

## Business Acumen for Diverse Attorneys

By Sidney Calloway and Dominique Bright-Wheeler

**The win-win will only be realized when the abilities of diverse attorneys are actively paired with law firm business models that incorporate an inclusive workforce strategy and adapt with the evolving nature of a firm's client base.**

# The Invitation's out, but Can We Dance?

The notion of diversity has shifted away from a metrics-based model that served as an exercise geared simply to increasing the numbers of minority attorneys within the ranks of the law firm community. Today, the working

paradigm accepts the reality of diversity and inclusion as phenomenal but permanent linchpins in the business models of most medium- and large-sized American law firms seeking long-term success in a competitive global economy. Diversity and inclusion embodies a hard-edged principle that recognizes a strategic and economic nexus between a law firm's cadre of associates and partners and today's highly competitive multicultural marketplace. While the initial concept of diversity was defined almost strictly in terms of race, gender, and ethnicity, this reference point today has more to do with the stark absence of Black, Hispanic, and women attorneys retaining positions with majority law firms—particularly given their numbers within the overall population of American lawyers. With that said, however, the tilt toward race, gender, and ethnicity does not capture the aspirational limits that the term

“diversity” is actually intended to encompass now. Today, the working definition of “diversity” also includes an attorney's heritage, age, sexual or lifestyle orientation, legal disability, and veteran status.

The legal community, unlike its corporate counterpart, has only recently begun to understand that the parameters of diversity and inclusion go well beyond race, gender, and ethnicity. While there is little doubt that professional competence and relationship building still exist as the twin principal pillars of legal services, a firm's reputable capacity for problem solving and facilitating business development depends on the strength of its collective intellectual capital. Law firms that are best positioned for the twenty-first century global marketplace make no bones about the fact that the universe of high-quality legal talent has expanded beyond the historically dominant focus on White, Non-Hispanic



■ Sidney Calloway is a partner and co-chair of Shutts & Bowen Government Law Practice Group in Fort Lauderdale, Florida. His prominent expertise as lead trial counsel for both public agencies and private sector clients encompasses jury trial litigation experience in cases involving land use and zoning, eminent domain, CERCLA, telecommunications, and construction defects. Dominique Bright-Wheeler currently serves as assistant general counsel of Capital One Financial Corporation. Ms. Bright-Wheeler concentrates her practice in the area of consumer financial services and banking law. She currently supports the Financial Services team in Plano, Texas, where she primarily practices in the area of mortgage originations and auto finance.

males to include the broad array of men and women having not only the requisite legal skills but also the varied cultural competencies and backgrounds that mirror a firm's existing and target client base.

A firm's day-to-day implementation of a long-term strategic plan that understands the competitive economic advantage of a diversified workforce are likely to achieve

■■■■■

**The sooner a diverse attorney is able to appreciate the inner workings of his or her firm, the varying interests represented, and how he or she fits into the landscape, the more likely he or she is to achieve a successful outcome.**

“functional diversity,” which is defined as the collective work of individuals within a multi-culturally managed business enterprise. Each individual is defined equally by a distinctive background, a respect for differences in perspectives, and a sagacious approach to achieving the business of the enterprise. A law firm that is functionally diverse stands a better chance of achieving long-term market growth and a profitable return on its investment. With the ability to leverage the diversity of perspectives of its attorneys fully, a firm is better positioned to respond quickly and comprehensively to its existing client base. A talented, diverse group of attorneys will almost immediately grow a firm's revenues given the expanded opportunity for cross-selling and originating new clients due solely to the diversified workforce.

At the other end of the spectrum are the law firms that give well-intentioned lip service to diversity but are plagued by the

false assumption that diversity is synonymous with the forced hiring of unqualified attorneys. From that perspective, diversity is perceived as a threat to meritocracy. Remarkably, even today, many majority law firms cling to the notion that where an attorney went to law school is the chief benchmark for gauging whether the attorney is qualified to be employed with the firm. The countless scores of Black, Hispanic, and other attorneys with diverse personal and professional backgrounds who, despite graduating from top-ranked law schools, still find it short of impossible to find employment with a majority law firm challenges the supposition. Notwithstanding, this is ground zero for many prominent law firms. The reason has little correlation to the qualifications of attorneys but instead has more to do with the fact that many law firms are partnerships of mostly older white men who share a common system of values and beliefs, which have bonded these men together long before the advent of diversity and inclusion. For these firms, the attachment to the so-called meritocracy is revealing itself as a likely cover for the phenomenon of “affinity bias,” which is the natural human tendency to prefer the company of others who we perceive as similar to us. Due to the affinity bias, many law firms will struggle to make progress if those in decision-making roles do not reevaluate how this plays out in the firms.

