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PERSPECTIVE

A candid look at ‘diversity, equity, inclusion & belonging’ in the legal profession

By Angela Reddock-Wright

The Supreme Court’s decision in *Students for Fair Admissions, Inc. v President and Fellows of Harvard College* did not just dismantle affirmative action on college campuses, it threw a wrench into diversity, equity, and inclusion (DEI) programs in the American workplace, including at the nation’s law firms.

Lawsuits have been filed against Perkins Coie and Morrison and Foerster challenging their DEI internship programs. Both firms - recipients of diversity honors within the profession - intend to launch vigorous defenses and the American Bar Association has condemned the lawsuits, but the damage may already be done.

As legal professionals, we must ask ourselves: What do we want our profession to represent? How we answer this question as individuals and legal professionals will dictate our continued and future efforts to level the playing field. We have come a long way as a profession. Now - despite the changing tides - is not the time to go back.

Background

Affirmative action was intended to overcome the effects of past practices, policies, or barriers to equal employment opportunity. The picture changed in 1996, when California voters dismantled the state’s affirmative action mandate through

Proposition 209. Voters in eight other states then followed California’s lead in abolishing affirmative action.

Now that affirmative action has been barred nationwide in higher education, the new focus is DEI in the workplace - including at law firms. Corporate programs to recruit and retain employees of color and other disadvantaged workers are being sidetracked, slowed down, or outright shut down. This is both short-sighted and tragic.

The first DEI programs coincided with laws such as the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964, and the Age Discrimination in Employment Act of 1967. Companies adopted programs to help employees adjust to working in more integrated offices, and those DEI efforts now include gender, sexual orientation, religion, national origin, and other representation in the workplace.

The 2020 Black Lives Matter and George Floyd protests prompted companies to invest more resources into their DEI programs. These strategic DEI programs - now with the added B for “Belonging” - are not only designed to increase the number of “diverse” individuals in the workplace, but also to boost team dynamics, productivity, and innovation, providing all team members with equal opportunities to feel included, valued and heard.

Diversity in the legal field

The legal profession has worked to address the underrepresentation of minorities in its ranks. As did

much of corporate America, law firms undertook the serious business of addressing disparities within their ranks by embracing DEI programs.

The California Rules of Professional Conduct include prohibitions against discriminatory behavior in the practice of law. For at least three decades, attorneys have been required to complete elimination of bias training, with “at least one hour dealing with the recognition and elimination of bias in the legal profession and society by reason of, but not limited to, sex, color, race, religion, ancestry, national origin, physical disability, age, or sexual orientation.”

Legal publications began adding a DEI category to their annual achievement awards, recognizing firms and practitioners who walked the walk in terms of hiring, mentoring, and challenging a broad spectrum of lawyers. Bloomberg Law this year announced its “Diversity, Equity, & Inclusion Framework” - a listing of law firms “that meet or exceed a rising standard for diversity, equity, and inclusion in their firm.”

In 2020, the NALP Foundation studied law firms across the country to track the effects of the pandemic and George Floyd protests. *Professional Development in a Pandemic: The Impact of COVID-19, Civil Unrest and Economic Crisis* includes these findings:

- 88% of firms reported having department, staff, or other personnel responsible for developing and implementing DEI initiatives;
- 70% of firms reported that their

DEI team’s scope and responsibilities had increased after March 2020;

- 69% of firms reported an increase in their DEI team’s visibility/clout among firm leadership.

Despite these efforts, significant gaps remain. According to the ABA, of the more than 1.3 million lawyers nationwide in 2022, those of color - Hispanic, Black, Asian, Native American, and mixed race - grew less than three percentage points in the decade from 2010 to 2020. Just 6% of lawyers are Hispanic and 5% of lawyers are Black, while representing 19% and 13% of the U.S. population, respectively.

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In its First Annual Report Card on the Diversity of California's Legal Profession, the California State Bar found that despite higher numbers of women and minorities in the profession and in leadership roles, significant gaps remain.

- People of color comprise 60% of California's population; 70% of active licensed attorneys are White.

- 7% of attorneys are Latino; the state has a 36% Latino population.

- The percentage of newly licensed attorneys who are Black increased in the three decades between 1990 and 2021 from 3% to 5%.

- 5% of attorneys report having a disability; 20% of Californians are disabled.

- People of color represent nearly one-third of attorneys in California law firms, but comprise a mere 23% of partners.

- White men are 44% of attorneys in law firms but 56% of partners.

- Women of color are 15% of law firm attorneys but just 8% of partners.

Significantly, among attorneys in California law firms, "Women, people of color, LGBTQIA+ and people with disabilities consistently report lower levels of satisfaction with workplace experiences than white men." As a profession, do we have a duty to address these concerns? I believe we do.

