

Roundtable: The New Calculus of Inclusion

In-house Counsel and Managing Partners discuss advancing diversity in the legal profession.

Clients who truly value diversity are looking beyond window-dressing tactics or checkbox employment requirements. They understand that staking a claim in the global marketplace requires a serious ability to embrace and leverage multiple perspectives.

When these clients shop for law firms, they look for more than simple addition and subtraction. They look for firms that understand the calculus of inclusion—that the broader and deeper the talent pool, the better positioned they are to compete globally and locally.

As the participants in this Law Practice Roundtable demonstrate, it's about much more than doing the right thing, it's also about doing the wise thing—and watching successes multiply.



by Karen MacKay, MBA, CHRP
President

Karen MacKay (KM) I'll lead off with the essential question: *What is diversity? Or more specifically, what does diversity being on the agenda in your organization mean?* Marc, let's start with you.

Marc Manly (MM) Diversity is about inclusion. At Duke Energy, it goes beyond EEOC requirements that include gender, race, ethnicity and sexual orientation issues. It's about recognizing all the differences among people—from their educational background to what region of the country or what region of the world they come from.

Robert Granatstein (RG) What diversity means on the agenda at Blakes is making every effort to be constantly attuned to two central things: the fact that within this workplace we have all of these differences represented, and that we need to consider those differences in our actions and our decisions.

Gary LeClair (GL) Diversity at LeClair- Ryan includes but also goes beyond the statutory employment law definition. In making decisions as a firm, we are now including concerns like geographic diversity, practice area diversity, and balancing the views of folks who have been with the firm for a long time with the views of our newcomers so that we are inclusive in considering decisions.

Stephen Gannon (SG) I would say Capital One includes another element or two—we focus a fair

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amount around diversity of communication styles, diversity of thought, diversity in IQ and EQ, and diversity in problem-solving and creativity styles.

David Hackett (DH) Diversity is definitely about inclusion. Our objective is to foster an environment where individuals of diverse race, color, ethnicity, culture, gender, sexual orientation, gender identity or expression, religion, nationality, age, disability and marital and parental status may succeed professionally and fully contribute to the goals of the firm. With Baker & McKenzie having 10,000 people, 70 offices, 38 countries and 75 languages in our firm today, diversity is who we are.

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KM *Why is it so important and who's accountable for the success of such efforts in your organization?*

DH It's important because our business proposition is founded on the notion of the value of diversity in helping each other and our clients. And diversity is increasingly important in that we want the best talent, perspectives and worldview to provide the best to our client companies. Management is accountable for supporting, thinking about and advancing a very diverse pool of talent for our firm. This is of huge significance to large and multinational companies.

Janice Innis-Thompson (JIT) At TIAA-CREF, diversity is critically important to us because of our constituents—hospitals, colleges and universities. It is essential that we understand these constituents' needs and we can best do that if our associates reflect the people we serve.

SG Inclusion does three things for us. First, it improves our morale and the overall Capital One experience. Second, it affects the retention and engagement of our workforce. Third, it has a positive impact on the development of our people when they truly believe there are no barriers to their advancement outside of their talents, their skills, their judgment, their problem-solving abilities and their interpersonal skills. We look to our senior leaders to support diversity within their business entities, and we expect them to reach out and drive additional diversity with our vendors and suppliers as well.

GL Ultimately, I'm responsible as the firm's chairman, but then we have cascading accountability throughout the firm. We concluded that diversity would not succeed at our firm unless the chair took a public leadership role and ownership in the success of the program. So, for example, I spend an hour every month with our diversity consultant to ensure that diversity truly is a core value and that as we are making strategic decisions, we consider the implications of those decisions and their effect on our diversity core value—just like you would consider profitability or excellence or any other core value.

RG Accountability is with senior leadership in our firm, and we have a national committee that is charged with implementing various diversity initiatives. But frankly, all of our lawyers and staff are expected to take responsibility for acting in a way that is consistent with what we're trying to achieve from a diversity perspective.

MM Fundamentally, it's important because it's the right thing to do. When a company does the right things, all sorts of wonderful benefits flow, from the way employees feel about their jobs to the way customers feel about the company. On the second part of

your question, in the Duke Energy Law Department, I'm accountable so I try to set the tone, and then it's about the people in the law department as well as the people we hire from outside firms. I'm responsible for making sure that we have a diverse group of service providers.

KM *Is diversity a feel-good issue only or are there bottom-line ramifications? And what are they? How can they be measured?*

MM I really think it's both. The term "feel good" can have a negative connotation, but if feel good means that you're doing the right thing, then yes, it's definitely a feel-good thing. It's also about attracting and retaining talent. So to the extent it makes your place of employment a more attractive place to be and to stay, that is a big bottom-line issue. Diversity directly impacts our success on the world stage. For example, when I can have a Brazilian-born, trilingual female who knows the cultures of the countries where we have operations, we can achieve an immensely better outcome—but I can't put a dollar amount on that.

