

# Preview the Introduction to CLI's 2013 Inclusiveness Manual

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Center for Legal Inclusiveness

*the path to transforming the legal profession*

## **Beyond Diversity: Inclusiveness in the Legal Workplace**

By Kathleen Nalty, Executive Director, Center for Legal Inclusiveness; Dr. Arin Reeves, President, Nextions LLC  
Sixth Edition – January 1, 2013

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## Foreword

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### ***Beyond Diversity: Inclusiveness Is the Key to Sustainable Change***

The legal profession will remain one of the least diverse until we move beyond studying the issue and signing pledges to implementing solutions. The Center for Legal Inclusiveness developed this comprehensive toolkit to help legal organizations create cultures of inclusion that eliminate barriers to sustainable diversity.

This manual will give you the framework to understand the new paradigm of inclusiveness and the tools to create an inclusive workplace that works for everyone. Although the protocol is laid out in a step-by-step process, it is not linear; it can be customized to your organization and its unique culture and needs.

### ***Colorado's Legal Community Pursues Inclusiveness***

The mission of the Center for Legal Inclusiveness (CLI) is to increase diversity in the legal profession by educating and supporting private and public sector legal organizations in their own individual campaigns to create cultures of inclusion. CLI is an outgrowth of the Colorado Deans' Diversity Council (DDC). The DDC is a group of top leaders in the Denver legal community brought together by the law deans at the University of Denver Sturm College of Law and University of Colorado Law School beginning in November 2006 to address the lack of diversity in the legal profession. Members of the DDC represent every sector of the legal community – law schools, law firms, judiciary, government agencies, public interest, and bar associations.

### ***Thank You to The Denver Foundation***

The CLI Board of Directors and the DDC wish to express their deepest gratitude to The Denver Foundation for the gift of its Inclusiveness Project materials to the Denver legal community.<sup>1</sup> This manual is based on The Denver Foundation's workbook – *Inclusiveness at Work: How to Build Inclusive Nonprofit Organizations*.<sup>2</sup>

The Denver Foundation is the oldest and largest community foundation in Colorado, having been established by several prominent leaders in the banking community in 1925. The mission of The Denver Foundation is to inspire people and mobilize resources to strengthen the seven-county Metro Denver community. Through conversations with nonprofit leaders, the Foundation discovered a widespread community interest in developing a deeper understanding of how inclusion of diverse voices and experiences enhances and expands the work of nonprofit organizations. In 2001, The Denver Foundation Board of Trustees established the Expanding Nonprofit Inclusiveness Initiative (now known as the Inclusiveness Project) to create a model for inclusiveness. In 2005, the Inclusiveness Project published *Inclusiveness at Work*, written by Katherine Pease, et al. This workbook was designed to help nonprofit organizations undergo a comprehensive change process to become more inclusive of communities of color. Since then, The Denver Foundation has supported several nonprofits as they have undertaken the process of becoming inclusive organizations. In October 2008, the foundation launched a website - <http://www.nonprofitinclusiveness.org> - showcasing its inclusiveness program.

## ***CLI's Inclusiveness Program***

While The Denver Foundation's program focuses solely on people of color, CLI has chosen to expand the focus of its inclusiveness program to all historically underrepresented groups in the legal community, including groups constructed around the identities of gender, race, religion, national origin, disability, sexual orientation and gender expression, in order to reflect a more expansive definition of diversity.

The legal profession is at the bottom of the list of all professions in terms of the numbers of people of color<sup>3</sup> but it is also lagging with respect to other groups, including women.<sup>4</sup> Thus, CLI encourages organizations undertaking this journey to become more inclusive to cast a wider net and focus on the perspectives and needs of all underrepresented groups.

This approach is not intended, however, to provide an excuse for organizations to gloss over the serious issues facing attorneys in underrepresented groups – racially/ethnically diverse, disabled, women (at senior levels), and LGBT attorneys. Nor is it intended to provide an excuse for legal organizations to take their focus off of increasing the numbers of attorneys from underrepresented groups. In the end, it is diversity *plus* inclusiveness that will lead to sustainable and representational diversity in the legal profession.

## ***CLI's Inclusiveness Network***

Since March 2008, 26 legal organizations joined CLI's Inclusiveness Network program and have been implementing this inclusiveness manual. CLI would like to thank and acknowledge the contributions of the following members of the Inclusiveness Network cohorts:

### **2008 Inclusiveness Network (IN08)**

Brownstein Hyatt Farber & Schreck, LLP  
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 Colorado Attorney General's Office  
 Denver City Attorney's Office  
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 Faegre Baker Daniels LLP  
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 Xcel Energy Inc. – Law Department

### **2011 Inclusiveness Network (IN11)**

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 Walmart Stores – Law Department

### **2011 Government Inclusiveness Network**

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 17th Judicial District Attorney's Office  
 18th Judicial District Attorney's Office  
 20th Judicial District Attorney's Office  
 U.S. Attorney's Office, District of Colorado



These organizations have been guided in their work by [Kathleen Nalty](#), Executive Director of [CLI](#), and [Dr. Arin Reeves](#), President of [Nextions LLC](#) (Chicago). Lessons learned from many of these organizations' experiences have been incorporated in this edition of the manual. To read about their experiences, refer to Step 6 - the Case Study chapter.

### ***Inclusiveness Required for Any Real Change***

Finally, CLI would like to acknowledge Will Grignon for his leadership on disability issues and his eloquent words in [Lawyers, Lead On: Lawyers with Disabilities Share Their Insights](#) (ABA, 2011):

“[R]eal change can take place only when the culture that supports the status quo is changed. It is hard to change culture because most of it is unspoken and subterranean. It is my hope that the current diversity movement, which tends to be marked and marred by victimization, the scarcity principle, and turf wars, will evolve into a paradigm of inclusiveness where each person, disabled [female, racially/ethnically diverse, LGBT] or not, is seen as an individual ... [who] is accorded respect, given a voice, and rewarded for creative and useful ideas. My ideal organizational culture is one in which buy-in, tie-in, and my-in inspire excellent work being done by happy, loyal, healthy people who like where they are working, like who they are working with, and believe in the ultimate worthwhile qualities of the organizational enterprise.”<sup>5</sup>

We couldn't have said it better ourselves. Lead on.....

## Introduction: Inclusiveness 101

---

Although the legal profession has worked hard in recent years to open its long-closed doors to diverse groups, the profession's limited focus on diversity without consideration of inclusion has changed the open doors into revolving doors. Many workplaces invest in recruiting and hiring people from under-represented populations only to see higher attrition rates within these groups. We need to do more than open the doors to diverse populations; we need to open the doors **and** ensure that workplaces actually welcome the different backgrounds and perspectives we are seeking.

Diversity 2.0 for the legal profession is inclusiveness. The profession will remain one of the least diverse until we move beyond studying the issue and signing pledges and begin implementing solutions. The Center for Legal Inclusiveness developed this comprehensive toolkit to help legal organizations create cultures of inclusion that eliminate barriers to sustainable diversity.

As one of the least diverse of all professions,<sup>6</sup> the legal community faces a crisis with higher demand for diverse attorneys (driven in part by efforts such as the *Call to Action*<sup>7</sup> and its successor, the Leadership Council for Legal Diversity<sup>8</sup>) but a limited supply that is not keeping pace with demographic changes. Nationally, people of color account for only 11-12% of all attorneys (compared to over 30% of the total workforce). Compounding the problem is the fact that relatively few students of color apply and matriculate to law school,<sup>9</sup> and attrition rates among racially and ethnically diverse attorneys in private practice are outpacing those for non-diverse attorneys.<sup>10</sup> Representation among other social identity groups, including gay, lesbian, bisexual, transgender (LGBT) and female attorneys, is also low when compared to the general workforce (LGBT – 2.07%<sup>11</sup> compared to an estimated 3.5-5%; women – 33%<sup>12</sup> compared to 46%<sup>13</sup>).

The Great Recession deepened this crisis. According to statistics collected by the National Association for Legal Career Professionals (NALP), the percentage of both female and racially/ethnically diverse attorneys declined during 2010<sup>14</sup> for the first time since NALP began collecting data in 1993. These findings were mirrored by other studies conducted by the Minority Corporate Counsel Association (MCCA) and Vault<sup>15</sup> as well as the National Law Journal's affiliate, *The American Lawyer*.<sup>16</sup> A study of the AmLaw200 in 2011 revealed an increase in hiring of racially/ethnically diverse attorneys but the total – 136 attorneys<sup>17</sup> – was very minimal and hardly made up for lay-offs, which disproportionately impacted diverse attorneys. In 2012, NALP reported that attrition rates for women stabilized but those for attorneys of color increased again by 3%.<sup>18</sup>

While important, traditional diversity initiatives have not achieved the success needed to reverse these trends. Greater diversity will be realized only through a fundamental change in the structures and cultures of legal organizations - the way they operate, encourage, support, acknowledge, and account for diversity. True cultural shifts happen when best practices coincide with organizational cultures that embrace and value people from different backgrounds and recognize that these differences can make organizations more innovative, creative, responsive to clients, and competitive in the marketplace. The combination of lower recruitment and higher attrition rates, particularly in private practice,<sup>19</sup> necessitate a shift from reliance on traditional diversity efforts to “Diversity 2.0,” which requires inclusiveness in order to create sustainable diversity in legal workplaces.

While diversity initiatives focus only on increasing representation among underrepresented groups, inclusiveness efforts focus on increasing representation as well as ensuring full opportunity

for all individuals to maximize their potential in the workplace. Thus, inclusiveness efforts end up benefiting everyone, not just those who are diverse.

## ***What is Diversity? What is Inclusiveness?***

Many people use the terms “diversity” and “inclusiveness” interchangeably but they have very different meanings. For purposes of this manual, **diversity** describes “compositional diversity” – the extent to which a legal organization has people from diverse backgrounds and communities working as attorneys and staff.

Primary dimensions of diversity include race, ethnicity, gender, age, religion, disability, sexual orientation and gender expression. Secondary dimensions of diversity can include lifestyle, communication style, personality type, learning style, economic status, geographic origin, education status, generation, avocation, work experience, world travel experience, political views, philosophical views, parental status, appearance, veteran status, nationality, and more.

**Inclusive** organizations not only have a diverse composition, but also value the perspectives and contributions of all people, and strive to incorporate the needs and viewpoints of diverse communities into all aspects of the organization. Inclusive organizations are, by definition, diverse at all levels.<sup>20</sup> **Inclusion** is the active, intentional, and ongoing engagement with diversity in the organization.

Inclusiveness is a new paradigm for the legal profession.<sup>21</sup> It moves beyond numbers (compositional diversity), and involves embedding practices and philosophies that encourage diversity in every aspect of an organization. Numbers are a critical component of any diversity initiative; however, as long as diversity in the legal profession is viewed (as it largely has been) as solely an outcome — a number, a phase, or a stand-alone goal — progress will be elusive.

Inclusive workplaces require us to understand that the numbers are merely a reflection of what is working or not working within the prevailing culture of the organization. An inclusive culture will yield the diversity statistics you are seeking, but chasing the statistics will not create an inclusive culture or yield sustainable outcomes.

The concept of inclusiveness moves the legal profession away from a simplistic definition of diversity (“the numbers”) to a more integrated and comprehensive notion of diversity that has the following features:

- Shifts the responsibility for diversity and inclusion to every person in the institution as opposed to one person, committee or department.
- Moves the organization away from conceptualizing diversity as a numerical representation of diverse attorneys and staff to a vibrant community that embeds diversity throughout the institution in multiple areas including, but not limited to:
  - demographics (numbers);
  - leadership;
  - management and administration;
  - communication;
  - structure – organizational committees, practice groups, and departments;
  - institutional advancement and promotion;
  - assessment and evaluation;
  - compensation;

- policies;
- recruitment and hiring;
- financial resources;
- professional development and training;
- marketing;
- technology; and
- physical environment.

Inclusiveness employs a broad and inclusive definition of diversity that includes all dimensions of diversity, and specifically includes those in the majority – white, heterosexual men. But until there is sufficient representation in the legal profession among those in historically underrepresented groups, inclusiveness initiatives will necessarily have to focus on both diversity in hiring as well as inclusiveness in retaining and advancing all groups.

The ultimate goal for any diversity and inclusiveness initiative is to create greater cognitive diversity or diversity of thought. Harnessing different perspectives, experiences, and backgrounds has proven to be beneficial in organizations in terms of creativity, innovation, and profits (see research discussed below). Not every decision in a legal organization needs input from a wide variety of people but when you're trying to come up with innovative solutions for clients' complex legal and business problems, it can make all the difference. Inclusion is about creating an atmosphere where differences are highly prized and leveraged to provide the highest level of excellence in client service; it is also where everyone receives equal opportunities, is encouraged to contribute, and is utilized fully.

### ***How Does Inclusiveness Differ from Diversity in the Legal Profession?***

Traditional diversity efforts in the legal profession are:

- Mostly viewed as fixing it for or helping “them” – attorneys belonging to underrepresented social identity groups, including racially/ethnically diverse, female, LGBT (lesbian, gay, bi-sexual, transgender) people, and disabled individuals;
- Focused heavily on compositional diversity and “getting the numbers up” or “reloading” through recruiting efforts;
- Responsible for surface-level efforts that do not address underlying causes for higher attrition rates for diverse attorneys; and
- Focused on “outsourcing” diversity and inclusion to a committee or an individual without adequate support systems for creating real change.

Inclusiveness involves a systemic shift in how we view and address diversity challenges. Inclusiveness is about:

- Valuing every person in the organization because of the different backgrounds and perspectives they bring to the table;
- Consciously creating a work culture that brings out the best in everyone;
- Removing hidden barriers to opportunity and success that exist within the organization that have greater negative impact on diverse attorneys (women, racially/ethnically diverse, LGBT people, disabled individuals);
- Making changes in the organization – cultural, structural and behavioral – that create a work environment that is inclusive, rather than exclusive;

- Embedding practices throughout the organization so that everyone has some responsibility for developing and sustaining an inclusive workplace, as opposed to merely assigning one committee or person the responsibility for all diversity efforts; and
- Empowering everyone to contribute fully as opposed to leaving their identity at the door each day and spending time either hiding their identity (i.e. LGBT lawyers who are not “out”) or making others feel comfortable with their differences.

The negative side effects of focusing on diversity alone include:

- Alienating white male attorneys and staff because they think diversity efforts do not include them since they are not diverse (as well as giving “unfair” advantages to diverse attorneys);
- Spending too much time and resources on recruiting and getting diverse attorneys in the door and not enough on retention (the door is a revolving door and diverse attorneys leave at high rates because the environment works to exclude them in many ways);
- Failing to address the underlying reasons for higher attrition rates among diverse attorneys as analysis tends to be surface level; and
- Causing diverse attorneys and staff to feel tokenized and cynical about whether their organization values them for anything other than their diversity status.

**Table 1. Differences between Traditional Diversity Efforts and Inclusiveness Initiatives**

	<b>Traditional Diversity Efforts</b>	<b>Inclusiveness Efforts</b>
<b>Leadership &amp; Committee</b>	<ul style="list-style-type: none"> <li>• Diversity Committee is comprised mostly of “the choir”; members are mostly or all diverse</li> <li>• Diversity Committee has no real power to make any changes in the organization</li> <li>• Involvement with senior management is sporadic and superficial</li> </ul>	<ul style="list-style-type: none"> <li>• Inclusiveness Committee is comprised of organizational leaders and other influential people in the organization, including diverse staff and attorneys but also non-diverse attorneys and staff; particularly those who are change-agents in the organization</li> <li>• Selection of Inclusiveness Committee members is highly strategic and based on a number of factors that will ensure sustainability and success</li> <li>• Includes a skeptic (or two)</li> <li>• Personal investment and participation by leadership</li> </ul>
<b>Scope of Work</b>	<ul style="list-style-type: none"> <li>• Diversity Committee is solely responsible for all diversity activities</li> <li>• No one else in the organization has any responsibility for diversity efforts and few people pay any attention to the work of the Committee</li> <li>• Committee members are given no credit for their work</li> </ul>	<ul style="list-style-type: none"> <li>• Inclusiveness Committee analyzes issues and devises strategies but directs others in the organization in their work to embed inclusive practices and procedures throughout the organization</li> <li>• Everyone in the organization has some responsibility for diversity and inclusiveness which are included in job duties and compensation decisions</li> <li>• Committee members are rewarded for their work through bonuses, credit for billable hours or other recognition</li> <li>• Organization management is knowledgeable about the Committee's efforts and provides full support</li> <li>• Committee members are strategically placed throughout the organization and act as ambassadors for inclusiveness as well as</li> </ul>

		liaisons for the Inclusiveness Committee throughout the structure of the organization
	<b>Traditional Diversity Efforts</b>	<b>Inclusiveness Efforts</b>
<b>Programs</b>	<ul style="list-style-type: none"> <li>• Heavy focus on recruiting</li> <li>• May have a mentoring program that has limited effectiveness</li> <li>• May have some affinity groups</li> <li>• May equate serious diversity efforts with cultural celebrations</li> <li>• Provides financial support for external diversity events, including job fairs, specialty bar organizations and conferences - but few non-diverse attorneys actively participate in those events</li> <li>• Diversity is not seen as integral to the organization's business goals and diversity is put on the back burner when other business priorities heat up</li> </ul>	<p>Engages in all traditional diversity efforts <b>PLUS</b></p> <ul style="list-style-type: none"> <li>• Recognizes that every organization has hidden barriers to success for diverse attorneys – structural, cultural and behavioral</li> <li>• Develops mission, vision, and case statements outlining the need for greater diversity and inclusiveness that are directly tied to business imperatives for the organization</li> <li>• Develops a comprehensive communication strategy led by the organization's leader(s) regarding Committee work and efforts</li> <li>• Surveys attorneys and staff to uncover hidden issues and barriers and delves deeper into the issues by conducting interviews and focus group sessions</li> <li>• Evaluates all policies and procedures to ensure inclusiveness (i.e., in the evaluation process, balanced-hours, work assignment system, networking and business development opportunities, client contact, promotions, professional development, formal and informal social opportunities)</li> <li>• Directs all departments, committees, divisions in their work to actively address and remove barriers to success</li> <li>• Engages in training – targeted skills training, diversity awareness training, anti-bias training – to educate all members of the organization about diversity and inclusiveness</li> <li>• Tasks all organizational committees with goals related to making the organization more inclusive and holds them accountable</li> <li>• Creates an inclusiveness action plan with goals for improvement throughout the organization and accountability measures with timelines</li> <li>• Includes diversity and inclusiveness as a substantive topic at all organizational meetings</li> <li>• Presents awards for inclusive practices</li> <li>• Leadership and succession initiatives include gaining skills in effective communication across differences</li> </ul>
<b>Assessing &amp; Training</b>	<ul style="list-style-type: none"> <li>• Inadequate assessments</li> <li>• Superficial trainings</li> </ul>	<ul style="list-style-type: none"> <li>• Keen awareness of the dominant culture and its impact on diverse attorneys and staff</li> <li>• Engages in training to make changes to the culture of the organization</li> <li>• Engages in diversity dialogues to break down barriers based on difference</li> <li>• Engages in training regarding unconscious bias and micro-inequities to impact some of the behaviors that cause exclusion</li> <li>• Spends time and resources engaging white men in the issues and creating allies and champions</li> </ul>

**Metaphors for Explaining Diversity Plus Inclusion (D+I)**

These concepts are difficult to understand right away. Sometimes, it is helpful to use metaphors to explain the difference between diversity and inclusiveness to others:

Diversity is when you count people; inclusiveness is about making people count. *Dr. Jim Moran, University of Denver*

Inclusiveness is the catalyst for sustainable diversity. Traditional diversity efforts have failed. The definition of insanity is doing the same thing over and over again while expecting different results. Inclusiveness is Diversity 2.0 for the legal profession; it is what is necessary to create lasting diversity results. *Center for Legal Inclusiveness*

Diversity is about going to the market to buy the ingredients for a great meal you plan to share with family and friends. Inclusiveness is about actually making the meal and fully incorporating all of the textures and flavors of the different ingredients. Each ingredient is distinct and different but it is the combination of all of the ingredients that make the meal (organization) great. *Center for Legal Inclusiveness*

Traditionally, legal organizations have focused on diversity first and inclusiveness later (if at all). They go out and buy very expensive seeds (talent) and plant them, expecting all of the seeds to grow. When certain types of seeds fail to grow, everyone blames the seeds. Yet this approach disregards the fact that legal organizations do not amend the soil (change the prevailing culture by removing hidden barriers through inclusiveness). Legal organizations will never achieve results with all of the seeds until they focus first on the soil (inclusiveness) and then plant the seeds (diversity). [\*Dr. Arin Reeves, Nextions LLC\*](#)

Think about your organization as a beautiful woven tapestry on the wall. Diversity is represented by a red ball of yarn. You can have the red ball sitting next to the tapestry and say you have diversity but the red yarn is not part of the tapestry; it is separate. Inclusiveness is about taking the red yarn and weaving it into the tapestry so it is an integral part of the picture (organization). [\*Dr. Arin Reeves, Nextions LLC\*](#)

## ***Why Should Legal Organizations Invest Time and Energy in Becoming More Diverse and Inclusive?***

Embarking on an inclusiveness initiative is a pivotal decision for an organization. Eventually, it requires the participation of everyone in the organization to be fully successful. Legal organizations must develop a shared understanding of the benefits of inclusiveness if they expect attorneys and staff to support an inclusiveness initiative. If you ensure everyone understands why the work is important and where it will take them, you will build a shared commitment that can result in deep changes for the organization.

