

Law Firms' Continued Lack of Diversity: Scholars Provide Insight on Reasons and Solutions

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Summary: Law firms are striving to be more diverse but are facing challenges along the way. This article explains why these challenges happen and how law firms can overcome them.

Modern law firms aspire to diversity. Whether large or small, most firms have stated policies as well as genuine intentions to maintain a diverse workforce and to hire and advance people based on merit and without discriminating against anyone based on a diversity factor.

These intentions come from a moral and ethical imperative to do the right thing, but they also come from economic self-interest. Law firms understand that society is becoming ever-more diverse and that the talent they need to prosper and beat the competition is not defined by race, gender, religion, sexual orientation, cultural variations, or any other "diverse" factor. Instead, it is defined by the capacity of the attorney to do the job in the most effective way possible and to meet the client's objectives (which--interestingly--in some cases means ensuring a diverse team of lawyers staffs the client's matters).

Scholarship on Lack of Diversity

Individual law firms, law firm attorneys, law firm committees, and organizations like the ABA are tackling the issue of law firm diversity. But academics are too. As discussed below, legal scholars and scholars in other social science disciplines are conducting research into the problem and providing suggestions to help law firms become more diverse institutions.

A common thread that runs throughout much of the research involves the importance of "social capital" to an attorney's career and the need for law firms to eliminate implicit bias concerns that impede the ability of minority lawyers to access and benefit from social capital.

See [Top 14 Ways Law Firms Can Recruit and Retain Minority Attorneys](#) for more information.

Diversity Statistics

Despite good intentions, lack of diversity continues to plague the legal profession. According to the American Bar Association's National Lawyer Population Survey 10-Year Trend in Lawyer Demographics, in 2017, 68.7% of attorneys are male, 35.3% are female, 4.1% are African-American, and 3.9% are Hispanic. These percentages represent only slight divergences from the status quo ten years ago, when 69.9% of attorneys were male, 30.1% were female, 3.2% were African-American, and 3.1% were Hispanic.

Another ABA publication, [A Current Glance at Women in the Law](#), published in 2017 by the Commission on Women in the Profession, gives further details on the disparate circumstances experienced by female attorneys. The guide reveals that less than a quarter of Fortune 500 general counsels are women and about a third of federal district court judgeships are held by women. Additionally, female attorneys earn a weekly salary that is less than 90% of the salary earned by male attorneys and female equity partners in the largest firms earn 80% of that earned by male counterparts.

Lack of diversity in law firms extends beyond gender. According to the National Association for Law Placement's 2016 Report on Diversity in U.S. Law Firms, minority female lawyers accounted for only 2.76% of law firm partners, and minority lawyers generally accounted for only 8.05% of partners. In 2016, there were only 2.31% Hispanic partners, 0.68% Hispanic female partners, 4.42% Hispanic associates, and 2.15%

Hispanic female associates.

Disabled and LGBT attorneys had low numbers as well. [Lawyers with disabilities](#) accounted for only 0.38% of all lawyers and attorneys identifying as being openly LGBT accounted for only 2.48% of all lawyers.

Importance of Social Networks to Diversity Efforts

A 2016 study by academics from Stanford, Georgetown, and the University of Washington found that the modern trend towards lateral hiring in law firms can work to the disadvantage of minority attorneys, who often have less access to the social networks needed for successful job searches. The study, [Career Mobility and Racial Diversity in Law Firms](#), looked at more than 1,400 attorneys who lost their jobs in the 2008-09 recession after working for one of six failed law firms (Dreier, Heller Ehrman, Morgan & Finnegan, Thacher Proffitt Wood, Thelen, and WolfBlock).

The study found that African-American attorneys were 9% less likely to find another job (and African-American associates 16% less likely), and concluded that firms "interested in increasing legal diversity might want to invest in developing strong work relationships for black associates." The authors explained their findings as follows:

Our empirical analyses produce three key findings that are consistent with a race-based mobility advantage in legal careers. First, following the dissolution of their employer, black lawyers were less likely to regain employment than white lawyers or lawyers who are neither white nor black. Second, white partners were most likely to regain employment and black associates were least likely to regain employment. Third, white lawyers were more likely to regain employment in the largest, highest-grossing, and [most prestigious US law firms](#) than lawyers of other races and blacks were less likely to do so than lawyers of all other races. White lawyers appear to have better prospects for inter-organizational mobility than lawyers of other races and black lawyers seem to have the worst mobility prospects.

The study indicates that firms can help increase diversity by providing better internal support systems that help minority lawyers build social capital within firms. Such systems may include mentoring relationships, but they also should include means by which minority attorneys can form bonds with coworkers. Strong coworker relationships provide career support as well as job search advantages in the form of coworker recommendations.

