

BUILDING DIVERSE LEGAL TEAMS IN A COMPETITIVE HIRING ENVIRONMENT

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AGENDA

Diversity in the Legal Profession:
Where We've Been and Where We're Going

Issues and Next Steps For Becoming
a More Diverse Legal Profession

Diversity and Corporate/Law Firm Partnerships

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DIVERSITY IN THE LEGAL PROFESSION: WHERE WE'VE BEEN AND WHERE WE'RE GOING

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A CALL TO ACTION – WE'VE BEEN HERE BEFORE

1999	2006	2006	2007	2009
First call to action to improve diversity in the legal profession – Charles Mason, EVP/GC Bell South, “Diversity in the workplace, A statement of principle”	Second call to action – Rick Palmore (then GC of Sara Lee)	ABA creates “History Project” to inspire diverse students to join the profession	ABA creates Commission on Sexual Orientation and Gender Identity to help eliminate bias against the LGBTQ+ community	Legal Council on Legal Diversity (LCLD) is formed

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A CALL TO ACTION – WE’VE BEEN HERE BEFORE

2016	2017	2019	2020	2021
American Bar Association – Model Diversity Survey 113	Diversity Lab and the Mansfield Rule	170 GCs sign letters to outside law firms demanding greater diversity	12 financial services GCs sign letter calling for greater diversity and inclusion	The Coca-Cola Company provides outside counsel guidelines with specific diversity metrics

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THE LEGAL PROFESSION CONTINUES TO LACK RACIAL DIVERSITY

Law School	Legal Profession
<p>In 2011, 25% of law students were students of color; in 2020, 32% of law students were students of color</p> <p>2020 Statistics of First Year Law Students</p> <ul style="list-style-type: none"> • Black – 8% of law students • Hispanic – 13% of law students • Asian – 7% of law students • Multiracial – 4% of law students 	<p>In 2011, lawyers of color represented 11.7% of the legal profession; in 2021, lawyers of color represented 14.6% of the legal profession</p> <p>2021 Statistics of Layers in the Legal Profession</p> <ul style="list-style-type: none"> • Black – 4.7% of lawyers • Hispanic – 4.8% of lawyers • Asian – 2.5% of lawyers • Native Americans - 0.4% of lawyers • Multiracial – 2% of lawyers

American Bar Association, *Profile of the Legal Profession Report* (2021), <https://www.americanbar.org/content/dam/aba/administrative/news/2021/0721/polp.pdf>

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THE LEGAL PROFESSION CONTINUES TO LACK DIVERSITY

Law School

- In 2010, 46.8% of law students were women; in 2020, 54.1% of law students were women
- In 2020, 7.7% of all law students working as summer associates identified as LGBT
- In the class of 2019, 89 law school graduates identified as non-binary

Legal Profession

- In 2011, 33% of all lawyers were women; in 2021, 37% of all lawyers were women
- In 2010, 1.9% of law firm lawyers identified as LGBT; in 2020, 3.3% of law firm lawyers identified as LGBT
- No reliable statistics on sexual orientation or gender identity exist representing all parts of the legal profession

American Bar Association, *Profile of the Legal Profession Report* (2021), <https://www.americanbar.org/content/dam/aba/administrative/news/2021/0721/polp.pdf>

NALP Research on Non-Binary Law School Graduates (Dec. 2020), <https://www.nalp.org/1220research>

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DIVERSITY IN U.S. LAW FIRMS



- In 2009, 6% of law firm partners were diverse
- In 2020, 10% of law firm partners were diverse
- In 2020, 21% of Equity Partners in law firms were women
- In 2020, 3% of equity partners were Women of Color
 - However, Black and Hispanic Women each make up less than 1% of all law firm partners
- Diverse law firm associates have risen from 20% to 26%

American Bar Association, *Profile of the Legal Profession Report* (2021), <https://www.americanbar.org/content/dam/aba/administrative/news/2021/0721/polp.pdf>

National Association for Law Placement, Inc., *2020 Report on Diversity in U.S. Law Firms* (2021) https://www.nalp.org/uploads/2020_NALP_Diversity_Report.pdf

