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# DOCKET

*INFORMED. INDISPENSABLE. IN-HOUSE.*

## **Why Diversity and Inclusion Will Advance Your Business — and Your Career**

**Cultural Competence**

**Law Department Management**



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## CHEAT SHEET

- **Reflect your customer base.** Diverse teams that reflect the companies' constituents and understand how to meet their needs have more effective and successful interactions with suppliers and customers.
- **Foster cultural understanding.** Team members who understand cultural differences can greatly assist in negotiating legal issues from different nationalities and cultures.
- **Outperform.** Diverse decision-making groups outperform homogeneous groups. For example, companies with the highest percentage of women on their executive committees significantly outperform male-only teams in both return on equity and average earnings before interest and taxes margin.
- **Be inclusive.** Engaged employees who feel valued have been shown to increase average revenue growth by 11 percent over the industry average. Therefore, an inclusive environment can increase productivity.

I am a 63-year-old, white male — and a long-time champion of diversity. As general counsel of four major corporations, I have helped 15 attorneys move on to become general counsel in their own right. Currently, I head technology and administration for MassMutual, a Fortune 100 company. Later this year, I plan to retire, after 45 years of work. I have had a wonderful life, career, spouse, and family. I may be among the luckiest people in this world! So why am I so committed to diversity and inclusion?

My personal success is closely correlated to advancing diversity and inclusion and surrounding myself with a diverse team. In the past, I have thought: Why share my competitive advantage? But by championing the value of diverse and inclusive teams, I have been able to attract and lead talented individuals who have led to my companies' — and my — success. If you truly aspire to be a leader, you need to make developing a diverse and inclusive culture as important as any other operational and leadership action you take to drive performance.

“Diverse” and “inclusive” mean different things to different people. While “diversity” reflects the different makeup of a team such as race or ethnicity, “inclusion” is the “active, intentional, and ongoing engagement with diversity in the organization.” Building a culture of diversity and inclusion in your legal team is critical because it will:

- Improve your team’s results;
- Attract superior talent;
- Provide unique insights to better understand the needs of your customers;
- Create better strategies and solutions for questions and issues your team will need to address;
- Help establish an environment of innovation and creativity; and
- Assist in developing an atmosphere of learning and continuous improvement.

All this will work together to increase productivity and deliver exceptional performance.

## It's all about talent and teams

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My guiding principle is: “It is all about talent and teams — diverse and inclusive teams.” Any leader or legal team is only as strong as the overall team. To identify and attract the very best talent, you need to be able to choose from the most expansive population pool. The broadest talent group possible should yearn to join your team and your organization. This talent pool is rapidly changing. Around the year 2042, the white majority in this country will become the minority, never to be reversed. Currently, 56 percent of enrollees and graduates at American colleges are women. Women comprised 51 percent of the law students in the 2018 class. Women now represent 28 percent of general counsel. Minorities are close to 11 percent of Fortune 500 GCs. In both categories; there has been an increase over the percentages of past years.

For years, many lawyers have recruited and hired people just like themselves. On one hand, that is not irrational. We tend to like people who are similar to us. And there is no doubt that it is generally “easier” to work with someone who comes from a similar education, background, experiences, and family as you. Not only are there commonalities, but many are hesitant to interact with others who are different because of a fear that they may do or say something wrong, cause offense, or even create legal liability. Recently, I found myself in India and asked one of the people there who worked with my team if they found it offensive if I asked questions about their family. But just because it may be harder to work with people who are different, and you may make mistakes, the payoff significantly outweighs any such difficulties.

Some individuals view a focus on diversity to be a zero-sum game, or think that the desire to create a diverse team that appreciates, accommodates, and is respectful of differences is a form of “cultural Marxism.” Thus, when a diverse attorney is hired or promoted, and a straight white man is not, that man may feel he has lost. And some feel that even though they are better qualified, a diverse attorney was hired for a choice position, or advanced over them. In such circumstances, it can be helpful to meet with these individuals to reassure them that their contributions are valued and that there are opportunities for all. If appropriate, describe the criteria you used to make your decision. Emphasize that having a diverse and inclusive team improves results and thereby creates additional benefits for all of us. Just being part of such a team will improve your results and therefore, increase your own potential and opportunities — this has certainly happened to me. There is not a limited number of positions or openings. By being successful, opportunities for all grow.

