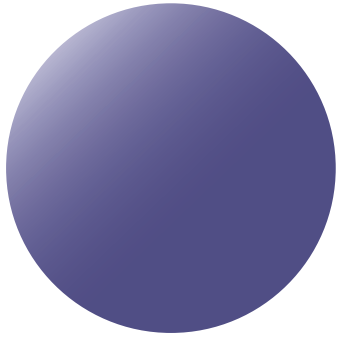


# Is ROI the Appropriate Measure for D&I?

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# Is ROI the Appropriate Measure for D&I?

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# A Message from the IILP Board

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Dear Friends,

It's fitting that the Institute for Inclusion in the Legal Profession ("IILP") celebrates its 10th anniversary with the publication of, "Is ROI the Appropriate Measure for D&I?" In many ways this publication and the programs that are developing out of it epitomize everything IILP stands for and our vision when we founded it:

- Emphasizing inclusion beyond diversity;
- Offering the legal profession new ways to look at, think about, and discuss diversity and inclusion;
- Acknowledging and understanding hard data and the value of measurable results;
- An openness to challenging the "tried and true" while exploring and assessing new ideas, new strategies, and different perspectives;
- A willingness to ask the hard (or previously unthought) questions about why our legal profession is not as diverse and inclusive as it ought to be and what can be done either more or differently
- Addressing all types of diversity, in all practice settings, all over the United States and beyond.

Over the years, some have tried to label us: we've heard ourselves described as the legal profession's D&I think tank, or as the Nerds (in a profession of nerds), or, even as the provocateurs. If we are, we own those labels with both pride and humility. That niche of thought leadership is critical to achieving greater diversity and inclusion in the legal profession and our motto, "Real change. Now."

"Is ROI the Appropriate Measure for D&I?" raises some new ways of thinking about our profession and its diversity and inclusion efforts. We're delighted to offer this as a tool, perhaps a spur, to those in our profession who would see it become truly diverse and inclusive in their lifetimes. While it exemplifies our work over our first ten years, let it also herald our continuing commitment to be analytical, thought-provoking, and a different kind of leader in the legal profession's D&I efforts for the next ten years and beyond!

Thank you for believing in and continuing to support IILP. ■

THE INSTITUTE FOR INCLUSION IN THE LEGAL PROFESSION

# About IILP

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The Institute for Inclusion in the Legal Profession (“IILP”) is a 501 (c)(3) organization that believes that the legal profession must be diverse and inclusive. Through its programs, projects, research, and collaborations, it seeks real change, now, and offers a new model of inclusion to achieve it. IILP asks the hard questions, gets the data, talks about what is really on people’s minds, no matter how sensitive, and invents and tests methodologies that will lead to change. For more information about IILP, visit [www.TheIILP.com](http://www.TheIILP.com).



# ROI and D&I

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## Return on Investment (“ROI”)

### Noun

- **The profit** from an activity for a particular period compared **with the amount** invested in it<sup>1</sup>

If imitation is the sincerest form of flattery, then the legal profession certainly wants to flatter the world of business. The past decade or two has seen the legal profession adopt and imitate the structure, personnel, protocols, and values of the business world. Our profession now boasts Talent and People Officers, business plans, and articulated core values. We use acronyms like KPIs (Key Performance Indicators), ERGs (Employee Resource Groups), and EAPs (Employee Assistance Programs). It’s understandable given that the business world comprises the clientele of so many lawyers and law firms. And if it encourages efficiency, productivity, and a better way to meet the needs of employees, it’s not necessarily a bad thing.

But how do we determine whether a business value is the right ones for the legal profession? If you’ve been involved in D&I (“Diversity and Inclusion”) in the legal profession, you can’t help but be well aware that budgets aren’t infinite and fundraising and financial sponsorships play a determinative role in which D&I efforts/programs/initiatives/etc. get to see the light of day. Competition for D&I dollars can be fierce. And more and more often, funders – law firms and corporate law departments – will query the ROI. What return can they expect for any particular D&I activity? Will their lawyers return with new business if they send them to a minority bar convention? Will they be able to market their inclusion on a “best of” list or herald their designation as the winner of an award if they sponsor an event? Will their

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1. Cambridge Business English Dictionary



Is one of the reasons the legal profession continues to lag behind other professions in terms of its diversity because as a profession we continue to fund D&I in ways that generate returns that may not actually advance D&I in a meaningful way?

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lawyers get to network with high-powered business executives if they sponsor or underwrite a reception? Mind you, none of this is “bad” in and of itself. But it does raise the question: is one of the reasons the legal profession continues to lag behind other professions in terms of its diversity because as a profession we continue to fund D&I in ways that generate returns that may not actually advance D&I in a meaningful way? Is ROI the right measure for D&I? If it is, how do we make sure that efforts that may be meaningful and have significant impact but not result in obvious returns can still get adequate funding? If not, what might be a better way to think about distinguishing among the myriad D&I offerings and limited resources and appropriately assessing and evaluating D&I efforts? ■

# Is ROI the Right Measure for Diversity and Inclusion?

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John H. Mathias, Jr.

*What's in a name? That which we call a rose  
By any other name would smell as sweet.*

Romeo and Juliet (II, ii, 1-2)

Like Juliet's rose, the achievement of diversity and inclusion (D&I) in the legal profession creates a delightfully scented atmosphere wherever it blooms. If you want to call it "return on investment" (ROI), that's perfectly fine, as by any other name it still has the sweet smell of success---unless what you mean by ROI is increased fee revenue for a private law firm. In the latter context, the name ROI by itself implies the existence of an "investor" whose point of view and financial welfare should be the focus of some predominating concern. But just who is this investor? More importantly, is this investor already diverse and inclusive, and if not, why should anyone else be interested in both adopting its mercenary perspective and helping to further its economic interests? This beast should not be fed its normal diet!

Sticking with the horticultural analogy for just a bit longer, what sense would it make for a rose grower to demand a "return on investment" right after getting his or her seeds to germinate? When should the grower start looking for payback? After the first sprouting? After transplanting seedlings to pots? After nourishing and supplying them with sunlight and air for months on end? How long should the grower wait before giving up and walking away? Like cultivating roses, achieving optimal levels of diversity and inclusion in the legal profession is a long game, but the rewards make it all worthwhile.

Enough with analogies. Let's get back to dollars and cents. When we talk about ROI as applied to a financial contribution by a private law firm to an external D&I program of one kind or another, must the firm be able to calculate the "return" on its initial

financial "investment" in terms of realized financial gain in order to determine its worth? If so, how long should the firm wait before requiring this monetary evaluation to be performed? Six months? A year? 3 years? Longer? When should the firm give up and walk away if it hasn't yet received its financial return? More importantly, is increased fee revenue really the right way to measure the value returned to a law firm on its financial contribution to an external D&I program? I would speculate that anyone who thinks so is probably a non-diverse lawyer.

When law firms embrace ROI as the business logic underlying their decisions on whether to contribute financially to outside D&I projects, I would suggest they are actually looking for some way to measure whether they are doing something worthwhile or simply pouring money down a drain. For them it isn't so much a desire to determine whether these projects will generate fee revenue either in the short run or at some later point, but rather whether they will provide any kind of measurable return resulting from their original financial "investment." If so, then that's great; but if not, these same law firms would likely prefer to limit their D&I financial support to increasing the robustness of their own in house D&I efforts, *which they can measure*, rather than making what they would otherwise deem to be a charitable outside financial contribution with no expectation of return.

My own law firm insists upon internal measuring of our progress on the D&I front. We have implemented a "Diversity Action Plan" requiring all partners to commit to a variety of specific actions designed to help increase diversity and inclusion. Partners' success in meeting their specified goals is measured and evaluated alongside other metrics during their individual compensation meetings. Overall success is then determined by measuring the percentage of the partnership as a whole successfully achieving



the goals of their individual Diversity Action Plans. Although this is what I might call a good start, it is hardly enough. But importantly for these purposes, it is measurable.

My firm also invests a substantial amount of time and effort in internal programs that generate non-monetary returns in the form of associate professional development. For example, “OnTrack Sponsorship” is a program we launched in 2018 to accelerate professional growth, promote career advancement, and unlock leadership opportunities for women and lawyers of color. Our associates are matched with a variety of sponsors, both in the firm and at our participating clients, to help them reach their defined professional goals. In so doing, we increase their commercial value both to the firm and to our clients, thereby building out and enhancing the enterprise value of our firm’s “professional capital,” which in purely mercantile terms converts to increased (*and measurable*) utilization and hourly rates.

So if the return on the investment of time and effort (the equivalent of money) can be measured internally at a law firm, can it also be measured when contributed in cash to an outside D&I project or organization? My answer to this question is a qualified but nevertheless resounding YES. The qualification is that a law firm should develop and maintain a solid relationship with whatever outside D&I project or organization it supports. In this way, by using rudimentary “before and after” measurements, a firm can evaluate its D&I progress in whatever metrics it deems most important to its own business and professional model. For example, a firm might use the headcount of diverse lawyers, their utilization, and their billing rates as baseline internal metrics. To the extent these metrics improve following a firm’s financial support for and association with an outside D&I program, working in collaboration with its internal D&I staff, financial success can be correspondingly measured. And there are other measures of success beyond the purely financial, including the quality of life and “great place to work” viewpoints of the firm’s population as a whole. These too can be measured with simple before and after surveys.

But there are two areas in particular where even the best intentioned law firms with the most robust D&I internal programs need substantial outside assistance: (1) ensuring a growing supply of talented, well-educated, and ambitious diverse lawyers from which to recruit and hire (the so-called “pipeline”); and (2) stimulating and increasing the demand for

the services of their diverse partners and associates by the external client marketplace. A law firm on its own can do very little to help itself in either of these two areas. This is where an “industry wide” outside D&I organization can really provide value.

On a purely objective level, a law firm can internally measure its diverse partner and associate headcount, utilization, and billing rates. Working with its internal D&I program staff, it can also measure the number and quality of diverse applicants for associate and partner positions (the “pipeline” again) as well as external client demand for the services of its diverse lawyers. After “investing in” and teaming up with a capable outside national or local D&I organization, it can then start measuring whether progress is being made from year to year in its internal diversity metrics. In my view, it is measurable progress in the pursuit of creating a sustainable, growing, diverse, and inclusive law practice which is the right measure for law firms to be using in evaluating their investment in an outside D&I organization—not fee revenue in an overall sense.

Please allow me a final personal observation regarding diversity and inclusion after 40 years at my law firm. We cannot and should not overlook the importance and power of the outside client marketplace in determining the success of private law firm lawyers, especially including diverse partners. A law firm can only do so much to cultivate and present outstanding diverse partners to the client marketplace. After that, it’s up to the client demand side of the market to decide whom to retain not just for their everyday “commodity” work but also for their most important, highest value matters. And that’s my final challenge to all who are truly concerned with promoting diversity and inclusion in the legal profession. Let’s do this together.

Achieving diversity and inclusion in the legal profession must be a comprehensive team effort among all concerned: law firms, clients, internal D&I programs, and outside D&I advancement organizations. Although a lot of progress has been made over the past few decades, there are miles to go before we reach our collective destination. Onward! ■

# Institute for Inclusion in the Legal Profession Question:

## Is the Return on Investment the Proper Measure of Law Firm Diversity and Inclusion Efforts?

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E. Macey Russell

**M**y first reaction to the question is that the answer should clearly be no. There are so many potential flaws in measuring the diversity and inclusion (“D&I”) return on investment (“ROI”) that it would be unfair to do so. We know based upon data tracked by the National Association of Law Placement that the percentages and numbers of minority attorneys in firms and in particular partners has barely changed over the past 20 years. So why measure the D&I ROI when the “return” is likely to be disproportionate to investment of time, money and human resources? During the course of writing this article, however, my thinking about the question began to change – depending upon whether a firm might be measuring the ROI is part of a short-term or long-term investment strategy. A short-term investor might use the assessment to justify abandoning the investment strategy, whereas the long-term investor may use it to identify areas for growth and improvement. History tells us that when race, ethnicity, gender, sexual orientation or class privilege is involved, meaningful and sustainable change takes time. In my view, it only makes sense to periodically measure the ROI associated with a long-term investment strategy, and for the purpose of finding ways to make the firm more diverse and inclusive. Given the slow pace of change per the NALP findings, any approach other than a long-term strategy makes no sense and is not helpful.

The initial concerns leading me to advocate resisting the urge to measure ROI stems from the assumption that law firms would likely limit the assessment and focus primarily on the ability of attorneys (particularly diverse attorneys) to generate revenue by capitalizing on corporate and general counsel pronouncements that they want diverse teams to work on their matters. This assessment ignores the fact that diverse attorneys con-



The initial concerns leading me to advocate resisting the urge to measure ROI stems from the assumption that law firms would likely limit the assessment and focus primarily on the ability of attorneys (particularly diverse attorneys) to generate revenue by capitalizing on corporate and general counsel pronouncements that they want diverse teams to work on their matters.

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front bias when attempting to develop a “book of business” thus making this measurement of their success unfair and unrealistic. The assessment might also fail to evaluate fairly whether partners are making a genuine and concerted effort to support the investment. The impetus to conduct an assessment might be in response to a concern by partners about the amount of money being spent on diversity “with little or nothing to show for it.” My initial reaction to the question also assumed that a firm would only want to measure its investment quantitatively - the financial return (“Financial ROI”) and not qualitatively - organizational change (“Organizational ROI”), which calls for a critical assessment of partner participation.

