

ACC Docket
July/August, 2011

Feature

Career

***44 GROWING DIVERSITY & INCLUSION**

Mark Roellig, Marc Walters [FN1]

Copyright © 2011 by the Association of Corporate Counsel; Mark Roellig, Marc Walters

WESTLAW LAWPRAC INDEX

INH -- In-House Counsel & Corporate Law Departments

***45 Building a diverse and inclusive legal team is essential to obtaining superior results and requires leadership.**

There are plenty of articles available that provide the business case for why promoting diversity in the corporate work force is the right thing to do. [FN1] This article, however, is intended for the general counsel or in-house legal team that has already reached that conclusion. This is a blueprint on the “how to” of building diversity and inclusion within (the corporate legal team (the “corporate legal team” refers not just to employees of a particular enterprise, but to external resources, such as outside counsel).

For the purpose of this article, we have not limited the definition of diversity to the traditional protected classes, rather we believe that diversity and inclusion should encompass all differences -- an infinite range of individual characteristics such as background, education, life choices and experiences. When combined with the necessary legal skills, these differences facilitate a collaborative and creative approach to identify better alternatives and solutions to legal challenges.

***46** We have chosen an approach that focuses on four areas:

1. Creating the internal environment.
2. Building the brand and reputation that the enterprise is committed to supporting and promoting, and making decisions (in part) based on diversity and inclusion.
3. Building a talented pipeline of diverse professionals.
4. Retaining, promoting and developing diverse legal professionals. [FN2]

In evaluating the suggestions in this article, the reader must balance the time commitments of the proposed activities against the work required to achieve the primary objective: high-quality legal services for your clients. We firmly believe that diversity can be achieved or improved regardless of law department size, location, work level or budget. All law departments are not the same, and therefore, legal professionals should adopt the ideas or examples in this article that best suit their department's work, size and budget. We strongly encourage our legal colleagues to invest resources in this endeavor. But of equal, if not more, importance is leadership. The

successful ideas and examples in this article are largely the result of focused, bold, risk-taking measures by leaders. Without courageous action, meaningful improvements in the legal diversity landscape will remain elusive.

Creating the internal environment for diversity and inclusion

Commitment from the top is critical

Building a successful diversity and inclusion initiative depends upon visible and active support from the very top of the organization. Ideally, this support should begin with the leadership team of the broader corporate entity. In most cases, this is not difficult because boards and CEOs have learned that to be successful they must have diverse and inclusive organizations. However, if this is not the case, and the enterprise as a whole has yet to take a proactive view of diversity, there is no reason that the law department should not take the lead toward that end. Any general counsel who wants to be successful and generate superior legal results will be an active proponent of diversity and inclusion. As superior results materialize, other executives within the enterprise will want to achieve similar successes and will follow suit.

It is also imperative that the leadership of the legal team be actively and visibly involved in diversity efforts. Employees watch their leaders closely and will make efforts to emulate what they see. To the extent the enterprise has executive sponsors for employee resource groups, the general counsel should be one. To the extent employee resource groups do not exist, the general counsel should push for their creation. The GC should also actively and visibly engage with diversity organizations and leaders in the community to obtain opinions and insights to improve diversity efforts. As the program develops and is successful, the general counsel should also participate at diversity events and on panels at various conferences. Finally, the GC should be a signatory to the Minority Corporate Counsel Association's corporate "call to action," the Leadership Council on Legal Diversity commitment statement, and other similar public commitments to diversity and inclusion.

Create a task force/diversity committee

A good first step is to create a task force of law department managers and other potential diverse legal professionals. In assembling the members of the task force, think expansively about who would bring diverse ideas and talents. The task force's objective is to evaluate best practices and make recommendations on how to develop and execute a diversity strategy. Two of the task force's early recommendations are likely to be developing a departmental policy on diversity and inclusion and establishing a standing diversity committee. Both of these are the foundation for your future actions and activities. And both can be accomplished in a small or single-attorney law department, even if the general counsel assumes the responsibilities of the diversity committee.

You need a diversity policy statement

It is crucial that the law department has a policy on diversity. The policy can be a part of a broader company policy or unique to the department. Either way, it needs to be a public statement defining the department's position⁴⁷ on diversity and inclusion. At a minimum, the policy should cover:

1. the definition of diversity and inclusion;
2. the importance of diversity from a business perspective;

3. the identification of key high-level strategies the department will follow to foster diversity and inclusion;
4. the creation of a standing committee on diversity and inclusion; and
5. the department's policy on retaining outside counsel, and how diversity and inclusion will be factored in and measured during this process.

The law department's standing committee on diversity and inclusion becomes the resource to accomplish the items referenced in the policy statement. Recognized leaders should populate the committee (leadership does not necessarily equate to management) and high-potential employees within the legal organization. It should be diverse and include professionals at all levels, including those who report directly to the general counsel. It should meet at least quarterly with the GC. Annually, it should create a strategy with specific, time-bound and measurable tactics, of what the department intends to accomplish that year with respect to diversity and inclusion. Because these efforts are so important to the overall success of the entire legal organization, they should be incorporated into the department's overall annual objectives or strategic long-range plan. Finally, this committee will be the clearing house of events and issues that come up during the year and will put structure around them so that decisions are not ad hoc, but rather thought-through and integrated.

**48 Diversity education and training is valuable*

As you work to establish a culture of diversity and training within your law department, it is important to ensure that your team understands what diversity and inclusion means, as it has been defined for your organization. It is important that everyone is reading from the same playbook. An effective way to achieve this goal is through diversity education. Most companies, generally through their human resources departments, provide some form of diversity education. Such training is beneficial, and all employees in the legal department should participate -- with active support and attendance from the general counsel and the other leaders. These programs should be structured to provide a robust discussion and understanding of what diversity is and why it is important to the success of the company (for the culture, acquiring talent, generation of ideas, the business, and serving and reaching customers). They should stress the influence of biases and stereotypes, the importance of being self-aware and learning about others, and the responsibilities leaders have in helping the company become more diverse and inclusive.

Diversity and inclusion need to be elements of the performance management process

It is often a challenge to ensure the legal organization understands that efforts to advance diversity and inclusion are not "extracurricular," but are an important element of one's job and a foundation of the department. One way to accomplish this goal is to have specific objectives established for the leadership of the law department, and include them as a component of their annual appraisal -- with an impact on compensation and promotional opportunities. In addition, some companies have found it effective to have all supervisory personnel evaluated and rewarded, in part, for their effectiveness in recruiting, retaining and developing diverse employees. If this is part of the tangible paper evaluation, individuals tend to take it more seriously than if it is just brought up as a side note during an appraisal. With these objectives in place and at these levels, the message will cascade down throughout the organization.

Ways to build the brand and reputation for diversity and inclusion

Once the law department establishes its commitment to diversity and inclusion, this commitment needs to be projected to the outside world. Sending a strong message of the law department's and the company's commitment will assist in developing a pipeline of potential diverse candidates, and will also ensure that the department's vendors and firms are aware of its importance.

Strategic partnering and sponsorships create visibility

The opportunity to sponsor and participate in diversity events will be plentiful. However, the diversity committee should evaluate these opportunities carefully, choosing only those events that are best aligned with the company's and the law department's diversity strategy and objectives. If the department sponsors, purchases tables or participates in diversity functions and events, make sure its involvement extends to major affinity groups consistent with the strategy, rather than just one or two, or those most identified with particular members on the diversity committee.

If an event or dinner is sponsored, it is imperative that the department has attendees, preferably at the leadership level, and any table purchased should be fully occupied. Outside counsel and primary vendors should be encouraged to participate. The diversity committee and law department leadership should explore ways to strongly encourage each law department employee to attend at least one such event per year (MassMutual includes this in their attorney's annual objectives). Employees will understand the department's diversity commitment and believe they are assisting in the success of the strategy. Otherwise, the same group of people will attend these events and your message of commitment is diluted. All attendees should maximize the value and opportunity of these events -- work the room and exchange business cards. In-house attendees should always follow-up shortly after the event with any attorneys or others who were impressive and may be valuable resources as outside counsel, diversity recruitment connections or future employees.

When attending these events, it can be advantageous to determine whether attorneys from firms you work with are also attending. At several national conferences, MassMutual has sponsored a separate smaller-targeted dinner or a reception and invited the attendees from the major firms with which it partners. MassMutual also conducted an annual dinner in Hartford for all of the attorneys (associates or partners) of color from the major firms it engages in that community. These receptions/dinners are important and should be attended by the leaders of the in-house law organization. A short presentation providing an overview of the business of the company, the legal work with which it is involved and how the law organization is structured, allows the attendees to consider how they could support the company. This event also provides a unique opportunity for the attendees to "sell" their services to the right leaders of the in-house groups in attendance, and very importantly, allows the in-house leadership direct access (not intercepted by relationship partners) to diverse attorneys whom they may choose to retain on future matters or as potential hires into the company. Efforts to make these "skip level" interactions *49 are valuable, and all key contacts should be tracked for future interactions.

Another tool for branding the in-house law department's diversity efforts is to have lawyers from the company sit on the boards of state or national legal diversity organizations. The company should cover the costs of the membership fees, and participation should be tailored to the areas of practice and location(s) of the in-house legal activities. Microsoft has found significant value in its team members holding leadership positions on key committees and boards in influential organizations including the American Bar Association (ABA), MCCA, Leadership Council on Legal Diversity, Corporate Counsel Women of Color, National Bar Institute and the National Asian Pacific American Bar Association. For MassMutual, the Massachusetts Woman's Bar (WBA), the

Massachusetts LGBTQ Bar Association and other broad encompassing diversity groups, such as the Lawyers Collaborative for Diversity in Connecticut or the Boston Lawyers Group in Massachusetts, can be valuable. MassMutual has also offered the use of its facilities for meetings of the WBA's annual meeting, and has hosted and sponsored fund-raising events and membership drives of the WBA and other minority bar associations.

Hosting an annual lunch or meeting with leaders of the major legal affinity groups in the state/community can also be valuable. At MassMutual, this event was attended by law department leadership, as well as the CEO of the company. The purpose of the meeting is to outline the company's commitment to diversity, identify the actions to support this commitment and create a "brainstorming" session with the leaders of the affinity groups on what the company can do to improve. The presence of the CEO at such an event is very powerful because it communicates what is expected from the law department with respect to diversity and inclusion and that diversity is a priority. This setting is also where a number of good ideas to advance diversity can be generated.

**50 Law schools and internships can be of assistance*

Activities involving law schools provide another avenue to promote the law department's diversity and inclusion strategy. However, activities at the law-school level typically have only long-term returns as most corporate law departments do not hire directly out of law school. For example, hiring diverse summer interns can be valuable, but probably should be done only at the first-year level -- otherwise you are robbing the intern of her best chance to obtain a great job by being a second-year intern at a major firm. For a first-year student, you may be helping them land that second-year summer associate position, given that a reference from a major client of a significant law firm can be incredibly powerful. Assisting interns with interview training for such opportunities is also advantageous. While law school diversity extern-ship programs have little downside, these efforts require a time commitment from in-house lawyers and paralegals to work with the students. Notwithstanding these additional efforts, such programs are an effective way of projecting the company's reputation for supporting diversity in the community.

One action that MassMutual has found very valuable is jointly sponsoring a summer associate with a major Boston law firm with which it works. The value of this fellowship is that significant law firms have access to incredibly high-caliber students -- usually better than any corporation. The program is valuable to the sponsored student who spends a couple of weeks at MassMutual during the summer and obtains a unique perspective of what it is like to work with a client. Such a program allows the company to have its leaders participate in some of the summer events at the firm. This opportunity is beneficial because law students at high-quality schools, other summer associates, and associates and partners at the firm will observe the company's commitment to diversity. The program also enables the company to develop relationships with attorneys at the firm who may at some time choose to leave private practice. If these relationships are successfully put in place, their first call for an in-house position will be to the people at companies they know, and companies that have demonstrated externally their commitment to diversity and inclusion, and have shown that the opportunity for advancement exists. Finally, MassMutual has found that advertising this fellowship, co-branded with its program partner at diversity events, distinguishes MassMutual and is more effective than all the other ads -- and as one fellowship associate stated, "It makes clear that MassMutual puts its money where its mouth is."

Mentoring is so important

Mentoring crosses all categories of this blueprint. Mentoring should exist for external attorneys

(high-potential attorneys at firms the company retains) and for internal diverse legal professionals. Many local programs exist for mentoring diverse law students, which can be used as an opportunity to help develop mentoring skills and provide assistance to these students. If the general counsel participates in such programs, it is likely that many others in the department will also participate.

It is important that one is not just assigned as a mentor, but that mentor training is provided to all the professionals who are engaged in this effort. Often, the Human Resources department can assist in this endeavor, or you can find books that provide good insights. We recommend the pamphlet entitled "Being an Effective Mentor: 101 Practical Strategies for Success," which is published by the National Association of Legal Professionals as a valuable resource. Make sure that the general counsel is visibly mentoring at least one external diverse attorney and at least one diverse employee (it may be better that this attorney is outside of the department chain of command to eliminate any perception of favoritism).

While this article is not intended to provide instruction on being a mentor, one must not forget the value of "reverse mentoring" in which the mentee provides suggestions and feedback to the mentor. "Reverse mentoring" can be particularly effective when the mentor and mentee are different from each other. Mentees often provide the leadership group with the best insights on what it is doing right and wrong, and what they should do more or less of. Some of the best ideas on how to improve the department's diversity efforts will come from mentees -- if the leadership listens.

Recognition -- you deserve it

As your diversity and inclusion "brand" grows, take the opportunity to apply for external awards and recognition. These are best done in the name of the company, since it recognizes the entire team's efforts. It is very powerful for your team to see positive reinforcement for ***53** all their after-work committee meetings, late night dinners and other efforts. In addition, attorneys are competitive. If they apply for recognition and do not receive it, it will cause them to work all that much harder on the underlying factors, to improve their future chances. Any recognition helps your external branding, reflects positively on the department, and garners recognition by senior leadership, the CEO and your board.

Establishing the internal and external diversity pipeline and resources

Leverage contacts and sourcing for diversity

Many activities in the branding area allow for interactions that develop the pipeline for internal candidates or external resources. When positions open, work hard to ensure that the slate from which a candidate is chosen includes diverse legal professionals -- then choose the best. It is important that a company advertise for open positions in areas likely to attract diverse candidates (e.g., MCCA or minority bar websites). Create database of key contacts (e.g., diversity leaders in the affinity groups, diverse attorneys at the firms you use, impressive individuals met at diversity events, mentees, fellowship recipients, interns, etc.), and when positions are open, let them know. Properly instructed external recruiters and the human resources team are also key partners to ensure that slates include diversity. You may also communicate an expectation that there is a diverse slate before interviews begin.

Keep in mind that in-house teams are selling results to their clients, while law firms are generally in the

business of selling hours. In addition, in-house law departments should have a “team” focus and less of a personal focus on being the “originator” or the “lead” on a matter. These factors provide the corporate law department a unique opportunity to attract a different and more diverse group of professionals. The in-house law department need not focus on where, when and by whom its good results are generated. Therefore, opportunities exist for the sharing of work, flexible schedules and working at different locations -- all of which can be incredibly meaningful for professionals with disabilities, working parents and others. Stress these opportunities and use them in recruiting -- creating a brand for being flexible and receptive to these needs will give you a competitive advantage in recruiting many very talented legal professionals.

Grow the pipeline and resources

Improving the pipeline also means getting involved in the effort of creating more diverse candidates. Companies should think of ways they can uniquely assist in growing their specific candidate pool of diverse legal professionals. Several years ago, Microsoft created the Microsoft Women and Minority Law Student IP Summit. The Summit is an annual meeting of law students, law firms and interested in-house counsel, designed to encourage women and minority law students to seek careers that focus on technology/IP-related issues. To help spread awareness for the Summit, Microsoft has developed a sponsorship program where outside law firms and other organizations can partner in supporting the event. Microsoft also participates in K-12 initiatives designed to create more awareness among underrepresented minorities regarding a career in law. Microsoft law department volunteers have worked with students as mentors through the Just the Beginning Foundation and the Future of the Law Institute.

Drive diversity in your external resources

In addition to the internal pipeline, there are the external resources, which generally need to become more diverse. On at least an annual basis, there should be a business meeting with the general counsel and the company's “Preferred Outside Counsel” (some entities use a measure for this category -- the firms which in the aggregate receive more than 80 percent of a company's billings). During this meeting, a specific agenda item should be the firm's progress with respect to diversity and the diversity of staffing on the company's matters. The general counsel and the leadership team need to make clear that the company only desires to have long-term relationships with firms that will continue to offer the best quality legal services in the areas it is retained. Clearly, if the firm has no diversity strategy, or is not making progress in this area, it will not be around for the long term. All such preferred firms should provide quarterly reports on the use of diverse attorneys. Measurable information also should be obtained on their recruitment efforts to attract diverse candidates, retention and attrition of diverse hires, and the nature and quality of both the matters and the assignments for the diverse professionals. Although this data may be captured from ebilling, asking the firms to provide the numbers and information regularly, creates heightened visibility and underscores its importance to those making the purchasing decisions of these firms' services.

Whenever it is necessary to retain outside counsel for a significant matter, more important than the firm chosen is the team that will work together with the in-house counsel. At this point, the diversity offered by the firm should be considered an important element in the selection process. Diversity should include not only entry-level associates who are called into the presentation room and will likely be rotated off the matter, but also the senior-level decision-making attorneys. Frankly, if the firm presents a homogenous*⁵⁴ team of attorneys as its staffing for the matter, the first question you should ask is: Do I stay in the meeting for the pitch long enough

to finish the coffee or do 1 exit now?

Efforts should also be made to understand how a firm rewards attorneys for working on your matters and ensuring alignment with your diversity strategies. You may think you are assisting a diverse partner in her career at a significant firm by going directly to that partner, only to find out that there is a “relationship partner” that is getting most of the credit. Ask firms how credit is evaluated and shared, and align how matters are assigned consistent with your objectives.

There are a variety of ways to broach diversity with outside counsel, and one example is Microsoft's successful 2009 launch of its Law Firm Diversity Program. The program is designed to encourage key outside counsel to increase diversity through a strategy of “pay for performance” and collaboration. Microsoft provides an annual 2 percent diversity incentive bonus for its premier preferred provider law firms that demonstrate concrete diversity progress. Firms achieve the bonus by selecting from one of five specific and objective targets, designed to measure that firm's diversity and inclusion progress annually. For example, one annual target is whether a firm has achieved percentage increases in its overall US diverse attorneys against the previous year, while another tracks increases in the percentage of hours produced by diverse attorneys working on Microsoft matters.

Many companies evaluate outside firm performance through annual surveys directed to outside counsel who work with the Preferred Provider Counsel. This survey should include questions on diversity, and responses should be shared with each firm and compared to the other firms. If one firm is getting low marks in diversity, that firm should be concerned. The company needs to make clear that it will no longer use firms that do not assist in the company's diversity and inclusion objectives and strategies.

Bottom line: Law firms will rightly view in-house counsel as disingenuous in requesting greater diversity in their firms (because it is a corporate objective) if the in-house team remains largely homogeneous. Diversity at the firm level will eventually be driven by the buyers. As in-house groups become more diverse, which they will, they will prove the value of a diverse and inclusive environment, and will seek to have the outside resources employed to augment their team and reflect similar diversity achievements. In addition, as in-house diverse teams continue to perform better than homogenous teams, diversity will be demanded to improve results. Finally, as we see more diverse GCs and leadership in in-house teams, these demographics will be mirrored in the outside counsel they select. These are significant and fast-moving trends in corporate America, and firms that are not prepared are in for a real surprise.

Developing and promoting diverse legal professionals

Most companies spend employee-development time trying to make their non-performers average instead of working on the more important objectives of making their performers superstars and giving their talented diverse employees the best chances to be successful. In the diversity space, it is critical that efforts are made to assist the department's high-potential diverse employees in having the opportunity to be successful.

Flexible work arrangements and gender diversity: A competitive advantage

In the effort to build diversity and inclusion in the law department, significant obstacles facing women and working parents should not be overlooked. In particular, if flexible work arrangements are offered by the department, leadership should make sure that the professionals taking advantage of these arrangements are seen and

treated as valued members of the team with opportunities for advancement. While today the view is that women can face significant challenges when it comes to balancing family and professional life, a growing number of men are likely to feel the effects as well. Families will require flexibility in their professional choices, and law departments that can take advantage of this growing need will benefit. Flexible work arrangements are a valuable way to accommodate life choices for some in the short-term, while keeping them in the workforce; when they no longer need a flexible schedule, they are able to seamlessly return to a conventional schedule if they so choose. Additionally, while flexible work arrangements are being utilized, your department will benefit from continuously having women, as well as parents, in the workforce who are loyal to the company and can bring different life experiences and points of view.

As part of any effort to address the unique issues facing women, it can be valuable and informative for leadership to regularly obtain input from women in the department on what gender diversity is, how gender discrimination manifests itself and the challenges they face, so the company can take steps to address such impediments.

On-boarding -- don't forget, even more important for diversity

For new hires, it is important to ensure they start off in the right direction. As the old adage goes: You only have one chance to make a first impression. For diverse legal professionals, particular focus on early interactions is key. A well thought-out and structured 30-60 day and six-month plan can help in this process -- this is standard operating procedure at Microsoft. As mentioned earlier, mentors can be of valuable assistance in assimilating*⁵⁶ a new legal professional, navigating the corporate structure and politics, and advancing within the in-house environment. Assign both a peer and a leader in the law group as mentors to any diverse hires. Make the mentor assignment a portion of the mentor's annual performance objectives. But remember, many mentor relationships do not work; therefore, readjust if necessary. Finally, look for opportunities for exposure for diverse legal professionals on significant projects or with senior leaders in the company.

Communicate diversity and inclusion on your website

One obvious but often overlooked way to communicate the diversity and inclusion learning opportunities is by building a robust internal legal diversity website. Companies should not overlook the value and usefulness of this tool overall. The website can act as the single source of key information, including, among other things, the department's policy on diversity and the schedule for all diversity events. If a useful and up-to-date website is well maintained, it will likely keep employees engaged in the overall diversity effort.

Keep diversity in the forefront

Keep diversity in mind at meetings where discussions and evaluations occur on promotions, bonuses or other compensation. If the outcomes of these processes do not achieve a diverse result, step back and identify the obstacles and how they can be traversed. Keep in mind that posters or policies are nice, but the actions the employees watch most are whom you hire, reward, promote and terminate. In announcements that reflect promotions or rewards, to the extent the individual is receiving the award based in part on those activities in the areas of diversity and inclusion, make that public and clear -- the others will watch and emulate.

Diversity and inclusion will create superior legal results

The most effective way to advance **diversity** and inclusion in a corporate legal team is to embed it in the fabric and structure of the **in-house legal department**. Once this goal is achieved, there is less of a need to take the extraordinary efforts to find or promote diverse legal professionals (internally or as outside counsel) -- it will occur based upon the performance and potential of the various individuals in the diverse legal team. However, promoting diversity and inclusion won't just happen. It ***57** takes a lot of focus, time and effort. It must be a priority, included in objectives and reviewed as a part of annual performance. However, being proactive in this space should create an environment that reduces the need for a company to have to do unusual things, or engage in activities that it would not otherwise have to. Often, doing these things -- such as hiring externally for diversity at a particular high level when the company normally promotes internally -- risks that the result will not only be unsuccessful, but also that the department's diversity challenges will be exacerbated. Finally, keep in mind the best defense to any complaints or claims regarding disparate actions is a strong offense that is based upon performance and potential.

We hope that this article provides a blueprint, or at the very least, several new ideas on how to build the diversity and inclusion in your law department. Taking an expansive view of diversity will lead to more solid and successful legal solutions. The department will have stronger talent, will better understand the people and cultures with which the company does business, and the team will generate more ideas and legal options, all of which will drive superior legal results.

Have a comment on this article? Visit ACC's blog at www.inhouseaccess.com/articles/acc-docket.

ACC Extras on ... Growing Diversity and Inclusion

ACC Docket

- *Developing Great Minority Lawyers for the Next Generation (July 2010)*. This article challenges in-house and outside counsel to work together to change the composition of the legal workforce. It offers diversity solutions and tactics for corporations and firms. www.acc.com/docket/minority-lawyers_jul10
- *Collaborating with Outside Counsel to Promote Diversity Change (June 2009)*. Based on Accenture's system, it's possible to take diversity from an idea to an action. Read how the company's global legal network developed an inclusive internal environment and how that had a domino effect on their external relationships. www.acc.com/docket/promt-diversity_jun09

InfoPAKsSM and LPPs

- *Affirmative Action Compliance (Sept. 2009)*. This InfoPAK overviews OFCCP methods and suggests steps a company can follow to determine if it is subject to federal affirmative action regulations and, if so, ensure compliance. www.acc.com/infopaks/affirm-act_sept09
- *Achieving Diversity (June 2006)*. This infoPAK provides in-house counsel with information on establishing and maintaining a diverse law department. www.acc.com/infopaks/diversity_jun06
- *Law Department Diversity Initiatives (March 2005)*. Read this leading practice profile and find out how the legal departments of 10 different companies profiled have developed diversity initiatives that are making a difference. www.acc.com/lpp/diversity_mar05

Quick Reference

- *Ten Things to Remember - Cultural Differences (Aug. 2010)*. Ten points to remember when dealing with companies and people in other countries and other cultures. www.acc.com/quickref/cult-diff_aug10

Forms and Policies

- *Wal-Mart Legal Department Diversity Alert (June 2005)*. A letter from Wal-Mart's legal department letter to its top 100 outside counsel, demanding to see more females and attorneys of color working on Wal-Mart matters, and managing the firm-client relationship. www.acc.com/walmart-diversity_jun05

Presentations

- *Diversity in the Legal Profession: What's New, What's Now, What's Next (Oct. 2009)*. During this presentation, top in-house counsel offer their perspectives on what's new, now and next in terms of diversity in the legal profession. www.acc.com/diversity-legalprof_oct09
- *X and Y and Boomers Too: The Ins and Outs of Generational Diversity in the Legal Workplace (Oct. 2009)*. This presentation discusses generational differences in the legal profession and the ways in which organizations can leverage the creativity that arises from generational diversity. www.acc.com/x&y_oct09

Resources

- *ACC Compliance Training Portal*. This resource center, ACC's compliance and ethics training tool, can help you stay on top of pertinent compliance matters, provide training materials for your employees, and give you quick tips on ethics issues. www.acc.com/compliance

Education

- Looking for additional information on managing and incorporating diversity? Join us at ACC's 2011 Annual Meeting, Oct. 23-26 in Denver, and attend session "507 -- Where to Place the Guardrails: Master Course on the Legal Backdrop for Corporate Diversity Initiatives." Through this course and over 100 others, earn CLE credits while networking with peers. Find more at <http://am.acc.com>.

Article

- *Diversity Creates More Productive Project Teams (May 2009)*. Diversity is often acknowledged as an important goal in building project or case teams, but there's little discussion about why it is desirable. Read this article from Robert Half Legal to learn why diversity creates a more productive project team. www.acc.com/diversity-pt_may09

ACC has more material on this subject on our website. Visit www.acc.com, where you can browse our resources by practice area or search by keyword.

[FN1]. MARK ROELLIG is executive vice president and general counsel at Massachusetts Mutual Life Insurance Company (MassMutual); responsible for all the legal, corporate secretarial, regulatory and governmental affairs of the company. Before joining MassMutual in 2005, Prior to their sale/mergers, Roellig served as general counsel and secretary to public companies Fisher Scientific International Inc., Storage Technology Corporation (StorageTek) and U S WEST Inc. He received his BA in applied mathematics from the University of Michigan, his law degree from George Washington University, and his MBA from the University of Washington. Roellig was the recipient of the 2003 Colorado Hispanic Bar Association Special Contribution Award and the 2010 North American South Asian Bar Association Corporate Counsel Achievement Award. He is also the executive sponsor of the MassMutual GLBTA Employee Resource Group. He can be contacted at *mroellig49@massmutual.com*.

MARC WALTERS is a senior attorney at Microsoft Corporation [Microsoft) and is part of Microsoft's commercial licensing legal team that supports Microsoft's OEM licensing business. He joined Microsoft in November 2010, and before that held senior legal roles supporting complex commercial transactions at Oracle Corporation, Sun Microsystems and StorageTek. Walters received his bachelor's and law degree from the University of Colorado at Boulder. He is part of Microsoft's LCA Diversity Outreach Team and his legal department has received recognition for its diversity efforts, including the Lawyers' Committee for Civil Rights Under Law A. Leon Higginbotham Corporate Leadership, National Bar Association Corporate Merit and more. He can be contacted at *mawalter@microsoft.com*.

** The views and opinions contained in this article are the personal views of the authors and not necessarily those of their employers.*

[FN1]. Denchant, K. and Robinson, C., *Building a Business Case for Diversity*, The Academy of Management Executive, August 1997; Osborne, E., "The Deceptively Simple Economics of Workplace Diversity," 21 J LAB. RES. 463 (2000); Brayley, D. and Nguyen, E., "Good Business: A Market-Based Argument for Law Firm Diversity," *The Journal of the Legal Profession*, 2009, 34 I. Legal Prof. 1; Marcus Robinson, Charles Pfeffer, and Joan Buccigrossi, *Business Case for Diversity with Inclusion*, (2003), wetWare, Inc. Rochester, NY. http://workforcediversitynetwork.com/docs/business_case_3.pdf; Castro, Melissa, "The Business Case for Diversity," *Washington Business Journal*, June 21, 2010. www.bizjournals.com/washington/stories/2010/06/21/focusl.html.

[FN2]. Throughout this article, reference is often made to legal professionals instead of "lawyers," "paralegals," etc. In this new in-house world, subject to the rules of professional responsibility, these lines are and should be blurred with work being allocated to the individuals and teams who have the best ability to efficiently and effectively accomplish the work with superior quality.

29 No. 6 ACC Docket 44

END OF DOCUMENT

InsideCounsel

Best Practices for Building Strong Legal Departments

Diversity, working well with others key factors for winning teams.

By Mary Swanton

June 1, 2011

Lawyers by nature and training often aren't the best team players. They tend to seek autonomy and thrive on competition. Law schools and law firm experience can cement these traits, rewarding individual contribution over team accomplishments. Yet success in the in-house legal world often depends on being a good team player. To meet the dual responsibility of protecting the corporation and helping business unit clients achieve their goals, general counsel must build a culture based on teamwork at two levels—within the legal department itself, and in partnerships with its clients. The ability to work well with others is crucial to the four factors former Qwest General Counsel Rich Baer identifies as the hallmarks of great in-house counsel:

- They help clients communicate more effectively
- They help clients think more critically
- They build consensus throughout the organization
- They serve as the conscience of the company

Building a strong legal team starts with hiring people with the ideal mix of legal expertise and people skills, and then retaining those who best adapt to the collaborative culture. On the following pages, general counsel share their best practices for legal department team building.

Hiring hints

“Building a strong legal team starts with hiring the right lawyers,” says Janice Block, general counsel of Kaplan Higher Education.

Other general counsel agree. But in recent years, the recession put the brakes on legal department hiring in many companies. Now that the economy is picking up, some GCs will be filling long vacant positions or even adding new ones. It's a critical opportunity to strengthen the team.

“In the era we are in, you get so few opportunities to bring somebody new into the legal department that you have to get it right,” says Cameron Findlay, general counsel of Medtronic, a medical technology company.

While strong legal skills are an obvious prerequisite when assessing job candidates, that is only part of the equation.

“When you make a hire, it's not just about credentials. A lot is about personality,” says Mike Evers, head of Evers Legal Search and an insidecounsel.com careers columnist. He notes that

because advancement opportunities in a legal department often are limited, it's important to hire those who have a psychological predisposition to be happy in that environment.

"You want talent and ambition, but not so much ambition that they will be a problem," he says. "When you know not everyone will succeed you as general counsel, you need to make an assessment of who will be happy [with that] and who won't be."

General counsel say they try to determine whether a job candidate will be a team contributor. Rich Baer, former general counsel at Qwest, calls it a search for "emotional intelligence—people who relate well to other people, which is not necessarily the strong suit of many lawyers."

In a similar vein, Block says she hires lawyers who are "committed to being team players, to listening to our clients and being responsive and accessible to them, to constantly learning and developing professionally and helping our direct reports and teammates do the same."

The ability to assess those traits in a job interview is more an art than a science, but Jerry Okarma, GC of Johnson Controls, has one technique:

"If I interview someone and hear, 'I, I, I' —'I did that public offering,' 'I won that case,' I put my pencil down and say 'Really, you did that stuff by yourself?' We are not an 'I' company. We take a team type approach to things. If they come in and say how great they are, it makes me nervous."

Findlay similarly listens closely when an applicant is describing cases he has worked on.

"There are some who will claim all the credit and others who will give credit to others and almost be embarrassed to talk about their own role," he says.

Picking candidates with the right attitude, Findlay adds, can impact the morale of the whole department.

"Practicing law can be so much fun when you have colleagues you like," he says, "and it can be miserable if you have colleagues you don't like."

Rules for Retention

Keeping that great new hire happy in his or her new position isn't always easy. It's complicated by the fact that legal departments tend to be relatively flat organizations, with limited advancement opportunities. The recession further complicated this, because lawyers haven't moved from company to company.

"If you are a talented young lawyer in an in-house department, you look up and say, 'My superior will be in this job another 10 years. What kind of opportunity does that give me?'" says Cameron Findlay, GC of Medtronic.

Part of a GC's job is to manage expectations by reminding lawyers of benefits of an in-house career, Findlay says. There's no pressure to drum up business or to meet a billable hours quota. "But in-house departments are flat organizations and you don't move up every year like you do in a law firm," he says. "[In-house lawyers] need to think of professional opportunities as not just being upwards, but also side to side and diagonal."