### **The Diversity and Inclusion Challenge—It Takes Two to Dance**

The limited scope of this article discusses two forward-looking areas that are at the heart of the diversity and inclusion paradigm for the twenty-first century. In a recent publication, Verna Myers correctly advanced the view that to move beyond the ideal of diversity, law firms must actively create and assure an inclusive workplace where the personal skills and perspectives of all attorneys are valued. Vernā A. Myers, *Diversity Is Being Invited to the Party; Inclusion is Being Asked to Dance*, in *Moving Diversity Forward: How to Go from Well-Meaning to Well Doing* 5–13 (2011).

The first subject addressed here dovetails with the positive premise of inclusion. At the same time, it underscores the proposition that equipping talented

young attorneys of diverse backgrounds with both business acumen and pertinent soft skills that are critical to their ability to compete effectively within a capitalistic business enterprise should not be left to well-intentioned whims of the law firm community.

Despite the enormous qualitative potential for these skills and attributes to drive diversity, associate and lateral retention, and overall law firm productivity, American law schools have not focused on helping students to develop much in these areas. With a few exceptions, this topic has not engendered widespread organized discussion. See, e.g., William D. Henderson, *Progress in the Chicago Corporate Bar? A 10 Year Progress Report 2002–2012*, Chicago Committee on Minorities in Large Law Firms, available at <http://chicagocommittee.org/assets/WHendersonpreso03072013.pdf>. Work strategies identified by William D. Henderson, as well as other intangible skills, are neither complex nor attached to race, cultural, or suspect preferences. Attorneys from diverse backgrounds, despite being educated by some of the best law schools in the country, are less likely to be acquainted adequately with many of the nuances and skills that are essential to developing talent.

For attorneys of diverse backgrounds, achieving some relative degree of success in a majority law firm requires thorough knowledge and understanding of what is required to compete effectively within a business enterprise while also practicing law. Consequently, we emphasize that the value of competency in these critical areas to attorneys from diverse backgrounds is not mutually exclusive with diversity and inclusion initiatives and should be accorded additional consideration by the thought leaders within the legal community.

The second and equally important area focuses on the current paradigm associated with the law firm community. Here, we propose that the structure of many American large- and medium-sized law firms is a significant reason for the difficulty that they have achieving more than marginal success with inclusion rates. Simply put, without decisive leadership by law firm partners recognizing the strategic, long-term importance of hiring and retaining

attorneys from a diversity of backgrounds and experiences, current external initiatives and prodding will do little to achieve real progress.

The current rates of population growth and demographic trends toward a multi-cultural society are more likely to create and to drive economic pressures that will make law firms acknowledge the nexus between sustained long-term growth and the need for attorneys with diversity of experiences and backgrounds. The law firms that “get it” sooner rather than later will be among those firms left untouched by bankruptcy, merger, acquisition, or dissolution. These firms recognize the looming marketplace competition for talented associates and partners and have executed a strategic business plan.

Each of these two areas are uniquely deserving of far more attention than we can possibly present here. However, it is the notion of better equipping already talented and qualified attorneys from diverse backgrounds by placing them in inclusive and multi-culturally managed law firms, which creates the greatest opportunity for a win-win.

The enduring phrase, “it takes two” applies here. It is simply not enough for a diverse workforce to be qualified, competent, poised, and primed to work hard and to compete for success. Likewise, it is not enough for the majority law firm community to begin a shift toward a workplace culture that leverages a team of attorneys whose personal and professional backgrounds mirror a firm’s existing and prospective client base.

The win-win will only be realized when the abilities of diverse attorneys are actively paired with law firm business models that incorporate an inclusive workforce strategy and adapt with the evolving nature of a firm’s client base. In this sense, the team of diverse attorneys and law firms may be likened to finely paired ballroom dancers during a waltz.

#### **For the Attorneys—Enhancing Your Business Acumen Is a Necessary Predicate for Success in the Law Firm**

Enhancing business acumen means recognizing that a law firm is a business enterprise, to succeed in business and in practice begins and ends with relationship building,

your firm’s partners are your potential clients, and you need to become comfortable in both your skin and your suit.

#### ***The Law Firm as Business Enterprise***

Many young lawyers with diverse backgrounds graduate from top-ranked U.S. law schools and are employed in prominent majority law firms across the country. One of the more potent teaching points that have proved to be particularly helpful to the same attorneys is that the practice of law is a business enterprise. Interestingly, law schools and law firms fail to appreciate the significance of providing this basic level of orientation to law students and young lawyers.

