

This Black History Month, Law Firms Should Challenge Norms

By **Paulette Brown** (February 8, 2021)

February is Black History Month, although I would prefer to call it Everyone's History Month, and there could not be a better opportunity to make an assessment as to where we are with diversity, equity and inclusion at law firms.

More importantly, it is a good time to take a deep dive into our culture to determine whether it is the reason, despite our best intentions, as to why so little has changed over the past several decades and why there has been so little progress in the diversification of law firms.



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We must change our culture from the ground up, starting with the elimination of terminology such as "effort" when speaking of diversity, equity and inclusion. Diversity, equity and inclusion should permeate through every aspect of the legal profession and law firms in particular, taking it out of the realm of "effort."

2020, in addition to the deadly COVID-19 pandemic, brought unprecedented discussion about racial justice in the legal profession and what can be done to, among other things, equalize opportunities for lawyers of color and, in some instances, African American lawyers in particular.

Law firms issued statements recommitting themselves to diversity, equity and inclusion, setting forth new goals to demonstrate that commitment. To be sure, steps are being taken to fulfill those goals.

CEOs at client companies have collaborated, making pledges to create equitable environments. General counsel have issued new edicts concerning expectations from their law firms. They have said they will no longer use law firms that do not meet designated percentages of minority lawyers working on their matters.

Even I had the lofty notion that I, along with dedicated general counsel, private practitioners, and diversity, equity and inclusion professionals, could create a sustainable solution to ensure that underrepresented lawyers get that elusive slice of the economic empowering pie.

But these pledges, edicts, promises, commitments or however they may be characterized, and without regard to how laudable they might be, are not enough to diversify law firms. There can be no better evidence than the National Association of Law Placement's "2020 Report on Diversity in U.S. Law Firms," serendipitously released last week, during Black History Month, which reported slow progress as women and people of color continue to be underrepresented at law firms.

Since the mid-1980s, when Cora T. Walker founded the Commercial Law Section of the National Bar Association and introduced the Corporate Counsel Conference, there has been no shortage of efforts to increase the economic prowess of African descendent lawyers.

To stress the importance of economically empowering African descendent lawyers, Walker made a determination that the Corporate Counsel Conference would always occur during Black History Month. This initiative was the beginning of many that have grown year over

year to get us to the point where we are today — not very far.

The history of Black History Month helps to inform us as to why we have not made as much progress as we would have liked.

Initially, one week in February was selected to honor the birthdays of Fredrick Douglas, a staunch abolitionist, and Abraham Lincoln, who on the first day of February signed the 13th Amendment into law. Scholar and historian Carter G. Woodson deemed it necessary to educate all of the citizens of the U.S. to not only the overlooked contributions already made by people of African descent but also their capacity to achieve at the highest levels. Woodson sought to disrupt the status quo.

This history is critical because it sets the stage for how our most revered institutions and professions were established and why. This month should be used to commit to the disruption of the status quo to make the necessary change we are seeking. It begins with our culture.

For most major law firms, much like the legal profession itself, the core of their being is based upon exclusivity.

Most of us are familiar with the beginnings of the American Bar Association, formed primarily to exclude every group of people other than Anglo-Saxons. The origins of some of our largest and most established law firms are not dissimilar. Fortunately, both have emerged from that type of thinking.

However, when a structure of exclusion has been so embedded into the fabric of an organization, there is no single or simple fix. New structures must be built to adjust the culture of law firms. Mere activities are not enough. All that is done to realize sustainable change must be driven by metrics.

An initial first step is for law firms to measure the strength of diversity, equity and inclusion in the same manner every other goal and core value is measured.

When, for example, billable hours goals are not met, there are consequences. Likewise, when those goals are exceeded, there are concomitant rewards. In large degree, this practice is not questioned because it is deemed a part of law firm culture.

When diversity, equity and inclusion goals are set, they must be transparent and enforceable. It should be of no moment as to who is the titular head of the organization for diversity goals to be realized. Written and transparent policies can be a part of the solution. There must be a strategic plan, informed by an assessment, and mechanisms in place to implement and enforce the plan.

Partnerships are an important component of changing cultures. We can no longer work in silos, and partners should be involved in implementing these policies.

As legal departments are demanding more diversity on their teams, many law firms proclaim there are not enough female and minority lawyers to fulfill all of the requirements of their clients and potential clients.

This poses questions as to whether we are looking far enough upstream and advancing the resources necessary to ensure that these requirements can be met, and whether every law firm is looking at the same law schools and the same law students in search of talent.

There must be a recognition that high-quality lawyers graduate from law schools that are not characterized as "elite" or "top-tier." More collaboration with outside organizations is necessary.

Retention is as critical as hiring. Retaining diverse talent also requires a disruption of current culture.

Instead of making excuses for why female and minority lawyers leave, law firms must look at their cultures and ask themselves what written policies are in place to inform underrepresented lawyers that they are in a welcoming environment and are valued.

Recognizing its known benefits, a robust sponsorship program is a good place to start — one that begins early in the career of a minority or female lawyer. Waiting until an associate is in the fifth or sixth year of practice may be too late.

Law firms should ask what written policies are in place so that a minority lawyer will not leave, even if tempted with an offer of other employment. Having a policy to conduct periodic stay interviews, by way of example, is a means by which to assess whether the law firm is providing the lawyer with the tools to be successful and therefore willing to stay with the firm.

There is much more law firms can do to change their cultures, including but not limited to, being intentional, reviewing the manner in which evaluations are conducted, reducing bias in decision making, understanding that one size does not fit all, committing to ongoing education, and understanding that equal opportunity does not always translate to equitable opportunity.

There should never be the belief that multitasking is not possible. We have gone beyond taking it one day at a time. It is going to take multiple, simultaneous steps to undo the culture of exclusivity in which law firms have thrived for so long.

There is no suggestion that it will be easy. However, in order to sustain the viability of law firms, the culture of exclusivity must change to a culture of inclusivity. It is time to go beyond initiatives and activities. Black History Month presents the perfect opportunity to get started on this important journey.

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