



# All together, now

## The business, professional and human case for law firm diversity

By **Jordan Furlong**

In the wake of the recession, law firm diversity numbers that had begun to inch upwards have stalled or even begun to drop again. Instead of complaining about their diversity obligations, law firms ought to understand and act on the business, professional and human reasons why they should improve diversity. Here is where they can start.

“Law firms may be getting ‘diversity fatigue,’” began an article in a legal periodical last summer. Some firms reported growing resentful that they’ve gone to great lengths to increase diversity within their ranks at in-house counsel’s request and don’t feel they’ve received enough appreciation from their clients — specifically, the kind of appreciation that can be measured in

billable hours. “What more do you want from us?” is a common way of expressing this feeling.

Contrast this sentiment with statistics recently generated by organizations like the National Association of Legal Placement (NALP), the Minority Corporate Counsel Association, and Vault.com. Surveys of more than 100,000 lawyers at more than 1,300 law offices found that women have yet to exceed more than one-third of all law firm lawyers (and their numbers are dropping), while ethnic minorities continue to hover around 12 percent.

An even starker picture emerges when you look solely at partners in these large firms. Women account for 19% of all partners, minority men 4.5%, and minority women less than 2%. Picture it this way: if you lined up 100 typical law firm partners, the first 81 would be male (and the first 76 would be white). The last 19 would be women, and barely the final two would be members of a minority. Diversity fatigue, indeed.

These numbers are pretty much exactly what you would expect from the structure and culture of the modern law firm. If you had set out to design a compensation and promotion system specifically to reduce the number of women in law firms, you could scarcely have done better than the billable-hour regime. And male or female, law firm partners who are almost universally white habitually hire, mentor, associate with and promote people who look, sound and act like them.

I don’t want to dismiss the efforts of firms that really have tried to improve diversity, and those numbers do show slight but genuine progress in the last

five years. What I want to focus on is this sense I sometimes get from law firms that they've done their duty here: they've put forth the effort on diversity, made the appropriate gestures, and can now get back to more important things. It's an attitude that diminishes everyone involved, not least the firms themselves.

It seems to me there are three elements involved in dealing with diversity in the practice of law. The first is to establish that it doesn't really exist, and I don't think there's a strong argument against that. The second is to establish that its absence is a problem, one that the profession should care about enough to address. And the third is to actually address it and solve it.

(For present purposes, I'll define diversity efforts in law firms as those that seek to increase the percentage of lawyers and partners who are women, are physically disabled, self-identify as GLBT, or belong to racial or ethnic minorities, and to ensure these lawyers proportionally occupy senior positions within the firm.)

### WHY THE "BUSINESS CASE" IS FLAWED

When attempting to show that the lack of diversity is a problem, some people argue that clients are themselves diverse or are making diversity a corporate priority, and that therefore lawyers and law firms should become more diverse in order to keep these clients' business. This is sometimes referred to as "the business case for diversity."

The "business case for diversity" reduces the issue to a simple matter of money, removing any consideration of social or moral responsibility. It's like paying your kids to clean their room and do their chores.

I understand the reasoning, but I don't agree with it. For one thing, it assumes that firms that do innovate in diversity will have a competitive advantage over those that don't. But innovation to gain a business edge has even less traction in law practice culture than diversity does, and most law firms have long rested easy in the knowledge that no one's going to try something different that will just make things more complicated for everyone else.

But my primary reason for disliking this "business case" is that it reduces the diversity rationale to a simple matter of money, removing any consideration of social or moral responsibility. It's like paying your kids to clean their

room and do their chores: sure, the tasks will get done, but the kids won't have learned anything about responsibility, discipline, or contributing their small part to the family unit. They'll have learned to do only what they get paid for, and when the money dries up, so does their work ethic.

Look at it this way: if clients stop paying lawyers for diversity, does that mean diversity doesn't matter anymore, and it's okay to go back to ignoring it?

### DIVERSITY STRENGTHENS PERFORMANCE

If you absolutely must have a good "business case" reason for a more diverse workplace, here's one: businesses without diversity are at an inherent disadvantage. When most or all of your people look the same and come from the same backgrounds, it's a safe bet that they'll all think the same and act the same, too.

