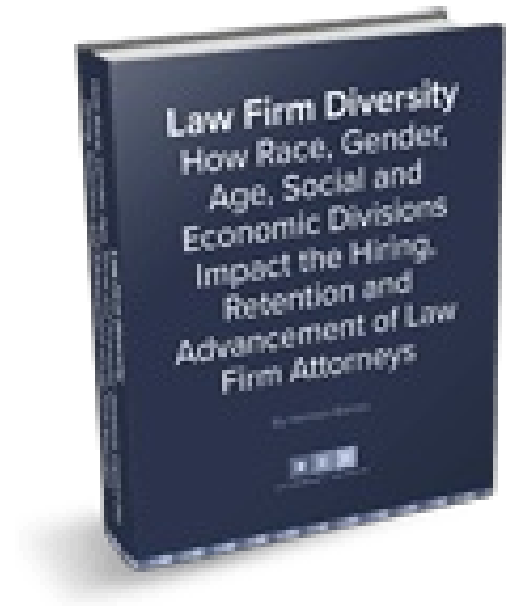


Chapter 5: The Law Firm Business Structure and Diversity

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Why do law firms keep hiring nondiverse people over diverse people, despite their diversity policies and best intentions? One reason may be that law firms have been "burned" in previous diversity efforts when they hired diverse people who turned around and accused them of not being diverse enough or tolerant enough or who continually dredged for problems regarding diversity. There are the self-reinforcing feedback loops, too.

Law firms seek to maintain low profiles and avoid people who seem "too diverse." In addition to fearing they will hire someone who ends up making problems, law firms also worry they will hire someone who is too independent-minded and who cannot be controlled in the way that law firms are accustomed to controlling their workers.[1]

Law firms are thus fine hiring an attorney who is a mother, but not if she expects to be treated differently. Law firms want to hire African Americans and other minorities, as long as they do not make an issue out of their diversity. Diversity is generally sought after and valued, but not when it is "in your face."

Years of enthusiastically representing attorneys of all sorts has led me to become a devil's advocate. Take it from the law firm's perspective: law firms are businesses, and they are driven by the needs and wants of their partners and their partners' clients.[2] This means that to get a job in BigLaw attorneys need to be the sort of lawyer and person that partners and clients want. That is a fact.

So how does an attorney who wants a reduced-hour schedule or time off to raise kids fit into this reality? Not so well--and not because there is anything inherently wrong with raising kids but because this attorney does not fit into the model of a client- and economics-driven law firm that demands loyalty to the firm above all else.[3] Additionally, a law firm cannot control this attorney, cannot call him or her whenever it wants to. It believes the attorney will not be as motivated to work because of family obligations. The firm will simply hire an attorney without this "baggage" because then the law firm can be confident it will not have to deal with control issues. Baggage is anything that makes an attorney too different and not of the "mold" that law firms require.

It does not matter what city the attorney is in. It could be San Francisco, Los Angeles, New York, or Charleston. [Law firms only accept and embrace diversity when it does not come with baggage that impedes their ability](#) to please partners and clients.[\[4\]](#) Law firm business structure has a lot to do with how they go about ensuring they cater to partners and clients.

The Law Firm Business Model

Law firms have always mirrored the companies that employ them. Throughout the 1950s and during the post-World War II period, American business boomed. Law firms were eager to respond to this new business and began growing to accommodate these interests. Before the 1950s, law firms rarely were larger than twenty attorneys. As law firms grew to accommodate major American corporations, significant changes in their organization occurred.[\[5\]](#)

Today, the largest law firms service the largest clients and have the most institutional clients. Because law firms do not have predictable sources of recurring revenue, like their large corporate clients do, they must devote time and effort to securing new or continuing business, and they do that by doing good work that makes clients happy. Except for some very large law firms with longstanding institutional relationships (which provide virtual annuities of money), most law firms are made up of individual partners, each of whom has a book of business.

Modern law firms are groups of attorneys who operate under one roof to service clients. A law firm can be made up of as many businesses as there are partners.[\[6\]](#) In the past, law firms serviced clients who belonged to the law firm, but this changed over the past several decades. Today, most individual partners within a firm hold the clients, and the law firm pays partners a percentage of the business those clients generate.

Partners allocate a portion of a client's work to other partners and associates in the firm and in turn receive a percentage of the revenue from work done for the client, including the work the partner completes as well as the work the partner allocates to others. The law firm, then, has an interest in pleasing these partners and doing what they want.[\[7\]](#)

According to an Aderant study from 2015, the main compensation system used by North American law firms is a subjective system in which partner "compensation is determined based on the subjective decisions made by a person or committee, although inputs to the decision may include statistical information."[\[8\]](#) The law firm provides a brand for partners to operate under, hires associates and staff, and manages the business logistics for partners. In exchange, partners typically turn over anywhere from 50 to 90 percent of the revenue that they bring in, most commonly 70 percent. That money is then split into thirds among the partner who originated the business, the other partners, and the firm for operating expenses.[\[9\]](#)

What this means is that partners generate the business that sustains modern-day law firms. For law firms to survive and flourish in today's business climate, they need to hire associates who please the partners by helping the partners please clients. What this also means is that concerns such as diversity are not paramount to law firms, but satisfying partners who generate business is.[\[10\]](#)

The issue is not that firms or people in firms are uninterested in diversity. Rather, the issue is that firms and people in firms are more interested in the economic bottom line and getting work done. Sometimes that concern dovetails nicely with diversity efforts, and other times it does not. The average client of the average large law firm is not a huge publicly held company like General Electric or Apple but instead is likely to be a closely held, midsize private company. These companies care about results and what their law firm can do for them. They hire the best law firms they can afford because they believe that is the way to ensure the best possible results. If diversity satisfies this type of client, diversity then becomes important to the partners that

service that client and to the firm.