Business structures like Medtronic's that contain mini legal departments within the business units, in addition to the corporate legal staff, are particularly suited to those lateral moves. "This gives us the opportunity to move someone out of M&A into a business unit where they are closer to the business and have leadership opportunities," he says. "This sets them up well to come back [to legal] with a better understanding of the business or to stay there and move up in the business unit."

Global legal departments can offer enhanced development opportunities with the added attraction of a new cultural experience. Jerry Okarma's department at Johnson Controls, for instance, supports three diverse global businesses. "It's a great opportunity to get experience in different business units and areas of the world," he says. "You don't have to leave the company to move along your developmental path, both personally and professionally."

Other large company GCs cite variations on this theme. At Cisco Systems, general counsel Mark Chandler encourages lawyers to rotate into business positions. He notes that of 30 attorneys who have taken non-legal jobs in the company during his tenure, 20 rotated back into legal—a testament to the department's culture.

"We create an environment where people are able to contribute in different ways to the growth of the company," he says. "Everybody can make a difference. It's a nonpolitical environment where people are rewarded for inclusiveness."

At Qwest, former GC Rich Baer found a way to provide new growth opportunities within the legal department with a program that moved six to eight attorneys a year from one discipline to another. Commercial litigators might work in the regulatory section, while regulatory experts worked on commercial contracts. This experience both deepened the department's bench strength and provided an incentive for attorneys by allowing them to develop new skills.

"To a lawyer, everyone we moved was a great success in the new job as well as the old job," Baer says.

Spreading the Word

Beyond hiring good people and motivating them with growth opportunities, general counsel of great legal teams set a tone, have a plan, and communicate, communicate, communicate with their teams.

It may sound basic, but it's critical, particularly when trying to realign a department around new goals and objectives. Take the case of Michael Going, general counsel of CNH America. He took

over the top legal spot in June 2007, determined to change the mindset of the team “from a risk-averse in-house law firm approach to one that understands what the business is trying to achieve and why we are trying to achieve it.”

From the outset he made his expectations explicitly clear with a slide presentation that defined his vision for the department and his expectations of everyone in the department, from himself to his administrative assistant. It’s an explanation he goes through with new hires and continuously reinforces with those already on the team.

“You have to get them out of the comfortable groove they’ve been in,” he says. “You have to tell them what is expected and coach them into new habits of doing things. Some will rejoice, some will welcome being able to use their left hand in this new approach. Some will take a while to learn. Some will be unwilling to do this new approach.”

In Going’s case, the task is complicated by geography. Of the 35 lawyers in his department, he is the only one based at the corporate headquarters in Burr Ridge, Ill. Others are scattered from Pennsylvania and Wisconsin to Brazil, Germany, France, the U.K., Italy, Switzerland and Australia.

That keeps him on the road a lot, so he can “continue the drumbeat,” as he puts it. “Leading by example is the tried-and-true way of helping people change.”

Cameron Findlay came to Medtronic as GC from Aon, where it was easy to stay in touch with the lawyers in his department with brown bag lunches and casual chats in the hallway. “Almost everyone was on one floor in one building in Chicago,” he says.

Findlay misses that daily contact in his role at Medtronic, with 125 lawyers spread around the country and around the world. He still hosts brown bag lunches for those who, like him, are based in the Twin Cities, but he also reaches out to other locations with quarterly all-hands webcast meetings and biannual all-hands global in-person meetings. On the off years, he plans to start regional all-hands meetings.

“It’s so important to people to know what is going on,” Findlay says. “It prevents rumors from running rampant. I always err on the side of communicating in all directions—up, down and sideways.”

At Johnson Controls, GC Jerry Okarma’s department constitutes 64 lawyers in more than a dozen offices, more than half of those outside the U.S. Just getting people to relate to being part of a global legal team is the first challenge, Okarma says.

“If you say to someone, ‘Welcome to the team,’ they would say, ‘What team are you talking about? There are four lawyers here with me in Brussels, I’m assigned to a business team, and you tell me I am one of 64 lawyers on the global legal team.’”

As a result, Okarma has learned that he has to factor in location, business unit and overall function when he tries to team build. He hosts quarterly global communications meetings where

he talks about the state of the business, where the department stands on its objectives and what challenges it faces to make all the lawyers feel part of one legal team. Below him, the global GCs have regular WebEx or conference call meetings with the business unit teams, and there are annual in-person regional meetings.

Not surprisingly, the legal department at tech giant Cisco Systems makes extensive use of the company's TelePresence video conferencing technology to keep a dispersed department in close touch. This has enabled the department to encourage flexible work arrangements that contribute to a low attrition rate, according to GC Mark Chandler.

"People need flexibility in their personal lives," Chandler says. "We encourage people to schedule work in accordance with their personal needs. Remote connectivity through WebEx and TelePresence, which provides the ability to do high-definition video from home, enables that."

Chandler also conducts all-hands meetings via TelePresence, which allows dialog among the dispersed team members. "The ability of TelePresence to create interaction has been a huge shift that allows us to get people together around the globe and build them into one team," Chandler says.

He adds that he typically spends three to four hours a day keeping in touch via TelePresence, which he says is almost the same as an in-person meeting.

"Sometimes I can't remember whether a meeting was in person or on TelePresence," he adds.

Sidebar: Teamwork Tool

Pro bono projects can be a valuable tool in keeping attorneys challenged and happy by offering them an opportunity to learn new skills while meeting their professional responsibility to give back to the community. They also provide opportunities to build teamwork.

At Exelon Corp., where pro bono work is rewarded and a wide range of pro bono projects are offered, GC Darryl Bradford cites the "Wills for Heroes" program as an especially effective teambuilding exercise. That program brings Exelon lawyers together to write wills for Chicago Police Department officers and their spouses. Afterward, the legal department sponsors a social event for the volunteers.

"It makes you proud to be associated with a department that will do those types of things," Bradford says. "It can have a dramatic impact on helping your law department jell."

Sidebar: Evolving Expectations

Johnson Controls GC Jerry Okarma, who has been practicing law for 34 years, thinks it's tougher today to keep people happy in their jobs than it was 20 years ago when people were satisfied with a big paycheck and an impressive title. He attributes that in part to the demanding work-life of today's in-house attorneys.

“If you talk to big company GCs, we are all learning that it’s not just the title and the dollars, because people are being asked to spend so much time working. So they have to like the company and the job,” he says. “It is so demanding physically and mentally that people don’t think it’s worth it if all they get is a business card and a paycheck.”

He also cites generational differences. “People from my vintage will say to themselves, ‘When we were coming up, we kept our heads down and someone would notice, something good would happen.’ People would go through a career never asking for a raise or a title change. Now people want earlier and more direct discussion about where they are and where they are going, and how everything you ask them to do ties in to help support that objective.”

Okarma has addressed those demands by creating a more formalized career development process, anchored by a spider chart illustrating where the supervisor and the employee each think the employee is in his or her career development path. Objectives are based on a discussion of the chart.

“Before we had a formal approach, many times an attorney’s objectives for the next year did not address the issues of what the person needed to improve and what the person needed to do to move to the next level,” Okarma says. “This has helped us a lot.”

Okarma notes that because of the recession, his plan’s effectiveness is yet to be tested.

“During the meltdown, we didn’t have the pressure of people being recruited away,” he says. “Now that we are coming out and people are hiring again, we will get a sense of how effective we are at making people feel good about their jobs.”

Sidebar: Outsiders In

Legal departments today often rely on outside resources to meet temporary staffing needs. Contract attorneys and seconded law firm lawyers work side by side with full-time employees. But should they be considered part of the team?

Mike Evers, who runs a contract attorney service called Evers Counsel in addition to Evers Legal Search, believes that makes sense.

“Your team doesn’t have to be limited to the traditional legal department team because the department doesn’t look like that anymore,” he says. “It’s hard to find a legal department today where the team doesn’t include adjunct team members.”

Michael Going, general counsel of CNH America, likes to consider his department a “virtual law firm.”

“I view it as a seamless team consisting of internal and external legal support and now adding contract employees plus legal outsourcing,” he says. “If you treat [contractors] like you treat other attorneys, give them exposure to clients and encourage clients to go directly to them, and

make sure they understand what you expect of them, it goes a long way to achieving what you want to achieve.”

Jerry Okarma, GC of Johnson Controls, also says his department treats contract attorneys the same way it treats full-time employees. “Staff meetings, off-site meetings, quarterly communications meetings, trips to a Brewers baseball game—whatever it is, we include them,” he says.

<http://www.insidecounsel.com/2011/06/01/best-practices-for-building-strong-legal-departmen>

[Print](#) [Close](#)

The structural challenge

Author: Tim Hamilton |

04 Jun 2013 | 13:08

- [Tweet](#) 0
- [g+](#) 0

In the first article in this series, we introduced our Valuedynamics toolkit, a study with 25 leading in-house lawyers to identify and debate the new challenges that they face. The study seeks to share practical hints and tips from our participating clients and to suggest some models that can be used to work through day to day challenges.

In this, the second article in our series, we consider in depth the second of four sections of our study: the Structural Challenge. The Structural Challenge supports the Value and Performance challenges and enables General Counsels (GCs) to address the fundamental area of identifying and developing the right structure for your in-house legal team.

The key priority for the in-house lawyers that participated in our study is how to do more with less, or at least more with the same, or constrained resources. GCs operating in the retail and financial services sectors in particular reported that higher levels of regulation were leading to significantly greater pressure from the business.

Interestingly, structure was the area that most of the panel were already working on and from which they could see the most value being delivered. The definition of structure is: the sum total of the ways in which an organisation divides its labour into distinct tasks and then achieves co-ordination among them. So how can processes be re-programmed to be more efficient?

Centralised versus decentralised?

One of the biggest areas of debate is whether the in-house legal team should be centralised or decentralised across the business. In the days before the financial crisis, there was a clear trend for decentralisation as organisations pushed lawyers out into different departments as part of a drive to make their in-house legal team more innovative and commercially focused.

Post-financial crisis, legal teams are much more concerned with risk, governance and regulation, which meant a move back from that approach and a return to a centralised focus. There is a real focus now on accountability and faster throughput of work, which lends itself to a central resource.

Almost all of the GCs participating in the study had spent a great deal of time thinking about their structure and how to improve it. Indeed, 50% of participants reported that they had undertaken significant reviews of their operating models in the past five years.

Some GCs were further along the journey than others, and the conclusion that we reached was that there is no one size that fits all - successful organisations are building structures that align with the goals of the business and allow teams to work collaboratively.

They also recognise that structures need to be flexible enough to respond to evolving commercial needs. The drivers for change in structure are therefore a need to fit in with the likely future shape of the organisation - as well as current needs and the profile of talent available.

Working out what's working well

The Value Challenge identified how the in-house legal team could add value to the business by understanding stakeholder goals, and crucially, how to demonstrate that value to the rest of the organisation. In line with that aim, the Structural Challenge begins with an audit of the current structure, what's working well and what needs to change.

This stage is necessary and the best place to start, but some of the GCs who participated in our study felt that they did not always have the time or resources to devote to a thorough examination of process effectiveness. They knew that they should be carrying out a regular audit, but everyday work often got in the way.

Of those participating GCs who did have the opportunity to examine processes, many were able to identify faulty structures within the department, such as the duplication of processes. Another common finding was that people were often continuing to do things in a certain way just because 'we've always done them that way'.

As part of this process, GCs were able to identify administrative or quasi-legal work that could be taken out of the department and handled by colleagues in HR or sales and marketing. For example, could sales and marketing handle more of the contract development work if standard templates were developed?

Other questions to ask at this initial phase included:

- Is partial outsourcing a better option than handling all legal work internally?
- Is a generalist or specialist model more effective?
- How flat should our structure be?
- How do we translate the Board's appetite for risk into an optimum resourcing strategy?
- Can we implement change without being pulled along by the structure of other colleagues?
- Is there a fashion for structures - have we opted for the safety of a me-too approach?

Where are we now?

Working with our participating GCs, we developed four types of structure for a generic organisation with revenues of more than £1 billion, selling consumer products in highly regulated markets, with four operating units in distinct markets, present in six developed markets and two emerging markets and a strategic plan to grow at 20% CAGR over the next four to five years.

These models serve as a reference against which GCs can evaluate their own structures and assess whether they could be changed. How could each work for them and their environment? What would be the relative pros and

cons of each approach?

Model 1: centralised hub and adviser spokes. This is a heavily centralised model with deep expertise across the whole organisations. Business unit advisors are in place and wear dual hats for their location. The team reports to the global GC, not to business unit heads. Non legal services, such as finance support, are provided centrally and a range of external panel law firms provide secondeed resources when needed.

Model 2: decentralised business unit model. This is a decentralised model where each of the four operating units has a senior legal team embedded in the unit. They are supported by a pool of flexible juniors. The global GC provides control and oversight. A small number of external partners provide additional resources. The inverted pyramid focuses on commercial lawyers with generalist expertise.

Model 3: organic model. This takes the concept of model 2 even further. A single inverted pyramid of qualified staff supports all business units, working directly for the GC. A partnership exists with a global panel law firm. Very light central specialist skills are retained as these are sourced as needed externally.

Model 4: location led model. This is where the geographic entities take the commercial lead. Multiple business unit resource pyramids support each of the eight locations and all business units in that location. Co-ordination is undertaken by the central specialist team under the GC. Similar support underpins those in model 1.

Determining the optimal structure

Finding the right shape and size for the in-house legal team depends on a number of structural factors, which we grouped into the four sub-groups below:

- Operational (geographic diversity, commercial diversity and complexity, scale of business and geographic growth rates and focus)
- Risk (diversity and complexity of the legal landscape, degree of market regulation and control, risk appetite)
- Efficiency (industry financial operating margins, long-range business strategy)
- Talent (intellectual matching, cost of skills, availability of skills)

Each of 12 structural factors can be mapped onto an individual business and used to develop an optimal legal team structure for today and tomorrow. By understanding more about where the business is headed and what its focus will be in the future, GCs can plan a more effective organisation.

This exercise helps to address the problem of 'we've always done it this way' because it shows that the old ways of doing things are no longer suitable for the shape of the business - and not flexible enough to accommodate change.

Another advantage is that GCs can demonstrate that all important value to the Board, because their planning is completely aligned with business strategy. It also sets up the team well for the Performance and Talent challenges that come next.

Breaking down and working systematically through the structural influencing factors and applying constructive thought may also provide an opportunity to be an innovator for the wider organisational structure.

How to make it work

Of course it is one thing to design a new, more effective structure and quite another to implement it. As one of our contributing GCs put it: "culture eats strategy for breakfast any day". In the experience of our panel, there are a number of factors that are the most effective in driving optimal performance from their teams.

They can be summarised into two groups:

- Engaging repeatable process and supervisory behaviour
- Engaging human capital motivation

The supervisory factors for success include the documentation of methods and know-how. Without this instruction manual, people take longer to change and lack understanding and motivation. Setting targets for change are important too: remember the old adage of 'you can't manage what you can't measure'.

Ease of access to key skills and tools is also vital, as are clear functional objectives and value drivers. How often does the team review its list of repeated activities and consider whether they really need to do it? A check can reveal monthly activities that are no longer required and can be discontinued. A good test is to consider who the ultimate user is and whether they actually value what is produced.

Turning to the human engagement success factors, quality of communications and connectivity are key: how well is the need for change explained to the team? Do they know why change is being implemented and how? Are you listening to their suggestions for how to make the process better?

Linked to this is the need for a performance and talent based culture. How are you tackling under performers, who could undermine your structural plans? How are you building the optimal team and how do you achieve maximum utilisation of your star players?

Another important success factor is the quality of business relationships. This is particularly important when considering which tasks could be better handled by other departments. The more they are engaged in your approach, the more likely they are to take back business tasks without complaint.

Keep it practical

The Structural challenge provides a framework to understand the current structure of the in-house legal team, how it could change to meet current and future needs of the business, and why both supervisory and engagement factors are needed to make that change happen.

Finally, the panel provided their insights into practical steps that can help other GCs achieve success when addressing structural planning. For example, ask your main law firm panel providers to give you a heat map of their capabilities in each geographic market in which you operate, stressing the differences between their generalist capability and their real sector experience. This will help you understand what can be handled externally and where.

From here, it helps to break down the Structural challenge into four stages:

- Understand your starting point
- Be clear on your strategic direction and future priorities
- Implement change
- Consolidate and continuously improve

Conclusion

Getting the right building blocks in place to create and sustain value from the right structure is a key challenge for the modern day GC. The most important task is making a structure work as effectively as possible, rather than search for the utopian solution.

From our perspective, structure is only optimal when it has been created to match the needs of the organisation, its people and its environment. It can only be effective when the approach to managing the people within the structure has been optimised too, and this is where GCs who are leading the charge spending most of their time.

ValueDynamics from Addleshaw Goddard is the first ever 'best practice' toolkit for General Counsel and Heads of Legal and provides insight, fresh perspectives and practical ideas to address the challenges faced by in-house lawyers.

To find out more about ValueDynamics, please contact Tim Hamilton, partner, Addleshaw Goddard on 0161 934 6650.

[Print](#) [Close](#)

C

Wisconsin Law Review
2012

Symposium: The Changing Role and Nature of In-House and General Counsel

*407 IN-HOUSE MYTHS

Eli Wald [\[FNa1\]](#)

Copyright (c) 2012 By the Board of Regents of the University of Wisconsin System; Eli Wald

Prevailing myths hold that **in-house legal departments** offer an attractive **work-life balance** and equality in their promotion policies, if only in contrast to the hypercompetitive and glass ceiling practice realities at large law firms. This Article challenges both myths. While in-house departments do offer greater flexibility, they increasingly impose on the personal lives of their lawyers, sometimes in less than obvious ways. And while in-house departments have a better gender record than large law firms in terms of promotion to senior positions of power and influence, they nonetheless feature similar patterns of implicit gender discrimination. In-house myths obscure implicit discrimination by suggesting that one can opt out of the problem and that it may not afflict all segments of the profession. Disproving these myths, the Article attempts to refocus attention on the complex problem and subtle manifestations of implicit discrimination in (and outside) the house.

	Introduction	408
I.	The Promise of In-house Practice	409
II.	In-house Realities	419
III.	The Failed Promise of In-house Practice	424
	A. The Elusive Promise of a Better Work-Life Balance In-house	424
	1. Time Worked v. Clarity of Work	427
	2. Established Career Tracks v. Terminal Positions	432
	3. Mobility v. Travel and Transfers	434
	4. Isolation v. Teamwork	436

	B. The Elusive Promise of Greater Equality In-house	439
	1. Implicit Gender Discrimination at Large Law Firms	442
	2. The Expectation of Greater Gender Equality In-house	444
	3. Implicit Discrimination at In-house Legal Departments	448
IV.	The Future of Work-Life Balance, Equality, and Diversity In-house	453
	A. What “Went Wrong?” Why Are In-house Departments Not a Professional Haven for Women Lawyers?	454
	B. The Case for Diversity and Equality inside the House	456
	Conclusion	460

***408** Introduction

The meaning of “going in-house” has changed dramatically over the last fifty years. Becoming in-house counsel used to evoke negative connotations, associated with failing to make partner, diminished professional status, more clerical and less challenging quality work, and reduced pay. As the role of in-house counsel changed within corporate entities and vis-à-vis outside counsel, so has its perception among lawyers: in-house counsel positions are increasingly understood not as consolation prizes for failing to make partner but as desirable and prestigious lateral moves offering an attractive mix of professional status, competitive pay, and a better work-life balance.

In theory, for women (and men) lawyers at large law firms on the hypercompetitive partnership track, in-house counsel positions represent not only the promise of an alternative, less stressful career path, but also a better shot at professional equality. As documented by an extensive body of literature, at large law firms, women lawyers face the glass ceiling effect and are systematically and significantly under-represented at the partner levels, especially as powerful equity partners. In-house counsel positions offer the promise of greener pastures because many of the documented reasons for inequality at large law firms--the increasingly demanding and rigid time commitment tied into the billable hour method, the expectation of becoming a rainmaker and developing a book of business, the inherent yet implicit reliance on increasingly harder-to-come-by mentoring and training--are missing from the in-house landscape, holding a promise for an equal professional playing field. Moreover, in recent years large corporations have been in the forefront of pushing for

diversity, and one might expect the commitment to apply to the entities' in-house lawyers as well.

As it turns out, however, in-house counsel positions may not be a professional haven, not for lawyers seeking a more balanced work-life environment, and not for attorneys seeking diversity and equality in the workplace. Rather, available evidence suggests that while in-house legal departments feature greater flexibility, diversity, and equality than large law firms and other segments of the legal profession, some of the ***409** same patterns that characterize the experience of women lawyers at large law firms and in the legal profession more generally, that is increased participation and representation overall coupled with stratification, under-representation in senior and powerful positions, over-representation in lower-end positions, and pay inequality, also apply to their experience in-house. This Article studies the myths of in-house counsel, namely that it offers a better work-life balance and that it features a more equal work environment compared to other segments of the legal profession, explains how and why the myths developed, and explores the lessons that emerge from debunking them. Disproving these myths, the Article refocuses attention on the complex problem and subtle manifestations of implicit discrimination in-house and outside of it, and examines both accountability for pursuing substantive diversity and means of achieving it.

I. The Promise of In-house Practice

The emergence of the modern in-house counsel role, the growth of in-house counsel departments, and the rise of in-house counsel professional status within the profession have been described repeatedly as “one of the most significant shifts in the legal profession.” [FN1] From the legal profession's internal perspective the rise of in-house counsel raises important questions. [FN2] First, in-house counsel positions give rise to complex questions of legal ethics, such as the exercise of independent professional judgment while working for a single client, [FN3] and the ***410** efficacy of multijurisdictional practice of law, as the practice of in-house lawyers often necessitates practicing law on a national and even global basis. [FN4] Second, it illustrates the agility of American lawyers and their ability to reinvent themselves as important actors in strategic decision-making junctures. Whereas in-house counsel was an insignificant constituency as late as the 1970s, [FN5] today in-house lawyers account for nearly ten percent of the profession and hold prestigious positions, demonstrating the capacity of lawyers to respond and adapt to changing market conditions and move into new roles while maintaining their elevated cultural status. [FN6] Third, the rise of in-house counsel is intertwined with significant changes in the standing and role of large law firms, such that the evolving relationship between in-house and outside counsel holds revealing insights about the ebbs and flows of power within the profession, the rise of new elites and the decline of others. [FN7]

***411** Some of these questions have been explored thoroughly: a lot of ink has been spilled by legal ethics scholars concerned with the possible loss of independence by in-house lawyers, with the most recent cycle focused on the ability and willingness of in-house counsel lawyers to serve as gatekeepers; [FN8] and perhaps not enough attention has been given to the lessons the entire profession can learn from the experience of in-house counsel with national law practice. [FN9] Legal profession scholars have begun to explore the new and expanding role of in-house counsel, [FN10] and the evolving relationship between in-house legal departments and large law firms. While it is clear that in-house counsel positions have grown in scope, importance, and prestige vis-à-vis the work done and role traditionally occupied by large law firms, [FN11] it is far from clear that large law firms have been at the losing end of this continuously evolving relationship. Arguably, while the new allocation of work, power, and authority has in the short run resulted in loss of ground, volume of work, and profits by large firms, in the longer run the shift could allow outside counsel to focus their attention on high-end, high-profit, complex legal work, increase their profitability, and maintain their elite status. And while the increased volume of work (now done or managed by in-house counsel) once upon a time served as a catalyst for large law firm growth, [FN12] the mere size of a large law firm, once the litmus test for status and prestige, no longer serves as

the *412 yardstick for elite status, [FN13] and so large law firms, even if they are unable to grow as fast, may end up adjusting to and benefiting from the new practice realities.

As the complexly symbiotic relationship between in-house legal departments and large law firms continues to unfold and their battle for prestige and elite status rages on, one group of lawyers has arguably emerged a clear winner-- senior associates and junior partners at large law firms, especially women lawyers who disproportionately experience the glass ceiling effect. [FN14] For these lawyers, the rise of in-house counsel *413 departments and the expanding role of in-house lawyers meant the establishment of a new elite career path, one in which equality could become a reality, an appealing alternative to the inhospitable practice conditions at large law firms, which feature under-representation of women attorneys in positions of power. Of course, in a historical context, turning to corporate America and its in-house legal departments in search of equality appears to be both misguided and ironic, given its documented past of institutionalized gender discrimination. [FN15] Understanding the promise of in-house legal departments relative to prevailing realities at large law firms thus necessitates some grounding in the dynamic worlds of large law firms, in-house counsel, and their evolving relationship.

Large law firms were established to service large corporate entities and elite interests. [FN16] In their “golden era,” [FN17] large law firms had formed long-term relationships with large corporate entities, near-exclusively representing these clients across the spectrum of their legal needs, ranging from routine corporate legal paperwork, such as keeping corporate minutes and submitting corporate filings to assisting with strategic decision-making in matters such as mergers, acquisitions, and large-scale litigation. [FN18] These relationships were not only very lucrative for large law firms, but also constitutive of their elite status within the legal profession: the constant flow of paperwork provided a reliable and significant income stream which built the firms' financial standing and helped them attract and recruit top talent out of law schools; and the *414 high-profile transactions and litigations established their professional reputation atop the profession. [FN19] Moreover, the growth of large corporate entities combined with the expansion of regulation to which they were subject, fueled a growth in the number and size of large law firms. [FN20]

Increased competition and structural changes in the market for corporate legal services, however, have changed the nature of the typical large law firm-large corporate entity relationship. On the supply side, the rise in the number of law firms led to the decline of long-term stable relationships as corporate clients turned to different law firms to handle their various needs and did not necessarily retain the same law firms repeatedly, even when satisfied with their performance. [FN21] On the demand side, the rise and growth of in-house legal departments allowed corporate clients to both handle some of their basic legal and corporate paperwork internally and more effectively manage their overall legal needs, cutting costs and eliminating a significant income source for large law firms. [FN22] Over time, as in-house counsel grew in sophistication, they began to handle some of the high-profile work as well, assumed greater responsibility for strategic and preventive legal work, and more effectively managed the work of the large law firms, now called outside counsel. [FN23]

These fundamental changes were symbolically captured in the reference to the heads of in-house legal departments as “general counsel”: on the one hand, the term reflected a new reality in which in-house lawyers, historically perceived as second-class attorneys vis-à-vis *415 large law firm lawyers, exercised more power and became the lead lawyers for the entities; [FN24] and on the other hand it signaled that large law firms no longer provided regular, general, and continuous legal services to corporate entities, and instead were increasingly limited to ad hoc, high-profile, unique, and specialized representations, under the supervision and management of in-house counsel. [FN25] Over time, this sea change led to a transformation in the professional standing of in-house lawyers, from a low-tier status of “failures” who were unable to make it as partners in large law firms, [FN26] to an elite, desirable status of powerful and influential professionals. [FN27]

Importantly, the increased status of in-house lawyers was not only the result of their growing role and responsibilities within corporations and vis-à-vis outside counsel, but also a reflection of the dynamic practice realities within large law firm themselves. Increasingly competitive practice realities, corresponding structural changes, and an ideological shift transformed the nature and meaning of large law firm partnerships: partners increasingly worked longer and harder, [FN28] the implied expectation of de facto tenure has been lost, [FN29] the culture of *416 “lockstep compensation” has been replaced with an “eat what you kill” ethos, [FN30] and a proliferation of statuses rendered the very title of “partner” unclear. [FN31]

As the professional allure of “making partner” at a large law firm was tainted and in decline, [FN32] cohorts of large law firms’ lawyers, associates, junior partners, and senior partners alike, began to look for career alternatives, and in-house counsel positions seemed attractive in theory for at least three interrelated reasons. First, they were presumed to entail significantly less-demanding schedules compared with the 24-7 mentality of large law firms and allow for striking a better work-life balance. [FN33] Second, they were assumed to allow for greater flexibility, in that in-house counsel, even when working long hours, were free of the “billable hour”—the need to account for every moment of their time and to meet certain specified targets. [FN34] Third, by definition, working for one client exclusively, in-house lawyers were liberated of the “rainmaking” burden to develop and bring in business and free to focus on their law practice, an expectation that led large law firms’ attorneys to spend long, non-billable hours developing business on top of their increased billable goals. [FN35]

*417 In-house counsel positions appeared particularly appealing to women lawyers. In contrast to the glass ceiling effect, [FN36] documented patterns of structural discrimination, [FN37] and significant under-representation in senior and powerful positions at large law firms, [FN38] in-house counsel positions held the promise of equality for women lawyers, a promise bolstered by a well-publicized, growing emphasis on diversity and the business case for it in corporate America. [FN39] The equality promise of in-house counsel positions was premised on the argument that the very reasons that have held women lawyers back at large law firms—increasingly long and rigid hours, rainmaking expectations grounded in business networking, gender stereotypes, and a prevailing ideology of 24-7 undivided loyalty to the firm and its clients—were inapplicable and irrelevant in the corporate sphere. Of course, many of these considerations would also apply to men attorneys, some of whom may conceive of in-house counsel as offering a better shot at equality.

Notably, such a rosy image of in-house counsel has little to do with the actual practice realities of lawyers working in-house for large corporate entities, and more to do with the practice realities experienced by lawyers working for large law firms. The promise of a better and more desirable professional life as in-house counsel, in other words, was and is, to a significant extent, the product of mounting dissatisfaction and displeasure of large law firms’ lawyers with their work realities, along the lines of “anything must be better than this,” and was not grounded in an informed assessment of the work, conditions, and realities of in-house counsel.

Much has been made as of late of the naïveté of lawyers and of law students and their apparent habit of making decisions irrespective of relevant available information. Large law firms and their lawyers have been criticized for running their shops with little regard to *418 management imperatives of for-profit entities. [FN40] Law students have been taken to task for continuing to flock to law schools notwithstanding mounting evidence of the questionable value of the J.D. degree. [FN41] Explanations of these patterns range from organizational management insights in the case of law firms, [FN42] to the cultural allure of being a lawyer, its cost-benefit value notwithstanding, in the case of law students. [FN43] Arguably, the infatuation of large law firms’ lawyers with the notion of going “in-house” may similarly be guided by wishful thinking and myths rather than by rational analysis and facts.

In defense of large law firm lawyers seeking greener pastures, the promise of in-house practice is informed by the hy-

percompetitive and glass ceiling realities in large firms and a dearth of actual information about in-house practice. Much of the existing legal literature on in-house counsel is of little help to lawyers interested in learning more about in-house positions. To begin with, the scholarship's emphasis on the increased role and prestige of in-house counsel might serve unintentionally to foster illusions of greener pastures. Another theme explored by the literature--loss of professional independence and the ability to exercise judgment vis-à-vis one powerful client--may also be of little relevance to large law firm lawyers whose practice in a hierarchical structure already introduced them firsthand to limited independence. [FN44] This, to be clear, is not a Robertsian attack on legal scholarship as detached from the day-to-day realities of practicing *419 lawyers. [FN45] Both the role transformation of in-house counsel and the question of the ability of corporations' lawyers to exercise independent professional judgment are legitimate and relevant inquiries pertaining to the practice of law in-house. Yet these inquiries simply do not address the separate issues of equality and diversity, and worse, may indirectly serve to distract those large law firm lawyers, who already want and are inclined to believe that in-house counsel positions must be better than the practice realities at large firms, from exploring them further. To allow lawyers contemplating a move in-house to act on a more informed basis, Part II collects the available information on equality and diversity in in-house legal departments. Part III explores the failure of in-house counsel positions to meet the promises of a better work-life balance and of enhanced equality. [FN46]

II. In-house Realities

In 1980 there were 54,624 attorneys employed by in-house legal departments, accounting for 10% of licensed attorneys practicing law. [FN47] In 2000 there were 75,945 in-house attorneys, [FN48] an impressive growth of nearly 40%. It should be noted, however, that the U.S. lawyer population grew from just over 542,000 in 1980 [FN49] to just over 1,066,000 in 2000, [FN50] an increase of nearly 100%, meaning that in-house *420 legal positions grew at a slower pace than the legal profession in the same time period. [FN51]

Of 54,624 in-house attorneys in 1980, 50,527 were men (92.5%) and 4,097 were women (7.5%). [FN52] By 2000, the percentage of women in-house counsel had risen significantly. Out of 75,945 attorneys, 54,972 in-house lawyers were men (72.4%), and 20,973 were women (27.6%), [FN53] reflecting a meaningful step toward formal gender equality in in-house counsel positions. [FN54] Indeed, in the year 2000 women lawyers accounted for 27% of all employed U.S. attorneys, [FN55] meaning that their representation within in-house legal departments in fact slightly exceeded their percentage within the profession and meets the standard of formal equality.

The achievement of formal diversity in-house is especially striking given the relatively modest growth of the in-house industry between 1980 and 2000: over that twenty-year span the industry added a net of 21,321 new in-house counsel positions, and women accounted for a net gain of 16,876 positions, a staggering 79%. [FN56] This is noteworthy because as some commentators have pointed out, in the relatively stable work environment of in-house counsel previously dominated by male attorneys, diversity gains are hard to accomplish if new positions are not created. [FN57]

In addition, there are some positive indicia of increased substantive gender equality, [FN58] for example, in terms of equal compensation. In Corporate Counsel's 2010 annual list of the highest-paid general counsel, a female attorney topped the list for the first time since its inception in 1994, [FN59] and fourteen out of the top one hundred best-paid general counsel were women. [FN60] It should be noted, however, that at 14% of best-paid general counsel, women attorneys who accounted in *421 2010 for nearly 19% of general counsel at Fortune 500 companies, [FN61] were still under-represented. Also, the percentage of women lawyers serving in the visible leadership position of general counsel of a Fortune 500 company has increased significantly over the past decade, more than doubling since 2000. [FN62]

Table 1: Female General Counsel at Fortune 500 Companies

Year	Number	Percentage
2000 ^{FN [FN63]}	42	8.4%
2004 ^{FN [FN64]}	75	15%
2005 ^{FN [FN65]}	76	15.2%
2006 ^{FN [FN66]}	83	16.6%
2007 ^{FN [FN67]}	90	18%
2008 ^{FN [FN68]}	92	18.4%
2009 ^{FN [FN69]}	85	17%
2010 ^{FN [FN70]}	94	18.8%
2011 ^{FN [FN71]}	101	20.2%

*422 On the other hand, women attorneys are still under-represented in positions of power and leadership, for example, serving as general counsel of Fortune 500 and 1,000 companies. MCCA's 2010 survey of Fortune 500 women general counsel indicates that 94 women served as top legal officers in Fortune 500 companies (18.8%), and that eighty women served as general counsel of Fortune 501-1,000 companies (16%). [FN72] While at the time an all-time record for female general counsel, the percentage is still far below that of women in-house counsel.

