



PROGRAM MATERIALS

Program #31102

April 15, 2021

**Diversity and Inclusion in the Legal
Profession:
A Business and Moral Imperative**

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- **Joel Stern, Esq. - National Association of Minority and Women Owned Law Firms (retired)**

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MODERATOR



Dr. Sharon Meit Abrahams
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Dr. Sharon Meit Abrahams is a legal talent development expert with over 25 years of experience in success coaching for attorneys and executing high impact programs for law firms. She has created and implemented firm wide initiatives that help attorneys maximize their productivity while maintaining engagement. When individuals produce, a firm increases its profitability. As a talent development leader, she has handled every aspect of an attorney's firm life from onboarding and integration, through mentoring and training to succession planning and exit interviews.

Dr. Abrahams has published three books with the American Bar Association and regularly publishes articles for Thomson Reuters and American Legal Media. Known for engaging and educational programs, Dr. Abrahams is a sought-after keynote speaker, program facilitator and law firm advisor.

Bringing CLE topics to law firms, legal associations and law firm networks is a labor of love. Reach out to see what Legal Talent Advisors can do for you.

SPEAKER



Joel Stern
Joel_Stern@namwolf.org

Joel Stern was the Chief Executive Officer of the National Association of Minority and Women Owned Law Firms, Inc. (NAMWOLF) for seven years, recently announcing his retirement effective March, 2021. NAMWOLF, founded in 2001, is a nonprofit trade association comprised of over 195 certified minority and women owned law firms in 42 states. NAMWOLF'S mission is to provide corporations the premier place to go to locate and hire minority and women owned law firms of the very highest caliber.

Joel has been actively associated with NAMWOLF since 2004 and has served as a board member and also as chair of the In-House Advisory Council. Prior to his role as CEO with NAMWOLF, he headed his own consulting practice, providing a range of services to corporate law departments and law firms.

Prior to his consulting practice, Joel spent more than 25 years as an in-house counsel for major companies. At Accenture, where he served as Deputy General Counsel from 1996-2010, he acted as chief operating officer for the consulting giant's 420-member global law department. He also managed all of Accenture's outside counsel relationships as well as managing North and South America legal matters. While in this role, he was tasked with leading a team of attorneys to create a "best in class" diversity and inclusion legal program, which he remains very proud of. Joel was a member of Accenture's US Leadership Team and its global Operations Council, and also part of the firm's CEO Advisory Counsel. During his tenure, the Minority Corporate Counsel Association gave Accenture its "Employer of Choice" award. Previously, he was Vice President and General Counsel at Advantis, a joint technology services venture between IBM and Sears, where Joel directed all legal functions and managed outside regulatory and government affairs. From 1987-92, he was General Counsel for Sears

Technology Services, which made him a key member of the legal team advising on the development and launch of the Discover Card. He began his in-house career in the mid-1980s as a staff counsel with leading insurer Allstate Insurance, then a division of Sears.

Joel's published articles and regular speaking engagements reflect his zeal for expanding opportunities in the law and providing equality for all. Currently, he has developed an accredited CLE titled "Diversity and Inclusion in the Legal Profession: A Business and Moral Imperative" that has been given to hundreds of in-house counsel across the U.S. and has served as a great vehicle to galvanize legal groups to do more in the diversity and inclusion space.

In 2020 Joel was honored with the National Association of Women Lawyers (NAWL) "Lead by Example Award" in recognition of a leading male attorney who supports the advancement of women within his organization. In addition, he received a Lifetime Achievement Award from Chambers and Partners for his long time diversity and inclusion work in the legal profession.

Joel earned his J.D. in 1984 from Cleveland Marshall College of Law; he graduated magna cum laude from Case Western Reserve University in 1981 with a B.A. in Political Science. He resides in the Chicago area with his wife, Donna, and his now three grown up daughters who all live within twenty minutes of Joel's home, Brittany, Amanda and Taylor. He is a first time grandfather to three year old Aidan Joel.



Diversity and Inclusion in the Legal Profession

A Moral and Business Imperative

JOEL STERN | Retired CEO NAMWOLF

Keeping D&I Top of Mind

NOW, MORE THAN EVER.



Agenda

- Time to Stop Admiring the Problem and Start Solving!
- Unconscious Bias
- Diversity & Inclusion “Best Practices” Within In-house Legal Departments
- Questions