Once a law firm reaches a certain size and starts relying on major institutional clients for work, it can and must take diversity seriously. As discussed previously, diversity is critical to large corporations such as General Motors, General Electric, and Walmart. Clients like this can have a big impact on law firm diversity because they offer large chunks of business and are thus in a position to influence the leaders and agendas of their law firms.

Major corporate clients can require their law firms to be more diverse. Even when they are not required, law firms can strive to reflect the values and norms of their important clients--so if a client is diverse and takes inclusion efforts seriously, then the law firm that services that client will do the same. The law firms that tend to reflect the attitudes and culture of corporate America are the large, household-name firms that rely on large corporations for a great deal of business.

In some of the largest law firms, making partner may require an attorney to bring in a huge multinational client or several smaller clients with a lot of money to spend to prove the attorney's business-generating capability.^[11] The most valuable clients are the ones that throw off tens of millions of dollars a year in business to law firms. Law firms are businesses and think with their pockets; if a client generates tens of millions in business, its law firm will take that client's needs extremely seriously.

What Partners Want

Aside from the limited circumstances in which a law firm's economic interests and cultural values intersect with that of a major client, law firms often face difficulties making diversity a part of their hiring calculus. Because of the way they operate, firms seek a certain type of hire who may or may not be diverse.

To hold on to partners, law firms must recruit attorneys (associates) who are the most highly qualified and with whom partners feel comfortable. These objectives are sometimes compatible with diversity goals, but not always.

Qualifications

An attorney's pedigree is extremely important to partners in law firms. The majority of law firms hire from the best law schools they can, and they hire the best students from those schools. Many law firms have grade cutoffs and base their reputation on the quality of their attorneys' academics (and minds)--which is essentially what they are selling for hundreds of dollars an hour.

When hiring lateral attorneys, law firms look very closely at the firm an attorney comes from and the training the attorney may have received there.^[12] Law firms hire laterally based on the quality of the attorney's experience. They want attorneys who have been trained in the best firms and who show the most potential. The fact that a major law firm hired a candidate in the past is considered an indication that the attorney passed that firm's screening methods and was deemed capable and qualified.

Firms look at the perceived "minds," that is, the intelligence and intellectual capabilities, of prospective hires. These qualifications are important to law firms because they contribute to satisfying partners, who please clients, who generate business. It has always been this way.

The challenge is that when a law firm hires based only on academic qualifications--the prestige of a candidate's law school and the ranking of the student within the graduating class--diversity figures into this calculation in a counterintuitive way.

Affirmative action programs and admissions diversity programs, which are designed to benefit diverse attorneys, sometimes ironically have the opposite effect. This can be the case when an affirmative action program advances a diverse individual through college and law school and into a law firm when that individual does not have the requisite skills (true abilities even though the "qualifications" look good on paper) to succeed without such support, and then fails in the work environment, making partners wary of hiring diverse attorneys in the future. This is also the case when an extremely capable and qualified diverse attorney is perceived as being less than qualified because he or she is diverse and *might* have been the beneficiary of affirmative action; once burned, partners tend to be shy.

I have spoken with several partners about the challenges they face with diversity issues. When a law firm and its partners pitch a potential client, they typically showcase the team they have put together to work on the matter. They like to present a team of attorneys that looks as good as possible on paper. This means the attorneys went to the best law schools, did well there, and received various honors and other accolades (Order of the Coif, Law Review, clerkships, and so forth). When clients are being charged high hourly rates, they expect their attorneys to have these sorts of backgrounds and want nothing but the best.

The partners and diversity coordinators I spoke with expressed concerns about how to integrate diversity into pitch sessions. Because of affirmative action-based programs and admissions diversity policies, at least a few partners said that they trust the qualifications of diverse graduates from only a few law schools, such as Harvard Law School, to be "up to par."^[13] Otherwise, they worried when hiring diverse candidates that the new hires might have earned their way into college and law school based on their diversity, not on their academic merit and abilities:

Every law school ends up with a cohort of black students with LSAT scores significantly lower on average than its nonblack students. The most selective law schools, employing racial preferences, take care to admit something like 5 to 10 percent of black applicants, in an attempt to approximate in their student body the black proportion of the population (which is 12 percent). That means that most black law students at that school come in with significantly lower LSAT scores than nonblack students.^[14]

At least a few people mentioned they believed that for admission to Harvard Law School black applicants must have LSAT scores of 168 and above, which puts them in the 95th percentile for that test.^[15] [The Harvard Law School website states that admissions decisions are based on the Admission Committee's considered judgment, and not standardized test scores alone.](#)^[16] The class of 2020 is listed as comprising 175 students in the 75th percentile of the LSAT, 173 students in the 50th percentile, and 170 students in the 25th percentile (out of the 562 students enrolled, LSAT statistics are provided for 519).^[17] We cannot know whether this hidden admission requirement for black students is true, but a few partners confirmed they hire African Americans only from Harvard Law School because they believe it to be true.