JIT We're in the business of giving financial advice to people, and our clients value working with people they can trust, with whom they feel comfortable. With a more diverse workforce, our people can empathize with and earn the trust of clients that have similar experiences and similar backgrounds—this is both a motivator and a financial benefit for us.

SG First, it is a development issue for us as we foster diversity counsels and networks at all levels of the organization. Second, I'd say that we view this as a virtuous cycle. The more we can engage through diversity, the more we have a broader worldview. External recognition validates our efforts and helps us in terms of building our brand and creating a more sharply defined sense of who we are—and we feel good about that.

GL For us diversity is a question of excellence and client service. Better client solutions come from having diverse input. It is also about recruiting, retaining, developing and advancing the best and the brightest and we don't want to exclude anyone.

RG It is so evident that inclusion is necessary and the right thing to do. I think it is true that good things follow from that. External recognition creates a virtuous cycle: You become known for doing certain things and that reinforces your efforts to do them. It also enables you to spread the gospel and evangelize. I believe that over time we're actually going to change the way traditional law firms operate—whether by a greater embrace of flexible work-life arrangements or greater accommodation for people at different stages of their careers.

DH Certainly a law firm's investment in its people is great; retention is important and attrition is expensive. Increasingly, too, diversity impacts which law firms the Fortune 1000 retains—all of these things have bottom-line ramifications.

KM *What initiatives have your companies or firms put in place to enable their diverse members to have a realistic future for growth and upward mobility?*

DH Our firm has a number of initiatives and structures, including an active regional diversity oversight committee that makes suggestions, runs programs and develops policies. Over the past year we've focused on women partners in particular. We have a North American Women's Initiative, monthly conference calls, and an additional day at our partners' meeting for addressing women's issues, and through this effort we've implemented many recommendations. We also encourage policies that foster flexibility,

including telecommuting and reduced hours.

Perhaps most significant, we retained industrial psychologists to interview lawyers and staff about how people are successful at Baker & McKenzie. We built a development framework that includes training, mentoring, evaluation and coaching to develop pathways to success, recognizing that we have to focus increasingly on the talent management program to give everyone the potential for success. We have a long way to go in implementation— but our retention rates have noticeably improved. We know that the more successful we are with everyone, the more successful we are with our diverse lawyers as well. At the end of the day talent management and growth is of the highest priority.

JIT We've found 360-degree reviews and the resulting development plans to be very effective. Clarity about skills and abilities enables us to identify opportunities not just within the legal department, but also within the company at large. When we get a chance to look at our people and look at what they have to offer, we can positively impact their development and help them reach their goals.

RG Among the interesting things that happened in our firm this year is that of the partners we admitted nationally, two were women whom we admitted on what we call restricted hours. That is to say, their total hours commitments are materially lower than what we would expect of a young partner, although obviously there are compensation adjustments that go with that. But what really stood out about these admissions is that we expected some internal disagreement over them, and the decision was really devoid of controversy. The fact that they were very strong people with strong support from their practice groups made for a very easy decision. We are winning by being flexible.

GL Lauren Stiller Rikleen's book titled *Ending the Gauntlet*—which I recommend to everyone—discusses the plight of women lawyers and the gauntlet they have to run to succeed and become partners in a law firm. At LeClairRyan, we now have an *Ending the Gauntlet Initiative* and we're striving to create an environment where our women attorneys can be successful throughout their careers. And for all of our lawyers, we are constantly evaluating our programs through confidential surveys that let us know how we're doing as a firm.

SG At Capital One, we look at benefits through the diversity lens. We have very active diversity networks and counsels that we use to drive influence and leadership and development of associates as well. Our company recognizes that it can't be totally from the top down because we can't think that every good idea comes only from leaders. We rely a lot on the diversity networks to bubble ideas up to us—and it's working.

MM Let me share from my personal experience. Thirty years ago when I came out of law school and was thoroughly worthless as a lawyer, I needed to be trained. Someone who looked like me became my mentor and trained me. Some of my women classmates felt they had nowhere to go. No one understood their issues, particularly when they became young mothers. And there was one African-American guy who joined the firm the same time as me. No one took him under his or her wing to mentor him, and within a year he was gone from the firm.

So I learned a lesson that it takes people, in part, who look like you to mentor you so that you can move up the ranks of the law firm. Now I'm using my purchasing power with our law firms to make the point that diversity and inclusion are important.

KM *What other types of things are showing enormous promise for the future?*

RG Blakes is partnering with one of the business schools to sponsor a leadership program for women in business. And we're working with another business school specifically to design business development training for women in the firm. We now also have emergency child-care support in most of our offices, for people whose primary child-care arrangement has fallen apart. In addition, we're excited about our involvement in a mentoring program for inner-city at-risk youth, in which we have lawyers at all levels volunteering their time, mentoring and learning.

DH We're in the process of hiring a chief diversity officer, and the firm's regional council is unanimous about the importance of this role, which will be filled by a person of prominence with a full-time mission to integrate and interconnect inclusiveness efforts with everything we do.