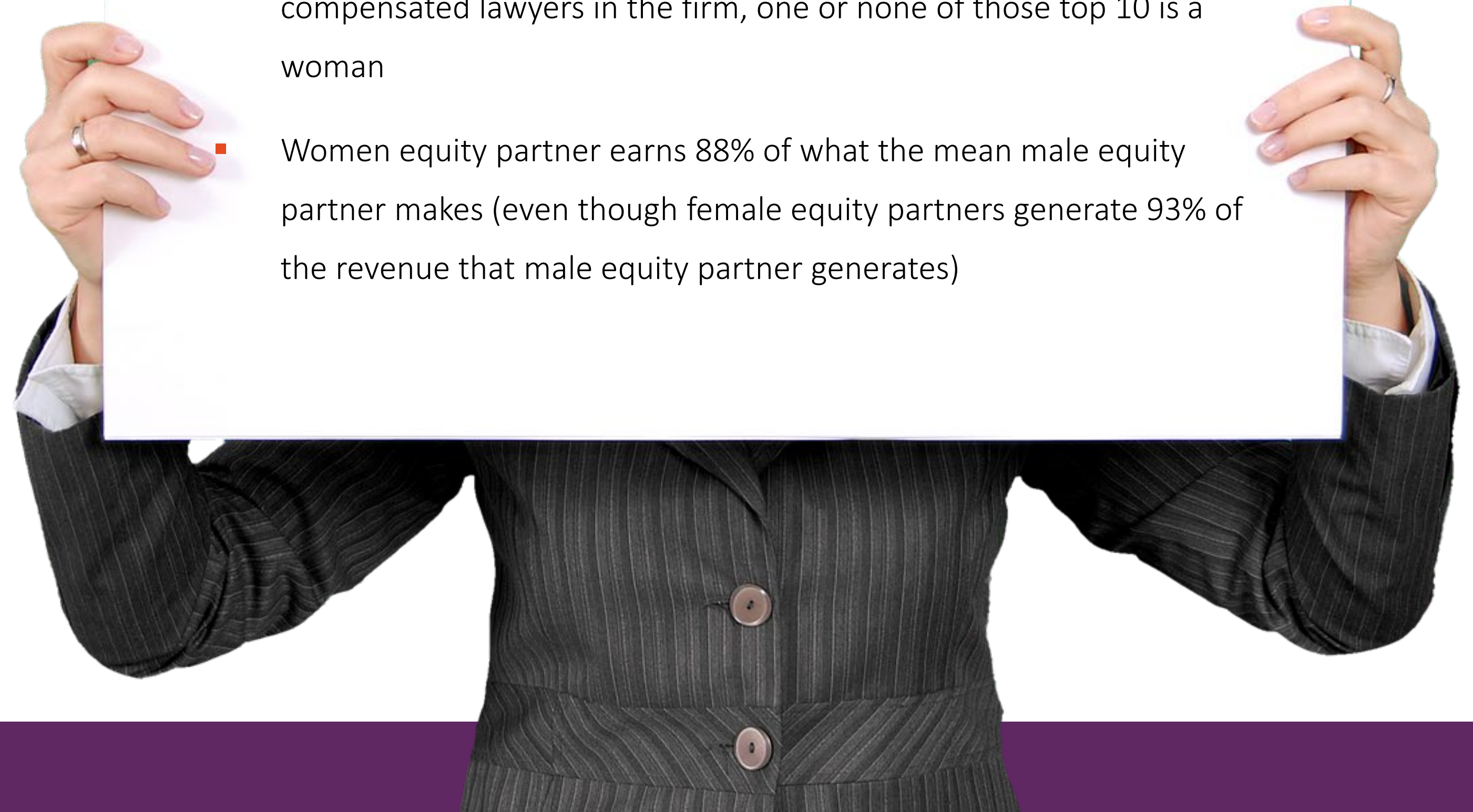


The Legal Profession is Falling Behind in Diversity

WOMEN

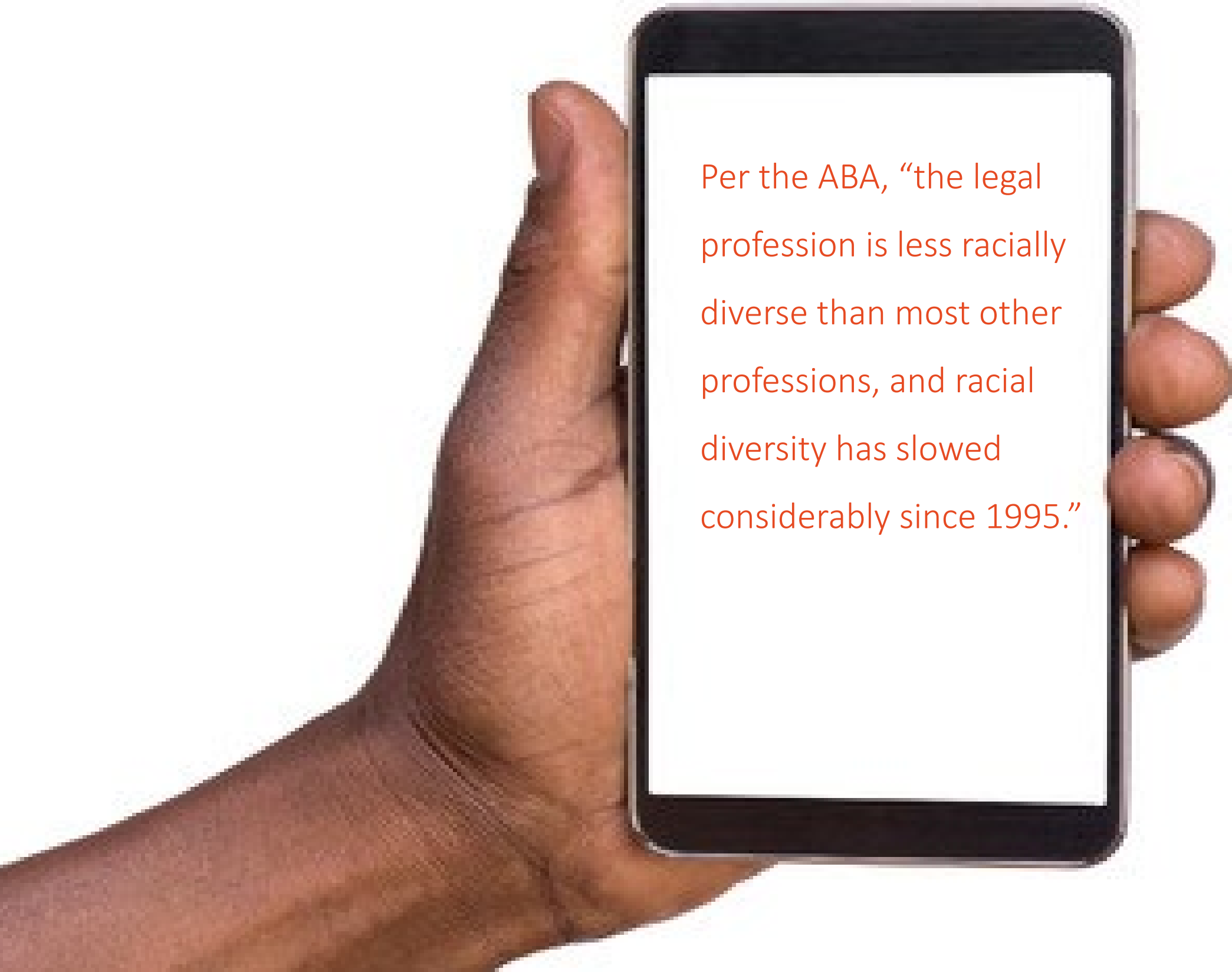
The National Association of Women Lawyers' latest report indicated...