## **The demographic tsunami is upon us**

Prepare now for the fast-paced wave of demographic changes. No legal team can limit itself to less than half of the talent pool. That means reaching out to women and other diverse individuals becomes a necessity, including women returning to the workforce after raising children. To attract the best talent, an organization needs to publicly display that it values all people and their views. It has to be clear that a diverse array of individuals can and have become successful because of their talent and their work. Your commitment to diversity will seem hollow if all the leaders look and act the same. Thus, not only must the team be diverse, but its leaders must also understand and represent those they are leading. Proof of “making it” benefits the current team and potential new recruits. Simplistically, a candidate should think: “*If I can see it, I can be it.*”

Recruiting a very talented woman or person of color has, in the past, been a challenge for many. Overcoming this challenge is all about the expectations for all those within your legal group. We do not delegate hiring to the company human resources recruiting team. Instead, it is each of our responsibility at every level in the organization. We need to get out and meet diverse talent, before we are even looking, whether through boards, at events, on panels, mentoring, internships, or writing for publications. By sharing what we have done, are doing, and plan to do with respect to diversity

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and inclusion, I know we have tipped the scales in our favor. In fact, one racially diverse attorney at a big-name firm in New York City told us that when she was considering an opportunity at MassMutual (in western Massachusetts); she asked her mentor whether he thought it made sense. His response: “If you have an opportunity to work for Mark Roellig, take it.” Why wouldn’t such an individual prefer to work in an organization where diversity and inclusion exist, where he or she will be given an equal opportunity to be successful, where upward mobility exists, and different perspectives are valued?

Just as the demographics in the United States are changing for the talent pool, they are also changing for attracting customers. Customers and suppliers of almost all businesses are also global; what looks like the population in the United States certainly does not reflect the world’s population. Effective and successful interactions with suppliers and customers require a team of individuals who not only reflect these constituents, but also understand their needs and how they can be met. Diversity brings an organization “cultural intelligence,” which is necessary in our global economy.

## **Perceptions matter**

In today’s economy, companies must consider and respond to customers’ perceptions of them. Competitive alternatives exist for almost all products and services. Customers trust businesses with entities whose workforce, marketing, and messaging reflect their individual preferences. Incorporating diversity in all aspects of an organization sends a message that you value differences and, therefore, value diverse customers.

Some argue that legal teams solely interact with internal clients and, therefore, do not need to reflect the population as a whole. This assertion is simply not true. For example, having a team member who understands cultural differences will greatly assist in negotiating legal issues from different nationalities and cultures. Coaching one another on how to best interact and communicate with different populations adds value to the business. As we work on legal issues with customers, regulators, legislators, and administrators, we often retain outside counsel who are appropriate for, and reflect, those stakeholder groups. The same rationale and benefits apply to a diverse in-house team. Our internal clients are not a homogeneous group either. Successful companies are embracing the notion that company employees, including senior management, should reflect the overall population. In short, the corporate enterprise demands diversity.

## **Inclusion is an essential part of the equation**

A full range of diversity is necessary, but not sufficient, to improve results. An inclusive environment, where different perspectives are truly encouraged, listened to, and valued is the second part. Diversity is the noun and inclusion is the verb — and you need both. Companies can create diverse teams just for numbers or window-dressing. But because the team is not prepared for, and does not value and listen to, the different individuals and perspectives being offered, they fail to “mine” the inherent value of a diverse group. It is not what members of senior management say about diversity and inclusion, but rather what they do that matters. *The requirement is to “live it” so that its values become a natural part of the corporate culture.*

If a group is diverse by gender, color, ethnicity, and other factors, that typically means it possesses ideological diversity. However, when advancing diversity of approach and thought, we cannot limit ourselves to just the historical “protected classes.” It is critically important to include the infinite range and combination of individual and unique characteristics and experiences that lead us to approach challenges differently and to identify varying solutions. There’s a saying that if a diverse team is in a

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room, and the lights go off, what remains are those different backgrounds and experiences that make for alternative perspectives on issues. It doesn't matter what the people look like.