Analysis of the number and breakdown of in-house counsel positions thus indicates increased formal gender diversity consistent with the trend in the legal profession more generally. [FN73] At the same time, however, and notwithstanding significant gains, especially within the ranks of Fortune 500 general counsel, the numbers reveal a disappointing gender showing in senior powerful positions, again consistent with the trend in the legal profession of gender under-representation and failure of substantive diversity.

The trends suggested by the data should not be overstated. First, the in-house counsel universe is quite diverse. Comparing large in-house legal departments with solo and small departments might not only compare apples and oranges but also obscure important facts about formal equality. For example, is the increased hiring of women lawyers driven by large in-house departments or by a grassroots movement of solo and small departments? Does in-house department size tend to correlate with the size of the entity that houses it? If so, are large publically traded entities the true force behind increased gender equality in-house? Similarly, do distinct patterns of hiring and promotion emerge across industries? Do in-house departments in the pharmaceutical, accounting, and finance industries have a better gender diversity track record compared with traditional manufacturing entities? No doubt, future empirical research will shed additional light on

increased formal and substantive equality in the hiring practices of in-house legal departments. [FN74]

*423 Second, a general counsel at a Fortune 500 entity is certainly not the only elite, powerful in-house legal position. Within large in-house departments, additional positions, such as associate general counsel, might confer elite status on their holders, and many positions outside of the Fortune 500 circle might be understood to confer desirable elite status. Additional research of such visible, powerful positions would provide insight into whether the trend of increased yet consistent substantive gender under-representation is present in these elite in-house positions as well. [FN75]

Nonetheless, the available evidence does suggest parallel patterns to those taking place in the legal profession more generally: significantly increased formal gender equality and increased substantive equality accompanied by a persistent glass ceiling effect (under-representation in elite powerful positions). Indeed, preliminary evidence indicates that some in-house lawyers, perhaps disappointed with their practice realities, are leaving their positions and returning to large law firms. [FN76] Yet drawing strong conclusions from this data is impossible to do. On the one hand, some in-house lawyers may leave their positions not because of dissatisfaction with their work-life balance or prospects for promotion but rather because large law firms, eager to better understand in-house hiring decisions of outside counsel, are aggressively pursuing them. On the other hand, other in-house lawyers who may be dissatisfied are not returning to large law firms because after spending time in-house removed from general law practice they are pursuing opportunities in the business world. [FN77]

*424 III. The Failed Promise of In-house Practice

A. The Elusive Promise of a Better Work-Life Balance In-house

The practice of law at a large law firm can be incredibly rewarding. Large law firms represent large entities and do complex and cutting-edge work, offering their lawyers high-profile, high-quality work [FN78] compared with other practice settings, and while legal paperwork is often part of the mix at these firms, [FN79] leaner staffing and the shift of some paperwork to in-house legal departments, paralegals, contract lawyers, and outsourced attorneys have improved the quality of work of associates and junior partners. [FN80] Next, large law firms benefit from elite status atop the profession and offer their lawyers prestige and professional standing. [FN81] Finally, large law firms offer competitive pay, traditionally at the top of the pay scale, [FN82] which is increasingly attractive given the growing cost of legal education. [FN83]

At the same time, life at large law firms is often challenging. The billable hour method combined with increased billable targets [FN84] results *425 in increasingly long workdays often spilling into weekends, imposing on and compromising one's shrinking personal life, and diminishing the quality of one's professional life. [FN85] The pressure to bill leads to hour "famine," as associates compete, in good and bad economic times, for assignments that would allow them to meet their billable targets. [FN86] Increased billable hours goals crowd out non-billable activities, such as mentoring and training, [FN87] as well as networking with colleagues, [FN88] and further extend the number of hours one has to spend in the office working. In turn, these lead to lack of flexibility. [FN89] Large law firm hours are thus long and rigid. [FN90]

To this basic tradeoff, recent trends have added instability, insecurity, and unpredictability over an extended period of time. [FN91] Whereas under the traditional tournament structure large law firm associates could expect to work hard for six to eight years knowing that many would not make partner, promotion to partnership did provide a significant

measure of stability and work security alongside increased *426 compensation and elevated status, and those who did not make partner could rely on the firm to assist them in securing a job elsewhere. [FN92]

The growth in the number and size of large law firms and the shift to an elastic structure have changed all of that. [FN93] Some large law firm lawyers are hired off the partnership track for an uncertain period of time without the security and status of large law firm practice. [FN94] Associates face longer tracks and promotion to partnership no longer means job security, as junior partners continue to compete for equity partnership positions and even equity partners now face the prospects of demotion and termination. [FN95] And the mere size and number of law firms as well as growing mobility means that large law firms are no longer as committed to or invested in helping departing lawyers find their next jobs. [FN96]

As a result, while large law firms continue to attract top talent out of law schools, attrition rates are high and dissatisfaction among senior associates and junior partners is mounting. [FN97] To be sure, attrition rates, especially for junior associates, have always been high for large law firms, in fact, the traditional tournament structure was inherently built on high attrition rates; [FN98] and some studies indicate that satisfaction rates for large law firm lawyers are high and holding. [FN99] Nonetheless, one struggling to strike an effective work-life balance practicing with a *427 large law firm might be tempted to believe that in-house counsel positions must be, if only by default, less demanding and more flexible.

Indeed, in some ways, they are. Corporate entities rarely adhere to the billable hour method, [FN100] and while they generally do not offer part-time arrangements, [FN101] they are more flexible in the sense that significant “face time” in the office is not an inherent employer expectation, [FN102] that is, in-house attorneys can more easily rearrange their work schedules to accommodate conflicting personal commitments. [FN103]

Yet one should not underestimate the demands of in-house counsel positions. As Lisa Nicholson has documented, the hours worked by in-house attorneys are long and getting longer. [FN104] Perhaps more importantly, simply comparing “hours worked” at large law firms and in-house counsel positions, as well as “flexibility,” is to compare apples and oranges. While “hours worked” is in fact an important aspect of the work-life balance, it is not the only aspect. Moreover, context matters: what one means by “hours worked” and “flexibility” differs across work environments. That is, the workplace environment differs greatly between large law firms and **in-house legal departments** in ways that shape and impact both the “work” and “life” components of the **work-life balance**.

1. time worked v. clarity of work

At a large law firm with its billable hour method, “hours worked” could be easily defined as the sum total of billable hours and non-billable hours. Large law firm work is uniform and strongly structured, in the sense that every associate hour billed, and every non-billable hour (administrative tasks, time spent networking, doing pro bono work, etc.) is spent toward a clear and specified goal--promotion to partnership. Law firms often have either formal or “informal” goals for billable and non-billable hours, for example, for pro bono work. As *428 importantly, increasingly all lawyers are rainmakers, or rainmaker wannabes, [FN105] making increased billable goals a necessary yet insufficient condition: one must invest (non-billable time) in meeting pro bono goals, building networks, securing powerful mentors, and otherwise pursuing a high visibility. Put differently, the meaning of--and expectations with regard to--both billable and non-billable hours are well-established at large law firms. [FN106]

Prima facie, it seems as if in-house lawyers should work shorter hours. In-house counsel do not generally bill their time, and thus the line between billable and non-billable hours is much murkier, and even as their hours increase, most work less than fifty hours a week. [FN107]

In-house legal departments, however, feature a very different work environment than that of large law firms, one that is significantly more diffused and unstructured. In particular, while job descriptions and expectations are presumably effectively communicated with regard to “official” work hours, in-house legal departments do not have a culture and structure that give meaning to something akin to non-billable time.

At first, this may seem like the very manifestation of the desirability of in-house counsel positions compared with large law firm positions, in terms of striking an effective work-life balance. Unlike large law firms, where the combined expectations of both billable and non-billable hours are overbearing, in-house legal departments only have expectations for “official” work, and no structured expectations exist regarding “soft” activities (analogous to pro bono, networking, *429 and business development). A close examination, however, reveals the naïveté of such a simplistic approach.

At least outside of senior legal positions, in-house lawyers are often thought of within the entity as cost-centers, [FN108] commonly perceived as naysayers who do not generate profit and therefore value. [FN109] Changing that image among one's peers is likely to be time-consuming: the ability to create value, and to be perceived as doing so, may be a function of spending the necessary time to get to know the business inside and out, to understand and master non-legal aspects of pertinent issues, and to prove and reprove to skeptics one's value and worth. [FN110]

The challenge is compounded exactly because of the lack of well-established tracks and structure. The flip side, if you will, of the large law firm's long hours, is that sophisticated and well-informed associates know how to spend their time, especially their non-billable time. [FN111] In contrast, some in-house lawyers may not realize that simply meeting “official” expectations may be insufficient, and worse, that even if one is willing and able to spend “soft” hours at the office, how to spend them effectively is less than clear. In-house lawyers, in other words, have to be more creative, in a sense, than their large law firm counterparts. To be sure, even at large law firms it might be hard to find a powerful mentor with whom one could spend non-billable time, let alone establish a meaningful relationship with such a mentor, but at least large law firm associates and junior partners know, or should know, to look for a mentor. Similarly, getting pro bono work--which might allow one to demonstrate her commitment to the firm's values and gain valuable experiences and professional growth unattainable from work done on behalf of paying clients--is relatively easy to do within large law firms. [FN112] Of course, adding pro bono commitments to *430 an already long and rigid billable expectation might be harder, and one must also watch against not allowing pro bono work to overshadow and interfere with the flow of valuable work for paying clients. Pro bono commitments are thus most meaningful when they come in addition to, not instead of, billable work for paying clients, a task more easily said than done. But at least in theory the task facing large law firm attorneys is clear, as opposed to the “soft” and often unclear expectations of in-house attorneys.

The structured/diffused distinction captures some of the complexity that prevents a simple comparison of “work hours” between large law firms and in-house legal departments. On the one hand, it may be easier for an in-house lawyer to “get away” with leaving the office at five o'clock every day and “not work” weekends. But doing so may be at one's own expense in terms of career advancement in the long run: without the imposing structure and clarity of the large law firm, one has to self-motivate and work hard to get to know the corporate entity--its work, its people--and figure out how to create value which will enhance one's work experience. One has to uncover the meaning of “soft” hours that are so important for one's career and success in-house. [FN113]

Importantly, working less is “easy” not only in the sense that the hours in-house are shorter, but also in the sense that finding “soft” work is harder in-house. Indeed, some of the hours may be spent on what traditionally would not be considered “work”; that is, one is not going to be compensated for such “soft” hours. [FN114] It might be difficult to work harder pursuing “soft” opportunities in-house, which may look like good news in the short run but is in fact bad news in the long run, especially for those lacking in entrepreneurship, drive, and self-esteem.

This, of course, is not to belittle the challenges facing large law firm associates. Extensive literature documents the fallacy of working hard and expecting to do well as a result. Even at large law firms, associates must be smart: they must work long and hard hours, but also *431 find time to network, befriend powerful senior associates and partners, find mentors, and understand, identify, and pursue non-obvious opportunities. [FN115] The point is not that large law firm associates and junior partners can simply work hard within the established law firm framework and expect to do well, that is, to be promoted to partnership and, once promoted, to be handed clients, power, and status within the firm. Such a perspective would be not only naïve, but also likely foolish. At the same time, however, the structure of law firms does provide guidance and clues for sophisticated associates and junior partners seeking promotion and advancement to positions of power.

In contrast, at in-house legal departments the shorter hours and relative lack of structure may end up being a long-term trap. The hours one “must” spend in the office may be shorter, but the burden is on in-house lawyers to spend the time finding ways to become valuable and pursue careers within the entities. To be sure, the particular challenge facing in-house lawyers is not just one of “getting” the corporate environment. Rather, because in-house attorneys are inherently outsiders to and within the corporation, in addition to “getting it”—which may be a time-consuming and difficult task for lawyers trained in law schools and by large law firms—in-house attorneys must find creative and non-obvious ways to demonstrate that they are team players who understand the business goals and culture of the entity and can serve it effectively.

It should be noted, however, that while large law firms generally feature robust structure compared with the diffused work environment of in-house legal departments, the “softness” of in-house departments varies. Large institutionalized departments tend to be more structured, demanding longer hours and leaving little room for “soft” hours. In-house lawyers at smaller departments, however, may experience more diffused environments. Moreover, in-house lawyers in closely held companies face a unique “soft” hours challenge. While they might be less concerned with advancement within the in-house department (such departments are likely to be relatively small with only limited opportunities for advancement) they would likely encounter pressures and incentives to invest significant “soft” hours getting to know the ins and outs of the company and forming strong personal relationships with *432 the relevant executives. While such significant “soft” hour commitments might enable in-house counsel to overcome the outsider stereotype and open doors for future advancement in the company outside of the in-house department, the investment is likely going to be highly firm specific and may not be transferable or valuable otherwise. [FN116]

The distinction between time worked and clarity of work does not mean that “soft” hours in-house are an impossible to figure out conundrum. One can, of course, ascertain how to effectively spend “soft” hours in-house in the context of pursuing work stability and possible promotion. “Soft” hours in-house do, however, differ from non-billable hours in two important ways. First, the former are inherently less structured and hard to pin down because they are more firm and industry specific than the fairly generic non-billable hours at large firms. Second, law students and lawyers are relatively well trained to figure out and excel at non-billable work (for example, pro bono). While deciphering “soft” hours in-house is possible, lawyers are relatively poorly trained for the task. Moreover, to the extent that “soft” hours are akin to non-billable hours, once an in-house attorney works significant “soft” hours the actual hours worked in-house (official and “soft” hours combined) may resemble the time commitment of large law firm attorneys, pulling the rug from underneath the expectation of a better work-life balance in-house.

2. established career tracks v. terminal positions

Large law firms offer more or less a clear picture of career advancement. One starts as an associate and within a certain time frame is promoted to partnership or let go. Even in an increasingly elastic tournament structure featuring non-

partnership and non-equity partnership tracks, and even when the actual standards for advancement are less than clear, a large law firm lawyer often has a good sense of where she stands in any given point in time in terms of work stability and prospects for promotion.

For lawyers working for in-house legal departments the picture is considerably muddier, with many positions being “dead-ends” in the sense of having no clear path to advancement, either within the in-house department or outside of it. Many in-house legal positions do not lend themselves to promotion to non-legal positions within the corporate entity, [FN117] and many legal positions do not have an obvious *433 path to a more senior legal position within the entity. [FN118] Moreover, senior in-house legal positions are often lateral positions, recruited from the ranks of senior lawyers outside of the entity. [FN119] This significantly complicates the challenge facing in-house junior lawyers: on the one hand, they need to invest ample “soft” time getting to know the business and its people; on the other hand, to the extent their next job may be for another entity, they do not want to develop firm-specific knowledge which would be of little use elsewhere. In any event, advancement is a function not only of doing one's job well, but also of thinking outside of the box, creating value, and looking for opportunities, all “soft” but nonetheless time-consuming activities--looking for the next not-obvious job within or outside the entity and positioning oneself for advancement.

That is not to say, of course, that in-house attorneys face an incomprehensible black box of promotion prospects. At some corporate entities, for example, in-house lawyers seeking a long-term future with the company could compete for a job outside of the in-house legal department, after spending some time in-house. After gaining such business experience, one could either seek promotion outside of the legal department or return in-house, seeking a more senior position. [FN120]

Nor is it entirely accurate to describe in-house positions as “dead-end” jobs, because the characterization suggests a negative connotation whereas to many the permanent nature of the position might be a desirable quality. In fact, for those attorneys who choose to opt out of the large law firm hypercompetitive rat race, the relatively pressure-free experience, at least in the sense that their current in-house position is not understood to be a stepping stone or a stop along the way to their next job might be a desirable aspect of in-house positions.

Even so, such a career track is clearly not as structured as the large law firm track, often involves non-legal positions and abandoning one's profession, entails reduced opportunities for future mobility (and is thus, counterintuitively, less flexible than a position at a large law firm) and may vary across corporate entities. Moreover, the number of senior positions in-house is finite, imposing a significant limit on career advancement within the legal department. Large law firms can always, in theory, make another partner. If one proves herself as a valuable attorney and a potential rainmaker, a large law firm could elect her a *434 partner and grow the top of the pyramid structure of the firm, possibly with the consequence of adding associates to support the new partner. This, in fact, has historically been the internal growth engine of large law firms. [FN121] In contrast, in-house legal departments do not feature a similar internal growth engine that would create analogous new “general counsel” positions. Differently put, the top of the pyramid in-house is not constantly growing as it does within law firms, resulting in significantly limited opportunities for promotion in-house. This ties into the inherent difference regarding the role of lawyers in law firms and in-house: while at law firms, lawyers are a profit-center and the growth of the firm is desirable when financially justified; at in-house departments, lawyers are a cost-center and the growth of the legal department is generally understood as undesirable.

In sum, to do their job well and position themselves for promotion, large law firm lawyers need to work very hard, meeting both billable and non-billable targets. Conveniently, doing your job well at large firms will lend itself to promotion. [FN122] In-house lawyers also need to work very hard: while their “official” work-hours expectation is usually lower than billable targets, “soft” hours spent trying to do the job well and convert colleagues who tend to think of law-

yers as cost-centers may add significantly to the task, and are made even more challenging by the diffused nature of in-house counsel work. It is often not at all clear how to spend “soft” time, which is necessary for doing one's job. Worse, doing one's job well in-house typically will not lend itself to promotion within the entity or to a lateral position elsewhere. This makes spending “soft” time networking with people who think of you as an obstacle and a cost-center even more essential, which the unstructured and diffused nature of in-house legal departments makes harder.

3. mobility v. travel and transfers

For all the talk about the nationalization and globalization of law practice, [FN123] it continues for the most part to be a local affair, at least in terms of physical travel. Even as the practice of law increasingly demands multi-jurisdictional knowledge, technology allows large law *435 firm lawyers to practice nationally and globally from their firm's offices virtually. Large law firms, even those with multiple offices, regional and national, usually do not have an inherent expectation of transfer. If one was hired as an associate in a firm's office, one could expect to make partner in that office to the extent promotion to partnership is at all a viable option. Put differently, usually promotion neither necessitates transfer, nor is made more likely by a willingness to transfer to another office. [FN124] To be sure, increased mobility is now a common feature of law practice, [FN125] but most of this lateral movement is between firms and within jurisdictions and does not involve significant travel or transfer within the same firm or across jurisdictions. [FN126]

In contrast, to the extent that a path for advancement exists in senior in-house counsel positions, it often involves a greater expectation of travel and transfer to corporate headquarters. Some junior in-house positions are regional, in proximity to local plants, offices, or regional headquarters. [FN127] Other junior positions may be in the entity's corporate headquarters but may involve more travel, compared with large law firms, to address corporate legal issues wherever the entity does business. [FN128] To the extent then that in-house legal positions are attractive to lawyers who seek a better work-life balance, the increased travel and possibility of transfer constitute a disadvantage compared with large law firm practice. [FN129]

*436 4. isolation v. teamwork

Structured and diffused work environments as well as the tradeoff between increased mobility and the expectation of travel and transfers account for the different work-life choices offered by large law firms and in-house legal departments. Importantly, while the choices and their manifestations are different, they are as complex in-house as they are at large law firms. Another important difference has to do not with the work-life balance itself but rather with the quality and environment of the work experience.

Large law firm practice is isolating. [FN130] With an increased emphasis on billable hours, large law firm lawyers face a reduced incentive to get to know and spend time with colleagues, let alone staff members. [FN131] Moreover, competitiveness undermines possible friendships, at least among similarly situated peers in the same practice group. [FN132] But certain aspects of large firm practice mitigate some of these factors. By virtue of spending long hours in the office, and the inherent teamwork characteristic of large law firm practice, [FN133] one constantly interacts with, and has the potential to form friendships with, both subordinates and superiors. Indeed, to the extent that the 24-7 culture of large law firms makes it difficult to maintain relationships with non-Big Law members, the same culture may indirectly foster friendships within these firms. Also, one can form relationships with similarly situated associates in other practice groups. And one way to secure the effective assistance of the staff is to be, simply put, nice.

Perhaps as importantly, most everybody working at large law firms is in the same boat. One is, if you will, not uniquely situated, at least in terms of isolation within the firm and the possible impact of the long and rigid work hours on isolation in one's personal life outside of the firm. Furthermore, one can always find professional support outside of

the firm. There is a proliferation of bar associations offering a venue for interacting with lawyers who practice in the same fields of law, [FN134] or *437 hail from the same or similar backgrounds. [FN135] Or one can associate with other law school alumni, or even connect with similarly situated lawyers virtually.

Isolation within the large law firm context is thus the result of insufficient time to pursue a rich personal life because of the stringent demands of one's professional life, [FN136] and of the consequences the rat race large law firm practice has become. Increased competitiveness and the “eat what you kill” culture undermine the foundation for true friendships, even as teamwork necessitates professional courtesy and shallow collegiality.

Much has been written as of late about the importance of teamwork in the context of in-house legal work. Summarizing the key attributes of successful in-house lawyers, Michelle Mayes and Kara Baysinger list: “political savvy; emotional intelligence; fielding and prioritizing multiple inputs without getting overwhelmed; keeping a calm, cool, and collected head in times of crisis and keeping it all together; an ego-free, consensus-focused approach to strategy, decision-making, hierarchy, and other considerations.” [FN137] Yet, while being a team member is a constitutive characteristic of a successful in-house counsel, in-house attorneys experience significant levels of isolation in their practice, perhaps even more so than large law firm lawyers.

In-house lawyers experience isolation in distinct ways at two different levels. Within the corporation they are often perceived as outsiders, [FN138] working alone, removed from non-lawyers, from corporate colleagues, [FN139] especially vis-à-vis lower-ranked executives who often see only one goal, generating profit, and thus little use for lawyers, as opposed to higher-up executives who have been tested in decision-making entailing complex legal elements who might better appreciate the value lawyers can generate. And they are uniquely situated, as compared with the entity's non-lawyers employees. [FN140] Such isolation is *438 hard to bridge: compared with their corporate counterparts, in-house lawyers may hail from different backgrounds and have different goals, job prospects, and professional aspirations. [FN141] In this sense, in-house counsel work is inherently isolating.

In-house attorneys must bridge the gap, prove themselves valuable to the entity, and overcome the outsider perception. Yet overcoming being an outsider is both time-consuming and costly. Moreover, passing and covering as insiders, even when successful, is only relative, not absolute, such that one continues to bear the costs of being an outsider over time. [FN142]

At the same time, in-house lawyers also experience a sense of isolation from the organized bar and the legal profession. Historically, in-house lawyers were looked down upon as “second-class citizens[]” who could not make it as partners at large law firms, [FN143] and as sellouts who did not share lawyers' defining characteristic of independence. [FN144] But even as their status improved, in-house lawyers do have unique practice conditions that insulate and isolate them from the realities of most other lawyers. They do not need to generate business, or worry about collecting fees, billing time, etc., and at the same time they face unique challenges such as remaining generalists in highly specialized legal work, serving one client, and operating as a cost-center rather than as a profit generator. [FN145] They experience different practice challenges than firm lawyers and tackle different legal and non-legal questions, mostly dealing with different types of clients and work environments. Consequently, contrasted with large law firm lawyers, in-house attorneys experience their daily professional experiences as isolating. [FN146]

Overall, the existing evidence suggests that while in-house lawyers work increasingly long hours, in-house practice generally offers a *439 better work-life balance compared with large law firm practice. At the same time, one should not underestimate the work-life challenges facing in-house attorneys nor assume that in-house practice offers an attractive work-life balance. [FN147] While in-house lawyers may on average work shorter hours than their large law firm counter-

parts and benefit from greater flexibility, the diffused work environment in-house--both in terms of the necessary investment of “soft” hours and in terms of having to think outside of the box to demonstrate one's value and pursue non-structured career advancement opportunities--the increased travel and transfer prospects, and the significant sense of isolation experienced by in-house lawyers all render striking an effective work-life balance at in-house departments a complex and challenging task.

B. The Elusive Promise of Greater Equality In-house

Inequality in the legal profession, and in particular gender inequality, is a well-documented phenomenon. [FN148] Nineteenth-century courts throughout the country routinely refused to admit women into the profession finding them unsuitable to practice law. [FN149] Twentieth-century law schools and law firms explicitly and overtly refused to admit female students or hire, let alone promote, them as associates and partners. [FN150] Early codes of professional conduct reflected and celebrated *440 a masculine ethos by constituting the combative adversary system as the paradigmatic system for finding truth, administering justice, and practicing law and treated “warm zeal” as the characteristic of excellence of practice. [FN151] Not until the 1970s did women begin entering the profession in substantial numbers, and not until the 1980s did women law students regularly account for approximately fifty percent of law students and entry-level associates at large law firms. [FN152] By the late twentieth century intentional, explicit, and systematic gender discrimination in the profession had been by and large eradicated. [FN153]

Implicit, institutional, and structural gender discrimination, however, remains a troublesome impediment to equality. [FN154] Numerous studies confirm that women lawyers are concentrated in low-status practice areas of the profession and underrepresented in high status practice areas; are underrepresented within the elite segments of the bar; and are paid less than their male counterparts for comparable positions and work. [FN155] The literature identifies five inter-related reasons for this glass ceiling effect: the impact of negative gender stereotypes, inhospitably rigid workplace structures, declining opportunities for training and mentorship that tend to disproportionately affect women lawyers, professional ideologies that define excellence in implicit masculine terms, and sexual harassment. [FN156]

Of course, the gradual shift toward greater gender equality within the legal profession, the decline of intentional discrimination and the perseverance of implicit discrimination, and gender underrepresentation in positions of power and influence are not unique to the legal *441 profession and reflect similar trends in America and its workforce. Yet, paying close attention to the various manifestations of implicit gender discrimination and underrepresentation across workforce arenas and, especially, in the legal profession is important.

First, while expecting lawyers and the legal profession to be at the forefront of the quest for equality may smack of self-serving lawyer exceptionalism, [FN157] there are compelling reasons to demand more from lawyers in the fight against implicit discrimination. As high priests and ministers of law and justice, [FN158] or even mere public citizens, [FN159] lawyers should set the standard for pursuing equality. Indeed, failure to do so might pull the rug from under the bar's claim of its special professional status. [FN160] Next, equality is at the core of the rule of law. While inequality may be a fact of life in many walks of life, its presence undermines the very meaning of law. For example, gender inequality may be a prevailing practice reality among carpenters, [FN161] but its lamentable presence does not undermine what it means to be a carpenter; whereas because equality is a constitutive element of the law, inequality does undermine both the meaning of law and what it means to be a lawyer. Finally, given the role of law and lawyers in our society as important instruments and constituents of our democracy and leadership, equality in the profession strengthens our democracy and active participation in it. [FN162]

*442 Second, unlike intentional gender discrimination, which in historical context tended to be overt, implicit dis-

crimination is harder to pin down and document. The devil, if you will, is in the details, and so are means of overcoming it. Therefore, even if implicit discrimination in the legal profession is nothing more than a symptom of the greater phenomenon in American society and its workforce, documenting its manifestations across different arenas of the legal profession is a constitutive and necessary step toward overcoming it. [FN163]

1. implicit gender discrimination at large law firms

Large law firms, historically overt and systematic discriminators on the basis of ethno-religious affiliation, gender, racial identity, socioeconomic, and cultural background, have come a long way. [FN164] Explicit intentional discrimination has all but been eliminated, [FN165] and large law firms have been at the forefront of promoting diversity within their ranks, attaining notable success in terms of entry-level recruitment. [FN166] At the same time, however, implicit structural discrimination is still very much a reality, with women attorneys experiencing the glass ceiling effect and significant gender under-representation at the senior associates, junior partners, and especially equity partners' ranks. [FN167]

*443 To begin with, biased stereotypical assumptions about qualifications, competence, and divided loyalties inhibit substantive gender equality at large law firms. Women lawyers are often assumed to misunderstand the complexities of the business world and to owe insufficient loyalty to the firm and its clients out of a competing loyalty to their families and children, [FN168] stereotyping that persists even in the face of evidence to the contrary. [FN169] Next, the rigid organizational structure of large law firms, for example, its reliance on increased billable targets and expectations of significant non-billable hours, as well as anticipation of one's development as a rainmaker, tend to disfavor women lawyers, who continue to disproportionately shoulder competing personal obligations. Declining training and mentoring opportunities at firms impact all of its attorneys, but disproportionately affect women lawyers who were historically and are still often considered "outsiders" to the all important "old-boys" professional networks that, in turn, play a role in the ability to develop as a rainmaker. [FN170] Finally, the culture and ideology of a 24-7 commitment and total loyalty to the firm and its clients, and the "eat what you kill" mentality and expectation that partners become rainmakers impose greatly on all large law firm lawyers' personal lives, but have a disproportionate impact on women lawyers seeking a career at large law firms. [FN171] Recent trends, like the adoption of risk-management procedures with the unintended consequence of further diluting the evaluation process of content [FN172] and the creation of multiple tracks with the unintended consequence of relegating women to non-partnership and non-equity-partnerships tracks, [FN173] further aggravate the plight of women lawyers. Thus, the disappointing and static retention, *444 promotion, and equity realities at large law firms may drive women (and men) lawyers to in-house positions in search of diversity and equality. [FN174]

2. the expectation of greater gender equality in-house

At large law firms, the interplay of two gender stereotypes hinders the career advancement of women lawyers: incompetence and inferior understanding of business realities, and insufficient loyalty to the firm and its clients because of assumptions about competing personal obligations which result in divided loyalties. Combined, both stereotypes feed gendered assumptions about the ability of women lawyers to become successful rainmakers. Over time, experience tends to disprove the business incompetence stereotype, whereas the divided loyalties stereotype persists even in the face of proven loyalty and empirical proof to the contrary. [FN175] At corporate in-house legal departments, one may expect gendered stereotyping to have less of a negative impact on career advancement. Not only may the business incompetence stereotype be somewhat disproven by experience, but also its effects may not be perceived as debilitating: within the in-house department, lawyers are often called upon to manage outside counsel and concentrate on legal rather than business tasks, and there is ample business expertise outside of the department to assist lawyers, who are perceived in any event to be outsiders to the corporate world.

Similarly, the divided loyalties stereotype may have less of a negative impact in-house compared with large law firms. While for-profit corporate entities certainly expect loyalty and devoted service, they may not expect 24-7 and undivided loyalty from their in-house attorneys. In contrast to large law firms, where lawyers are the profit-centers and rainmakers, a reality that breeds an expectation that equity partners be around 24-7 generating business for the firm, in-house lawyers are often understood as cost-centers. They certainly are expected to be available and to do their part, but they are not commonly understood as the essential human capital component whose presence is needed around the clock to make the business succeed.

Moreover, Joan Williams and others have suggested that in-house women lawyers may benefit from a phenomenon known as the “flip side of bias,” namely the ability of particular groups to benefit under ***445** certain conditions from stereotypical biases when the very stereotypes depict desirable characteristics. [FN176] “By default alone,” writes Williams:

women have traditionally been under the pressure of not putting themselves ahead in the packing order, but rather, assuming a more attentive, helpful, emotionally intelligent role. These are the sort of things they were expected to do, but now, these same qualities are seen as being very effective for corporate legal leadership. [FN177]

Such a “flip side of bias,” it has recently been argued, is “an unforeseen game-changing advantage to women lawyers on the rise.” [FN178] Indeed, a gender-based “flip side of bias” phenomenon may help explain the advances made by women attorneys serving as general counsel at Fortune 500 companies and mitigate some of the structural features inherent to in-house practice that inhibit the career advancement of women lawyers.

Next, while the rigid structure, particularly increased billable targets and the expectation of significant office face-time, help explain the glass ceiling effect at large law firms, in-house departments are typically not nearly as rigid. Most do not utilize the billable hour method and do not require considerable face time. To the contrary, flexibility of work hours characterizes in-house legal departments: even as the total work hours of in-house lawyers have been on the rise, the hours tend to be flexible such that in-house attorneys exercise greater control over their schedules and can rearrange them with greater ease to accommodate and fit conflicting personal commitments.

In-house departments do not tend to feature scarce mentoring and training “famine” for two related reasons. Unlike large law firms, where the already long hours and pressure to bill clients and generate business constitute incentives to senior associates and partners not to mentor and train their juniors, no such disincentive scheme exists in-house. Moreover, the traditional large law firm model builds on the hiring of inexperienced junior attorneys straight out of law school and their training at the firm, creating a competitive environment and “famine” for mentoring and training, which has no equivalent at in-house departments. In contrast, many in-house lawyers are hired ***446** laterally already possessing the requisite experience and skill sets needed for the job and providing more senior in-house attorneys with little reason not to train those who do need assistance.

Finally, the contemporary rise of a hypercompetitive masculine ideology at large law firms that defines and measures professional excellence in terms of “eat what you kill” and 24-7 aggressive commitment to serve the interests of entity clients further inhibits the career advancement of women lawyers at large firms. [FN179] The resurgence of masculine ideology at large law firms, it should be noted, is far from an obvious development. Large law firms, at least in theory, were conceived as and meant to be meritocracies, and therefore, if only implicitly, gender-blind. [FN180] Of course, they were not and are not strictly meritorious, [FN181] featuring structural gender discrimination. [FN182] Moreover, the longstanding legacy and ethos of masculinity in law practice, evident for example in the adversarial system's demand for “warm zeal” and combativeness, [FN183] helps explain and provide a context for the continued prevalence of structural discrimination.