It is no wonder that many of the same associates and junior partners “light up” when armed with the full knowledge that they and their peers are generally viewed as economic elements of a larger enterprise where success and failure are principally measured as a function of billable hours and hourly rates. Too often, the pejorative “wheels turning” in his or her head can be seen when the attorney is challenged to do the math—calculate the product of the number of hours worked in the preceding twelve months and the applicable hourly billable rate.

What amount do you believe realistically accounts for all the expenses that the firm incurs or allocates to the cost of maintaining your employment? As for your peers, assume they have the same number of required billable hours and the same hourly rate as you. Assess each fixed and variable factor that may affect your ability to bill the required hours. Which factors are more or less within your control? Of the factors that you have little or no control over, does it make sense to develop a game plan for managing or perhaps even eliminating each?

Notably, most young associate attorneys, including those with diverse backgrounds, generally assume that the billable work “just comes.” They presume that the outflow of work from partners to associates is, more or less, automatic and not affected by the human dispositions and eccentricities of the partners within a firm. The same attorneys all but abhor the real fact that billable work, like water in a pipeline, in most instances, doesn’t “just come,” but

instead requires a good dose of pumping and priming by an attorney.

The reality is that an associate attorney must develop the art of asking again and again for work. Perfecting the art of asking for work is a healthy supplement to a firm’s base obligation and economic incentive to insure that its associates and junior partners have enough work to meet their

### **They must leverage**

the intrinsic nature of that difference in background and life experience as an opportunistic means of advancing their own ability to compete successfully within their law firms.

billable hour commitments. More importantly, it serves the function of honing the most basic of business development skills that are essential to the long-term success of every attorney. If an attorney wants to succeed, then it is imperative that he or she becomes comfortable with working productively to meet his or her firm’s defined assignment of billable hours.

Understanding the empirical and economic significance of his or her productivity to the profitability of his or her firm is a powerful precursor to carving a special niche as a valued associate and potential partner within the law firm. Attorneys, especially those coming from diverse backgrounds, must take the initiative and learn quickly that they are not just lawyers, but in fact, they are professional business men and women operating within an American corporate enterprise where nothing—not even billable hours—“just comes.”

Organizational savvy is also critical to success and longevity. The sooner a diverse attorney is able to appreciate the inner workings of his or her firm, the varying interests represented, and how he or she fits

into the landscape, the more likely he or she is to achieve a successful outcome.

### ***Business and Successful Practice Begin and End with Relationships***

For an associate, the partners and senior associates within his or her law firm represent the platform for attracting the work that will allow the associate to meet his or

■ ■ ■ ■ ■  
**The law firm industry has lost sight of another crucial virtue of the pure American capitalism: the marketplace is a fiercely competitive environment in which clients choose their attorneys.**

her billable hour commitment. Consider two important facts. First, a huge percentage of a law firm's annual revenue is generally derived from the partners' existing client base. Second, most new business that the partners generate also is derived as a result of cross-selling from the same existing client base. Consequently, an associate's ability to maintain an open pipeline of work from either the same partner or from additional partners depends, in part, on the maturity of the associate's relationships within the firm. A partner must know and trust you but most importantly must have confidence in your ability to perform.

For attorneys with different backgrounds, relationship building is often the fundamental inhibitor to a successful association or partnership position. Relationship building may be difficult for a diverse associate because it means that he or she must actively develop successful relationships with firm partners and senior associates, most of whom are older Caucasian men. Relationship building requires a new associate strategically to target partners and senior associates that he or she deems important to his or her professional development.

The challenge that this creates for both a diverse attorney and his or her partners is due mostly to the fact that neither has had much first-hand experience interacting with the other personally or professionally. Add the idiosyncrasies of the age gap as well as cultural differences to this interaction and the intricate nature of the challenge for both is readily apparent. As with any other challenge or unrealized opportunity, an associate or a junior partner looking to develop relationships with more senior partners can better equip himself or herself to address this task by using the same thoughtful and strategic planning skills employed in other important relationships.

Attorneys from all backgrounds should appreciate how bias works to affect our capacity to create relationships and then also how to use it as a competitive advantage to promote more meaningful relationships. In this sense, "affinity bias"—the innate tendency to want to surround oneself with other "people who make me comfortable" or "people who are like me"—is a motivational driver for all of us. With that said, attorneys should not take it as a personal affront or indicator of malice that Caucasian men, who make up the predominant population of partners in American law firms, have the same natural tendency to prefer being surrounded by others with similar qualities and characteristics as themselves as anyone else. A thoughtful associate or junior partner can still seize on the litany of other like qualities, similarities, or life experiences to form the basis of a professional relationship within a law firm context.

