

Diversity Really Does Matter

by Kathleen Nalty and Andrea Juarez

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Convincing non-diverse lawyers, who are the decision-makers in most legal organizations, that diversity really matters in the business and practice of law is one of the biggest challenges to advancing diversity in the legal profession.

Advocates have learned that arguments predicated on altruism are rarely useful since many lawyers don't ascribe to the moral or ethical case for diversity. The traditional business case for diversity is not working well either. According to research by the Minority Corporate Counsel Association, only a small percentage of corporate law departments actually follow through on their pledge to change business relationships with outside counsel based on law firms' metrics or diversity efforts (8% of the 544 law departments surveyed).¹

Taking diversity efforts to the next level requires more compelling answers to the question of "why" diversity is essential in the practice and business of law. Those answers can be found in cutting-edge theory and research studies.

A NEW FRAMEWORK FOR A NEW CENTURY — THE NEXT IQ

Increase your intelligence and excellent client service:

Dr. Arin Reeves, President of Nextions LLC and the author of major national research studies on diversity in the legal profession, has written a new book that sets forth a compelling proposition for diversity: individuals and organizations cannot be as smart or competitive in the 21st century without deliberately incorporating diverse perspectives in their thought processes and decisions.

A best-seller for the ABA and now available from the NALP bookstore, *The Next IQ: The Next Level of Intelligence for 21st Century Leaders* (2012) challenges the way we think about intelligence in our fast-paced and ever-changing workplaces. According to Dr. Reeves, personal intelligence (measured by traditional IQ tests) has its limitations, especially in terms of our ability to quickly gather, analyze, and transform information into actionable insights. Using several real-world examples from the business and legal sectors, Dr. Reeves makes the case that including diverse perspectives is the only way to achieve a competitive advantage in any workplace.

As legal issues become more complex, multi-dimensional, and increasingly global, the ability to gain a competitive advantage and "see around corners" for clients is critically important.

This intersection between inclusiveness and intelligence (The Next IQ) transforms the "why" discussion from "diversity is important because the client says so" (the traditional business case) to "diversity and the different perspectives it brings makes me a smarter, more effective lawyer (or organization) for my clients."

More importantly, Dr. Reeves' book focuses on the most compelling motivator for change — self-interest.

Moving from external to internal reasons for doing something is a profound shift for explaining why diversity matters. The reality is that most lawyers simply will not embrace diversity efforts until they determine "What's In It For Me (WIIFM)"? *The Next IQ* goes to the heart of "WIIFM" since excellent client service can only be achieved by deliberately seeking out and incorporating difference into your thinking.

THE RESEARCH

Many are familiar with the general legal research studies demonstrating that diverse teams of people generate more creative and innovative work products. There is also more specific research on gender and racial/ethnic diversity and its profound impact in the workplace.

GENDER DIVERSITY

Increase predictability of case outcomes:

Given the costs and risks of civil litigation, a lawyer's ability to successfully assess and predict case outcomes can make the difference in keeping and acquiring clients. In a study designed to measure the accuracy of these kinds of predictive judgments, researchers found gender plays a surprising role.²

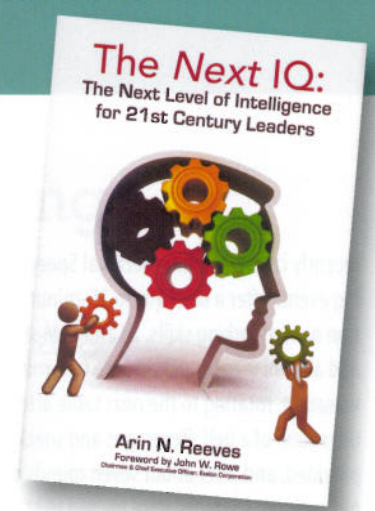
Nearly 500 litigators across the U.S. with cases expected to go to trial within a year were asked to estimate the outcome as well as the degree of certainty in their prediction. Only one-third of the lawyers were accurate in their predictions while 44% over-estimated the final case outcome. The researchers found a higher percentage of male attorneys were overconfident in their estimations. This overconfidence led them to trial instead of settlement. Thus, clients interested in more accurate predictions and perhaps better case outcomes should insist on gender diversity on their trial teams.

