”

How Low Diversity Hurts Your Organization's Bottom Line and Reputation

A lack of diversity and unconscious bias could even be a liability to your bottom line and your reputational assets. A few cautionary tales from Silicon Valley illustrate that point.

In 2017, a Google study on gender and dialect bias indicated that the technology used for automatically-generated captions was inherently skewed to identifying male voices because the developers that designed the voice recognition technology are primarily male. In fact, Google's technical teams are not racially diverse and are made up of 74.3% males. The results of the study found a robust differences in accuracy across both gender and dialect, with lower accuracy for detecting women's voices.

Similarly, back in 2009, a blogger wrote an entire post, titled "Racist camera! No, I did not blink...I'm just Asian," about her troubling experience trying out a new Nikon S630 digital camera during a Mother's Day gathering (Are Face-Detection Cameras Racist, 2010). Apparently untested on Asian faces, the camera misperceived them as always blinking.

Be it the camera blog post, voice recognition apps or YouTube videos demonstrating how a particular sensor-operated soap dispenser or hand dryer worked only on Caucasian hands, these cringe-worthy anecdotes illustrate the type of product design failures and public perception disasters that can result from a lack of diversity and inclusion among the teams developing these innovations.

They also demonstrate how crucial it is that your team represent the diversity of the population at large, because the makeup of your team is directly reflected in the work product that you're putting out there.

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Clients Demand Diversity in Legal

In law firms and legal departments, lacking a diverse team of litigators could mean loss of revenue because prospective clients are being more intentional about partnering with firms who prioritize diversity. With certification and programs like the Mansfield Rule, corporations are demanding more diversity and inclusion as part of their requests for proposals (RFPs). The Mansfield Rule requires that at least 30% of the candidates considered for leadership and governance roles, equity partner promotions, formal client pitch opportunities, and senior lateral positions must be women, attorneys of color, LGBTQ+, and lawyers with disabilities.

Those organizations that fall short of that threshold will not be certified and run the risk of losing existing clients.

Many clients already expect these baselines for diversity. Some in the near future could ask to see metrics on how your diverse populations are represented, including hiring and promotion, access to mentorship programs, how they are treated internally, and how many hold positions of governance and leadership within your organization. According to the Diversity Lab, “as of 2022, there are 270+ U.S. and Canadian law firms, [and] 15+ UK law firms” participating in the certification process.

Blueprint to Boost Diversity

So, what can you do today to drive diversity? There are some initial questions to ask and some step-by-step strategies you can follow for the long term. For instance, have you identified strategies for diversity hiring? What are your hiring and promotion targets? Some 66% of companies already have strategies for diversity hiring, but only 25% actually have set targets for hiring. Setting a percentage target doesn't mean you have to then tailor hiring practices to meet those goals, but without a target, it's hard to have a sense of where you are in the process.

Have you been doing the same thing and hence, getting the same results?

For example, have you been hiring lawyers from the same law school for the past 10 years? Where are you getting your referrals? Are you waiving qualifications for certain candidates? What are their demographics? (Historically, they are white men.) Answering these questions will give you a clearer picture of where you're at now.

Best Practices for Creating a Culture of Awareness, Accountability, and Support for Diversity

Diversity initiatives take a strategic approach with a lot of follow-up, but legal teams on the leading edge

Questions you should be asking:

Have you identified strategies for diversity hiring?

What are your hiring and promotion targets?

Where are you getting your referrals?

What are your recruits' demographics?

of these transformations have already tried out best practices to help you through the process, from initial assessment to hiring and retention.

- ▶ Starting points: Establish a baseline
 - ▶ Track and analyze metrics. Look for patterned differences between gender, race, or any other underrepresented group that your organization tracks, such as military veterans or LGBTQ employees.
 - ▶ Identify what you can do now and what goals you can set for the future.
 - ▶ Set targets by which you can measure yourself later.
- ▶ Measure progress: You won't know whether you are on the right path unless you have a mechanism to test whether your programs are working and doing what they were initially designed to do:
 - ▶ Even if you have set goals in your organization, how have you measured them?
 - ▶ How do you measure success?
 - ▶ How do you measure continued

“In today’s global business world, everyone needs diversity in their teams, organizations, leadership and perspectives if they are going to grow and innovate.”

challenges?

Look to the experts and keep up with diversity and inclusion initiatives. Check out the Diversity Lab and its Move the Needle Fund for diversity initiatives to observe the conversations happening. Follow prominent leaders in the D&I space on LinkedIn to learn from their thoughts and ideas.

Promotions

- ▶ Start with your existing team. Broaden the pool of candidates for promotions to leadership within your organization:
 - ▶ For instance, have you been relying on the same people to identify candidates for promotion? Seek different perspectives.
- ▶ Adopt policies to make promotions merit-based. Look at past promotions and determine where qualifications were waived.

Hiring

- ▶ Follow the candidate pool through the entire hiring process, from resume review and initial contact to interviews and hiring, and then analyze where underrepresented groups are eliminated from the hiring process.
- ▶ Keep a record of the candidates who are hired as a result of referrals and determine whether it results in a diverse pool.
- ▶ Recruit where diverse candidates and nontraditional students are. One option is the PALS organization (Practicing Attorneys for Law Students Program), which is dedicated to enhancing the skills and careers of minority law students and early-career attorneys.
- ▶ Track whether hiring qualifications are waived more often for some groups vs. for others.
- ▶ Track interviewers' reviews and recommendations to look for demographic patterns.
- ▶ Empower people involved in the hiring process to spot and interrupt bias.
- ▶ In job postings, avoid language that has been proven to decrease the number of female applicants, such as words like “competitive” or “ambitious.”

- ▶ Consider implementing a structured interview process, where all candidates are asked the same or similar questions, and the questions being asked have been drafted to ensure they are focused on job-related topics.

Retention of Diverse Legal Talent

- ▶ Create a safe space where a diversity of opinions and perspectives can flow in dialogue, and thought leaders can talk about their experiences. Maintain a diversity committee and integrate its feedback into actionable steps at your organization. Align diversity goals with those of clients.
- ▶ Be transparent about what drives compensation. This is a vital first step to empower women and people of color to refuse work that does not enhance their compensation and focus on work that positions them to receive greater compensation.
 - ▶ For a great resource for law firms after hiring, read the “Identifying Bias in Partner Compensation Worksheet” available online at BiasInterrupters.org.
- ▶ Look at whether lawyers are disadvantaged for taking parental leave, caregiving, or choosing part-time work:
 - ▶ Are those employees with caregiving responsibilities excluded from future opportunities?

- ▶ Do part-time lawyers receive less than proportionate pay for proportionate work?
- ▶ Are they excluded from future opportunities?
- ▶ Establish procedures and processes that are trackable to ensure the perception and reality of fairness.

Conclusion

In today’s global business world, every legal organization needs diversity in their teams, leadership, and perspectives if they are going to thrive and innovate. A broader perspective improves the quality of legal advice and client service, supports employee retention, and has a halo effect in terms of reputation, which increases your client’s positive perceptions. Diversity and inclusion must be approached with intention from the top-down, and it takes a deep commitment to sustained effort and assistance from leaders and employees in changing behavior. It can’t happen overnight, but it’s important that organizations who are interested in having a culture of diversity invest in programs to join the discourse, in order to see continued progress in the legal profession.

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