Further conversations turned up the perception that state law schools accepted students who were not academically qualified to attend and who subsequently did not succeed in law firms. This includes schools such as the University of California, Los Angeles, the University of California, Berkeley, the University of Virginia, and the University of Minnesota. The partners I spoke with stated that black attorneys graduating from these schools did not seem to do well in law firms because their work was not of the same caliber as that of black attorneys who graduated from Harvard Law School. (But see the later section "Preconceptions About African American Attorneys" on bias in evaluating the work product of diverse attorneys.) Some partners believed state schools admitted students who were not as intellectually capable as students admitted to better schools.

As a result of this doubt and assumption, several diverse attorneys confided that they felt as if they needed to work harder than white attorneys at their firms because of the "negative perception" that affirmative action cast on them. In many respects, affirmative action may have the unintended impact of marginalizing diverse attorneys because these programs cause firms and clients to perceive diverse attorneys as unqualified for the positions they apply for.

Comfort Level

A partner's comfort level with an associate may or may not coincide with a firm's diversity agenda. The problem with attorneys hiring people they are most comfortable with is that these new hires are often people who are alike and share a background with the hiring attorneys. This perpetuates a certain diversity or lack thereof.

Many older attorneys have been representing clients for forty years or longer. Forty years ago, large law firms were almost the exclusive domain of white Protestant men. As discussed earlier, because of homophily, people tend to hire people who are similar to them. Thus, the white Protestant men tended to hire people like them, advanced people like them, and handed down business to people like them.

Although the makeup of law firms has changed dramatically since the 1970s, it has been slow in changing. The progression is something like the following: in the 1950s and 1960s, only white Protestant males worked in large law firms. Next, these white Protestant males hired other attorneys like them and gave them their business when they retired, continuing a power structure in law firms that is dominated by white Protestant males. Then, this cycle repeated. People hire those like them and with whom they feel most comfortable. White Protestant males thus stay in power in law firms, holding the majority positions, numbers, and business.

If a firm includes more diverse attorneys, it will likely promote more diverse attorneys to partners, who will likely hire more diverse attorneys.

The Three Essential Criteria Firms Use for Hiring Attorneys

Aside from qualifications and comfort level, almost all law firms and individual partners consider three essential criteria in hiring decisions:

1. Can the attorney do the job?
2. Can the attorney be managed?
3. Will the attorney do the job long term?

When law firms hire any attorney--diverse or not--they ask these three questions that get to the core of how law firms operate as businesses in a competitive and profitable manner. One of the best ways law firms can further their diversity goals is by filtering diversity efforts through these three questions.

Similarly, attorney candidates must consider hiring partners to be their customers: to get hired, candidates must give partners what they want, which, mainly, means being able to answer yes to each of these three questions.

Can the Attorney Do the Job?

Law firms ask, "Can this attorney do the job?" as soon as they receive a rsum. Most attorneys can do the job, but there are exceptions.

Law firms typically base hiring decisions on qualifications--the law school attended, grades received, and first jobs attained--which presumably signal an attorney's ability as well as forecast future potential. Yet, hiring decisions based on such qualifications penalize some attorneys because these qualifications do not necessarily represent their ability to do the job or translate into future success.

For example, in a Harvard Law School study of four different graduating classes across four different decades, researchers found that "grades are not predictive of partnership for women or men."^[18] Additionally, a 2010 study by Richard Sander and Jane Yakowitz argues that law school prestige has lost much of its credibility as a predictor of attorney career success.^[19] Instead, characteristics such as commitment, the ability to overcome adversity, the ability to generate business,^[20] and other measures better predict success in the career trajectory of an attorney.

Law firms always take a risk when hiring an attorney at the entry level. The only information they have to go on is the attorney's grades in law school and the attorney's interview ability. To protect against mistakes, law firms offer summer associate programs to test whether people are more likely to swim than sink. Because the ability to do the job is so important, if an attorney has not undergone the summer associate vetting process, a law firm will be reluctant to take a chance on that attorney. This is true even for graduates of major law schools.

Yet, even when firms have an attorney's previous work experience to judge that attorney's ability to do the job, they still perceive they are taking a risk hiring diverse attorneys. Because NALP and other groups use entry-level hires to measure firms' diversity, law firms are under tremendous pressure to hire diverse classes of first-year associates. They compete for diverse candidates, specifically black attorneys. Because of this practice, many diverse attorneys who are laterally moving from their first position are presumed--often wrongly--to have less ability to do the work because they were hired initially to fill diversity spots. This unfortunate perception results in many diverse attorneys having to work harder than others to prove themselves once they get into a law firm.

And the academic qualifications of black attorneys continue to be misperceived when they lateral into new firms. When white attorneys who received less-than-stellar grades in law school lateral from their first major law firm to another firm, most prospective law firms disregard the lackluster grades. The new firm reasons that because the attorney was hired initially by a major law firm, he or she can do the work and get along.