- While women have been 50% of law school graduating classes for the past 10 years, the representation of women declines significantly as she rises in seniority at law firms making up 47% of associates, 30% of non-equity partners (unchanged from 2018) and 20% of equity partners
- Men continue to dominate the top earner spots, with 93% of firms reporting their top earner is a man and of the 10 most highly compensated lawyers in the firm, one or none of those top 10 is a woman
- Women equity partner earns 88% of what the mean male equity partner makes (even though female equity partners generate 93% of the revenue that male equity partner generates)



The Legal Profession is Falling Behind in Diversity

MINORITIES



Per the ABA, “the legal profession is less racially diverse than most other professions, and racial diversity has slowed considerably since 1995.”

For example, according to the 2019 National Association for Law Placement report, the percentage of African-American associates is 4.76%. In 2009, the percentage was 4.66%

For all minorities, percentage of associates increased 1.2% to 25.44% (much of which is attributable to increases among Asian American lawyers)

Per the same report, women of color continue to be the most dramatically underrepresented group at the partner level – 3.45% (compared to 1.8% in 2009)

Percentage of minority partners grew less than half of a percentage point in 2019 to 9.55% (7.66% when looking only at minority equity partners)

African American partners discouragingly low at 1.97% (1.83 in 2018)

Attorneys of color make up only 10.2% of Fortune 500 General Counsels with only 4% being women of color.

Additional Findings from NALP Report

Minority women continue to be the most dramatically underrepresented group at the partnership level

*1 in 5 equity partners women

*People of color make up 7.65% of equity partners

Significant differences by law firm size and geography and many jurisdictions where the disparities in representation are stark (Miami versus Boston versus Phoenix)

Asian Women make up 1.46% of Partners

Latinx Women make up 0.80% of Partners

African American Women make up 0.75% of Partners

Representation of women and people of color in the summer associate ranks compares much more favorably to the population of recent law school graduates and hit all time highs in 2019.

Overall percentage of LGBT lawyers increased slightly to 2.99% compared with 2.86% in 2018. However, LGBT representation among summer associates jumped over 1.1 percentage points, from 5.73% in 2018 to 6.86% in 2019.

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The Implications of Lagging in Diversity

“Advocates of the ‘business case for diversity’ likely did not mean to weaken diversity by undermining its normative justifications, but opponents of diversity initiatives have seized the opportunity to reframe and focus attention on the (admittedly often questionable) **instrumental grounds for diversity**. Indeed, David Wilkins, who has written extensively about the ‘business case for diversity,’ has astutely cautioned against both an uncritical adoption of it and against abandoning other justifications for diversity: ‘given the limitations with self-interested justifications for client participation in programs to increase law firm diversity, advocates for those programs would be well advised not to give up on...’normative diversity arguments.”¹

¹A Primer on Diversity, Discrimination, and Equality in the Legal Profession or Who is Responsible for Pursuing Diversity and Why by Eli Wald

The Implications of Lagging in Diversity

Projections indicate that the U.S. will be a majority minority nation in 2044.

Former Attorney General Eric Holder noted the "overall lack of diversity within the legal profession adversely impacts our ability as lawyers to serve those most in need of assistance."

Accordingly, it is the legal profession's responsibility to be concerned about

"The potential effects [for the legal profession] of being significantly more racially homogenous than the increasingly heterogeneous society in which we live."

Business Case vs. Moral Case

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Benefits of Diversity



Racial & Gender Diverse Companies/Law Firms Outperform Less Diverse Companies

- Companies in the top quartile for racial and ethnic diversity are **35 percent** more likely to have financial returns above their respective national industry medians
- Companies in the top quartile for gender diversity are **15 percent** more likely to have financial returns above their respective national industry medians
- Companies in the bottom quartile both for gender and ethnicity and race are statistically **less likely to achieve above average financial returns** than the average companies in the data set
- For every **10 percent** increase in racial and ethnic diversity on senior-executive teams, earnings before interest and taxes **rises by 0.8%** in the U.S.
- Diverse teams drive **6 percent greater revenue, 15 percent more customer wins** and create **significantly higher** market share
- Companies with integrated diversity and inclusion strategies have **2.3 times** higher cash flow per employee, **1.8 times** more likely to be “change ready” and **1.7 times** more likely to be innovation leaders in their market
- Diverse law firms generate **more than \$100,000** of additional profit per partner than less diverse firms of the same size, location and hours

California Rules of Professional Conduct

Rule 2-400: Prohibited Discriminatory Conduct in a Law Practice

- In the management or operation of a law practice, a member shall not unlawfully discriminate or knowingly permit unlawful discrimination on the basis of race, national origin, sex, sexual orientation, religion, age or disability in:
 - (1) hiring, promoting, discharging, or otherwise determining the conditions of employment of any person; or
 - (2) accepting or terminating representation of any client.



New York Rules of Professional Conduct

Rule 8.4(g): Misconduct

- A lawyer or law firm shall not unlawfully discriminate in the practice of law, including in hiring, promoting or otherwise determining conditions of employment on the basis of age, race, creed, color, national origin, sex, disability, marital status or sexual orientation.