## Groupthink is dangerous

Diversity and inclusion bring equilibrium to any team. The more alternatives that exist to solve a particular problem, the greater the potential for a better decision. I remember, at US WEST, we wanted to expand our telecommunications business beyond traditional wired telecommunications services, but through cable properties. At that time, the Cable Cross-Ownership Act did not allow us to be in the cable business. I could have worked with just our legislative group to try to figure out how to change the law, but we put together a diverse team, including those with litigation and constitutional law expertise, and brainstormed ideas to get around this. The team concluded it made sense to sue the federal government on the basis that such a limitation infringed on our right of free speech — and we won! Thus, another benefit of a broad range of ideas is counterbalancing groupthink. *A clubby group may be more cautious about calling out what is wrong, crosses the line, or is even illegal.* How many times have we heard we should do something because “everybody does it.” Only to be surprised when there is a problem and on further inspection, not “everybody” is doing it. Understanding, evaluating, and vetting different approaches sharpens a team’s thinking. This allows team members to identify and raise issues early, correct them, and reduce errors later in the process.

This outcome has been substantiated by studies, using mock juries, which conclude that a diverse decision-making group outperforms homogeneous groups. And they will consider more information, more carefully deliberate, and make fewer errors. Diversity also encourages homogenous group members to raise more facts and make fewer errors. This effect is particularly telling when working on complex issues. Given the complex and multifaceted legal challenges facing enterprises, it is logical to conclude that diversity of thought will be of particular value in solving such problems.

“[P]eople work harder in diverse environments both cognitively and socially. They may not like it, but the hard work can lead to better outcomes,” writes Katherine Phillips in her 2014 Scientific American article, “How Diversity Makes Us Smarter.”

An organization that demonstrates its commitment to accepting and respecting individual differences will also be receptive to ideological differences. Creativity and innovation are natural products of such an environment. Individuals will feel more comfortable both expressing their own ideas and challenging institutional assumptions and the ideas of others because the organization has established a safe culture where all are encouraged to try new things. (I would rather 10 have ideas, with only two good ones, than none at all.) I remember when we decided to join the Massachusetts Attorney General in litigating that the Defense of Marriage Act (DOMA) was unconstitutional. We brainstormed, with several of our gay attorneys, on ways we could show how the then-current law forced us to discriminate against our gay employees — inconsistent with our corporate non-discrimination policies. I believe adding these specific facts and arguments to the amicus brief added value in the litigation and appeal, which was ultimately successful. Steve Jobs recognized the value of diverse input to innovation when he “connected the humanities to the sciences, creativity to technology, arts to engineering … at almost every product launch Jobs ended with a slide that showed a sign at the intersection of liberal arts and technology streets.”

If an individual walks into a meeting with strangers who look like cardboard cutouts of each other, and they have concluded that the correct solution to a problem is X, it is simply hard to suggest alternative Y. However, if one walks into a room where diverse groups of individuals are working in an environment where unique “against the grain” thoughts are accepted and encouraged, it is much

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easier to propose and debate alternative Y. A CEO whom I worked for often said, “When smart people ask dumb questions — listen.” *You need to create an environment where smart people are comfortable asking those “dumb” questions.* Moreover, if the participants are diverse and the organization supports differences and inclusion, it is likely that good, constructive questions will be raised — which leads to more thorough discussions and better solutions. “The mere fact that an individual is different from most people around him promotes more open and divergent, perhaps even rebellious thinking in that person.” “Simply adding social diversity to a group makes people believe that differences of perspective might exist among them and that belief makes people change their behavior.” Liberating people from conventional thinking, and inspiring individuals to move out of their silos and collaborate (potentially even cross-functionally), enhances innovation. “[F]or groups that value innovation and new ideas, diversity helps.”

Whenever I need to develop a unique legal strategy, confront and provide a solution to a challenge, or respond to an adverse result, I do not close my door and start working. My first step is to pull together a team of smart, creative people. For example, recently I was making tough decisions on how to best structure my new technology team to best support our business objectives. I knew I could not do this on my own. Therefore, I surrounded myself with individuals who were viewed and respected as having creative ideas, careful thinking, and good judgment. And these individuals were not people who were all at the higher levels in our corporate hierarchy. The group has to be diverse to ensure that many potential solutions are raised and all the possible downsides are identified and addressed. When making a key decision, an individual with good judgment timely considers alternatives, weighs the value of the range of facts, and considers the impact on various stakeholders, as well as the risks, cost, and likelihood of successful implementation of the proposed solution. A diverse and inclusive team will bring valuable input to each of these components, enhancing and refining both the decision-making process and the decision itself.