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ISSUES AND NEXT STEPS TO BECOMING A MORE DIVERSE PROFESSION

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ISSUES AND NEXT STEPS TO BECOMING A MORE DIVERSE PROFESSION



- 1. Barriers to the legal profession**
2. Lack of diversity in recruitment and retention
3. Recent discrimination cases involving DEI issues
4. Initiatives and backlash

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BARRIERS TO THE LEGAL PROFESSION: A LACK OF EXISTING DIVERSITY

A lack of existing diversity in leadership positions

- Leads to missing perspectives and voices in recruiting, hiring, retention, and promotion decisions that can serve as a barrier for diverse candidates
- Leads to a lack of mentors and sponsors with firsthand experience as a diverse associate at a law firm or in a corporate legal department which leads to less effective mentorship programs for diverse lawyers



Diversity at Law Firms: A Renewed Focus (Oct. 12, 2020), <https://www.law.columbia.edu/news/archive/diversity-law-firms-renewed-focus>.

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BARRIERS TO THE LEGAL PROFESSION: UNCONSCIOUS BIAS

Systemic barriers and unconscious bias

- Women of color, white women, and men of color reported having to go above and beyond to get the same recognition and respect as coworkers
- Men of color and women of all races reported being mistaken for administrative staff, court personnel, or janitorial staff at a significantly higher rate than white men
- Women of all races reported doing more administrative tasks than white men



Joan C. Williams, Marina Multhaup, Su Li, and Rachel Korn, *You Can't Change What You Can't See* (June 28, 2018), <https://www.americanbar.org/content/dam/aba/administrative/women/you-cant-change-what-you-cant-see-print.pdf>

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ISSUES AND NEXT STEPS TO BECOMING A MORE DIVERSE PROFESSION



1. Barriers to the legal profession
- 2. Diversity in recruitment and retention**
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RECRUITING DIVERSE TALENT

- Review recruiting locations and broaden the pool
- Track candidate pools through hiring process and analyze where underrepresented groups fall out of the hiring process
- Standardize interviewing and onboarding processes
- Employee referral program
- Unconscious bias training
- Conduct panel interviews when possible and be mindful of diversity of interviewers



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RECRUITING DIVERSE TALENT

Legal Guardrails

- Review position descriptions and requirements, eg., prior large law firm experience
- Review metrics and “marginalia”
- Conduct Interview Skills training for anyone involved in interviews
- Due Diligence when selecting facilitator and program for unconscious bias training
- Watch out for potential allegations of discrimination cases involving DEI issues
 - No Quotas, No Targets, take care in setting “aspirational goals”

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RETAINING DIVERSE TALENT



Mentorship and Sponsorship

- “Mentors advise you, Sponsors advocate for you”
- Reverse mentoring programs

Manager Training

- Stretch assignments (with caveat)
- Succession planning
- “Inclusive” activities & events
- Active participation in ED&I efforts

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RETAINING DIVERSE TALENT

- Develop and foster a welcoming, authentic, and inclusive work environment where all employees can be their authentic selves
 - Starts with leaders being open and setting a culture of authenticity
 - Discuss authenticity during recruiting and on-boarding
 - Create a space for everyone to be comfortable sharing their stories and experiences



Michelle Silverthorn, *Have You Met Kevin? He's from Yale*, (Nov. 14, 2018), <https://michellesilverthorn.com/blog/have-you-met-kevin-hes-from-yale>.

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RETAINING DIVERSE TALENT

- Focus on equity and identify and dismantle barriers in systems, structures, policies, and practices
 - Use metrics to identify areas where inclusion and equity challenges exist
 - Use metrics to track promotion, departure, assignment quality, and mentoring trends
 - Use metrics to analyze performance evaluations
 - Make changes where necessary



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RETAINING DIVERSE TALENT

Employee “climate” surveys

Self-Identification Categories (Race, Gender, LGBTQ+)

“SWAT Team”

Career Development

Equity, Diversity & Inclusion training programs

Offer family-friendly and flexible work programs

Engage employee affinity groups to assist in relationship/community building

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CREATING AN INCLUSIVE LEGAL DEPARTMENT: HOW ARE YOU LEADING?

Senior Leadership

- Commitment, responsibility, messaging
- Culture
- Goals
- Accountability

Diversity Council

- Roles, responsibility, and membership
- Strategic planning
- Function of legal

Actions

- Are you being intentional in engaging diverse lawyers?
- Are you soliciting feedback on how to improve culture?
- Are you open to learning about ways to improve as a leader?