Indeed, the deep masculine roots of the profession help explain the long staying power of gender stereotypes: women lawyers were assumed not to be tough or aggressive enough to be effective litigators, and when large law firms emerged with their emphasis on transactional work, women lawyers were assumed not to have the requisite understanding of business to be effective corporate advisors. [FN184] Over time, as alternative styles of practice have become more common, featuring for example the “ethic of care” and collaborative approaches, [FN185] zeal has been declining in popularity, [FN186] and some *447 masculine imagery, such as “Rambo-style depositions,” is now used in derogatory professional terms. [FN187] Nonetheless, the masculine roots of the profession help provide some of the necessary background for understanding contemporary realities.

In contrast, corporate entities, and their in-house legal departments, appear to feature a different ideology, one that is grounded in profit maximization, and, as of late, inclusive of social corporate responsibility and a commitment to pursuing diversity. The expectation that corporate entities will do better in terms of diversity, presumably including their in-house legal departments, is therefore grounded in the “business case for diversity” [FN188] and the well-advertised commitment of corporate America to diversity. [FN189]

Perhaps surprisingly, the expectation of greater equality in hiring and promotion policies in-house is also grounded in history. In-house general counsels have played an important role in combating discrimination and fostering diversity in the legal profession before. [FN190] The rise of in-house counsel and the appointment of general counsels helped break down the old boys network's ties between traditional white-anglo-saxon-protestant (WASP) corporate America and Wall Street's elite WASP law firms. Charged with obtaining high-quality legal advice under a budget constraint, general counsels were more inclined than their predecessor decision-makers, predominantly WASP senior corporate executives, to hire Jewish, Catholic, and “mixed” law firms. [FN191] Such early manifestation of the “business case for diversity,” however, illustrates both the strengths and weaknesses of utilitarian-based diversity initiatives. On the one hand, general counsels did help introduce ethno-religious diversity into the previously WASP-dominated upper echelon of elite Wall Street law firms. On the other hand, the driving force was ultimately retaining quality legal services at *448 a competitive cost, and enhanced diversity was nothing more than a beneficial side effect, foreshadowing current realities.

In sum, because in-house legal departments do not feature the same manifestations of gender stereotypes common at large law firms, have more flexible work conditions, do not rely on mentoring and training to the extent large firms do, offer better incentives for mentoring and training, and do not feature hypercompetitive ideologies, one might reasonably expect them to offer more equal work conditions for lawyers who shoulder personal responsibilities, predominantly women.

3. implicit discrimination at in-house legal departments

Unfortunately, in-house legal departments appear to offer no better shot at equality than large law firms do. While the details vary, the same patterns of implicit discrimination that afflict large law firms--stereotyping, structural rigidity, reliance on social capital, and inhospitable ideology--are also very much present in in-house legal departments, and the results are predictably similar: while women lawyers fare well at entry-level and junior positions, [FN192] they are woefully under-represented in senior, powerful, leadership positions. [FN193]

While the divided loyalties stereotype may have less of an impact on in-house attorneys, and women attorneys may benefit from the gender stereotype of being better listeners and team players, [FN194] the incompetence stereotype, which has been in decline at large law firms, may still have negative consequences in-house. Promotion to senior positions within the in-house department, let alone outside of the department to C-suite positions, requires not only mastery of business knowledge but also the perception of it, opening the door to negative gender assumptions about the business

knowledge and expertise of women lawyers.

***449** Moreover, unlike large law firms, where the existence of generations of competent women lawyers has helped gradually disprove the incompetence stereotype, the ongoing gender under-representation in corporate America's C-suites has not allowed the experience of women there to undermine the prevalence of the stereotype. The continued masculine culture and male dominance in the senior ranks of corporate America may help explain the under-representation of women lawyers in senior ranks of in-house legal departments. Appointments as general counsel and associate general counsel are ultimately senior executive appointments, which depend to an extent on one's social capital and, in particular, effective networking. To the extent that women lawyers possess or are perceived to possess less social capital than their male counterparts, they may be at a disadvantage competing for senior in-house positions.

Without a doubt, even as the average hours of in-house lawyers are on the rise, in-house departments feature shorter, and, as importantly, more flexible work arrangements. Yet, other structural features of in-house departments somewhat negate their relative advantage vis-à-vis law firms in terms of the plausibility of gender equality. The diffused nature of in-house legal departments, both in terms of lack of structured promotion tracks and clearly established expectations about “soft” hours, and in terms of dead-end positions whereby the work done in junior positions does not necessarily lend itself for promotion and does not allow one to develop skills that would be applicable and relevant in a more senior legal position, will especially disfavor women attorneys for several related reasons.

First, the implied expectation of significant investment of “soft” hours by in-house attorneys, operating in the context of a male-dominated ideology of “ideal workers” and of lawyers being perceived as “outsiders,” means that junior in-house lawyers must rely on networking and connections to better understand and do their jobs effectively, and, subsequently, to secure their next position. To the extent that women lawyers tend to have or are assumed to have reduced social capital compared with their male counterparts, this structural feature of in-house legal departments will tend to disfavor women lawyers.

Second, and related, because senior in-house counsel positions are often staffed laterally from the ranks of senior associate and partners from large law firms, [FN195] and because these ranks evidence structural ***450** discrimination and feature mostly men lawyers, [FN196] the glass ceiling effect at large law firms will tend to transfer and translate itself into gender under-representation at senior levels at in-house legal departments.

Third, to the limited extent that junior in-house counsel lawyers are promoted internally, and since their legal in-house jobs do not train them well for senior positions, those promoted would have to prove themselves by developing well-rounded careers and demonstrating understanding not only of the legal aspects of corporate challenges but also the business, financial, and other aspects of the work environment. Put differently, top positions require business understanding and therefore trigger gender stereotypes about business incompetence, not unlike gender stereotypes that afflict women lawyers at large law firms. [FN197] Promotion to senior positions would also require significant investment of “soft” hours, triggering gender stereotypes regarding divided loyalties and women lawyers' inability to meet the goals of the “ideal worker” corporate ideology.

Moreover, some of the structural features of in-house practice that make it less of a work-life haven may have a disproportionate impact on women lawyers. Top positions require “soft” time commitment, travel, and the possibility of transfer, which women lawyers who continue to bear greater responsibility for childrearing may be unable or unwilling to meet. Worse, even when they are willing and able to accommodate increased travel and transfer, women lawyers may become victims of stereotypical assumptions about their divided loyalties and desire to stay home. [FN198]

Next, the decentralized structure of in-house counsel practice breeds isolation for lawyers and may be experienced

more acutely by women lawyers, to the extent that female lawyers tend to have a preference for collaborative practice settings and collegiality. [FN199] Once again, gendered assumptions may hinder the career path of women *451 attorneys even if they in fact have no such preferences, as decision-makers may nonetheless attribute to them such stereotypical preferences. [FN200]

Finally, in-house legal departments do not feature a hypercompetitive ideology that defines and celebrates professional excellence in terms of a 24-7 commitment. But neither are they built upon and organized around a meritocratic ideology. Rather, a masculine past, not unlike that of the legal profession and its large law firms, provides the backdrop for corporate hierarchy and bureaucracy. As Rosabeth Moss Kanter notes, the ideal type of the American corporate manager was a man. Rationalization “gave bureaucratic organizations their advantage of efficiency over other types of organized groups. Bureaucracy was the truly ‘passionless’ organization; it was singularly unromantic--even singularly inhuman. . . . eliminat[ing] from official business love, hatred, and all purely personal, irrational, and emotional elements which escape calculation[s,]” [FN201] all reflecting and contributing to a masculine ethic. “[A] ‘masculine ethic’ of rationality dominated the spirit of managerialism and gave the manager role its defining image.” [FN202]

This role ideology lent itself, in an historical context, to men dominating managerial positions. [FN203] And while the picture may not be as bleak as it was in 1973, it is still fairly disheartening for women. The norm and expectation of senior management in corporate America, popular talk about board diversity notwithstanding, [FN204] is still male. [FN205] *452 Joan Acker argues that “[i]n organizational logic, both jobs and hierarchies are abstract categories that have no occupants . . . no gender. . . . [F]illing the abstract job is a disembodied worker” [FN206] So far, so good, notes Acker, however, “[t]he closest the disembodied worker doing the abstract job comes to a real worker is the male worker whose life centers on his full-time, life-long job, while his wife or another woman takes care of his personal needs and his children.” [FN207] This is how an “ideal worker” ideology is conceived, in which “[t]he concept ‘a job’ is thus implicitly a gendered concept, even though organizational logic presents it as gender neutral.” [FN208] Once organizational logic is couched in terms of gender neutrality and meritocracy, the “paradox of meritocracy” follows, whereby managers that show greater bias favoring men over equally performing women, ironically justify their assessments in terms of “gender neutral merit,” and fail to see the fallacy of the analysis. [FN209] This masculine ideology has rendered women “outsiders” in senior levels of corporate America in a sense that helps explain the disproportionate impact of certain structural features of in-house counsel positions on women lawyers. [FN210]

At the end of the day, while in-house legal departments do not feature many of the characteristics of structural discrimination common *453 to large law firms--there is no expectation of business development and rainmaking capabilities, no inherent expectation of long billable hours and a 24-7 commitment to the firm, and no professional ideology that defines excellence in terms of undivided loyalty to the firm--unfortunately, these characteristics are replaced with other discriminatory features: gender stereotypes about business knowledge that influence promotion patterns to senior in-house and C-suite positions, implicit expectations of long “soft” hours alongside diffused work environments which in turn reintroduce reliance on social capital, greater travel and transfers, increased isolation both within the corporate entity and vis-à-vis other segments of the legal profession, and reliance on an “ideal worker” ideology and entrepreneurial spirit in a masculine work environment.

IV. The Future of Work-Life Balance, Equality, and Diversity In-house

The in-house myths, holding that **in-house legal departments** offer a superior **work-life balance** and a more equal playing field in terms of promotion to senior and powerful positions compared with large law firms, are just that, myths. In-house departments do in general demand shorter hours and offer greater flexibility but the better **work-life balance**

should not be overstated because other structural and institutional features informally extend the de-facto hours expectation and undermine the attractiveness of the balance. And while many of the details of structural discrimination that plague the career advancement of women lawyers at large law firms are not present at in-house departments, other features create a similar environment of implicit discrimination.

The takeaway from debunking the in-house myths, however, is not that women (and men) lawyers should not practice in-house, any more than the well-documented glass ceiling effect at large law firms should discourage women (and men) lawyers from seeking equality there. Rather, in the short run, discrediting the work-balance and equality myths can play a constructive role in allowing women (and men) lawyers to seek and compete for in-house positions on an informed basis with a more accurate understanding of the trades-offs these positions offer, the challenges that lay ahead, and the steps necessary to address them. In the longer run, exposing the in-house myths for what they are can help avoid the temptation to look for easy solutions in the fight against under-representation in positions of power and influence and refocus attention on the formidable challenges of combating implicit discrimination.

***454 A. What “Went Wrong?” Why Are In-house Departments Not a Professional Haven for Women Lawyers?**

Nothing “went wrong” in-house, except for the unrealistic expectation that in-house departments become professional havens for women lawyers. One way to understand the glass ceiling experience of women lawyers at large law firms is in the context of, and as an example of, broader implicit structural discrimination taking place in work environments that are becoming more competitive, increasingly demanding, and less hospitable to the “personal” sphere in the work-life balance, with a disproportionate impact on women lawyers who continue to shoulder an uneven personal burden in our culture. Viewed in such a light, large law firms are not evil entities, but rather paradigmatic examples of for-profit entities that struggle, notwithstanding significant investments in diversity, with gender under-representation in an increasingly competitive marketplace for legal services. Furthermore, from this perspective, the expectation that large law firms will or should do better than other for-profit entities reflects unrealistic lawyer exceptionalism, and the expectation that in-house legal departments will and should do better, overlooking the fact that these are departments of for-profit entities, was naïve. If nothing else, that in-house departments experience the same patterns of increased pressure on the work-life balance, inequalities, and implicit gender discrimination is not at all surprising.

It should be noted, however, that the in-house myths were not solely grounded in the disappointing and persistent glass ceiling realities at large law firms. Corporate America has been a recent leader in pursuing the “business case for diversity,” with a highly visible campaign to demand enhanced gender (and racial) diversity from its outside counsel, and one could have reasonably expected to see these policies and their consequences impact the in-house departments of these entities as well. Indeed, the numbers do reflect a significant formal and substantive change since 2000, which is quite striking given that since 2008 in-house legal departments appear to be experiencing stagnant growth, and given that the number of general counsel positions at Fortune 500 is finite. [FN211] At the same time, in-house legal departments and lawyers are inherently somewhat of outsiders, separate from the general entity and its culture and thus, arguably, diversifying in-house legal departments and even general counsel would be easier to do than *455 diversifying other senior management positions, at least as evidenced by the abysmal number of female chief executive officers. [FN212]

As Sung Hui Kim argues, corporate entities are good about telling others, such as large law firms and law schools, about diversity, but may not be as good in pursuing diversity themselves. [FN213] While joining amicus briefs calling on law schools to diversify their student bodies and faculties, and demanding that outside counsel diversity efforts be monitored and managed by in-house counsel, large corporate entities have not managed to attain substantive equality in their own in-house legal departments and have a very poor record of gender diversity outside of these departments. While

already hiring the best and most prestigious elite law firms, large corporate entities have taken advantage of their relative power vis-à-vis large law firms and the increased competition in the market for corporate legal services to demand, at little to no cost to themselves, that large law firms feature enhanced diversity. And not only was this nearly cost-free, but also it had the side benefit of creating positive public relations free of charge: corporate America was not only committed to diversity, it was showing the way to America's elite law firms!

Diversifying their own in-house legal departments, especially outside of the visible Fortune 500, was and is altogether a different story. Diversification at entry levels was relatively easy to achieve at little cost: recruiting disillusioned mid-level female (and male) associates from large law firms was easy enough to do. And indeed, the percentage of women in-house lawyers has increased tremendously over the last twenty-five years. [FN214] Similarly, diversification at the most visible levels of general counsel at Fortune 500 companies may also be, relatively speaking, easy to do, exactly because lawyers are perceived to be “outsiders,” and the in-house legal department an “outsider” in the corporate environment. There are, after all, only a finite number of Fortune 500 general counsel positions, and change at that level does not require nor reflect a fundamental transformation of the gendered culture of corporate America. Achieving substantive diversity goals and equality outside of entry level positions and at the most visible legal positions at the top of the pyramid, however, is altogether a different story requiring a systematic overhaul of corporate culture, work ethos, and prevailing organizational structures.

*456 To begin with, achieving gender diversity at senior levels of in-house legal departments is in part a function and a reflection of the pool of available candidates, the so-called pipeline problem. [FN215] Recruiting primarily laterally from within the ranks of large law firms, large corporations are facing a shallow pool of women lawyers. Moreover, the problem is also a reflection of under-representation in corporate America, outside in-house legal departments. Notwithstanding corporate America's love affair with diversity talk, and, in particular, with board diversity talk, [FN216] its diversity track record in senior management levels is shockingly poor. [FN217] While some gains have been made in the realm of boards, senior managements continue to be the near exclusive domain of men. [FN218] As many have shown, gender homogeneity of key corporate decision-makers will tend to perpetuate itself, and, not surprisingly, the result tends to be a male-dominated senior in-house counsel rank.

Moreover, as David Wilkins has argued, while the business case for diversity can result in positive progress toward enhanced diversity, its normative desirability is suspect and should not be overstated. Ultimately, the business case for diversity is just that, a business instrumental and utilitarian case, which depends and is constrained by the overall commitment of for-profit entities to maximize profits on behalf of shareholders, diversity and equality notwithstanding. [FN219]

B. The Case for Diversity and Equality inside the House

Increased competition in the market for corporate legal services, growing client sophistication and commoditization of legal work has resulted in increased pressure on the personal sphere in the work-life balance struck by lawyers in the corporate hemisphere of the legal profession, at large law firms and in-house departments alike. [FN220] And *457 while in-house departments still offer a more attractive work-life balance compared with large law firms especially in terms of flexibility of hours worked, the differences are not as pronounced as one might expect and are narrowing. As importantly, the growing pressure on the personal lives of lawyers is not unique to the legal profession and is, in part, a feature of increased global competition in service industries.

Yet how large law firms, in-house departments, and the legal profession as a whole respond to these challenges remains a fundamental issue in need of addressing. In addition to whatever reasons that support diversity initiatives and

commitment to gender equality outside of the legal profession, [FN221] there are compelling reasons as to why the legal profession and some of its leading constituencies as such must actively pursue substantive diversity. [FN222] Commitment to equality, what it means to be a lawyer, access to legal services, and recognition of the role law plays in our society as a stepping stone for leadership positions all justify a special, or heightened commitment to diversity and equality within the legal profession. [FN223]

That lawyers qua lawyers and the legal profession as a whole ought to lead in the battle for substantive gender equality sounds, admittedly, like lawyer exceptionalism, and might serve, indirectly, to legitimize and support lawyers' claims to continued special professional status and benefits, and to defeat calls for de-regulation of the profession. [FN224] For purposes of this Article, it is unnecessary to engage with the greater debate over the desirability of professionalism and *458 lawyer exceptionalism. [FN225] Suffice it to say that as long as lawyers continue to be recognized as professionals, claim the benefits of professional status, and explain their elevated position in terms of commitment to the rule of law and equality as one of its core elements, it is legitimate, indeed reasonable, to hold them to higher standards of equality and substantive diversity.

Moreover, certain constituencies of the legal profession, for example, elite segments of the bar and entities such as large law firms that unintentionally practice implicit, institutional, and structural discrimination are under a special duty to lead in the battle for equality. [FN226] In other words, the legal profession's heightened duty to equality and substantive diversity should not be equally distributed among all members of the profession. Rather, elite segments and constituencies of the profession that engage in implicit gender discrimination must do more than other lawyers to undo their own discriminatory policies and conduct.

Proponents of substantive diversity in the legal profession argue that elite legal positions serve as a stepping stone to positions of influence and leadership in our society and that gender under-representation in the upper echelons of the bar leads to such under-representation in leadership positions throughout our society and thus breeds inequality and injustice as well as distrust in our leading institutions. [FN227] Gender under-representation in in-house legal departments turns out to be a case at hand. To the extent that in-house legal departments tend to recruit senior lawyers from within the ranks of senior associates and junior partners at large law firms and thus “import” the inequality common at large law firms into the world of in-house counsel, the result underlines the importance of pursuing and achieving substantive diversity and equality within large law firms. Failure to do so results not only in under-representation of women as equity partners at Big Law, but also in under-representation of women as general counsel in corporate America, and in the C-suites of corporate America more generally.

Should in-house legal departments be subjected to the heightened duty to pursue gender equality and substantive diversity? The analysis entails a two-step inquiry: first, are in-house legal departments and their lawyers members of the legal profession; and second, if so, do in-house departments practice implicit discrimination? [FN228] This Article *459 answers the second inquiry in the affirmative. But are in-house departments for purposes of assessing accountability for equality and responsibility for diversity a constituency of the legal profession?

As members of the legal profession, like all attorneys, in-house lawyers should be obligated to pursue equality. On the other hand, the reasons that compel commitment to substantive diversity applicable to lawyers qua lawyers and to law firms qua law firms, do not immediately apply to in-house counsel, who are employees of for-profit corporate entities, with the same force. [FN229] Compared with large law firms, corporate entities have a more legitimate and compelling interest, recognized in the doctrines of corporate law, in maximizing profits, irrespective of the per se pursuit of equality and diversity. To the extent, for example, that a pool of qualified candidates for senior in-house counsel positions--senior associates and junior partners at large law firms--consist predominately of men lawyers, corporations have a legitimate

reason to hire them, uninhibited by considerations such as the inherent importance of equality to the role of law. Moreover, not only do unique additional justifications compel lawyers as lawyers to seek equality and substantive diversity (compared with non-lawyers), but also lawyers' independence usually empowers them to effectuate changes within the legal profession and act on their heightened duty to equality. [FN230] In contrast, in-house lawyers often do not have the power to effectuate change at the senior levels of the in-house department even if they were committed to doing so, because such hiring and promotion decisions are often made by non-lawyers.

On the other hand, some unique justifications for equality and diversity that apply to large corporate entities, and do not usually apply to lawyers as lawyers, such as social corporate responsibility and the business case for diversity, may prove to be sufficient to trigger a heightened commitment to equality in-house. To the extent, for example, that corporate entities begin to acknowledge their responsibilities and duties as social citizens and pursue the goals of equality and diversity independent of the business case for them, a gradual cultural transformation may render pursuit of gender equality in-house more attainable. Of course, as long as shareholder supremacy and profit maximization continue to dominate American corporate law and culture, such a sea change may be a remote possibility.

***460 Conclusion**

That in-house legal departments, which are after all part of corporate America, turn out not to be a professional haven for women lawyers, notwithstanding the wishful thinking of some large law firm lawyers, is perhaps not surprising. The beliefs that in-house departments offer an attractive work-life balance and greater equality in promotion to positions of power and influence are exaggerated myths. Furthermore, that in-house departments feature implicit gender discrimination similar to patterns evident at large law firms as well as the American workforce more generally is likely, upon reflection, to be expected. At the same time, the recent gender diversity gains made by in-house legal departments have been significant. In-house women lawyers have attained the goal of formal diversity and have made visible strides toward substantive diversity. In particular, in-house departments do offer a more attractive work-life balance compared with large law firms at least in terms of greater flexibility, and have, at least at the highly visible level of the Fortune 500 general counsel level, made impressive substantive diversity gains. The experience of women attorneys at in-house legal departments thus suggests three conclusions.

First, within the legal profession, there is no substitute for a heightened commitment to formal and substantive diversity. [FN231] There are no simple solutions to the complex problem of implicit gender discrimination, no easy means of escaping it, for example, by opting out of large law firms to in-house legal departments, and no quick fixes to it. Instead, unintentional structures, organizations, policies, and procedures that result in disparate impact on the hiring and promotion of women (and minority) lawyers must be identified, challenged and mitigated. As long as lawyers justify their professional standing and elevated status in terms of their commitment to the rule of law and equality, they must lead the battle for gender equality and substantive diversity.

Second, the duty of all members of the legal profession to pursue equality should not be shouldered evenly by all lawyers and legal actors. Leading legal institutions, such as large law firms and elite in-house legal departments, that play an important symbolic role in the legal profession and that implement, albeit unintentionally, structures, organizations, policies and cultures, which result in implicit gender discrimination must do more than other lawyers to prevent, mitigate and correct for the unintended consequences of their conduct. Prevailing practice realities at both large law firms and in-house legal *461 departments reveal significant patterns of implicit discrimination and inequality that ought to be actively combated by these institutions.

Finally, inside and outside of the legal profession, implicit discrimination is an evil that must be tackled head on. Un-

intended and unintentional as implicit discrimination may be, it has real and harmful consequences that must be addressed by legal means. [FN232] Even as explicit intentional discrimination has been in decline, implicit discrimination helps sustain the legacy and consequences of intentional discrimination, pulling the rug from underneath the “no-problem” problem approach to gender inequality. [FN233]

[FN1]. Charles W. Delaney Jr. Professor of Law, University of Denver Sturm College of Law. I thank participants in the Who's in the House? The Changing Role and Nature of In-house and General Counsel conference at Wisconsin Law School, in a faculty workshop at the University of Denver Sturm College of Law, and in the Legal Profession Research Seminar at Harvard Law School for their insightful comments. Special thanks to Rachel Arnow-Richman, Rick Bailey, Arthur Best, Lawrence Hamermesh, Nancy Leong, Justin Marceau, Russ Pearce, Deborah Rhode, Bill Simon, Anne Smith, Joyce Sterling, David Wilkins, and Jolene Yee for their invaluable feedback. Julie Nichols and Diane Burkhardt, Faculty Services Liaison at the Westminster Law Library at the University of Denver Sturm College of Law, provided outstanding research assistance.

[FN1]. Abram Chayes & Antonia H. Chayes, [Corporate Counsel and the Elite Law Firm](#), 37 *Stan. L. Rev.* 277, 277 (1985); Mary C. Daly, [The Cultural, Ethical, and Legal Challenges in Lawyering for a Global Organization: The Role of the General Counsel](#), 46 *Emory L.J.* 1057, 1057-67 (1997); Omari Scott Simmons & James D. Dinnage, [Innkeepers: A Unifying Theory of the In-House Counsel Role](#), 41 *Seton Hall L. Rev.* 77, 79 (2011).

[FN2]. Notably, the legal profession was not a driving force behind the rise of in-house counsel. The rise of in-house counsel is primarily explained in terms of the needs and interests of corporate entities. Yet the rise does impact the legal profession significantly. On the value of in-house counsel to corporations, see Simmons & Dinnage, *supra* note 1, at 110-40. See generally Ronald J. Gilson, [Value Creation by Business Lawyers: Legal Skills and Asset Pricing](#), 94 *Yale L.J.* 239 (1984).

[FN3]. See Hugh P. Gunz & Sally P. Gunz, [The Lawyer's Response to Organizational Professional Conflict: An Empirical Study of the Ethical Decision Making of In-House Counsel](#), 39 *Am. Bus. L.J.* 241, 244 (2002) (arguing that there is little empirical evidence to show that in-house lawyers' exercise of professional judgment is compromised by organizational pressures); Robert Eli Rosen, [The Inside Counsel Movement, Professional Judgment and Organizational Representation](#), 64 *Ind. L.J.* 479, 489-90 (1989). See generally John J. Creedon, [Lawyer and Executive--The Role of the General Counsel](#), 39 *Bus. Law.* 25 (1983); Geoffrey C. Hazard, Jr., [Ethical Dilemmas of Corporate Counsel](#), 46 *Emory L.J.* 1011 (1997); Ted Schneyer, [Professionalism and Public Policy: The Case of House Counsel](#), 2 *Geo. J. Legal Ethics* 449 (1988).

[FN4]. Carol A. Needham, [The Changing Landscape for In-House Counsel: Multijurisdictional Practice Considerations for Corporate Law Departments](#), 43 *Akron L. Rev.* 985, 993-97 (2010). See generally Daly, *supra* note 1.

[FN5]. Compare Carl D. Liggio, Sr., [A Look at the Role of Corporate Counsel: Back to the Future--Or Is It the Past?](#), 44 *Ariz. L. Rev.* 621, 622 (2002) (“During the 1960s and 1970s corporate [i.e., in-house] counsel were looked on with disdain by the outside bar. The corporate counsel role was deemed a parking place for those associates who couldn't make partner.”), with Bernard A. Burk & David McGowan, [Big But Brittle: Economic Perspectives on the Future of the Law Firm in the New Economy](#), 2011 *Colum. Bus. L. Rev.* 1, 23 (“Beginning in the late 1970s, in-house law departments became significantly larger and began handling more of their companies' day-to-day contractual and regulatory issues, as well as many kinds of litigation.”).

[FN6]. Lisa H. Nicholson, [Making In-Roads to Corporate General Counsel Positions: It's Only a Matter of Time?](#), 65 *Md. L. Rev.* 625, 633 (2006). For a general discussion on the role of in-house and corporate counsel's increased numbers and prominence, see, for example, H.J. Aibel, [Corporate Counsel and Business Ethics: A Personal Review](#), 59 *Mo. L. Rev.* 427 (1994); Chayes & Chayes, *supra* note 1, at 277; Daly, *supra* note 1, at 1070-72; Gunz & Gunz, *supra* note 3, at 244; Susanna M. Kim, [Dual Identities and Dueling Obligations: Preserving Independence in Corporate Representation](#), 68 *Tenn. L. Rev.* 179, 199 (2001); Carl D. Liggio, [The Changing Role of Corporate Counsel](#), 46 *Emory L.J.* 1201, 1201 (1997) [hereinafter Liggio, *The Changing Role of Corporate Counsel*]; Liggio, *supra* note 5, at 632; Rosen, *supra* note 3 at 480; Steven L. Schwarcz, [To Make or to Buy: In-House Lawyering and Value Creation](#), 33 *J. Corp. L.* 497, 498 (2008); Sida Liu, [Palace Wars over Professional Regulation: In-house Counsel in Chinese State-owned Enterprises](#), 2012 *Wis. L. Rev.* 547, 554 (documenting the rise of in-house counsel in China). But see Larry Ribstein, [Delawyerizing the Corporation](#), 2012 *Wis. L. Rev.* 305 (anticipating the decline in the number of and professional status of in-house lawyers).

[FN7]. Ronen Shamir, [Managing Legal Uncertainty: Elite Lawyers in the New Deal](#) (1995) (analyzing the rise of administrative lawyers to elite status following the Great Depression and the New Deal); Eli Wald, [The Rise and Fall of the WASP and Jewish Law Firms](#), 60 *Stan. L. Rev.* 1803 (2008) (exploring the rise of the large law firm to prominence as an elite institution in the late nineteenth and early twentieth centuries, the emergence of new elite Jewish law firms after 1945, and the role in-house lawyers played in bringing about these changes).

[FN8]. See generally Sung Hui Kim, [Naked Self-Interest? Why the Legal Profession Resists Gatekeeping](#), 63 *Fla. L. Rev.* 129 (2011); Nicholson, *supra* note 6, at 634-35; Lisa H. Nicholson, [Sarbox 307's Impact on Subordinate In-House Counsel: Between a Rock and a Hard Place](#), 2004 *Mich. St. L. Rev.* 559, 561; David B. Wilkins, [Team of Rivals? Toward a New Model of the Corporate Attorney-Client Relationship](#), 78 *Fordham L. Rev.* 2067, 2071-76 (2010).

[FN9]. See Daly, *supra* note 1; Eli Wald, [Federalizing Legal Ethics, Nationalizing Law Practice, and the Future of the American Legal Profession in a Global Age](#), 48 *San Diego L. Rev.* 489 (2011).

[FN10]. Rosen, *supra* note 3.

[FN11]. Marc Galanter & Thomas M. Palay, [Why the Big Get Bigger: The Promotion-To-Partner Tournament and the Growth of Large Law Firms](#), 76 *Va. L. Rev.* 747, 751 (1990); Grace M. Giesel, [The Business Client Is a Woman: The Effect of Women as In-House Counsel on Women in Law Firms and the Legal Profession](#), 72 *Neb. L. Rev.* 760, 762 (1993); Robert L. Nelson and Laura Beth Nielsen, [Cops, Counsel, and Entrepreneurs: Constructing the Role of Inside Counsel in Large Corporations](#), 34 *Law & Soc'y Rev.* 457, 486-87 (2000).

[FN12]. See Marc Galanter & Thomas Palay, [Tournament of Lawyers: The Transformation of the Big Law Firm](#) 4-5 (1991); Marc Galanter & William Henderson, [The Elastic Tournament: A Second Transformation of the Big Law Firm](#), 60 *Stan. L. Rev.* 1867, 1882 (2008).

[FN13]. The size of the firm used to define status. See Galanter & Henderson, *supra* note 12, at 1896 (discussing the prestige associated with ranking among largest firms); Randall S. Thomas et al., [Megafirms](#), 80 *N.C. L. Rev.* 115, 142-43 (2001) (describing Skadden Arps's growth in size and status in response to increased client demand); David B. Wilkins, [Partner, Shmartner! EEOC v. Sidley Austin Brown & Wood](#), 120 *Harv. L. Rev.* 1264, 1264-65 (2007). Now, size is no longer the primary test for elite status, replaced by profits per partner. See Anthony V. Alfieri, [The Fall of Legal Ethics and the Rise of Risk Management](#), 94 *Geo. L.J.* 1909, 1916 (2006); Galanter & Henderson, *supra* note 12, at 1896; Kim, *supra* note 8, at 139.

[FN14]. See Cynthia Fuchs Epstein et al., [Glass Ceilings and Open Doors: Women's Advancement in the Legal Profes-](#)

sion, 64 *Fordham L. Rev.* 291, 295-99 (1995) [hereinafter Epstein et al., *Glass Ceilings and Open Doors*]; Cynthia Fuchs Epstein, *Women in the Legal Profession at the Turn of the Twenty-First Century: Assessing Glass Ceilings and Open Doors*, 49 *U. Kan. L. Rev.* 733, 733-40 (2001) [hereinafter Epstein, *Women in the Legal Profession at the Turn of the Twenty-First Century*]; S. Elizabeth Foster, *The Glass Ceiling in the Legal Profession: Why Do Law Firms Still Have So Few Female Partners?*, 42 *UCLA L. Rev.* 1631, 1632-34 (1995); Judith S. Kaye, *Women Lawyers in Big Firms: A Study in Progress toward Gender Equality*, 57 *Fordham L. Rev.* 111, 119-21 (1988); Judith S. Kaye & Anne C. Reddy, *The Progress of Women Lawyers at Big Firms: Steadied or Simply Studied?*, 76 *Fordham L. Rev.* 1941, 1941-44 (2008); Nancy J. Reichman & Joyce S. Sterling, *Recasting the Brass Ring: Deconstructing and Reconstructing Workplace Opportunities for Women Lawyers*, 29 *Cap. U. L. Rev.* 923, 923-27, 938 (2002) [hereinafter Reichman & Sterling, *Recasting the Brass Ring*]; Nancy J. Reichman & Joyce S. Sterling, *Sticky Floors, Broken Steps, and Concrete Ceilings in Legal Careers*, 14 *Tex. J. Women & L.* 27, 28-30 (2004) [hereinafter Reichman & Sterling, *Sticky Floors, Broken Steps, and Concrete Ceilings in Legal Careers*]; Deborah L. Rhode, *From Platitudes to Priorities: Diversity and Gender Equity in Law Firms*, 24 *Geo. J. Legal Ethics* 1041 (2011); Deborah L. Rhode, *Myths of Meritocracy*, 65 *Fordham L. Rev.* 585 (1996); Deborah L. Rhode, *The “No-Problem” Problem: Feminist Challenges and Cultural Change*, 100 *Yale L.J.* 1731 (1991) [hereinafter Rhode, *The “No-Problem” Problem*]; Steve French, Note, *Of Problems, Pitfalls and Possibilities: A Comprehensive Look at Female Attorneys and Law Firm Partnership*, 21 *Women's Rts. L. Rep.* 189, 189-90, 209 (2000); Nancer H. Ballard, *Equal Engagement: Observations on Career Success and Meaning in the Lives of Women Lawyers* (Ctr. for Research on Women, Working Paper No. 292, 1998); see also Cynthia Fuchs Epstein, *Women in Law* 5-8 (2d ed. 1993) [hereinafter Epstein, *Women in Law*]; Mona Harrington, *Women Lawyers: Rewriting the Rules* 18, 25-26, 47, 147, 188-89, 197 (1993). See generally Virginia Valian, *Why So Slow? The Advancement of Women* (1999).