NY State New Diversity Requirement effective January 1, 2018

Rules 22 NYCRR 1500.2 (g)

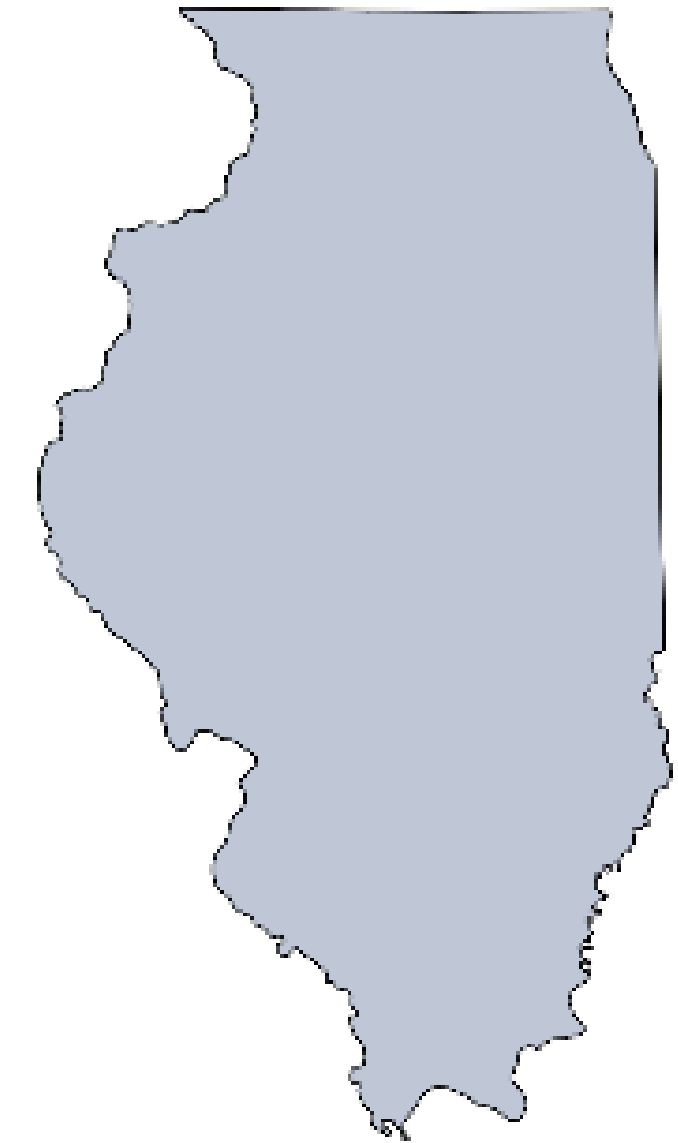
- Experienced attorneys must complete at least one (1) credit hour in Diversity and Inclusion.
- Diversity, Inclusion and Elimination of Bias courses, programs and activities must relate to the practice of law and may include, among other things, implicit and explicit bias, equal access to justice, serving a diverse population, diversity and inclusion initiatives in the legal profession, and sensitivity to cultural and other differences when interacting with members of the public, judges, jurors, litigants, attorneys and court personnel.



Illinois Supreme Court Rule 794(d) CLE Requirement on Diversity Training

Rule 794(d): Diversity Training

- Illinois lawyers required to complete one hour of diversity and inclusion CLE as part of the Professional Responsibility CLE requirement due to studies showing that the legal field falls short in the area of diversity.
- Illinois fourth state to require diversity-related CLE



Diversity of The Legal Profession as a Moral Imperative and Professional Obligation

Lawyers have an ethical responsibility to eliminate bias in the legal profession as codified in the following rules of conduct:

California Rules of Professional Conduct

Rule 2-400: Prohibited Discriminatory Conduct in a Law Practice

New York Rules of Professional Conduct

Rule 8.4(g): Misconduct



Unconscious Bias in the Legal Profession

The study of unconscious bias is based on 40 years of social science research. Our brain reaches conclusions without immediately telling us that it's reaching conclusions.



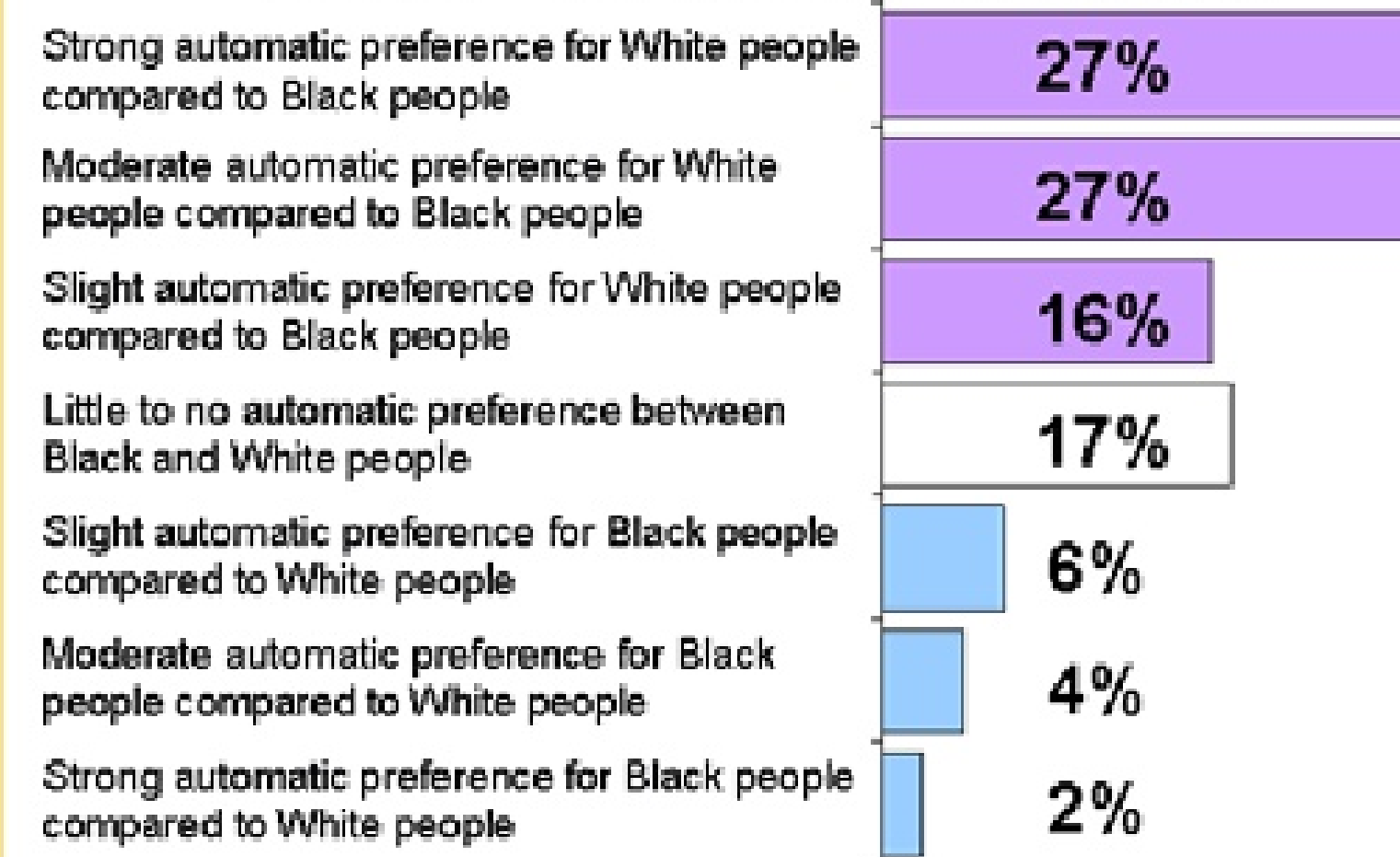
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Harvard Implicit Association Test