Another study, [A Portrait of Asian Americans in the Law](#), spearheaded by California Supreme Court Justice Goodwin Liu and [Yale Law School](#) students, reached a similar conclusion in connection with Asian American lawyers. Though the study found that in recent decades Asian Americans were the largest minority group in major law firms, it also found that Asian Americans had the highest attrition rates and that lack of access to mentors and networking contacts (especially for Asian American women) was a primary barrier for advancement.

The Role of Implicit Bias and Difference Blindness in Impeding Diversity Goals

Other scholars who have studied lack of [diversity in law firms](#) suggest that excessive emphasis on "difference blindness" is a big part of the problem. They recommend that law firms replace difference blindness standards for hiring and advancement with a "bias awareness" approach. In the 2015 Fordham Law Review article, [Difference Blindness vs. Bias Awareness: Why Law Firms with the Best of Intentions Have Failed to Create Diverse Partnerships](#), the authors explain that:

[A] significant barrier to systemic diversity at the law firm partnership level has been, paradoxically, the insistence on difference blindness standards that seek to evaluate each

person on their individual merit. While powerful in dismantling intentional discrimination, these standards rely on an assumption that lawyers are, and have the power to act as, atomistic individuals--a dangerous assumption that has been disproven consistently by the literature establishing the continuing and powerful influence of implicit and institutional bias. Accordingly, difference blindness, which holds all lawyers accountable to seemingly neutral standards, disproportionately disadvantages diverse populations and normalizes the dominance of certain actors--here, white men--by creating the illusion that success or failure depends upon individual rather than structural constraints. [In contrast, we argue that a bias awareness approach that encourages identity awareness and a relational framework is a more promising way to promote equality, equity, and inclusion.](#)

Law firm institutional systems of advancement that rely on difference blindness, the authors argue, are based on the assumption that a person will make it into the firm's upper echelons based solely on that person's individual actions. But that assumption is misguided, as in reality--and as encapsulated in a bias awareness approach--advancement of an individual within a law firm is not the product of that individual alone, but of relational factors, as well.

Firms that ignore "implicit bias and presumptions" and adhere to strict difference blindness can unwittingly encourage lack of diversity and discourage equality and inclusion. When people such as a dominant class of white, male, heterosexual law firm decision-makers ignore the way implicit bias impacts decisions, they will often naturally tend towards homophily (the phenomenon of people feeling most comfortable with people who are most like them). This means that white, male, heterosexual attorneys will tend to mentor and facilitate other white, male, heterosexual attorneys and--consciously or not--a cycle of impeded diversity will result.

Law firms that want to move away from such a cycle and try something new can opt for a bias awareness system. One way to begin implementing a bias awareness system is by instituting training programs about how to avoid implicit bias in work collaborations, mentoring relationships, and evaluations. Another way is by training all attorneys about how to build social capital and develop business. Moreover, firms can develop "additional assessment tools alongside [the billable hour](#) that can more accurately measure the input and output of BigLaw lawyers, such as the quality and timeliness of work product, responsiveness, effective communications with law firm's team members and the client, and client satisfaction."

The problem of implicit bias also is the subject of another recent law review article, [Implicit Bias and The Legal Profession's "Diversity Crisis": A Call for Self-Reflection](#), recently published in the Nevada Law Journal. The author makes suggestions about how law firms can mitigate the pernicious role implicit bias plays in [law firm culture](#), including by having key players in the firm assume responsibility for instituting systems to avoid implicit bias instead of simply relying on diversity committees to do so. Additionally, attorneys involved in hiring decisions should receive comprehensive training about implicit bias and candidate interviews should be conducted by a diverse panel of attorneys as opposed to a single attorney who may be more susceptible to implicit bias.

For more information about law firm diversity, see our [Diversity Resources](#).
Conclusions

[Achieving diversity within law firms and the legal profession is an admirable and viable goal.](#) The academic scholarship discussed in this article provides insight into why the problem continues to persist despite significant efforts to remedy it.

To move further along towards diversity, firms might consider expanding the ways in which minority or

"diverse" attorneys access, build, and capitalize on social networks. They also might question whether difference blindness is impeding diversity efforts and ascertain whether steps can be taken to meet diversity goals by improving awareness of implicit bias, instituting across-the-board training in networking and business development, and even reworking the way billable hours are calculated.

For more information about diversity, see the following articles:

[Law Firm Diversity: They All Talk the Talk, But It's Harder to Walk the Walk](#)

[Why Upper and Lower Class Attorneys Rarely Succeed in Law Firms: How Race and Class Often Hinder Law Firm Success](#)

Learn more about law firm diversity in this in-depth book:

[Law Firm Diversity: How Race, Gender, Age, Social and Economic Divisions Impact the Hiring, Retention and Advancement of Law Firm Attorneys](#)

See the following articles for more information:

[Steps to Attract and Retain Female Partners](#)

[The Importance of Attracting and Retaining Gay Attorneys](#)