To be fair, law firms understand that clients want diverse teams to help solve their problems. And to maintain valuable client relationships, firms want to become more diverse. They spend a considerable amount of time and money each year on recruiting, training and developing diverse talent. Thus, it is understandable that a firm might want to measure its D&I progress to assess whether the continued investment is prudent and/or if it is making progress. If a law firm wants to measure both Financial ROI and Organizational ROI, it should be mindful that the investment and related assessments have different challenges.

The Financial ROI would evaluate the firm’s financial investment (via a marketing budget) to support the efforts of diverse attorneys to build their professional and civic profile through participation in non-profit events, bar association conferences, and industry conferences. Firms assume that this strategy will increase their chances of becoming a “rainmaker,” which is one way to be successful in a firm. In contrast, the Organizational ROI investment might include: (i) expanding the firm’s list of approved law schools to include schools with higher percentages of minority law students; (ii) expanding hiring criteria to include candidates displaying leadership, grit, and soft skills, which are known to be traits of successful partners; (iii) hiring personal development coaches for diverse attorneys; or (v) paying for them to attend conferences providing instruction on law firm success strategies.

Under the Financial ROI analysis, a firm wants to know if its investments in recruiting, hiring, and training of diverse attorneys make the firm more profitable. To do so, the firm might review over a certain time period, the number of new matters or increased net revenue against the monetary value of attorney time spent on D&I plus costs. To be fair to diverse attorneys, however, a law firm should be mindful that they face unique business development barriers despite the belief that



It is somewhat ironic for a firm to measure its D&I investments because the partners control the firm’s success or failure.

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corporations are eager to hire them. While prospective clients generally focus on a firm’s rate structure and subject matter expertise when deciding who to engage, diverse attorneys often wonder if implicit or unconscious bias based upon their race, ethnicity, gender, and/or sexual orientation is also a factor. Aside from rates and subjective matter expertise, certain in-house counsel prefer to hire outside counsel they know and trust in contrast to hiring qualified diverse attorneys they just met and do not know. Diverse attorneys sense that the bias factor may be in play when they are not hired and in-house counsel offers: (i) “you are a great lawyer and really talented but I am going in a different direction;” (ii) “Attorney Smith has handled this matter for us several times, so we have asked him to help out on this one;” or (iii) “we will keep you in mind for the next matter.” Law firms do not always understand or appreciate that bias may be a reason that diverse attorneys have difficulty building a viable “book of business.” Bias may explain why minority attorneys, who have demonstrated the skills and qualifications necessary to reach the level of senior associate, counsel or partner cannot develop a sufficient “book of business” to become and/or remain a partner. To support this notion, the 2019 NALP data shows that out of 47,625 partners nationwide, only 872 are African American, 1,185 – Hispanic, and 1,729 – Asian American; 91% are white. Under these circumstances, measuring the ROI of diverse attorneys based upon their new business generation is unfair. And, if their law firm success is contingent on a “book of business,” than being a “service partner” (with little or no business generation responsibilities) is not a viable option.



## Law firms must consider first if their D&I investment is part of a short or long-term investment, which in turn will answer the question of whether to measure ROI.

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Under the Organizational ROI analysis, the firm should consider measuring cultural changes in partner attitudes about D&I before and after (i) diversity trainings designed to help them better understand how bias plays a role in the hiring, mentoring and development of diverse attorneys, (ii) learning of lost business because of insufficient diversity, or (iii) learning of business generated because of sufficient diversity. This analysis might also measure the (i) qualitative benefits to the firm of diverse associates and/or partners, (ii) conversion rate of diverse associates to counsel and then to partnership, and (iii) ratio of diverse rainmaker partners to diverse service partners attorneys. The firm should compare its diverse attorneys findings against the firm's non-diverse attorneys in the same categories. To assess the firm's performance in the proper context, it should then measure its D&I progress against external benchmarks such as comparable firms locally, regionally or nationally.

I might add that it is somewhat ironic for a firm to measure its D&I investments because the partners control the firm's success or failure. First, the firm can subjectively select the criteria to measure and then decide if the outcomes are satisfactory. Second, the firm's organizational success is dependent on the efforts of partners to confront and address issues such as bias. Third, partners control what attorneys (i) receive "real" mentoring, (ii) are assigned to the most important projects, (iii) are asked to take depositions, argue motions, and

second chair trials, (iv) are invited to meet with clients, (v) receive bonuses, (vi) are placed on partnership track, (vii) make partner, and (viii) are selected to participate in partner level marketing presentations to clients.

With respect to the firm's D&I investment, measuring the Organizational ROI using a short-term strategy is not likely to be helpful because change takes time. As an African American partner, who is keenly aware that African Americans have been fighting for full inclusion since the end of slavery over 150 years ago, a long-term strategy is essential. The election of President Barack Obama did not solve America's race issue. History tells also us that there are no quick fixes when it comes to race, ethnicity, gender or sexual orientation. When any of these categories are triggered, we know that it can take years, even decades to move the needle in a positive direction. African Americans understand that their chances for professional success are greater when organizations make sustainable long-term investments than when they do not. I practice in Boston. The [2019 NALP Boston](#) data shows there are only 15 African American partners out of 1,560. These numbers will not improve without a long-term strategy.

The long-term ROI assessment might provide the firm with valuable information and insight concerning: (i) the challenges facing diverse attorneys internally and externally as they try to develop business; (ii) areas that need improvement so the firm can become more diverse and inclusive; (iii) partner contribution (or lack thereof) and reasons therefore such as a "full-plate" of work; (iv) what should be measured and why; and (v) how best to meet client demand for diverse teams to work on their matters.

Law firms must consider first if their D&I investment is part of a short or long-term investment, which in turn will answer the question of whether to measure ROI. By asking the question, IILP is challenging law firms to assess whether diversity and inclusion is a true core value worthy of a long-term investment and sustained commitment to equality. ■



## The Future is Equal

At Exelon, we believe the best ideas emerge when individuals from diverse backgrounds collaborate to tackle our biggest business challenges. Incorporating a diverse range of perspectives and experiences into the way we think, plan, and work leads to innovative concepts, increased stakeholder engagement, and better solutions to any challenge we face.

Exelon is proud to support the Institute for Inclusion in the Legal Profession and their mission to drive real progress through comprehensive outreach and original programming to replace barriers with bridges between legal, judicial, professional, educational and governmental institutions.

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# Social ROI

Barrington Lopez

To say the marketplace for legal services is undergoing a ripple-to-tsunami change is not news. Like many other businesses, those in the practice are witnesses to, or acting on, technological and cultural shifts that are impacting every corner of the population. Hollywood films that teased us for decades with the prospect of self-driving cars and conversational based artificial intelligence are now elements of funding pitches at investor meetings. The world is changing. Recognizing the need to demonstrate a straight-line path of evolutionary – if not revolutionary -- actions that lead to new or additional revenue, law firms are increasing spending on new marketing and business development initiatives to differentiate their lawyers and services in an ever-crowded field of firms that serve an often smaller pool of demanding clients. The decisions are increasingly based on data-driven actions and greater familiarity with the financial accounting concept of *Return On Investment (ROI)*.

These same investment challenges to take advantage of changes in the broader culture has taken diversity and inclusion directly under the banner of the broader call to action to meet client needs, employee hiring and retention and social engagement. As corporations in almost every field have already figured out – and law firms under the same pressures -- *not acting* is no longer an option.

Simply put, ROI measures if the money spent on a goal – such as increasing revenue or attracting talent – accomplished the goal rather than spending the same or less sums of money on other ways to accomplish the same goal. How much business was gained, retained or lost by the investment made.

In a rudimentary sense, it's not unheard of to look at ROI under the same lens as a homeowner's decision to spend money to update the home and landscape to meet current and future needs of the market. Will the spending to update that 1970's kitchen lead to better use by the household and will future buyers value the upgrades enough to bid a higher price.

Add the layer of taking on debt to fund those upgrades and...you get the point.

For firms these investments, returns and costs are rolled into the billing rates to the clients. Other businesses incorporate these charges into the final product – whether it is a flat rate for advertising / accounting services or when a supermarket cashier scans the loaf of bread before placing it into your reusable bag. It varies by business but the concept doesn't really change that much.

In an atmosphere where diversity sparks many conversations, how does a law firm use ROI factors to bring diversity and inclusion to the forefront of the business decision? Simply put under a revenue lens: Clients want it. Employees prefer it.

- Client Acquisition and Engagement - Keep existing key clients and obtain new clients. What was sparked by demands from large clients for diverse work teams on their matters is now become the norm as clients' teams want their vendors to mirror similar work practices as they have put in place. Likewise, the general counsel sourcing the matter is more likely today to be a woman, person of color and/or a member of the LGBTQ+ community

Past or Present	
<p><b>Grounded in Past</b></p> <p>Diversity as an afterthought or non-critical to strategy</p>	<p><b>Taking Off</b></p> <p>Diversity as part of the revenue and employee strategy</p>

## Diversity and Inclusion

<b>Diversity</b>	The differences amongst your employees
<b>Inclusion</b>	When the diversity and differences are welcomed and embraced

- Employee Satisfaction (all jokes about associate billing hours aside), firms are incredibly mindful that they are keeping the people the firm invested in. A top of mind question is whether their most valuable assets -- the culturally informed, tech savvy, internationally educated workforce -- that generate and protect revenues, are coming back in the morning. As the generation of *Mad Men* is heading off into retirement, in their place is a socially engaged, diverse, international workforce who want diversity and inclusion to be part of their day-to-day workplace.

Indeed, even new metrics for ROI also warrant highly engaged diversity and inclusion within the legal profession.

### Social ROI and Impacts on the Brand

In the changing landscape of investments and business strategy, what is now called *Social ROI* is another framework for the measurement of return. Social ROI captures elements of the value of decisions that have longer term financial impacts that are not always reflected in traditional financial statements – but may have longer and more lasting impacts on profitability. A big component of ROI in this context is the *brand value* of the organization.

In a market with more and more options for your clients and employees, what makes them chose your firm? It can be an individual partner or partners for a specific large matter, but keeping the client for a range of matters is likely built on the reputation and brand awareness that the firm has built over time.

Having a firm *brand* – what your firm is known for or not known for -- that mirrors the diversity and inclusion of the clients it serves is not a nice-to-have – it is smart business practice and can be reinforced in one-on-one conversation rather than having each partner attempting to build that reputation from the ground up.

Corporations, and their law departments, have long measured Social ROI in annual budgets, KPI's and strategic decisions under the moniker of *reputational*

*valuation*. This is evident when events negatively impacting the brand and reputation of the business leads to fewer customers, money spent to acquire new customers, greater regulatory scrutiny and regulatory costs and lost revenue. In the financial world, we see this when brand value of an acquisition or division is written off. The brand is impacted and resources potentially allocated to growing the business or increasing broad employee compensation are now allocated to saving customers from bolting. Regulators focus on the news just as their constituents do.

Under the brand context, Social ROI is also an effective tool to review what you may lose if you don't make the investment in diverse work teams at all levels in the organization.



Under the brand context, Social ROI is also an effective tool to review what you may lose if you don't make the investment in diverse work teams at all levels in the organization.

## The Group Photo

<b>Past – Cul-de-Sac Staffing</b>	Diversity is a buzz-word. The staff bios look like a marketing poster from Mad Men
<b>Current – Diverse Teams</b>	Social Media updates reflect diverse teams and consistent ongoing commitment to diversity and inclusion

### Social ROI and the Risk of Limited Pools

In addition to external brand impacts, another element of Social ROI is the value of incorporating diverse teams in the decision-making process. Several studies over the past decade come to the same conclusion that diverse teams make more effective business decisions and tackle issues from different perspectives – driving more innovation and identifying new areas of financial opportunity.

As part of increasingly diverse corporations, general counsel are well aware that diverse teams help with the dual task of protecting the corporation from risks and utilizing the legal channel to help the business meet revenue and strategic objectives.



Those enterprises that don't actively incorporate D&I into the strategy will not only lose out on recruiting the best and brightest, but they will inherit the traits of limited pools, the term I'll call *social inbreeding*.

Accordingly, both general counsel and audit committees recognize the impacts of Social ROI of diverse teams because of the impacts to the business:

- Is the marketing strategy inclusionary and won't lead to customer, employee and social media missteps
- are there environmental impacts to the decisions that are not account for
- are our suppliers equally engaged in our priorities
- have we taken into account stakeholders other than investors -- groups without whose support our well-funded efforts would fail.

Agile technology companies with global workforces frequently have this encoded in their DNA.

From a staffing and hiring perspective, Millennials / Gen Ys place greater significance on diversity and inclusion. It takes a swift read on organizational rating and review sites to see how well they may fit into the culture of the firm or organization. Call it the "Glassdoor Effect". Often, law firms and high paying organizations feel they are immune to this affect because they get a band of high credentialed applicants each year, but frequently do not seek data on why highly recruited targets chose other options or leave the firm. Data from review sites typically point to "culture", not hours worked or pay.

Those enterprises that don't actively incorporate D&I into the strategy will not only lose out on recruiting the best and brightest, but they will inherit the traits of limited pools, the term I'll call *social inbreeding*. Only limited solutions will come up in meetings. Resolutions to solve complex multi-disciplinary business and regulatory problems will be narrow and limited to common experiences of those in the room. To borrow from the home-as-ROI example, everyone's opinions, options and resolutions will come from the same small group of homes in the hypothetical cultural cul-de-sac.