Over time, the growing participation of women lawyers may transform in-house legal departments. For example, Judith Kaye, former Chief Judge of the State of New York, suggests that the increased number of women lawyers in in-house legal departments plays a role in the changing role of in-house counsel attorneys. See Judith S. Kaye, *Foreword: What's Next? A Paved but Perilous Road to Michelle Coleman Mayes & Kara Sophia Baysinger, Courageous Counsel--Conversations with Women General Counsel in the Fortune 500*, at 3, 4 (2011).

[FN15]. Rosabeth Moss Kanter, *Men and Women of the Corporation* 15-18 (2d ed. 1993); Sharyn L. Roach, *Men and Women Lawyers in In-House Legal Departments: Recruitment and Career Patterns*, 4 *Gender & Soc'y* 207 (1990); see also David B. Wilkins, *From “Separate Is Inherently Unequal” to “Diversity Is Good for Business”: The Rise of Market-Based Diversity Arguments and the Fate of the Black Corporate Bar*, 117 *Harv. L. Rev.* 1548, 1553-54 (2004) (exploring past race-based discriminatory practices employed by corporate America).

[FN16]. Magali Sarfatti Larson, *On the Nostalgic View of Lawyers' Role: Comment on Kagan and Rosen's “On the Social Significance of Large Law Firm Practice,”* 37 *Stan. L. Rev.* 445, 448 (1985); Wald, *supra* note 7, at 1813.

[FN17]. Galanter & Henderson, *supra* note 12, at 1894; see Galanter & Palay, *supra* note 12, at 21, 24, 33-34; Wilkins, *supra* note 8, at 2075.

[FN18]. Galanter & Palay, *supra* note 12, at 33-34; Giesel, *supra* note 11, at 794; Wilkins, *supra* note 8, at 2078-79 (describing the long-term relationships law firms had with their primary entity clients).

[FN19]. Robert L. Nelson, *Partners with Power: The Social Transformation of the Large Law Firm* 231 (1988) (arguing that law firms are the embodiment of power in the legal system); Galanter & Henderson, *supra* note 12, at 1869-71; Wilkins, *supra* note 13, at 1277.

[FN20]. Galanter & Palay, *supra* note 11, at 796 (describing the rise of corporate demand and its effect on large firms);

Robert L. Nelson, Of [Tournaments and Transformations: Explaining the Growth of Large Law Firms](#), 1992 Wis. L. Rev. 733, 736-37.

[FN21]. George P. Baker & Rachel Parkin, [The Changing Structure of the Legal Services Industry and the Careers of Lawyers](#), 84 N.C. L. Rev. 1635, 1637 (2006); Galanter & Henderson, *supra* note 12, at 1894-95; Galanter & Palay, *supra* note 11, at 797; Wilkins, *supra* note 8, at 2085-87 (describing the in-house--large law firm relationships as shifting from unique long-term relationships, to multiple short-term competitive relationships, and finally to a handful of “preferred provider[]” relationships); John S. Lipsey, Shift in Focus: Keeping Clients Happy, Nat'l L.J., Jan. 29, 2001, at B19.

[FN22]. Galanter & Palay, *supra* note 11, at 751; Giesel, *supra* note 11, at 762-63; Schwarcz, *supra* note 6, at 498-99; Wald, *supra* note 7, at 1849.

[FN23]. Daly, *supra* note 1, at 1061-62; Giesel, *supra* note 11, at 789; Liggio, [The Changing Role of Corporate Counsel](#), *supra* note 6, at 1205-06; Rosen, *supra* note 3, at 483.

[FN24]. Chayes & Chayes, *supra* note 1, at 277; Daly, *supra* note 1, at 1059-60; Walker B. Davis, Reflections of a Kept Lawyer, 53 A.B.A. J. 349, 349-50 (1967); Giesel, *supra* note 11, at 790; Liggio, [The Changing Role of Corporate Counsel](#), *supra* note 6, at 1203; Rosen, *supra* note 3, at 479; Jeffrey S. Slovak, [The Ethics of Corporate Lawyers: A Sociological Approach](#), 1981 Am. B. Found. Res. J. 753, 772.

[FN25]. Baker & Parkin, *supra* note 21, at 1654-55; Daly, *supra* note 1, at 1061-62; Liggio, [The Changing Role of Corporate Counsel](#), *supra* note 6, at 1207; Rosen, *supra* note 3, at 485. David Wilkins points out that within large corporate entities, some general counsel have subsequently “traded in the legal sounding title of ‘general counsel’ for the more corporate sobriquet Chief Legal Officer ... in order to clearly signal that they are part of the ‘C’ suite of top executive officers in the company.” David B. Wilkins, [Is the In-house Counsel Going Global? Assessing the Role of Internal Counsel in Emerging Economies](#), 2012 Wis. L. Rev. 251.

[FN26]. Giesel, *supra* note 11, at 790-91; Hazard, *supra* note 3, at 1011-12; Rosen, *supra* note 3, at 504; Marc I. Steinberg, [The Role of Inside Counsel in the 1990s: A View from Outside](#), 49 SMU L. Rev. 483, 484 (1996) (quoting Aibel, *supra* note 6, at 427).

[FN27]. Chayes & Chayes, *supra* note 1, at 277; Rosen, *supra* note 3, at 479, 481.

[FN28]. Galanter & Henderson, *supra* note 12, at 1892-93; Giesel, *supra* note 11, at 785.

[FN29]. See Galanter & Henderson, *supra* note 12, at 1892; Giesel, *supra* note 11, at 785 (summarizing numerous news articles about big firms firing partners); Eli Wald, [A Primer on Diversity, Discrimination, and Equality in the Legal Profession or Who Is Responsible for Pursuing Diversity and Why](#), 24 Geo. J. Legal Ethics 1079, 1129-30 (2011) [hereinafter Wald, [A Primer on Diversity](#)] (discussing the new multiple tracks for associates and partners in firms); David B. Wilkins, [Partners without Power? A Preliminary Look at Black Partners in Corporate Law Firms](#), 2 J. Inst. Study Legal Ethics 15, 15 (1999); Catherine Rampell, [At Well-Paying Law Firms, a Low-Paid Corner](#), N.Y. Times, May 24, 2011, at A1.

[FN30]. Milton C. Regan Jr., [The Fall of Wall Street Lawyer: Eat What You Kill](#) 36-38 (2004); Galanter & Palay, *supra* note 11, at 752; Ronald J. Gilson & Robert H. Mnookin, [Sharing among the Human Capitalists: An Economic Inquiry into the Corporate Law Firm and How Partners Split Profits](#), 37 Stan. L. Rev. 313, 340 (1985).

[FN31]. See Baker & Parkin, *supra* note 21, at 1665; Galanter & Henderson, *supra* note 12, at 1875-77; Eli Wald, [Glass](#)

[Ceilings and Dead Ends: Professional Ideologies, Gender Stereotypes, and the Future of Women Lawyers at Large Firms](#), 78 *Fordham L. Rev.* 2245, 2262 (2010).

[FN32]. See Galanter & Henderson, *supra* note 12, at 1892-93; Giesel, *supra* note 11, at 783-84 (discussing the past understanding of partnership as denoting respect and collegial support). See generally Wilkins, *supra* note 13.

[FN33]. Nicholson, *supra* note 6, at 652; Roach, *supra* note 15, at 208; Wald, *supra* note 31; David Machlowitz, *Corporate Moves: Achieving a Delicate Balance*, A.B.A. J., Aug. 1989, at 62, 62.

[FN34]. Steinberg, *supra* note 26, at 484; see Walt Bachman, *Law v. Life: What Lawyers Are Afraid to Say about the Legal Profession* 102 (1995); Anthony T. Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* 302 (1993); Susan Saab Fortney, *Soul for Sale: An Empirical Study of Associate Satisfaction, Law Firm Culture, and the Effects of Billable Hour Requirements*, 69 *UMKC L. Rev.* 239, 246-47 (2000).

[FN35]. Baker & Parkin, *supra* note 21, at 1637; Ann J. Gellis, [Great Expectations: Women in the Legal Profession, A Commentary on State Studies](#), 66 *Ind. L.J.* 941, 967-68 (1990-91) (arguing that lack of “rainmaking” expectations is one reason why more women attorneys are employed by the government); Giesel, *supra* note 11, at 787 (discussing how not having to engage in “rainmaking” is particularly appealing to women attorneys).

[FN36]. See sources cited *supra* note 14 and accompanying text.

[FN37]. Wald, *A Primer on Diversity*, *supra* note 29, at 1119-23, 1141-42.

[FN38]. See Epstein, *Women in the Legal Profession at the Turn of the Twenty-First Century*, *supra* note 14, at 738-40, 746; Giesel, *supra* note 11, at 762. See generally Wald, *supra* note 31.

[FN39]. David B. Wilkins, [Do Clients Have Ethical Obligations to Lawyers? Some Lessons from the Diversity Wars](#), 11 *Geo. J. Legal Ethics* 855, 856-57 (1998); Wilkins, *supra* note 15, at 1555-58. See generally Anthony Patrick Carnevale & Susan Carol Stone, *The American Mosaic: An In-Depth Report on the Future of Diversity at Work* 59 (1995) (“[T]he benefits of diversity tend to fall into three broad categories: workforce quality, market sensitivity, and organizational agility.”); Raymond L. Ocampo, Jr., *On Hiring Women and Minority Attorneys: One General Counsel's Perspective*, ACCA Docket, Summer 1994, available at <http://careers.findlaw.com/diversity/articles/onhiring.html> (describing Oracle Corporation's outside counsel retention policy).

[FN40]. See Galanter & Henderson, *supra* note 12, at 1913; Wilkins, *supra* note 8, at 2111-12. See generally Milton C. Regan, Jr., [Risky Business](#), 94 *Geo. L.J.* 1957 (2006).

[FN41]. See, e.g., Richard W. Bourne, *The Coming Crash in Legal Education: How We Got Here, and Where We Go Now*, 45 *Creighton L. Rev.* (forthcoming 2012) (manuscript at 30-35), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1989114; David Segal, *Is Law School a Losing Game?*, *N.Y. Times*, Jan. 9, 2011, at BU1; Herwig Schlunk, *Mamas 2011: Is a Law Degree a Good Investment Today?* (Vanderbilt Law & Econ., Working Paper No. 11-42, 2011), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1957139.

[FN42]. See Alfieri, *supra* note 13, at 1915; David B. Wilkins & G. Mitu Gulati, [Reconceiving the Tournament of Lawyers: Tracking, Seeding, and Information Control in the Internal Labor Markets of Elite Law Firms](#), 84 *Va. L. Rev.* 1581, 1630-31 (1998) (describing how the law firm's structure instills and exhibits culture and values).

[FN43]. Segal, *supra* note 41; Wilkins & Gulati, *supra* note 42, at 1629-30 (describing the historic cultural allure of being

a lawyer and its lasting effects).

[FN44]. See generally Robert W. Gordon, *The Independence of Lawyers*, 68 *B.U. L. Rev.* 1 (1988). Loss of independence takes place not only by virtue of being subject to the control of senior lawyers, but also because of the rise of risk management procedures displacing individual exercise of professional judgment. See Alfieri, *supra* note 13, 1933-40; Galanter & Henderson, *supra* note 12, at 1912; Regan, *supra* note 40, at 1962-63.

[FN45]. Chief Justice Roberts has assailed the relevance of legal scholarship to law practice. See Law Prof. Ifill Challenges Chief Justice Roberts' Take on Academic Scholarship, ACSblog (July 5, 2011), <http://www.acslaw.org/acsblog/law-prof-ifill-challenges-chief-justice-roberts%E2%80%99-take-on-academic-scholarship>; Debra Cassens Weiss, Law Prof Responds after Chief Justice Roberts Disses Legal Scholarship, ABA J. (July 7, 2011, 5:29 AM), http://www.abajournal.com/news/article/law_prof_responds_after_chief_justice_roberts_disses_legal_scholarship/?utm_source=maestro&utm_medium=email&utm_campaign=weekly_email. The Chief Justice is not the first to have criticized legal scholarship in this fashion. See Harry T. Edwards, *The Growing Disjunction between Legal Education and the Legal Profession*, 91 *Mich. L. Rev.* 34 (1992).

[FN46]. This Article explores gender equality and diversity at in-house legal departments and large law firms. This is not to belittle of course other disturbing patterns of under-representation and implicit discrimination that are very much present at these institutions and in the legal profession more generally. See Wald, *A Primer on Diversity*, *supra* note 29, at 1122.

[FN47]. Barbara A. Curran et al., Am. Bar Found., *The Lawyer Statistical Report: A Statistical Profile of the U.S. Legal Profession in the 1980s*, at 19 (1985) [hereinafter 1980 Statistical Report].

[FN48]. Clara N. Carson, Am. Bar Found., *The Lawyer Statistical Report: The U.S. Legal Profession in 2000*, at 28 (2004) [hereinafter 2000 Statistical Report].

[FN49]. 1980 Statistical Report, *supra* note 47, at 4.

[FN50]. 2000 Statistical Report, *supra* note 48, at 27.

[FN51]. Accordingly, in-house attorneys have accounted for only 8.4% of U.S. lawyers in 2000. *Id.* at 6.

[FN52]. 1980 Statistical Report, *supra* note 47, at 40.

[FN53]. 2000 Statistical Report, *supra* note 48, at 28.

[FN54]. Wald, *A Primer on Diversity*, *supra* note 29, at 1093-1100 (defining “formal diversity”).

[FN55]. 2000 Statistical Report, *supra* note 48, at 27.

[FN56]. See *id.* at 28; 1980 Statistical Report, *supra* note 47, at 19, 40.

[FN57]. Kevin T. Leicht & Mary L. Fennell, *Professional Work: A Sociological Approach* 191 (2001).

[FN58]. See Wald, *A Primer on Diversity*, *supra* note 29, at 1105-09 (defining “substantive diversity”).

[FN59]. David Lat, *Who Are America's Best-Paid General Counsel?*, *Above the Law* (July 19, 2011, 6:19 PM), <http://abovethelaw.com/2011/07/who-are-americas-best-paid-general-counsel>.

[FN60]. Id.

[FN61]. Thomas Threlkeld, MCCA 2010 Survey of Fortune 500 Women General Counsel, *Minority Corp. Couns. Ass'n*, <http://www.mcca.com/index.cfm?fuseaction=page.viewPage&pageID=2107> (last visited Feb. 16, 2012).

[FN62]. Figures are based on MCCA's surveys of Fortune 500 women general counsel. See Research, *Minority Corp. Couns. Ass'n*, <http://www.mcca.com/index.cfm?fuseaction=Page.viewPage&pageId=2077&parentID=471&nodeID=1> (last visited Feb. 16, 2012); see also Mayes & Baysinger, *supra* note 14, at 11 (describing the three waves of women general counsel).

[FN63]. Alea Jasmin Mitchell, *The Status of Fortune 500 Women General Counsel in 2004*, *Minority Corp. Couns. Ass'n*, <http://www.mcca.com/index.cfm?fuseaction=page.viewpage&pageid=716> (last visited Feb. 16, 2012).

[FN64]. Id.

[FN65]. Alea J. Mitchell et al., *Diversity & the Bar: MCCA Annual Survey of Fortune 500 Women General Counsel*, *Minority Corp. Couns. Ass'n*, <http://www.mcca.com/index.cfm?fuseaction=page.viewpage&pageid=1294> (last visited Feb. 16, 2012).

[FN66]. Alea J. Mitchell, *MCCA 2006 Survey of Fortune 500 Women General Counsel*, *Minority Corp. Couns. Ass'n*, <http://www.mcca.com/index.cfm?fuseaction=page.viewpage&pageid=1207> (last visited Feb. 16, 2012).

[FN67]. Rachel Ray, *MCCA's 2007 Survey of Fortune 500 Women General Counsel*, *Minority Corp. Couns. Ass'n*, <http://mcca.com/index.cfm?fuseaction=page.viewpage&pageid=1480> (last visited Feb. 16, 2012).

[FN68]. Rachel Ray et al., *MCCA 2008 Survey of Fortune 500 Women General Counsel*, *Minority Corp. Couns. Ass'n*, <http://www.mcca.com/index.cfm?fuseaction=page.viewpage&pageid=1766> (last visited Feb. 16, 2012).

[FN69]. *MCCA 2009 Survey of Fortune 500 Women General Counsel*, *Minority Corp. Couns. Ass'n*, <http://www.mcca.com/index.cfm?fuseaction=page.viewPage&pageID=1931> (last visited Feb. 16, 2012).

[FN70]. Threlkeld, *supra* note 61.

[FN71]. Press Release, *Minority Corporate Counsel Association*, *MCCA Survey: Women Serving as General Counsel At Fortune Companies Reaches New High* (Oct. 1, 2011), available at <http://www.mcca.com/index.cfm?fuseaction=Feature.showFeature&featureID=276>.

[FN72]. Threlkeld, *supra* note 61.

[FN73]. See Wald, *A Primer on Diversity*, *supra* note 29, at 1093-1100.

[FN74]. Between the mid-1990s and the mid-2000s, *Corporate Legal Times* published an annual survey of the largest legal departments, occasionally including an "industry breakout." See, e.g., *The Largest Legal Departments*, *Corp. Legal Times*, Aug. 2005, at 32, 32-43.

[FN75]. Empirical studies estimate the percentage of women partners at large law firms at 15%. Wald, *supra* note 31, at 2251, n.27. At rates of 15% to 20% for the same time period, the representation of women general counsel at Fortune 500 companies is higher. Indeed, substantive gender diversity in-house is even more striking, if one compares general counsel to managing partners, their analogous position at large law firms, which is estimated at a meager 6%. Roberta D. Lieben-

berg, Breaking through the Glass Ceiling--Attaining Equality for Women Lawyers, U.S. News & World Rep. <http://bestlawfirms.usnews.com/editorialarticles.aspx?articleid=10> (last visited Mar. 31, 2012).

[FN76]. Joel F. Henning, Jawboning Key to Managing Outside Lawyers, Lateral Hiring is a Two-way Street Now, Corp. Legal Times 1, 23 (Aug. 1, 1993) (“What used to be a one-way street—people moving from law firms into legal departments—is now a two-way street. And in many cases, outside firms are recruiting people from legal departments, because they have that expertise and special skills.”); see, e.g., Press Release, Shearman & Sterling LLP, Shearman & Sterling Recruits Top M&A Lawyer, available at <http://practiceview.muzeview.com/links/index.php?id=233595> (reporting the return of a senior in-house counsel at a Fortune 500 company to his former elite law firm).

[FN77]. See *infra* Part III.A.2 (arguing that a career trajectory in-house may cause lawyers to distance themselves from the practice of law).

[FN78]. Chayes & Chayes, *supra* note 1, at 296; Wilkins, *supra* note 13, at 1277.

[FN79]. Wilkins & Gulati, *supra* note 42, at 1609-10.

[FN80]. See Chayes & Chayes, *supra* note 1, at 294-95; Milton C. Regan, Jr. & Palmer T. Heenan, [Supply Chains and Porous Boundaries: The Disaggregation of Legal Services](#), 78 *Fordham L. Rev.* 2137, 2149 (2010); Wald, *supra* note 31, at 2261.

[FN81]. See, e.g., Galanter & Henderson, *supra* note 12, at 1928; Bryant G. Garth, [Legal Education and Large Law Firms: Delivering Legality or Solving Problems](#), 64 *Ind. L.J.* 433, 433 (1988-89) (“Large law firms are the most successful institutional component of the American legal profession according to the criteria of economic prosperity, proximity to the corridors of economic and political power, and the influence exerted on the legal profession generally.”); Wald, *supra* note 31, at 2271.

[FN82]. See, e.g., Janan Hanna & Rachel M. Zahorsky, What America's Lawyers Earn, 97 *A.B.A. J.* 35 (2011); Schwarcz, *supra* note 6, at 504 n.40; Wald, *A Primer on Diversity*, *supra* note 29, at 1096.

[FN83]. See Denis Binder, [The Changing Paradigm in Public Legal Education](#), 8 *Loy. J. Pub. Int. L.* 1, 10-15 (2006) (documenting law school tuition “explosion”); Michael L. Coyne, Law School for the White and Wealthy, *Nat'l L.J.*, Apr. 11, 2011, available at <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id??1202489489121>; William K.S. Wang, [The Restructuring of Legal Education along Functional Lines](#), 17 *J. Contemp. Legal Issues* 331, 333 (2008) (summarizing available data on law school tuition increases). See generally John A. Sebert, [The Cost and Financing of Legal Education](#), 52 *J. Legal Educ.* 516 (2002).

[FN84]. Fortney, *supra* note 34, at 246-47; Susan Saab Fortney, [The Billable Hours Derby: Empirical Data on the Problems and Pressure Points](#), 33 *Fordham Urb. L.J.* 171, 171-72 (2005) [hereinafter Fortney, *The Billable Hours Derby*]; Galanter & Palay, *supra* note 11, at 752; Nicholson, *supra* note 6, at 652; Wald, *A Primer on Diversity*, *supra* note 29, at 1123.

[FN85]. Holly English, Gender on Trial: Sexual Stereotypes and Work/Life Balance in the Legal Workplace 195-97 (2003); Ballard, *supra* note 14, at 22-26; Fortney, *supra* note 34, at 263-92; Galanter & Henderson, *supra* note 12, at 1920-21; Gellis, *supra* note 35, at 967 (distinguishing this feature of large firms' environments from government work environments); Giesel, *supra* note 11, at 782-83.

[FN86]. Fortney, *supra* note 84, at 173; Galanter & Henderson, *supra* note 12, at 1913; Wald, *A Primer on Diversity*,

supra note 29, at 1137-38.

[FN87]. Kronman, supra note 34, at 302; Galanter & Henderson, supra note 12, at 1907, 1914 (discussing the decline in mentoring and training in firms); Giesel, supra note 11, at 778 (discussing the value of mentoring relationships); Wilkins, supra note 8, at 2108-09 (examining the decline in partner training of associates).

[FN88]. See Chayes & Chayes, supra note 1, at 296 (explaining how billable projects crowd out other commitments at large law firms).

[FN89]. Galanter & Henderson, supra note 12, at 1921. See generally Cynthia Fuchs Epstein et al., *The Part-Time Paradox: Time Norms, Professional Life, Family, and Gender* (1999); Christen Linke Young, Note, [Childbearing, Childrearing, and Title VII: Parental Leave Policies at Large American Law Firms](#), 118 *Yale L.J.* 1182 (2009); Kim Tasso, Opinion: Law Firms' Flexible Working Policies--Could Do Better, *Lawyer*, Feb. 15, 2010, at 6, available at <http://www.thelawyer.com/opinion-law-firms%E2%80%99-flexible-working-policies-%E2%80%93-could-do-better/10034>.

[FN90]. Law firms do not generally implement policies that would allow associates to work on a more flexible schedule. See Wald, supra note 31, at 2263; see also Barbara Kellerman & Deborah L. Rhode, *Women and Leadership: The State of Play*, in *Women and Leadership: The State of Play and Strategies for Change* 1, 4-6 (Deborah L. Rhode & Barbara Kellerman eds., 2007); Wald, *A Primer on Diversity*, supra note 29, at 1129; Young, supra note 89.

[FN91]. See generally Galanter & Henderson, supra note 12; Wald, supra note 7, at 1862; Wilkins, supra note 13, at 1277.

[FN92]. Galanter & Henderson, supra note 12, at 1873; Wilkins & Gulati, supra note 42, at 1629 (discussing how associates who did not complete the partner tournament were confident in their ability to find another job).

[FN93]. Wilkins & Gulati, supra note 42, at 1615-16; David B. Wilkins & G. Mitu Gulati, [Why Are There So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis](#), 84 *Calif. L. Rev.* 493, 535-36 (1996); see Galanter & Henderson, supra note 12, at 1896-97.

[FN94]. Galanter & Henderson, supra note 12, at 1875, 1882-91; Galanter & Palay, supra note 11, at 752; Wald, *A Primer on Diversity*, supra note 29, at 1129-30.

[FN95]. Lawrence J. Fox, [The End of Partnership](#), 33 *Fordham Urb. L.J.* 245, 247 (2005) ("Elevation to partnership no longer comes with any sense of tenure."); Galanter & Henderson, supra note 12, at 1875-77; Galanter & Palay, supra note 11, at 753-54; Wald, supra note 31, at 2261; Wilkins, supra note 13, at 1274.

[FN96]. See Érica Gorga & Michael Hallberstam, [Knowledge Inputs, Legal Institutions and Firm Structure: Towards a Knowledge-Based Theory of the Firm](#), 101 *Nw. U. L. Rev.* 1123, 1195-1200 (2007).

[FN97]. See Fortney, supra note 34, at 283-84; Nicholson, supra note 6, at 632; Wald, *A Primer on Diversity*, supra note 29, at 1090.

[FN98]. Galanter & Palay, supra note 11, at 774-90; Wilkins, supra note 15, at 1587.

[FN99]. Chayes & Chayes, supra note 1, at 298-99 (discussing law students' continued interest in large law firms); Ronit Dinovitzer & Bryant G. Garth, [Lawyer Satisfaction in the Process of Structuring Legal Careers](#), 41 *Law & Soc'y Rev.* 1,

23 (2007); Galanter & Henderson, *supra* note 12, at 1926-27 (discussing satisfaction rates at big firms among students from lower tier law schools).

[FN100]. Fortney, *The Billable Hours Derby*, *supra* note 84, at 184-85 (discussing lateral moves from law firms to in-house positions to escape billable hour requirements); Giesel, *supra* note 11, at 788.

[FN101]. Nicholson, *supra* note 6, at 658 (noting that only a few in-house departments offer true part-time positions). But see Giesel, *supra* note 11, at 788 (arguing that there are more part-time options available in corporate legal departments compared with large law firms).

[FN102]. See Nicholson, *supra* note 6, at 662.

[FN103]. Corp. Couns. Project, *Project for Att'y Retention, Better on Balance: The Corporate Counsel Work/Life Report 3* (2003), available at <http://www.attorneyretention.org/Publications/BetterOnBalance.pdf>.

[FN104]. Nicholson, *supra* note 6, at 660; see also Larry Smith, *Inside/Outside: How Businesses Buy Legal Services* 283 (2001) (describing how in-house work has become just as demanding as working at a law firm).

[FN105]. See Galanter & Palay, *supra* note 11, at 752; Wald, *supra* note 31, at 2256; Wald, *A Primer on Diversity*, *supra* note 29, at 1131-32 (discussing partners' desire to be either rainmakers or "super-rainmakers"); Jonathan Lindsey et al., *Compensation Is Key to Attracting and Retaining Rainmakers*, *L. Firm Partnership & Benefits Rep.*, July 2002, at 1; see also Baker & Parkin, *supra* note 21, at 1637; Phyllis Weiss Haserot, *How to Get Associates into the Act*, *Nat'l L.J.*, Aug. 25, 1986, at 15, 15. See generally Regan, *supra* note 30, at 37-38 (exploring the cultural transformation of a large law firm's understanding of the partner's role and the growing expectations and pressures to become a rainmaker).

[FN106]. Richard Abel, *The Paradoxes of Pro Bono*, 78 *Fordham L. Rev.* 2443, 2446 (2010); Fortney, *The Billable Hours Derby*, *supra* note 84, at 179; William G. Ross, *Kicking the Unethical Billing Habit*, 50 *Rutgers L. Rev.* 2199, 2203 (1998) (noting that experts agree that approximately one-third of office time involves non-billable activities); David B. Wilkins, *Doing Well By Doing Good? The Role of Public Service in the Careers of Black Corporate Lawyers*, 41 *Hous. L. Rev.* 1, 16-26 (2004). But see also Wilkins & Gulati, *supra* note 42, at 1596-97 (arguing that large law firms feature information asymmetry, such that expectations are communicated informally to some but not others).

[FN107]. Nicholson, *supra* note 6, at 652 (stating that in-house attorneys work approximately fifty hours per week and rising); see also Corp. Couns. Project, *supra* note 103, at 3; Deborah A. DeMott, *The Discrete Roles of General Counsel*, 74 *Fordham L. Rev.* 955, 981 (2005).

[FN108]. Liggio, *The Changing Role of Corporate Counsel*, *supra* note 6, at 1219; Rees W. Morrison, *What Value Do In-house Lawyers Produce?*, *Nat'l L.J.*, May 9, 2011, at 8. But see Schwarcz, *supra* note 6, at 500 (challenging the assumption of lawyers as cost-centers as inaccurate).

[FN109]. See generally Schwarcz, *supra* note 6; Morrison, *supra* note 108.

[FN110]. Daly, *supra* note 1, at 1060-61; Peter J. Gardner, *A Role for the Business Attorney in the Twenty-First Century: Adding Value to the Client's Enterprise in the Knowledge Economy*, 7 *Marq. Intell. Prop. L. Rev.* 17, 43 (2003) (arguing that businesses can best succeed by utilizing in-house legal departments and discussing ways of demonstrating this to corporation executives); Wilkins, *supra* note 15, at 1552-53 (arguing that such a perception is already changing).

[FN111]. This is not to suggest that the task is either conceptually straightforward or that it is easily attainable in prac-

tice.

[FN112]. Scott L. Cummings & Deborah L. Rhode, [Managing Pro Bono: Doing Well by Doing Better](#), 78 *Fordham L. Rev.* 2357 (2010) (examining the growing role of large law firms as providers of pro bono legal services).

[FN113]. Wilkins & Gulati, *supra* note 42, at 1596-97 (discussing the inherent importance of not assuming that working hard and doing what you are told would be sufficient for making partner); see also Renée M. Landers et al., *Rat Race Redux: Adverse Selection in the Determination of Work Hours in Law Firms*, 86 *Am. Econ. Rev.* 329 (1996); Steven C. Bennett, *From Plebe to General: Planning the Campaign*, *Nat'l L.J.*, Aug. 24, 1998, at C6 (“Associates who find secure nests in simple, rote areas may rarely fail, but they probably will not progress much.”).

[FN114]. Generally, large law firms do not directly pay associates and partners for overtime or billable hours exceeding formal or informal goals. But they do often pay year-end bonuses that reflect billable and non-billable goals, and promotion to partnership could be thought of as deferred compensation for hours worked as an associate.

[FN115]. Fortney, *The Billable Hours Derby*, *supra* note 84, at 179; Nicholson, *supra* note 6, at 647 (arguing that considerations other than simply working hard are even more essential for women lawyers to succeed in elite firms); Wilkins, *supra* note 29, at 44; Wilkins & Gulati, *supra* note 42, at 1596-97; David B. Wilkins & G. Mitu Gulati, [What Law Students Think They Know about Elite Law Firms: Preliminary Results of a Survey of Third Year Law Students](#), 69 *U. Cin. L. Rev.* 1213, 1222 (2001) (criticizing the simplistic assumption that working hard is both necessary and sufficient for success at large law firms).

[FN116]. I thank Jolene Yee, Associate General Counsel at E. & J. Gallo Winery, for pointing this out to me.

[FN117]. Roach, *supra* note 15, at 217.

[FN118]. *Id.* at 216; Nicholson, *supra* note 6, at 655-56.

[FN119]. Liggio, *A Look at the Role of Corporate Counsel*, *supra* note 6, at 632; Nicholson, *supra* note 6, at 631; Roach, *supra* note 14, at 215; Rosen, *supra* note 3, at 497; Wilkins, *supra* note 8, at 2096.

[FN120]. I thank Karen Ripley, Chief Legal Officer at MillerCoors LLC, for making this point.

[FN121]. Galanter & Palay, *supra* note 12, at 4-19.

[FN122]. See Galanter & Palay, *supra* note 11, at 781.

[FN123]. See Michael M. Boone & Terry W. Conner, [Change, Change, and More Change: The Challenge Facing Law Firms](#), 63 *Tex. B.J.* 18, 20 (2000); Daly, *supra* note 1, at 1058; Gardner, *supra* note 110, at 18-19. See generally Richard L. Abel, [Transnational Law Practice](#), 44 *Case W. Res. L. Rev.* 737 (1994); Wald, *supra* note 9; Wilkins, *supra* note 8, at 2089-91.

[FN124]. Large law firms do not generally move lawyers among offices in part because of state-based admission rules that make it difficult to transfer attorneys from one jurisdiction to another. See Carole Silver, [Regulatory Mismatch in the International Market for Legal Services](#), 23 *Nw. J. Int'l L. & Bus.* 487, 489 (2003) (“[R]estrictive rules of practice ... complicate or limit the ability of firms to move lawyers among offices”).

[FN125]. Eli Wald, [Lawyer Mobility and Legal Ethics: Resolving the Tension between Confidentiality and Contempor-](#)

ary Lawyers' Career Paths, 31 J. Legal Prof. 199 (2007).

[FN126]. One growing exception to limited internal mobility within large law firms is secondment--the lending of a lawyer to a host organization for a limited period, usually an entity client or another law firm. See Comm. on Prof'l & Judicial Ethics, N.Y. City Bar Ass'n, Formal Opinion 2007-2 (2007), available at <http://www2.nycbar.org/Ethics/eth2007.htm> (discussing secondment of law firm attorneys and association with a law firm); Wilkins, supra note 8, at 2092-93.