The working principle here underscores the point that spending quality time identifying potential areas that bind an attorney to the partners and other attorneys within his or her firm will pay dividends.

### ***Your Partners Are Potential Clients***

Attorneys with diverse backgrounds will be better armed for competing effectively for firm work by understanding a bit more about the general nature and motivations of partner-level attorneys in majority law firms. Partners are generally successful in a variety of ways. Most work hard at the practice of law, raise and support families, and occupy strategic spaces in their communities—perhaps involved in the arts, education or children-oriented char-

ities, nonprofits, or business. Partners are strong willed, competitive, and usually well respected within their area of practice. Partners have an insatiable passion for winning, matched only by their disdain for losing. In the real sense, these men and women are self-centered and focused almost totally on meeting their clients' needs. Originating business from existing clients and landing new clients are the principal occupations of most. Time is the most important professional asset for these attorneys, simply because they dedicate extreme amounts of it toward working, billing, and originating business.

Consequently, when starting out an attorney's ability to increase his or her list of client matters that he or she works on for a particular firm partner is based primarily on how well the partner knows and trusts him or her to perform and to produce a quality work product, which is almost exclusively a written legal document that must be completed within a specific time frame.

In this sense, an attorney's ability to continue generating work from such a partner is a function of his or her personal and professional commitment to spend the time in the office doing the work, burning additional research oil, and learning or undertaking proactive diligence on a something that he or she anticipates that the partner may want to assign. Demonstrating the ability to prioritize and exhibiting organizational, time-management, and self-management skills are crucial.

### ***Become Comfortable in Your Skin and the Business Suit***

Attorneys from diverse backgrounds entering a majority law firm environment will commonly struggle with dispositions to varying degrees that affect their sense of success or failure. In many instances a diverse attorney is either "the only one" or may even be joined by a few others. However, the psychological effect of being "the only one" is daunting, particularly within a business enterprise with pressure to produce timely, high-quality work. An attorney's perceptive acumen for using bias to his or her own advantage is an important means of mitigating these effects.

However, a diverse attorney's capacity to recognize and to appreciate the need to

address his or her own personal assumptions, predisposition, and beliefs about majority attitudes and characteristics is equally important. The debilitating weight of self-consciousness, perhaps even inferiority, must be substituted with a savvy, competitive drive to succeed within his or her law firm. Especially when interacting with the majority mainstream community, a diverse attorney's focus has to be aligned with the realistic business spirit of the American capitalist marketplace. On this stage, both success and failure are most often judged by personal motivation and ambition to achieve success in the face of an equally competitive counterpart. Diverse attorneys, just as everyone else, must be at ease with this fact because individual competition to achieve within a law firm context—to win—is played out as much between associates sparring for coveted billable work and “play time” with partners as it is between partners competing for distributed profits.

Diverse attorneys cannot succumb to debilitating feelings of insecurity (even inferiority) stemming from being different or “the only one.” Instead, they must leverage the intrinsic nature of that difference in background and life experience as an opportunistic means of advancing their own ability to compete successfully within their law firms. The ability to leverage this “affinity group” status is apparent on a number of fronts. For example, Black attorneys likely have the best potential for tapping into American business and other economic market sectors that are increasingly represented by Black professionals. Corporate counsel, executive management, business and public administration, insurance, and health care are notable examples of this vein. Another example was highlighted in *Diversity in High Places Making It Work*, in which the authors affirm that lesbian, gay, bisexual, and transgendered (LGBT) attorneys have brought something different to the table and to their firms' bottom lines by developing sub-specialties devoted to LGBT legal issues, including estate planning and employee benefits. See Lisa A. Linsky and Nicole Pearl, *Diversity in High Places*, California Lawyer (Sept. 2011), available at <https://www.callawyer.com/Cistory.cfm?eid=917671> (last visited July 9, 2014). See also *HR Masterclass: Strategic*

*Affinity Group, People Power, Managing Partner* (Oct. 2010), available at [http://www.thresholdadvisors.com/wp-content/uploads/2011/04/HR-Masterclass-Strategic-Affinity-Groups\\_Managing-Partner\\_October-10.pdf](http://www.thresholdadvisors.com/wp-content/uploads/2011/04/HR-Masterclass-Strategic-Affinity-Groups_Managing-Partner_October-10.pdf).

#### **For Law Firm Community— We Live in a Colorful World**

The world that we live in is wonderfully colorful. Firms that embrace this wonderful colorfulness, take marketplace realities into account, remember that clients choose their attorneys, and adopt long-term business models that upend existing business models will position themselves to survive. The nation's law schools have a role to play as well.