At one time or another, most legal organizations have asked themselves, “How do we become more diverse?” In fact, the first question should be, “**Why** do we need to become more diverse?” This is perhaps the biggest barrier to greater diversity in the legal profession – lawyers who have very wide blind spots about the benefits of diversity and don’t see the value proposition.

One of the biggest, yet most unrecognized benefits of inclusiveness to a legal organization is that it represents a comprehensive new approach to a very serious issue that never seems to get resolved, no matter how hard people try and no matter how many “best practices” are implemented. The bottom line is that many legal organizations are “stuck” in an endless diversity cycle where individual programs simply don’t work and everyone is frustrated or cynical about achieving real progress.

This totally different framework – *inclusiveness* – has proven successful in other sectors (higher education, corporations, accounting firms, nonprofits) and is being implemented by some of the largest law firms and departments in the country that can afford to hire consultants and staff to create comprehensive inclusiveness programs.

While there are no ready-made solutions that an organization can simply implement and declare “mission accomplished,” CLI’s six-step inclusiveness program certainly provides an antidote for being “stuck.” CLI’s Inclusiveness Manual empowers and equips leaders in an organization to develop their own individualized answers and solutions.

Having new tools to tackle the diversity dilemma and a new paradigm to turn to for answers is essential. To make any real progress, however, you have to be able to explain **why diversity** is important. Until we have a clear and compelling reason why differences are valuable in the legal workplace, nothing will change.

In the last few years, advocates have turned to the business case for diversity to try to make change happen. A few corporate legal departments have used their influence with outside law firms to drive various diversity initiatives (notably, Walmart and Microsoft). Unfortunately, they have had minimal impact in the profession overall. Recent research demonstrates that only a small number (12.5%) of corporate law departments actually change relationships with outside counsel upon failure to meet diversity metrics or objectives.<sup>22</sup> Further, the vast majority of law firms (80%) receive little business from corporate law departments due to their diversity efforts.<sup>23</sup> The result is that the traditional business case for diversity (the threat of losing clients) is not very compelling and isn’t driving real change in the legal profession.

Thus, experts are beginning to call for an end to discussion of the traditional business case for diversity. Laura Liswood, co-founder of the Council of Women World Leaders, argues that:

“Diversity and inclusion are instrumental for any organization that seeks innovation, creativity, and engaged employees. We don’t need to make the business case for it; it is well accepted that a diverse workforce is essential to staying competitive in the global marketplace. In today’s world, problems are complex, communication is global, and the environment is constantly changing. Diversity is no longer a luxury; it is a necessity.”<sup>24</sup>

Until the reasons why diversity is important to the bottom line and to people personally are more widely known and accepted, convincing lawyers of the value of diversity will be challenging. To successfully persuade your organization to undertake an inclusiveness initiative, you will have to find just the right **why**. You may need to use different reasons for different people in the organization.

***“The secret to overcoming any challenge lies in finding the alignment of self-interests.”*** Colorado Governor John Hickenlooper

Some people will only invest in an inclusiveness initiative if they know what’s in it for them. It would be too easy to think that the moral and ethical reasons work in all cases; we know they won’t. Being politically savvy and strategic in identifying the deepest external and internal motivators for key decision-makers and influencers in the organization is very important. Once you find those motivators, use the following reasons and research to drive the *why* of diversity and inclusiveness:



### Moral/Ethical/Equity

- It is the right thing to do.
- The legal profession is the vanguard in our society for defending justice and pursuing liberty for all citizens and, thus, should lead the way toward full inclusion. As Justice O'Connor stated in *Grutter v. Bollinger*, "Effective participation by members of all racial and ethnic groups in the civic life of our Nation is essential if the dream of one Nation, indivisible, is to be realized."
- Several national research studies clearly demonstrate that there are glaring inequities in legal organizations when it comes to opportunities. Basic fairness requires that they be revealed and eliminated.

### Personal Benefit – You Aren't as Smart as You Think You Are Without Diversity

- Dr. Arin Reeves, [Nextions, LLC](#), writes in her book – *The Next IQ: The Next Level of Intelligence for 21st Century Leaders*<sup>25</sup> – about the transformation of leadership from being rooted in individual expertise to being formed from multiple and diverse perspectives. This next generation of intelligence is about actively soliciting and then harnessing the power of diverse perspectives that may or may not be rooted in specific individual education, experience and/or expertise.

In today's society, given that information is so readily available, no one person can be intelligent or competitive enough without seeking out and actively incorporating the perspectives of different people. Thus, diversity is critically important to everyone in their own work and personal success. Even further, Dr. Reeves contends that the traditional "business case" for diversity can actually hurt diversity and inclusiveness efforts. As an external motivator, it is not as effective as an internal motivator such as personal benefit.

### Keeping Clients, Attracting New Clients

- For organizations with (the relatively few) clients who do value diversity, the traditional business case may still work. Inclusive legal organizations are more likely to **retain work from clients** who value the benefits of diversity and will be in a better position to develop additional business from such clients. For example, the *Call to Action*, an initiative signed by 150 Fortune 500 companies,<sup>26</sup> required law firms to increase diversity or risk losing their business. The successor to the *Call to Action* – the [Leadership Council for Legal Diversity](#) – includes over 70 major corporate law departments and 130 law firms as members. Clearly, some corporate general counsel (GCs) are not wavering in their commitment to diversity. They see diversity as a business imperative and expect that value to be shared by all vendors, not just legal organizations. For law firms serving these clients, inclusiveness will help them achieve those diversity expectations.
- Inclusive legal organizations provide **better client service** because they have employees with a wide variety of backgrounds, experiences, and skills who assist in understanding clients, their markets, and their needs. By 2042, people of color will be in the majority in the United States. That threshold has already been crossed in some cities and states. More and more companies cater to diverse markets. They value advice from lawyers who truly understand their business and their customers. Baker & McKenzie's managing partner David Hackett thinks diversity is "increasingly important in that we want the best talent, perspectives and world-view to provide the best to our client companies. Management is accountable for supporting, thinking about and advancing a very diverse pool of talent for our firm. This is of huge significance to large and multinational companies."<sup>27</sup>

### Maximizing Profits

- Research conducted in the business sector establishes that greater gender diversity on corporate boards leads to greater profitability.<sup>28</sup> Similarly, McKinsey & Company has documented a financial advantage for companies that have greater diversity among its executive ranks.<sup>29</sup>
- Corporate clients also see diversity and, particularly, inclusiveness efforts, as a way to **stem attrition and reduce costs**. The Association of Corporate Counsel Value Challenge calls for focused efforts on providing value to clients, which includes reducing attrition as well as continuing diversity efforts.<sup>30</sup>
- Harvard Law school students conducted a statistical study of AmLaw200 firms, comparing firm profitability for different levels of diversity. The results demonstrate that law firms with greater diversity have **greater profits per partner** than less diverse firms, even after controlling for location, firm size, and hours worked.<sup>31</sup>
- Along the same lines, longitudinal research by McBassi & Company, Inc. on leadership and law firm success found that inclusiveness is highly correlated with **profitability**. Specifically, the statistical analysis revealed that successful law firms have leaders and managers who are “inclusive” and “skilled at eliminating unnecessary barriers to effective work [see discussion below about how women and diverse attorneys face hidden barriers to success].”<sup>32</sup>

### Increasing Competitive Edge, Innovation, Creativity

- Inclusive legal organizations are **more competitive** when they have teams of diverse individuals.
  - Research at Stanford University demonstrates that diverse teams of people are more creative in their problem-solving because of their differences and can solve complex business problems and come up with **innovative solutions** more readily than homogenous groups.<sup>33</sup>
  - Another study found that diverse groups developed more and **higher-quality solutions** to problems than homogenous groups, exhibiting greater creativity and problem-solving skills.<sup>34</sup>
  - A 1996 study by McLeod, Lobel & Cox determined that racially diverse groups were 11% more likely to come up with **creative ideas** than all white groups. The study evaluated an idea's creativity not only relative to overall effectiveness but also in terms of whether the idea could feasibly be implemented.<sup>35</sup>
  - Additionally, University of Michigan Professor Scott Page has used mathematical modeling to demonstrate that diverse groups of people are **more productive**:

“[D]iverse groups of people bring to organizations more and different ways of seeing a problem and, thus, faster/better ways of solving it. People from different backgrounds have varying ways of looking at problems, what I call ‘tools.’ The sum of these tools is far more powerful in organizations with diversity than in ones where everyone has gone to the same schools, been trained in the same mold and thinks in almost identical ways. The problems we face in the world are very complicated. Any one of us can get stuck. If we’re in an organization where everyone thinks in the same way, everyone will get stuck in the same place. But if we have people with diverse tools, they’ll get stuck in different places. One person can do their best, and then someone else can come in and improve on it. There’s a lot of empirical data to show that diverse cities are more productive,

diverse boards of directors make better decisions, the most innovative companies are diverse.”<sup>36</sup>

- Further, a study released in 2010 indicates that gender diversity is important in litigation. The study found that male lawyers are much more overconfident in predicting litigation outcomes than women and this excessive optimism can lead clients to litigation rather than settlement of cases.<sup>37</sup>
- Another study demonstrates that racial diversity tends to **improve the performance of decision-making groups**. Samuel Sommers, a professor of psychology at Tufts University, conducted a study in 2006 on diversity in mock jury panels and its impact on decision-making. The study found that all-white juries spent less time on their decisions, made more errors with the evidence, and considered fewer perspectives. The groups that were racially mixed spent more time deliberating and delved into the facts more deeply. The mere presence of diversity on the mock jury panels caused the white jurors on those panels to be more cognitively engaged than those on the homogenous jury panels, thus increasing the performance of the group as a whole.<sup>38</sup>
- Similarly, research by Katherine Phillips<sup>39</sup> demonstrates that the social identity of newcomers to groups has a profound impact on group performance. Performance gains do not result from the ideas or contributions of the newcomer, per se; rather, it was the oldtimers’ response to the newcomer’s presence that shaped group performance. Groups with out-group newcomers outperformed those with in-group newcomers. More surprisingly, members of groups with out-group newcomers were more willing to change their minds and initial opinions than were members of groups with in-group newcomers. Again, surface-level diversity deeply and positively impacts the thinking of those in the majority.
- A study co-authored by researchers at MIT, Carnegie Mellon University and Union College found that groups with more women had higher levels of social sensitivity – the ability to perceive others’ emotions - which allowed the groups to work more cooperatively. This led, in turn, to **greater collective intelligence and problem-solving ability** compared to teams with fewer women.<sup>40</sup>
- Similarly, a 2006 study by the Wellesley Center for Women found that three is a critical threshold number for representation of women on corporate boards. Once there are three women on a board, the group functions differently; it becomes **more collaborative and open to different perspectives** (which is essential for inclusiveness).<sup>41</sup>

Legal issues are increasingly becoming more complex. Any advantage in creating better solutions for clients enhances **competitiveness**.<sup>42</sup> Jordan Furlong, a consultant with Edge International, put it best:

“[B]usinesses without diversity are at an inherent strategic disadvantage. When most or all of your people look the same and come from the same backgrounds, it’s a safe bet that they’ll all think the same and act the same, too. They’ll adopt the same analytic approaches, make the same sorts of assumptions, and reach the same kinds of conclusions; when they meet to compare notes, the groupthink atmosphere will reinforce the built-in strategic biases, and each member of the team will congratulate the other on their brilliant work.

It’s the opposite of diversity: it’s commonality. And a law firm with a surfeit of commonality lacks any number of essential ingredients to be a top-notch solutions provider: a wealth of perspectives, a broad pool of knowledge, creative dissent,

constructive self-doubt, an eye for unanticipated outcomes, and most importantly, an ability to see every angle of the multi-faceted challenges clients bring to lawyers every day. A law firm afflicted with commonality fails to see what its members aren't looking for, and sooner or later, that will be fatal."<sup>43</sup>

### **Better Recruiting**

- An inclusive environment may foster recruitment of additional diverse and female attorneys, thereby increasing the pool of applicants. Diverse candidates are not the only ones who evaluate the composition of a legal organization to assess its commitment to diversity; non-diverse law students are turning down offers from law firms with few diverse attorneys.<sup>44</sup> But inclusiveness is broader than just hiring diverse law students; it involves a commitment to bring in diverse lateral attorneys at the partnership level and, more importantly, to promote diverse associates into the partnership ranks. In 2010, the National Association for Legal Career Professionals (NALP) reported that for the first time since it began gathering data from lateral attorneys that diversity is now among their top five concerns and disappointments at their new firms.<sup>45</sup>

### **Lower Attrition and Reduced Turnover Costs**

- Inclusiveness is about retaining and advancing talent. When you create an environment where everyone feels valued and that they can succeed, they will naturally be more likely to stay. This reduces turnover costs - not only hard costs, such as expenses for recruiting and training new hires - but also opportunity and investment costs, all of which may be as high as \$350,000 for a third-year law firm associate, according to NALP.<sup>46</sup>
- Inclusive legal organizations invest in their attorneys and staff by providing professional development opportunities which reduces attrition.

### **Greater Productivity and Engagement**

- People rarely produce their best work when they have to spend time fitting into someone else's mold. Inclusiveness allows employees to let go of many concerns about not fitting the dominant culture which necessarily inhibit productivity. If you feel like you have to leave a major part of your identity at the door each day, you simply can't be as focused on the work at hand.
- Engagement and productivity are also negatively impacted when people do not feel valued in the workplace. In the fall of 2011, Gallup research showed that the majority of American workers were not engaged in their jobs, resulting in an estimated cost of \$300 billion annually in lost productivity.<sup>47</sup> Gallup's annual inclusiveness survey demonstrates that there is a "strong linkage between inclusiveness and employee engagement" which "leads to measurable improvements in business outcomes, including lower turnover, stronger customer loyalty, higher sales, and better profit margins."<sup>48</sup>
- A survey by the American Psychological Association concludes that nearly half of all workers do not feel valued at work, which leads to disengagement.<sup>49</sup> This finding is mirrored by a 2011 Corporate Counsel Women of Color study in which the number one reason given by female attorneys of color for leaving their firms to go in-house was that they did not feel valued.<sup>50</sup>
- Inclusive legal organizations improve productivity and innovation because communication barriers between people of different backgrounds are minimized.
- Inclusive legal organizations have higher morale and loyalty when they provide resources to employees that may have been previously unavailable such as flexible work arrangements, on-site day care, and child and senior care benefits (all of which make balancing work and personal commitments easier).

### Reduced Liability

- Diverse and inclusive organizations arguably limit their exposure to lawsuits based on discrimination. They have searched for and removed hidden barriers that often give rise to lawsuits.
  - Novartis AG settled a class action discrimination lawsuit in 2010 that accused the company of discriminating against female sales representatives. According to company President Andre Wyss, Novartis defended the suit vigorously until evidence at trial revealed incontrovertible misconduct by a few employees. The company recommitted to diversity and inclusiveness efforts as a result of the lawsuit. Wyss believes that “if the workforce does not actually reflect the diversity in the country, you won’t be successful over time. Diversity and inclusion should be embedded in your business as it’s a key success factor for a company. I believe it drives performance.”<sup>51</sup>
  - In dicta in a 2012 decision by the 7th Circuit (*McReynolds v. Merrill Lynch*), Judge Posner described how courts might find disparate impact in the informal process at Merrill Lynch where brokers formed teams, operating like “little fraternities” and routinely excluding black brokers simply by selecting brokers for their team who were more like themselves.

### General Benefits

- Inclusiveness creates a better workplace for everyone in the organization. There is a basic human dimension to inclusiveness that cuts across differences – all people want to be included and valued in their workplace. Law firms that create cultures of inclusion are rated highest by their associates in national surveys, as reported by the ABA Journal.<sup>52</sup>
- Inclusiveness is a “win-win” proposition. Inclusive organizations get the best from each person in terms of commitment, productivity, motivation, and creative thinking. When the organization truly values each person and responds to them as individuals, they thrive and the organization benefits.
- Inclusive organizations generate good publicity and generally have better reputations. Attorneys throughout the community, and particularly younger diverse attorneys, communicate with each other about “the numbers” and the inclusiveness of firm cultures.
- Inclusive organizations likely will benefit from the fact that a good work environment often matters to younger attorneys more than money.
- Organizations that are inclusive necessarily feel more welcoming and inviting to all who interface with the organization, including vendors, visitors, and potential clients.
- Inclusive legal organizations are more attractive to other firms for mergers, since they have already moved forward in creating firm cultures built for the future.
- Inclusive organizations reflect the integrity of the legal system by enhancing credibility and trust among all in the community.