Percent of web respondents with each score



<http://implicit.harvard.edu>

TAKE THE HARVARD IMPLICIT ASSOCIATION TEST (IAT)

www.implicit.harvard.edu/implicit/demo



Different Types of Unconscious Bias



- Confirmation
- Perception
- Affinity
- Halo Effect
- In-Group
- Fundamental Attribution Error
- Incumbency Bias

Unconscious Bias in the Legal Profession

Impact on In-house Legal Groups

Internal Impact

- Hiring
- Promoting
- Firing
- Mentoring
- Overall engagement of legal group

Big Firm Impact

- Who we interview
- Who we retain
- Who we like
- Who we find flaws in
- Who we support

Supplier Impact

- Are you giving MBE/WBE firms the opportunity to compete for and win the business?
- Are MBE/WBE firms unfairly disadvantaged due to our unconscious biases?



The Unconscious Bias Checklist



Understand

Seek first to understand that you have biases and then take steps to solve them



Assess & Share

Take and then share results of the Harvard Implicit Association Test



Be Aware

Stay on top of your biases



Consult Experts

Use expert consultants to minimize adverse impact on legal group

Diversity & Inclusion “Best Practices” Within In-house Legal Departments



Diversity & Inclusion In-house Best Practices

Top Down & Bottom Up Support

Accountability Defined

Embedded In Core Values

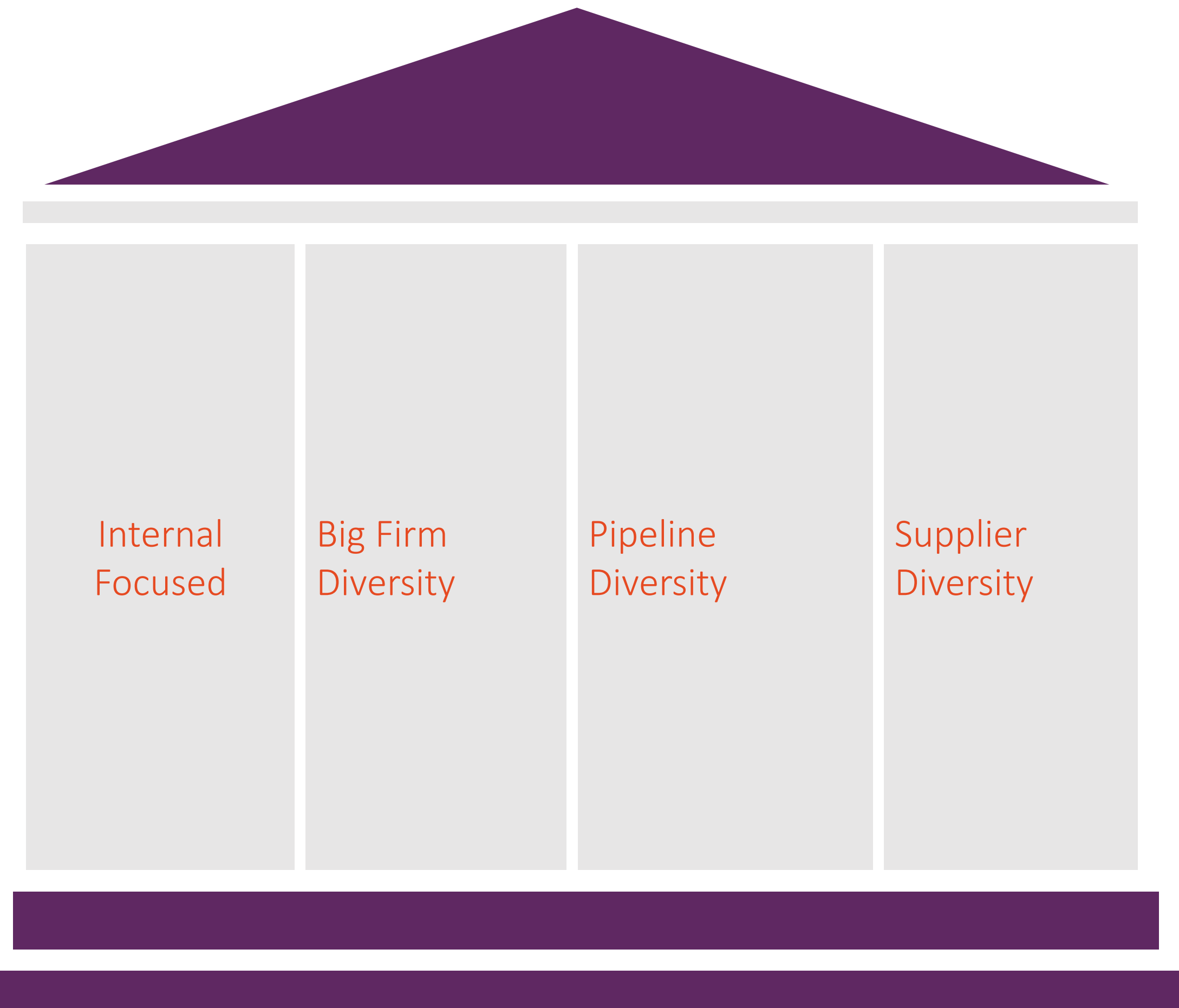
Managed as a Strategic Imperative

Carrot & Stick Approach

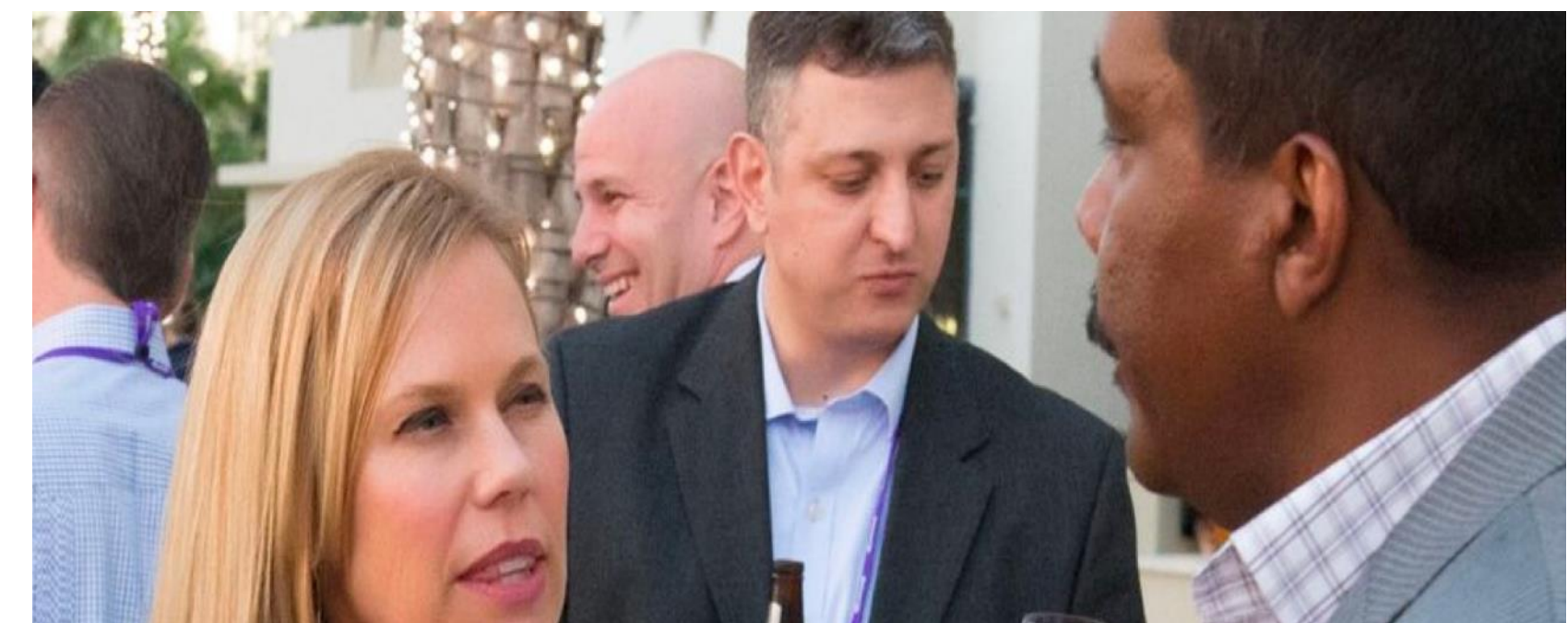
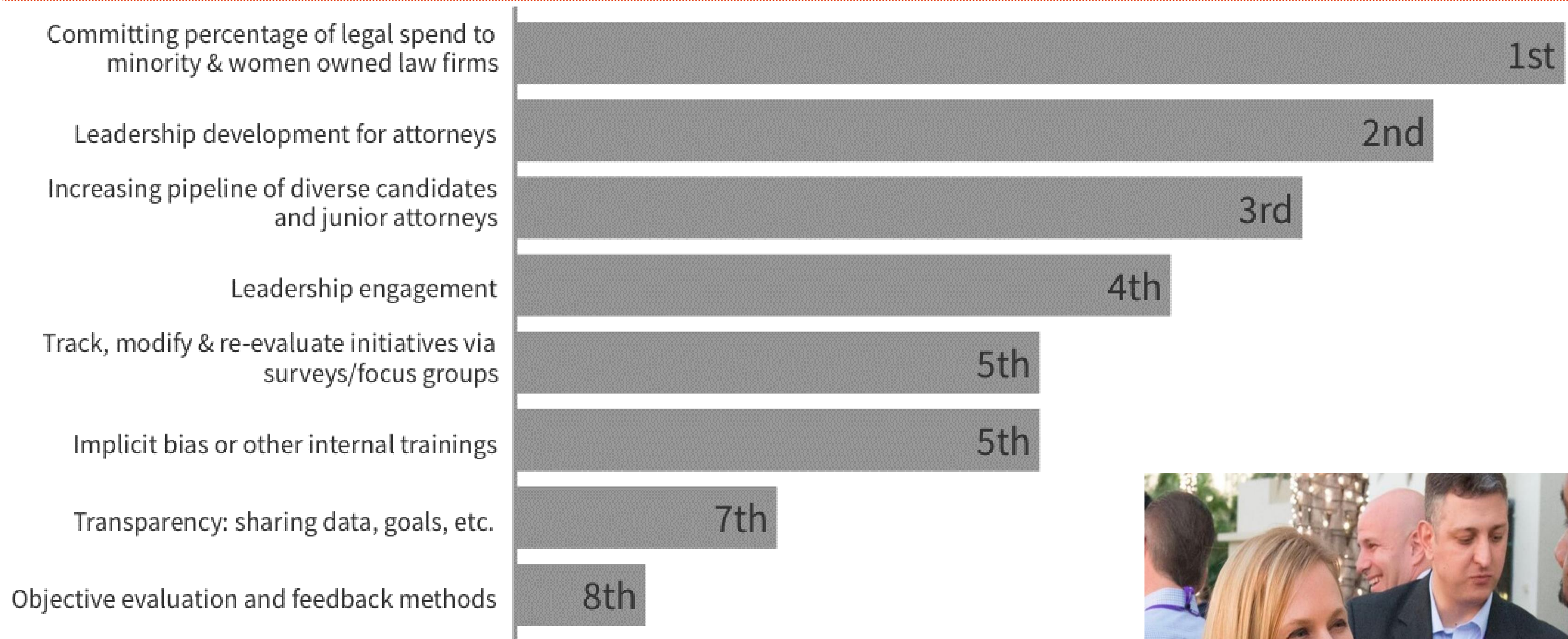
Goals Created & Measured

Successes & Failures Communicated

Legal Leads & Not Follows



Rank the following categories in order of prioritization for diversity and inclusion efforts within your organization.