A cul-de-sac is safe for children on bicycles, but not complex legal and business problems. ■





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# ROI and D&I:

## Can We Measure It? Should We?

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David L. Douglass

Law firms, like the broader society in which we practice, have labored to rectify centuries of exclusionary practices that have disadvantaged persons of color, women and the LGBTQ community. This legacy of discrimination has remained stubbornly difficult to overcome, however. In the Spring of 2004, Rick Palmore, then General Counsel of Sara Lee, frustrated at the persistent lack of progress, issued a “Call to Action: Diversity In the Legal Profession.” According to Palmore, “Its purpose is to take the general principle of interest in advancing diversity and translate that into action, into a commitment to act on, to make decisions about retaining law firms based in part on the diversity performance of those law firms.”<sup>1</sup> The Call to Action not only encouraged firms to do more to increase diversity but threatened to withhold work from those that failed to do so. Seventy-four companies signed onto the Call. Palmore’s Call to Action dangled the prospect of making diversity a competitive advantage, and, conversely, lack of diversity a competitive disadvantage. Its value lay largely in reframing the D&I debate from an amorphous and potentially fractious social imperative to a defined, recognized business imperative—meeting client demand. In other words, the Call to Action made a business case for diversity.

Law firms answered the call. Responding to client demand, law firms devoted resources and developed programs to improve the recruitment and advancement of diverse lawyers and legal professionals. Firms erected sophisticated and expensive infrastructure to promote diversity and inclusion. In 2004, for example, it would have been rare to find a law firm that dedicated resources to advancing diversity and inclusion. At best, the diversity responsibility was an added (and often uncompensated) responsibility assigned to existing personnel. Today, most large firms

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1. Call To Action: Sara Lee’s General Counsel: Making Diversity a Priority. <https://www.mcca.com/wp-content/uploads/2017/10/Mandating-Diversity-The-Inclusion-Clause.pdf>

have at least a diversity partner, or a chief diversity officer, or both. There are dedicated D&I programs, training, retreats, etc. Law firms spend a lot of money and time (meaning we spend a lot of money) promoting diversity and inclusion.

As a diverse lawyer, I celebrate this willingness to walk the talk. Promoting diversity in our firms and in our profession is an important and noble thing to do. It is a worthwhile end unto itself. As a law firm partner, however, I am also sensitive to the need to justify our expenditures. The reality is we are in a highly-competitive business in which profit margins are not what they once were. (Oh, for the good old days!) In this market, whether we are evaluating investment in personnel, technology, professional association membership, or requests to sponsor a table or support a non-profit organization, return on investment becomes a central consideration. What is the ROI? Invariably, measuring ROI is difficult. But, what about ROI and D&I? Should we measure it? If so, how?

The “should we” question is nettlesome because of the nature of D&I efforts. Apart from the business case, most lawyers, I would wager, believe in promoting a diverse and inclusive legal profession as not only the right thing to do but as the Preamble to the ABA Model Rules of Professional Conduct notes, a lawyer is a “public citizen having special responsibility for the quality of justice.”<sup>2</sup> In that spirit, many of us believe we have an obligation to promote equality in society generally. Viewed through that lens—social good—measuring ROI seems crass, at best; more vocational than professional. At the same time, despite the resources we have devoted to answering the Call, achieving a diverse and inclusive profession

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2. ABA Model Rules of Professional Conduct: Preamble & Scope. Preamble: A Lawyer’s Responsibilities, [1], available at [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/model\\_rules\\_of\\_professional\\_conduct\\_preamble\\_scope/](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preamble_scope/)

remains frustratingly elusive. Nearly, two decades later, we are simply not where we thought we would be. This perceived lack of progress invites questions about the value of our efforts. Yet, if the premise of the business case for diversity is that diverse firms will enjoy a competitive advantage, it is fair to ask for evidence of it. As lawyers, having made a business case for diversity, we can scarcely complain about being called to our proof. Quantifying the return has proved challenging, however. It is difficult to link diversity efforts to a revenue return. The relationship is rarely direct or simple. Rather, to the extent increased diversity has resulted in additional business, those efforts are intertwined with recruitment, client development, capabilities, multiple relationships, etc. Identifying the strand that is diversity requires a complex dissection of events. In the face of these challenges, it is understandable to ask whether the problem is not in the data but in the question. Maybe seeking to demonstrate the ROI on D&I is the wrong question.

I am sympathetic to that view. I hate the question personally. As a diverse lawyer, I would like to believe that the value proposition for diversity is more than business development. I would like to believe that law firms want diversity because they want to leave behind the exclusionary profession they created. I would like to believe my non-diverse colleagues support promoting diversity because they too want to practice in an environment characterized by a variety of identities, experiences, perspectives, and cultural traditions. I would like to believe we all are working together to realize the world our founding fathers articulated but could not achieve, much less appreciate. I would like to believe that we all hope their reach is not beyond our grasp.

Exempt D&I from ROI? Sign me up. Let's move on. Are there cases to be made for advancing D&I other than a business case? Yes. I've made one. In the paper, *The Scientific Basis for the Ethical Obligation to Require Action to Eliminate Bias and Promote Diversity in the Legal Profession*, I trace the evolution of the American legal profession's ethical obligations to demonstrate the lawyers have always been considered to be the defenders of our founding social values, the most cherished of which is equality. From that original role, I traced the evolution of our codified ethical rules, such as the ABA Model Rules of Professional Responsibility, and reveal that they were designed to regulate the tension between advancing private interests as advocates and serving the public interest



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as a profession. This, I explain, our codified Rules are neither the source nor the limits of our ethical obligations. More importantly, I show that our codified rules are evolving toward recognizing our public obligations, as in ABA Model Rule 6.1, which recognizes, "Every lawyer has a professional responsibility to provide legal services to those unable to pay"<sup>3</sup> and encourages every lawyer to devote 50 hours annually to providing *pro bono* legal services. Following that model, I urge the adoption of Model Rule 8.5 which recognizes a lawyers' obligation to promote equality in society and urges every lawyer to devote 20 hours to activities that promote diversity and inclusion in the legal profession.<sup>4</sup> In other words, I believe there is a compelling ethical case to be made for advancing D&I.

Reluctantly, however, I do not believe that we will abandon the business case for D&I. And, I'm not sure we should. While we may be understandably

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3. ABA Model Rule 6.1

4. See [insert my article.]



## In order to determine whether you have made a good investment, you have to understand what is reasonable to expect and what your investment objectives are.

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disappointed by the lack of progress we have made under the business case for diversity, undeniably progress has been made. The business case establishes a shared value proposition—client service—for advancing diversity in the profession, which we should not cavalierly abandon. Yet, if we are going to argue the business case for diversity, then we will have to justify the business case for diversity. But can we? Of course we can.

The challenge we face is not an inability to demonstrate a return on our D&I investment, the business case. It is that we have been loose in our thinking about the question we are asking. And, as we have all been trained since law school, analytic clarity is the key to effective lawyering. As initially framed, the Call to Action, suggested a short-term return on the D&I investment; demonstrably more work from clients. With the benefit of hindsight, however, that expectation was admirably naïve. In order to determine whether you have made a good investment, you have to understand what is reasonable to expect and what your investment objectives are. We have learned that it was unreasonable to expect that reversing centuries of bigotry and exclusion would be a simple matter of will. For example, since 2004, we have learned that implicit biases conspire to thwart our best intended effort to look beyond the surface. While we were working to identify, recruit, and mentor diverse lawyers, our implicit biases were

a drag on our performance. (A deflating if not deflationary force). We learned that entrenched yet often unappreciated professional and cultural norms and expectations made the law firm environment both less accessible and less attractive to diverse lawyers. We brought them in; they opted out. Many of them elected to work for our clients, where they continued to hold us accountable for our lack of diversity, much to our chagrin.

Despite these and other headwinds, the data tells us we are starting to see the “green shoots” of a return on investment (to borrow a phrase from former Federal Reserve Bank Chairman Alan Greenspan). The data tell us that diverse organizations outperform non-diverse organization over the long-term. We are also beginning to realize, i.e., monetize, our investment. As in-house legal departments have outpaced law firms in creating diverse teams under diverse leaders, our investment in diversity increases the prospects for affinity between our diverse lawyers and the diverse lawyers who select outside counsel. Finally, our efforts to eliminate barriers to success that obstruct diverse lawyers by adopting processes and practices that are fair, objective, and transparent benefit all lawyers, diverse and non-diverse alike. We promote true meritocracy by eliminating the barriers that have excluded or discouraged talented lawyers based not on their ability but on their identity. In a mercilessly competitive legal services market, we no longer have the luxury of fielding anything less than our best team,

I write this essay as I return from my firm’s retreat for diverse and LGBTQ lawyers. More than a hundred diverse lawyers gathered to discuss who we are and what we aspire to be as professionals, colleagues, and as a firm. I’ve been practicing in large law firms for the better part of thirty years and in that room I saw the return on our professions D&I investments. I saw in those confident, accomplished, ambitious lawyers a stronger firm, a more rewarding professional environment, and the arsenal of experiences and perspectives necessary for a law firm to thrive in a competitive, diverse, global marketplace. In other words, I saw the return on our D&I investment. While I would prefer we not have to make a business case for diversity, as long as understand we are making this investment to ensure that our firms and our profession remain relevant, competitive, and valued in a dynamically evolving legal marketplace, I am confident we can win the case. ■



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# Return on Investment: Re-defining Return and Investment...

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Hamza Jaka

The legal profession has never been more diverse. However, there is still more to go, as the legal profession itself has often struggled with diversity. For example, according to the American Bar Association's National Lawyer Population Survey of Resident Active Lawyers only 36 percent of lawyers are women, 5 percent are black, 5 percent are Asian, and 5 percent are Latinx.<sup>1</sup> NALP reports that only 2.86 percent of lawyers report that they identify as LGBT. Further, there is such scant reporting on disabled lawyers in the legal workforce that statistics are often not reported.<sup>2</sup> The fact that there is some improvement in the inclusion of marginalized lawyers is a positive thing, but these rates are not high enough. Yet, there are more and more marginalized individuals attending law school each year<sup>3</sup>. In fact, most recent statistics indicate that women outnumber men in terms of law school enrollment.<sup>4</sup> This is an incredibly important and notable fact. However, enrollment rates for multiply marginalized individuals drop sharply after the first year of law school. In my experience, law school is an incredibly difficult, barrier filled program in which multiply marginalized students are required to build their own support networks, while their competency is under continual question. It is survivable, but often students need to create their support networks in order to survive law school. Our networks are sometimes all that we have in supporting us. However, the day to day barriers and "grinding" work rate expected in law school are often too much to take. Hence, students from marginalized backgrounds are overrepresented in non-transfer attrition rates after

their 1L year.<sup>5</sup> This background information is here to contextualize the barriers people of color, disabled people LGBT people face in entering the legal world. It does not often get better or individuals entering the workforce, as bar prep is often expensive.

These post law school costs, especially when combined with the already onerous loans, hit people of color and other marginalized individuals the hardest. Oftentimes, there are significant additional costs to marginalized persons in the legal profession that result in less opportunity. For example, disabled individuals with specific accommodation needs, and those who require a personal care assistant, otherwise known as a PCA, often have to pay additional costs for accommodations that meet their or their assistant's needs. For example, accessible rooms are often more expensive because many of them are suites or more upscale rooms. If an assistant requires a second room, or ticket to an event, even at a discount, are significant extra costs that don't apply to non-disabled individuals. Transit costs are also potentially prohibitive for marginalized lawyers, making it difficult for lawyers to take jobs that require transit or driving. The legal profession recognizes some of the barriers facing marginalized lawyers, most often those of the financial variety. Many law firms, and lawyers view diversity and inclusion as a return on investment. Namely, that by hiring diverse lawyers, they will develop a better reputation in the legal profession and outside of it, thus allowing them to attract more clients and attract future talent. The legal profession is not alone in viewing diversity as a return on investment. Or example, in the disability world, the hiring of disabled employees is often framed as a return on investment. Disabled individuals are said to be more loyal employees, persons who lead the creation of a more accessible workplace and more accessible systems of work, and as a gateway to

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1. [https://www.americanbar.org/content/dam/aba/administrative/market\\_research/national-lawyer-population-demographics-2009-2019.pdf](https://www.americanbar.org/content/dam/aba/administrative/market_research/national-lawyer-population-demographics-2009-2019.pdf)

2. NALP Diversity Statistics in the workplace. [https://www.nalp.org/uploads/2018NALPReportonDiversityinUSLawFirms\\_FINAL.pdf](https://www.nalp.org/uploads/2018NALPReportonDiversityinUSLawFirms_FINAL.pdf)

3. [https://www.huffpost.com/entry/minority-lawyers-hanging-from-their-own-bootstraps-how-law-schools-fail-those-who-seek-justice\\_b\\_5b17f63ce4b00229eba3c6f3](https://www.huffpost.com/entry/minority-lawyers-hanging-from-their-own-bootstraps-how-law-schools-fail-those-who-seek-justice_b_5b17f63ce4b00229eba3c6f3)

4. <https://abaforlawstudents.com/2019/02/28/where-do-women-go-to-law-school-2018-numbers/>

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5. <https://www.accesslex.org/xblog/aba-data-reveals-minority-students-are-disproportionately-represented-in-attrition-figures>

a new market.<sup>6</sup> Each of these rationales is certainly true to an extent, and reputational and accessibility gains are extremely important, but the emphasis of Return on investment in hiring practices sometimes elides the fact that you are not hiring an entry point to a market, or an accessibility consultant, you are hiring an individual person, who is competent and ready to do a job. In many ways, the logic of return on investment is similar to arguments for diversity promulgated in the higher education context. Diversity can make a whole student body better, and can provide opportunities for individuals who otherwise would be overlooked or miss them. However, being one of a few, or the only marginalized attorney in an office can lead to a lot of additional work educating their offices, and oftentimes unfortunately face discrimination in their workplaces. Many attorneys of color, disabled attorneys and LGBT and women attorneys often take up the work of educating or supporting their office in being an inclusive environment. Speaking from my own experiences, I can remember providing accessibility expertise to my classroom and work environments, and gently reminding individuals that hypothetical questions or cases about mentally ill testators or terrorist attacks might sound like a positive way to connect the law to interesting real world cases., but can really harm students, especially if students have friends and family that are affected by terrorist attacks, and skew the ways we think about the law. In addition, many attorneys of color that work for law firms do not receive opportunities for advancement. This is especially true in the case of Black attorneys<sup>7</sup>, and is also a problem for Asian attorneys<sup>8</sup>.