On the other hand, the taint of affirmative action follows black attorneys when they attempt to lateral from their first job to another. It comes down to this: many prospective law firms believe that black candidates were admitted to certain prestigious law schools and were offered their first job at a major law firm because of their diversity, not their ability. This is clearly an unfair and very problematic judgment on the part of hiring firms. But I make this observation because I have seen it in action. Many black attorneys I have worked with have had difficulty transitioning out of their first legal position because their ability to do the job is questioned.

It is important to note that "doing the job" pertains not only to being able to accomplish the work on the basis of intellectual ability but also to growing in the position and becoming part of a team. Each law firm has its own ways of doing things, and an attorney must be able to adapt to the unique culture of the law firm in order to be able to do the job.

Can the Attorney Be Managed?

Law firms want to be sure that any attorney they hire can be managed. Many attorneys are not manageable. In fact, a great many attorneys end up leaving the practice of law in law firms precisely because they cannot be managed.^[21]

"Being manageable" means an attorney follows instructions, works to the best of his or her ability, cares what others think, and tries to his or her best ability to do good work and to continually improve. It also means that an attorney will not try to find fault with the organization or the people in it, that the attorney will not cause trouble for the firm, and that the attorney is willing to submit to the needs of the firm in exchange for employment and the benefits that accrue from that.

Being controllable and manageable apply not only to associate hiring but also to partner hiring. Partners also must be managed by the law firms that hire them. Just like associates, partners must submit to the law firm's control and not make issues. These personality traits are important to law firms, and not every person fits the definition of being manageable.

In general, law firms are conservative institutions. They exist to serve others, and the needs of their employees, including attorneys, are supposed to be subordinated to those of their clients. The majority of attorneys in law firms, including partners and counsel, are expected to work silently in the background and to follow orders while others do the more exciting and glamorous work in the firm.^[22]

Associate attorneys are expected to be tools of the organization. They are to bill hours, follow orders, and not draw unnecessary attention to themselves or the firm.^[23] Law firms want worker bees. In associates, they are not looking for business generators or activists. When law firms hire attorneys, they want to make sure their attorneys will not sue them, will not air firm dirty laundry, will be controllable, and will rely on them and be dependent on them.

It's crucial that attorneys depend on their law firm--for their self-image, income, lifestyle, and more. This is one reason why attorneys from wealthy backgrounds typically do not do well in law firms: they do not see the value of contributing so much hard work when they need not depend on a firm to supply income, status, or lifestyle. To succeed in law firms, attorneys must desire the income and the (presumed) social prestige that comes from being an attorney. In short, the attorney needs to have desires that the law firm can fulfill, which gives the firm leverage for managing that employee.

Certain types of people are notoriously unmanageable. Firms do their best to avoid hiring the campus activist, the person who seems angry all the time, the individual who does not want to fit in, and the candidate who is more concerned with his or her personal needs and desires than those of the firm. Law firms do not want trouble.

The "us against them" mentality of movements and causes scares law firms.^[24] Law firms do not wish to be the battleground where employees fight out issues of social justice. Law firms want to serve their clients and avoid drawing negative attention to themselves in the process. This is why law firms tend to shy away from hiring employees who are involved in a cause or who might stir up problems within the firm. Whatever the societal benefits of social justice activism, law firms simply see it as trouble and cost--both to the firm and to the firm's clients--and wish to avoid candidates who might raise these issues.

Years ago, I worked with two attorneys who were from the same law firm. They had gone to the same law school and had similar grades. They were both in the same practice area and looking for a position in the "bastion" of liberalism: San Francisco. One was white and the other was black. The black woman had a bunch of stuff on her rsum about how she had been a national leader of the Black Law Students Association and was proud to have sued her law school with other black students over an issue of diversity. I thought she was a great candidate. She did not get a single interview; the white woman got several interviews and job offers.

Law firms may find it difficult to ascertain whether diverse candidates are manageable. In today's market, it's

likely that the person hiring candidates does not share a background or culture with diverse candidates and, especially because of cultural misconceptions or misunderstandings, will have no way to judge whether a candidate is the type of worker the firm is looking for.

Will the Attorney Do the Job Long Term?

A large concern is whether an attorney will remain with the firm long term. Firms invest tremendous amounts in hiring attorneys, training attorneys, bringing attorneys up to speed on matters, and placing attorneys on existing client teams. Law firms want to hire people who will stay around long enough for them to recoup their investment at least. They also want to hire attorneys they believe have the potential to become partners who will grow the firm in the future.

Law firms have huge problems with retention, and in many cases retention is lowest for diverse attorneys. Most often, the problem is systemic in a law firm and not the fault of the diverse attorney. Inside law firms, diverse attorneys experience many issues that can decrease their ability to do the job long term, such as feeling left out of the social group of the law firm, having their work criticized more than that of peers, lacking role models for their diverse group, having trouble getting sponsors and mentors, having no access to inside information about the firm and feeling uncertain about the future, and feeling like token representatives of diversity who are really not given substantive work to do.

Law firms want to hire attorneys with long-term potential. Yet many factors can make diverse attorneys not want to do the job long term or to be perceived as attorneys who cannot do the job long term. Without a solid support network, they often do not feel welcome in the law firm environment and end up leaving, which reinforces the perception that diverse attorneys do not stay for the long term, creating a self-perpetuating cycle.