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DIVERSITY IN RETENTION

Legal Guardrails

- Monitor demographics of mentors and sponsors (look out for “mini-me”)
- Have clear instructions on use of Self-ID information, particularly for non-legally required categories (e.g., LGBTQ+)
- Advise on EEO-1 filings and Affirmative Action Plans
- Review all questions on surveys, determine appropriate access to results
- Carefully vet external trainers and consultants
 - Presentation content
 - Instructions given to “focus group” participants
 - Use of data/information beyond project

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ISSUES AND NEXT STEPS TO BECOMING A MORE DIVERSE PROFESSION



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DISCRIMINATION CASES INVOLVING DEI ISSUES

Duvall v. Novant Health, Inc.

North Carolina federal jury awarded plaintiff \$10 million dollars for his discrimination claim.

Wilberg v. Google, Inc.

Court ordered arbitration for Wilberg's wrongful termination and discrimination claims.

DUVALL V. NOVANT HEALTH, INC.

Duval was hired in 2013 as Novant Health's Senior Vice President for Marketing and Communications and received positive performance reviews throughout his employment

In 2018, Duvall was fired, allegedly without warning, and replaced by two women, one of whom is Black

On November 18, 2019, Duvall filed a law suit in the Western District of North Carolina alleging he had been wrongfully terminated in violation of Title VII

In his complaint, Duvall alleged he was among seven white executives who were replaced with women or Black men as part of a diversity push

DUVALL V. NOVANT HEALTH, INC.

In October 2021, a North Carolina federal jury ruled for Duvall and awarded him \$10 million

The jury stated “in court records that Duvall proved ‘that his race (Caucasian) and/or his sex (male) was a motivating factor in Novant Health’s decision to terminate him’ and that Novant Health did not prove ‘that it would have made the same decision to terminate David Duvall regardless of his race (Caucasian) and/or his sex (male).’”

Duvall v. Novant Health, Inc., Civil Action No. 3:19-cv-624, (W.D.N.C. Nov. 18, 2019).

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Wilberg v. Google, Inc.

Wilberg, a technology personnel recruiter for Google and its subsidiary, YouTube, opposed Google’s hiring policy and filed numerous internal complaints.

In November, 2017, Wilberg was terminated because he was “not meeting goals” and “talking too much in meetings.”

In January 29, 2018, Wilberg filed wrongful termination and discrimination claims in California.

Wilberg alleged that Google had a hiring policy that outwardly favored Hispanic, African American, and female candidates, while discriminating against Caucasian and Asian men.

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Wilberg v. Google, Inc.

Relied on three pieces of evidence in the complaint:

1) Policy document stating that for three months in 2017, YouTube would only hire “diverse” candidates;

2) Email instructing recruiters to only interview entry level candidates from historically underrepresented groups; and

3) Instructions to recruiters to cancel all interviews with entry level candidates who were not female, African American, or Hispanic, and to purge the applications of non-diverse entry level candidates from the internal system.

Wilberg v. Google, Inc.

On March 20, 2018, the court ordered arbitration.

Google denied that it implements discriminatory policies towards Caucasian and Asian men. Google stated that it maintains “a clear policy to hire candidates based on their merit, not their identity. At the same time, we unapologetically try to find a diverse pool of qualified candidates for open roles, as this helps us hire the best people, improve our culture, and build better products.”

INITIATIVES AND BACKLASH

Diversity Programs and Hiring Plans

- Many companies have pledged to increase diversity in their workplaces
- There has been an increase in discrimination claims involving DEI issues asserted by employees who do not belong to traditionally marginalized groups