Biases in learning and promoting, are problems in every profession, but this problem is especially acute in the legal profession, as many attorneys represent people from marginalized backgrounds, and cases that implicate the rights of marginalized people are litigated every day. Attorneys should fight and understand oppression as vigorously as they understand and protect their clients' interests. The profession can and must do better. So what can the profession do? Understand that the bottom line is not always a flat picture and revolves Invest in resources around inclusion, anti-racism, anti-ableism, anti-sexism, and anti-homophobia and transphobia. Create mentoring programs to support new attorneys in the

6. [https://www.accenture.com/t20181029T185446Z\\_w\\_us-en/\\_acnmedia/PDF-89/Accenture-Disability-Inclusion-Research-Report.pdf](https://www.accenture.com/t20181029T185446Z_w_us-en/_acnmedia/PDF-89/Accenture-Disability-Inclusion-Research-Report.pdf)

7. <https://www.law.com/americanlawyer/2019/06/06/am-law-firms-with-zero-black-partners-how-is-this-possible-in-2019/>

8. [https://static1.squarespace.com/static/59556778e58c62c7db3f8e84/t/596cf0638419c2e5a0dc5766/1500311662008/170716\\_PortraitProject\\_SinglePages.pdf](https://static1.squarespace.com/static/59556778e58c62c7db3f8e84/t/596cf0638419c2e5a0dc5766/1500311662008/170716_PortraitProject_SinglePages.pdf)



## The profession can and must do better.

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workplace. Consider changing practices that perpetuate standards of professionalism that aren't always necessary. Allow attorneys to show up at work when they need to, invest in new technologies and take chances on candidates from marginalized backgrounds, and evaluate whether job postings need to have the listed qualifications. For example, a many job postings list lifting boxes as a requirement of the job, but lifting boxes is not always necessary for an attorney, and many disabled attorneys cannot lift boxes. It is true that reasonable accommodations can make lifting boxes possible, but the presence of these requirements can drive many people away from applying. Additionally, job requirements that prioritize certain types of firm experience can screen out lawyers of color, or lawyers from low income backgrounds, who often lack the networks that lead to those kinds of employment opportunities. So much of the legal profession's norms come out of routine practices, but those practices are not always accessible or easy for multiply marginalized lawyers to comply with.

By reevaluating your own norms and belief systems, you can better understand how both your individual legal ecosystem could be made better, and by making sure to be inclusive to clients and lawyers, you will contribute to the careers and positive outcomes of many clients and attorneys. You may even end up playing a pivotal role in changing the law down the road, and hopefully, be a part of the legal system's journey to become more equitable. An individual attorney or individual firm may not be able to leave a large footprint, especially with attorneys dealing with overwork and debt, but by doing your part you can help the profession do better. The law is built by the people who can access it, and it is our job as attorneys to make the law as accessible as possible. Investing time, money and personal effort into making the law more accessible for multiply marginalized lawyers, and investing in multiply marginalized lawyers, specifically for their growth and improvement, is an investment all lawyers should make. And the return on that investment? A more equitable and just legal profession. ■

# Pro Bono Service: A Path to Diversity & Inclusion Engagement for Small Law Firms

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Brian J. Winterfeldt and Emily D. Murray

A survey of large law firm websites in 2019 will demonstrate that diversity and inclusion programs are featuring more and more prominently in a firm's brand presence. National and global firms are increasingly not only declaring their commitment to diversity and inclusion, but promoting this commitment on a variety of fronts, from recruitment tables at minority career fairs, to the availability of numerous affinity groups across a variety of diversity categories, to prominent, high-dollar sponsorships of diversity-related events. There is no doubt that these programs, which may have begun as responses to market forces (such as client requirements to show a D&I commitment), do contribute to the growth of opportunities for hiring and promotion of diverse attorneys, in an industry that continues to lag at or near the bottom for diversity in its workforce, at least in the United States.

Smaller firms, however, may need to seek alternative approaches to demonstrating a commitment to D&I. Firms that need to hire less frequently, by virtue of their size, may not employ dedicated hiring personnel that can conduct the on-campus and conference-based recruiting common to large law firms. While a small firm can certainly create an atmosphere that is highly inclusive, there may not be enough personnel to maintain affinity groups dedicated to particular diverse populations. In addition, budgets for event sponsorships will rarely be in the five- and six-figure range, in terms of US dollars, that will grant a firm prominent sponsor status. Despite the differences in small and large firm demographics and economics, small firms usually need to respond favorably to the same client survey and RFP questions presented to large firms in order to be eligible for new and continuing engagements. What, then, should smaller firms do, so that they may remain

competitive in this arena with larger practices with more personnel and budget resources?

One area in which even small practices can have a large impact is in pro bono service. While small firms may not have the resources to take on the large-scale litigation matters commonly featured in the press (for example, taking on a high-profile criminal defense matter), in many practice areas, notable assistance may be provided with just a few hours of work. Intellectual property is certainly one of these areas, particularly in the trademark portfolio and Internet practice specialties. While managing a large global IP portfolio is certainly an intensive endeavor, conducting a trademark clearance search, filing and prosecuting a single trademark application, and resolving a domain name dispute are examples of smaller matters that can make a big difference to a pro bono client. Many organizations seeking pro bono services have missions that are focused on serving diverse populations, providing an intersection of pro bono and D&I work. For example, Winterfeldt IP Group has assisted organizations focused on serving LGBTQ+ persons (including youth); persons with disabilities; disadvantaged youth; sexual assault survivors and trafficking victims; and more.

An organization's brands are often its greatest assets; strong brands allow an organization to achieve local, national, and even global recognition, and grant the ability to enforce against unauthorized parties co-opting the brands for their own gain. This is true whether the organization is conducting for-profit commerce or is operating as a nonprofit, including those engaged in charitable endeavors. Charities can be in a particularly challenging position with regard to allocating resources for legal advice, as their resources are usually devoted to providing direct



service to their target populations and to paying the staff that administer those services. Some charities do not have any internal legal staff; larger ones may have a general counsel, but it is rare to have specialized counsel, such as for intellectual property, in-house. Legal budgets to hire outside counsel, if they exist at all, are likely extremely limited.

Despite these limitations, we would argue that IP protection is extraordinarily important for charities. First, charities operate largely through brand recognition. Most charities rely heavily on both volunteers and donors; these personnel must know about them in order to contribute their time and money. Their target populations must also know that they exist and how to seek out their services. Without strong brands, charities will likely lose out on opportunities both to gain support and render their services. IP counsel can assist with selecting strong brands, protecting them in the appropriate jurisdictions (and in both the brick and mortar and digital realms), and providing training to internal personnel on proper, consistent brand usage to optimize brand growth and recognition.

On a more sinister note, IP infringers are becoming increasingly sophisticated, and charities may be particularly vulnerable to having their brand subjected to unauthorized use, especially in the digital space through infringing domain names and social media profiles. At a minimum, brands that are not enforced may be easily confused with others in the marketplace; volunteers, donors, and target populations that are seeking out a particular charity may be misdirected to the wrong organization. In some cases, such confusion may result in donors providing contributions to an unintended party, and may be defrauded in the process. As a worst case scenario, a vulnerable person seeking assistance (for example, a member of the LGBTQ+ youth community who is in crisis and seeking support) may be misdirected to a site that engages in hate speech, resulting in tragic consequences. A brand protection and enforcement program can significantly reduce the possibility that those wanting to engage with the charity will be defrauded, and provides a framework for addressing infringement efficiently and effectively when necessary.

Small firms can be ideal organizations to partner with charities, and the benefits can be widespread. First of all, pro bono work provides an excellent opportunity for all members of a firm to participate in a team activity that reflects the firm's core values. Without the constraints of tight billable budgets, team members are able to gain experience in working on different types of matters, thus enhancing their skill



## Measuring a specific ROI from D&I work, including pro bono service to diversity-related charities, could be quite challenging in terms of assigning a specific financial value.

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sets in ways that can contribute to billable work in the future. Charities that are not able to pay for legal services may be able to offer public recognition for those who donate services to assist them, thus further growing the profile of the firm, and may be able to serve as references for other potential (billable) clients. Donating pro bono services may also open doors to serve on boards of directors or other leadership committees for charities, thus further enhancing attorneys' and firms' D&I and general public profiles. Such leadership roles may also allow for greater networking within the legal community, including opportunities to meet potential clients who share similar values.

Measuring a specific ROI from D&I work, including pro bono service to diversity-related charities, could be quite challenging in terms of assigning a specific financial value. However, in Winterfeldt IP Group's experience, the rewards permeate the entire spirit and energy of the firm. From team-building and cross-training benefits, to the psychic rewards of applying our specialized skills to assisting deserving and appreciative organizations, to the networking and community leadership opportunities, our pro bono service is critical to the unity of the firm and the growth and professional development of our team members at all levels. While competing with the D&I initiatives offered by large firms may be daunting, we would encourage all practitioners in smaller practices to seek out opportunities to contribute their skills - for at least a handful of hours here and there - to organizations in need in their local communities. The small investment of time will likely result in dividends that resonate throughout the trajectory of a long legal career. ■

# Achieving ROI for Diversity & Inclusion Efforts

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Alan P. Dorantes

The next time you meet someone who works for AT&T, ask them if their company is committed to diversity and inclusion – and why. If you do, you may walk away with a clearer understanding of D&I ROI.

Achieving ROI for D&I efforts takes hard work, and it's a journey. It also requires listening. At AT&T we survey our quarter-million employees every 18 months on a wide range of topics, including D&I. And every time we do, they tell us the same thing: When it comes to walking the D&I talk, their company is deeply committed. They also see that validated externally, where the company is consistently ranked among the top 10 by DiversityInc and dozens of other groups.

Employees also know the company is committed because they *experience that commitment* at work. They know they matter as individuals; that their point of view has value. They also know they have a right to be treated fairly – and that if they're not, there are remedies that work.

Corporations and law firms that struggle with proving ROI for their D&I efforts often do so because they're looking in the wrong places. While proving cause and effect between D&I efforts and bottom line impact is almost impossible, the correlations are numerous. The key is to apply logical and analytical reasoning – something attorneys are generally quite skilled at.

Appreciating the value proposition of a diverse workforce and inclusive culture, then, begins with adopting a different mindset. Rather than focusing on programs, we've found it helpful to think about experiences, culture, leadership expectations and accountability. It also helps to think holistically. While we're far from perfect, at AT&T we've found that a four-pronged approach works best for us. We

focus on employees, customers, suppliers and in our communities.

This enables us to more clearly see a return on our investment across a wider spectrum. When a company commits to meeting its diverse customers where they are, for example, it reaches the top and bottom lines. When law firms support diversity in their communities in visible and tangible ways, reputation, retention and hiring improve. And when we all hold our suppliers accountable to the same high standards we set for ourselves, we create a multiplier effect.

It's almost 2020. At the turn of the century, it might have been acceptable to ask *why* companies should be great at D&I. But we believe we've moved beyond that. The important question now is, *How?*

And on that, the jury is in.

Developing a reputation for excellence and achieving ROI on D&I efforts cannot happen from the bottom up. Despite numerous studies showing that millennials and Gen Xers place a high value on corporations and firms whose commitment to D&I and other social issues is self-evident, these younger groups are almost always powerless to lead the way. Instead, they look to their leaders. That's why we believe the number one attribute required for achieving positive D&I return on investment is *leadership commitment*.

Senior partners and C-suite executives reveal the depth of their D&I commitment every time they set long- and short-term strategies. But just as importantly, they show their employees, customers, suppliers and communities the depth of their commitment in their daily interactions. And when leaders embed a D&I commitment in all they do ... when they hold themselves and their workforce accountable ... and when *their actions match their words*, organizations realize positive ROI. ■

# The Case for Pipeline Diversity Programs:

## Short Term Investment/Long-Term Gain

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Lorraine McGowen

Ever wonder what majority law firms will look like thirty years from now? In less than thirty years, the United States will become “minority white”. What percent of law firm partners at majority law firms will be Black or Latinx or Asian? As a leader of diversity & inclusion (D&I) efforts at my firm, and a person committed to enhancing diversity in the profession more generally, these are questions that keep me awake at night. Why? Recent studies indicate that we are falling behind in enrolling and graduating Black and Latinx students in postsecondary education and law school. With the anticipated recession approaching, there is a strong possibility that firms will start to limit funding of pipeline programs on the quest for a more immediate return on their diversity spending.

A focus on ROI as it relates to diversity programs, particularly for pipeline diversity initiatives, is misguided. Instead, the focus ought to be on building and maintaining diverse teams. Certainly, if the client surveys all of our firms are asked to complete give any indication, our clients want diverse teams working on their matters. Clients are also focused on the pipeline for diversity. Most client surveys ask firms to describe programs the firms support to create a pipeline for diversity in the legal profession more generally.