Diversity & Inclusion - What Companies Are Doing

- **Hewlett Packard** – Imposes up to a 10% hold back of firm fees if certain firm diversity requirements are not met. Outside counsel must have at least one diverse firm relationship partner regularly engaged on billing and staffing issues, or at least one woman and one racially/ethnically diverse attorney, each performing or managing at least 10% of hours billed to HP.
- **Chase Bank** – Requires that at least 50% of its matters be handled by diverse attorneys.
- **Microsoft** – Provides annual two-percent diversity bonus for law firms which satisfy certain diversity benchmarks designed to measure firm's diversity and inclusion progress annually, including whether firm has achieved increase in diversity compared to previous year. Senior corporate counsel's year-end bonuses are also tied to diversity success of outside counsel.

Diversity & Inclusion Best Practices

- **Monitor who's doing billable work for the Company** – Look at the top three to five attorneys charging time on account. If there aren't diverse attorneys in that group, insist that change over a given period of time or face consequences.
- **Meet with engagement Partner at firm** – Discuss state of the legal profession, and need for greater diversity. What is firm's strategy to address this?
- **Identify up-and-coming diverse attorneys within firm** –
 - a) Develop opportunities for those diverse attorneys to gain your confidence and develop the kind of relationships that could later lead to greater responsibility inside the firm;
 - b) Involve these attorneys in Company's functions and events, where they might be able to make networking/client development connections;
 - c) Consider offering secondment opportunities.

Diversity & Inclusion Best Practices

- **Tracking software** - In-house now have available technological resources to track and measure the diversity of their outside counsel, along with tracking other performance metrics, such as results, efficiency and cost effectiveness.
- **E-billing software** – Is the solution of choice for tracking diversity data for several reasons:
 - a) Most law firms use e-billing to communicate information to their clients anyway;
 - b) Familiarity with this software;
 - c) Flexible reporting functionality makes it easy to aggregate and present comparative, qualitative and quantitative data.
- **E-billing technology** - Essential to collecting and aggregating critical metrics, including:
 - a) Total attorneys assigned to all legal matters during previous calendar year or year to date;
 - b) Total diverse attorneys assigned to all legal matters during previous calendar year or to date; and
 - c) Total diverse attorneys assigned to each matter.

Become the change you
wish to see in the world
and it will happen.



The Unique Challenges Facing Women-Owned Law Firms

By **Joel Stern**

In 2016, women made up a majority of students in American Bar Association-accredited law schools for the first time. Since then, female law students have continued to outnumber male law students, with the percentage of female law students rising to 53.3% in 2019. This followed years of men and women having roughly equal numbers of enrollment.[1]

While these numbers are encouraging, we are yet to see gender equity manifest itself in the legal world beyond school, especially in the leadership ranks of law firms.



Joel Stern

Law360's **2020 Glass Ceiling Report**, which studies women in the legal profession, showed women making up just over 37% of the attorneys at law firms in the U.S. The numbers get worse the higher up the ladder you look — women make up 32% of all nonequity partners and just 22% of all equity partners.

The same report calls attention to the woefully small number of women assigned lead counsel positions in individual cases, with the New York State Bar Association reporting women accounting for just a quarter of lead counsel roles in the state.

The numbers are even more dispiriting for women of color, who make up 9% of all attorneys in the U.S., and just 3% of equity partners. Also concerning is that the percentage of women of color who leave their firms is disproportionately larger than the percentage of attorneys who are women of color — in other words, women of color are more likely to leave their firms than any other attorney demographic.

The gender wage gap within the legal profession continues to be an enormous problem, with 94% of law firms reporting that their top-earning attorneys are men, according to a 2020 report by the National Association of Women Lawyers.[2] And the U.S. Bureau of Labor Statistics found that in 2020 female lawyers made, on average, 72 cents per every dollar earned by their male counterparts.[3]

This is partly explained by the high barrier of entry for obtaining equity partnerships, as male attorneys hoard the best assignments and clients for themselves, and by the incumbency bias of clients wishing to continue working with the attorneys they already know, who are overwhelmingly male.

The data also show female attorneys pigeonholed into practice areas that have lower average salaries, such as labor and employment and family law, while men excel in commercial litigation and other, more lucrative practice areas.[4]

Apart from financial considerations of certain kinds of legal work, female attorneys report feeling unsatisfied with the kinds of assignments they are given.[5]

Many female attorneys are expected to also fulfill office housework, such as administrative duties and marketing. Similarly, female attorneys see a financial loss in the assignment of credit for business procured — a fraught process weighted in favor of older male attorneys — that brings with it the loss of prospective future work that is more personally and professionally enriching and challenging.

Female attorneys also report experiencing unequal treatment in terms of work-life balance. Women in heterosexual partnerships still complete more housework than their partners, while mothers bear the brunt of the childcare duties, even as women make up half of the overall workforce, and as half of all American families identify a woman as the main breadwinner.

There is a pernicious double standard at work where a father who handles most of the childcare responsibilities is considered admirable, whereas a mother as primary caregiver is merely expected, the default. The COVID-19 pandemic has only **exacerbated these problems**, as mothers are expected to work from home while also caring for their children and supervising remote learning.