For better or worse, we generally live our lives in a homogeneous world. As a result, we all carry certain stereotypes and biases. We should not necessarily be self-critical that we have such natural biases or stereotypical views. Without them, our minds would not be able to create “shortcuts” to allow us to react to the almost infinite amount of perceptions we receive on any given day. And the individuals we generally love and trust most are our families. Likewise, most employees spend most of their non-working time in their family environment. Generally, the family unit is *de facto* very homogeneous. We tend to be like our parents and our kids tend to be like us — biology and/or parenting works that way. In addition, we are likely to be more comfortable around people who are like us. Not all, but most people’s friends tend to be like them.

We need to be aware of not only our potential “negative” biases, but also of our “positive” biases. When we are working on a great project, are we actively thinking to ensure we don’t assign it to someone we know, or like, and might enjoy working with, but to people based upon their abilities? I am a true believer in a performance driven and reward culture. But, remember, *results are the combination of ability and opportunity — we need to ensure we do not allow our biases to impact to whom we give opportunities.* Otherwise, only a limited group will have the chance to obtain those visibly great performances.

By understanding and discussing our natural biases, we have an increased opportunity to counteract them and allow them to have a reduced influence on our decisions. This self-awareness can have a significant impact on our choices around the key employment decisions including hiring, promotions, compensation, team composition, and the retention of external counsel. When we discuss these choices, I include my entire (diverse) leadership team. Through transparency and discussion, we aim to better recognize and avoid our biases and reach better outcomes. I simply could not do this alone.

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The workplace is different from our predominately homogeneous homes and families. At work, we are engaged in solving issues side-by-side with individuals of different genders, races, religions, and cultures, who come from disparate geographic and socioeconomic backgrounds, and who have different political and ideological leanings. This diversity allows us to interact with and learn about and from individuals who may be very different from ourselves. The optimal outcome is the creation of a learning environment that leads to the organization always looking at what is different, what is new, and what can be improved. Every month, I send out a message to my team covering the significant religious and ethnic holidays of that month — their history, meaning, and how they are celebrated. It is a great way to share with one another our differences and has been a continuous learning experience for the team — and for me. For example, I had not heard of “Three Kings Day.” I got huge kudos for sending out notes explaining what Eid is and wishing our team a great Eid al-Fitr.

At different times, we all play diverse roles: individual contributor, follower, and leader. In addition, someone may be a manager who fills out appraisals, makes compensation decisions, etc. An individual’s unique perspectives and experiences provide opportunities for them to play certain roles and be leaders with respect to those roles. Therefore, creating a diverse team and drawing upon the value of inclusion creates leadership opportunities for many. Within our law department, we have a diversity committee. No surprise, it is made up of both diverse and non-diverse members from all levels in our department, including our non-lawyer staff. All of these individuals had an opportunity to work together with me and our leadership team. As a result, we could learn about them, interact with them, and see how they come up with creative ideas and implement them. In addition, for all of our interview panels, we require the interviewers to be diverse (both on gender and color). As a result, during the hiring process, I have the opportunity to interact with many people who are different from me and learn about how they would make judgments around the selection of talent — probably the most important decisions we make. By the way, if talent and teams are so important, every general counsel needs to send the message and interview every attorney hired, and always ask about the diverse slate and diverse interviewers.

## **The importance of leadership — not slogans or posters**

If we think about our careers, we all know how much more we enjoyed working for a leader who we respected and who cared about our work, our futures, and us. People generally do not leave jobs, but leave bosses. The 2010 Corporate Counsel Women of Color survey shows that “being valued” is the greatest driver of job satisfaction for inhouse counsel woman of color. In addition, studies support the proposition that diversity effectiveness improves business results by increasing employee retention, facilitating collaboration, and inspiring employees to work slightly harder. Moreover, if we think about how much more productive we were when we were valued by our leaders and had high job satisfaction, it is startling. We are energized to come to work early, go the extra mile on a project, or spend our free time thinking about how to achieve better results.