My commitment to diversity initially started as a way to give back and became a way to “pay it forward”. My amazing thirty-year career began at a Wall Street firm thanks to a brave midlevel Black female associate, Patricia Irvin, who enabled me to become a summer associate at her firm. Pat went on to become the first Black partner at that firm. It is because of people like Pat and Sharon Bowen, among others, that diversity programs first came to the fore



A focus on ROI as it relates to diversity programs, particularly for pipeline diversity initiatives, is misguided.

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a little over thirty years ago. Then the focus was on recruiting diverse attorneys from major law schools, so programs like Practicing Attorneys for Law Students (PALs) in New York were created (for which Pat was one of the principal architects). There wasn’t much of a need to establish a business case for diversity then—the statistics spoke for themselves. Majority firms had few minority attorneys and even fewer minority partners.

From there, a plethora of programs have been developed to help diverse attorneys find their footing and navigate the hallways of majority firms. Notwithstanding these efforts, the numbers of minority partners at majority firms has not changed materially.



The focus for immediate, short-term ROI may include, among other factors: identifying the clients involved in the initiative, how strategic is the opportunity for the practice and the firm; identifying who, at the client are involved in the program or initiative and whether they are decision makers for selection of counsel; identifying the potential fees to be generated from the clients, and who at the firm will have the opportunity to work on those client matters.

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Today, African-Americans represent just 1.83% of partners in the nation's major law firms (only .68% of whom are women). It is disappointing that, after so many years, more meaningful progress has not been made. The percent for other minority representation in partner ranks is not much better. So, the focus of most programs is not just about bringing in diverse

talent, but also about inclusion- making sure that diverse individuals feel included and have an opportunity for equal access to meaningful assignments. Today's D&I focus is more generally on the retention and professional development of diverse attorneys, and also on mentoring and sponsorship of diverse attorneys.

The prospect of a recession raises the specter of cost-cutting law firms will be forced to make of discretionary programs. If past experience gives us any indication, there will be tremendous pressure on diversity programs to either cut spending or demonstrate the benefits to the firm. In other words, diversity directors will be required to demonstrate the "return on investment" or "ROI" for items in their diversity budget. The focus for immediate, short-term ROI may include, among other factors: identifying the clients involved in the initiative, how strategic is the opportunity for the practice and the firm; identifying who, at the client are involved in the program or initiative and whether they are decision makers for selection of counsel; identifying the potential fees to be generated from the clients, and who at the firm will have the opportunity to work on those client matters.

I am not saying that one should apply an ROI to any D&I program. As our experience has shown, there is no quick solution to enhancing diversity in our majority firms or in the profession more generally. Pipeline programs, even if supported by clients, do not fit squarely into any of these tests. Pipeline programs, though, are beneficial because they support efforts to encourage underrepresented students to pursue careers in the legal profession.

### **Importance of Pipeline Programs**

Our majority law firms tend to recruit only from the top colleges and law schools, but recent studies have shown that Blacks and Latinx are underrepresented at these selective colleges and law schools. The first-year non-transfer attrition rate for Black and Latinx is also disproportionately higher than for white students. The pipeline challenges of declining enrollment, high attrition and underrepresentation of Black and Latinx at the top colleges and law schools can have a profound and long-term impact on the candidate pool for attorneys at majority law firms and in the legal profession in general.

Several programs have been created to address these challenges starting with middle-school and high

school students, such as the National Urban Debate, Legal Outreach, NJ Leap, Street Law's Legal Diversity Pipeline Program, among others. There are also programs focused on post-secondary, pre-law students. These programs not only teach young adults about the law, but also provide college-prep counseling and tutoring. They also provide mentoring and networking opportunities with lawyers, many of whom share similar backgrounds and experiences.

Pipeline initiatives are critical to the continued success of our D&I initiatives. We rely on these programs to inspire and guide diverse under-represented students to pursue legal careers, and to attend and succeed at the selective colleges and law schools from which we recruit. Many of the graduates of the pipeline programs become practicing attorneys at our firms and as in-house attorneys. Others will pursue careers in academia, public service or in other professions. My firm had the benefit of having graduates of our pipeline programs later join us as summer associates. These programs are even more important in times of economic turmoil.

Establishing and maintaining a long-term, sustainable D&I program isn't just the right thing to do. Providing our clients with diverse teams is simply good business: diverse teams are more creative, collaborative and successful. The continued creation, expansion and funding of pipeline programs is critical to the success of having a diverse legal profession now and in the future.

Nonetheless, if you need an ROI in order to support pipeline programs, there will be a return on your investment. Consider this: the high school graduating classes of 2026-2027 (current 10 to 11 year-olds) will be the individuals considered for partner in 2043-2045 (4 years of college, 3 years of law school, and an average of 8 to 10 years working in a law firm). Thus, participants in today's pipeline programs will be partner candidates 25 to 30 years from now. Other participants will become attorneys, engineers, doctors, businesspersons, and other professionals who become our clients. Some will become judges or government officials overseeing matters on which we are appearing. Thus, while not immediate, there are certainly many long-term benefits by continued support of pipeline programs. And, if you need further reasons, many of these programs are sponsored by clients.



Thus, while not immediate, there are certainly many long-term benefits by continued support of pipeline programs.

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### What can you do—Investments for the Future

- Adopt a middle school or high school in an underserved community, so that students from underserved communities interact with lawyers, particularly lawyers that look like them and may have similar backgrounds;
- Support programs like the National Urban Debate, Legal Outreach, NJ Leap, Street Law's Legal Diversity Pipeline Program, among others;
- Expand the firms' network of schools to conduct on-campus interviews and collect resumes and recruit from schools that have a large minority student class;
- Recognize the financial gap of candidates & that for some candidates, may be first generation college graduate. Support, expand, and fund access to SAT, LSAT, other standardized test prep courses for minority and underserved communities to close the gap in standardized tests;
- Consider mentoring/sponsoring diverse college students, particularly schools that have a higher percentage of Black and Latinx students;
- Support, expand and fund programs like Sponsorship for Educational Opportunity (SEO) and Council on Legal Education Opportunity (CLEO) that helps expand legal education opportunities to minority, low-income and disadvantaged college students or graduates interested in attending law school. ■

# Return on Investment Versus Meaningful Inclusion

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Melanie Rowen

Is return on investment -- specifically, increased profits -- the best way to measure effectiveness of diversity and inclusion programs? In thinking about this question, I have to start with my own experience as a lawyer with a disability. What I believe, based on that experience, is that it is not possible to create meaningful inclusion in a legal workplace while also using return on investment as the sole measure of success of diversity and inclusion programs.

In this essay, I am assuming that the goal of diversity and inclusion programs is to create space for attorneys of color, attorneys of all genders, LGBTQ attorneys, attorneys with disabilities, and attorneys from all faith traditions to bring our whole selves to work. At best, profit simply doesn't tell us whether a diversity and inclusion program is succeeding in this. At worst, looking for profit actually interferes with creating meaningful inclusion.

About a year after I graduated from law school, I began experiencing some symptoms of what would eventually be diagnosed as multiple sclerosis (MS). MS is a chronic condition that affects the function of the central nervous system, and it is notoriously variable and unpredictable in how it affects the people who have it. Among other issues, it's not uncommon for people with MS to experience periods of fatigue and to have frequent medical appointments, both of which have come up for me from time to time in the 14 years that I have had MS.

When I began experiencing symptoms, I was an associate in the litigation practice of an AmLaw 100 firm. A year later, I moved to a national civil rights non-profit, where I did impact litigation and policy advocacy on LGBTQ issues for several years. As any lawyer who has worked in both settings can tell you, legal non-profits are not inherently different from

law firms when it comes to the pressure to produce a very high volume of top-quality work, often on a short timeline. The specific reasons for this pressure may be different, but in both environments, there is a tendency to measure success in terms that depend on lawyers maxing out their time spent at work and generally being available for work at all times.

Even with supervisors who encouraged me to take care of my health and who avoided directly pressuring me to work beyond my physical limits, there were times I couldn't escape the feeling that I wasn't doing the job the way it was expected to be done. I questioned whether I belonged in the legal profession. If my disability made it difficult to conform to norms around hours and availability in the kinds of practice spaces I had been part of, did I still have a place in those spaces?

I want to emphasize that this was not the fault of the specific organizations I worked for, but was about the culture of the profession as a whole. We may recognize that there are values -- inclusion and retention of lawyers with disabilities among them -- that are more important than purely maximizing profits or producing the most advocacy victories with the fewest staff. But without a determined commitment to a work environment that allows people to meet all of their health and other life needs, legal workplaces are in danger of defaulting to a model that is inaccessible for people with chronic conditions, as well as people with family obligations, significant time commitments in their religious practice, and many other life circumstances that directly raise diversity and inclusion issues.

But how does this broader cultural dynamic connect with the specific issue of using return on investment as a measure of success for diversity and inclusion programs? In order to produce genuine inclusion in

our organizations and across the profession, to make sure that all attorneys are able to bring their whole selves to work, we need to invest in creating that culture. In my own experience, for example, it became clear to me that the structure and norms of litigation practice in many places is inhospitable to people who have more than a bare minimum of limitations on their schedules. This could be addressed, and has been addressed in some organizations, by staffing differently in order to create more flexibility.

But making these kinds of changes means, potentially, expending some resources. To continue the example, staffing cases more robustly and/or having smaller caseloads per lawyer may mean smaller profit margins, in the short term or overall. Or, it might just be difficult to demonstrate up front that the organization will in fact realize financial gains, in the long term, from doing so. In a framework where profit is the deciding factor, a diversity and inclusion program attempting to make this kind of cultural change might never be adopted.

What might be a more meaningful way to measure the success of diversity and inclusion programs? If they aren't already, organizations should regularly assess the experiences of the people within them -- not just the attorneys -- to find out how comfortable the workplace is for everyone, with attention to disparities across diversity criteria. These assessments should look at whether the organization's participation in specific programs is helping to create an inclusive culture. And, as assessments identify concrete cultural or structural changes that could improve everyone's ability to bring their whole selves to the organization, those changes should be the priority.

Creating an inclusive workplace in the legal profession is not, in real terms, costly. Particularly when we think holistically about the benefits of diversity and inclusion, it is easy to make the case. But more importantly, even if it were not, we have a moral obligation to make the legal profession, with all of the power and privilege that we hold, fully accessible to people from communities that have been and continue to be marginalized in our society. This is especially true because lawyers and the legal system have so often been the means of that marginalization.

Of course, we want to make the most impactful choices in using our resources. This might lead us to prioritize diversity and inclusion programming that comes with a profit. But we need to understand that profit is not necessarily meaningful impact, if we



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are serious about making the change that is needed for a truly inclusive profession. Instead, our choices need to be driven by how effectively programs will directly create and support the culture we are trying to build, where all of us can show up to work as our authentic selves and know we are welcome. ■

# The Fallacy Of Using ROI To Measure Diversity & Inclusion

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**Marci Rubin**

When asked, “Is ROI the Right Measure for D&I?”, my immediate response was “absolutely not”. Realizing my gut reaction was not a considered response, I spent significant time thinking about the question.

In the end, my answer remains the same. It is based on 35 years experience - 29 years in the Wells Fargo Law Department and 6 years as Executive Director of the California Minority Counsel Program (CMCP).

The fallacy of using Return on Investment (ROI) to measure the value of Diversity & Inclusion (“D&I”) efforts is twofold:

- It presumes that the only value from D&I is business development. It ignores the value of investing wisely in talent, with a long-term view that recruiting, training & retaining the most talented lawyers will always be a benefit to a firm. It also ignores the fact that firms do not hold the activities of white male attorneys to the same standard when evaluating their ‘value’ to the firm.
- ROI is not an effective measurement of a law firm’s business development and business retention activities. ROI measures the profit from an activity for a particular period compared with the amount invested in that activity. In the law firm context, it does not take into account the actual, and significant, financial investment a law firm makes in every young lawyer it hires. Nor is it used in a way that consistently defines “an activity” and the “particular period” of time or is even capable of tracking that information if well-defined.

Every law firm Chair & Managing Partner I’ve spoken with acknowledges that business is obtained in one of two ways:

- The client relationship is handed down from one



ROI is not an effective measurement of a law firm’s business development and business retention activities.

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partner to another partner or possibly a senior associate - which is business given but not necessarily earned, and is available only to a select few; or

- Business comes directly or indirectly through relationships an attorney develops over time - directly by being hired by the person with whom the relationship is first established, and indirectly by referrals from that person and/or others met as a result of that relationship.

Relationships take time to develop. There isn’t always a direct line that can be tracked between the time an attorney first meets a potential client and the time the attorney gets any business, whether directly or indirectly. I have yet to see a formula that:



- captures all the time and costs of developing a relationship and turning it into business, and
- matches that against a firm's profits from the relationship.

This is especially true for law firms that define the "client relationship" as belonging to a particular partner, and define the "client" as a company, without regard to either which lawyer in the firm does the work or who actually obtained a piece of business, or why the company's lawyer selected that attorney.

Thus, to use ROI to measure the results of a specific D&I activity is disingenuous. If ROI doesn't drive much of what a law firm does, using it to measure D&I activities imposes an undue burden on those efforts. It may look good and sound fair on its face, but in reality, doing so assures D&I efforts fail.

Below are just a few examples of the various ways in which law firms do not, or cannot, measure ROI. Each is reflective of things I, and colleagues with whom I speak regularly, have seen and continue to see in every large law firm.