Class Issues in Law Firms

When the British arrived on the Fijian Islands, they had an impossible time getting the native Fijians to work.^[25] The Fijians' lives had always been simple and did not require hard work. If they needed something to eat, they tapped a coconut or speared a fish. Then it was time for a nap.

Fed up with the differences in work culture, the British brought over Indians from India to work.^[26] The Indians quickly set up shops and worked hard, showing they had the work ethic and drive to get things done. Many hardworking people of Indian descent still call the South Pacific home, and they are resented by native Fijians because they are now in positions of power and comprise the majority of professionals, business owners, and middle class in large parts of the country.^[27]

What is interesting about this, of course, is that the British (who in this scenario might be termed "the upper class") certainly did not want to do the work. They wanted to live off the fruits of others' work. Simultaneously, the native Fijians (who might be termed the "lower class") did not want to do the work either. They wanted to live off the fruits of nature's work instead. So, the British went searching for people who wanted to be the middle class and do the work.

Societies have always struggled to find people to do the work. Today, for example, countries like the United Arab Emirates and Saudi Arabia largely import people to work in lower- and middle-class positions. "Source countries include [but are not limited to] Afghanistan, Bangladesh, China, India, Indonesia, Nepal, Pakistan, The Philippines, Sri Lanka, Thailand, and Vietnam."^[28] Doctors, lawyers, engineers, accountants, and others come from the United States, Europe, and other developed, wealthy countries with lots of middle-class workers.^[29]

Around the world, hotels are run and managed by Europeans and Americans and their rooms are cleaned by people from the Philippines, Thailand, and other poor countries; cruise ships that plow the seas are captained, owned, and managed by Americans and Europeans, and the kitchens are staffed and rooms cleaned by people from the Philippines. Work is done largely by the lower and middle classes in countries like the United Arab Emirates. The upper classes are those born into wealth (and oil), and thus are serviced by and control those below them on the social hierarchy. This sort of arrangement--in one form or another--is how class, money, and status have interacted in various societies for centuries.

Law firms have a fundamental problem with treating certain people inside as upper-class citizens and others as lower-class citizens. As in society, it is often the upper classes who are the least diverse and yet the most powerful, who have the power to perpetuate the system or change it. In this class-based system, the "important" people are often less diverse than the people who service them because of differences in status and power. This creates a negative self-reinforcing cycle of classism.

The issue of class is neither new nor unique to law firms. For example, Karl Marx observed in *The Communist Manifesto* that "the history of all hitherto existing society is the history of class struggle." Class is an explosive issue in American society--nobody wants to talk about it because nobody wants to be categorized or feel that they are less than another.

But class factors into the diversity equation and must be addressed. I have experienced the kinds of disadvantages associated with growing up in a poor working-class environment and have felt first-hand the problems caused by that kind of background when I tried to get ahead in the middle-class field of law.

The surroundings I grew up in are a form of diversity-- in single-parent homes, in public schools, in working-class neighborhoods, in conservative prep schools where I did not excel because I did not fit in. I learned to live with being different. I learned to live with disenfranchisement. I learned what it meant to be treated like you were high class and what it meant to be treated like you were low class. I learned what it meant to be part of a community and family and what it meant to be isolated and marginalized. I knew what it meant to be included and what it meant to be ignored.

I believe *diversity* means more than just your [race or sex, social class, or religion](#). Diversity has a lot to do with where you came from and what you have overcome. There is a cost to growing up as I did. I am not black or a minority, but I learned what it is like to be in an environment that pushes you down.

Comparative Analysis of Class Values and Success

Being an attorney is the most middle-class job you can have and requires middle-class values of hard work, consistency, predictability, education (and educational accomplishment), and working for the rich (or, in some cases, the poor). One of the greatest problems in the legal profession comes when people from lower-class or upper-class backgrounds try to enter the legal profession--especially prestigious law firms.

Something I learned long ago is that the upper and lower classes are more like each other than either is like the middle class.

The upper and lower classes are less likely than the middle class to work (and if they do, the jobs do not require much thought).[\[30\]](#)

Frustrated and not part of the "mainstream" workforce, the upper and lower classes often experience various social and other problems to a greater degree than the middle class.[\[31\]](#)

Hard drug use generally starts with the upper class and goes straight to the lower class, bypassing the middle class (the middle class is working!).[\[32\]](#)

The middle class cares what others think of them, and the lower and upper classes often could care less![\[33\]](#)

The middle class tries to fit in--the lower class does not care and neither does the upper class.[\[34\]](#)

The problem is that people from the lower classes and upper classes often were not raised with the same work ethic demanded of the middle class and thus demanded by modern-day law firms. This is not to say that people from these two classes do not work hard or value hard work in certain contexts. Nobody would argue, for example, that an individual of the lower class who works three jobs to put food on the table does not have an exceptional work ethic! But that kind of work ethic is different from the kind of "put your head down and bill hours" work ethic that is typically associated with middle-class professionals and that is necessary for success in a law firm environment.