[FN127]. Nelson & Nielsen, supra note 11, at 471-72; Nicholson, supra note 6, at 655.

[FN128]. Roach, supra note 15, at 215; Wald, supra note 9, at 496; Machlowitz, supra note 33, at 62.

[FN129]. The expectation of travel for in-house attorneys is very much a function of the size of the in-house department and the industry. For example, lawyers for a small closely held entity might not have to travel frequently whereas in-house attorneys for a large entity with branch offices or legal needs that span many jurisdictions might have to travel more frequently.

[FN130]. Wilkins & Gulati, supra note 42, at 1634 (describing firms' incentives and conditions which result in high levels of unsupervised work).

[FN131]. See generally Fortney, supra note 84.

[FN132]. Kimberly Kirkland, [Ethics in Large Law Firms: The Principle of Pragmatism](#), 35 U. Mem. L. Rev. 631, 678 (2005); see Regan, supra note 30, at 37-38; Galanter & Henderson, supra note 12, at 1910.

[FN133]. Galanter & Palay, supra note 11, at 748; Fern S. Sussman, [The Large Law Firm Structure--An Historic Opportunity](#), 57 Fordham L. Rev. 969, 971 (1989); Wald, supra note 7, at 1806.

[FN134]. Leslie C. Levin, [Specialty Bars as a Site of Professionalism: The Immigration Bar Example](#), 8 U. St. Thomas L.J. 194, 194 (2011).

[FN135]. Wilkins, supra note 15, at 1607 (describing minority bar associations); Veta Richardson, [Analyzing Changing Demographics in Law Departments, MCCA Offers Recommendations for Women and Minorities](#), Legal Times, Sept. 15, 2003 (reporting the results of the Minority Corporate Counsel Association's annual survey of the Fortune 500).

[FN136]. Chayes & Chayes, supra note 1, at 296; Fortney, [The Billable Hours Derby](#), supra note 84, at 179-81; Fortney, supra note 34, at 246-47; Galanter & Palay, supra note 11, at 752; Nicholson, supra note 6, at 652; Wald, [A Primer on Diversity](#), supra note 29, at 1123.

[FN137]. Mayes & Baysinger, supra note 14, at 30 (emphasis added).

[FN138]. See supra notes 107-10 and accompanying text.

[FN139]. Mayes & Baysinger, supra note 14, at 28; supra notes 107-10 and accompanying text.

[FN140]. See supra notes 107-10 and accompanying text.

[FN141]. See supra notes 107-10 and accompanying text.

[FN142]. Eli Wald, [The Visibility of Socioeconomic Status and Class-Based Affirmative Action: A Reply to Professor](#)

[Sander](#), 88 *Denv. U. L. Rev.* 861, 865-67 (2011).

[FN143]. Hazard, *supra* note 3, at 1011-12; see also Giesel, *supra* note 11, at 790-91; Rosen, *supra* note 3, at 504; Steinberg, *supra* note 26, at 484.

[FN144]. Wilkins, *supra* note 8, at 2075. See, e.g., Louis D. Brandeis, The Opportunity in the Law, Address Before Harvard Ethical Society (May 4, 1905), in 39 *Am. L. Rev.* 555, 557-59 (1905) (urging a graduating class of law students to stand their professional ground and practice as lawyers for the people instead of as servants of corporate interests).

[FN145]. Daly, *supra* note 1, at 1061-62 (describing the four main roles that in-house attorneys occupy); Gardner, *supra* note 110, at 39; Giesel, *supra* note 11, at 791; Kim, *supra* note 6, at 201; Rosen, *supra* note 3, at 504-05.

[FN146]. Cf. Liu, *supra* note 6, at 554 (describing the separation between Chinese lawyers and enterprise legal advisors who counsel Chinese state-owned enterprises).

[FN147]. Nelson & Nielsen, *supra* note 11, at 487; Nicholson, *supra* note 6, at 631; Schwarcz, *supra* note 6, at 528-29; Joan C. Williams et al., [Better on Balance? The Corporate Counsel Work/Life Report](#), 10 *Wm. & Mary J. Women & L.* 367, 448 (2004) (concluding that attorneys seeking to balance work and life commitments by moving to corporate law departments should investigate the particular department policies before assuming all in-house departments provide these benefits).

[FN148]. See sources cited *supra* note 14 and accompanying text.

[FN149]. See, e.g., [Bradwell v. Illinois](#), 83 U.S. 130, 141 (1872) (Bradley, J., concurring) (stating that women's nature precludes them from membership in the professions and suits them to “the domestic sphere as that which properly belongs to the domain and functions of womanhood”); [In re Goodell](#), 39 *Wis.* 232, 245 (1875) (finding women's “tender susceptibility” inconsistent with the qualities required by the practice of law). The U.S. Supreme Court subsequently validated the sentiments expressed by such state court opinions by holding that states have the power to determine whether women are competent to practice law. [In re Lockwood](#), 154 U.S. 116, 118 (1894).

[FN150]. Ballard, *supra* note 14, at 2; Beatrice Dinerman, Sex Discrimination in the Legal Profession, 55 *A.B.A. J.* 951, 951 (1969) (noting that women admitted to law schools are more closely scrutinized than men for “ability and motivation” in the admissions process). See generally Ronald Chester, *Unequal Access: Women Lawyers in a Changing America* 87-116 (1985); Karen Berger Morello, *The Invisible Bar: The Woman Lawyer in America 1638 to the Present* 57-61 (1986). In 1992, Cynthia Fuchs Epstein found that while women attorneys have constituted 40-50% of entering associate classes, they account for only 37% of associates and approximately 11% of partners. Epstein et al., *Glass Ceilings and Open Doors*, *supra* note 14, at 314. In 2007, women accounted for 16% of equity partners, 26% of non-equity partners, and 30% of “of counsel” lawyers. Nat'l Ass'n of Women Lawyers, *National Survey on Retention and Promotion of Women in Law Firms* 4 (2007), available at <http://nawl.timberlakepublishing.com/files/FINAL%20survey%20report%2011-14-07%20for%20website.pdf>.

[FN151]. Eli Wald, [Loyalty in Limbo: The Peculiar Case of Attorneys' Loyalty to Clients](#), 40 *St. Mary's L.J.* 909, 928-36 (2009) (quoting L. Ray Patterson, *Legal Ethics and the Lawyer's Duty of Loyalty*, 29 *Emory L.J.* 909, 938 (1980)) (internal quotation marks omitted).

[FN152]. Paula A. Patton, [Women Lawyers, Their Status, Influence, and Retention in the Legal Profession](#), 11 *Wm. & Mary J. Women & L.* 173, 173 (2005).

[FN153]. Wald, *A Primer on Diversity*, supra note 29, at 1098.

[FN154]. Id.

[FN155]. ABA, *The Report of At the Breaking Point: A National Conference on the Emerging Crisis in the Quality of Lawyers' Health and Lives--Its Impact on Law Firms and Client Services* 6 (1991) (“[W]omen in most positions continue to be worse off financially than their male colleagues.”); Ronit Dinovitzer et al., *The Differential Valuation of Women's Work: A New Look at the Gender Gap in Lawyers' Incomes*, 88 *Soc. Forces* 819, 843-50 (2009).

[FN156]. Wald, supra note 31, at 2255-58 (summarizing the literature on the causes of implicit gender discrimination).

[FN157]. See John P. Heinz et al., *Lawyers for Conservative Causes: Clients, Ideology, and Social Distance*, 37 *Law & Soc'y Rev.* 5, 33-34 (2003); Sung Hui Kim, *Lawyer Exceptionalism in the Gatekeeping Wars*, 63 *SMU L. Rev.* 73, 76-77 (2010).

[FN158]. Robert W. Gordon, “The Ideal and the Actual in the Law”: Fantasies and Practices of New York City Lawyers, 1879-1910, in *The New High Priests: Lawyers in Post-Civil War America* 51, 51-74 (Gerard W. Gawalt ed., 1984) (exploring the elevated role and status of lawyers in American society).

[FN159]. See Model Rules of Prof'l Conduct Preamble P 1 (2011) (“A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.” (emphasis added)); Deborah L. Rhode, *Lawyers as Citizens*, 50 *Wm. & Mary L. Rev.* 1323 (2009) (examining in detail the “special responsibilities” of lawyers as “public citizens”).

[FN160]. See, e.g., Thomas D. Morgan, *Calling Law a “Profession” Only Confuses Thinking about the Challenges Lawyers Face*, 9 *U. St. Thomas L.J.* (forthcoming 2012) (manuscript at 4-7), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2007296. But see Eli Wald, *An Unlikely Knight in Economic Armor: Law and Economics in Defense of Professional Ideals*, 31 *Seton Hall L. Rev.* 1042 (2001).

[FN161]. David A. Cotter et al., *Gender Inequality at Work*, U. Md. http://www.bsos.umd.edu/socy/vanneman/papers/Cotter_etal.pdf (last visited Mar. 31, 2012) (alongside truck-driving, carpentry is the most male dominated occupation in the United States).

[FN162]. ABA Presidential Initiative Comm'n on Diversity, *Diversity in the Legal Profession: The Next Steps* 10, 18 (2010).

[FN163]. Wald, *A Primer on Diversity*, supra note 29, at 1119-41.

[FN164]. Deborah L. Rhode, *Gender and Professional Roles*, 63 *Fordham L. Rev.* 39, 68 (1994); Wald, supra note 31, at 2286-87; see Douglas E. Brayley & Eric S. Nguyen, *Good Business: A Market-Based Argument for Law Firm Diversity*, 34 *J. Legal Prof.* 1, 4-8 (2009) (summarizing data on large law firms' expenditures on diversity and the disappointing results achieved, especially in terms of retention and promotion); see also Erin Brereton, *The New Face of Law Firm Diversity*, *Legal Mgmt.*, May/June 2010, at 28 (reviewing large law firms' spending on diversity programs); Laura Finkle & Mark A. Bridgeman, *Committed to Inclusion: Examining Innovative Law Firm Diversity Programs*, *Legal Mgmt.*, May 2009, at 24 (surveying large law firms' diversity initiatives).

[FN165]. Wald, *A Primer on Diversity*, supra note 29, at 1090; Wilkins, supra note 29, at 27. See generally Jerold S. Auerbach, *Unequal Justice: Lawyers and Social Change in Modern America* (1976).

[FN166]. Brayley & Nguyen, *supra* note 164, at 4-8; Wald, *A Primer on Diversity*, *supra* note 29, at 1090; Joan C. Williams & Nancy Segal, [Beyond the Maternal Wall: Relief for Family Caregivers Who Are Discriminated against on the Job](#), 26 *Harv. Women's L.J.* 77, 88 (2003).

[FN167]. Deborah L. Rhode, "What's Sex Got to Do with It?": Diversity in the Legal Profession, in *Legal Ethics Stories* 233 (Deborah L. Rhode & David Luban eds., 2006); Wald, *supra* note 31, at 2287; see Epstein et al., *Glass Ceilings and Open Doors*, *supra* note 14, at 296; Epstein, *Women in the Legal Profession at the Turn of the Twenty-First Century*, *supra* note 14, at 739; Foster, *supra* note 14, at 1632; Kaye, *supra* note 14, at 111-12; Kaye & Reddy, *supra* note 14, at 1942; Steven A. Ramirez, *The New Cultural Diversity and Title VII*, 6 *Mich. J. Race & L.* 127, 137-38 (2000); Reichman & Sterling, *Recasting the Brass Ring*, *supra* note 14, at 923-25; Reichman & Sterling, *Sticky Floors, Broken Steps, and Concrete Ceilings in Legal Careers*, *supra* note 14, at 29. On racial under-representation, see Wilkins & Gulati, *supra* note 93, at 496-97.

[FN168]. ABA Comm'n on Women in the Profession, *The Unfinished Agenda: Women and the Legal Profession* 14-16 (2001); Wald, *supra* note 31, at 2256.

[FN169]. Ronit Dinovitzer et al., *After the JD II: Second Results from a National Study of Legal Careers* 68 (2009) (finding that women lawyers at large law firms bill almost as many hours as their male counterparts).

[FN170]. See sources cited *supra* note 87.

[FN171]. Roach, *supra* note 15, at 208; Wald, *supra* note 31, at 2262-63; Wald, *A Primer on Diversity*, *supra* note 29, at 1131; Williams & Segal, *supra* note 166, at 136.

[FN172]. See Alfieri, *supra* note 13, at 1910; Anthony E. Davis, [Legal Ethics and Risk Management: Complementary Visions of Lawyer Regulation](#), 21 *Geo. J. Legal Ethics* 95, 96 (2008).

[FN173]. Wald, *A Primer on Diversity*, *supra* note 29, at 1131. See generally Alexandra Kalev, *Cracking the Glass Cages? Restructuring and Ascriptive Inequality at Work*, 114 *Am. J. Soc.* 1591 (2009); Rebecca Korzec, [Working on the "Mommy-Track": Motherhood and Women Lawyers](#), 8 *Hastings Women's L.J.* 117 (1997).

[FN174]. *Catalyst, Women in Law: Making the Case* 57 (2001); Giesel, *supra* note 11, at 762; Roach, *supra* note 15, at 208; Wilkins, *supra* note 15, at 1557; Williams & Segal, *supra* note 166, at 118.

[FN175]. See Dinovitzer et al., *supra* note 169, at 68.

[FN176]. Wald, *supra* note 31, at 2276-86; Wald, *supra* note 7, at 1844-47, 1860; Eli Wald, [The Rise of the Jewish Law Firm or Is the Jewish Law Firm Generic?](#), 76 *UMKC L. Rev.* 885, 929-33 (2008) [hereinafter Wald, *The Rise of the Jewish Law Firm*].

[FN177]. Mayes & Baysinger, *supra* note 14, at 31.

[FN178]. *Id.* at 30.

[FN179]. Wald, *supra* note 31, at 2284.

[FN180]. *Id.* Of course, the conception of merit advanced by the elite law firms was developed in an era in which hardly any women practiced law.

[FN181]. See Wald, *supra* note 7, at 1821-23; Wilkins & Gulati, *supra* note 42, at 1608-09 (arguing that large firms' claims of meritocracy have never been accurate).

[FN182]. Wald, *A Primer on Diversity*, *supra* note 29, at 1118; Williams & Segal, *supra* note 166, at 86.

[FN183]. See Rhode, *supra* note 164, at 44-53; Wilkins, *supra* note 8, at 2068-69.

[FN184]. Nicholson, *supra* note 6, at 649; Wald, *supra* note 31, at 2274; Joan C. Williams & Elizabeth S. Westfall, *Deconstructing the Maternal Wall: Strategies for Vindicating the Civil Rights of "Carers" in the Workplace*, 13 *Duke J. Gender L. & Pol'y* 31, 33 (2006); Machlowitz, *supra* note 33, at 65 (1989) (discussing how women in corporate settings face additional challenges of assumed lack of business knowledge).

[FN185]. Cynthia Grant Bowman, *Women and the Legal Profession*, 7 *Am. U. J. Gender Soc. Pol'y & L.* 149, 172 (1999); Carrie Menkel-Meadow, *Toward a Theory of Reciprocal Responsibility between Clients and Lawyers: A Comment on David Wilkins' Do Clients Have Ethical Obligations to Lawyers? Some Lessons from the Diversity Wars*, 11 *Geo. J. Legal Ethics* 901, 906 (1998) [hereinafter Menkel-Meadow, *Toward a Theory of Reciprocal Responsibility Between Clients and Lawyers*]; Carrie Menkel-Meadow, *What's Gender Got to Do with It?: The Politics and Morality of an Ethic of Care*, 22 *N.Y.U. Rev. L. & Soc. Change* 265, 292-93 (1996) (examining the ethic of care in lawyering); Nicholson, *supra* note 6, at 640; Wilkins, *supra* note 8, at 2071 (describing how large entity clients are increasingly demanding a collaborative approaches and commitments from their law firms).

[FN186]. Wilkins, *supra* note 8, at 2068-69.

[FN187]. *Id.* at 2073-74 (discussing law suits filed against aggressive lawyers).

[FN188]. See Scott E. Page, *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools, and Societies* (2007); Nicholson, *supra* note 6, at 642-45.

[FN189]. Nicholson, *supra* note 6, at 628.

[FN190]. Wald, *supra* note 7, at 1848; Wald, *The Rise of the Jewish Law Firm*, *supra* note 176, at 905-06.

[FN191]. Paul Hoffman, *Lions in the Street: The Inside Story of the Great Wall Street Law Firms* 135-36 (1973); Wald, *supra* note 7, at 1848; Wald, *The Rise of the Jewish Law Firm*, *supra* note 176, at 905.

[FN192]. Nicholson, *supra* note 6, at 626-28; see Nat'l Ass'n of Women Lawyers, *supra* note 150, at 4; Williams & Segal, *supra* note 166, at 88.

[FN193]. Nicholson, *supra* note 6, at 626-28; Williams & Segal, *supra* note 166, at 88. See generally Robert L. Nelson, *The Futures of American Lawyers: A Demographic Profile of a Changing Profession in a Changing Society*, 44 *Case W. Res. L. Rev.* 345, 375-78 (1994); Paula A. Patton, *Women Lawyers, Their Status, Influence, and Retention in the Legal Profession*, 11 *Wm. & Mary J. Women & L.* 173, 173 (2005) (stating that "women [lawyers] comprise about one-half of the ABA-accredited law school graduating class but account for [less than seventeen percent] of the partners in law firms nationwide," and the disparity in women partners is even more striking given that almost seventy-one percent of women lawyers work in private practice law firms).

[FN194]. For a discussion of the so-called "flip side of bias" phenomenon, see *supra* notes 176-177 and accompanying text.

[FN195]. Roach, *supra* note 15, at 215; Erin Abrams, *Women Rising up the Ranks as CFOs and General Counsel*, *Glass Hammer* (June 5, 2008, 11:40 AM), <http://www.theglasshammer.com/news/2008/06/05/women-rising-up-the-ranks-as-cfos-and-general-counsel/> (“The path to the GC’s office often involves many years at a law firm”).

[FN196]. Leicht & Fennell, *supra* note 57, at 180; Wald, *supra* note 31, at 2251, 2263; Machlowitz, *supra* note 33, at 66.

[FN197]. Wald, *supra* note 31, at 2274; Machlowitz, *supra* note 33, at 64, 66.

[FN198]. Peter Glick & Susan T. Fiske, *Sexism and Other “Isms”: Independence, Status, and the Ambivalent Content of Stereotypes*, in *Sexism and Stereotypes in Modern Society: The Gender Science of Janet Taylor Spence* 193, 206-07 (William B. Swann, Jr. et al. eds., 1999); Williams & Segal, *supra* note 166, at 95 (discussing the negative impact of “benevolent stereotyping”).

[FN199]. See Carrie Menkel-Meadow, *Portia in a Different Voice: Speculations on A Women’s Lawyering Process*, 1 *Berkeley Women’s L.J.* 39 (1985); Menkel-Meadow, *Toward a Theory of Reciprocal Responsibility between Clients and Lawyers*, *supra* note 185, at 906; Wald, *supra* note 31, at 2281.

[FN200]. Madeline E. Heilman, *Sex Stereotypes and Their Effects in the Workplace: What We Know and What We Don’t Know*, 10 *J. Soc. Behav. & Personality (Special Issue)* 3, 7 (1995); Wald, *supra* note 31, at 2275; Williams & Segal, *supra* note 166, at 97.

[FN201]. Kanter, *supra* note 15, at 22 (quoting *From Max Weber: Essays in Sociology* 215-16 (Hans Gerth & C. Wright Mills eds., 1958)) (internal quotation marks omitted); see also Galanter & Henderson, *supra* note 12, at 1912; Williams & Segal, *supra* note 166, at 99-100 (discussing how law is associated with masculine characteristics).

[FN202]. Kanter, *supra* note 15, at 25; see also Wald, *supra* note 31, at 2274-75; Williams & Segal, *supra* note 166, at 94 (arguing that masculine ideals dominate the workplace environment).

[FN203]. Gail Collins, *When Everything Changed: The Amazing Journey of American Women from 1960 to the Present* 22 (2009) (“A report on women in management by Harvard Business Review in the 1960s said there were so few [of them] ‘there is scarcely anything to study.’ The idea that men were supposed to be in charge went beyond conventional wisdom; it was regarded as scientific fact.”); Kanter, *supra* note 15, at 16-17; see Roach, *supra* note 15, at 208.

[FN204]. See Lisa M. Fairfax, *The Bottom Line on Board Diversity: A Cost-Benefit Analysis of the Business Rationales for Diversity on Corporate Boards*, 2005 *Wis. L. Rev.* 795, 795-97; Galanter & Henderson, *supra* note 12, at 1924 (discussing media coverage of diversity efforts by firms); Nicholson, *supra* note 6, at 643 (discussing how diversity in corporations makes them more attractive employers); Wald, *A Primer on Diversity*, *supra* note 29, at 1091 (explaining that many firms display their diversity achievements and commitments on their websites); LeeAnn O’Neill, *Hitting the Legal Diversity Market Home: Minority Women Strike Out*, *Mod. Am.*, Spring 2007, at 7, 10-11.

[FN205]. Wilkins & Gulati, *supra* note 115, at 1247; see also Wilkins, *supra* note 15, at 1579; Williams & Segal, *supra* note 166, at 99-100 (discussing how women who display masculine characteristics are further discriminated against because they are disliked).

[FN206]. Joan Acker, *Hierarchies, Jobs, Bodies: A Theory of Gendered Organizations*, 4 *Gender & Soc’y* 139, 149 (1990).

[FN207]. *Id.*

[FN208]. *Id.*; see also Dana M. Britton, *The Epistemology of the Gendered Organization*, 14 *Gender & Soc'y* 418 (2000); Madeline E. Heilman, *Description and Prescription: How Gender Stereotypes Prevent Women's Ascent up the Organizational Ladder*, 57 *J. Soc. Issues* 657 (2001). But see Erin Reid, *Passing as Superman: The Ideal Worker and Men's Professional Identities* (unpublished manuscript) (2011) (on file with author) (finding no empirical support for the theory of gendered organizations).

[FN209]. Emilio J. Castilla, *Gender, Race, and Meritocracy in Organizational Careers*, 113 *Am. J. Soc.* 1479 (2008); Emilio J. Castilla & Stephen Benard, *The Paradox of Meritocracy in Organizations*, 55 *Admin. Sci. Q.* 543, 567-68 (2010).

[FN210]. “Conventional masculinity,” writes Joan Williams, “is involved in the constant signaling of who is higher on the hierarchy... What's needed is more thoughtfulness about how to free certain work cultures from masculine bravado. The result will be a lot more co-ed common sense.” Mayes & Baysinger, *supra* note 14, at 31.

[FN211]. *Supra* Part II. While corporate America's “call for action” deserves some credit, some of its outcomes have been counterintuitive, resulting in gender and racial matching and pigeonholing minority attorneys to certain clients and tasks.

[FN212]. Paul Philippe Frere, *Board Practices: The Structure of Boards at S&P 1,500 Companies* 39-47 (U.S. ed., 2011).

[FN213]. Sung Hui Kim, *The Diversity Double Standard*, 89 *N.C. L. Rev.* 945, 953-54 (2011).

[FN214]. See *supra* Part II.

[FN215]. See, e.g., *The Education Pipeline to the Professions: Programs that Work to Increase Diversity* (Sarah E. Redfield, ed., 2012); Dorothy H. Evensen & Carla D. Pratt, *The End of the Pipeline: A Journey of Recognition for African Americans Entering the Legal Profession* (2012).

[FN216]. Regina F. Burch, *Worldview Diversity in the Boardroom: A Law and Social Equity Rationale*, 42 *Loy. U. Chi. L.J.* 585 (2011).

[FN217]. Frere, *supra* note 212, at 39-47.

[FN218]. J. Robert Brown, Jr., *Neutralizing the Board of Directors and the Impact on Diversity* (Univ. of Denver Legal Studies, Research Paper No. 11-18, 2011), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1938427.

[FN219]. See Wilkins, *supra* note 15.

[FN220]. On the separation of hemispheres in law practice, whereby large law firms tend to service large entity clients and solo and small law firms commonly serve individual clients, see John P. Heinz & Edward O. Laumann, *Chicago Lawyers: The Social Structure of the Bar* 319-20 (1982) (the legal profession consists of two categories of lawyers whose practice settings, socioeconomic and ethno-religious backgrounds, education, and clientele differ considerably).

[FN221]. Wald, *A Primer on Diversity*, *supra* note 29, at 1121 (arguing that gender stereotyping within law firms is in part a product of processes that take place outside these firms); see Valian, *supra* note 14, at 198-208. See generally Joan Williams, *Unbending Gender: Why Family and Work Conflict and What To Do About It* (2000).

[FN222]. See Wald, *A Primer on Diversity*, supra note 29, at 1101, 1112; see also Trevor C.W. Farrow, [Sustainable Professionalism](#), 46 *Osgoode Hall L.J.* 51, 91 (2008) (“[G]ender equality is a fundamental legal norm The law in Canada now demands adherence to the equality principle. The legal profession should show leadership by adopting equality norms as its own.” (internal citations omitted)); Williams & Segal, supra note 166, at 120.

[FN223]. Wald, *A Primer on Diversity*, supra note 29, at 1101, 1103; see also Daly, supra note 1, at 1069; Stephen L. Pepper, *The Lawyer's Amoral Ethical Role: A Defense, a Problem, and Some Possibilities*, 1986 *Am. B. Found. Res. J.* 613, 615-17 (arguing that effective access to law and lawyers is a condition for first-class citizenship).

[FN224]. See, e.g., Morgan, supra note 160 (manuscript at 7-14); Ribstein, supra note 6 (arguing that in-house departments populated by cohorts of lawyers are a self-serving invention, which is not warranted by the actual needs of corporate entities).

[FN225]. See sources cited supra note 157.

[FN226]. Wald, *A Primer on Diversity*, supra note 29, at 1112-20.

[FN227]. *Id.* at 1096; Wilkins, supra note 8, at 2118-19 (asserting that misuse of lawyers' privileged status undermines public trust in the profession).

[FN228]. See Wald, *A Primer on Diversity*, supra note 29, at 1112-19.

[FN229]. Or, at least, substantive diversity justifications unique to lawyers and the legal profession may apply with similar force to general counsel and heads of in-house legal departments but not to the corporate entities as a whole, and heads of in-house legal departments may not have the ultimate authority and power to effectuate and pursue substantive diversity initiatives to the extent large law firms can.

[FN230]. Gordon, supra note 44.

[FN231]. Nicholson, supra note 6, at 662-65; Wald, *A Primer on Diversity*, supra note 29; Wilkins, supra note 15, at 1559.

[FN232]. See, e.g., Rebecca J. Cook, *Structures of Discrimination*, 28 *Macalester Int'l J.* 33 (2012); Tristin K. Green, [Discrimination in Workplace Dynamics: Toward a Structural Account of Disparate Treatment Theory](#), 38 *Harv. C.R.-C.L. L. Rev.* 91 (2003).

[FN233]. Rhode, *The “No-Problem” Problem*, supra note 14.
2012 *Wis. L. Rev.* 407

END OF DOCUMENT



By Susan M. Diehl

How to Run Your In-House Legal Department Like a Profit Center

Introduction

I have always had a love of business, even when I knew I wanted to be a lawyer. Reality set in at my first in-house position, during the height of an industry slump. That job taught me what often defines the life of corporate positions: being “overhead.” I learned that when times get tough, overhead gets going (right out the door). The nearly quarterly demands to trim our already meager ranks were also accompanied by the question, “What, exactly, is it that you *do*?” This hard lesson spurred a journey to prove that what an in-house lawyer *does* is something worthwhile for business.

The question is how to define and demonstrate the value creation potential of an in-house legal function. Despite numerous articles on law firm convergence, e-billing, and TQM (total quality management) for dummies, none provided me a road map of how to translate individual actions and transactions into a total system for value creation. This system also needed to be translatable to the business. Ultimately, the answer came from the principles of business itself: strategy and execution.

In this article, I will discuss how our company’s legal function evolved from an assembly of high-quality lawyers acting individually to a high-performance team that has leveraged its small size by using tested business principles to create and execute a strategy. The goal—to be a corporate service that adds to, not detracts from, our company’s bottom line—is still a work in progress. As with most things, the fundamentals are critical. Then, it is about basic strategy, execution, and continuous improvement.

FAST FACTS:

Understanding your company’s business and strategic goals is an important step toward formulating a legal strategy that brings value to your client.

Leveraging your company’s existing processes and resources can enhance the credibility of the legal strategy and reduce costs.

Acknowledging and rewarding the support of the legal department team members and others in the organization is important currency in keeping the team motivated.

First, the Fundamentals

There are four fundamentals to take on the journey toward value creation: (1) know the business you serve to the same degree or *better* than other business managers, and understand its value creation drivers; (2) be fluent in business as a second language; (3) assess the processes and resources available through the business and leverage them to good advantage; and (4) build a superior team of people who will create and execute a legal strategy that generates value for the business.

To “know” the business you serve is the mantra of effective corporate counsel. One of the simplest and best articulations of this fundamental is in “Reebok Rules,” by John B. Douglas III.¹ In his classic article, Douglas reminds corporate counsel to attend business meetings and exercise business judgment.² Practice these rules and use legal training techniques in meetings to develop and challenge ideas, and suggest some of your own. Participate actively in the business as a whole, and become as good a business manager as your clients. Most importantly, learn what creates value for your business and apply these drivers to the selection of the work you perform.

Be fluent in business as a second language. This is vital to your credibility as a business leader and ensures that you can translate legal concepts and strategy into business value terms. A good example is in the finance area. Many lawyers feel vulnerable when others are discussing financial concepts, and often will refrain from a financial discussion to avoid making a mistake. Recently, we had an opportunity to settle a piece of pending litigation one of two ways: one allowed us to capitalize the settlement with minimal bottom-line impact for the year, and the other had an immediate and significant adverse effect on our bottom line. Using your business fluency helps the two-way dialogue with business partners, leading to choices that are consistent with enterprise-wide objectives.

Learn how the company’s existing business support resources and processes can relieve your team of non-core work. Leveraging these resources and processes allows greater focus on core legal activities that create value. It also helps the department forge collaborative relationships with other corporate services and exposes department members to key business processes.

Assemble a superior team of people with a good complement of skills. Like the businesses we serve, having a high-performing group is all about finding, developing, and retaining great people. And, if your team develops terrific business leaders, there is no greater value that you can bring to your company!

Next, Develop Your Strategy

Our team is small, so we recognized that its strength was enhanced by being aligned to a common purpose. We worked with an outside consultant to help discover that purpose and to visualize our future. Using our company’s purpose, mission, and values as our guide, the legal team developed its own version of these elements to begin to answer the question, “What, exactly, is it that you *do*?” In the end, the department set a goal to be the

“best in the world” at running an in-house legal function like a profit center.

As its next element, a legal department strategy needs a “functional business plan” to identify how it should focus resources to support the company’s overall business strategy. In its plan, our legal team identified three strategic “anchors” that define the function’s key characteristics. These anchors direct our performance and are the basis of our strategy.

With our anchors set, we also elaborated the drivers of value creation for the department. These drivers are criteria for the selection of the short- and long-term initiatives the department chooses to execute its strategic objectives. In our group, cost effectiveness, prevention, and claims management are how the department brings value to the enterprise. But these drivers cannot be viewed out of context; they need to align further with the company’s overall strategy.

A brief word on the bottom-line focus of the legal strategy is appropriate. In the end, enhancing shareholder value is a principal goal of the business. Of course, the legal function provides ethical leadership and integrity, enhancing the organization’s license to operate. Nevertheless, the executive leadership of most companies wants to understand how much the enterprise spends on internal and external legal services and how the department influences the use or investment of that spending. That “influence” factor is the foundation of the definition of the value a department creates.

Therefore, a legal function *can never ignore* its legal spending, or attribute it to things beyond its control. In response to this reality, we set one- and three-year objectives for legal spending and created targets for reduction. And, simply because it is often a necessary expense, legal spending should be viewed as a business investment. Like any investment, business leaders want to see the yield of what is spent. For example, continuing to spend money on litigation when the additional investment can-

not create a better result is not prudent management of business resources. This resource investment and allocation is a daily part of our work as corporate counsel and is an important feature of our value-based model.

The strategic initiatives the team selects should be specific and measurable and support the company’s strategy. Our department sets its initiatives annually at an offsite event. The team comes prepared with the company’s goals in hand and does pre-work around “hot” issues on the horizon, based on discussions with internal clients and other key stakeholders. As the initiatives are debated and set by the team, the team aligns naturally to them and “buys in” to their importance. Each initiative has an “owner” who is responsible for communicating, tracking, and completing the initiative on time. Of course, like all business initiatives, the company’s performance management systems will reinforce behaviors that align with the strategy.

At the same session, it is important to establish metrics. Metrics are often a difficult concept for lawyers because lawyers believe that their work is more art than science. While setting the metrics is often tough, they are critical to the successful implementation of the strategy and continuous improvement of the processes that support the strategy. Metrics are the measuring tool that the department uses to communicate its role and outputs in business terms.

Now, Execute the Strategy

Once the strategy is in place and the initiatives are chosen, the challenge and exhilaration of implementation begins. Why exhilaration? Because it is at this stage you can transform the department from something that *acts* like a profit center to something that *is* a profit center.

First, communicate the initiatives. The communications take many forms, both written and verbal. Keep the messages simple



Celebrate your wins and thank those in the company who have contributed to your success as a team. Acknowledging and rewarding the support of the team members and others in the organization is important currency in keeping the team motivated.

and uncomplicated and use the language of the business. For example, when we discuss cost-reduction targets, we link them to the company's objectives to standard financial measures, like return on investment. This communications plan, which is more marketing than law, also promotes the legal team's performance culture within the organization.