### Tracking ROI for Business Development? Not Possible.

Shortly after becoming CMCP Executive Director, I met with a Latino law firm partner. He said he thought highly of CMCP and wanted to get more involved "even though I never got any business through CMCP". I asked, "How do you know?" After a minute of silence, he responded saying: "Let me correct that. I never got business directly from a Corporate Connections interview. But when I look back over my career, I realize all my current business derives directly or indirectly from contacts I made at CMCP or County Bar diversity programs. Where else could a young Latino lawyer meet business prospects?"

- Attorney's don't always recognize the source of business that results from years of cultivating relationships.
- There's no doubt the firm's investment in this partner's early involvement in diversity programs directly contributed to the firm's ROI. The time period involved in obtaining this partner's large book of business encompassed more than a decade and was the result of multiple contacts and activities – both well outside the traditional business definition of ROI.



Attorney's don't always recognize the source of business that results from years of cultivating relationships.

- The law firm had no procedures in place to track business development on a long-term basis. And no one in the firm ever asked about the source of this attorney's business.

### No Credit, No ROI.

My team hired a Latina law firm partner who we met through one of our Law Department colleagues. After the work was completed, we learned all the credit went to the white male "Wells Fargo relationship partner", a man no one on my team had ever met.

- When I wanted to protest this, as the Latina partner was the only reason the firm got that piece of business, she asked us not to say anything as it would cause her problems within the firm.
- More than 15 years later, at CMCP's Annual Business Conference in 2014, this issue was the topic of serious discussion. A number of women and minority partners spoke about their own experiences of not getting credit for work they brought into the firm. Some related that when a client insists that they get the credit, the firm will agree to keep the client happy behind the scenes the firm still gives most or all the credit to the "relationship partner".



## If it looks good and makes partners feel good, ROI doesn't matter.

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### Lack of Attention and Recognition.

A 4<sup>th</sup> year African-American female associate at a large international law firm told me: "The partner who assigned me work left the firm, and the other partner in our practice area clearly doesn't like me. He gives all the work to the white male associate who sits next door." I asked if she was sure the partner knew she had no work. She couldn't imagine how he wouldn't know, but the next day went to his office and asked if he was aware of her situation or if there was a reason he didn't give her work. The partner acknowledged had no clue she was just sitting waiting for work (even though she was one of only two associates in his practice group), immediately handed her 5 files, and she has been an active contributor to the group ever since.

- The associate assumed someone was watching the store, e.g., that the remaining partner in her practice group & others in the firm knew she didn't have enough work. Thus, she believed she wasn't wanted, and was preparing to seek another job when she called me.
- No one in the firm paid any attention to her low billable hours, or if they were aware of the problem, they did nothing to address it. Paying a highly qualified associate to do nothing, or losing her to another firm, is a huge loss on investment. Where's the ROI in that?
- The happy ending for the associate and was the result of sheer luck that she called me & I asked the right questions. That's no way to run a business.

A minority associate working on a transaction at my request caught a documentation error that would have resulted in serious adverse consequences for my company, the firm's client. The mistake was corrected, and the transaction closed successfully. The deal partner thanked the associate profusely but never told anyone what happened, including me. I learned about this from the associate involved after he left the firm.

- Associates generally get recognized for their work if the partner they're working for proactively gives recognition. Partners don't want to look bad, so recognition of this important work isn't generally given.
- ROI was never factored into the associate's compensation or promotion opportunities because it was more important for the partner not to admit his mistake. And because from the firm's perspective, the financial investment in recruiting & training the associate isn't associated with business development, thus not included in any calculation or ROI. Yet, if that associate had not caught the mistake, I would not have hired the firm again.
- The associate didn't think his efforts, or D&I, were valued by the firm. He believed it would have been professional death to speak up at the time. Instead he left the firm and is very successful elsewhere with a huge book of business.

### Wasted Marketing & PR Dollars.

While at Wells Fargo, I was continually pitched for business by white male partners at expensive and time-consuming lunches or dinners. Rarely were the partners prepared to address my specific concerns and legal needs, even when I asked the questions in advance. None of these lunches or dinners resulted directly in the firm getting work. Yet these partners rose within their firms.

- No one questioned the ROI for these partners from what I deemed a waste of the firm's money and time.
- Rarely did the firm bring a minority partner or associate who could do my team's work, even though I always asked.
- Minority and women partners and associates continue to report that they get questions about what ROI resulted from these types of business development expenses, and in addition often hear comments about "going out with friends

on the firm's money" when the potential client is of the same race or gender.

I attended many large law firm D&I events with high-profile speakers, catered food & drink. They were enjoyable evenings, and maybe good D&I PR for the firm. Given the high cost of the events, however, very few of any firm's young diverse pool of talented attorneys were included.

- These are "feel good" PR events that use significant amounts of a firm's D&I budget with minimal, if any, expectation of generating business. If it looks good and makes partners feel good, ROI doesn't matter. These same firms often balk at spending significantly less money to send a minority associate or partner to a diversity-focused networking event geared specifically to making the introductions from which business relationships can arise.
- The message to the minority attorneys who are not invited is that they are not important, and that D&I isn't for them.

### Treating D&I Related Events Differently.

Law firms routinely purchase tables for thousands of dollars at non-diversity related events for organizations their partners support. Business development opportunities at these events are generally limited to the short pre-program reception period, since members of the firm sit together at their table. Often the law firm tables at these events are empty or only partially full.

- If ROI were a driver of law firm activity, either these tables would be filled with firm lawyers and business prospects, or the firms would put their money elsewhere.
- The same firms spend a few hundred dollars to register a minority attorney for the CMCP Annual Business conference, at which they have an opportunity to meet and network with 500+ attorneys over 1-1/2 days. Too often:
  - a firm will require the attorneys to return to the office to work, wasting the money spent and the client development opportunities; or
  - a firm focuses only on whether it got business from a pre-set 15-minute CMCP Corporate Connections interview, without considering the valuable new contacts made that may lead to future business.



## There is no ROI from money spent on something not used.

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CMCP has always had large law firm members that pay their annual dues, but don't let their minority attorneys get involved and take advantage of the firm's membership. Eventually these memberships lapse. When asked why, the answer is always "we never got any business from our membership".

- There is no ROI from money spent on something not used. The important question here is "why not send your minority attorneys to CMCP events which are geared to their meeting potential business prospects?".
- The same firms pay for things like golf club memberships which they believe enhance business development. Those memberships are vastly more expensive than CMCP membership, and they don't go unused. No firm tracks the ROI from these memberships, especially when used to "retain" business, e.g., golfing with friends who already are firm clients. ■

# The Paradox of Diversity and Inclusion

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Sidney Kanazawa

*“What gets measured, gets improved.” Peter Drucker.*

**B**usiness guru Peter Drucker has argued businesses cannot improve without measuring performance. In the realm of diversity and inclusion, some would argue we cannot advance the cause of diversity and inclusion without measuring our return on investment (ROI). But what should we measure? What return are we trying to achieve? What are we assuming by what we measure?

In the 1930s and 1940s, the Harvard University Business School embraced the concept of guiding business strategies with a quantitative “management by the numbers.” A young contemporary of Peter Drucker, Robert S. McNamara, was an eager disciple. At the age of 24, McNamara became the youngest assistant professor at the Harvard Business School and then went on to use these quantitative principles to vastly improve logistical efficiency and mission planning in the Army Air Corps during World War II. In 1946, he and his “Whiz Kids” team joined and turned around a floundering Ford Motor Co. with this same rational discipline. At a time when most auto manufacturers believed “safety does not sell,” McNamara justified the installation of padded dashboards, collapsing steering wheels, tempered and laminated glass, seatbelts, and other safety features by calculating the potential aggregate costs to Ford of human deaths and how that cost could be reduced by these new safety features. In 1961, after President John F. Kennedy appointed him as Secretary of Defense, McNamara used this same “management by the numbers” approach in the prosecution of the Vietnam War under Presidents Kennedy and Johnson and counted dead bodies as the measure of the war’s progress.

Later in life, however, McNamara reassessed, met with his Vietnam War counterparts, and tempered

his earlier devotion to “management by the numbers.” As described by Phil Rosenzweig in his essay, “Robert S. McNamara and the Evolution of Modern Management,” (December 2010), <https://hbr.org/2010/12/robert-s-mcnamara-and-the-evolution-of-modern-management> (as found on March 6, 2019), McNamara returned to Harvard with a more humble perspective:

In 2005, months before his 89<sup>th</sup> Birthday, McNamara returned to Harvard Business School and spoke with students on the subject of decision making. Among the lessons he stressed: That for all its power, rationality alone will not save us. That humans may be well-intentioned but are not all-knowing. That we must seek to empathize with our enemies, rather than demonize them, not only to understand them but also to probe whether our assumptions are correct.

By 2005, McNamara had seen how his North Vietnamese body counts misled and blinded him from the shared human motivations of all sides of the war. These callous statistics and the dead body images on the nightly news inflamed opponents, citizens, and the world and did not advance McNamara’s goal of peace. By labeling the North Vietnamese the “enemy,” he could not see the similarities of the North Vietnamese’s unyielding struggle to rid their country of the United States to our own Patrick Henry’s anti-British revolutionary declaration, “give me liberty or give me death.” Nor could he appreciate that the body counts were as irrelevant to the North Vietnamese as the loss of more than 2% of our country’s population in our own civil war. The reduction of the North Vietnamese to a caricature of evil allowed our soldiers to kill but prevented them from seeing the common humanity, hopes, fears, courage, hate, and grit that naturally arises in all of us when our friends, comrades, and loved ones are killed on or off the battlefield.

Even in the automotive arena, McNamara saw how his devotion to rationing resources by the numbers looked heartless (“profits over people”) to consumers and jurors when Ford was hit with a \$128 million verdict in a Pinto fuel tank fire case in 1978. McNamara assumed that the dollar amount an auto maker spends on safety should be proportional to the dollar value of the lives saved. At Ford, he took government estimates on the value of life and calculated how much Ford should spend on safety to match the value of the lives saved by each safety feature. He never appreciated how cold-hearted investments in safety based on a theoretical price of life would appear to a family who lost a loved one or to a jury deciding whether Ford should have spent a few cents more to make its cars safe.

It is easy to measure. But it is hard to know what to measure and why.

Let’s start with why. Why should lawyers and law firms in the business of law care about diversity and inclusion? Some might say clients are requiring diversity and inclusion and therefore we must embrace it to maintain our inflow of legal business. Some might say it is necessary to attract and retain the best and brightest lawyers in this diverse competitive marketplace. Some might say reflecting what America looks like will improve perspectives and problem-solving. Some might say that diversity and inclusion are the morally right things to do and therefore should be a necessary part of every lawyers’ and law firms’ goals.

In each instance, we could find a metric that would measure our investment and success in achieving these goals. Client generation. Revenues. Headcounts. Retention. Client reviews. Awards and recognitions.

But like McNamara, we would be blinded by our assumptions.

Diversity and inclusion is not like revenues and profits. It is not a number. It is about trust. Can we be different and still trust each other as members of the same team? Or are we limited to seeing the stigma of each other’s labels and assuming we can never be trusted friends or colleagues?

We humans are tribal by nature. We find similarities to identify with our tribe. At the same time, we use differences to distinguish our group from other groups. Race. Ethnicity. Gender. Education. Age. School. Team. Place. Citizenship. Political party.



## Diversity and inclusion is not like revenues and profits. It is not a number. It is about trust.

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Wealth. Job. We instantly label people and assume they all have certain attributes based on that label. We see difference not only to distance ourselves from “others” but also to reinforce our identity with our own tribe. Letting down our barriers and inviting “others” to be a part of our tribe, risks losing our identity and losing our tribe. So long as we view “others” as not part of our tribe – “diverse” – we cannot embrace them as part of our tribe – “inclusion.”

This is our challenge. Diversity and inclusion are contradictions. Paradoxically, as lawyers, we bear the special responsibility of both disrupting and keeping our society and all of its contradictory micro-tribes together under a rule of law. To embrace the rule of law envisions everyone is on the same team. All of us equally subordinate to a consistent set of team rules and not subject to disparate treatment based on the whims, biases, or selfish motives of the more powerful among us.

Under a rule of law, we lawyers use commonly held beliefs and principles to justify the creation of power and to move the powerful to new perspectives.

As advocates, we give voice to those who are different or think differently. We mend tears in our social fabric and lower swords by reframing and proposing paths forward that align with the values, constitution, laws, and agreements that we hold in common. In doing so, we create new acceptable norms, new accommodations, and a new trust derived from our shared beliefs.

As transactional lawyers, we similarly use the parties’ shared past, shared goals, and shared vision to create new agreements and common foundations from which the parties can trust each other to take future risks together.

As mediators, arbitrators, and judges, we help parties see past labels, step beyond their entrenched battle lines, and view themselves as part of a common heritage and system of rules and conventions that can be balanced in an agreed or more agreeable manner from this day forward.

We lawyers are fundamentally agreement makers. On the litigation side, we agree with our opponents and settle or get plea bargains in 98% of the cases filed and even in the 2% we try, we seek agreements with the judge or jury. On the transactional and regulatory side, we openly seek agreements to smoothly plan for future risks and benefits.

Agreements require mutual trust. Every new idea, new plan, and new challenge starts with one person. It never grows beyond that one person unless trusted by another. Small group ideas never become majority ideas unless trusted by the larger majority. In each step, the mutual trust grows from the parties' common foundations. In his book, "The Rules of Influence: Winning When You're in the Minority," Professor William D. Crano describes this common foundation in terms of belonging to the same social, legal, or moral cultural stream and erasing our "otherness." "For the minority to influence the majority, it must persuade the majority that 'we're all in this together, we are part of the larger group.' This is the first and most critical rule of minority influence." We cannot change hearts and minds – and build bridges between people – if we are "others."