With lower- to working-class attorneys, I see a recurring problem--they view their jobs as them exchanging a certain amount of time for a certain amount of money. If two thousand hours per year is required, that is what they are going to try to give. If they need to work occasionally on the weekend, then that is what they will do. It is an attitude of "I am selling my labor for this amount of money." Whereas the middle-class mentality of an attorney is to put in as much time as it takes to solve the case or make the client happy.

When I see attorneys failing, dropping out, not making partner, and having issues with the practice of law, it is mostly because they do not understand the value of hard work and constant improvement. Regardless of an attorney's diversity--and social class is a form of diversity--success as an attorney follows, in large part, their ability to understand the value of constant, never-ending commitment and unwavering discipline to improve and be the best they can be. They get ahead by proving their merit.

It is a profound problem when the upper and lower classes are advanced on something other than merit. They develop expectations that they should be making large salaries, that they should be surrounded by other attorneys who also went to great schools, that they should be doing work on behalf of major corporations, and that they should have a shot at being a partner in a major American law firm.

But this rarely works out. Unless they have learned the sorts of middle-class values that are necessary to succeed in the law firm atmosphere, they usually do not perform at the level required to advance. Not to say they cannot learn this work ethic; in fact, they *must* learn it if they are going to succeed in BigLaw.

Generally, middle-class people are raised with the attitude and learn the skills to provide service to those who have the money to pay for it. From a young age, they are schooled, pushed, and taught these skills and the importance of pleasing superiors. They also watch their parents do it, and they go to schools that push this and show them how to do this. They are told they should be doctors, lawyers, accountants, and other middle-class professions, and the necessity of stability and having a career is drilled into them. This is why middle-class people do so well as attorneys.

In contrast, upper-class people are raised watching their parents hire and fire lawyers. (These are overgeneralizations--stereotypes, if you will--of these classes of people.) They learn that lawyers are people who serve them and that attorneys will grovel, if necessary, to get their business. Lower-class people may not even be exposed to attorneys at all. Further, the parents of lower-class people are unlikely to set an example of the middle-class work ethic. "Lower class families have lower parental literacy levels . . . less stable housing . . . and less security that comes from stable employment," among other things.^[35]

Working-class people are more likely to view the employer as the "enemy," someone who is exploiting them and not paying them enough per hour and someone to unionize against. Because lower- to working-class people see work as a "job," they don't see what they do as important or as a mission. Because it is not a mission, they approach everything as a trade-off: this much work for this much money.

This attitude misses a hugely important point:
It is the quality of the labor that counts.

It is the passion behind the labor that counts.

It is being a client's advocate and not a seller of labor that counts.

It is seeing yourself as essential to the client's happiness and not just a pawn that counts.

Being an attorney involves billing hours, but that is not the same as punching a time-clock. Law is a profession an attorney grows into, develops a reputation in, becomes more and more skilled at, and spends a lifetime doing. Attorneys do not sell their labor or their time. They sell something more significant: relationships, peace of mind, a sense of security for clients in the necessary transactions in life.[36]

Attorneys experience class-based issues in law firms when they do not understand what is expected of them (middle-class mentality) and when they do not have the drive to do what it takes (middle-class work ethic). Socioeconomic level might not be a category of diversity we usually think of, but it can mean that certain diverse attorneys face additional hurdles to achieving success in law firms.

Associates are judged by hours billed and their chances of making partner. The hours of every associate in a law firm are measured and reported. Hours are needed to get bonuses and stay employed. The chances of making partner are related to an attorney's hours billed, strength of background, business development potential, and quality of work.

Partners are judged by the amount of business they bring in, collections, and hours billed. Partners are under a lot of pressure to generate business. The most powerful partners inside of any law firm are those with the most business--the ones who can give work to other associates and partners.

Both partners and associates are judged on the quality of their education and accomplishments. Their accomplishments include such factors as trials won, deals done, clients brought in, presentations made, titles attained in the community, social standing achieved in the community and in the firm, among other things. Each law firm has a system of values and requirements that it uses to judge its attorneys and by which the attorneys inside of the firm judge each other.

The Great Chain of Being in BigLaw

Remember Aristotle's Great Chain of Being? The social structure of large American law firms is more consistent with the Great Chain of Being in the Middle Ages than other American businesses are. In the same way that Medieval society was organized under a strict hierarchy, so too is the modern large law firm:

The large law firm operates with the managing partner (or law firm CEO) at the top--the king. This is the person who is the face of the kingdom and who is held out as being in charge.

Beneath the managing partner are nobles, who are the other partners and have "land" (i.e., own a percentage of the firm). The land that nobles control is equivalent to the percentage of a law firm equity partners control. Very few people are made equity partner in large law firms; equity partner is a rarified position.

Next are the knights: the salaried associates, income partners, and counsel attorneys. The salaried attorneys in the firm are respected for the work they do. The very best knights and the ones who make the largest sacrifice for the nobles, over the longest period, can become nobles, but that is rare.

Next are the guilds: accounting, Human Resources and their junior helpers and assistants, staff attorneys, paralegals, and other business services professionals in the firm. The largest kingdoms have a proliferation of guilds.

Next come the serfs: the para-professional staff in the firm. The serfs were bound to the land in Medieval society and were like slaves. In law firms, serfs might be the people without professional skills, such as break room help and people in the copy room, filing assistants, and receptionists who are employed full-time.

