

THE DIVERSITY & INCLUSION DUET: HOW DIVERSITY NEEDS INCLUSION TO BE DIVERSE

BY ARIN N. REEVES

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The business case for diversity has been well articulated and communicated in most legal workplaces, but the very fact that it is a business case only for diversity has limited its impact. The oft-mentioned business case for diversity in legal workplaces is a straightforward one that posits that the more diverse your workforce, the better off you are as an organization. Based on this business case model, we count heads, we recruit, we count the heads again, we groan over the attrition that has occurred, and we go out to recruit more diverse candidates. When we have completed this cycle, we repeat it.

In spite of the robust pressures from clients that drive the business case for diversity, the revolving door for diverse lawyers has kept many of our workplaces from achieving the sustained diversity that creates the momentum for additional diversity. The progress has been slow, and in 2009 we saw the profession take a step back in its progression toward racial/ethnic and gender diversity, especially in law firms.

So, why has the business case for diversity not spurred sustained change even though the commitment levels for diversity in legal workplaces have increased significantly? The answer is simple to articulate but difficult to implement: recruiting gets diverse candidates in the door, but retention and advancement of those diverse candidates require inclusion. The business case for diversity has encouraged efforts in legal workplaces that have advanced diversity tremendously – but only at the front door. We need our workplaces to focus on diversity **and** inclusion in order to recruit, retain, and advance diverse lawyers.

In *The Wisdom of Crowds: Why the Many Are Smarter Than the Few and How Collective Wisdom Shapes Business, Econ-*

omies, Societies and Nations (2004), James Surowiecki argues that diversity of opinion is not only essential to an organization's ability to be successful but that diversity of opinion can make the difference between a wise crowd and an irrational crowd. Surowiecki uses many examples in economics and politics (from NASA disasters to business innovations to national disasters) to demonstrate how a lack of diverse opinions can cause ineffectiveness at best and catastrophes at worst in many organizations, associations, and even nations.

Many of the people who cite Surowiecki's work as evidence of the business case that diverse organizations are more effective, competitive, and sustainable do not adequately unpack what he is actually saying – you need diverse perspectives in your workplace, and you need a workplace culture where the diverse perspectives are actually heard. You need diversity, but without an inclusive workplace where different perspectives are encouraged and different viewpoints are safely articulated, the diversity you have achieved does you no good. In other words, there is no business case for diversity if you don't have inclusion.

As much as your hiring numbers and head counts help you understand your success in diverse hiring practices, the numbers don't tell you much about inclusion. Here are some questions to help you assess if your organization is diverse **and** inclusive:

1. Is the highest leadership team in your organization (e.g., management committee, executive committee, partner board) diverse with racial/ethnic minorities, women, and/or LGBT lawyers?
2. Is the partnership/general leadership of your organization representative of the racial/ethnic, gender, and/or sexual

orientation diversity that is present in the lower ranks of your organization?

3. Is there a formalized mechanism by which younger people in the organization can express their perspectives, concerns, and/or compliments to the senior leadership? Is this mechanism anonymous or confidential?
4. Does your organization do 360-degree reviews or upward reviews? Do these reviews get integrated into the senior people's compensation?
5. Do people in the organization have an appeal process that they can utilize if they have concerns about their reviews, compensation, or informal interactions?

If you answered “no” to three or more of the above questions, your organization is probably not very inclusive even if you are quite diverse.

As an aside, it is important to note that many organizations that are not diverse are actually quite inclusive because it is easy to be inclusive of similarities. The strength of an organization – its competitive and sustainable wisdom – is derived from inviting in a diverse array of perspectives and creating an environment where the different perspectives can actually be heard and be integrated into the decision-making processes of the organization.

Transitioning the focus of your organization's efforts from diversity to diversity **and** inclusion is not merely an exercise in semantics; it is an act of strengthening your organization from the inside out.

So, how do you move beyond diversity to diversity **and** inclusion? The Colorado Campaign for Inclusive Excellence (CCIE, www.legalinclusiveness.org) has created a website and a manual that

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focuses on inclusion in the legal profession. In addition to the detailed and practical manual, the website has a large database of articles, research studies, and expert insights that can make it relatively painless for organizations to transform yesterday's diversity efforts into today's diversity and inclusion strategies. The manual delves into detailed tips on, for example, how to build internal support, how to engage white men, how (and when) to engage consultants, and many other critical topics. (Full disclosure: I assisted CCIE in the revision of its manual.)

One of the most frequently asked questions when the topic of inclusion is raised is whether the inclusion construct dilutes traditional diversity categories. Under the diversity and inclusion rubric, diversity necessarily expands beyond the traditional Title VII categories to cover "invisible" criteria such as socioeconomic background, cultural heritage, nationality, linguistic flexibility, and many other aspects of one's identity. That said, the power of diversity and inclusion lie in understanding what perspectives are indeed missing from decision-making bodies, and we often have to start with what is visibly underrepresented before we delve into the invisible. When there are only men around a table, the lack of women is so visible that the gender diversity needs to be addressed before we can delve into the invisible criteria. Similarly, when there are no people of color in a room, the lack of racial/ethnic diversity speaks so loudly that it is difficult for other identity components to be heard.

Ideally, diversity efforts will continue to increase the representation of underrepresented groups while inclusion efforts increase the ability of everyone in the workplace to be heard. Diversity efforts can be focused, while inclusion efforts can be global; together, they enable organizations to bring in diverse voices and create workplaces where the diverse voices are allowed to join the conversation.

As Surowiecki explains through carefully researched examples, a crowd – even a diverse one – cannot be wise if everyone is pressured to select the same answer because diverging from the norm or the expected is punished

instead of rewarded. An interesting application of this research can be founded in recent research on juries reported in the *Journal of Personality and Social Psychology*. According to the American Psychological Association, "...juries that include white and black members are likely to exchange more information about the details of a case than all-white juries, a process that may lead to more detailed deliberations and fairer verdicts." Interestingly, the presence of black jurors did not just lead to a difference in the deliberations; the presence of black jurors actually changed the way white jurors discussed the evidence because they were not locked into the fast and incomplete agreement that often occurs in homogeneous crowds. Just as importantly, the environment was set up to make the black jurors feel comfortable speaking up, so the inclusive environment encouraged all jurors to speak up, even when the discussions had nothing to do with race.

As your organization works to define its diversity commitment and efforts, make sure that the business case for diversity and inclusion is integrated into the dialogue. You can create diversity without inclusion, but it will not last. You can create inclusion without diversity, but it won't make you stronger. You need the duet of diversity *and* inclusion in order to tap into the wisdom that is required to make your organization more competitive, sustainable, and successful. ■