#### **A Race to the Bottom— Filling Educational Gaps**

The seismic nature of population and demographic trends projected for the United States and globally has profound implications for the economic future of American businesses, which inevitably includes the legal community. These trends, coupled with increased constraints within the legal services labor markets, have already inspired broad support for a revolutionary paradigm shift in the basic mission of United States law schools. Twenty-first century law school graduates, without question, must be better educated and equipped with myriad business and legal skills for immediate, functional utility in a highly competitive and rapidly evolving global marketplace.

#### **Adapt to Marketplace Realities**

At the same time, the proliferation of real estate and corporate acquisitions and a host of other complex financial transactions are commonplace in both the urban and rural sectors of the United States. Foreign corporations, with increasing frequency, are investing and participating in federal, state, and local government competitive procurement of professional services and large-scale public work projects. The United States continues to advance a formal foreign policy that advocates international free trade and effectively opens America's domestic economy to global competition. Corporate America has escalated the transformation of its entire business model to accommodate and to adapt to

a marketplace that is heavily influenced by the realities of a multicultural society. U.S. business enterprises have expanded the scope of their products, goods, and services to reach a global array of international customers and clients. Nowhere is the evolution in the corporate business model more evident than in human resources and technology.

Given both the sporadic and imprecise efforts among American law firms to execute diversity, inclusion, and talent development plan programs, diverse attorneys would do well to seize the initiative and seek out the essential guidance, skills, and resources necessary to enhance opportunities for professional success and star power.

#### **Clients Choose Their Attorneys**

Large- and medium-sized American law firms are at risk of decimation as an industry sector. This dismal predicament is due, in large part, to the failure to appreciate much less adapt to the changing platform from which national and global economics operate. There has never been a time when the maxim, “every lawyer needs a client,” ceased to apply. Still too, law firms cannot operate, and in fact will cease to exist without a cadre of well-educated, creative attorneys who are adept at problem solving and otherwise expert in performing a wide range of high-quality legal services. The law firm industry has lost sight of another **Diversity Dance**, continued on page 91

---

## **Diversity Dance**, from page 77

crucial virtue of the pure American capitalism: the marketplace is a fiercely competitive environment in which clients choose their attorneys. Senior-level partners, executive committees, and other leadership professionals that operate and manage American law firms have either ignored or neglected the broad implications of evolution in the demographic composition of these firms' existing and future client base.

### ***New Times Call for New Business Models***

The power and leadership dynamics within a law firm partnership can be tremendously complex and fluid. Strategic visioning, for all its importance, may not necessarily get the thorough vetting that would take place within a large corporation. Without decisive leadership, partners, sometimes numbering in the hundreds, are less likely to execute long-term business strategies that are not directly tied to short-term revenue gains or losses beyond one to three years. Better than any external carrot or stick, economic survival and self-interest are powerful equalizers.

Many law firms have their heads in the sand or are fixated on short-term partner revenue and profit models, but these firms will only appreciate the effects of the demographic and population changes on their client base when it is too late. It is not difficult to imagine the self-destructive results that many law firms will suffer because they choose to operate for the next decade under their existing business model. Consequently, for these and other related reasons, the next decade is likely to be the backdrop for a decisive constriction of American large- and medium-sized law firms. For those law firms that will succumb to bankruptcy, unsuccessful merger, or some other form of dissolution, the subject of diversity and inclusion will be moot. However, the positive fallout from the conclusion reached here is that the large- and medium-sized law firms that are still operating in 2025 are more likely to be among the class of law firms that recognized the causal nexus between having a diversified group of associates and partners and keeping a happy, diverse client base.

## **Conclusion**

Attorneys with diverse backgrounds must not lose sight of the premise that becoming

a high-quality business lawyer is the quintessential top priority of associates, junior partners, and senior level partners in every thriving American majority law firm. Despite the challenges presented by a lack of diversity and inclusion in the mainstream law firm community, diverse attorneys choosing this industry must be fluid and skilled in the objective norms of both business acumen and law practice that extend well beyond an attorney's subjective or preconceived expectations.

Given both the sporadic and imprecise efforts among American law firms to execute diversity, inclusion, and talent development plan programs, diverse attorneys would do well to seize the initiative and seek out the essential guidance, skills, and resources necessary to enhance opportunities for professional success and star power. Many of these soft skills are irreplaceable tools that diverse attorneys need to express themselves authentically and realistically as an enterprising legal professional. Diverse attorneys operating with self-imposed limitations based on personal beliefs, attitudes, and or even previous experiences are only holding themselves back from great potential. **FD**