While most law firms report having set up policies to address these issues, most female attorneys are hesitant to take advantage of them. A 2016 survey by the Diversity & Flexibility Alliance found just 8% of lawyers surveyed taking advantage of their firms' flexible hours policies.[6]

Firms talk a nice game about giving work-life balance to their employees, but the general culture of BigLaw firms discourages attorneys from taking any time off, and women feel the consequences of this far more than men do.

All of this barely scratches the surface in describing the issues faced by women in the legal profession — sexual harassment, in particular, is a substantial problem at law firms,[7] and a considerable impediment to female attorneys' ability to succeed and progress in traditionally male-dominated spaces.

But the data clearly demonstrate that America's law firms have a problem with treating men and women equitably. As a result, many women are leaving their firms; some quit being attorneys altogether, while others move to in-house roles, and still others start their own firms.

Women-owned law firms are a source of tremendous optimism for those of us concerned about gender equity in the legal profession. But the women who start these firms face unique challenges.

Leaving behind the financial security of a BigLaw firm is difficult and scary, particularly in the era of the coronavirus. In starting a new firm, female attorneys must prove themselves all over again, and in many respects must be even more impressive than their BigLaw counterparts.

In addition to overcoming inherent bias against female lawyers, they have to overcome potential clients' hesitation toward working with a brand-new firm. Regardless of how well they served their clients in the past, those same clients might be risk-averse and hesitant about giving their business to an "unknown" firm. New women-owned firms must establish their own brand from scratch and convince prospective clients to put aside their big-firm bias.

So, how can new women-owned law firms make a name for themselves, and how can established women-owned firms expand their brand? There are steps women-owned law firms can — and do — take to show their compelling value proposition.

First, they demonstrate the consistently high caliber of legal services they deliver. They do

this by first showing mastery over the subject matter.

Second, they can stand out over the incumbent (often a man) by showing their business acumen, empathetic listening skills, emotional intelligence, and the benefits of providing a different perspective on the issues, challenges and solutions as a result of their gender, i.e., a different perspective.

They can also distinguish themselves by emphasizing how adaptive, flexible, responsive, creative and innovative they are, which has become even more critical as so many legal professionals work from home during the pandemic.

In the past year, women-owned law firms have shown how they are able to adapt to working from home much better than their male counterparts. Women-owned law firms must also actively support each other, even if in competitive practices and geographies, and I see this happening every day.

Another critical piece of the solution is enlisting men to help by educating them on their male privilege and the need to create a level playing field, as well as educating everyone on the adverse impact unconscious bias has on women, and specifically on women-owned law firms. You can't solve the equity problem if you don't have inclusion, and men are a critical piece of inclusion.

We must also ensure that no one uses diversity fatigue as an excuse to not focus on women-owned law firms, as well as other suppliers such as minority-owned firms. It is easy to become cynical when we see insincere corporate diversity "calls to action" fail, but it's imperative that we continue pushing the issue until true equity is achieved.

Buyers of legal services, i.e., in-house legal groups, are also a critical piece of the solution and must be a lot more vocal and action-oriented in their efforts. Corporate legal groups must become better educated on the benefits of using women-owned law firms.

Many companies have highly touted supplier diversity initiatives at the corporate level. These initiatives are premised on the fact that women and minority groups have historically been economically disadvantaged and that when these professionals leave the safe confines of the majority-owned companies and start their own businesses, they deserve the chance to showcase their talents, products and services.

While these programs do not exempt in-house legal counsel from participating, many corporate legal groups lack an understanding of the difference between big-firm diversity and legal supplier diversity.

It is important for the buyer of legal services to understand that both objectives are critical pieces of the solution. Corporate legal groups must have concerted strategic efforts to give women- and minority-owned law firms the opportunity to compete for and win the business in all practice areas and geographies.

Many women-owned law firms are thriving, and this is clear evidence of what can happen when law firms operate from a position of fundamental gender equity and fairness. But this is only a small piece of the puzzle. BigLaw firms must change much more quickly than they have shown they're willing to.

The gender makeup of law firms — at both the rank-and-file and leadership levels — must reflect the makeup of the profession as a whole. And the workaholic culture at so many big

law firms, which disproportionately harms women and benefits men, must change.

This means that female attorneys who choose to have children won't suffer professionally, that firms won't have official policies on family leave that are unofficially discouraged, and that male attorneys have a much better understanding of their privilege and of how to treat their female colleagues with fairness and respect. It also means reexamining the origination credit programs that adversely and unfairly affect women.

However, until such time as we achieve equality in our profession, it is critical that women-owned law firms be given every opportunity to prove the quality and value they offer to all buyers of legal services. They will not disappoint.

Joel Stern is CEO at the National Association of Minority and Women Owned Law Firms Inc.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of the firm, its clients or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] ABA Profile of the Legal Profession

2020: <https://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf>.

[2] Report of the 2020 NAWL Survey on Promotion and Retention of Women in Law Firms: <https://www.nawl.org/p/cm/ld/fid=2019>.

[3] BLS Labor Force Statistics from the Current Population Survey: <https://www.bls.gov/cps/cpsaat39.htm>.

[4] 2019 ABA report, "Walking Out the Door: The Facts, Figures, and Future of Experienced Women Lawyers in Private Practice": <https://www.alm.com/intelligence/wp-content/uploads/2019/11/WALKING-OUT-THE-DOOR-FINAL-AS-OF-NOV-14-2019-pm.pdf>.

[5] 2013 report by Esquire Recruiting: <http://esquirerecruiting.com/why-are-women-attorneys-unhappy/>.

[6] 2016 Flexibility Benchmark Survey Report: <http://dfalliance.com/wp-content/uploads/2017/03/2016-DFA-Flex-Benchmarking-Report-ES-FINAL.pdf>.

[7] 2020 report by Women Lawyers ACTION Network, "Still Broken: Sexual Harassment and Misconduct in the Legal Profession, a National Study": <https://womenlawyersonguard.org/wp-content/uploads/2020/03/Still-Broken-Full-Report-FINAL-3-14-2020.pdf>.