### ***Misperceptions and Myths about Inclusiveness***

When starting an inclusiveness initiative, leadership and members of the Inclusiveness Committee may need to spend some time dispelling common assumptions and misperceptions about inclusiveness, including the following:

**Table 2. Misperceptions and Myths about Inclusiveness**

<b>Misperception/Myth</b>	<b>Response</b>
“Inclusiveness is really only about affirmative action.”	Inclusiveness is about retaining and advancing the talent you have already worked hard to recruit into your organization; those in whom you have already invested – the “keepers.” Inclusiveness efforts also help retain non-diverse attorneys and staff.
“We’re already ‘doing’ diversity and have been for a long time; we don’t need to start an inclusiveness initiative.”	Inclusiveness represents an entirely new paradigm and not some new and improved version of traditional diversity efforts (which haven’t worked).
“Inclusiveness is really just the same as diversity.”	Inclusiveness is a radically different approach and involves deep systemic changes in the organization as well as participation by everyone.
“No one is discriminating against diverse attorneys.”	Most of the marginalization causing diverse attorneys to leave in higher numbers is unintentional. It happens because majority attorneys who control opportunities in the organization prefer to work with others who are like them and have similar backgrounds and interests. This is caused by bias FOR people – not bias against others.
“We treat everyone the same in this organization.”	These statements ignore the hidden barriers documented in national research studies. In fact, diverse attorneys are often not treated the same as those in the majority. Inclusiveness is about removing those hidden barriers.
“Inclusiveness will water down efforts to increase representation (diversity) in the organization.”	The core of an inclusiveness initiative is to remove hidden barriers impeding the progress of diverse attorneys so that they can be retained and advanced. At its core, inclusiveness presumes continued focus on diversity and recruiting. Diversity efforts and increasing representation are absolutely essential to an inclusiveness initiative. Diversity PLUS inclusion is the ultimate goal. It is not an “either/or” proposition; it is an “and/both” proposition.
“We have a lot of diversity; we don’t need to focus on inclusiveness.”	Not unless you want to keep those diverse attorneys and staff and have productive, engaged people in your organization. You can have a lot of diversity but no inclusiveness. If you survey diverse members of the organization, you might be surprised to learn about the depth of discontent.

### ***What Is an Inclusiveness Initiative?***

An inclusiveness initiative is a concerted, organized effort on the part of an organization to become more inclusive of all individuals, with ***a specific focus on increasing and integrating historically excluded populations.***

Unlike diversity initiatives that focus primarily on statistics, events and limited attempts to change the structure and culture of an organization, inclusiveness initiatives focus on integrating inclusion into everything that the organization does. In other words, if diversity seeks to change the face of your organization, inclusiveness seeks to change the organization itself.

Whether you are in the process of creating a new inclusiveness initiative or advancing an already robust effort, it is important to recognize that the change process is cyclical. As you implement the six steps of the inclusiveness manual, you will be advancing in terms of organizational development to higher levels of inclusiveness. To move from one level of inclusiveness to the next, you may have to re-evaluate and revisit how you are approaching and advancing inclusiveness in your organization. What worked during early efforts may not work as your inclusiveness initiative becomes more sophisticated.

Finally, advancing inclusiveness is a journey, not a destination. Even organizations that advance into the highest level of inclusiveness, as demonstrated on CLI's "Advancing Inclusiveness Model (AIM) for Excellence" below, need to be diligent in their efforts to stay at that level. Even doors that are removed can slowly be resurrected if the workplace is not persistent in maintaining an environment that is truly open to all.

### ***How Long Will It Take to Complete an Inclusiveness Initiative?***

The process of engaging in an inclusiveness initiative is just that – a process. It will never be "finished" until diversity and inclusiveness have been embedded throughout every aspect of the organization and become such an integral part of everyday business operations that the issues are not separable or identifiable apart from the organization. In a successful initiative, diversity and inclusiveness become a part of the "DNA" of the organization and are as central to its well-being as a healthy bottom line.

In general, it is best not to rush the process on an inclusiveness initiative. It takes time to do this work well and, not surprisingly, success will depend in large part on how inclusive the process itself is.

Engaging in a methodical process to evaluate where your organization measures up against the AIM for Excellence Model and what steps you need to take to get to the next AIM level will ensure that you do not lose momentum. This process can also be understood as a "campaign approach" that seeks to persuade and build momentum through concerted and collective action. People can get frustrated if they feel that nothing concrete has materialized as a result of their work, which can result in dissatisfaction with the inclusiveness initiative. Thus, you want to strike a balance between moving the process forward, showing accomplishments along the way, and taking enough time for people to provide input into the process.<sup>53</sup>

CLI intentionally adopted a campaign approach in bringing inclusiveness to the legal profession as a sustainable solution to lack of diversity. This approach has worked well to create tremendous momentum within the Inclusiveness Networks. Thus, it is recommended that your Inclusiveness Committee consider embracing the following elements in your inclusiveness effort:

- Develop an inclusiveness action plan that mobilizes people.
- Place your energy into actions in order to maintain momentum.
- Commit to forward movement, even without the complete engagement of all.
- Create an expectation that you may well act your way into new thinking.
- Give ideas life by trying new things; not everything will work, but try it and learn from it.

### ***Will Organizations Be Finished After the Implementation Phase?***

Yes and no. You will have completed the formal elements of the manual and have a lot to show for your work. Moreover, you will be well on your way to becoming more inclusive as an

organization. On the other hand, inclusiveness work is never absolutely complete. Inclusiveness is a continual process rather than a fixed destination. Your organization will need to continue to re-assess programs and policies to determine how well you are meeting the ever-changing needs of the organization.

Becoming more inclusive requires a commitment to an in-depth, extended process, and this manual is best suited for those organizations able to make that commitment.<sup>54</sup> Most legal organizations have mastered the basics of diversity programs but going to the next level – inclusiveness - requires more time, resources, energy, commitment, and accountability. The most important point is that your organization and its leadership must make a continued commitment to addressing both diversity and inclusiveness in your organization.<sup>55</sup>

Over time, most organizations will develop mechanisms to ensure that inclusiveness is institutionalized at every level. For example, it may become so integrated into the strategic planning process, performance reviews, recruitment, and the organization as a whole, that it is no longer necessary to maintain a separate inclusiveness initiative. You will always want to take steps to ensure that your programs and organizational culture are inclusive and that newcomers to your organization share an understanding of inclusiveness. This, too, will evolve to simply be a part of the way your organization does business.<sup>56</sup>

### ***Twelve Factors for Creating an Inclusiveness Initiative***

Lee Gardenswartz and Anita Rowe, national diversity experts, recommend consideration of the following when creating an inclusiveness initiative:

1. “A long-term change effort is required to realize significant cultural change.
2. Time, energy, money, and emotional commitment are essential.
3. Support from the top is critical to success.
4. Don’t raise expectations that may eventually be dashed.
5. Expect discomfort: change is unsettling.
6. Be clear about the depth and breadth of the effort.
7. Work to modify the systems you already have in place.
8. Help employees understand the big picture and get beyond themselves.
9. Set measurable criteria.
10. To get better support for the changes, employees must be shown something better will result than what currently exists.
11. Training is necessary but not sufficient.
12. There is no ‘there’ there [the work will be on-going].”<sup>57</sup>

### ***Additional Helpful Qualities in Launching an Inclusiveness Initiative***

- Openness to feedback about the organization’s work.
- Expectation that this work may involve difficulty and discomfort.
- Strong internal and external communication, both formal and informal.
- Organization’s ability to change.
- Conflict-resolution skills within the organization.
- An internal culture of respect.
- A belief in the value of differences.
- A belief that diversity matters in the delivery of legal services.
- An ability to set and reach goals and objectives.



- An ability to track, measure, and evaluate progress.
- Designation of someone within the organization who can act as an ombuds and allow sharing of confidential information from staff and attorneys to upper management.

### ***Be Strategic in Starting an Inclusiveness Initiative***

Where do you start if few members in your organization are ready to pursue an inclusiveness initiative? How do you engage those who hold power in your organization and who can actually make change happen?

This is perhaps the greatest challenge in getting an inclusiveness initiative off the ground, sustaining it and embedding inclusiveness throughout every aspect of the organization. Even when the top leader in the organization is invested, his or her influence may not be sufficient, especially in law firms where rainmakers and practice group leaders can easily dismiss the managing partner's entreaties on diversity and inclusiveness. As one managing partner in Denver lamented about some of his partners, "I can't go back to my firm and wag my finger [on diversity and inclusiveness] because they'll just give me another finger."

Some might think that the data (described at length below) would be compelling and cause people to act. It isn't enough, however, as demonstrated by the case of the Wall Street law firm that paid a consultant to examine its evaluation process for hidden gender bias and then deliberately ignored the results when gender bias was documented.<sup>58</sup> In a blog on the issue, the reality was acknowledged: "So many firms out there are 100% driven by the annual payout for the equity partners, that rocking the boat, shaking things up, is seen as too expensive, unachievable, and really not that valuable in comparison to the PPEP [(profit per equity partner)]."<sup>59</sup>

You have to find equally important countervailing interests if you want successfully implement an inclusiveness initiative. Be strategic in your thinking on this issue:

- Are there important clients who ask about diversity and inclusiveness in RFPs that can be leveraged? Find a way to engage those clients in joint D+I efforts such as scholarships, pipeline events, training, or CLI's Inclusiveness Network. Having clients in the room is a powerful motivator.
- Become fluent in the "why" of D&I so you can customize your messages to different constituents.
- Come up with a clear, comprehensive and non-negotiable case for diversity and inclusiveness. Unfortunately, it sometimes takes a near- or actual crisis to propel people to change so find a way to create urgency (see the discussion below on overcoming apathy).
- Create an outside accountability mechanism, such as participating in CLI's Inclusiveness Network or creating an external advisory board (discussed in Step Two).
- Create internal accountability measures, such as quarterly reports on clients who ask about diversity and inclusiveness in RFPs which are communicated to all partners.
- Have key allies in leadership set up one-on-one lunches with disengaged lawyers or invite them to a diversity event to gain their buy-in or at least reduce their resistance.
- Appeal to people's competitive nature by pointing to similar organizations making headway with diversity and inclusiveness (D+I).

## **Summary**

Inclusiveness work is a marathon, not a sprint: it will take time, patience, endurance, and continuous leadership. Throughout this manual, your organization will likely experience highs and lows, and it will need internal strength and external support. But at the completion of the different steps of the manual, you will have a concrete action plan for how to make your organization more inclusive and will be well on your way to implementing this plan.<sup>60</sup>

## Introduction: AIM for Excellence – Advancing Inclusiveness Model

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### *Stages of Diversity*

The legal profession is slow to recognize that there are different stages of organizational development with respect to diversity. It is an evolutionary process with three distinct stages of development:<sup>61</sup>

#### **First Stage of Organizational Development: Monocultural**

Many legal organizations, even if they have diverse attorneys and staff, operate as a monocultural organization, functioning as if everyone has similar backgrounds. In this type of organization, there is a strong unspoken rule that everyone should conform to one standard. The culture is usually built around the values, needs, and beliefs of the founders and leaders, who are usually white men. Success in these organizations is, therefore, measured by standards set by white men that reflect white male culture. Anyone who is different - women, racially/ethnically diverse, LGBT, disabled - is expected to assimilate to this dominant style.

Leaders and management in a monocultural organization claim they are “color and gender blind” in their operation of the organization and that “everyone is treated the same.” What they fail to see, because they don’t often look into their blind spots, is that diverse attorneys and staff have to spend time and energy leaving major parts of their identity at the door each day and assimilating to the prevailing culture in order to be successful. This extra effort is often wasted since they just can’t fully conform or “fit in.” Outliers with exceptional inter- and intra-personal skills are held up as examples of what others could achieve if they could only “fit in.” (See the discussion below about how unconscious bias for those in the majority operates to marginalize diverse attorneys.)

#### **Second Stage of Organizational Development: Nondiscriminatory**

As the organization evolves, it reaches the second stage – nondiscriminatory – where there is much more attention paid to hiring and promoting diverse attorneys particularly if some outsider (i.e. a client) is pressing for greater diversity. Promotion presumes retention so the organization becomes much more interested in why diverse attorneys are leaving in higher numbers than non-diverse attorneys. This is the stage where diversity training is employed and inclusiveness efforts are initiated. Diverse attorneys and staff still feel as if they must assimilate to be successful – to look, act, dress, and behave like those in the majority. They are not valued for the differences in backgrounds, perspectives, and styles they bring to the table.

#### **Third Stage of Organizational Development: Multicultural**

If the organization presses forward with inclusiveness efforts, it will reach the third stage of development – the multicultural stage:

“In this stage, there is not only a recognition that there are clear differences of culture, background, preferences, and values, but a valuing of those differences and the benefits they bring. Assimilation is no longer the model for success. Rather, new norms are created that allow more leeway for employees to do things their own way. Organizational policies and procedures are flexible enough to work for everyone, and no one is put at an exploitive advantage.”<sup>62</sup>

The goal of an inclusiveness initiative is to reach this latter stage -- to create a culture, build a structure, and encourage individual behaviors that value differences and incorporate them into the fabric of the organization.

## ***Assessing Where Your Organization Currently Stands***

The following model and exercise, created by the Center for Legal Inclusiveness and Dr. Arin Reeves, Nextions LLC, will help you assess where your organization stands in terms of development.

*Imagine for a moment that you hear about an amazing place of opportunity filled with incredible people whom you want in your life as colleagues and friends. Imagine now that you are given a list of qualifications that you need to obtain and accomplishments you need to achieve in order to enter this amazing place that has captured your imagination. You work hard to obtain the qualification and achieve the prerequisite accomplishments, and you are finally given the location of this place and directions on how to get there.*

*Now, imagine that you have arrived at the right address and you announce your presence and knock on the door, but no one opens the door. You try and open the door only to realize that it is locked. Frustrated, you might kick the door or even pound on it with all your might. The door does not budge. Finally, after hours of trying to get in, you see a group of people come out, but they don't even notice you. When you try and speak to them about the locked door, they look at you like you may be a bit crazy because when they initially arrived the door had not been locked.*

*After years of personally struggling to get the doors to this place unlocked and watching others like you try to get the doors to this place unlocked, you and others like you get the attention of few of the people inside who realize that it may not be right to let you languish outside. One of the individuals from inside may come out, introduce himself to you and invite you in. However, once you are inside, you are consistently reminded that you are inside because of the good graces of the person who invited you in. You are inside, but you are still treated very much like an outsider.*

*Then, after you have struggled in this place for a while as an outsider who is desperately trying to fit in, you realize that there are more people who are beginning to recognize just how many people are languishing outside. You decide to explain to people that even though they have unlocked the doors, many people are not going to open the doors on their own because, after years of encountering locked doors, they may not believe that the doors have actually been unlocked. You convince enough people of the realities you know exist outside the doors to this amazing place, and the people decide to open the doors. There are, however, many people on this inside who are afraid that if the doors are opened too wide, many unwanted people may enter along with the wanted people so the place decides to open the doors just a bit instead of all the way. There are people who are convinced that the outsiders are outside because they don't have what it takes to come inside. And the outsiders who are let in are treated well sometimes and not so well at other times. They often feel like, although they are inside, they have to work much harder than the insiders in order to stay inside. Many of the outsiders eventually leave because it is too difficult to fit in with the insiders who often point out all the ways in which the outsiders differ from the insiders. Some of the insiders who hear the outsiders' stories are sympathetic, but some of the insiders see the outsiders as complainers who want to take from the place but not put in the work necessary to survive in the place.*

*Notwithstanding the number of outsiders who got in but are leaving the place, the partially open doors give hope to many of the people who are outside the doors. They can now see into the place, and they feel the likelihood of being invited in increase. There are, in fact, many more people from the outside invited in because so many people on the inside realize that there are amazing people on the outside whose talents can greatly benefit the place. As the outsiders enter, the insiders realize that it is not okay to make the outsiders feel like they are outsiders. So, they go out of their way to decrease the ways in which outsiders are made to feel like outsiders. Their efforts are sometimes successful, but the outsiders are often reminded in subtle ways that they are not really insiders. Some of the outsiders stick it out because the place is really amazing, but many of the outsiders leave because of the stress and loneliness of being an outsider.*

*As more and more outsiders leave, some of the insiders realize that the place actually needs the outsiders, and they can't afford to keep losing the outsiders. So, they decide to open the partially open doors fully, and they stand at the door to actively invite in the outsiders. They welcome them into the place and tell them how valued they are and how they want them to stay. Many of the insiders also work with other insiders to convince them that the place, as a whole, needs to change so that the outsiders will start to feel at home like the insiders do. The insiders work to keep the door propped open at all times, and they invite the outsiders to help the insiders understand how to make the place feel like home to everyone. The place now has more outsiders than ever before and the outsiders and insiders get along pretty nicely. However, every time one of the outsiders walks past the door, they are reminded of how the doors used to be closed and locked to them, and they wonder what will happen if the insiders suddenly decide to close the door again or perhaps even close it and lock it again. The door reminds the outsiders that they are, in reality, outsiders no matter how many insider friends they have or how successful they have become in the place.*

*As the insiders hear how the outsiders feel about the door, insiders realize that the existence of the door sends the wrong message about what the place has become. They take down the door. Now that the barrier between the inside and the outside is gone, the outsiders feel less like outsiders and the insiders feel less like insiders. It is scary for both groups to feel that way, but everyone realizes that the place will only continue to be an amazing place if that door stays gone.*

*As you read the above narrative, did you empathize more with the insiders or the outsiders? What emotions did you feel as you read the narrative? Can you think of ways in which your workplace has metaphorically locked or closed doors? What about partially open or fully open doors? What about revolving doors – does your organization have higher attrition rates among diverse attorneys?*

The five levels in the Advancing Inclusiveness Model (AIM) for Excellence, a model for the legal profession based on research by Evangelina Holvino and others,<sup>63</sup> describe what organizations look like and how they operate at each level. Before your workplace embarks on an inclusiveness initiative, it is important to study the five levels described in the model below and assess the level at which your organization currently operates (see Exercise 1 below).

