

[Towards diversity in law firms](#)

Diversity in the practice of law has been on my mind the last few days. Partly it's thanks to a confluence of events, such as the second annual [Call to Action: General Counsels' Summit on Diversity](#), which starts tomorrow in Arizona and gathers 150 top GCs to find [ways to increase diversity](#) among their own departments and their outside law firms.

Other triggers include Coca-Cola's recognition of Kansas City's Shook, Hardy & Bacon for [making significant progress on diversity](#) and Skadden Arps' [innovative \\$10M program to encourage minority students](#) at City College of New York to pursue legal careers. But I was mostly prompted by my participation in a plenary panel last Friday at the National Association of Law Placement's Annual Education Conference in Toronto.

Sharing a stage with an advocate like [Vernā Myers](#), and hearing her speak incisively and passionately about diversity in the law, is a moving experience. So is sitting in front of several hundred NALP members, an overwhelmingly female and not uniformly white audience, and thinking about how many of them would, if they wished, be renowned lawyers, practice group leaders and managing partners today were the law firm environments they entered not been so structurally hostile to them.

Vernā made the case that law firms' business and cultural models are white, male, straight and Western in their orientation; I think she's right. The fact that there's a commonly employed compensation system called "eat what you kill" tells you how lawyers like to imagine and narrate the law firm experience. If you had set out to design a compensation and promotion system specifically to reduce the number of women in firms, you could scarcely have done better than the billable hour regime. And male or female, law firm partners are near-universally white, and they continuously hire, mentor, associate with and promote people who look like them.

The results of this culture of exclusion are depressingly clear. Women make up half of law school graduating classes, but only one-third of the practising bar and less than one-fifth of law firm partners. In terms of diversity, 25% of US doctors are from minority groups, along with 21% of auditors and accountants and 18% of professors; for lawyers, the number is 11 percent. I don't have statistics for Canada or the UK, but I imagine they're no better and they might well be worse.

It seems to me there are three elements involved in dealing with diversity in the practice of law. The first is to establish that it doesn't really exist, and I don't think anyone has a strong argument against that. The second is to establish that its absence is a problem, one that the profession should care enough about to address. And the third is to actually address it and solve it.

When attempting to show that the lack of diversity is a problem, some people argue that clients are either themselves more diverse or are making diversity a corporate priority, and that therefore lawyers and law firms should become more diverse in order to keep these clients' business. This is sometimes referred to as "the business case for diversity." I understand the reasoning, but I don't agree with it.

For one thing, it assumes that firms that do innovate in diversity will have a competitive advantage over those that don't. But innovation to gain a business edge has even less traction in law practice culture than diversity does, and most law firms have long rested easy in the knowledge that no one's going to try something different that will just make things more complicated for everyone else. Only in the unique oligopoly of the legal services industry is innovation considered bad for business. That will change in time, because dire circumstances will force it, but it won't be by way of freely chosen marketplace maneuvers, and it's not where I'd want to place my hopes.

And in any event, my primary reason for disliking the "business case for diversity" is that it reduces the diversity rationale to a simple matter of money and removes any consideration of social responsibility. It's like paying your kids to clean their room and do their chores: sure, the tasks will get done, but the kids won't have learned anything about responsibility, discipline, or contributing their small part to the family unit. They'll have learned to do only what they get paid for, and when the money dries up, so does their work ethic. If clients stop paying lawyers for diversity, does that mean diversity doesn't matter anymore, and it's okay to go back to ignoring it?

If you absolutely must have a "business case" for a more diverse workplace, here's one: businesses without diversity are at an inherent strategic disadvantage. When most or all of your people look the same and come from the same backgrounds, it's a safe bet that they'll all think the same and act the same, too. They'll adopt the same analytic approaches, make the same sorts of assumptions, and reach the same kinds of conclusions; when they meet to compare notes, the groupthink atmosphere will reinforce the built-in strategic biases, and each member of the team will congratulate the other on their brilliant work.

It's the opposite of diversity: it's commonality. And a law firm with a surfeit of commonality lacks any number of essential ingredients to be a top-notch solutions provider: a wealth of perspectives, a broad pool of knowledge, creative dissent, constructive self-doubt, an eye for unanticipated outcomes, and most importantly, an ability to see every angle of the multi-faceted challenges clients bring to lawyers every day. A law firm afflicted with commonality [fails to see what its members aren't looking for](#), and sooner or later, that will be fatal.

But even this argument, which I think has a lot of value, is still fundamentally self-interested: it promotes diversity as a means to the firm's ends, rather than as an end in itself. The only really valid argument in favour of diversity is that it matters on its own merits and for its own inherent rightness.

Nature is diverse: the natural order of things is to spawn as many variations on a theme as possible and to set them all to work together. People are diverse: not one of us is exactly like anyone else, and when given the opportunity, we invariably mix and match and swirl together to produce vibrant, cosmopolitan and fulfilling communities. The essential rightness of diversity in everything around us is so obvious that if anything, the burden should lie on making a powerful case against it.

Diverse workplaces are better. They look better; they *feel* better, they *are* better. There is something refreshing, uplifting, and constantly sharpening about a diverse environment: you feel a deeper connection to the real world around you when you're no longer surrounded by the artificiality of sameness. You are never more yourself than when those around you look and think differently from you, because you're challenged to bring your unique background and characteristics into play at all times. Diversity is good, and its absence in the practice of law is bad for us and bad for the system and society we serve.

It remains to decide whether the legal industry's commonality should and can be addressed. On the former point, all I can say is that if diversity is a good thing, then the legal profession should be a leader, not a laggard, in encouraging it. We talk a great game, we lawyers, about our commitment to higher standards and the respect we ought to receive for our valued contributions to society. If so, then we need to be out there driving diversity in our ranks forward, leading by exhortation and example, demonstrating that diversity is inherently right and lawyers are equally right to be aligned with its promotion. Other professions have done it, and there's no excuse for lawyers to be so far behind.

So how do you achieve diversity in the law? I'm actually not big into either incentive programs or mandates from governing bodies: if all you're doing is using a carrot or a stick to motivate or force change, then attitudes towards diversity remain unmoved or even become soured. I do think attitude matters, because resistance to diversity is grounded in biases, conscious or unconscious, against people who don't look like we do.

Vernā talked about the fact that too many people in the law look at a woman or a member of a minority and automatically make negative assumptions about their intellect, their work ethic, the position they hold, and the route they took to get there. If we're honest, we'll admit that we all do that: to meet a truly open-minded person is rare, and to meet a person free from all biases and assumptions is impossible. Ridding our nature of these biases is certainly too tall an order, but there's no reason we can't actively question those assumptions.

White, male, straight lawyers who see a colleague or potential colleague who differs from them in one or more of these characteristics (among others) need to be aware of the inferences they're drawing and the conclusions they're jumping to, and they need to actively shake their minds loose from those biases every time. It's an excellent habit to get into, especially since lawyers are especially good at seeing an issue from any angle and adopting new positions from which to understand and analyze a situation.

Accepting diversity starts with a conscious effort by those of us in the profession's majority to see difference not as an obstacle to be surmounted or minimized, but as an opportunity to think fresh, see clearly, learn something valuable — and appreciate the barriers that our conveniences and assumptions create for others. A diverse legal profession lies just the other side of a willingness to constantly challenge our own assumptions about others. That's not even close to too high a price to pay.

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