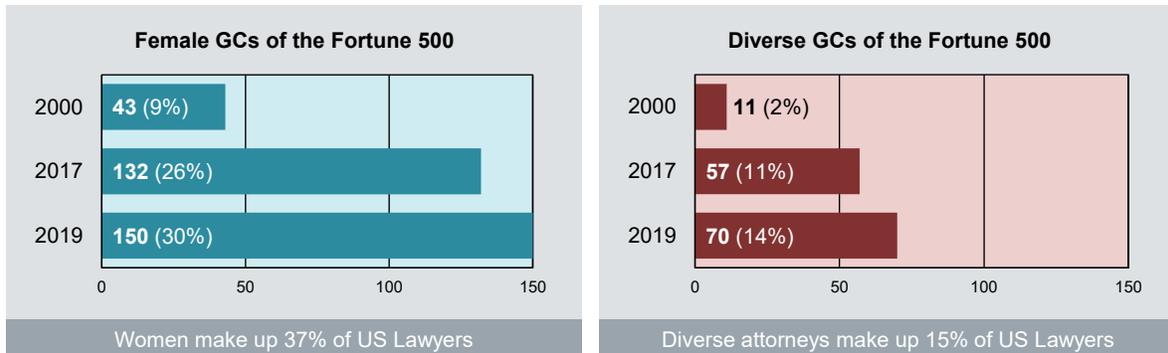
Florida Supreme Court

- In April 2021, the Florida Supreme Court sua sponte amended the Rules Regulating the Florida Bar, rejecting a policy that set diversity requirements for faculty at Business Law Section-sponsored CLEs and stating this policy was “antithetical to basic American principles of nondiscrimination.”

DIVERSITY AND CORPORATE/LAW FIRM PARTNERSHIPS

DIVERSITY IN CORPORATE LEGAL DEPARTMENTS

Corporate Legal Departments are asked to advise on legal risk, while also focusing on increasing diversity in their own ranks. Some statistics are worth noting:



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CORPORATE CLIENTS REQUIRING MORE DIVERSITY FROM OUTSIDE COUNSEL

Carrot Approaches

- Microsoft gives a 2% bonus to law firms that meet certain diversity goals
 - Overall 30% increase in percentage of hours worked by diverse attorneys
- PepsiCo scores and ranks outside counsel's diversity efforts, top ranking firms get a spot on preferred counsel list and honored at PepsiCo's campus for a day

Stick Approaches

- HP withholds up to 10% of legal fees from outside counsel who fail to meet D&I requirements
- MetLife requires underperforming firms to create D&I action plan with their General Counsel; failure to remedy results in losing spot on outside counsel list

Collaborative Approaches

- Starbucks created a Diversity Mentorship Program that connects Starbucks in-house lawyers with private practice junior lawyers from diverse backgrounds
- MassMutual hosts dinners for diverse attorneys from its outside firms and company leaders, creating "skip-level" interactions and valuable key contacts on both ends

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CORPORATE LEGAL DEPARTMENT: PARTNERING WITH LAW FIRMS TO CREATE MORE DIVERSITY

Collaborate with law firms to develop diversity programs

Foster relationship building between in-house and outside counsel

Offer opportunities for leadership and visibility

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IN-HOUSE ATTORNEYS AND OUTSIDE COUNSEL PARTNER FOR DIVERSITY MENTORING PROGRAM



As part of the overall diversity program, a large public company is initiating a diversity mentoring program in partnership with their core firms. The objectives of the mentoring program are to provide high-potential diverse senior associates, counsel, and junior partners an opportunity to:

- Learn about in-house life, including the broader business context and the business/legal challenges that the company faces;
 - Have a career resource outside of the firm; and
 - Develop closer partnerships with their OGC team.
- The year-long program will consist of monthly interactions between attorneys from the company and their law-firm mentees.

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JONES DAY DEI COLLABORATIONS

We partner with a client to co-teach Patent Law at two Historically Black Colleges and Universities (“HBCUs”). Examples of recent initiatives borne out of discussions with clients include:

Expansion of Jones Day’s SEO Program – The SEO Law Fellowship is the only program of its kind to offer talented, underrepresented, incoming law school students the opportunity to work at a top law firm during the summer before law school. SEO interns undergo a rigorous interview process after they have been admitted into top law schools across the country. The SEO program is Jones Day’s most successful pipeline program. We have been a supporter of SEO since 2010; 39% of our SEO fellows subsequently joined the Firm as associates. As part of our initiative with a current client, we plan to expand our partnership with SEO in the next few years. In addition to welcoming additional Fellows into our summer program, we also hope to offer additional qualitative programing that will expose our SEO Fellows to our clients’ business, for example, client speakers, company visits at our expense, and intentional SEO staffing on client projects.



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