**Table 3. Advancing Inclusiveness Model (AIM) for Excellence  
Organizational Development Model**

<b>Advancing Inclusiveness Model (AIM) for Excellence</b>	
<b>LEVEL 5: Inclusive Organization  (No Doors)</b>	<ul style="list-style-type: none"> <li>Diversity and inclusion are core values of the organization</li> <li>Organization includes members from several different social identity groups and those members are found in all levels, departments, divisions and practice groups of the organization</li> <li>All aspects of the organization (mission, values, operations, services, policies, procedures) reflect the contributions and interests of the wide diversity of cultural and social identity groups</li> <li>Organization seeks and values diversity; leaders and members have eradicated all forms of oppression within the organization and eliminated all hidden barriers to success</li> <li>Systems and work practices support members of every group to succeed and fully contribute</li> <li>Members across all identity groups are full participants in decision-making and leadership</li> <li>Organization provides support, both internal and external, for all members based on their individual needs; affinity groups are no longer needed for support</li> <li>Differences of all types become integrated into the fabric of the business, such that they become a necessary part of doing its everyday work</li> <li>Diversity is seen as a valuable asset to be developed, rather than a problem to be managed</li> <li>Diverse members regularly report feeling valued, included and deeply connected to the organization</li> </ul>
<b>LEVEL 4: Redefining Organization  (Fully Open Doors)</b>	<ul style="list-style-type: none"> <li>The organization is in transition – members recognize the difference between diversity and inclusiveness; the organization is actively embracing change</li> <li>Everyone understands the value of diversity and, particularly, of inclusiveness, as well as business case and inherent advantages of greater diversity and inclusiveness</li> <li>Working to create an environment that values and capitalizes on diversity</li> <li>Working to ensure full inclusion of diverse attorneys and staff to enhance growth and success of organization</li> <li>Proactively works to question limitations inherent in the dominant organizational culture: mission, policies, structures, operations, services, management practices, climate, etc.</li> <li>Makes necessary changes and develops an organization that values and includes multiple cultures</li> <li>Provides supplemental support and career development opportunities to increase success for underrepresented attorneys; fully supports separate affinity groups for under-represented groups</li> <li>Committed to assessing, redesigning and implementing policies and practices to ensure the inclusion, participation and empowerment of all members</li> </ul>
<b>LEVEL 3: Awakening Organization  (Partially Open but Revolving Doors)</b>	<ul style="list-style-type: none"> <li>Recognizes that recruiting efforts won't solve the diversity issues and retention problems will not change without a totally different approach</li> <li>Dominant group still largely unaware, however, of how organizational culture impacts diverse groups but beginning to be more aware and open to finding hidden barriers and making structural, cultural, and behavioral changes</li> <li>Subtle ways in which the norms, structures and methods of working still favor dominant group and makes it hard for those of difference to feel they can contribute or advance</li> <li>Committed to eliminating blatant or overt discriminatory practices and inherent advantages</li> <li>Implements a more active approach to recruiting and promoting members of historically underrepresented groups</li> <li>Employees supported through training to be aware of how underrepresented groups are impacted by the dominant culture and structure of the organization as well as behaviors that are not inclusive</li> <li>Hidden or unofficial culture still undermines inclusiveness and erodes diversity efforts through attrition (racist/sexist/heterosexist jokes and behavior still tolerated; micro-inequities still exist)</li> <li>Diverse employees feel compelled to assimilate to organizational culture (e.g. LGBT employees reticent in discussing vacation plans or displaying photos of partner) and work to make co-workers feel</li> </ul>

	<ul style="list-style-type: none"> <li>comfortable with their discomfort about differences</li> <li>Diversity and inclusiveness efforts (funding and resources) suffer in difficult economic times since diversity and inclusiveness are not core values for the organization</li> </ul>
<p><b>LEVEL 2: Compliance/ Tokenism Organization</b></p> <p><b>(Unlocked but Closed Doors)</b></p>	<ul style="list-style-type: none"> <li>Diversity is viewed as a compliance issue – outside pressure from clients or legal compliance programs are the primary drivers</li> <li>Allows a few “token” members from other social identity groups but only if they are better “qualified” and can fully assimilate into the dominant culture as well as keep any negative views about the dominant culture to themselves</li> <li>Token members are admitted in when dominant sponsors open doors for them</li> <li>No recognition of need for change in organizational culture, mission or structure because the dominant culture still feels “normal” and natural</li> <li>“Good fit” for the organization is still extremely important but no real awareness of what the dominant culture is or how it impacts members</li> <li>Committed to removing some of the more blatant discrimination inherent in the organization but completely unaware of the structural, cultural and behavioral barriers to recruitment and retention of diverse people; disconnect between verbal commitment and consistent action in regards to compliance</li> <li>Assimilation into dominant organizational culture required; no one permitted to challenge the system or “rock the boat” and certainly not raise issues of sexism, racism, classism, ableism, heterosexism, religious oppression, ageism</li> <li>Most people in the organization are oblivious to lack of diversity and the subsequent discrimination and/or hostile work environment for diverse individuals who may be hired into the organization</li> </ul>
<p><b>LEVEL 1: Exclusionary/ Discriminatory Organization</b></p> <p><b>(Locked Doors)</b></p>	<ul style="list-style-type: none"> <li>Has no diverse attorneys or staff</li> <li>Is either explicitly or implicitly not including all groups in recruiting, hiring and advancement</li> <li>Dominant group still openly maintains its power and privilege</li> <li>Membership is exclusive and heavily favors dominant group</li> <li>Structure, policies, procedures are all functioning to maintain dominance</li> <li>Culture is heavily influenced by dominant group and is reflected in every aspect of the organization</li> <li>Structure, policies and procedures maintain privilege of those who have traditionally held power and influence</li> <li>The organization’s way of doing things is viewed as the only “right” way and “business as usual”</li> <li>Engages in diversity issues only on members’ terms and within their comfort zone</li> </ul>

The AIM Model, as its name suggests, is about striving to make your workplace a place where there are no doors blocking any individual’s path to success.

**Exercise 1:** You can use the AIM Assessment Tool in Appendix A to measure people’s perceptions of where your organization is on the 5-point scale. The Inclusiveness Committee should complete the assessment tool and engage in a discussion comparing different people’s perceptions and views of the various elements that make the organization more inclusive or exclusive. You should note that people experience aspects of the organization in different ways, and a discussion should start with an acknowledgement that there is no right or wrong answer, because people are going to have varying experiences and perceptions. The Inclusiveness Committee can also incorporate the assessment tool into a survey for the rest of the organization to obtain a broader view of people’s perceptions about the components of where the organization stands in terms of inclusiveness.

**Complete Exercise 1:** Assessing your organization’s level of inclusiveness (Appendix A).

Regardless of which AIM level your organization currently occupies, the goal of leadership should be to keep moving toward a level where inclusiveness is integrated into the organizational culture as a key core value. Repeating the steps described in this manual is often required to get your organization to move up from one level to the next, but every time you advance, it becomes easier and easier to implement the steps.

Good intentions and surface-level programs will not move an organization from one level to the next; concerted efforts and repeated work through the six steps will.

### ***What Are the Steps of an Inclusiveness Initiative?***

The steps required to advance from one level to the next are outlined below.

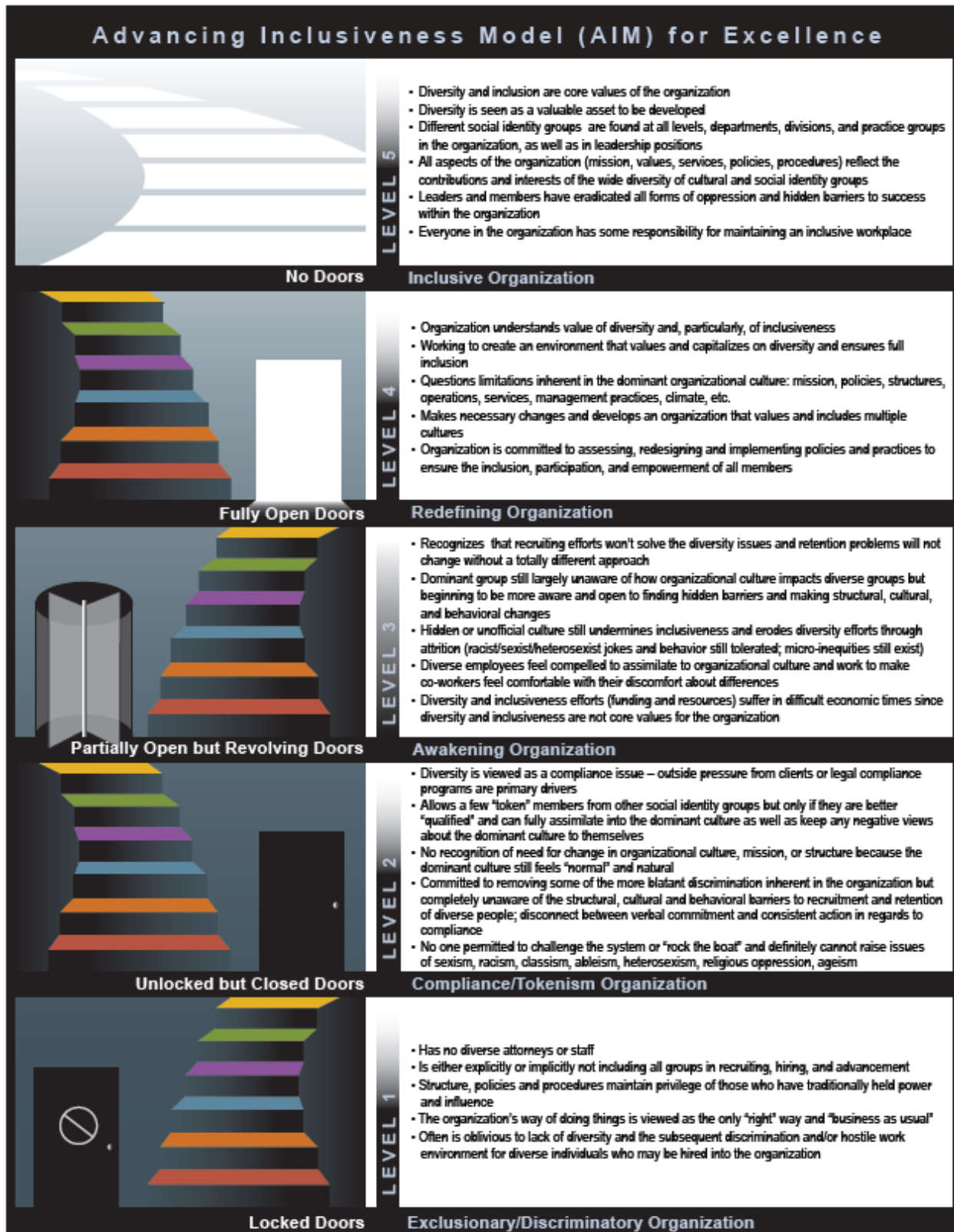
**Table 4. Steps to Creating an Inclusive Organization**

<b>STEP 1:</b>	<b><i>Laying the Internal Foundation (RED)</i></b> Leadership Creating an Inclusiveness Committee White Male Allies Overcoming Apathy Removing Barriers & the Impact of Bias
<b>STEP 2:</b>	<b><i>Creating an External Support System (ORANGE)</i></b> External Advisory Board Consultants & Trainers Other Organizational Resources (i.e., Bar Associations, etc.)
<b>STEP 3:</b>	<b><i>Integrating Inclusiveness within Your Organization (BLUE)</i></b> Examining Your Organizational Culture Building the Case for Inclusiveness Gathering and Analyzing Information Removing Structural Barriers Inclusiveness Training & Diversity Dialogues Ten Ways to Fight Diversity Fatigue
<b>STEP 4:</b>	<b><i>Integrating Inclusiveness into External Relationships &amp; Communication (PURPLE)</i></b> Web Presence Client Communication & Marketing Recruiting/Hiring Communication & Marketing Strategic Community Involvement
<b>STEP 5:</b>	<b><i>Implementation (GREEN)</i></b> Creating an Inclusiveness Action Plan Enforcing Accountability Measuring Success
<b>STEP 6:</b>	<b><i>Collective Effort &amp; Success: The Inclusiveness Network (YELLOW)</i></b> Case Studies of Legal Organizations Embracing Inclusiveness

These steps work seamlessly in concert with each other to propel your organization to the next level of the AIM for Excellence Model. The steps can sometimes be achieved in a linear way where you progress from each step to the next; however, it is quite common to have to accomplish these steps in a cyclical way that allows for revisions to goals, strategies and resources.

The full color model below shows how the steps are integrated into the Advancing Inclusiveness Model (AIM) for Excellence:





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## Introduction: Successful Inclusiveness Initiatives in Other Sectors

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Even though inclusiveness is relatively new to the legal profession, other industries and sectors have fully embraced inclusiveness and made significant progress with respect to diversity (representation of various social identity groups). There are many examples from accounting firms, corporations, higher education, and the nonprofit sector that the legal profession can turn to for inspiration and models for success in reversing the seemingly intractable problem of diversity.

### **Corporations**

Much of Corporate America has fully embraced both diversity and inclusiveness. Chief Executive Officers of major U.S. corporations have invested significant resources in their inclusiveness initiatives.<sup>64</sup>

#### **Lockheed Martin Corporation**

***“One company, one team, all-inclusive, where diversity contributes to mission success.”***

“Nothing defines a successful corporate culture more fully than the way it fosters the inclusion of all employees and values their individual talents and differences.”<sup>65</sup> This is what Lockheed Martin Corporation found with its Diversity Maturity Model (DMM), an extensive inclusiveness program the company first implemented in 2000.

Lockheed Martin's inclusiveness initiative includes many elements: diversity leadership training for managers, ethics training which teaches employees how to recognize and confront inappropriate behavior, work-life balance programs, and career development opportunities. The commitment to inclusion in the Lockheed Martin starts at the top with the Executive Diversity Council and visible and active support from the CEO and continues down to the local level with more than 30 Diversity Councils at operating units.

In addition, Lockheed supports diversity through its Women's Success Forum, African American Leadership Forum, Council of Asian American Leaders, and Hispanic Leadership Forum, as well as 125 affinity groups at locations across the company. The forums enable managers to support each other and share career development experiences, while the affinity groups give employees with a common perspective or shared affiliation an opportunity to join together to explore how they can more fully contribute to Lockheed Martin's success.

To track progress in the area of diversity and inclusion, Lockheed's engineers developed a metrics system that includes five phases:

- Level One – Foundational
- Level Two – Enlightened
- Level Three – Embraced
- Level Four – Integrated
- Level Five – Institutionalized Inclusion

Lockheed assesses its progress along this continuum through a combination of measures, including internal survey results (what people think), business unit self-assessment against best

practices, and representation (number of diverse employees and attrition statistics). Everyone at Lockheed Martin participates in the program through regular surveys, trainings and dialogues, and is held accountable through job duties and evaluations for their efforts to create a more diverse and inclusive company. Since implementing the DMM, Lockheed has reached Level Three – Embraced. Efforts to improve and achieve higher levels of success are concerted and on-going.

## **Xerox Corporation**

Xerox provides another example of the importance of inclusion in corporations. The President and CEO describes the company's imperative as follows:

"Diversity is a constant we can be proud of at Xerox. We live and work in a diverse world and having a diverse workforce is a competitive advantage and makes good business sense. When we foster an inclusive culture, it allows us to leverage our differences, reach our full potential, and ultimately be an employer and supplier of choice. Diversity and inclusion benefits everyone; let's celebrate it every day."<sup>66</sup>

The inclusiveness program at Xerox is described on its website as follows:

"Often when people think about diversity and inclusion they think it's about quotas but to Xerox it goes beyond the numbers to how we leverage the talents, innovation and creativity of our workforce. An inclusive workplace also goes beyond gender and ethnicity; we also look at it in terms of generations, sexual orientation, family status, physical or mental abilities, learning styles, thinking styles, etc. because inclusiveness encompasses everything that makes us different or unique.

As a company, it is one thing to say you have a diverse workforce but quite another to make sure that those who make up that workforce are continually given every opportunity to flourish without limits. Xerox offers such assurance through a variety of programs and groups.

Under the company's Inclusive Workplace Strategy, senior managers are evaluated on their ability to hire, develop and promote a diverse workforce. This strategy has been carefully designed to improve imbalances in representation at all levels in the Xerox workforce. Among the things Xerox considers when recruiting is using a "diversity lens" to determine how its workforce will develop over time, which helps design a plan for the future. We ensure resource planning is inclusive of all our employees, now and into the future."

## **Accounting**

Accountants have done a much better job of creating a profession that is inclusive of difference. National statistics show that over 26% of accountants are racially/ethnically diverse, for example, compared to only 11% of lawyers.<sup>67</sup> Additionally, over 61% of accountants are women.<sup>68</sup> Although women only hold 19% of partnerships in accounting firms, there are other management positions besides partnership and women hold between 11-31% of all management positions in accounting firms of all sizes.<sup>69</sup> In comparison, women account for only 19% of the partnerships in law firms even though they have received almost half of the JDs in the past 25 years. Why is the legal profession so far behind the curve?

Howard University's Center for Accounting Education published a white paper on retaining African Americans in the accounting profession in February 2010 that provides a "Success Model" for accounting firms seeking to make organizational changes to reduce attrition rates.<sup>70</sup> The model, like this inclusiveness manual, calls upon organizations to change their structures and cultures to be more inclusive. The three components of the model include: 1) an examination of unconscious bias and training for managers in inclusiveness, 2) changes to the structures and systems of the organization, and 3) support for diverse accountants in their first two years so that they can build "eminence" in the organization.

### **Deloitte & Touche**

Deloitte & Touche USA launched an inclusiveness program in 1993 called the Women's Initiative, which is credited with reversing higher attrition rates among women. The accounting firm formed a task force in 1992 to study why women were not reaching partnership and interviewed current and former employees to identify the reasons. The task force recommended a multi-dimensional approach that focused on three main areas:

1. Creating a more inclusive environment for women;
2. Providing women with greater access to "career-defining opportunities" through strengthened mentoring, networking and career-planning programs; and
3. Making flexible work arrangements available to employees at all levels.

Deloitte's efforts have all the hallmarks of a model inclusiveness initiative. The accounting firm treats the Women's Initiative as a core business strategy which firm leaders have visibly supported and championed and it has become an essential part of the firm culture.

### **Ernst & Young**

Ranked among the top five companies on Diversity Inc's top 50 list the last three years, the accounting firm of Ernst & Young also considers diversity and inclusiveness a core business strategy:

"Our Global Chairman and CEO, Jim Turley, has challenged our global organization to commit time, resources and executive leadership to arrive at this refreshed vision of diversity and inclusiveness. Our global management team has identified diversity and inclusiveness as one of two "transformational" priorities for Ernst & Young. Our Global Diversity and Inclusiveness Leader has counterparts in each of our major geographic areas, including Americas Inclusiveness Officer Billie Williamson who leads a multi-functional team that advises our people and teams on effective inclusive strategies and practices."

At Ernst & Young, partners are rated on four different parameters of success, such as effectiveness in leading and managing people, including the ability to retain and advance women and employees of color. So that rewards match rhetoric, the business-critical nature of effectively leading people is reinforced by ensuring that a partner's total score (which determines compensation) cannot be more than one point higher than the score received for this category – regardless of the amount of business an individual partner has brought in. This is a strong accountability measure that conveys the message that bringing in work without keeping talented people does neither the client nor the firm any good.

Ernst & Young's diversity and inclusiveness efforts have resulted in significant change in several key measures:

- Racially/ethnically diverse partners and staff represent 30% of Ernst & Young's total U.S. employee population, more than double the representation from a decade ago.
- The number of Ernst & Young partners or principals of color in the U.S. has more than tripled since 1995.
- Racially/ethnically diverse hires account for 35% of the firm's total hiring from campuses.
- Women represented nearly 30% of all partner, principal, executive director and director promotions over the past few years.
- For two consecutive years, the Public Accounting Report listed Ernst & Young as highest among the Big Four in the U.S. for percentage of women in its new partner category.
- In fiscal year 2008, 51% of all new hires, 41% of client-serving experienced hires, and 51% of staff/intern hires were women.<sup>71</sup>

Ernst & Young also recognizes that diversity and inclusiveness starts with its pipeline. In 2009, the accounting firm donated \$500,000 to Indiana University's Kelley School of Business to create a new initiative at the school that will help it become more inclusive and attract more diverse students into the accounting profession.<sup>72</sup>

## ***Higher Education***

The Association of American Colleges and Universities (AAC&U) was the first to coin the term "inclusive excellence" and it has been a leader in spreading the concept to institutions of higher education throughout the country. The AAC&U's *Making Excellence Inclusive* initiative is "designed to help colleges and universities fully integrate their diversity and educational quality efforts and embed them into the core of academic mission and institutional functioning. Through this initiative, AAC&U re-envision[s] diversity and inclusion as a multi-layered process through which [colleges and universities] achieve excellence in learning; research and teaching; student development; institutional functioning; local and global community engagement; workforce development; and more."<sup>73</sup>

### **University of Denver**

In 2006, the University of Denver (DU) was introduced to inclusive excellence when Dr. Alma Clayton Pedersen, Vice President for Education and Institutional Renewal with AAC&U, delivered a keynote address at the annual DU Diversity Summit. A few months later, Chancellor Robert Coombe and Provost Gregg Kvistad asked the university's senior leadership to embrace inclusive excellence and begin working in conjunction with the staff of the Center for Multicultural Excellence (CME) to implement it at DU. Dr. Jesús Treviño, (former) Associate Provost and Director of the CME, spearheaded the university's inclusiveness initiative. There has been progress in implementing the principles and practices of inclusive excellence throughout all of the departments and schools at DU. Much of the progress has been systemic; particularly in embedding diversity into processes, systems, mission statements, and other structural dimensions of the university.