Our strength as lawyers lies in our training to see more than one perspective. We reframe. We re-define. We reclassify. We reexamine assumptions to create new combinations and perspectives that includes all of us in a future derived from what we have in common.

For us, diversity and inclusion are at the heart of what we do and what our fellow citizens expect of us. We recognize that a single unified perspective is not the goal of a democratic society. Our strength and our growth as a society lies in our perpetual differences and conflicts. New ideas. New levels of respect. New balances of power. New appreciations of difference and commonality. In a healthy democratic republic, conflict is essential. But like the symbiotic concepts of diversity and inclusion, the conflict will be counter-productive to the collective interests of the group unless it is tethered to the common principles and foundational beliefs of the group.

Our fellow citizens expect us to see beyond labels.

The rule of law is the antithesis of a rule of power that changes the rules according to how the powerful among us arbitrarily label certain members of the group. Under the rule of law, we believe no one tribe within our society has a monopoly on defining justice. The rule of law assumes we are all part of the same tribe and that the same rules should apply to all of us in equal measure.

Peace, safety, and the rule of law are neither absolute nor permanent. Each is a relative feeling of trust. It is a feeling of whether we view each other as being on the same team, responsible to each other, and willing to be vulnerable to each other. Warriors can pave the way to peace, safety, and the rule of law but their unchecked conquering power is the direct opposite of a safe, peaceful, and rule of law democracy.

We feel at peace when we do not think we need to arm ourselves and physically protect ourselves from our neighbors and designated "enemies."

We feel safe when we do not think we must test every carton of milk before we drink it and can trust the farmers, the milk producers, the wholesalers, the local markets, and local proprietors who provide that milk to us for purchase.

We feel protected by the rule of law when we can see and understand the rules, can speak and be heard, and can feel respected and treated the same by the people enforcing the law on the street, by the courts, and by the legislative and executive bodies creating the laws.

It is a feeling, not an immutable fact or number. It is a feeling of power and control and not a feeling of fear. It is a feeling in the present and not in the past. It is feeling that is relative, changeable, and dependent upon the circumstances of the moment.

It is a feeling that can change over time. In different wars, Britain, Japan, Germany, and Italy were once our mortal enemies and now are our trusted friends. China and Russia were once our allies and trusted comrades in arms and are now our suspect enemies.

During World War II, Japanese were so distrusted that they had to be removed from the West Coast and held in prison camps in inland United States. Now they are U.S. Senators and leaders in our government and respected trading partners.

The difference in each instance is trust. When we believe we are on the same team, with common goals, we can trust each other in ways that enemies

never can. How we characterize and view each other profoundly changes our feelings of trust.

When President Abraham Lincoln faced a divided country he devoted both of his inaugural addresses to reinforcing and underscoring what both sides had in common. In his first inaugural address, he appealed to the notion that we can disagree and still be friends:

“I am loathe to close. We are not enemies, but friends. We must not be enemies. Though passion may have strained it must not break our bonds of affection. The mystic chords of memory, stretching from every battlefield and patriot grave to every living heart and hearthstone all over this broad land, will yet swell the chorus of the Union, when again touched, as surely they will be, by the better angels of our nature.”

In his second inaugural address he reiterated a compassion for all sides and their common task of rebuilding lives, again, as members of the same team with common goals and aspirations:

“With malice toward none, with charity for all, with firmness in the right as God give us to see the right, let us strive on to finish the work we are in, to bind up the nation’s wounds, to care for him who shall have borne the battle and for his widow and his orphan, to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations.”

So what should we measure and why?

Diversity and inclusion is about trust. The more curious we are about those with whom we disagree, the less we view them as “enemies” and “others” with whom we can never associate. The more empathetic we are, the more we can appreciate the perspective of others and their overarching common humanity despite our simple labels and categorizations of different sub-tribes within our group. The more we realize that nothing remains the same and everything evolves from the day we are born to the day we die, the more we can give space to change and appreciate that each of us cannot remain immutably unchanged. The more we listen (and not tell), the more vulnerable we are to hearing what we might not want to hear. But it is through this exchange that we build the trust and empathy we need to embrace each other as members of the same team.

This is scary. No one wants to be vulnerable to losing our identity, our tribe, our beliefs, our biases. No



As scary as it may be, someone must begin the process of listening without judgment and risking the possibility that our perspective may change.

one wants to believe they could be wrong or wants to hear others telling them they are wrong. Everyone wants to believe there are islands of beliefs and principles they can anchor themselves to that cannot change in a sea of constant change. Still, our willingness to trust and be vulnerable is the real test and measure of the diversity and inclusion. We cannot trust and cannot build trust unless we have the courage to be vulnerable and to extend our empathy and compassion to those beyond the walls of our own tribe, with no guarantee of any positive return. Reinforcing those walls and protecting ourselves against vulnerability and disappointment will never build trust. To tear down those walls, we must acknowledge their existence and boldly and curiously step beyond those protective walls to embrace “enemies” and “others” as part of one team – our team. In doing so, we give others the opportunity to reciprocate with courage and kindness. We cannot dictate to others to do what we are unwilling to do ourselves. As scary as it may be, someone must begin the process of listening without judgment and risking the possibility that our perspective may change. The comfortable feeling of peace, safety, and the rule of law cannot exist without allowing enemies to become friends.

To the extent we can openly disagree and still be friends that is the true measure of diversity and inclusion. It is about trust. It is about being on the same team. And it is about seeing beyond labels and appreciating what we have in common. As Abraham Lincoln once said: “The best way to destroy an enemy is to make him a friend.” ■

# Is ROI the Appropriate Measure for D&I?

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Sandra Yamate

Is ROI – return on investment – the appropriate measure for D&I? For those who come from a corporate business practice setting or a large law firm, usually the initial inclination is to say, “Yes, of course it is!” But as one considers the question, equally obvious is that if the return on investment is indeed the appropriate measure, then why haven’t we, as a profession, made greater, faster, more meaningful progress? Perhaps it’s because we’re improperly applying ROI as a measure for D&I.

If we apply return on investment as a measure, the usual way this is done is to weigh – or gamble – financial support for a diversity and inclusion program or activity, against some immediate (or soon to be realized) return: new or more business from a client, improved morale that results in better employee retention, noticeably improved professional development in lawyers, etc. None of those things are undesirable. But if that’s the best we might hope to see come from diversity and inclusion efforts, is it any wonder that we remain one of the least diverse professions in America.

I submit that ROI is the appropriate measure of D&I but that it is the proper way to *apply* ROI to D&I that has been missing.

Measuring the return on investment of diversity and inclusion efforts needs to be about diversity and inclusion, as opposed to other goals or objectives masquerading as diversity and inclusion. In order for return on investment to be the appropriate measure for our diversity and inclusion efforts, we need to align our notions of what constitute “returns” with the purpose for the investment: a more diverse and inclusive legal profession. When we apply return on investment as the means of measuring diversity and inclusion, we ought to be assessing the diversity and inclusion outcomes. Return on investment needs to be employed to measure diversity and inclusion *impact*.

For example, if an organization is trying to decide whether to sponsor a table at a diversity and inclusion event, the return on investment should not be viewed in terms of whether the company gets visibility for its presence or the law firm gets new business. Nor should it be viewed in terms of which or how many corporate in-house counsel the law firm lawyers meet or how many shout-outs a corporation receives. Rather, consider how the funds are being used and the impact of the sponsorship. If the organization hosting the event is, in turn, using the funds raised to contribute to making meaningful advancements in the diversity and inclusion of the profession or broader society, then the return on investment of supporting that event may have tremendous impact. But, if not, if there is no identifiable return for the profession or society, then it might be time to rethink the extent to which there is truly any return on investment.

This results in a profound shift in the way we – both as a profession and as corporate or law firm funders – think about and evaluate the return on investment of diversity and inclusion efforts. It shifts the burden of proof to the purveyors of diversity and inclusion efforts and, while that might seem additionally burdensome, it’s not unfair.

Indeed, it might spur better outcomes if we started assessing the return on investment of diversity efforts. Efforts that are good but primarily intuitive might need to elevate their game and find some way of measuring their impact. Programs that have remained essentially unchanged without showing results, might be ready for retirement.

The difficulty in this approach is that not all diversity and inclusion programs lend themselves to easy measurement of their impact. For example, consider the legal profession’s many diversity pipeline programs. I am firmly committed to finding ways to support pipeline programs, but I acknowledge



that measuring their impact, their return on investment, is currently unavailable. Even if a pipeline program can show that the number of students it reaches grows each year, and the students in the program find it beneficial and enjoyable, as a profession we have yet to measure how many of those students find their way into law school and a career as a lawyer. This is not to point blame at anyone or to criticize pipeline programs. But their return on investment as a diversity and inclusion strategy for the legal profession may be too remote. That doesn't make them bad or unworthy of our funding and support. Pipeline programs ought to be supported because they are an important means of introducing young people to law as a future profession and inspiring them to consider pursuing it as a career. But perhaps we ought to be supporting and acknowledging them as a social good and not necessarily as a diversity and inclusion tool to increase the pool of diverse talent entering the legal profession. That way, such programs would not be penalized for failing to produce a return for funders that these programs were never designed to offer.

It's regrettable that funding for diversity and inclusion and many other worthy and worthwhile causes is not unlimited. Corporations and law firms need to find ways to increase overall funding to support their corporate social responsibility to the betterment of their communities and our profession. But in the interim, so long as we value a more diverse and inclusive legal profession, we have an obligation to manage the resources currently available so that they are able to have the most impact possible in achieving that goal. We need to stop applying a "return" on that investment of limited resources that has little or nothing to do with impact or progress and more to do with meeting other goals and objectives in the name of diversity. That creates a false idea of the return on investment from diversity and inclusion.

Is return on investment the appropriate measure of diversity and inclusion? Yes. But the return on investment in diversity and inclusion should not be measured by the returns better suited for measuring business development, marketing, reputation, and the like. The real return on investment of diversity and inclusion will ultimately be a more diverse and inclusive profession; anything that doesn't lead to that shouldn't be considered diversity and inclusion for the legal profession. ■



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# About the Authors

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## **Alan Dorantes, Assistant Vice President, Senior Legal Counsel, AT&T**

Alan Dorantes is an Assistant Vice President, Senior Legal Counsel of Human Resources at AT&T. In this role, Alan supports AT&T's Chief Diversity Office and the corporate diversity and inclusion team. He also is a co-chair of the AT&T Legal Department's Diversity and Inclusion committee and has served as a board member of the committee since its founding. Alan also is a member of AT&T's Workplace Diversity and Inclusion Business Council. In these roles, he goes above and beyond his everyday duties to foster diversity within the legal profession.

Throughout his 16-year career with AT&T, Alan has advised clients within several areas of the company, including Government, Education and Healthcare Solutions, Retail Sales Operations, Network Engineering, Corporate Real Estate and Human Resources.

Outside AT&T, Alan champions diversity as a member of the board of the Dallas Hispanic Law Foundation. He has helped organize and raise funds for the annual Amanecer, which funds scholarships for Hispanic law school students. He actively recruits attorneys with fundraising and advocacy skills to join the organization, activities to help stabilize and increase the pipeline for Hispanic attorneys to join the legal profession.

Alan also promotes legal diversity and inclusion programs nationally through organizations such as the Institute for Inclusion in the Legal Profession (IILP) where he sits on its Advisory Board and has helped bring IILP's annual legal symposium to AT&T in Dallas and Los Angeles. He also serves on the Executive Board of the SMU Dedman School of Law, where law school diversity remains a key issue and objective. Alan received his undergraduate and law degree from SMU. Alan is active with the Anti-Defamation League serving as a co-chair for the annual 2019 Larry Schoenbrun Jurisprudence Award Luncheon. Alan also serves on the board of The Arts Community Alliance (TACA), a Dallas-based non-profit providing financial resources to Dallas' many arts organizations. In November, Alan will receive the Texas General Counsel Forum's Magna Stella Award for Diversity.



### **David L. Douglass, Partner, Sheppard, Mullin, Richter & Hampton LLP**

Mr. David Douglass is a partner in the Government Contracts, Investigations & International Trade Practice Group in the firm's Washington, D.C. office.

David is an experienced trial attorney who has won trials as a prosecutor, plaintiff, and defense counsel. David has represented numerous companies and individuals in criminal and civil, investigations and litigation. A large portions of David's practice consists of representing health care companies, government contractors, and individuals in criminal and civil fraud investigations and litigation including False Claims Act litigation.

David is a Fellow of the American College of Trial Lawyers. The College is composed of the best of the trial bar from the United States and Canada. Fellowship is extended by invitation only and only after careful investigation to those experienced trial lawyers who have mastered the art of advocacy and whose professional careers have been marked by the highest standards of ethical conduct, professionalism, civility and collegiality. Membership in the College cannot exceed one percent of the total lawyer population of any state or province.

A distinguishing feature of David's practice has been working on behalf of the government, as well as private companies. In 2013, David was appointed by the U.S. District Court for the Eastern District of Louisiana as the deputy federal monitor over the New Orleans Police Department responsible for reviewing, assessing, and reporting publicly on the NOPD's compliance with a far reaching Consent Decree. David has also led two high-profile government investigations. In 1994, he served as executive director of the White House Security Review, which resulted in the closing of Pennsylvania Avenue in front of the White House. In 1993 he served as assistant director of the Treasury Department's investigation of the raid on the David Koresh compound in Waco, Texas. David served as a Department of Justice Trial Attorney in the Civil Rights Division, Criminal Section. Prior to that he served as an Assistant United States Attorney for the District of Massachusetts.