If we want to ensure diversity in the legal field and profession, it starts with the educational pipeline - not just in law schools, but in the K-12 education system and communities as a whole. In its July 5, 2023 statement on the heels of the affirmative action decision, the Diversity in the Profession Section of the Los Angeles County Bar Association decried its negative impact on the legal profession. "The U.S. Supreme Court's decision ending race-conscious affirmative action is a setback for efforts to diversify the educational pipeline leading to the legal profession."

Why it matters

The State Bar put it succinctly: "Having a diverse legal profession positively impacts the administration

of justice, ensures fairness, and promotes the rule of law. The mandate to promote a diverse and inclusive legal profession is central to the State Bar's mission of public protection."

The "mission of public protection" is central to the legal profession and sets it apart from most other professions. As lawyers, we have a unique duty and responsibility to see that justice is done. True justice can only be achieved when legal professionals - lawyers, judges, neutrals, academics, and others in our profession - look beyond themselves.

When they exchange ideas, connect with, and develop meaningful relationships with people from different backgrounds and experiences, their views become wider, helping them see and appreciate how others see and view the world. When diverse teams work on cases together lawyers bring to their clients a more inclusive world view that recognizes and responds to their issues.

The law - and the practice of law - should reflect the society in which we live. Our clients should see a diversity of backgrounds across the entire system - not just in law firms but among judges, mediators and arbitrators, prosecutors, and public defenders, and in supportive professions such as expert witnesses and jury consultants. To best serve their clients and the legal industry, lawyers - even those who are in-house - must be able to relate to them from a broader set of perspectives and with deeper understanding. All clients deserve to work with lawyers and other legal professionals who understand and are sensitive to their diverse employee, vendor, consumer, and customer bases.

For many underrepresented communities, lawyers of color are the first - and sometimes only - professionals to provide legal services. These attorneys can be lighthouses for their communities. When they return to mentor and give back, they serve as both role models and critical support systems for others. True diversity across the

legal profession allows the system to work by shining a 360-degree spotlight on the process. Everyone - lawyers, legal professionals, and disadvantaged communities - benefits.

Strategies that work

Just as DEI has evolved to add the important "B" of belonging, so too must the legal industry evolve to recognize the contributions of traditionally marginalized and underrepresented communities within its ranks. There can be no tolerance of separation, differentiation, and ostracism.

Policy statements are not enough. Legal professionals must develop strategies not only to recruit diverse attorneys and other legal professionals, but also to ensure their success after hire. The good news is that DEIB is not rocket science. Law firms have spent years creating programs that make a difference.

Although we still have a long way to go, there are good blueprints for expanding and diversifying the legal workplace. Successful law firm DEIB initiatives have included the following:

- Leadership - Any successful program starts with leadership from the top. When those at the top lead, others will follow.

- Accountability & Measurable Goals - SMART Goals using metrics, benchmarks and milestones can help track and align DEIB initiatives with the firm's goals. Measurable standards must be reviewed and re-evaluated on a regular basis. Goals must not only be clear, but clearly communicated throughout the firm.

- Recruiting - Firms should seek out law school students who will bring not just a knowledge and skill set but also interesting insights and experiences to the job. They should do outreach to marginalized groups through targeted bar association and law student groups, job boards and word of mouth.

- Mentorship/Sponsorship - A lawyer's success depends as much

on relationships and other intangibles as it does on writing briefs and doing discovery. The profession must look beyond simply honing skills and truly create environments that are welcoming to people of different backgrounds. All members of the firm should be invested in the growth and retention of attorneys.

- Affinity Groups - These groups provide opportunities for women, lawyers of color, LGBTQIA+, and other groups to network, mentor and provide support to one another both inside the firm and in the larger community.

- Project Assignments - Teams are selected for different types of clients and work based on the unique perspectives, experiences, and skills of individual attorneys.

- DEIB Committee - Representatives from every level of the organization should have an equal say in DEIB decisions. A dedicated group should meet regularly to coordinate programming, communications, and initiatives for the firm.

- Education & Training - Regular DEIB training should help build strong working relationships between team members, promote models for success of underrepresented attorneys, and provide attorneys with tools to better support their minority clients.

Every firm's DEIB strategy must be uniquely crafted and designed to meet that firm's goals and objectives.

Conclusion

Law schools must continue supporting a diverse and inclusive student body by recruiting, training and graduating a broad cross-section of future lawyers. Law firms and legal organizations must continue the work of fostering a profession that reflects the world around us, including adopting and supporting DEIB programs. Justice should be blind, but the legal profession cannot be blind to the importance of leading the way in ensuring equality and equity for all.