## Nonprofits

Nonprofits are also leading the way on inclusiveness under the guidance of The Denver Foundation's Inclusiveness Project.

Through its conversations with leaders in Denver's nonprofit sector, The Denver Foundation discovered a widespread interest in developing a deeper understanding of how diverse voices and experiences enhance and expand the work of nonprofits. Even though nonprofits had the desire, no one knew how to be more diverse and inclusive. So, in 2001, The Denver Foundation board of trustees established the "Expanding Nonprofit Inclusiveness Initiative" (ENII). The Denver Foundation began its work by conducting research to determine how inclusive the nonprofit sector in Metro Denver was, and what the best practices and barriers were to building inclusiveness. In the fall of 2002, ENII surveyed 210 nonprofits about their inclusiveness practices, and conducted in-depth case studies of 11 organizations.

The Denver Foundation hired a national diversity and inclusiveness expert, Katherine Pease, to research and develop a step-by-step workbook that would serve as a comprehensive guide for nonprofit organizations in developing cultures of inclusion. That workbook - *Inclusiveness at Work: How to Build Inclusive Nonprofit Organizations* - was published in 2005 and piloted with several nonprofit organizations in the Denver area. In 2009, The Denver Foundation launched a new website – [www.nonprofitinclusiveness.org](http://www.nonprofitinclusiveness.org) – dedicated to educating nonprofits across the country about the steps they can take to create cultures of inclusion. Success stories of nonprofits working to create cultures of inclusion and increase diversity are highlighted on the website, along with resources.

### Colorado Center for Law & Policy

One of the nonprofits using The Denver Foundation's workbook to create a culture of inclusion is the Colorado Center for Law & Policy (CCLP). Its mission is to secure justice and promote economic security for all Coloradans, especially lower income individuals and families. CCLP became involved in an Inclusiveness Initiative in 2005 after the board and staff determined they were committed to engaging in a process they believed would enable CCLP to better and more effectively serve its constituents, particularly in diverse lower-income communities in Colorado. Over time, those involved in the initiative realized what ought to have been obvious from the beginning – that the process they were about to engage in would have to be an ongoing one if they hoped to be an inclusive organization.

The board and staff believed that in order for CCLP to become an inclusive organization, it was necessary to identify why it did not adequately reflect the communities it served and identify how it might do so. In addition they recognized that in order to remain relevant as an organization this effort was critical. An organization must be able to meet the needs of its clients but cannot do so if it does not truly understand its clients and value their experiences.

CCLP identified the following goals and objectives as part of its effort to become a more inclusive organization:

- Learn more about what it means to be an inclusive organization.
- Conduct an honest assessment of the organization and programs.

- Develop a more inclusive board, staff, and advisory committee focusing particularly on bringing more people of color and lower income people into the organization and retaining them over the long-term.
- Develop policies, practices, and processes that foster and institutionalize inclusiveness within each of the program areas and administration.

The process CCLP engaged in and the policies and practices the nonprofit identified were captured in its Inclusiveness Blueprint (action plan), the document that guides staff and board (current and future) through the organization's journey toward inclusiveness.

The process is "not easy but it is necessary," according to T.A. Taylor-Hunt, the nonprofit's interim director.

## Introduction: Diversity in the Legal Profession

Diversity in the legal profession most often focuses on the four groups – racially/ethnically diverse, female, disabled, and LGBT attorneys – that are least represented. Understanding the way diverse attorneys experience the practice of law is an important place to start any inclusiveness initiative. While this chapter focuses on these groups, it is important to note that inclusiveness requires focused work on any group that is marginalized. Rankism, where legal professionals and staff feel excluded, is actually one of the most salient inclusiveness issues in legal organizations.

Generally, before people will engage in an inclusiveness initiative, they must be convinced there is something wrong with the status quo. Even then, it is often an uphill battle in legal organizations dominated by non-diverse attorneys to persuade them to make change happen. The only path to genuine progress is by recognizing the reality that:

- Some groups are severely under-represented in the legal profession, and
- Female and diverse attorneys and staff face hidden barriers in legal organizations – structural, cultural, and behavioral – that must be removed in order to create an inclusive organization.

### ***Demographics – Gaps in Representation in the Legal Profession***

Nationally, the legal profession continually lags behind other professions in terms of racial and ethnic diversity. A study conducted by the American Bar Association (ABA) in 2004 found that only Chief Executive Officers (CEO's), as a profession, were less diverse than the legal profession.<sup>74</sup> By 2009, even CEOs had out-stripped attorneys in terms of representation by people of color with lawyers falling to last place among all professions, according to statistics gathered from the National Bureau of Labor.

These statistics, which provide a picture of diversity across the entire legal profession, show that racially and ethnically diverse attorneys comprise between 11-12% of all lawyers, compared to over 30% of the workforce. Every year or two, CEOs or architects fall to the bottom of the list in a perpetual race to the bottom with attorneys. But it is hard to reconcile this poor performance with the fact that the guardians of equity and justice – lawyers – are regularly among the least diverse of all professions.

**Table 5. 2010 Statistics by Profession – U.S. Bureau of Labor<sup>75</sup>**

Profession – Ranked by % of Diversity	Percent of Total –African Americans	Percent of Total – Asian	Percent of Total – Hispanic or Latino	Total Percent of Diversity
Chemists	7.2	19.6	6.6	33.0
Physicians/Surgeons	5.7	16.4	6.3	28.4
Electrical Engineers	9.4	5.1	17.0	27.2
Accountants	8.0	10.3	6.3	24.6
Financial Managers	8.5	6.1	9.1	23.7
Mechanical Engineers	5.9	4.0	10.1	19.9
Psychologists	6.3	3.2	6.2	15.7
Architects	2.5	4.8	6.9	14.2
Chief Executive Officers	2.9	4.2	4.6	11.7
Attorneys	4.7	4.1	2.8	11.6



In 2011, attorneys once again traded places with CEOs in the continual race to the bottom:

**Table 6. 2011 Statistics by Profession – U.S. Bureau of Labor**

Profession – Ranked by % of Diversity	Percent of Total – African Americans	Percent of Total – Asian	Percent of Total – Hispanic or Latino	Total Percent of Diversity
Medical Scientists	7.0	28.4	7.5	42.9
Chemists	9.9	18.2	4.3	32.4
Physicians & Surgeons	5.8	15.7	6.8	28.3
Accountants	8.6	9.1	5.8	23.5
Financial Managers	6.7	6.9	8.1	21.7
Mechanical Engineers	3.2	11.0	3.7	17.9
Psychologists	3.9	3.3	7.3	14.5
Architects	2.1	1.9	7.8	11.8
<b>Attorneys</b>	<b>4.3</b>	<b>3.4</b>	<b>3.4</b>	<b>11.1</b>
Chief Executive Officers	2.8	3.2	4.8	10.8

Another gauge of diversity in the profession, at least among law firms, is provided by the National Association for Legal Career Professionals (NALP) which publishes data on female, LGBT, disabled, and racially/ethnically diverse attorneys each year based on the statistics it gathers from its member law firms. In 2010, for the first time since NALP began its demographic surveys in 1993, the overall percentages of female and racially/ethnically diverse attorneys declined.<sup>76</sup> Many blamed the layoffs that occurred during the recession, with their disproportionate impact on diverse attorneys (only 6% of non-diverse attorneys were laid off compared to 9% of diverse attorneys).<sup>77</sup>

In 2012, racially/ethnically diverse attorneys made small gains but did not make up all the ground lost during the recession, according to NALP.<sup>78</sup> Racially/ethnically diverse attorneys comprise 12.91% of lawyers in NALP-member law firms compared to 12.7% in 2011.<sup>79</sup> Just under one-third of lawyers at these firms are women – 32.67% in 2012 compared with 32.97% in 2009. The percentage of female associates declined in 2012 for the third year in a row.<sup>80</sup>

NALP's data reveals other gaps in representation. Nationally, only 6.71% of law firm partners are racially/ethnically diverse (up from 2.25% in 1993).<sup>81</sup> Women make up 19.91% of all law firm partners, up from 12.27% in 1993.<sup>82</sup> Women of color in partner ranks are quite rare - only 2.16% of law firm partners in the U.S. (up slightly from 1.95% in 2010). Similarly, only 1.44% of partners are LGBT.<sup>83</sup> Disabled attorneys are very few and far between, comprising only .33% of all partners in NALP member firms.<sup>84</sup>

**Table 7. 2012 National NALP Statistics for Member Law Firms**

	Total percent of all attorneys	Total percent of partners
Female	32.67%	19.91%
Racially/ethnically diverse	12.91%	6.71%
Openly LGBT (2010) <sup>85</sup>	2.07%	1.58%
Disabled	.30%	.33%

## Higher Attrition Rates

Retention is one of the legal profession's biggest challenges – not just for diverse attorneys, but all attorneys. Attrition rates are higher, though, among diverse attorneys, according to the National Association for Legal Career Professionals (NALP). While NALP only tracks data for member law firms these statistics are instructive for the profession overall since they highlight disparities between diverse and non-diverse attorneys that undoubtedly exist in other sectors as well.

Statistics gathered by NALP<sup>86</sup> from 2008-11 indicate high rates of attrition for associates in general but higher rates for diverse associates, compared to non-diverse:

**Table 8. 2008-2011 Law Firm Associate Attrition Statistics**  
National Association for Legal Career Professionals<sup>87</sup>

	Percent Leaving within 1 year				Percent Leaving within 2 years				Percent Leaving within 3 years				Percent Leaving within 4 years				Percent Leaving within 5 years			
	2008	2009	2010	2011	2008	2009	2010	2011	2008	2009	2010	2011	2008	2009	2010	2011	2008	2009	2010	2011
Female	3	5	2	2	35	23	9	16	48	48	29	27	67	66	53	45	79	79	69	64
Male	4	6	1	2	25	26	10	14	50	53	32	26	68	70	54	48	78	82	70	67
Non-Minority	4	5	1	2	23	24	9	14	47	49	31	25	66	67	52	44	76	78	69	63
Minority	4	6	2	2	28	28	9	18	52	57	31	31	75	75	56	55	85	87	73	72

In 2008, 2009, and 2011, the gap in attrition between diverse and non-diverse associates was nine percentage points by the fifth year of practice. In 2009, 87% of 5<sup>th</sup> year diverse associates left their firms compared to 78% of non-diverse associates. More associate departures in 2008 were unwanted (40%) by their firms than wanted (33%). Not surprisingly, in 2009, as the recession deepened, more associate departures were wanted (45%) than unwanted (28%). The most frequent reason cited for associate departures in 2009 was “firm downsizing” (32%). In 2012, however, the majority of attrition was “unwanted.”

According to research by Vault and the Minority Corporate Counsel Association (MCCA), the lay-offs during the recession disproportionately impacted racially/ethnically diverse and female attorneys.<sup>88</sup> In 2010-11, the annual Vault/MCCA survey of law firms found that the percentage of racially/ethnically diverse attorneys returned to pre-recession levels and attrition rates for this group improved.<sup>89</sup> However, the gap in attrition rates between diverse and non-diverse associates remained.

In 2011, the NALP Foundation reported that attrition rates for white women stabilized but those for attorneys of color rose again by another 3% compared to 2010.<sup>90</sup>

## ***Race and Ethnicity in the Workplace***

There are some striking research findings regarding the experiences that many people of color have in their workplaces. Though one should be careful not to make broad generalizations based on these findings, it is important to understand that many people of color have had negative experiences in their past or current workplaces as a result of their race or ethnicity.

In 2002, the Center for Creative Leadership completed a survey of 330 individuals' perceptions of their workplace. Approximately half of the respondents were white and approximately one-third of the respondents were African American. The remaining respondents came from other racial and ethnic backgrounds. The survey findings uncovered the following differences in how African American and whites perceive the effects of racial issues on their workplaces:

- More than 63% of African Americans surveyed said that race is a moderate to great source of tension in their workplace. Only 26% of whites believed that race was a moderate to great source of tension in their workplace.
- Almost twice as many African American respondents as white respondents said that dealing with race-related issues at work was painful or difficult.
- Sixty-seven percent of African Americans rated their workplaces as being moderately to very sensitive to racial diversity issues while 82 percent of whites felt that their workplaces were moderately to very sensitive to racial diversity issues.<sup>91</sup>

The findings from the 2007 Denver Legal Diversity Survey<sup>92</sup> reveal a similar pattern in which the perceptions of diverse attorneys vary from those of white male respondents in particular.

- For example, nearly two-thirds of white male respondents think that sufficient efforts are being made to recruit racially and ethnically diverse attorneys in legal organizations while only one-third of the racially and ethnically diverse respondents agreed.<sup>93</sup>
- On the issue of organizational climate, only 2.5% of white men think that racially and ethnically diverse attorneys are leaving because the climate is not conducive to their wanting to stay. In contrast, 25% of racially and ethnically diverse attorneys agreed that diverse attorneys are leaving because of the climate and culture of the organization.<sup>94</sup> One respondent explained: "It is extremely difficult for individual attorneys to show how subtle (and sometimes not so subtle) an organizational culture can be - so discouraging, isolating, and offensive."<sup>95</sup>

Further review of research in legal diversity reveals other facts that are useful in uncovering hidden barriers and designing an inclusiveness action plan. Sources include the NALP Foundation, which is gathering the final data-set in its ten year longitudinal study of nearly 5,000 attorneys who graduated from law school in 2000 -- *After the JD (AJD)* - to analyze numerous factors that impact new attorneys.<sup>96</sup> Some of the findings from this study with respect to diverse attorneys should be taken into account, including the following:

- Current professional development and mentoring programs for diverse attorneys seem to be failing. Few respondents, whatever their race or ethnicity, considered the formal mechanisms – training programs and employer-appointed mentors – important sources of knowledge for their jobs or of support during their years of early employment.<sup>97</sup> But that does not mean these aren't important to young diverse attorneys. More

racially/ethnically diverse than white respondents expressed a desire for more and/or better training and mentoring by senior attorneys.<sup>98</sup>

- Disparities in social and networking opportunities still exist. White respondents reported spending more non-working time with partners than did members of some diverse racial-ethnic groups. Black lawyers in particular were less likely than others to say that they joined partners for meals or recreational activities.<sup>99</sup>
- Discrimination persists in legal organizations. Members of all racial/ethnic groups were considerably more likely than white lawyers to report having experienced some form of discrimination in the workplace, including demeaning remarks and missing out on desirable assignments.<sup>100</sup>

The AJD study also gives a better picture of where the racially and ethnically diverse attorneys go when they leave law firms. Between the first wave of data (2000-2003) and the second wave (2004-2007), more racially and ethnically diverse attorneys moved into the public and business sectors. They were already over-represented in those sectors, with many choosing them from the outset of their careers.<sup>101</sup> While some think cultures of legal organizations in the public and business sectors are more inclusive of attorneys of color, which is why they leave law firms to go to work in those sectors, individual attorneys frequently report that these workplaces are no more inclusive; rather, the work is more rewarding, which makes the inequities inherent in the workplace somewhat more tolerable.

Other national research studies conducted since 2006 on the experience of racially/ethnically diverse attorneys clearly demonstrate that many experience the practice of law very differently; they do in fact have to overcome barriers that simply do not affect non-diverse attorneys the same way or with the same impact. These studies are outlined in more detail below. They provide feedback that can be used in the information-gathering process outlined in Step Three, to educate those in your organization about the experience of diverse attorneys in the practice of law, and provide areas of exploration for a survey within your organization.

## ***Gender Disparities in the Legal Profession***

One of the first two female attorneys invited to join the American Bar Association (in 1918), Mary Florence Lathrop<sup>102</sup> was a Colorado lawyer who attended the University of Denver College of Law. She graduated with honors in 1896 and was the first female attorney to open a law office in Colorado. Ms. Lathrop excelled in a male-dominated profession but objected to being called a woman lawyer, saying “I’m either a lawyer or I’m not, and don’t go dragging my being a woman into it.”<sup>103</sup>

Unfortunately, “being a woman” in the legal profession is still problematic 100 years later. Only one-third of attorneys in the U.S. are women<sup>104</sup> despite comprising a large percentage of law school graduating classes for the past 25+ years. It is widely believed in the legal industry that women comprise 50% of law school classes throughout this period but that is a myth. The percentage of female law students passed the 50% mark only once – during the 1992-1993 school year - according to the Law School Admission Council – and has been in a slow but steady decline ever since. Currently about 46% of law school classes are female at a time when women are earning 60% of undergraduate degrees.

And the disparities don’t end there. Women hold only 19% of the partnerships in law firms. This figure has increased only marginally since 1993 when women accounted for merely 12% of partners.<sup>105</sup> Experts at [Catalyst, Inc.](#) estimate that at this rate, women won’t reach parity with men

in their share of law firm partnerships until 2086.<sup>106</sup> It is important to note, however, that this calculation was made in 2008. Five years later, women still only comprise 19% of law firm partners so that means the parity year has surpassed 2100.