David received his J.D. *cum laude* from Harvard Law School and his B.A. from Yale College.



### **Hamza Jaka, Law Clerk, Gardiner, Koch, Weisberg and Wrona**

Hamza Jaka is a licensed Illinois attorney who currently works as a law clerk for the Lake Geneva, Wisconsin office of Gardiner, Koch, Weisberg and Wrona. Hamza identifies as a Desi, specifically as an American Muslim of Pakistani descent. Hamza is also disabled and uses a wheelchair to ensure his mobility. He went to UC-Berkeley for undergrad and law school, but has traveled the country and the world to promote social justice, particularly in the area of disability rights, but he has also worked on racial and disability issues. He has significant experience advising on the area of disability inclusion, having done so with several non-profits. Hamza is an experienced advocate and activist on local, state, national and international levels, his work has been honored by Barack Obama. As a lawyer, Hamza hopes to promote justice, particularly through civil rights enforcement and policy work, promote inclusion in the legal profession, and support artists of color (thanks to some stirring intellectual property classes). In law school, Hamza worked to ensure disability inclusion, and supported greater legal education opportunities for multiply marginalized individuals of color as a Phoenix Fellow, and as a member of Berkeley Law's Coalition for Diversity. Outside of legal and advocacy work, Hamza enjoys Spider-Man comics, videogaming and spending time with his family.



### **Sidney Kanazawa, Mediator, Alternative Resolutions Centers**

Sid Kanazawa is a mediator, arbitrator, trial lawyer, and bridge builder bringing people together even when it seems impossible. For over 40 years, he represented plaintiffs and defendants, locally, nationally, and internationally, in jury and non-jury trials, arbitrations, administrative proceedings, crises, mediations, and negotiations.

Sid takes parties from anger and distrust to curiosity and hope. In the largest oil spill in the Port of Los Angeles, Sid quelled an angry mob and settled 600 claims within two weeks of the spill and all 2,000+ within three months. For plaintiffs and defendants, he resolved multi-million matters over lunch and wrote about it in a 2004 article entitled, “Apologies and Lunch” which has been republished multiple times. Recently, he has engaged parents negotiating their parenting time at the Edelman Children’s Court and has converted their long-standing hate, anger, and distrust into solid agreements in nearly 100% of the mediations he has handled.



### **Barrington Lopez**

Barrington Lopez was formerly Vice President and General Counsel of the 16-state Midwest Area for Verizon Wireless. He is currently engaged in a pre-launch augmented reality start-up.

In his prior role at Verizon, Barrington was responsible for technology related commercial transactions in addition to state regulatory and enforcement agency investigations, cell tower and retail real estate transactions, commercial litigation, state government contracts, and local distribution and marketing matters. In addition to his legal department functions, Barrington led the crises management team for the Midwest area supporting operational responsiveness to large scale crises matters impacting customers, employees and state emergency management teams.

Barrington was past chair of the diversity advisory group of Verizon’s legal department and an active participant in the company’s pro bono efforts.

He continues to both advise executives in various industries and mentor students and recent graduates.



### **John H. Mathias, Jr., Partner, Jenner & Block**

John H. Mathias, Jr. is a senior litigation partner and veteran trial lawyer whose practice focuses upon complex commercial disputes with particular emphasis upon contract litigation, insurance coverage, international arbitration, class actions, unfair competition, securities, and intellectual property. Clients seek his advice and representation in difficult matters requiring sophisticated strategy, execution and advocacy. He has just completed a three year residency in the London office of Jenner & Block London LLP, which he opened for the firm in 2015, and has returned to its Chicago office.

Since 2004, Chambers & Partners USA has annually named Mr. Mathias one of the leading U.S. lawyers in Insurance Law. In 2013, Chambers USA gave its prestigious “Award for Excellence in Insurance (Policyholder)” to the firm’s Insurance Litigation and Counseling Practice, which Mr. Mathias chairs, recognizing it as the nation’s best

policyholder-side practice. Shortly thereafter, the National Law Journal named his group the “Chicago Litigation Department of Year: Insurance.” Benchmark Litigation has named Mr. Mathias a U.S. Insurance Litigation Star. He has co-authored more than 20 legal publications, including *Insurance Coverage Disputes* (Law Journal Press) and *Directors and Officers Liability: Prevention, Insurance and Indemnification* (Law Journal Press), two of the leading treatises in the insurance field.

In addition to his longtime participation in the International Bar Association and its Insurance Committee, Mr. Mathias has been an active member of the American Bar Association and its Section of Litigation for many years, formerly serving on its leadership Council and co-chairing various Section committees, including the Insurance Coverage Litigation Committee. He currently serves as Co-Chair of its International Litigation Committee. He is also a past Chair of the ABA’s Death Penalty Representation Project Steering Committee. He has successfully represented five clients in death penalty cases on a pro bono basis.



### **Lorraine McGowen, Partner, Orrick, Herrington & Sutcliffe**

Lorraine McGowen is a restructuring partner at Orrick, a global law firm serving the financial, energy & infrastructure, and tech sectors. She counsels financial institutions, lender groups and creditor committees in the U.S., Europe, Asia and Africa to find the best possible path to recover or grow her clients’ investments.

She is a member of Orrick’s Management Committee, co-leads Orrick’s Automotive Technology & Mobility Group, and recently completed two terms on the firm’s Board of Directors.

As co-lead of Orrick’s global Diversity & Inclusion initiatives, McGowen continues to be an advocate, believing diverse teams are more creative, collaborative and successful.

McGowen has been recognized as an MCCA Rainmaker and as one of the Most Influential Black Lawyers by Savoy Magazine for 2018 and 2015, and Most Influential Women in Corporate America, 2019, and by the National Bar Association, Minority Partner in Majority Firms Division, Lawyer of the Year, 2019, and Legal Outreach’s Pipeline to Diversity 2017 Champion.

McGowen received her B.S.F.S. from Georgetown University, and her J.D. from Columbia University School of Law.



### **Emily D. Murray, Chief Marketing Officer and Director of Intellectual Property, Winterfeldt IP Group**

Emily D. Murray serves as Chief Marketing Officer and Director of Intellectual Property for Winterfeldt IP Group. She has nearly 20 years of experience in supporting legal practices, primarily working in the intellectual property arena for large global law firms prior to the founding of Winterfeldt IP Group in 2017.

Emily provides non-legal business advice to clients in the brand protection, Internet and policy arenas. She serves as an advisor on client communications, ensuring they offer guidance that is both thoughtful and business-minded and that can be implemented easily by clients' in-house teams. Emily has extensive knowledge of ICANN's new generic top-level domain (gTLD) program, and also tracks Internet policy issues relevant to brand owners, such as those relating to rights protection mechanisms.

Emily also directs Winterfeldt IP Group's marketing and business development activities. Her responsibilities include preparing client development materials, coordinating participation in RFPs and other business development opportunities, and managing the firm's brand presence. She facilitates opportunities for team members to participate in industry activities such as professional association memberships, and organizes internal client advisories and webinars as well as external publications and speaking engagements. Emily also develops and executes client relations events, such as mini-conferences and receptions. In addition, Emily ensures Winterfeldt IP Group's resources are allocated to allow robust support for pro bono clients as well as participation in diversity and inclusion and other CSR activities, in keeping with the firm's core values.

Emily holds a BA in English from the University of Maryland Baltimore County and an MBA from University of Maryland University College.



### **Melanie Rowen, Associate Director for Public Interest and Public Sector Programs, Career Development Office, U.C. Berkeley School of Law**

Melanie Rowen is the Associate Director for Public Interest and Public Sector Programs in the Career Development Office at U.C. Berkeley School of Law, where she works with students pursuing careers in non-profits, government, and mission-driven law practices. Melanie previously practiced for several years in civil rights impact litigation and public policy advocacy at the National Center for Lesbian Rights (NCLR). Melanie received her J.D. from the University of Chicago in 2004, and was a litigation associate at Latham & Watkins LLP before transitioning to civil rights practice. Through the National Association for Law Placement (NALP) and independently, Melanie frequently presents trainings to law school and legal employer audiences on topics related to equity and inclusion, particularly around gender, sexual orientation and disability. She is also a mediator, and trains lawyers and non-lawyers on difficult conversations and conflict resolution skills with the Center for Understanding in Conflict.



### **Marci Rubin, Board Member & Officer, California ChangeLawyers**

Marci Rubin is a prior corporate attorney and a prior non-profit executive director, with a life-long commitment to social justice, diversity & inclusion. She brings a strategic view to everything in which she is involved. Marci connects the dots & then the people. She's passionate about developing young professionals to be strong leaders, and learning all she can from our young leaders.



### **Macey Russell, Partner, Choate Hall & Stewart LLP**

Macey Russell is a partner in Choate's Litigation Department where he practices in the area of complex commercial litigation. Appointed by the Governor from 2011 until 2014, Macey Russell served as the Chair of the 21 member Judicial Nominating Commission which recommended judicial appointments at all levels throughout the Commonwealth. He served as Vice Chairman in 2010 and as a member from 2007 until 2010. In 2009, Litigation Counsel of America named Mr. Russell to its Trial Lawyer Honorary Society composed of less than one-half of one percent of American lawyers. In 2016, American Registry listed him among America's Top 1% of all Professionals and he received AV Preeminent ratings from both Martindale-Hubbe and the Judiciary. In 2017, Mr. Russell was elected as a Fellow in the College of Law Practice Management, an honorary organization made up of individuals who have made significant and sustained contributions to the field of law practice management over a period of years. In 2011, the American Bar Foundation named him a Fellow, which is reserved for one third of one percent of attorneys in his jurisdiction. Since 1989, Mr. Russell has been a frequent advisor and contributor to Harvard University Law School's Trial Advocacy Workshop. Mr. Russell is listed in Best Lawyers in America.

Mr. Russell is a nationally recognized authority and lecturer on diversity and inclusion in the legal profession. In 2009, Massachusetts Lawyers Weekly named him a "Diversity Hero." In 2011, the Boston Bar Association appointed Mr. Russell as Co-Chair of its Diversity and Inclusion Committee. The Burton Foundation and Library of Congress honored him with a 2011 Burton Award for excellence in legal writing for his co-authored article "Developing Great Minority Lawyers for the Next Generation." In 2017, Mr. Russell was honored for his volunteer leadership of the Next Level youth football program at the 10th Annual Gala to Support Boys & Girls Club of Brockton. In 2018, Get Konnected together with The Boston Foundation and Greater Boston Chamber of Commerce named him one of Boston's 100 Most Influential People of Color. Also in 2018, the Boston Bar Association honored Mr. Russell with the "Voice of Change" award.



### **Brian J. Winterfeldt, Founder and Principal of Winterfeldt IP Group**

Brian J. Winterfeldt, the Founder and Principal of Winterfeldt IP Group, has practiced trademark and Internet law for nearly two decades. Brian advises clients on the creation of global trademark and branding strategies. He also develops programs to register and enforce clients' intellectual property rights and protect against infringement of their trademarks and other branding elements in the US and internationally, including domestic and international trademark counseling, clearance, prosecution and enforcement. In addition, Brian advises clients on trade dress, copyright, privacy, Internet governance and domain name issues, including domain name disputes. Brian also regularly counsels clients and provides training on cutting edge Internet issues such as social media platforms, including developing and administering social media policies and promoting and protecting clients' brands in this ever-evolving space. He supports clients by managing takedowns of infringing profiles and content, while advising on proactive uses of social media that can strengthen online brand presence. He regularly counsels global leaders across a broad variety of industries, such as apparel and footwear, entertainment and media, financial services, Internet and technology, pharma, retail, and more.

As a prominent voice in the IP arena, Brian has written numerous articles on trademark law and is a frequent speaker at industry events on topics such as trademark law, Internet governance and social media. In addition to his IP practice, Brian is a leading advocate for diversity and inclusion in the legal industry. His support of the diversity community includes pro bono services for organizations focused on the LGBTQ+ community, women's issues and persons with disabilities, and he has both organized and hosted diversity-related panels and participated as a speaker in clients' diversity events.

Brian earned his BA from Emory University, his MA from Tulane University, and his JD from Georgetown University Law Center.



### **Sandra S. Yamate, Chief Executive Officer, Institute for Inclusion in the Legal Profession**

Sandra S. Yamate is the Chief Executive Officer of the Institute for Inclusion in the Legal Profession ("IILP"). IILP is a 501(c)3 organization dedicated to creating a more diverse and inclusive legal profession through its research and programs. Sandra is IILP's subject-matter expert on diversity and inclusion and is responsible for all of its research and programming.

After practicing law for ten years, Sandra served as the Executive Director of the Chicago Committee on Minorities in Large Law Firms and as the Director of the American Bar Association's Commission on Racial and Ethnic Diversity in the Profession.

Sandra has long been active in a variety of charitable causes. Currently, she serves as the Chair of the National Judicial College and is a member of the board of directors of the National Association of Women Lawyers.

Sandra earned her JD from Harvard Law School and an AB in Political Science (cum laude) and History (magna cum laude) from the University of Illinois at Urbana-Champaign where she was elected to Phi Beta Kappa. Sandra has written and spoken extensively on community engagement, diversity and inclusion, cultural competency, and multicultural issues.

Sandra and her husband, Brian Witkowski, reside in Chicago with their two dogs, Cashew and Filbert.





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