Next come the peasants: independent contractors. Peasants were free and sometimes had skills, but often did not. The peasants inside of a law firm are contractors who maintain the building and people brought in for short-term assignments, such as contract attorneys, contract secretaries, and contract paralegals. They are the lowest status because they have no attachment or ongoing permanent relationship with the firm.

As was true in Medieval society, there is very little movement between classes in a major law firm. The serfs

and peasants are unlikely to ever become guild members, guild members are unlikely to become knights, knights are unlikely to become nobles (equity partners), and nobles are unlikely to become kings. The law firm is a Medieval sort of institution, and the larger a law firm becomes, the more Medieval it is.

The nobles own the firm and set the rules that make a noble-rewarding system self-perpetuating. Nobles do not want their land carved up and doled out to more land owners. They want to keep things the way they are so that they stay in power and can continue to get as large a share of the profits as possible. The knights try to keep each other down and undermine each other.

Though it may be controversial to say, based on my observations, diversity and inclusion in the law firm *decreases* the higher up the chain you go:

The king--the managing partner--is more likely to be a white male than a woman or person of color or gay.

The nobles--the equity partners--are much more likely to be white males than women, people of color, or gay.

The knights--the salaried associates, counsel, and income partners--are much more likely to be white than diverse.

The guild professions--the accounting staff, Human Resources staff, and other professionals--are more likely to be white than diverse.

The serfs--the janitors, receptionists, and break room staff--are more likely to be diverse than white.

The peasants--the contract secretaries, paralegals, and attorneys--are more likely to be diverse than white.

One of the major sources of debate inside of law firms is the diversity that exists among the knights, nobles, and kings. Among these three groups of the lawyer class, the knights (salaried associates, counsel, and income partners) tend to have the most diversity. The diversity among the knights is most evident and prevalent among those who are hired directly out of law school.

The reason that law firms can better make more diverse and inclusive hires at the entry level is because they know that most of their entry-level hires will never become nobles. They can even make non-equity partners out of some of these knights--but they still are not nobles and own no land. The law firm can look "diverse" to the outside world when it is not. Report after report has noted that the place where diversity lacks the most is at the noble (equity partner) level.

Interestingly, law firms may even elevate the occasional diverse noble to a king. In fact, the few diverse knights who become nobles often have a better-than-average chance of being elected to king by their firms to show the outside world that they are, in fact, diverse when they really may not be.

But neither hiring more diverse entry-level knights nor making the occasional diverse noble a king actually changes the fundamental, institutionalized class-based and unequal nature of the large American law firm.

Class Issues with Staff

One aspect of the class hierarchy in law firms that is even more rarely discussed than the divisions between classes of attorneys relates to divisions and inequality between attorneys and staff, which greatly affect diversity efforts as well as the success of law firms.

It's a laudable goal to increase diversity among their attorney ranks, but at the same time firms often operate under a two-tiered social structure, where attorneys are at the top and staff are at the bottom. Moreover, the people at the top (the attorney class) are generally less diverse than the people at the bottom (the [non-attorney](#) class). As you will see, most of this division is based on perceptions of people's relative value to the firm.

When I was an attorney in a major law firm, I saw that attorneys sometimes took the staff for granted, did not

treat them well, and let them believe that they were "fungible," in many respects, and could be replaced. Attorneys were extremely impressed with the backgrounds of other attorneys but nowhere near as impressed with the backgrounds of staff members. In fact, very few people talked about the staff at all. Everyone seemed more interested in the lives of attorneys, and the staff operated in a universe where jobs were less secure, where they were thought of less, where most made drastically less money than attorneys, and where they were taken for granted. I am not saying I agree with any of this--I do not--but this is what I witnessed.

These are some of the perceptions that attorneys have of staff members. These serve to reinforce the status of staff as "second-class citizens."

Most attorneys believe legal staff will not become practicing attorneys. Very few legal staff will go to law school. Therefore, they will always do only nonbillable work. Unlike a major corporation--where someone can start out in the mailroom and eventually work up to become the chief executive officer--a legal staff person without a law degree does not have any possibility of such upward mobility. Almost all of the serious upward mobility and rewards inside law firms is reserved for the attorneys.

Most attorneys believe legal staff will never make anywhere near as much money as attorneys. Attorneys in large law firms make a lot of money. Legal staff do not earn as much, and because of this, they tend to feel less financially valued in law firms as compared to attorneys.

Most attorneys believe legal staff are not as intelligent as attorneys. Attorneys often believe that legal staff are not as intelligent as they are simply because they do not have the same educational and other qualifications that attorneys have. This is not true, of course, because intelligence is not dependent on education. Nevertheless, this misperception (stereotype) controls how legal staff are treated.

Most attorneys believe legal staff do not work as hard. Very few professionals work as hard as attorneys, especially those in the largest law firms. Legal staff are in positions where they are not judged by how many hours they bill but by other criteria. Secretaries, paralegals, and other legal staff often work overtime and put in long hours, the majority of legal staff members can work regular nine-to-five-type jobs, whereas most attorneys can put in untold hours.