Improve group dynamics and performance:

A 2006 study by the Wellesley Centers for Women revealed that when there is a critical mass of three women on corporate boards, the board becomes more collaborative and open to different perspectives.³ If you decide your organization needs to incorporate diverse perspectives to become more intelligent (and, therefore, competitive and successful), gender diversity provides an important tool in facilitating that process.

More financial success:

In a seminal study, researchers at Catalyst, Inc. found that Fortune 500



companies with at least three female board directors significantly outperformed those with no gender diversity on the board of directors.⁴ This study was cited recently by the California Pension Fund in challenging Facebook's decision to create an all white and male board of directors (which led to COO Sheryl Sandberg's appointment to the board).

RACIAL AND ETHNIC DIVERSITY

Reduce unconscious bias:

Many people believe they are "color blind" — that they do not behave or think differently when interacting with people of a different race or ethnicity. As we learn more about unconscious bias and preferences, it is clear this mindset is an illusion. Seven national research studies document how unconscious biases and preferences cause hidden barriers in legal organizations, leading to higher attrition rates for female and diverse attorneys.⁵ Interacting with people who are different helps interrupt and reduce unconscious bias, which is reason enough for having diverse people in an organization.⁶ (Learn more about unconscious bias and hidden barriers in short Quick Concept videos by the Center for Legal Inclusiveness, www.colegaldiversity.org).

Increase analytical and critical group thinking:

Racial diversity also plays an unexpected role in how white people think and act in decision-making groups. In a study at Tufts University,⁷ 200 mock jurors were sorted into jury panels of six members each. Half the panels included only white jurors; the other half were composed of four white and two black jurors. Jurors knew before any evidence was presented whether they were on an all-white or racially diverse panel. Deliberations, which were monitored by the researchers, revealed disparities in group dynamics as well as the level of analysis of the case.

The all-white jury panels spent less time deliberating, made more errors with respect to the evidence in the case, and considered fewer perspectives in reaching their decisions. The jurors serving on the racially diverse jury panels actually worked harder to listen to and process the information presented in the trial as evidenced by the fact that they engaged in deeper analysis of the facts in the case, made fewer mistakes, and participated in lengthier discussions.

In essence, white jurors serving on homogenous panels fell into the trap of "group think" and became intellectually lazy while their counterparts on racially diverse panels were much more engaged in critical and analytical thinking. The mere presence of diversity can increase cognitive ability and functioning in decision-making groups.

INCLUSIVENESS IS A CATALYST FOR DIVERSITY

Clearly, diversity is important in the business and practice of law. Individual lawyers and legal organizations interested in attaining excellence in legal services must incorporate diverse perspectives. And clients should assert their own self-interest in dealing with outside counsel by going beyond the traditional business case to emphasize the research-proven benefits achieved through diversity.

But the mere presence of diversity does not automatically guarantee diverse perspectives will be valued or integrated into the organization. Law firms, corporate law departments, and government law offices are doing a poor job of creating inclusive environments designed to retain and advance female and diverse attorneys. According to the latest NALP Foundation law firm study, minority attorneys' attrition rates rose (again) by 3% last year, while non-diverse attorneys' attrition rates remained stable.⁸

Legal organizations cannot begin to maximize and leverage the many advantages of diversity, including excellence in client service, until they make genuine progress, through inclusiveness initiatives, to retain, develop, and advance female and diverse lawyers.

It is time to stop talking about diversity and start taking action — through inclusiveness — to make it really matter.

The Center for Legal Inclusiveness (CLI) is a Denver-based nonprofit dedicated to advancing diversity in the legal profession by actively educating and supporting private and public sector legal organizations in their own individual campaigns to create cultures of inclusion. For more information about diversity and inclusiveness in the legal profession, see CLI's online resources at www.legalinclusiveness.org. ■

Endnotes

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