Equally troubling, NALP and the [National Association for Women Lawyers](#) (NAWL) report that women lawyers in private practice are over-represented in positions with less power, such as non-equity partners (26%) and staff attorneys (70% - up from 55% in 2011).<sup>107</sup> NAWL's annual studies also find that:

- The percentage of female associates declined in 2010 for the first time since NAWL has tracked this demographic. In 2012, they comprise 45% of first and second year associates.
- The percentage of female equity partners has flat-lined at 15% for the past six years.
- Female attorneys are under-represented in leadership positions. They hold only 20% of positions on the highest governing committee and comprise only 4% of firm-wide managing partners.
- Women partners are less likely to receive credit for developing business.
- Women make less than men at every stage of their careers, with the greatest disparities among equity partners (89% of what men earn).<sup>108</sup>

The [Women in Law Empowerment Forum](#) (WILEF) also focuses on women lawyers' access to power in private practice. WILEF created a new certification program in 2011 for law firms meeting certain criteria indicating women have a share of power positions in their firms. Only 32 (out of hundreds of) firms met three or more of the following criteria where women represent at least:

- 20% of equity partners
- 10% of firm chairs and office managing partners
- 20% of the firm's primary governance committee
- 20% or more of the firm's compensation committee
- 25% of practice group leaders or department heads
- 10% of the top half of the most highly compensated partners<sup>109</sup>

In 2012, the National Law Journal's study of women in its NLJ 250 Survey found only five firms with more than 25% female equity partners. The NLJ determined that the firms with better track records all point to culture as the reason for their success in advancing women. Female partners in these firms said a "culture of inclusion was key":

"Partners at other firms with high female-equity partner numbers also say that their firms' success with women go beyond formal programs and policies. 'The culture drives it,' says K. Allison White, a litigation partner in Ballard Spahr's Denver office, who started her career at a big New York firm. 'It's something that can't happen overnight; it has to be long ingrained in the culture,' added Ballard partner Lynn Rzonca."<sup>110</sup>

According to the NALP Foundation's *After the JD* (AJD) longitudinal study, these types of discrepancies won't be ending anytime soon since disparities based on gender are impacting the newest generation of attorneys. According to the second wave of data from the AJD study (tracking the careers of nearly 5,000 new lawyers from their graduation in 2000), typical gender patterns

continue to play out in the legal profession. Some of the findings from this study include the following:

- Women are seven times more likely than men to be working part-time (14% versus 2.3%).<sup>111</sup>
- Women are more likely to report they are unemployed (9.5% versus 1.4% for men).<sup>112</sup>
- The strong majority of women (but less than half of men) who are not employed full-time report caring for children as the reason for working a reduced schedule or not at all.<sup>113</sup>
- Fewer women are in private practice (50% versus 58% men).<sup>114</sup>
- Women are more likely to be working in the public sector than are men (30.5% versus 25%).<sup>115</sup>
- In the smallest firms, where new lawyers have the highest rates of partnership at the stage of the career when the second wave of data was taken, fewer women than men made equity partner (17% versus 24% men); this disparity persists as firm size increases, with women attaining equity partnership at less than half the rate of men.<sup>116</sup>
- More women are attaining non-equity partnership but this is cause for concern since it indicates that women are being diverted into less significant positions.<sup>117</sup>
- Women's predictions of attaining partnership are much lower than men's, especially in the largest law firms.<sup>118</sup>
- From the outset of their careers, women earned less than men in this cohort; among those working full-time, women are making 85% of men's salaries.<sup>119</sup>
- There is a gender differential in billable hours, with women reporting fewer billable hours than men (1723 for women versus 1807 for men) and this difference grows as firm size increases.<sup>120</sup>
- More women than men are delaying both marriage and children.<sup>121</sup>

Disparities between male and female law firm partners are also documented in a 2010 study by the [Project for Attorney Retention](#) (PAR) and the Minority Corporate Counsel Association (MCCA) called "New Millennium, Same Glass Ceiling? The Impact of Law Firm Compensation Systems on Women." This study, which surveyed 700 female law firm partners, found:

- There is a 22% pay gap between male and female equity partners, with women earning an average of \$66,000 less than their male counterparts.
- Female partners of color only earn 47% of what white male equity partners make each year.
- Women are severely under-represented on compensation committees.
- Significant numbers of women do not know what they need to do to advance or earn higher salaries in their organizations because the criteria for advancement are highly subjective and there is no transparency in the process.<sup>122</sup>

According to Brande Stellings, a senior director at Catalyst, Inc., while women frequently cite work-life balance as a barrier to retention and advancement in the legal profession, lingering stereotypes and lack of female role models in upper ranks also cause these disparities.<sup>123</sup> It should be noted that while the issue of balanced-hours may currently impact female attorneys more frequently and be categorized by many in the legal profession as a "woman's issue", it is quickly turning into a workplace issue with the newest generation of lawyers, including both men and women, seeking balanced-hours programs in greater numbers (see discussion in Step Three).

Despite all of these statistics, one recent national study provides a small measure of hope, at least for white women. According to new research by Catalyst, white female attorneys in private

practice are reporting slightly higher levels of satisfaction with inclusiveness-related measures. For example, white women reported:

- More satisfaction with the support they receive from their supervising attorneys,
- Being included in decision-making at their firms,
- Benefiting from mentoring relationships, and
- Having more opportunities for conversations with those who are senior to them in the firm.<sup>124</sup>

Similar results, on a smaller scale, were revealed in CLI's 2011 study of associates in Denver law firms. There were consistent disparities between the survey responses of diverse (racial/ethnic, LGBT) and white female associates. White female associates report higher morale, greater integration in their firm, higher rates of access to clients, and higher billable hours than their diverse counterparts.<sup>125</sup>

The New York City Bar Association's 2012 study<sup>126</sup> on diversity among its signatory law firms illustrates how firms can be more successful in terms of gender diversity. In analyzing demographic data, the Bar found that "having a critical mass of women on the management committee—defined as three or more in our analysis—was associated with higher representation of women at nearly all levels."<sup>127</sup> Specifically, 24% of signatory firms reported a minimum of three women management committee members and among these firms women represented 41.8% of new partner promotes, 21.9% of partners (20% equity and 28.7% income), and 23.8% of management committee members. But for firms with no women on the management committee, the numbers for women partners were substantially lower. Those firms "reported 30% women new partner promotes and 15.8% of women partners (22.7% income and 15.2% equity partners)."<sup>128</sup>

### ***The Intersection of Race and Gender in Legal Organizations***

Gender can't be viewed at in isolation, however. Gender issues cut across lines of race, ethnicity, and sexual orientation. In fact, gender sometimes emerges as having a greater negative impact than race or sexual orientation.

In 2010, the Minority Corporate Counsel Association (MCCA) published a major research report on inclusion of LGBT (Lesbian, Gay, Bisexual, Transgender) attorneys in the profession. Curiously, gender was seen as more impactful on attorneys' career paths than sexual orientation. Although only 11% of all LGBT lawyers reported experienced unfair performance evaluations, when that percentage was broken down by gender, it was clear that fairness is a greater challenge for women than men: 18% of women (but only 7% of men) reported receiving unfair performance evaluations. Additionally, both male and female focus group participants agreed that gender issues for women, regardless of sexual orientation, were greater challenges in many of their firms than sexual orientation issues for GBT men.<sup>129</sup>

Similarly, in a study released by Corporate Counsel Women of Color in 2011, gender was seen as a greater obstacle to advancement than race, with 52% of respondents agreeing that being female posed a significant barrier compared to only 35% reporting that race impeded their careers.<sup>130</sup>

Seven national research studies regarding women of color in the legal profession have been published since 2006 which demonstrate that the intersection of gender with race/ethnicity in the legal workplace leads to the most significant inequities:

- ***Visible Invisibility: Women of Color in Law Firms*** (ABA, 2006)<sup>131</sup>
- ***From Visible Invisibility to Visibly Successful: Success Strategies for Law Firms and Women of Color in Law Firms*** (ABA, 2009)<sup>132</sup>
- ***Sustaining Pathways to Diversity: The Next Steps in Understanding and Increasing Diversity and Inclusion in Large Law Firms*** (MCCA, 2009)<sup>133</sup>
- ***Women of Color in U.S. Law Firms*** (Catalyst, 2009)<sup>134</sup>
- ***Few and Far Between: The Reality of Latina Lawyers*** (Hispanic National Bar Association, 2009)<sup>135</sup>
- ***Creating Pathways to Success for All: Advancing and Retaining Women of Color in Today's Law Firms*** (D.C. Women's Bar Association, 2008)<sup>136</sup>
- ***The Perspectives of Women of Color Attorneys in Corporate Legal Departments*** (Corporate Counsel Women of Color, 2011)<sup>137</sup>

Female attorneys of color have the highest attrition rates in private practice<sup>138</sup> and make up only 2% of all partners in law firms. The findings from the ABA's seminal study include the following:

- Women of color “experience higher levels of isolation in the workplace than racially/ethnically diverse men, white men, and Caucasian women.”
- Nearly two-thirds of women of color reported being excluded from both informal and formal networking opportunities (compared with only 4% of white men).
- Nearly half of women of color but only 3% of white male respondents experienced demeaning comments or harassment at work.
- Forty-four percent of women of color but only 2% of white men reported having been denied desirable assignments.
- Forty-three percent of women of color but only 3% of white men had limited access to client development opportunities.
- Nearly one-third of women of color but less than 1% of white men felt they received unfair performance evaluations.
- Twenty percent of women of color but only 1% of white men felt they were denied promotion opportunities.<sup>139</sup>

The ABA study also found that when female attorneys of color became stuck in dead-end assignments as third- and fourth-year associates, their experience lagged significantly behind their white male counterparts, thus limiting their advancement potential and career trajectories. These differential assignments, in turn, affected the ability of women of color to meet their billable hours. Further, many women of color complained that they received “soft evaluations” which denied them the opportunity to correct deficits and gain experience that could lead to promotions and partnership.

The latest study,<sup>140</sup> published by [Corporate Counsel Women of Color](#) (CCWC) in 2011, extends the research on women of color in the legal profession to the business sector. Over 850 female attorneys of color practicing in corporate law departments participated in an online survey. A little over three quarters of the survey respondents left law firm practice to go in-house. A majority of these respondents left law firms because of inclusiveness-related issues, such as:

- Not feeling valued (23.7%)
- Not feeling supported (22.1%)



- Lack of mentorship (21.3%)
- Dissatisfaction with the quality of work assignments (16.5%)
- Lack of promotional opportunities (16.1%)
- Feelings of isolation and seclusion (15.6%)
- Lack of training and development opportunities (13.2%)
- Difficulty meeting billable hours (11.9%)
- Stereotypes and discrimination (11.4%)<sup>141</sup>

Given these findings, it isn't surprisingly that the largest percentage of respondents (40%) identified "being valued" in their law department practices as their number one factor in job satisfaction.<sup>142</sup> Other factors were included compensation – 22%, upward mobility – 13%, challenging work assignments – 11%, recognition for work – 9%, and flexible work arrangements – 5%.<sup>143</sup>

Half the female attorneys of color participating in the study believe that corporate law departments are more inclusive than law firms.<sup>144</sup> However, only one-third of the survey respondents believe they have the same opportunities in their legal departments as white male attorneys which indicates that bias (whether it is bias against or bias for others) is still present in corporate law departments.<sup>145</sup> Areas of perceived inequities include mentorship and sponsorship,<sup>146</sup> honest feedback,<sup>147</sup> and advancement opportunities.<sup>148</sup>

As mentioned above, one of the most interesting findings from the CCWC study was the fact that the respondents believe gender is more of a limiting factor than race or ethnicity. Slightly more than one-third (34.5%) agreed that their advancement was impeded by race/ethnicity compared to over half (51.8%) who reported that gender impaired their ability to advance.<sup>149</sup>

One theory about why female attorneys of color have higher dissatisfaction and greater attrition is that racially/ethnically diverse women do not have the same access to white males enjoyed by diverse men and white women (which may explain why white women are beginning to report feeling somewhat more included in their firms):

"Professor Kimberlé Crenshaw of the University of California at Los Angeles and Columbia University's law schools coined the term 'living room/locker room syndrome' to describe this gap. According to Crenshaw, white women share the living room with white men, and men of color share the locker room with white men, providing both groups with informal opportunities outside of work to relate socially to white men, opportunities which do not naturally exist for women of color. As a result, white men and women of color are left without experiential knowledge or a frame of reference when it comes to understanding each other."<sup>150</sup>

There are many ways to combat the isolation and marginalization experienced by female attorneys of color, all of which have to do with creating opportunities to break down cultural and communication barriers. Diversity training that focuses on micro-inequities and unconscious bias/preferences, mentoring programs with reverse-mentoring as well as cross-cultural mentoring relationships, and diversity dialogues are just some ways to start.

The study completed by the Women's Bar Association of the District of Columbia recommends, among other things, that law firms "empower women of color by creating an environment where they can speak candidly, without penalty. Doing so will help all attorneys and staff recognize and correct the mixed messages and micro-inequities that can lead to isolation and

failure to thrive in the law firm environment.”<sup>151</sup> The D.C. Women’s Bar also made other recommendations on “best practices,” many of which are included in the composite list of best practices in [Appendix B](#).

## ***Sexual Orientation in the Legal Workplace***

Diversity in the legal profession includes more than just women and attorneys of color. Lesbian, Gay, Bi-sexual, and Transgender (LGBT) attorneys are also historically underrepresented in the practice of law. There is no way to know precisely how many LGBT attorneys are represented in the legal profession, but data collected by the National Association for Legal Career Professionals (NALP) indicates that they comprise only 2.07% of attorneys in larger law firms across the country (NALP, 2011), which is up slightly from 1.71% in 2009.<sup>152</sup> Researchers estimate that approximately 3.5-5% of the U.S. population is LGBT (some advocacy groups’ estimates are higher – between 5-10%).<sup>153</sup>

Members of the LGBT community also experience discrimination in the legal workplace. Over 37% of the LGBT respondents to the 2007 Denver Legal Diversity Survey reported that they had witnessed or experienced discrimination. In a similar survey conducted by the Minnesota Bar Association in 2006, 84% of LGBT attorneys reported bias in the workplace as a major or moderate problem, while 67% of heterosexual attorneys reported it as a minor or non-existent problem. Four percent of LGBT attorneys reported they had been physically threatened by a coworker or employee and another 16% reported they had been verbally harassed in the workplace. Forty-nine percent of all attorneys who responded had heard or observed harassment directed towards a co-worker due to his or her sexual orientation.<sup>154</sup>

One big difference, however, between the discrimination experienced by racially/ethnically diverse and LGBT attorneys is that employers are less likely to become aware of incidents involving sexual orientation. A 2006 study by the California State Bar found that:

“[N]one of the many LGBT lawyers who indicated they had experienced workplace discrimination reported such perceived mistreatment to supervisors. This is a startling statistic. By contrast, 51 percent of female lawyers, 40 percent of lawyers over 40 years old, and 52 percent of minority lawyers who felt they had experienced discrimination did report it to management. It is possible that, even today, LGBT attorneys, unlike attorneys in the other categories surveyed by the California State Bar, do not report discrimination against them because they believe their concerns as LGBT people will not be treated seriously by their employers. Maybe some LGBT attorneys do not complain because they do not want to self-identify as LGBT, perhaps fearing that in doing so they will experience negative consequences in the workplace, including being thereafter marginalized as the ‘gay associate.’ Whatever the reasons for LGBT attorneys’ reticence to report discrimination, the 2006 California State Bar Report confirms that legal employers are not getting the feedback they need to understand that problems persist for LGBT lawyers, much less how to address those problems.”<sup>155</sup>

With these findings in mind, leaders in legal organizations should take steps to improve the culture by ensuring that all employees feel safe enough to report incidents of discrimination.<sup>156</sup> No organization can be inclusive when some members feel isolated and fearful of repercussions for reporting instances of discrimination.

The Minority Corporate Counsel Association (MCCA) published a major research study of LGBT lawyers in the summer of 2010 - *The New Paradigm of LGBT Inclusion: A Recommended Resource for the Legal Workplace*. This study measures the impact of sexual orientation, gender identity, and gender expression on attorneys in large law firms and makes recommendations for fostering more inclusive and supportive environments for LGBT attorneys. Some of the findings include the following:

- “[G]ay white men were no more likely than their straight white male counterparts to report concerns about unequal treatment by their peers. This suggests that in law firms, being white and male continues to afford advantages, and the advantage of being white and male helps to minimize several of the challenges associated with being gay. Thus, although all LGBT attorneys face multiple challenges to full inclusion, women and race/ethnic minorities experience more significant obstacles.”<sup>157</sup>
- “[T]he gender differential was a significant factor in understanding the overall challenges faced by the LGBT attorneys. Although the percentage of LGBT attorneys (10%) who felt that their gender would hinder their advancement in the firm was roughly the same as the percent of attorneys overall (11%), 23% of female LGBT attorneys felt that their gender would hinder their advancement in comparison to only 2% of males. Among LGBT partners, only 2% felt that gender would hinder their advancement, in comparison to 9% of LGBT associates. Both the male and female focus group participants agreed that gender issues for women, regardless of sexual orientation, were greater challenges in many of their firms than sexual orientation issues for GBT men.”<sup>158</sup>

As with the recent studies on attorneys of color cited above, the respondents in a research study by Catalyst, Inc.,<sup>159</sup> on the experience of LGBT employees in the workplace, cited three factors that affect their career advancement and formation of critical relationships in the workplace:

- A lack of awareness regarding LGBT issues.
- Discriminatory behaviors against LGBT employees.
- Exclusion from important connections with others.

The research also demonstrated that LGBT employees at organizations with diversity and inclusion programs, policies and practices, and broader talent management programs, were more satisfied and committed, perceived their workplace as more fair, and had more positive relationships with their managers and colleagues.

Often employers are unsure how to address LGBT issues. In an article in the February 2010 ABA Journal highlighting CLI’s innovative work in inclusiveness within the context of LGBT issues, one lawyer recommended employers be more proactive: “You can’t force people out, but if somebody sticks a toe out, ask if there’s anything they’d like you to be doing to support their community.”<sup>160</sup>

## ***Disability in the Legal Workplace***

*“The greatest disability is not of the body, but of a closed mind.”* Jeff Rosen, General Counsel, Snap!VRS

Another group that is severely under-represented in the legal profession is the disabled. Less than one-quarter of one percent of lawyers self-identify as disabled, according to NALP. It is

safe to say that most disabilities are hidden, however, since data from the U.S. Census and Bureau of Labor Statistics indicates that over 20% of the workforce has a disability.<sup>161</sup>

The gap in self-identification may be due to the “[s]hame, stigma, and discrimination that are still very much parts of the disability experience.”<sup>162</sup> Like other diverse lawyers, those who are disabled often feel:

“isolated, alienated, or ... hesitant to come out about their disabilities. Being ‘out’ about disability can come with its risks, including employers’ lowered expectations, professional stagnation, coworker and supervisor stereotyping, positions of tokenism, and the creation of professional ‘ghettoes’ of lawyers with disabilities.”<sup>163</sup>

Unfortunately, disability is often the forgotten step-child in the diversity conversation. Disabled attorneys and staff often feel left out since their diversity committees most often focus efforts on female, LGBT, and racially/ethnically diverse attorneys. Inclusiveness efforts, on the other hand, require focused efforts on anyone in the organization that may be impacted by hidden barriers, including those who are disabled.

According to the Minority Corporate Counsel Association’s Pathways research, while most of the “attorneys with disabilities gave their firms overall high marks for leadership and diversity committee activity, one area where firms appear to be falling short is the level of support that attorneys with disabilities have in place to discuss concerns or complaints they may have about the work environment. In addition, there was an underlying concern that while the firm is making strides with respect to diversity, the firms are not doing as well as they could to include and address the concerns of attorneys with disabilities.”<sup>164</sup>

As in the case of female attorneys of color and lesbian attorneys (discussed above), women attorneys with disabilities report their gender has a significant impact on career success:

“A more illuminating theme emerged through the answers to one simple statement: ‘I believe that my gender will not hinder my advancement in this firm.’ Not surprisingly, 98% of the men felt that their gender was not a hindrance. But only 41% of women with disabilities responded that they felt the statement was true. In fact, almost one-third of the women (31%) reported in the negative – meaning that they felt their gender *will* hinder their advancement at the firm, and 28% of the women were neutral or not sure how their gender would impact their ability to advance.”<sup>165</sup>

MCCA recommends legal organizations “audit their existing diversity efforts and initiatives with a view to making sure that they are broad and inclusive of the concerns and challenges faced by lawyers with disabilities. It also must be clearly communicated that as with race/ethnicity, gender, and sexual orientation, the firm is equally committed to providing a workplace that is open and inclusive of attorneys with disabilities.”<sup>166</sup>

The American Bar Association’s Commission on Disability Rights promotes “[Disability Diversity in the Legal Profession: A Pledge for Change](#),” a one-page pledge for legal employers. This Pledge affirms the signatory’s commitment to diversity, specifically disability diversity, and recognizes that diversity is in the best interest of the profession, those the profession serves, as well as the organization making the commitment.