Common sense dictates that an effective strategy is one that the team can deliver. To enhance the team's alignment and ability to deliver, we meet regularly to track progress, focusing on current priorities and advancing the initiatives. Upfront planning leads to productive meetings and effective team dynamics. These meetings also create individual accountability for completion of the initiatives, and mitigate the risk that initiatives fall victim to the daily routine.

Next, where necessary, develop business processes to facilitate execution of the initiatives. With an overall goal of reducing outside counsel spending, our team set an initiative for the year to reduce the number of cases pending by net 10 percent, without exceeding appropriate settlement ranges. The root cause of the creep in litigation numbers seemed to evolve from the "out of sight, out of mind" syndrome. To address this reality, we decided to meet bimonthly as a team to review all pending litigation and to track statistics that were predictive of our costs, such as the length of time a case was open. Each case has an "owner" who is accountable for the case, including its successful resolution. Within three years, the number of pending cases was less than 50 percent of the number existing at the start of the tracking. We then mapped the process to preserve institutional knowledge, which brings value to the organization.

As the initiatives proceed, it is important to continue to communicate progress made to date and changes to the scope of the initiatives or outcomes expected. This step reinforces the importance of the initiatives to the organization and confirms their relevance to the company's objectives. Communication is the key to creating buy-in to the value creation concepts and creates a sense that the department is committed to helping the business. It also helps to create allies who will be business partners in other initiatives.

Finally, celebrate your wins and thank those in the company who have contributed to your success as a team. Acknowledging

and rewarding the support of the team members and others in the organization is important currency in keeping the team motivated. Communicate (again) the outcome of the initiative and then seek feedback on what went right and what could be improved. Use this information to improve the processes, team dynamics, and execution methods.

Conclusion

The concepts contained in this article are an amalgamation of many business concepts. As I reflect on what our in-house legal department has done and what we have left to do, it's about planning, marketing and executing—things that lawyers practice regularly. But instead of letting others drive the work that the department does, convince them to support those initiatives that align with the organization's strategy and create value for the shareholder. Since 2001, when we began to track the outcomes of our initiatives, the department has contributed over \$30 million in EBITDA (earnings before interest, taxes, depreciation, and amortization) and an additional \$50 million in cash flow. This outcome required an internal investment of approximately \$1 million for the legal department and \$4 million for outside legal resources. The department has defined and demonstrated value equal to or better than the amounts the company has spent on legal services, which in business terms equates to a solid return on the investment in the department. Maybe, just maybe, the concept of lawyer as "overhead" can be a thing of the past. ■



Susan M. Diebl is vice president, general counsel, and secretary of Holcim (US) Inc., one of the largest cement manufacturers in the U.S. and part of Holcim Ltd, a \$15 billion global supplier of cement, aggregates, and construction-related materials. Ms. Diebl's practice focuses primarily on corporate, compliance, and commercial issues, which provide many value-creating opportunities for her company.

FOOTNOTES

1. Douglas III, John B., "Reebok Rules," *ACCA Docket*, Spring 1992.
2. *Id.*, rules 1 and 3.



FEATURE ARTICLE

The majority of legal departments have a flat organisational structure. **Philip Hout** looks at how general counsel can keep in-house lawyers motivated when the scope for career advancement is restricted.

Talent show

The expansion of in-house legal departments in recent years has thrown up many different tests for general counsel. One growing management challenge surrounds how they can keep a group of intelligent and ambitious lawyers motivated to provide peak performance when most departments have a relatively flat organisational structure.

In this situation, only one person can have the top job and opportunities for promotion are likely to be thin on the ground. The contrast with the leveraged model employed in most private practice law firms, which offers a much more delineated career path, is marked.

Reach for the sky

One solution, of course, is to reorganise the legal department and introduce a greater degree of hierarchy. BSkyB, the UK-based broadcasting company, adopted this approach during an overhaul of its legal department that took place between 2006 and 2007. The company, which has a 60-lawyer strong team, appointed 11 departmental heads and created two tiers of principal legal adviser and senior adviser. General counsel James Conyers said at the time that the move was partly driven by a desire to give individual lawyers 'more scope to progress up the ranks'.

For smaller legal departments, however, this is unlikely to be an option. The general counsel may have little scope to create new job titles, with the company's senior management and human resources department particularly likely to resist such a proposal if there are no

additional responsibilities involved. The head of legal's flexibility to motivate their staff with enhanced remuneration packages may likewise be restricted.

Given these limitations, what can general counsel do to ensure that the team remains committed to providing a high standard of service? This is an area with no easy answers.

According to Paul Gilbert, founder of management consultancy LBC Wise Counsel and former Head of Legal at financial services company Cheltenham & Gloucester, it is important to understand what the general counsel is and is not responsible for.

They are not required to provide the lawyers in their team with a tailored career path, he insists. 'It's down to the individual lawyers to have that plan – it should not be developed for them,' he suggests. 'There's now much more mobility than there used to be and people are able to move on every three to five years to take advantage of the opportunities available.'

Gilbert argues that the head of legal's principal obligation to the people they employ – and the best way of ensuring they remain motivated – is to ensure they have a fulfilling, proper job. This means, for example, that if a lawyer specialises in contracts, they get a good quality of work and the training to equip them with the skills they need to do the job.

Richard Stock, founding partner of Catalyst Consulting, a Canada-headquartered legal management consultancy, agrees that access to challenging and diverse work is vital. What drives many lawyers, he says, is not necessarily a hunger for the top job but rather the chance to handle work that is strategically important to the business. This in turn provides access to

Philip Hout is a freelance journalist and can be contacted by e-mail at philip.hout@btinternet.com.

– and recognition from – the higher echelons of the company’s management.

Giving in-house lawyers the chance to participate in special projects, get involved with company-wide task forces or lead major transactions are ways of doing this and can be a key motivational tool, Stock suggests.

Another strategy is to encourage individual lawyers to become a genuine specialist in a particular area of law, so that they become the ‘go-to’ person within the company – they can even establish a reputation in the wider legal market for their expertise. Such personal development could then be rewarded financially, in recognition of the individual’s investment in building up their know-how and the fact that such a capability is a real asset to the business. This approach can help create a culture where it is expertise that is valued, rather than time-served.

Leading the way

Most lawyers respond well to being given responsibility and leadership opportunities, according to James Brumm, former Senior Co-Chair of the International Bar Association’s Corporate Counsel Forum and former general counsel at Mitsubishi International Corp in New York. ‘There is always a balance to be struck between supervision and giving them as much responsibility as possible,’ he adds.

Benita Kumar, former head of the 12-strong in-house legal department at Henderson Global Investors, agrees. ‘Our way to motivate people was to give them complete power over particular products and jurisdictions,’ she says. ‘They were effectively mini-general counsel for their areas. The system was based on mutual respect and the empowerment of the individual through the division of work and clients. For the lawyers, they felt that ownership [of product and client areas] was really about trusting them.’

At Henderson Global Investors, the legal department also worked in an open plan environment, which encouraged knowledge sharing, and held team meetings every other week. The lawyers took it in turns to chair these team meetings and had the responsibility of ensuring they were innovative and engaging.

‘Sharing that management activity helped develop leadership qualities,’ says Kumar, who is now a consultant at management

consultancy Jomati. ‘We managed to recruit people of good calibre who were two years qualified and went on to become good managers. This approach showed a cultural investment by the organisation.’

One of the problems, however, is that in-house lawyers at many businesses operate in silos or are dispersed widely across the company. ‘In many cases an in-house lawyer might have far more interaction with their “clients” than with other members of the legal team,’ says Stock.

Programmed for success

In a bid to bring greater coherence to this area, an increasing number of businesses are putting time and resources aside to develop formal talent management programmes for their legal teams.

Jonathan Bellis, Vice-President at management consultancy Hildebrandt International, has for a number of years conducted benchmarking exercises for a group of 15 leading international companies, looking at issues such as law department management, diversity, legal skills development, mentoring and reward systems. ‘The more progressive law departments are those that are trying to come up with programmes and strategies, both for the team as a whole and ones targeted to individuals,’ he says, noting that the issue has risen up the agenda in the last three to five years.

Gilbert adds that a robust personal development programme will involve much more than simply paying for the lawyer’s practising certificate. ‘It [the programme] should be really thought through,’ he says. ‘After a few years the individual lawyer will then be qualified to take on their next role – they have not just marked time.’

A talent development programme might include plans to rotate a lawyer round different business units, participation in department-wide know-how initiatives, and tailored training including executive coaching for senior lawyers in the team.

Training budgets are often a soft target for cost cutting when times are tough, but Gilbert points out that this element of a talent development programme does not have to relate to technical legal skills, where the lawyer has to spend time out of the office on an expensive course.

FEATURE ARTICLE

'Why not get the individual lawyer to spend a week in one of your external law firms, at the sharp end? Or get them to spend a day in one of the company's factories or branches?' he suggests. 'You can get genuine personal insight through things that cost nothing, rather than, say, worrying about the latest case from Europe and whether or not you understand it.'

Moving out of the department

Formal programmes of the type advocated by Bellis and Gilbert can make people feel that they are progressing as in-house lawyers and also that the company is committed to seeing them reach their full potential. While that is the case, they are more likely to stay.

A more left-field strategy for retaining able employees and developing their skills is to give them the opportunity to work in a non-legal role. 'There are a fair number of general counsel I have worked with who have not been directly appointed from within the law department,' points out Hildebrandt's Bellis. 'A move to the business side was an essential part of their career path.'

Mitsubishi's Brumm believes that such redeployments should be considered more frequently than they are. When he was promoted to Executive Vice-President at the Japanese company's New York subsidiary, he was also placed in charge of the firm's communications strategy. He subsequently recruited one of his former assistant general counsel as a director of corporate communications, a move that turned out to be a great success. 'It makes sense to give people other avenues, particularly when you are running a small legal department and the chances for promotion are somewhat limited,' he says.

Ultimately, some members of an in-house team – including a number of the best people – will move on to seek career advancement elsewhere. If they are departing to become head of legal at another company, general counsel will have to console themselves that they have done a good job. Until that time, there is a lot that can be done to keep the team firing on all cylinders. ❖

**WORKPLACE 2020:
WHAT GEN Y ATTORNEYS EXPERIENCE & EXPECT**



**SUSTAINING PATHWAYS
TO DIVERSITY®**

WORKPLACE 2020

WHAT GEN Y ATTORNEYS EXPERIENCE & EXPECT

MCCA Board of Directors

Joseph K. West
President & CEO
MCCA

Simone Wu
MCCA Chair
Senior Vice President,
General Counsel, Corporate Secretary
& Chief Compliance Officer
Choice Hotels International, Inc.

Vernon G. Baker, II
Senior Vice President
& General Counsel
Meritor, Inc.

Michelle Banks
Executive Vice President,
General Counsel, Corporate Secretary
& Chief Compliance Officer
Gap Inc.

Clarissa Cerda
Executive Vice President
Chief Legal Officer & Secretary
LifeLock, Inc.

A.B. Cruz III
Former Chief Legal Officer
& Corporate Secretary
Scripps Networks Interactive, Inc.

Anthony K. Greene
Director
Jamison Insurance Group

Gary F. Kennedy
Senior Vice President
General Counsel &
Chief Compliance Officer
American Airlines

Jean Lee
Vice President &
Assistant General Counsel
JPMorgan Chase

Don H. Liu
Corporate Senior Vice President
General Counsel & Secretary
Xerox Corporation

Hinton J. Lucas
Vice President &
Assistant General Counsel
DuPont Company

Robbie E.B. Narcisse
Vice President
Global Ethics & Business Practices
Pitney Bowes Inc.

Samuel M. Reeves
Senior Vice President
& General Counsel
Walmart US Legal

Carlos J. Rincon
Partner
Rincon Law Group, P.C.

Thomas L. Sager
Senior Vice President
& General Counsel
DuPont Company

Robin H. Sangston
Vice President &
Chief Compliance Officer
Cox Communications, Inc.

Kenneth S. Siegel
Chief Administrative Officer
& General Counsel
Starwood Hotels & Resorts Worldwide, Inc.

Mary E. Snapp
Corporate Vice President
& Deputy General Counsel,
Legal & Corporate Affairs
Microsoft Corporation

Lawrence P. Tu
Senior Vice President,
General Counsel & Secretary
Dell Inc.

Neil H. Wilcox
General Counsel - Chase Card Services
JPMorgan Chase & Co.

MINORITY CORPORATE COUNSEL ASSOCIATION

**SUSTAINING PATHWAYS
TO DIVERSITY®**

**WORKPLACE 2020
WHAT GEN Y ATTORNEYS EXPERIENCE & EXPECT**

Table of Contents

From the President6
Introduction7
Executive Summary8–11
Workplace 2020: What Gen Y Attorneys Experience and Expect.	12–26
Supplemental Materials	27
Appendix A – Research Methodology	27
Appendix B – Survey Instruments	28-38



It has been said that the only constant is change itself. Changing demographic patterns require and demand an on-going assessment of how those changes affect the workplace. The legal profession and its newest generation of lawyers is no exception. This study of “Generation Y” lawyers seeks to examine this dynamic in all of its complexities. Theirs is a generation that arrives at the workplace at the confluence of a number of extraordinary and exciting circumstances. It is a time of globalization, a rollercoaster economy, technological advances, and uncertainty around employment trajectories and traditional billing arrangements. These circumstances are layered with this generation’s shifting appreciation for the import and impact of diversity and inclusion, as well as, flexible work schedules and varying workplace cultures.

This report is designed to both introduce this generation to the marketplace and provoke thought and discussion around where both they and the profession are headed.

A handwritten signature in black ink that reads "Joseph K. West". The signature is fluid and cursive.

Joseph K. West
President & CEO
Minority Corporate Counsel Association

II. Introduction

“Generation Y is entitled, lazy, selfish, tech savvy, and incompetent,”
-Scott Greenfield, Attorney.¹

“I had a summer associate call me and ask me, ‘So that my girlfriend and I can coordinate our showers in the morning- can I schedule to come in at 9:30 instead of 8:30 to work?’”
-Dan Hull, Attorney.²

“The Millennial: Generation Enlightened or Generation Lazy?”
-Ashby Jones, WSJ Law Blog³

“I don’t envy the Millennial Generation. In fact I don’t think they are equipped for the hard going that lies ahead of them...Technology provides them with mountains of instant data, but all that technology and data are useless without judgment. Judgment, like thinking, is a process that must be introduced and internalized, nurtured and practiced...Is this young generation, weaned as they are on video games and the internet, equipped to meet such challenges?”

Hon. John L. Kane, U.S. District Court,
District of Colorado⁴

According to the Integrated Postsecondary Education Data System at The National Center for Educational Statistics approximately 25,000 to 35,000 Generation Y (Millennials or Gen Y) lawyers have passed the bar each year since approximately 2006.⁵ Further, it is estimated that between 120,000 to 150,000 Gen Y attorneys are currently in the workplace, and those numbers will continue to rise by approximately 15,000 to 20,000 each year.

Comments, anecdotes, and article titles such as those listed above have become commonplace in legal publications over the past few years. The kind of complaints noted above, primarily from Baby Boomers (born between 1947 and 1964), about Generation Y (born after 1980), abound in informal conversations, meetings, conferences, and publications. Yet, the legal profession has done very little analysis on who this generation is, what they experience and expect in the legal workplace.

This study is an exploration of the legal workplace from the perspective of Millennial attorneys. The report provides an analysis of the Gen Y perspectives, and is an effort to better understand who they are and how they compare to Baby Boomers and Generation X (born between 1964 and 1980) attorneys.

This report focuses on five key areas of the Gen Y workplace experience: 1) selecting an employer, 2) attachments to their employer and aspirations, 3) experiences and expectations for the use of technology, 4) experiences and expectations for the workplace, workday, and work style, and 5) the value of diversity and inclusion. The findings of this study illustrate that Gen Y experiences and expectations for the legal workplace are complex and not always reflective of the stereotypes and complaints affixed to this generation. This report provides a portrait of an emerging generation that cannot be captured by simplistic stereotypes. It is a generational portrait that is critical for anyone who wants to better understand and lead change in legal workplaces.

III. Executive Summary

For several years, Generation Y, also known as Gen Y or the Millennials, have been a heated topic of conversation in informal conversations, meetings, conferences, and publications. Generation Y, comprised of individuals born after 1980, tends to clash particularly with the generation that is primarily responsible for parenting and leading them: the Baby Boomers. Issues around work ethic, propriety, informality, communication preferences, and value systems are active in workplaces across the country. In spite of conversations surrounding Generation Y, little analysis has been done on who this generation is, and what they experience and expect in legal workplaces. This study is an exploration of legal workplaces from the perspective of Millennial attorneys, without comparison or contrast points to other generations. The findings in this study illustrate that Gen Y's experiences and expectations for legal workplaces are complex and not always reflective of the stereotypes and complaints that have been affixed to their generation. This portrait is one of an evolving generation and it is critical for anyone who wants to better understand and lead change in legal workplaces.

Methodology

The Workplace 2020 methodology was designed to explore the experiences and expectations of Generation Y attorneys through their own eyes. A web-based survey was developed, which focused on the perceptions and experiences of Gen Y attorneys in a variety of areas relevant to their selection of employers, their experiences with and expectations of their employers, and their overall perspectives on the legal profession.

The Minority Corporate Counsel Association (MCCA) used an open, self-selection model of inviting respondents to participate in this survey. The overall sample size of 938 respondents, all born after 1980, represented workplaces primarily in the private sector including corporations and law firms of varying sizes. The gender representation of the respondents was roughly equal with slightly more women than men, and the representation of racial/ethnic minorities and sexual orientations was consistent with average percentages of minority representation in law schools.

Below is a summary of the study's findings, broken down by categories that were designed to capture the full experience a typical Gen Y employee in the workforce. The full report is available at www.mcca.com/research.

1. Selecting An Employer

In selecting an employer, respondents were asked to consider the factors present in their decision making process. For example, geographical location, reputation, organizational values, financial rewards, learning opportunities, opportunity to do meaningful work, ability to travel, diverse workforce, inclusive workplace, opportunity to learn from proven experts, opportunity to advance, employee benefits, and flexibility. It is notable that, in their decision-making process, many respondents identified current economic conditions as an additional and important consideration in their decision, if not a deciding factor.

Respondents identified the five factors below, in order of importance, as most critical to their decision:

1. Geographical location
2. The opportunity to do meaningful and satisfying work
3. The opportunity to work with great colleagues
4. Learning and training opportunities
5. The opportunity to learn from proven experts/leaders

The least important factors are: limited travel, ability to travel, a diverse workforce, flexibility and an inclusive workplace.

While the above factors represent the average perspective, there were notable differences for minority respondents. For example, learning and training opportunities were ranked as having greater importance than the opportunity to work with great colleagues. Women ranked organizational values and culture among the most important criteria in selecting an employer, above opportunities to learn from proven experts and leaders.

2. Attachments and Aspirations

Even though Gen Y attorneys in this study were thoughtful and deliberate in how they selected their employers, attachment to their employer was tenuous. How long a Millennial attorney planned to stay with their current employer and their long-term aspirations with their employer (advance into leadership positions) was more indicative of short-term career choices in contrast to long-term career decisions. Comments by several respondents also indicate that economic conditions were reflected in their short-term choices but not in their long-term attachments or aspirations.

The overwhelming majority of respondents were not planning to stay with their employer for more than five years, with higher percentages of minorities and women planning to stay less than five years. Approximately 25% of respondents, across all demographic groups, reported they were planning to stay in their workplace between one to three years. Only 18% of women and 20% of minorities were planning to stay in their workplace more than five years. Women and minority respondents generally felt that the opportunity to advance into senior leadership roles within their workplace was not a significant criterion.

The overall positive sentiment expressed by Millennial attorneys was a complex mix of wanting to advance into leadership positions while not being completely sure how long they wanted to stay with their current employer. Regardless of their long-term trajectory, respondents expressed a strong desire for the opportunity to shape their current workplace. This shift from future-based investment to investment for the “here and now” is critical for senior lawyers and workplace leaders to understand in order to best integrate this generation’s perspectives into the overall work environment.

3. Experiences and Expectations for the Use of Technology in Communication and Professional Development

A significant portion of respondents expressed frustration and dissatisfaction with the underutilization of technology, especially within the context of informal professional development. The majority, across all groups, reported feelings that their workplaces did not use technology as an informal communication tool for feedback, training, and professional development.

Approximately 35% of all respondents felt that communication mechanisms used by leadership were not very effective. For these respondents, the key issues of ineffectiveness were: outdated technology, underutilized intranets, lack of transparency, outdated telephone systems, ineffective information technology support systems, and other inefficiencies in technology infrastructures.

About 33% of all respondents felt that their workplace was not utilizing technology very well with regards to overall productivity, while 48% of all respondents felt that their workplaces did not utilize technology efficiently as a training and development tool. Some key suggestions from respondents included:

- Increasing on-line trainings, webinars, and on-demand video trainings
- Better trained staff who execute trainings
- More intranet-based and easily searchable materials
- Better use of the intranet
- Increase use of Skype technology instead of conference calls

Men, in comparison to women, chose telephone communications as needing more improvement than email communications. Women and minorities expressed a greater comfort level with email communications because they felt they would be evaluated more objectively.

4. Experiences and Expectations of the Workplace, Workday, and Workstyle

According to Gen Y attorneys, the factors that would best maximize their productivity at work included:

- Flexibility with the place and time of work
- Individual office space
- An informal work culture

Respondents indicated that the following would most likely have a positive impact on their work experience:

- Increased compensation
- Increased and better mentoring by senior attorneys
- Increased flexibility in accommodating personal life
- Better utilization of technology to create flexible hours
- Greater opportunity to shape the future direction of the workplace

Increased compensation was noted by many respondents to be directly connected with their insecurities about overall market conditions. Many Millennial respondents also expressed a frustration with senior attorneys because of their lack of informal communication, feedback on work, and constructive advice on career development.

The issue of flexibility, although agreed upon by all groups as an important factor for productivity and satisfaction, was fraught with differentials based on gender. Specifically, how men versus women internalized what flexibility meant and how accessible it was to them as individuals. Women were far more likely than men to believe that

the balance options in their workplace did not work for them (24.51% men versus 31.38% women), that their careers would be negatively impacted if they utilized the available options (34.80% men to 41.34% women) and that greater flexibility in the workplace would have a positive impact on their careers (65.19 % men to 79.20% women).

Rather than being directly correlated with career advancement, respondents also identified their desire for flexibility in accommodating personal life and better utilization of technology to create flexible hours as critical components to “feeling comfortable” in the workplace. However, the flexibility offered by a workplace was not an important factor in how these attorneys selected their workplace.

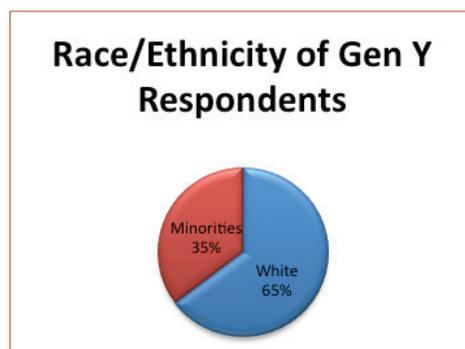
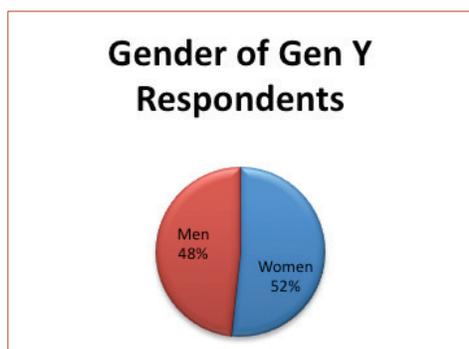
5. Perspectives on Diversity

Unsurprisingly, women and minorities were significantly more likely than men or whites to say that it was important to them to have a diverse legal profession. However, the data also marks the generational trend of a majority stating that a diverse legal profession is important. White respondents and male respondents felt that a diverse profession and a diverse and inclusive workplace was important to them in spite of their belief that such a priority would not benefit them personally.

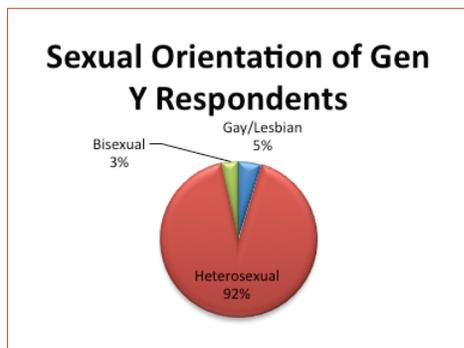
IV. Workplace 2020: What Gen Y Attorneys Experience and Expect

A. The Gen Y Respondents

The Minority Corporate Counsel Association (MCCA) used an open self-selection model for inviting respondents to participate in this survey. The overall sample size of Gen Y respondents was 938, all born after 1980. The pool of participants represented workplaces primarily in the private sector including corporations and law firms of varying sizes. The gender representation of the respondents was roughly equal with slightly more women than men, and the representation of racial/ethnic minorities was consistent with average percentages of minority representation in law schools.⁶

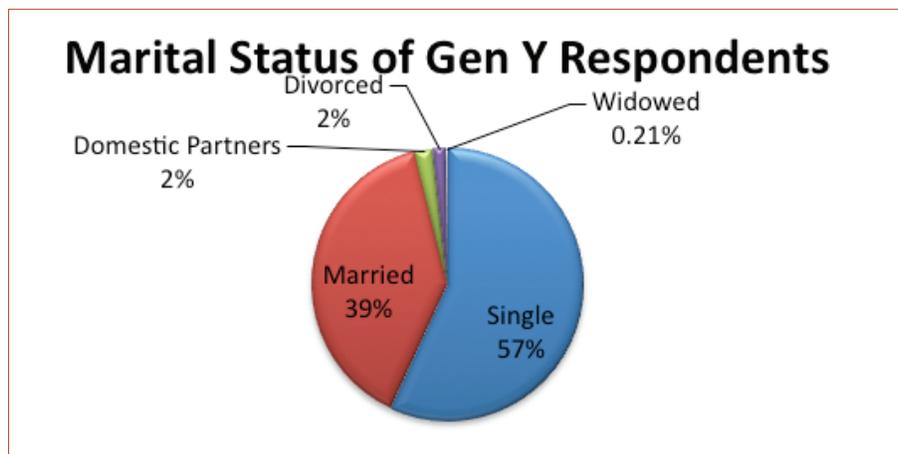


Respondents also reported sexual orientation representation similar to what has been reported in law schools, and about 1% of respondents reported disabilities.⁷

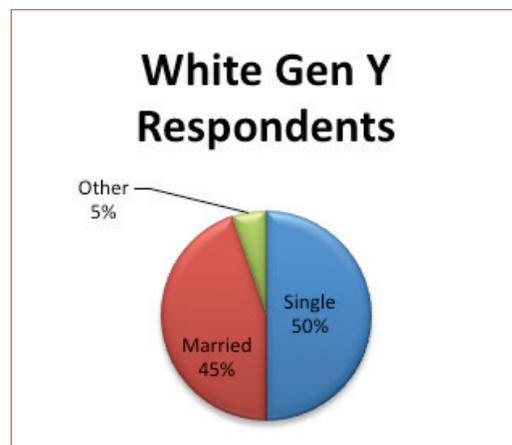
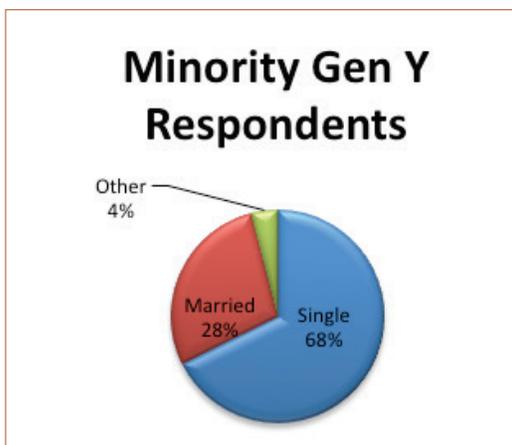


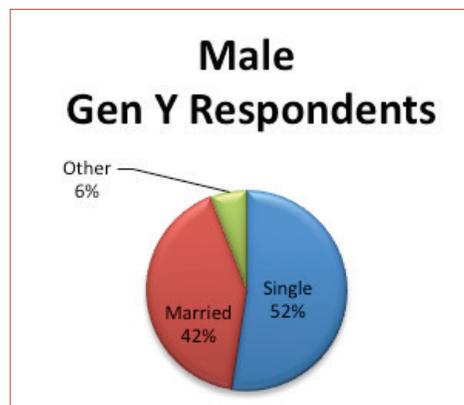
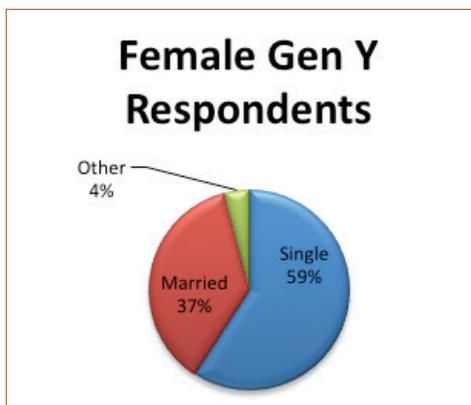
While there were no significant differences between men and women or minorities and whites in the sexual orientation or disability reports, there were substantial differences between these demographics in the area of marital status.

Overall, a substantial majority (56.3%) of the respondents reported being single (never married) while 38.87% of respondents reported being married. 2.1% of respondents reported being in domestic partner/same-sex couples, 1.47% reported being divorced, and .21% reported being widowed.



Whites were significantly more likely to be married than minorities and men were significantly more likely to be married than women.





B. Gen Y’s Expectations and Experiences as Attorneys

1. Selecting An Employer

In selecting an employer, respondents were asked to consider the factors present in their decision making process. For example, geographical location, reputation, organizational values, financial rewards, learning opportunities, opportunity to do meaningful work, ability to travel, diverse workforce, inclusive workplace, opportunity to learn from proven experts, opportunity to advance, employee benefits, and flexibility.

Respondents identified the five factors, noted that in the chart below in order of importance, as most critical to their decision in selecting an employer. It is notable that in their decision-making process, many respondents identified current economic conditions as an additional and important consideration in their decision, if not a deciding factor.

The focus on the economy permeated the responses of all demographic groups. Many respondents noted that the current economic conditions greatly impacted their decision making processes. Comments on this topic ranged from “I was lucky to find a job,” “lacking options in a recession,” and “simply wanted to be employed,” to “high student loans” and “previous offer was rescinded due to economy.” There were a few key differences between minorities and whites and women and men that distinguished how these different demographics interpreted and internalized market conditions.



While the above factors represent the average perspective, there were notable differences for minority respondents. For example, learning and training opportunities were ranked as having greater importance than the opportunity to work with great colleagues. Women ranked organizational values and culture among the most important criteria in selecting an employer, above opportunities to learn from proven experts and leaders.

Overall, 48% of respondents felt it was very important to work with great colleagues. For minorities, learning and training opportunities were ranked as having greater importance than the opportunity to work with great colleagues. A majority of respondents, approximately 67%, noted an inclusive environment as being very important or important when selecting a current employer. While 50% of respondents overall ranked diversity as important, inclusiveness was still assigned a greater value than diversity. Similarly, minority respondents commented that although having a diverse workforce was not that important to them, having an inclusive workplace was important to them. However, minority respondents differed as to which was a greater influence on their individual success, diversity within the workforce or the practices of inclusion that were incorporated into the workplace.

Minority respondents also felt that the opportunity to advance into senior leadership roles was not an important criterion for selecting an employer. Many minority respondents were skeptical about being with their employer long enough to advance into leadership roles, as reflected in comments like “I just want to get the opportunity to succeed...I doubt I’ll be here long enough to actually make it into leadership.” While others commented on the lack of minorities in leadership as a harbinger of their own futures. One minority respondent commented, “I don’t even see enough minority partners to start thinking about myself as a partner or in leadership of any kind.”



Similar to minorities, women also prioritized an inclusive workplace as more important than the opportunity to advance into senior leadership roles, and they did so for many of the same reasons. Women also ranked organizational values and culture as one of the most important criteria in selecting an employer. For women, the preference for working “at a place where their values are consistent with mine,” and the perspective that “it’s difficult for me to see myself working somewhere where my values are not considered important” were illustrations of how this criteria rose above others in helping identify a workplace of choice.

2. Attachments and Aspirations

Even though the Millennials attorneys in this study were thoughtful and deliberate in how they selected their employers, their attachments to their employers (how long they plan to stay with their current employers) and their long-term aspirations with their employers (desire to advance into leadership positions in their workplace) were more indicative of short-term career choices in contrast to long-term career decisions. Several comments by the respondents also indicated that the impact of the economic conditions was reflected in their short-term choices but not in their long-term attachment to or aspirations in their workplaces.



The overwhelming majority of respondents were not planning to stay at their employers for more than five years, and higher percentages of minorities and women were planning to stay less than five years.

As the table illustrates, the highest percentage, approximately 25%, of respondents in all demographic groups, reported they were planning to stay in their workplace between one and three years. Approximately 18% of women and 20% of minorities were planning to stay in their workplace more than five years.

Expectations of Staying with Current Employer	Average Duration	Duration for Minorities	Duration for Women
Less Than 1 Year	15.94%	18.58%	15.22%
Between 1 and 3 Years	26.38%	24.59%	27.34%
Between 3 and 5 Years	14.76%	19.13%	16.61%
Between 5 and 10 Years	15.94%	6.56%	7.27%
More Than 10 Years	19.49%	11.48%	12.8%

The data for the number of Millennial attorneys who aspired to advance into leadership roles with their current employer was more positive than the data illustrating how long respondents wanted to stay with their current employer. Approximately one-third of all respondents did not aspire to advance into leadership roles in their current workplace, with minorities and women having less desire to do so than the average. The data, upon closer examination, also shows a few interesting perspectives that are worth noting.