SG I think that's a great step. At Capital One, we talk to our preferred provider network about their diversity efforts. We make it an issue and track who does what work on our matters.

GL We are working with other law firms in Richmond in collaborative ways so that we can all become more inclusive. And we're working hard on our mentoring program, trying to make sure that everyone in the firm has a mentor—which includes providing executive coaches for our shareholders so they can continue to develop.

Also, our diversity consultant works with us on helping our shareholders understand what's called the "deficit model." In this model, there are assumptions that some white males in particular make about women or attorneys of color, assumptions they don't make about young white males who look like them. The typical scenario is when an associate turns in an assignment and it's not exactly right, but if that associate happens to be a blond-haired, blue-eyed white male, he may be cut slack.

If, on the other hand, a woman associate or a lawyer of color turns in the same assignment, the immediate assumption may be that there's some kind of talent deficit with this person and she or he is only here because of affirmative action. Addressing these assumptions presents touchy issues and often initiates long discussions—but that's a good thing because it helps us better understand the deficit model.

MM As I previously noted, I'm using Duke Energy's purchasing power with law firms to say diversity and inclusion are important and we want your female and minority lawyers to be introduced to our work. To help ensure that becomes a reality, I'm going to measure who is doing our work and reward the firms that figure out the way to get more females and minorities into the upper ranks of their partnerships. I'm going to shift more work to the firms that accomplish this.

On internal hires, before we make a hiring decision we step back to make sure that we've reached out and included a diverse pool of candidates; that we've taken the blinders off; and that we've been as inclusive as possible in the interview process. I want our outside law firms to do the same.

JIT We co-host a minority law forum where we invite New York firms, and particularly their minority lawyers, to visit our offices to see the type of business that we do—especially because women and minorities are rare in the financial services industry. This is giving the law firms an opportunity to get their people in the door, to meet us, to see what we do and to build business relationships. In this and other ways, we are focusing on education (the carrot) as well as on statistics about who works on our matters (the stick).

KM *What are some of the mistakes you see organizations making in their diversity programs?*

DH Saying you have a policy but not integrating that with the overall strategic plan. Assimilating diversity into strategy needs to be at the core.

RG There is so much work to be done in this area that it's a mistake to think that it will take care of itself and that you don't need a committee and a designated program to keep it constantly on your organization's mind.

SG Firms also make mistakes when they don't use both vertical and horizontal approaches to communication between the members of the various groups that make up the firm. When you simply have a committee that is off in a corner generating reports, you don't accomplish a whole lot.

MM The biggest single mistake I've seen made by companies or law firms that set up a diversity group is this: They automatically make the chair a minority. I think this could send the wrong signal to everyone, suggesting that this is only an issue for that diverse group. The chair of my law department diversity counsel is a white, blue-eyed heterosexual male who sincerely believes in our diversity and inclusion commitments. This sends a signal throughout the entire department that these matters are important to all of us.

GL It is a mistake to disenfranchise or ignore our more conservative white male colleagues. You can't ignore that constituency within your firm because you need them to support this. And I think you have to inspire them—with an excellence mission, as we say in our case.

JIT Building on Gary LeClair's discussion of the deficit model, I have witnessed assumptions made about where the attorney was educated. Two associates turn in a project, neither of which is perfect, but the assumption is that the Harvard-educated junior can fix it and that the other, educated in a non-Ivy League law school, cannot. When people use the word qualified without considering or even talking about diversity in backgrounds, it suggests they are settling for less. That is a big mistake—and a truly offensive one.

KM *If you could change one single thing about the practice of law that would make it more hospitable to a more diverse group, what would that be?*

SG There has been a historical absence of mentoring programs for those who are from diverse populations in the legal environment. If I could do one thing to make a difference, it would be providing good mentors to all young lawyers.

RG The way law is practiced in many private firms today is a negative for all kinds of people. A whole range of things about the way we operate makes the pool of potential lawyers shrink. I think putting greater focus on the whole issue of flexibility in work arrangements is the key.

DH Challenging the hours-based economy is imperative to increasing hospitality.

JIT Let's promote to partnership the women who aren't working 2,600 billable hours a year. Let's work on the firm environment through mentoring. And let's make all of this a normal part of our organizations. I think the entire profession needs to stop talking about it as much and start doing it.

GL I'm going to be a bit controversial here. I think law firms suffer from a lack of capital. We need to seriously consider the Clementi Reforms in the United Kingdom and allow public ownership of law firms so that we can have the capital that would allow us to have professional management— particularly in the HR area—and otherwise properly manage ourselves. Right now we're relying on lawyers who really aren't compensated for providing mentoring and are ill trained for management. I believe many law firms are just terribly run organizations when I compare them to other kinds of organizations that are very well run by truly professional management.

MM There's a lot we can do, as we've discussed today. And remember, we're in a profession that is ultimately responsible for fair treatment and administering rules that make for a civilized society.



Frankly, though, I'm proud of our profession and where we are compared to a lot of other professional organizations in terms of commitment to diversity and a pipeline of diverse talent. LP

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