## Introduction: Removing Barriers and the Impact of Bias

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### *Hidden Barriers to Opportunity*

Why do diverse and female attorneys leave legal organizations at greater rates than non-diverse attorneys? Several national surveys have been conducted since 2006 to find the answer -- by the American Bar Association (ABA); the Minority Corporate Counsel Association (MCCA); Catalyst, Inc.; the National Association for Legal Career Professionals (NALP); the Women's Bar Association of the District of Columbia; the National Hispanic Bar Association; and Corporate Counsel Women of Color (CCWC).<sup>167</sup> Each of these studies points to hidden barriers in legal organizations, caused by bias, as the root cause of higher attrition rates for diverse attorneys. In other words, most of the issues experienced by diverse attorneys that cause them to leave are related to organizational structures, cultures, and behaviors that are exclusive, rather than inclusive. Not surprisingly, the number one recommendation for law firms by the CCWC as a result of its study was to create an inclusive work environment.<sup>168</sup>

Success in any legal organization depends on so many subtle factors apart from technical skills and ability. An attorney's relationships and how well s/he "fits in" can have profound impacts on the opportunities s/he receives. It is critically important to understand that diverse attorneys can be viewed, often unconsciously and unintentionally, as outsiders due to their difference (race/ethnicity, age, gender, sexual orientation, disability, etc.). The national research studies clearly demonstrate that this outsider status can make it very difficult for diverse attorney to be informally included in so many subtle aspects of the organization that are required for success -- "the qualities or behaviors that go beyond one's technical performance, but are nonetheless essential to success."<sup>169</sup>

### **Ten Most Common Hidden Barriers**

Generally, the research studies indicate female and diverse attorneys have more limited access to the intangible opportunities critical to advancement, including:

1. Informal and formal networking opportunities;
2. Information from internal networks (intelligence from the "grapevine");
3. Meaningful work assignments that lead to skill-building;
4. Training and development (like leadership programs);
5. Mentoring and sponsors; and
6. Substantive contacts with clients.

Female and diverse attorneys are also more likely to:

7. Be socially isolated;
8. Have fewer billable hours/lower profile work;
9. Receive inadequate feedback and "soft evaluations"; and
10. Be denied promotion opportunities.

These hidden barriers keep many diverse attorneys from enjoying the same opportunities that lead to success.<sup>170</sup> Attorneys can have all the ability in the world but without the opportunities

to demonstrate and further develop that ability, they cannot be successful, and thus feel compelled to leave.

Certainly, individual attorneys are responsible for their own success and should engage in behaviors aimed at advancing their careers. According to longitudinal research conducted by Catalyst, Inc. in the business sector, certain tactics can be used in career advancement strategies:

- Get on-the-job experience by requesting a variety of work assignments to increase knowledge and skills.
- Gain access to power by identifying influential people, seeking introductions and building a network.
- Make achievements visible by seeking credit for work done, requesting additional feedback and reminding supervisors about accomplishments.
- Be available to work long hours and/or weekends.
- Get formal training to develop new skills.
- Develop a multiyear career plan.
- Seek advice from co-workers and others.
- Scan opportunities outside the organization by monitoring job ads, maintaining an outside network, and staying in touch with executive search firms.
- Scan opportunities within the organization by staying on top of internal work or job opportunities.

Catalyst's research, which focused on gender differences, found that even when women employed all of these strategies, they still failed to advance at the same rate as men and had slower pay growth.<sup>171</sup> Catalyst recommended two key factors that women needed to focus efforts on to break through these underlying systemic issues: greater self-promotion designed to gain more visibility and attracting a sponsor who can help them navigate the hidden barriers more successfully.

Similarly, research in the business sector reveals a complex set of hidden factors that limit women's careers at the highest levels (which are instructive for the legal sector). This study of 16 competencies of 6,000 male and female business leaders revealed that while women had higher average scores, there was no corresponding increase in percentage of female leaders. A deeper analysis resulted in the following findings:

- Men ranked statistically higher in the specific competencies most often deemed critical at higher levels in the organization – those focused on financial acumen and strategic thinking.
- Women consistently had stronger “soft skills,” such as collaboration, customer service, relationships, and building realistic plans.
- Women had less experience in business growth, operational experiences, and high-visibility experiences.
- Women were more interested in personal accomplishment while men favored gaining power and influence as well as responsibilities for others.<sup>172</sup>

The report acknowledged that businesses need the skills and competencies in which women excel but recommended that organizations work on ways to help women develop financial and strategic skills so they can become more visible and influential.

These studies demonstrate why it is so critical for legal organizations to embed inclusiveness and make the structural, cultural and behavioral changes necessary to ensure opportunities are equitably distributed. It is common for senior attorneys to have a “sink or swim” mentality when it comes to junior attorneys but that outlook presumes everyone has equal access to the critical, career-enhancing opportunities. The national research demonstrates that female and diverse attorneys have fewer opportunities due to the (mostly hidden) structural, cultural, and behavioral barriers in legal organizations.

Thus, inclusiveness committees in legal organizations should put the national studies at the top of their list of priorities, in terms of understanding the issues and the root causes of attrition, and then focus on finding and remedying these systemic issues.

## ***Bias in the Legal Workplace***

It is difficult for many to accept, especially in our supposedly “post-racial society”, that bias – both intentional as well as unconscious or unintentional - has been identified in the research studies as the root cause underlying higher attrition rates for diverse attorneys. Most people say, “I don’t have any biases.” But everyone has bias; it is just part of human nature. The good news is that bias, even when it is unconscious, can be interrupted with awareness and training.

We see evidence of continued overt and intentional bias in the daily news which regularly includes stories about hate crimes, employment discrimination cases, glass ceilings, pay inequities, and more. In fact, 2011 was a record year for discrimination complaints filed with the Equal Employment Opportunity Commission (EEOC).<sup>173</sup> The legal workplace is not immune to conscious bias against others, with reports that diverse attorneys still witness and experience discrimination.<sup>174</sup>

However, most blatant instances of intentional bias have been replaced by barely perceptible but consistent instances of exclusion and slights that accumulate over time into something just as damaging as blatant, intentional discrimination. Experts point to these small, even subtle, inequities that happen frequently in the workplace as having a big impact on attrition rates among diverse attorneys.<sup>175</sup>

## **Micro-Inequities**

Instances of this type of bias are referred to as “micro-inequities.” This term, coined in 1973 by Mary P. Rowe, a professor studying race and gender exclusion at MIT’s Sloan School of Management, describes “apparently small events which are often ephemeral and hard-to-prove, events which are covert, often unintentional, frequently unrecognized by the perpetrator, which occur wherever people are perceived to be ‘different.’”<sup>176</sup> These messages can be intentional or unconscious and are communicated non-verbally through looks, gestures or even tone of voice. The cumulative effect of micro-inequities often leads to frustration, damaged self-esteem and, eventually, withdrawal.

All kinds of small behaviors can make people feel invisible, insignificant, isolated, and marginalized, including:

- **Avoidance:** Absence of a greeting or lack of eye contact; minimal interaction.

- **Discomfort:** Unfriendly tone of voice; facial expression communicating impatience; cool or rejecting body language; conversation that ends when a diverse attorney enters the room.
- **Subtle insults:** Use of the term “qualified” only when discussing diverse applicants; negative perceptions of competence or presumed incompetence; people consistently mispronouncing a last name or confusing one diverse attorney with another; mistaking a female attorney for a secretary; mistaking an African American attorney for the mailroom clerk; asking a Latina attorney to replenish the coffee in the conference room; asking the only female attorney at a meeting to take notes.
- **Neglect:** Assignment of non-substantive/uninteresting work; inadequate performance evaluations because the evaluator is afraid to be open (which can have long-lasting impacts on assignments and promotion – because the diverse attorney was not given an opportunity to understand what could be improved in the first place).
- **Exclusion:** Not being invited to social events to which other attorneys have been invited; not being included in client meetings because the client might not be comfortable; not being included in the grapevine at work or in networking opportunities; not being considered for opportunities that involve significant travel because of parental status.
- **Tokenism:** Being invited to some events only because their presence will give the appearance of diversity; being asked to attend a client pitch or having their name included on “Request for Proposal” (RFP) to appeal to a client interested in diversity but not actually performing much, if any, of the substantive legal work on the case.

Many of these “micro-inequities” are not conscious or intentional. They often result from stereotypes - preconceived notions about race, ethnicity, gender, disability, etc. Many times, these discriminatory acts are routine and go completely unnoticed by those who commit them.

Unconscious bias flourishes in unstructured, informal processes; particularly in high-stress environments, which is the norm for most legal organizations. Busy lawyers who are constantly under time constraints regularly make “gut” decisions about people, their ability, their potential, and whether they will receive certain opportunities, that are not often examined. Lack of time also impacts the development of deep relationships, which are where most of the intangible opportunities required for success come from.

Experts agree that the only effective way to deal with micro-inequities and their damaging impacts is to bring them to the surface and discuss them openly and regularly, especially among those in senior management. Making people aware of their unconscious bias will help them interrupt the bias and change behaviors. But management must go further in making cultural and structural changes that diminish the impact of unconscious bias.

After making people aware of unconscious bias and micro-inequities, Rowe recommends replacing them with “micro-affirmations,” which she describes as “subtle messages that let you know you’re doing well and are expected to succeed.”<sup>177</sup> According to Rowe, “[M]icro-affirmations are tiny acts of opening doors to opportunity, gestures of inclusion and caring, and graceful acts of listening. [They] lie in the practice of generosity, in consistently giving credit to others—in providing comfort and support when others are in distress, when there has been a failure at the bench, or an idea that did not work out, or a public attack. Micro-affirmations include the myriad details of fair, specific, timely, consistent and clear feedback that help a person build on strength and correct weakness.”<sup>178</sup> Examples of micro-affirmations include an invitation to contribute to a highly visible project, attend a client pitch or a social event, an email to everyone in the organization highlighting



someone's recent accomplishment, or an unexpected commendation – all things that majority attorneys receive more commonly.

Stephen Young, author of *Micromessaging: Why Great Leadership is Beyond Words*,<sup>179</sup> recommends the following ways to create micro-affirmations to strengthen relationships to positively impact others' commitment and performance:

1. Actively solicit opinions.
2. Connect on a personal level.
3. Constantly ask questions.
4. Attribute or credit ideas.
5. Monitor your facial expressions.
6. Actively listen to all.
7. Draw in participation.
8. Monitor personal greetings.
9. Respond constructively to disagreement.
10. Limit interruptions.<sup>180</sup>

**Complete Exercise 2:** Exploring Unconscious Bias and Micro-Inequities in the Workplace (Appendix A).

Even though blatant instances of discrimination may have declined, diverse and female attorneys still face the pernicious force of hidden barriers that limit their opportunities. It is clear from the national research (described above) that many diverse and female attorneys are slowly but surely pushed out to the sidelines in their organizations; generally not by intention or design, but by the natural human tendency of those in the majority to have better relationships with junior attorneys who are more like them. The intangible opportunities flow from relationships. Deep relationships require trust, which is easier to form and build based on likeness.

### Affinity Bias – Bias *for* Others

Unconscious bias “is the true gatekeeper preventing our ability to unlock the benefits of diversity within an organization.”<sup>181</sup> While many of the micro-inequities discussed above stem from unconscious bias against others, behavior is also shaped by the natural human tendency to be biased in favor of those with whom you may be more comfortable. Most people do not realize that it is actually bias or preference **for** people that cause more disparities in opportunities than overt bias and discrimination (referred to as affinity bias).

It is human nature to prefer working with people who have similar backgrounds and interests. In fact, this tendency appears to be biological. Researchers at Yale University documented affinity bias in babies as young as three months. In a [report on 60 Minutes](#), the primary researchers described experiments where a large majority of babies favored an “in-group” puppet over an “out group” puppet.<sup>182</sup> The favored puppet had merely selected the same type of food chosen by the babies (either Cheerios or graham crackers) while the “out-group” puppet chose the opposite food. Remarkably, 87% of the babies in the study also favored a puppet that punished the “out-group” puppet. While this unconscious tendency remains throughout our lives, the researchers found that older children are able to consciously suppress it and act more equitably. However, the researchers noted that affinity bias comes to the surface more readily when people are under duress,<sup>183</sup> which is often the case with practicing attorneys.

Especially in work environments where attorneys are under a lot of stress and pressed for time, it is simply easier to develop close work relationships with people who are more like

themselves - who look like, think, act, dress, behave, and operate like they do. It simply takes less energy to relate to people who are more like you. “But when those in the majority or those in power allocate scarce resources ... [(such as jobs, networking contacts, work assignments, invitations to key social or business events, introductions to clients, etc.)] to people who are just like themselves, they are effectively discriminating against those who are different from them.”<sup>184</sup>

According to Dr. Arin Reeves, a national expert on diversity and inclusiveness in the legal profession, preferences are just as harmful to diverse attorneys as intentional and overt bias:

“[S]ometimes I think people think of race bias as a bias *against* somebody. I think the legal profession and law firms specifically should understand that race biases are not necessarily against somebody, but are biases *for* someone. Take for example, an older white partner. He may not be biased against racial or ethnic minorities. He might have a preference for someone—he might feel more comfortable with a younger white man who reminds him of how he was as a younger man. He might be more comfortable with older white men who are like him. So a preference for someone or a comfort with a particular kind of person may not be bias against someone else, but it may end up having the same impact.”<sup>185</sup>

Some believe that law firms, in particular, have unusually high attrition rates because they are unique business organizations with many informal practices that lead to disparate opportunities and little transparency that keep barriers to success hidden – even to those in management. Other possible reasons why law firms have greater challenges with retention:

1. There is typically very little diversity of opinion in law firms since most partners, especially in management positions, are white and male. They operate with unconscious blind spots in administering the firm, particularly with respect to the hidden structural, cultural, and behavioral elements that keep many female and diverse attorneys on the sidelines and limit their opportunities.
2. Law firms are usually extreme work environments where lawyers are very busy and work unreasonably long hours under great stress. Investments of precious time and energy generally go to “in-group favorites” with whom those in the majority are more comfortable.
3. Attorneys in supervisory roles rarely have little formal management training and often make decisions reactively and based on their gut, which is where unconscious (and mostly unintentional) bias flourishes.
4. Law firms have horizontal structures where even those chosen to lead the firm are hesitant to create or change policies that affect their partners. Gaining consensus among dozens of equals is difficult and influential power-brokers in the firm can prevent some changes from occurring at all. Hence, “top-down” leadership on diversity and inclusiveness, which works better in corporate law departments and government law offices, is often difficult in law firms.<sup>186</sup>

Unfortunately, legal organizations are not meritocracies. Rather, they operate on a currency of favoritism where those who fit in and integrate quickly, learn the unwritten rules, build relationships with the “right” people, and figure out how to play “the game” better will advance farther and faster than those who do not. In-group favoritism causes majority attorneys (for the most part, unconsciously) to share the “playbook” and opportunities with others in their comfort zones, with the unintended consequence of keeping diverse attorneys on the sidelines and feeling invisible and marginalized.

A lack of awareness about the power of affinity bias perpetuates the status quo. Most attorneys are surprised when confronted by evidence of their own affinity bias at work. Schiff Harden partner Patricia Brown Holmes talks about an experience she had when she joined the firm as a lateral several years ago:

"'Early on, after I arrived at the firm, a matter came in, and a white male partner staffed it with all white males,' Holmes recalls. 'I then opened a matter and staffed it with the three African American women associates. The partner came to me and asked me why I had done it that way. I said that I thought that was how it was done, since he had staffed his case with all white males.' Holmes continues, 'The partner had not considered the impact of his actions and how they would be viewed by me as a minority. He immediately understood the impact of his decision and agreed that all levels of diversity—race as well as gender and other factors—ought to be considered when staffing cases.'"<sup>187</sup>

It is imperative that supervisors and managers in all legal organizations who control opportunities learn more about their own conscious and unconscious biases and how affinity bias, in particular, leads to situations where some attorneys are left out. Reducing the impact of bias depends on making people aware of their unconscious preferences and biases in a non-threatening way. The most widely used tool for testing one's own unconscious bias is the Implicit Association Test (IAT), which is actually a series of free online tests created and maintained by Project Implicit, a consortium made up of researchers from Harvard University, the University of Virginia, and the University of Washington. The IAT was created more than 15 years ago and has now been used by millions of people in over 20 countries. Researchers at these three universities, as well as others, have used the test to study many aspects of organizational and social performance, ranging from healthcare decisions to the operations of the criminal justice system. This research has uncovered surprising examples of the profound effect of unconscious bias in all areas of society.

To take the IAT, go to <https://implicit.harvard.edu/implicit/>. To learn more about the IAT and unconscious bias, you can view a videotape of a CLE workshop presented by University of Colorado Law Professor Helen Norton in July 2010 on CLI's inclusiveness manual website – [www.legalinclusiveness.org](http://www.legalinclusiveness.org).

**[Complete Exercise 3](#)**: Exploring Unconscious Preference (Bias For) in the Workplace ([Appendix A](#)).

If you can't persuade leaders and decision-makers to take the IAT tests, you might be able to convince them that unconscious bias really exists by going outside the legal field for examples. A 2011 study by an economics professor at Southern Methodist University establishes how pervasive racial bias is in sports. He analyzed the calls of Major League Baseball home-plate umpires on 3.5 million pitches from 2004 to 2008 and discovered that they call disproportionately more strikes for pitchers in their same racial/ethnic group. Because most MLB umpires are white, this caused disparate advantages for white pitchers. When MLB umpires were working in ballparks where their calls were monitored by a computer system, however, their unconscious racial bias was diminished. The extra scrutiny heightened their awareness which caused their decision-making to be less influenced by their unconscious mind.<sup>188</sup>

Another way to make potential affinity bias more visible is to ask senior attorneys to respond to simple questions:

- List the more junior attorneys with whom you socialized outside of work in the past six months.
- What are the highest profile cases in your department/practice group right now and which junior attorneys are working on them?
- Which attorneys have you assigned work to in the past three months?
- With whom do you discuss new ideas?

### Ways to Combat Hidden Bias

Everyone has bias; it is just a part of our hard wiring as humans. We act continually throughout the day with bias against as well as for others. Even though we cannot be “cured” of bias, there are ways to become more aware of our own bias and work to limit its negative impact on others, especially in the workplace. Unconscious bias is pervasive and requires intention, oversight, and accountability to reduce its impact.