Approximately 49% of participants responded positively (“Strong Yes” or “Yes”) when asked about their aspiration to advance into leadership in their current workplace, while only 46% of minorities and 48% of women responded similarly. However, minorities were the demographic group most likely to respond “no” (26%) to this question. The overall positive sentiment expressed by Gen Y attorneys, is a complex mix of wanting to advance into leadership positions even while they are not completely sure of how long they want to stay with their current employers.

Aspiration to Advance into Leadership	Average	Minorities	Women
Strong Yes	20.08%	17.49%	17.30%
Yes	29.13%	28.96%	31.14%
No	22.24%	26.23%	24.91%
Strong No	11.42%	9.84%	11.07%

3. Experiences and Expectations for the Use of Technology in Communication and Professional Development

Across all demographic groups, the majority of respondents felt that their workplaces used technology well as a formal communication tool. However, the majority of all demographic groups felt that their workplaces did not use technology well as an informal communication tool for such things as feedback, training, and professional development.

Approximately 35% of all respondents felt that communication mechanisms used by leadership were not very effective. For these respondents, the key issues of ineffectiveness were: outdated technology, underutilized intranets, lack of transparency, outdated telephone systems, ineffective information technology support systems, and other inefficiencies in technology infrastructures.

Some respondents noting that the lack of transparency regarding information led them to sites like Above the Law as being more of a resource than their own workplace websites. While all of these comments did not touch on the direct communications from the leadership, many respondents expressed frustrations with their leadership’s overall inability to modernize their workplace with the technology necessary to make communication processes smoother throughout the organization.

As a formal communication tool, the respondents’ expectations primarily revolved around getting frequent information communiques from leadership as to what was expected of them and what they could anticipate in terms of business decisions from organizational leaders. To that end, the respondents were generally satisfied with email communications that served this purpose as well as digital storage of necessary policies, manuals, and other information on workplace intranets.

Effective Communication from Leadership	Average	Minorities	Women
Strong Yes	13.01%	11.89%	13.95%
Yes	49.71%	53.51%	49.32%
No	28.35%	27.03%	28.91%
Strong No	7.77%	6.49%	6.80%

Regarding informal communication, especially communication related to feedback, the overwhelming majority of respondents felt that the primary types of communication that needed to be improved in the workplace were: face to face communications, networking, and email communications, in that order. Interestingly, men, in comparison, to women differed from the majority and chose telephone communications as needing more improvement than email communications.

Whites	Minorities	Men	Women
Communication that is Most Necessary to Improve in the Workplace			
Face to Face	Face to Face	Face to Face	Face to Face
Networking	Networking	Networking	Networking
Email	Email	Telephone	Email

The above table illustrates the order in which each demographic group ranked communications that needed improvement.

In their comments on this topic, women and minorities expressed a comfort level with email communications because they felt they would be evaluated more objectively. Men felt they made better impressions if they were to see people face to face or talk on the phone with them. Men also valued face to face communications the most in their professional lives in contrast to minorities and women who valued email the most as a communication tool in their professional lives. Minorities, in comparison to whites, valued networking events more than telephone communications, and many minority respondents reflected on the fact that they are more likely to connect with other minority attorneys through strategic networking events. These connections, according to the minority attorneys, led to informal peer networks, mentoring relationships and future opportunities that they felt were lacking in their own workplaces.

Whites	Minorities	Men	Women
Communication that is Most Valued in Professional Life			
Email	Email	Face to Face	Email
Face to Face	Face to Face	Email	Face to Face
Telephone	Networking Events	Telephone	Telephone

All of the groups ranked Twitter, text messaging, instant messaging and video and web conferencing as the least valued communication modes in their professional lives.

All of the groups also ranked Twitter and video conferencing along with networking events as the least valuable modes of communication in their personal lives. All demographics were also fully aligned with face to face, text and email (in that order) as the most valued modes of communication in their personal lives. Only men reported face to face communication as the most valuable mode of communication in both their personal and professional lives indicating a seamless communication process across personal and professional lives whereas women and minorities preferred face to face in their personal lives and email in their professional lives.

About 33% of all respondents felt that their workplaces were not utilizing technology very well with overall productivity, and 48% of all respondents felt that their workplaces did not utilize technology efficiently as a training and development tool. As one respondent stated, “Every meeting has either people standing up and talking to us or it is people using powerpoints that are even more boring than if they were standing up and talking.” Another noted that “the online trainings we use are horrible at best.”

Recommendations from the respondents for improving the use of technology for training and development included:

- More webinar and on-demand video trainings,
- Effective online and elearning trainings,
- Better trained staff who execute trainings,
- More intranet-based easily searchable materials,
- Better use of the intranet, and
- More skype technology instead of conference calls.

4. Experiences & Expectations of the Workplace, Workday and Workstyle

According to Millennial attorneys, the factors that would best maximize their productivity at work included: flexibility with place and time of work, individual office space, and an informal work culture. All three were expressed both as productivity maximizers and overall job satisfaction enhancers.

Many of the respondents did not feel that their work environments saw flexibility and hard work as compatible or complementary. Several respondents reported that they often had to “look like they were working” to senior lawyers by staying in their offices even if it was not productive to do so.

Top Productivity Maximization Factors for All Demographics
Flexibility with when and where I work.
Flexible work day with some structured hours.
Individual office space.
By myself but not always in my office.
Informal work culture.

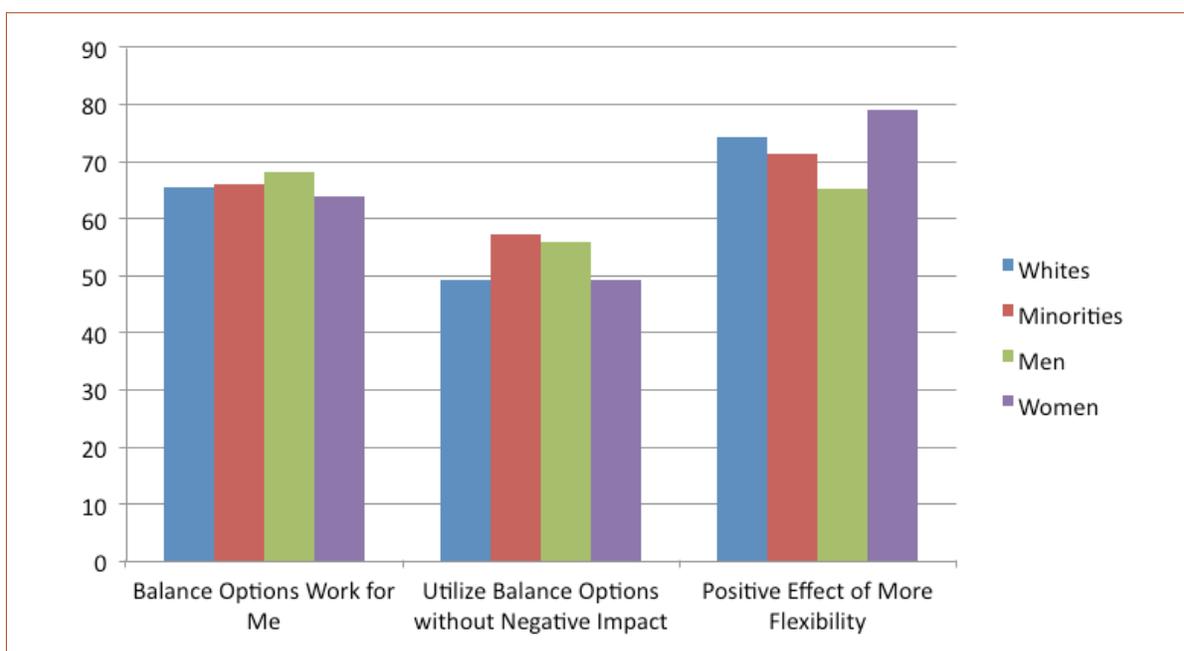
When asked about what changes in their workplace would have a positive impact on their careers, they responded with: increased compensation, more and better mentoring by senior attorneys, more flexibility in accommodating personal life, better utilization of technology to create flexible hours

and greater opportunity to shape the future direction of the workplace. Increased compensation was noted by many to be directly connected with their insecurities about overall market conditions. Many Gen Y respondents also expressed a frustration with senior attorneys because of their lack of informal communication, feedback on work and constructive advice on career development. Even attorneys who were in environments with robust professional development programs commented that those professional development programs were not adequate or effective substitutes for one-on-one mentoring by senior attorneys.

Workplace Changes with Most Positive Impact on Careers
Increased compensation.
More and better mentoring by senior attorneys.
More flexibility in accommodating personal life.
Better utilization of technology to create flexible hours.
Greater opportunity to shape the future direction of the workplace.

More flexibility in accommodating personal life and better utilization of technology to create flexible hours were noted as critical components to “feeling comfortable” in the workplace. Although flexibility offered by an organization was not an important factor in how these attorneys selected their workplaces, it did become crucial to how they experienced satisfaction and productivity in the workplace. A few respondents commenting “what they say they do and what they actually do is so different that you can’t believe what they say in recruiting” and “even if they have the policies, there are unwritten rules to not use the policies if you want to get ahead.” Rather than being directly correlated with career advancement, respondents also identified their desire for flexibility in accommodating personal life and better utilization of technology to create flexible hours as critical components to “feeling comfortable” in the workplace. However, the flexibility offered by a workplace was not an important factor in how these attorneys selected their organization.

The issue of flexibility, although agreed upon by all groups as an important factor for productivity and satisfaction, was fraught with differentials based on gender. Specifically, how men versus women internalized what flexibility meant and how accessible it was to them as individuals. Women were far more likely than men to believe that the balance options in their workplace did not work for them (24.51% men versus 31.38% women), that their careers would be negatively impacted if they utilized the available options (34.80% men to 41.34% women) and that greater flexibility in the workplace would have a positive impact on their careers (65.19% men to 79.20% women).



The above chart indicates the percentage of respondents who responded yes to questions related to workplace expectations and experiences.

Question	Whites	Minorities	Men	Women
Balance options in my workplace work for me	65.47% (yes) 29.64% (no)	66.09% (yes) 26.31% (no)	68.14% (yes) 24.51% (no)	63.87% (yes) 31.38% (no)
People in my workplace can utilize balance options without negative impact on their careers	49.19% (yes) 41.36% (no)	57.31% (yes) 29.64% (no)	55.88% (yes) 34.80% (no)	49.27% (yes) 41.34% (no)
Positive effect of more flexibility it the workplace to accommodate my personal life	74.27% (yes) 21.50% (no)	71.34% (yes) 20.47% (no)	65.19% (yes) 26.47% (no)	79.20% (yes) 17.15% (no)

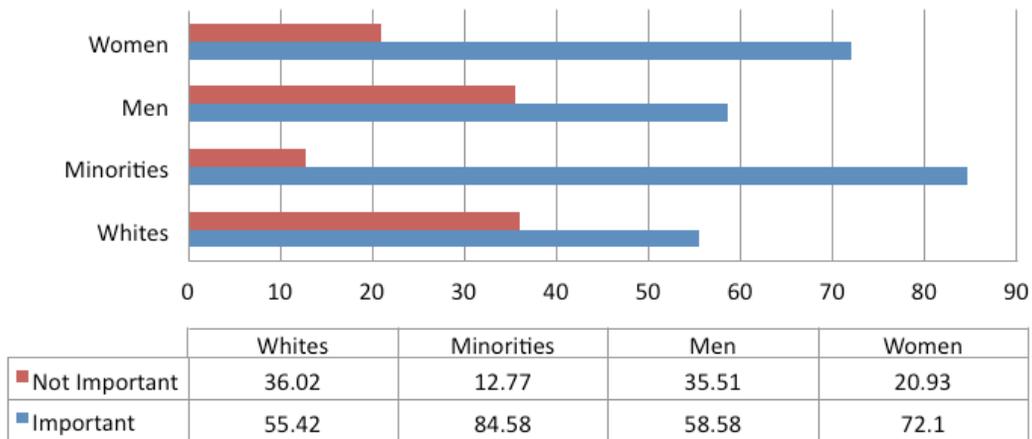
From a gender perspective, there is also evidence that Gen Y men and Gen Y women are starting to think about flexibility options in different ways. At the same time, the number of men who are seeking and utilizing flexibility options is higher than it has been in previous generations.

The final reported change for positive impact on careers was a greater opportunity to shape the future direction of the workplace. Although many of the attorneys commented that they were not sure if they wanted to stay within their organization long enough to ascend into leadership positions, they did want to have the opportunity to shape the while they were there. This generation of lawyers is very engaged in their current workplaces without necessarily being attached or invested in being in that organization for the rest of their careers. This shift from future-based investment to investment for the “here and now” is a shift that is critical for senior lawyers and workplace leaders to understand in order to best integrate this generation’s perspectives into the overall work environment. As one respondent wrote, “I don’t know where I’ll be in 10 years, but I’m here now and I want to make a difference while I’m here.”

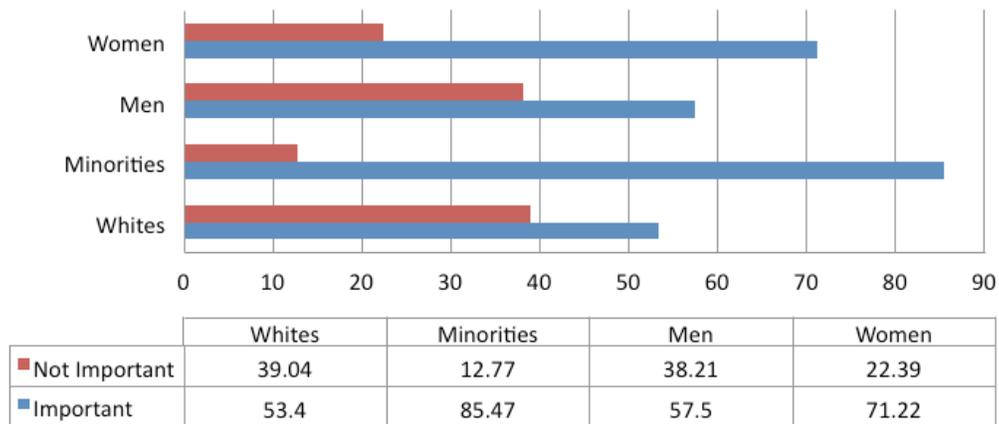
5. Perspectives on Diversity

Gen Y’s complex perspectives on diversity add the final layer of understanding on the experiences and expectations of this generation. Unsurprisingly, women and minorities were significantly more likely than men or whites to say that it was important to them to have a diverse legal profession. However, the data also marks the generational trend of a majority stating that a diverse legal profession is important. White respondents and male respondents felt that a diverse profession and a diverse and inclusive workplace was important to them in spite of their belief that such a priority would not benefit them personally.

Importance of Having a Diverse Legal Profession

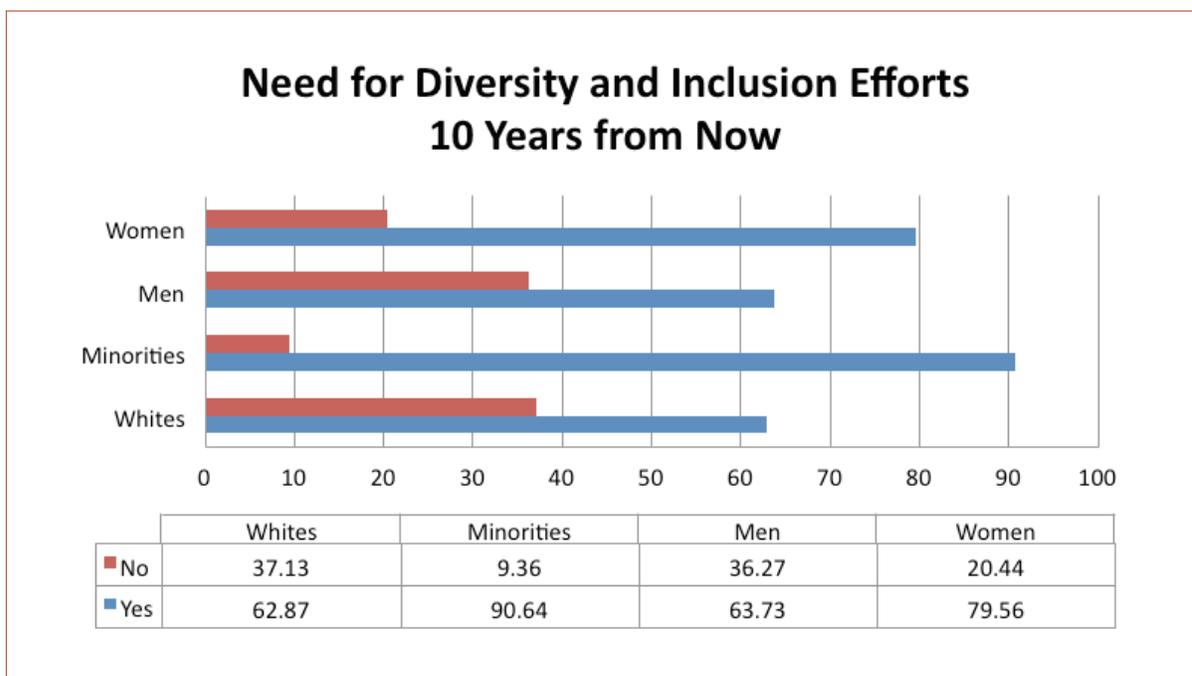


Importance of Having a Diverse & Inclusive Workplace



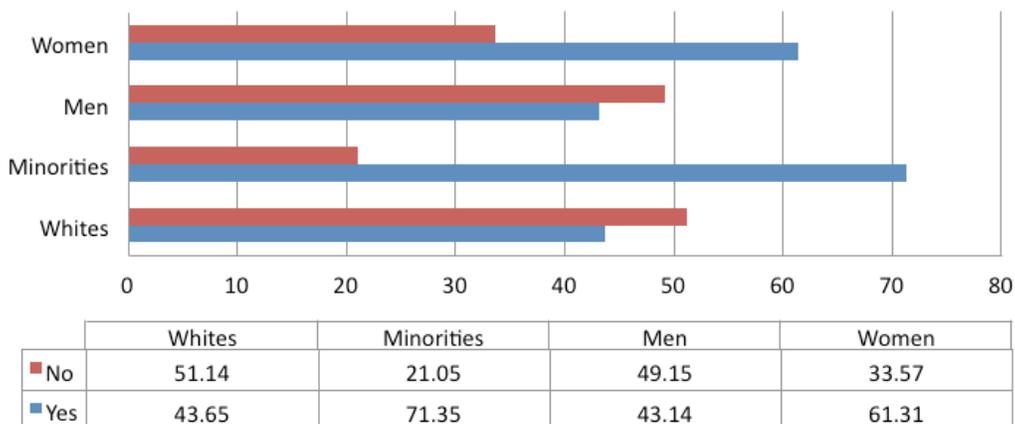
The shifting importance of diversity in the legal profession to the importance of having a diverse and inclusive workplace is a similar trend among the various demographic groups (whites versus minorities, men versus women). Having a majority report that it is important for them to be in a diverse and inclusive workplace is a trend evident from the responses as well. Overall, the value of a diverse legal profession and a diverse and inclusive workplace are greater for this generation than in previous ones even as the differentials between the represented and the underrepresented continue.

A corollary to the value of a diverse profession and a diverse and inclusive workplace is the respondents' perspectives on whether the legal profession will still need diversity and inclusion efforts in ten years. An overwhelming majority answered in the affirmative, but the differentials between men and women, as well as, whites and minorities persist.



The question of whether increased diversity and inclusion in the workplace would have a positive impact on their careers is the only diversity question where the overall perspectives of whites and minorities dip below the majority. Even though whites overall and men felt that a diverse profession and a diverse and inclusive workplace was important to them, they did not equally feel that increased diversity and inclusion would be beneficial to them personally.

Positive Impact of Increased Diversity & Inclusion on Individual Careers



C. Recommendations

1. Assess Your Environment
2. Communicate Expectations Clearly and Frequently
3. Collaborate and Include Gen Y's Voices
4. Integrate Technology into all Strategies
5. Create Feedback Loops

End notes

¹Adrian Dayton, "Why Partners Don't Understand Generation Y." (May 2009).

<http://adriandayton.com/2009/05/why-partners-dont-understand-generation-y/>

²Ibid.

³Ashby Jones, "The Millennials: Generation Enlightened or Generation Lazy?" (May 2009).

<http://blogs.wsj.com/law/2009/05/21/the-millennials-generation-enlightened-or-generation-lazy/>.

⁴Hon. John L. Kane, Remarks at the 50th Class Reunion of the University of Denver College.

<http://westallen.typepad.com/files/50th-class-reunionuniversity-of-denver-college-of-lawmay-22.pdf>.

⁵Integrated Postsecondary Education Data System at The National Center for Educational Statistics.

<http://nces.ed.gov/ipeds/>. See additional data analysis by Economic Modeling Specialists Inc. at:

<http://www.economicmodeling.com/2011/06/22/new-lawYERS-glutting-the-market-in-all-but-3-states/>.

⁶American Bar Association Section of Legal Education and Admissions to the Bar.

http://www.americanbar.org/groups/legal_education/resources/statistics.html.

⁷Ibid.

V. Supplemental Materials

A. Methodology

This research project was designed to explore the experiences and expectations of Generation Y attorneys through their own eyes. A web-based survey was developed, which focused on the perceptions and experiences of Millennial attorneys in a variety of areas relevant to their selection of employers, their experiences with and expectations of their employers, and their overall perspectives on the legal profession. The web-based survey instrument for this research was designed and edited by Nextions LLC with substantial input from the Minority Corporate Counsel Association (MCCA) as well as MCCA's sponsors.

MCCA used an open, self-selection model of inviting respondents to participate in this survey. The overall sample size of 938 respondents, all born after 1980, represented workplaces primarily in the private sector including corporations and law firms of varying sizes. The gender representation of the respondents was roughly equal with slightly more women than men, and the representation of racial/ethnic minorities and sexual orientations was consistent with average percentages of minority representation in law schools. The identity of individual respondents remained completely anonymous, and individual surveys were and are only accessible to the research team at Nextions. However, demographic data provided by the respondents was used to sort the data by important variables such as gender, race/ethnicity, and sexual orientation in order to analyze trends and patterns within and between groups. The data were not sorted by individual responses but rather analyzed in the aggregate.

The survey was distributed through MCCA's network as well as the networks of the American Bar Association, state, local, and specialty bar associations. The survey was also distributed through individual networks of MCCA supporters.

Nextions LLC conducted the research for this MCCA study with Dr. Arin N. Reeves serving as the primary researcher and Debbie T. Jerome serving as the project manager.

B. Survey Instrument

**Minority Corporate Counsel Association
Sustaining Pathways to Diversity Research
MCCA Workplace 2020: Gen Y Survey**

Please tell us a little information about you.

1. When were you born?

- Before 1927
- Between 1928 and 1946
- Between 1947 and 1964
- Between 1965 and 1980
- After 1980

*** 2. What is your racial/ethnic background?**

- Asian/Asian American (including South Asian)
- Black including Caribbean and African/African American
- Caucasian/White (excluding Hispanic)
- Arab/Arab-American
- Native American/Alaskan Native
- Hispanic/Latino
- Pacific Islander
- Bi-racial/multi-racial
- Other

*** 3. What is your gender?**

- Male
- Female

Please tell us a little about how you like to work.

*** 4. From the factors listed below, please rate the importance of each of the following factors in terms of how much it influenced your decision to select your current employer:**

Know	Very Important Important Not Important Don't
Geographical location	Inclusive workplace
Reputation/prestige	Opportunity to work with great colleagues
Organizational values/culture	Opportunity to learn from proven experts/leaders
Compensation/financial rewards	Opportunity to advance into senior leadership roles
Learning/training opportunities	Employee benefits
Opportunity to do meaningful/satisfying work	Flexibility with where and/or when I work
Access/ability to travel	
Limited travel	
Diverse workforce	

5. Please share any additional reasons, if any, that influenced your decision to choose your current employer:

*** 6. During the first three months of my current employment, I received the information and advice that I needed to begin performing well.**

- Strongly Agree
- Agree
- Disagree
- Strongly Disagree
- Don't Know

Additional Comments

7. What additional information/resources would have been helpful in orienting you to your work environment?

*** 8. I feel that connecting with my peers on a professional and social level is important in my ability to be productive and happy in the workplace.**

- Strongly Agree
- Agree
- Disagree
- Strongly Disagree
- Don't Know

Additional Comments

*** 9. I feel that connecting with senior leaders on a professional and social level is important in my ability to be productive and happy in the workplace.**

- Strongly Agree
- Agree
- Disagree
- Strongly Disagree
- Don't Know

Additional Comments

*** 10. From the factors listed below, please rate how important each factor is in your ability to maximize your productivity:**

Very Important | Important | Not Important | Don't Know

- Work environment (design, ambiance, etc.)
- Informal work culture
- Formal work culture
- Ability to work in a team
- Ability to work by myself
- Collaboration work spaces
- Individual office space
- Flexibility with when I work
- Flexibility with where I work

*** 11. How important is to you to have a diverse legal profession?**

- Extremely Important
- Very Important
- Not Important
- Not at All Important
- Don't Know

Additional Comments

*** 12. How important is to you to work in a workplace that is diverse and inclusive?**

- Extremely Important
- Very Important
- Not Important
- Not at All Important
- Don't Know

Additional Comments

Please tell us a little more about how you like to work.

*** 13. I prefer to work: (please choose the response that describes your strongest preference)**

- By myself in a private office
- With people from my team in a shared work environment
- By myself, but not always in my office
- With people from my team, but not always in the office

Additional Comments

*** 14. I prefer to work: (please choose the response that describes your strongest preference)**

- A conventional work day with structured hours
- A flexible work day with some structured hours and some unstructured hours
- A flexible work day with mostly unstructured hours

Additional Comments

*** 15. I am currently very productive in my work environment.**

- Strongly Agree
- Agree
- Disagree
- Strongly Disagree
- Don't Know

Additional Comments

Please tell us a little about your perspectives on technology at work.

*** 16. My workplace utilizes technology efficiently as a productivity tool.**

- Strongly Agree
- Agree
- Disagree
- Strongly Disagree
- Don't Know

Additional Comments

17. How could technology be better used to improve productivity in your workplace?

*** 18. My workplace utilizes technology efficiently as a communication tool.**

- Strongly Agree
- Agree
- Disagree
- Strongly Disagree
- Don't Know

Additional Comments

19. How could technology be better used to improve communication in your workplace?

*** 20. My workplace utilizes technology efficiently as a training and development tool.**

- Strongly Agree
 - Agree
 - Disagree
 - Strongly Disagree
 - Don't Know
- Additional Comments

21. How could technology be better used to improve training and development?

Now, a few questions about your communication preferences.

*** 22. How much do you value each of the following communication methods in your professional life?**

Very Much | Somewhat | Not At All | Don't Know

- Face to face interactions
- Telephone interactions
- Networking events
- Video conference interactions
- Skype/web conference interactions
- Email
- Text messages
- Instant messages
- Twitter
- Social/professional networks (such as LinkedIn, Facebook, etc.)
- Other: _____

*** 23. Which of the following communication methods do you wish were more effectively utilized in**

your workplace?

Very Much | Somewhat | Not At All | Don't Know

Face to face interactions
Telephone interactions
Networking events
Video conference interactions
Skype/web conference interactions
Email
Text messages
Instant messages
Twitter
Social/professional networks (such as LinkedIn, Facebook, etc.)
Other: _____

* 24. How much do you value each of the following communication methods in your personal life?

Very Much | Somewhat | Not At All | Don't Know

Face to face interactions
Telephone interactions
Networking events
Video conference interactions
Skype/web conference interactions
Email
Text messages
Instant messages
Twitter
Social/professional networks (such as LinkedIn, Facebook, etc.)
Other: _____

Your preferences for feedback and evaluation.

* 25. I feel that people who are senior to me communicate effectively with their peers in my workplace.

- Strongly Agree
 - Agree
 - Disagree
 - Strongly Disagree
 - Don't Know
- Additional Comments
-

*** 26. I feel that people who are senior to me communicate effectively with me in my workplace.**

- Strongly Agree
- Agree
- Disagree
- Strongly Disagree
- Don't Know

Additional Comments

27. What could your workplace do to improve its communication processes?

*** 28. The feedback and evaluation systems in my organization work well for me.**

- Strongly Agree
- Agree
- Disagree
- Strongly Disagree
- Don't Know

Additional Comments

29. What could your workplace do to improve its evaluation processes?

30. What could your workplace do to improve its feedback processes?

*** 31. I receive timely and useful feedback on my work so that I understand both my strengths and what I need to do to improve.**

- Strongly Agree
- Agree
- Disagree
- Strongly Disagree
- Don't Know

Additional Comments

A few more questions about your thoughts on your current workplace.

*** 32. I am satisfied with the level of challenging work that I receive.**

- Strongly Agree
- Agree
- Disagree
- Strongly Disagree
- Don't Know

Additional Comments

*** 33. I have had at least one formal mentor in my organization who has played an important part in supporting my career development.**

- Strongly Agree
- Agree
- Disagree
- Strongly Disagree
- Don't Know

Additional Comments

*** 34. I have had at least one informal mentor in my organization who has played an important part in supporting my career development.**

- Strongly Agree
- Agree
- Disagree
- Strongly Disagree
- Don't Know

Additional Comments

*** 35. Actively doing pro bono and other service work is important to me.**

- Strongly Agree
- Agree
- Disagree
- Strongly Disagree
- Don't Know

Additional Comments

*** 36. My organization is doing a good job of developing and preparing young lawyers for future leadership positions.**

- Strongly Agree
- Agree
- Disagree
- Strongly Disagree
- Don't Know

Additional Comments

*** 37. I aspire to advance into a senior leadership role with my current employer.**

*** 38. How long do you plan to stay with your current employer?**

- Less than 1 year
- Between 1 and 3 years
- Between 3 and 5 years
- Between 5 and 10 years
- More than 10 years
- Don't know

Additional Comments

The last few questions about your thoughts on your current workplace.

*** 39. I think that my workplace has work-life flexibility/balance options that work for me.**

- Strongly Agree
- Agree
- Disagree
- Strongly Disagree
- Don't Know

Additional Comments

40. What could your employer do to make it easier to achieve work-life balance in your workplace?

*** 41. I think that people in my workplace can utilize the work-life flexibility/balance options without any negative impact on their careers.**

- Strongly Agree
- Agree
- Disagree
- Strongly Disagree
- Don't Know

Additional Comments

*** 42. Please rate the following changes in your current workplace in terms of the positive effect each would have on your career.**

- No Effect
- Little Effect
- Positive Effect
- Very Positive Effect
- Don't Know/Not Applicable

The establishment and consistent implementation of formal policies for reduced/alternative work arrangements

- Less pressure to engage in work related social activities
- More opportunities to interact with peers and colleagues in informal social settings
- A collaborative and/or creative space where colleagues can relax and/or brainstorm with each other
- Better utilization of technology to create flexible work hours
- More flexibility from the workplace in accommodating my personal life
- Greater opportunity to shape the future direction of the workplace
- More and better mentoring by senior attorneys
- Training on how to better communicate across generations
- More opportunities for pro bono work
- Less subjectivity in the work allocation and promotion processes
- Increased compensation
- More diversity and inclusion

*** 43. Given what you have experienced and/or observed about current efforts to make the legal professional and workplaces more diverse, do you think that there will be a need to continue to advocate for diversity 10 years from now?**

- Yes
- No

Additional Comments

*** 44. Do you feel that you communicate well across differences?**

- Yes No

Additional Comments

*** 45. Do you feel that communicating across differences is necessary to a successful legal career?**

- Yes No

Additional Comments

46. Please share any additional thoughts or comments that you have on what the legal profession in general or your workplace particular can do to be more of an ideal workplace for you?

Please tell us a little bit more about yourself.

*** 47. What is your sexual orientation?**

- Heterosexual
 Gay, Lesbian
 Bi-Sexual
 Transgendered
 I would prefer to not answer.

Additional Comments

*** 48. Are you a person with a disability?**

- Yes
 No
 I would prefer to not answer.

Additional Comments

*** 49. What is your current marital status?**

- Single, never married
 Married, heterosexual couple
 Domestic partner/Married, same-sex couple
 Divorced
 Widowed
 I would prefer to not answer.

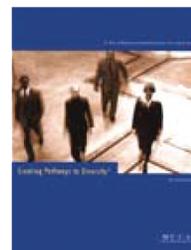
Additional Comments



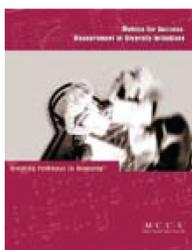
Additional Resources from MCCA Pathways Research Series



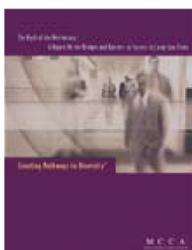
A Study of Law
Department
Best Practices
(1st Edition)



A Set of Recommended
Practices for Law Firms



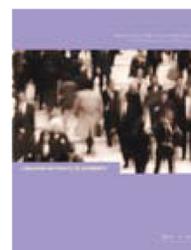
Metrics for Success:
Measurement in
Diversity Initiatives



The Myth of the
Meritocracy: A Report
On the Bridges and
Barriers to Success
in Large Law Firms



From Lawyer to
Business Partner:
Career Advancement
in Corporate Law
Departments



Perspectives From
The Invisible Bar: Gay
& Lesbian Attorneys
in the Profession



Mentoring Across
Differences: A Guide
to Cross-Gender and
Cross-Race Mentoring



A Study of Law
Department
Best Practices
(2nd Edition)



The Next Steps in
Understanding and
Increasing Diversity
& Inclusion in Large
Law Firms



The New Paradigm
of LGBT Inclusion:
A Recommended
Resource for Law Firms

SUSTAINING PATHWAYS TO DIVERSITY®

| M | C | C | A |
MINORITY CORPORATE COUNSEL ASSOCIATION