Most attorneys believe legal staff do not have comparable educational qualifications. Most legal staff are not attorneys, did not attend the top schools that attorneys did, and did not perform as well in school as many attorneys did. Even if a legal staff member has excellent educational qualifications--including having gone to a prestigious law school--most attorneys do not take nonpracticing lawyers as seriously as they take associates, partners, and counsel.

Far more than just attorneys work in law firms. Firms are massive institutions with a myriad of people working there. At their most basic level as economic institutions, large law firms are composed of people providing professional services (legal work) and people providing business services (adjuncts to legal work, such as document production, recruiting, and marketing).

As law firms become more diverse and inclusive of diverse attorneys, they should also pay attention to the class and other distinctions that exist between attorneys and staff. These distinctions end up marginalizing people who perform vital business services that support the work of attorneys to ensure the profitability of the firm.

What most people think of when they think of the practice of law is a group of attorneys doing legal work--not a group of nonlegal professionals doing everything else necessary to make the legal work possible in a complex and competitive international marketplace. Because of the emphasis on "lawyering" as the skill law firms sell, many believe that the work done by staff is less important than the work done by attorneys.

Staff report that some attorneys act like staff are "beneath them" and not doing work that is as important as the work attorneys do. This feeling of class division runs through the staff-attorney relationship in many law firms. In American law firms in large cities, the most diversity is at the bottom of the social hierarchy--among the entry-level associates and staff attorneys and clerks. The further up the hierarchy you go (equity partners and

heads of important departments, like the chief financial officer), the less diversity you'll find. Diversity follows the class lines.

Law firms are further divided into subhierarchies within the lawyer and staff classes. For example, within a law firm's professional services class are attorneys of different ranks and statuses, with equity partners at the top, associates in the middle, and contract attorneys at the bottom. Similar hierarchies exist in the business services class. A firm's chief financial officer is likely to be at the top, for example, whereas the copy room clerk is going to be at the bottom.

With limited exceptions, most nonlawyers inside of law firms do nonbillable work. Because their work does not lead directly to profit--one hour of work does not translate into one hour of fees--attorneys may not always appreciate and understand the importance of staff and the work they do. The work staff do is critically important to the profitability and success of the firm because it enables attorneys to specialize in law work, function efficiently, earn more money, and service clients more effectively.

Owing to the peculiar way in which attorneys judge themselves and each other, it is hardly surprising that attorneys view people who do not directly generate fees as less valuable and accord them lower status in the social hierarchy of firms. Even partners without business are made to feel like second-class citizens.

Law firms that scale up typically realize the importance of the work that staff do and consistently develop new staff positions to enable their staff to work more effectively servicing attorneys, who in turn service partners, who in turn generate business by making clients happy. Many of the largest law firms even have nonlawyer staff who earn as much as (or more than) non-equity partners in the firm.

Another problem that contributes to the reduced status of staff is, because they are cost centers (i.e., they do not directly generate fees through billable hours), their jobs are more vulnerable to being reduced or eliminated than are the jobs of attorneys, who can bill hours. When a law firm is considering laying off people to save money, often the first to go are staff. Lawyers are typically closer to "their own kind" and are most interested in saving each other's jobs. Also, a law firm's reputation can suffer greatly when it lays off attorneys, yet staff layoffs rarely merit mention.

Resentment between Classes

As a result of competition between the various classes of the social hierarchy in law firms--as in society--resentments and divisions emerge:

Partners resent those trying to become partners.

Associates resent partners.

Contract attorneys resent associates, counsel, and partners.

Staff resent attorneys.

Attorneys resent staff.

Associates resent other associates aspiring to become partners.

Partners resent other partners competing for larger shares of the profits.

The average law firm is a combustible mix of class warfare, resentment, and diversity issues that eat up people in the profession. Nowhere is this stress more prevalent than in American BigLaw. If you have any doubt about any of this, just read the headlines in any legal tabloid, lawyer blog, or staff blog. Resentment is everywhere you turn.

Law firms are incredibly complex institutions, and every member has a distinct and crucial role in the functioning and profitability of the enterprise. Without the clerk to file the brief on time, the most brilliant bet-the-company lawsuit would be lost. Without the paralegal to proof the prospectus, the most sophisticated

securities deal would go bust. Without the business development professional to alert the clients to changes in the law, the most important client would be left hanging in the wind. True diversity and inclusion begins with understanding, appreciation, and respect--of both staff and attorneys.

Attorneys may not be in control of every single factor that affects their career, but knowing how law firms operate, and why, enables them to improve their chances of getting hired by presenting themselves as candidates who can do the work, be managed, and stay long term.

What law firms say about diversity and what they do about it are two different things. Whereas Justice is blind, law firm hiring practices cannot be. Firms have good intentions to increase hiring and retention of diverse attorneys because their clients demand diversity, it can increase their innovation and market position, and it's the right thing to do.

But law firms are businesses, and they must contend with the realities of the legal marketplace. They stay in business and are profitable by attracting valuable partners and providing them with attorneys who do good work that satisfies clients. What pleases partners--the subjective part of hiring decisions, which rests on some unfounded beliefs about diverse candidates and some hiring traditions--influences why some candidates get hired and others don't.

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[Click Here to Reach Chapter 6: Hiring Practices Remain Tense with Diversity Efforts](#)
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