#### Collect Data and Provide Education:

- **IAT Tests:** Most of us think of ourselves as fair and in fact want to be fair – but none of us can do much about biases of which we are unaware. Encourage people to take some of the IAT tests to help reveal their own unconscious bias.
- **Hidden Barriers:** Examine past decisions about opportunities and determine whether everyone was considered for and received those opportunities on an equitable basis. Hard data that demonstrate inequities (disparities in salaries, work assignments, evaluations, etc.) can be revealing to those who truly believe they are acting without bias.
- **Decision-makers:** It is particularly important to improve decision-makers’ self-awareness about their potential for implicit bias. Educating and challenging decision-makers to consider the possibility of their own biases can help reduce the influence of implicit bias on their decisions which should reduce the disparities in opportunities documented in the national research studies discussed above. Encouraging decision-makers to take IAT tests to reveal unconscious bias is a good place to start. They should also be encouraged to participate in an activity where they are in the minority, as that may cause some self-reflection as well. Finally, educate them about “bias for” others and ask them to reflect on key points in their own careers to determine if they were the beneficiary of “bias for” in those situations.
- **Make the Time:** Make the time to address the hidden issues that are so detrimental to the infrastructure of the organization. Ellen Ostrow, a national expert, argues there is no real alternative if you want to reduce implicit bias and its impact on retention:

“[I]n organizations where time is money, there is a natural resistance to investing considerable time in diversity activities. However, there is simply no alternative. Interrupting automatic, biased reactions requires self-observation, self-monitoring and self-reflection. Lawyers simply must slow down enough in situations in which stereotypes are most likely to be elicited in order to be alert for their influence. This is a fundamental commitment issue. Law firm leaders may say they do not have time for this kind of activity. It is important to understand, however, that there are law firms that have committed the time.”<sup>189</sup>

- **Reframe the Issue:** Break out of the usual examples of bias (race, gender, etc.) by reframing the insider/outsider dynamic. Use examples of how people feel when they are located at a regional office as opposed to the home office, the class differences perceived between staff and attorneys, or membership in a small practice group vs. a large practice group.

#### Shape the Environment:

- **Counter-Stereotypic Environments:** Break down stereotypes by implementing practices where people spend time working with others who counter the stereotype. For instance, if your department implicitly reinforces the stereotype that men are better managers than women with mostly males in management positions and women in supporting roles, give people the opportunity to shadow women managers in departments or practice groups where they are in leadership roles. Exposure to “counter-stereotypical cues” may reduce unconscious bias and promote inclusive practices.
- **Mentoring Across Difference:** Just as exposure to individuals who disconfirm the traditional group stereotype can destabilize those stereotypes with respect to workplace roles, instituting mentoring programs across difference or creating opportunities for informal social opportunities where people get to know each other can also help break down stereotypes and resulting biases.
- **Change Structures:** Unconscious bias lives and breathes in unstructured, subjective practices. Building greater objectivity and transparency into policies, procedures, and practices will reduce the impact of unconscious bias. Thus, review all aspects of the organization with a view toward replacing:
  - unstructured with structured,
  - subjective with objective, and
  - hidden with transparent.

#### Broaden Decision-Making:

- **Accountability of Decision-Makers:** Hold decision-makers individually accountable for the fairness of their decisions. If decision-makers are required to justify their decisions in specific terms with specific evidence, they will often go beyond “top of mind” and consider all of the options available for staffing a matter, putting a pitch team together, etc. Requiring decision-makers to consider every

available person, instead of the usual favorites that quickly come to mind, will also help ensure fairness in opportunities.

- **Systems Accountability:** Implement a system where “culture checks” become a routine part of all decision-making.<sup>190</sup> At every point where important decisions are made – especially where teams of people are being created (committees, task forces, succession-planning, pitch teams) – ask if there is diversity of perspective, thought, and experience represented, which may require specific focus on visible differences (race/ethnicity, gender, age, sexual orientation, disability) until there is adequate representation in the organization. For example, if every pitch team only includes white men, there is a systemic pattern of bias in play that needs conscious, intentional consideration for diversity and inclusiveness before it is embedded in all decision-making in the organization.

### ***Overcoming Hidden Barriers is an Ongoing Battle***

New research by Catalyst, Inc. illustrates how powerful hidden barriers are in the business setting - even when people are aware of hidden barriers and adapt to overcome them, their career paths are still limited. The fact that individuals cannot overcome these limiting factors on their own provides even more reason for organizations to engage in inclusiveness initiatives.

Catalyst conducted a longitudinal study of over 3000 high-potential MBA graduates to examine their relative levels of success when implementing various strategies for advancement. The Catalyst report<sup>191</sup> begins by acknowledging the importance of the intangible factors in career advancement and listing those that are required to get ahead:

- Actively seeks high-profile assignments,
- Rubs shoulders with influential leaders,
- Communicates openly and directly about their career aspirations,
- Seeks visibility for their accomplishments,
- Ensures their supervisor knows about their skills and willingness to contribute,
- Continually seeks out new opportunities,
- Learns the political landscape or unwritten rules of the company, and
- Isn't afraid to ask for help.<sup>192</sup>

More than half of the men and women in the study adopted all of these strategies. Yet, “[e]ven when women used the same career advancement strategies—doing all the things they have been told will help them get ahead—they advanced less than their male counterparts and had slower pay growth.”<sup>193</sup> Inclusiveness requires systemic changes and monitoring that will help break the cycle of lingering biases that hold the glass ceiling firmly in place.

A 2012 study reveals one reason underlying gender bias – men’s marriage and family structure. A group of researchers from several universities probed the attitudes and beliefs of employed men and found that men whose wives who did not work or worked part-time were more biased against women at work. Specifically, these men “(1) have an unfavorable view about women in the workplace; (2) think workplaces run less smoothly with more women; (3) view workplaces with female leaders as less desirable; and (4) consider female candidates for promotion to be less qualified than comparable male colleagues. The researchers also found that the men who exhibited resistance to women’s advancement were ‘more likely to populate the upper echelons of organizations and thus, occupy more powerful positions.’”<sup>194</sup> These attitudes can be unconscious and unintentional but powerful in their impact on women’s careers.

## Endnotes

- <sup>1</sup> CLI and the DDC would like to thank the following individuals at The Denver Foundation for their leadership in licensing the Inclusiveness Project materials to CLI:  
**David Miller**, President and CEO  
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**Katherine Pease**, Consultant and primary author of *Inclusiveness At Work: How to Build Inclusive Nonprofit Organizations*  
**Cinque McKinney**, Associate Program Officer  
**Rebecca Arno**, Vice President of Communication  
**Adrienne Mansanares**, Inclusiveness Project Program Manager  
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**Rich Lopez**, 2009 Chair of The Denver Foundation Board of Trustees, former Chair of the Expanding Nonprofit Inclusiveness Initiative (now the Inclusiveness Project)
- <sup>2</sup> Pease, Katherine. *Inclusiveness at Work: How to Build Inclusive Nonprofit Organizations*. The Denver Foundation (Denver 2005).
- <sup>3</sup> Chambliss, Elizabeth. *Miles to Go: Progress of Minorities in the Legal Profession*, American Bar Association, (2004). According to the American Bar Association's report, which compiled statistics on various professions from the 2000 U.S. Census figures, racially/ethnically diverse people comprise 9.7% of all lawyers compared to the following: physicians – 24.6%, professors – 18.2%, accountants - 20.8%, computer scientists – 23.1%, dentists – 15.9%, economists – 20.3%, architects – 14.9%. Only chief executives as a group were lower at 9.5%. (See [http://www.abanet.org/abastore/products/books/abstracts/4520014\\_2005%20execsumm.pdf](http://www.abanet.org/abastore/products/books/abstracts/4520014_2005%20execsumm.pdf)). Since this report was issued, chief executive officers and lawyers are in a perpetual race to the bottom of the list, trading places every couple of years. CEOs won the race in 2009, with 12.7% diversity compared to 11.3% diversity in the legal profession. 2009 National Bureau of Labor Statistics. (Available at: <http://new.abanet.org/marketresearch/PublicDocuments/cpsaat11.pdf>).
- <sup>4</sup> The American Bar Association reported in 2006 that women comprised 30.2% of the legal profession. (See report at: <http://www.abanet.org/women/CurrentGlanceStatistics2006.pdf>). The National Association for Legal Career Professionals, which collects demographics for larger law firms across the U.S., reports that women make up 33% of all larger law firm attorneys in 2009. (See statistics available at: <http://www.nalp.org/oct09lawfirmdiversity>).
- <sup>5</sup> Basas, C.G.; Williford, R.S.; & Enyart, S.L. (editors). *Lawyers, Lead On: Lawyers with Disabilities Share Their Insights* (ABA, 2011) at p. 49-50.
- <sup>6</sup> Chambliss, Elizabeth. *Miles to Go: Progress of Minorities in the Legal Profession*, American Bar Association (2004). (Available at: <https://www.abanet.org/abastore/index.cfm?fm=Product.AddToCart&pid=4520014>). (When the American Bar Association studied labor statistics in 2004, CEO's, as a group, were at the bottom of the list of all professions in terms of racial and ethnic diversity. Attorneys were second from the bottom. In 2009, attorneys fell to last place when compared to all other professions. But CEOs subsequently fell to last place in 2010. See further 2010 National Bureau of Labor Statistics. (Available at: <http://www.bls.gov/cps/cpsaat11.pdf>).
- <sup>7</sup> The *Call to Action* was an initiative by corporate counsel nationwide to promote diversity in the private practice of law. Signatory corporations pledged to hire only those law firms that are diverse. The *Call to Action* has now become the Leadership Council for Legal Diversity ([www.lclldnet.org](http://www.lclldnet.org)).
- <sup>8</sup> [www.lclldnet.org](http://www.lclldnet.org).
- <sup>9</sup> Jones, Leigh, "A Bleak Outlook for Minority Enrollment at Law Schools." *The National Law Journal* (January 21, 2008). Web. Prior to the 2008 economic downturn, the Law School Admission Council reported declining applications by racially/ethnically diverse students. (Available at: [www.lsacnet.org](http://www.lsacnet.org)).
- <sup>10</sup> Patton, P. *Sidebar for Law Leaders* (March 2007), NALP Foundation (A decade of research by the National Association for Legal Career Professionals reveals that racially/ethnically diverse associates depart their law firm employers at higher annual rates than do white associates.) In 2008, 85% of racially/ethnically diverse attorneys left their firms by the 5<sup>th</sup> year of practice compared to 76% of non-diverse attorneys (2008 Update on Associate Attrition, NALP Foundation). Those percentages increased in 2009, to 87% and 78%, respectively (2009 Update on Associate Attrition, NALP Foundation). Those figures fell somewhat in 2010, to 73% and 69%, perhaps due to the lay-offs and deepening recession (2010 Update on Associate Attrition, NALP Foundation).
- <sup>11</sup> See statistics gathered by the National Association for Legal Career Professionals. (Available at: [http://www.nalp.org/lgbt\\_representation\\_up\\_in\\_2012](http://www.nalp.org/lgbt_representation_up_in_2012)).

- <sup>12</sup> See statistics gathered by the National Association for Legal Career Professionals. (Available at: <http://www.nalp.org/oct09lawfirmdiversity>, <http://nalp.org/2010lawfirmdiversity>, [http://www.nalp.org/women\\_minorities\\_jan2012](http://www.nalp.org/women_minorities_jan2012), and <http://www.nalp.org/2012lawfirmdiversity>).
- <sup>13</sup> See U.S. Department of Labor Statistics. (Available at: <http://www.dol.gov/wb/stats/main.htm>).
- <sup>14</sup> NALP, *Law Firm Diversity Among Associates Erodes in 2010* (November 2010). (Available at: <http://nalp.org/2010lawfirmdiversity>).
- <sup>15</sup> Djordjevich, Vera. *Law Firm Diversity Stalls in Recession* (October 20, 2010). (Available at: <http://www.vault.com/wps/portal/usa/vcm/detail/Career-Advice/Workplace-Issues/Law-firm-diversity-progress-stalls-in-recession?id=32398>).
- <sup>16</sup> Barker, E. *Diversity Scorecard: One Step Back*, *The American Lawyer* (March 2, 2010), pp. 71-77. (Available at: <http://www.law.com/jsp/tal/PubArticleTAL.jsp?id=1202445331427&slreturn=1&hbxlogin=1>).
- <sup>17</sup> American Lawyer Diversity Scorecard 2011 Report.
- <sup>18</sup> *Update on Associate Attrition: Findings from a Study of Law Firm Associate Hiring and Departures – Calendar Year 2011*, NALP Foundation (2012), p. 4.
- <sup>19</sup> *Visible Invisibility: Women of Color in Law Firms*, (2006), NALP Foundation. In the late 1990's, research by the National Association for Legal Career Professionals found that more than 75% of female associates of color had left their jobs in private law firms within five years of being hired; by 2005, that figure had increased to 81%. (Available at: <http://www.abanet.org/women/VisibleInvisibility-ExecSummary.pdf>). Statistics from NALP indicate that in 2009, attrition rates were higher than ever before. By the fifth year of private practice, 87% of associates of color left their firm, compared to 78% of non-majority associates (*2009 Update on Associate Attrition*, NALP Foundation).
- <sup>20</sup> Pease, Katherine. *Inclusiveness at Work: How to Build Inclusive Nonprofit Organizations*. The Denver Foundation (Denver 2005).
- <sup>21</sup> The term "inclusive excellence" was first developed by the Association of American Colleges & Universities (AAC&U) and shared with CLI by Dr. Jesús Treviño, former Associate Provost, University of Denver, Center for Multicultural Excellence. The AAC&U has led in developing "Inclusive Excellence" as a guiding vision for the higher education community and advances "Making Excellence Inclusive" to achieve that vision. Visit [http://www.aacu.org/inclusive\\_excellence/index.cfm](http://www.aacu.org/inclusive_excellence/index.cfm) for more information.
- <sup>22</sup> "The Business Case for Diversity: Reality or Wishful Thinking?" The Institute for Inclusion in the Legal Profession (2011). (Available at: <http://www.theiilp.com/resources/Documents/IILPBusinessCaseforDiversity.pdf>.)
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- <sup>25</sup> Reeves, A.N. *The Next IQ: The Next Level of Intelligence for 21<sup>st</sup> Century Leaders* (American Bar Association, 2012).
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- <sup>27</sup> Hackett, David. Remarks during Roundtable Discussion. (Reported in *2008 ABA Diversity Collection* at: <http://www.abanet.org/diversity/Docs/DiversityCollection.pdf>, p. 5).
- <sup>28</sup> Catalyst, Inc. first documented this in its Bottom Line report in 2004 but it was replicated by Credit Suisse in 2012. See Curtis, M. "Does Gender Diversity Improve Performance?" Credit Suisse (July 31, 2012)(Full report available at: [https://infocus.credit-suisse.com/data/product\\_documents/shop/360145/csri\\_gender\\_diversity\\_and\\_corporate\\_performance.pdf](https://infocus.credit-suisse.com/data/product_documents/shop/360145/csri_gender_diversity_and_corporate_performance.pdf)); Carter, N.M and Wagner, H.M. "The Bottom Line: Corporate Performance and Women's Representation on Boards (2004-2008)(Available at: [http://www.catalyst.org/file/445/the\\_bottom\\_line\\_corporate\\_performance\\_and\\_women's\\_representation\\_on\\_boards\\_\(2004-2008\).pdf](http://www.catalyst.org/file/445/the_bottom_line_corporate_performance_and_women's_representation_on_boards_(2004-2008).pdf)).
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- <sup>30</sup> ACC Value Challenge: Briefing Packet (2009). (Available at: [http://www.acc.com/valuechallenge/upload/Value-Challenge-Brief\\_022510.pdf](http://www.acc.com/valuechallenge/upload/Value-Challenge-Brief_022510.pdf)).
- <sup>31</sup> Brayley, D.E. & Nguyen, E.S., *Good Business: A Market-Based Argument for Law Firm Diversity*, 34 J. LEGAL PROF. (January 2009) (Available at:



- <http://sites.harvard.edu/fs/docs/icb.topic526845.files/ERIC%20NGUYEN%20and%20DOUGLAS%20BRAYLEY%20-%20J.%20Legal%20Profession%20-%20Good%20Business%20-%20Law%20Firm%20Diversity.pdf>.
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- <sup>39</sup> Phillips, K.W. et al. "Is the Pain Worth the Gain? The Advantages and Liabilities of Agreeing with Socially Distinct Newcomers." *Pers. Soc. Psychol. Bull.*, vol. 35, no. 3, pp. 336-350 (March 2009)(Available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=402081](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=402081)).
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- <sup>44</sup> In January 2007, two white male law students at Stanford Law School created a grassroots group called *Building a Better Legal Profession* that rates law firms on diversity and encourages students to decline offers from firms that are poorly rated – [www.betterlegalprofession.org](http://www.betterlegalprofession.org).
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- <sup>51</sup> Ali, S. "Andre Wyss on Building Gender Equity at Novartis." DiversityInc.com. May 12, 2011.
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- <sup>53</sup> Pease, Katherine. *Inclusiveness at Work: How to Build Inclusive Nonprofit Organizations*. The Denver Foundation (Denver 2005), pp. xxi-xxii.
- <sup>54</sup> Id. at xxv.
- <sup>55</sup> Id. at xxxi.
- <sup>56</sup> Id. at xxii.
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- <sup>62</sup> Gardenswartz, p. 324.
- <sup>63</sup> This model, now known as *Advancing Inclusiveness Model (AIM) for Excellence*, is patterned after a model originally presented in "Racial Awareness Development in Organizations" (*Working Paper: New Perspectives, Inc.*), 1981, Bailey Jackson, Ed.D., Rita Hardiman, Ed. D., and Mark Chesler, Ph.D. See Jackson and Holvino (1986) and Jackson and Hardiman (1994). The original concept was adapted by J.H. Katz and F.A. Miller in 1986 ("Developing Diversity," The Kaleel Jamison Consulting Group, Inc.) and continues to evolve. See Holvino, E.H., Ferdman, B.M., & Merrill-Sands, D. (2004). *Creating and Sustaining Diversity and Inclusion in Organizations: Strategies and Approaches*. In M.S. Stockdale & F.J. Crosby (Eds.), *The Psychology and Management of Workplace Diversity* (pp. 246-48). Malden, MA: Blackwell Publishing. Also see Holvino, E. (1998). *The Multicultural Organizational Development Model*. Unpublished training materials. Chaos Management, Ltd. Brattleboro, VT. Jackson, B., & Hardiman, R. (1994). Multicultural organization development. In E. Cross, J.H. Katz, F.A. Miller, & E.W. Seashore (Eds.), *The promise of diversity: Over 40 voices discuss strategies for eliminating discrimination in organizations* (pp. 221-239). Burr Ridge, IL: Irwin. Also see Washington, Jamie. Keynote presentation. University of Denver's Seventh Annual Diversity Summit. May 2, 2008.
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- <sup>65</sup> See "Shaping Our Culture," Lockheed Martin. (Available at: <http://www.lockheedmartin.com/data/assets/corporate/documents/shaping-our-culture.pdf>
- <sup>66</sup> See Xerox's website at: <http://www.xerox.com/about-xerox/jobs/diversity-and-inclusion/enca.html>.
- <sup>67</sup> 2011 statistics from the U.S. Bureau of Labor and Statistics. (Available at: <http://www.bls.gov/cps/cpsaat11.pdf>).
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- <sup>69</sup> See *2009 Quick Takes Report on Women in Accounting*, Catalyst Report (2009). (Available at: <http://www.catalyst.org/publication/204/women-in-accounting>).
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- <sup>201</sup> Id.
- <sup>202</sup> Id.
- <sup>203</sup> Id.
- <sup>204</sup> See generally, *White Men as Full Diversity Partners* (<http://www.wmfdp.com/>).
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- <sup>207</sup> *Best Practices in Achieving Workforce Diversity*, U.S. Department of Commerce. (Available at: <http://govinfo.library.unt.edu/npr/initiati/benchmk/workforce-diversity.pdf>).