They'll adopt the same analytic approaches, make the same sorts of assumptions, and reach the same kinds of conclusions; when they meet to compare notes, the groupthink atmosphere will reinforce the built-in strategic biases, and each member of the team will congratulate the other on their brilliant ideas.

It's the opposite of diversity: it's *commonality*. And a law firm with a surfeit of commonality lacks any number of essential ingredients to be a top-notch solutions provider:

- a wealth of perspectives,
- a broad pool of knowledge,
- creative dissent,
- constructive self-doubt,
- an eye for unanticipated outcomes, and most importantly,
- an ability to see every angle of the multi-faceted challenges clients bring to lawyers every day.

A law firm afflicted with commonality fails to see what its members aren't looking for, and sooner or later, that will be fatal.

### BECAUSE IT'S RIGHT

But even that argument, which I think has a lot of value, is still fundamentally self-interested: it promotes diversity as a means to the firm's ends, rather than as an end in itself. The only really valid argument in favour of diversity

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is that it matters on its own merits.

Nature is diverse: the natural order of things is to spawn as many variations on a theme as possible and to set them all to work together, collaboratively and competitively. People are diverse, too: not one of us is exactly like anyone else, and when given the opportunity, we invariably mix and match and swirl together to produce vibrant, cosmopolitan and fulfilling communities. The essential rightness of diversity in everything around us is so obvious that if anything, the burden should lie on making a powerful case *against* it.

Diverse workplaces are better. They look better; they *feel* better; they *are* better. There is something refreshing, uplifting, and constantly sharpening about a diverse environment: you feel a deeper connection to the real world around you when you're no longer surrounded by the artificiality of sameness.

You are never more yourself than when those around you look and think differently from you, because you're challenged to bring your unique background and characteristics into play at all times. Diversity is good, and its absence in the practice of law is bad for us and bad for the system and society we serve.

### HOW CAN WE IMPROVE DIVERSITY?

It remains to decide whether the legal industry's commonality should and can be addressed. On the former point, all I can say is that if diversity is a good thing, then the legal profession should be a leader, not a laggard, in encouraging it.

We talk a great game, as a profession, about our commitment to higher standards and the respect we deserve for our valued contributions to society. If so, then we need to be out there driving diversity in our ranks, leading by exhortation and example, demonstrating that diversity is inherently right and lawyers are equally right to be aligned with its promotion. Other professions have done it, and there's no excuse for us to be so far behind.

So how do we achieve diversity in the law? I'm not a great proponent of either incentive programs or mandates from governing bodies: if you use a carrot or a stick to motivate or force change, then attitudes towards diversity remain unmoved or even become soured. And I do think attitude matters, because resistance to diversity is grounded in biases, conscious or unconscious, against people who don't look like we do.

Too many people within law firms look at a woman or a member of a minority in a senior position and automatically make negative assumptions about the position they hold and the route they took to get there. Ridding human nature of these biases is certainly too tall an order, but there's no

reason we can't actively question those assumptions.

White, male, straight lawyers who see a colleague or potential colleague who differs from them in one or more of these characteristics (among others) need to be aware of the inferences they're drawing and the conclusions they're jumping to, and they need to actively shake their minds loose from those biases every time. It's an excellent habit to acquire, especially since as lawyers, we're supposed to be good at seeing an issue from any angle and adopting new positions from which to understand and analyze a situation.

Accepting and promoting diversity starts with a conscious effort by those of us in the profession's majority to see difference not as an obstacle to be surmounted or minimized, but as an opportunity to think fresh, see clearly, learn something valuable — and appreciate the barriers that our conveniences and assumptions create for others.

A diverse legal profession lies just the other side of a willingness to constantly challenge our own assumptions about others. That's not even close to too high a price to pay. •



## Presenting: the future

**Jordan Furlong** delivers dynamic presentations to law firm retreats and legal organization conferences throughout North America. He explains the unprecedented changes in the legal marketplace and how lawyers can respond.

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