An environment and culture that promotes diversity and inclusion is one where people bring their full selves to a diverse-friendly environment. This means that diverse people feel they are welcome and can “show up” to their jobs in full, without holding anything back. They trust they will not have to deal with the pain and discomfort of an unwelcoming environment and they can instead focus on adding value. The best, and saddest, example of this was my good friend — Dan Brandhorst. Dan was a partner at PwC and helped me with many tough projects. He was also there to support me and comfort me during some of the challenging times in my career. Unfortunately, he apparently felt that he could not share his personal life with his colleagues or me. And I did not know he was gay — until Dan, his partner, and son were all killed in the second plane to hit the Trade Center. I felt sick that he believed he had to hide this from all of us — and I vowed that *I would not work in such a world that*

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*doesn't allow individuals to share their differences. Thank you, Dan!*

Employees do not come to work wanting to be failures. They come to work wanting to be valued and to add value. Engaged employees have been shown to increase average revenue growth by 11 percent over the industry average. If the environment encourages this attitude, productivity will soar. Conversely, if one is suppressing something — an experience, a thought, a suggestion — because they feel it will be unwelcome, it is natural that such suppression will also invade and erode their ideas, creativity, and productivity.

## **The results will occur**

All of the previous factors work together to increase productivity and produce better results. Therefore, it is not surprising that companies with the highest percentage of women on their executive committees significantly outperform male-only teams in both return on equity and average earnings before interest and taxes margin. A 2001 survey also found that Fortune 500 firms with more female executives outperformed their industry medians by 34 percent in terms of profit as a percent of revenues and by 69 percent in terms of profit as a percent of stockholder's equity. In addition, 72 percent of respondents to a 2010 McKinsey survey believe there is a direct connection between a company's gender diversity and financial success. Finally, "highly diverse law firms generate greater revenue and turn higher profits than their peers, even after controlling for hours, location, and firm size ... The evidence suggests that diversity is both a cause and effect of good business."

## **Diversity and inclusion have moved beyond civil rights**

For a long time, diversity has been championed in the name of equality and called the "right thing to do" from legal, moral, and religious perspectives. In my younger days, we called it "civil rights." This certainly remains true today. Yet, law departments that want to drive competitively superior performance will recognize the affirmative business value of diversity and inclusion. They will move beyond satisfying the minimal standard of what is legally required and will attract and develop a very talented, diverse team to establish a culture that is inclusive of all views and perspectives. Such an environment will allow every individual to create value, and bring his or her greatest gifts to the organization. The outcome will be more creative and proactive legal approaches and better decision-making that will generate superior results in addressing complex legal challenges and customer needs.

## **Straight white males can't just be supporters — They need to own it**

As advancing diversity and inclusion is so important, it cannot be assigned to others to accomplish. Nonetheless, generally, the straight white male, like me, has not been always been involved in this issue for two major reasons. First, it is viewed as "not my issue" — it is one for diverse individuals to work on and address. And, second, many thought that a focus on diversity and inclusion does not benefit the straight white legal manager. As a result, we often feel we do not have the "psychological standing" to actively advance and support this imperative.

The factors outlined above should make it clear why diversity and inclusion benefit all of us. So, it is just as important to the members of the majority as it is to others. We need to be clear that this is a non-delegable issue. It cannot be assigned to only diverse individuals or employee resource groups. It can't be treated as a "feel-good" extracurricular exercise, but must be pursued like other

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significant business objectives — purposefully and with a sense of urgency.

We should always select and promote the best person for any position. Therefore, if we want to have the strongest team, and get the best results, we need to take significant steps to attract a diverse pool of candidates and ensure equal opportunities in recruitment (involving a diverse slate and diverse interviewers), career development, and promotion. If we are selecting the best person, they will be valued, and become an active supporter of diversity and inclusion. And if one is such a supporter, he or she will work hard to ensure to create a diverse team. Part of this effort is to work very hard to compensate for, and reduce, our unconscious biases in all significant employment decisions.

## **The conclusion is simple**

The conclusion to this article is simple to write. Advancing diversity and inclusion is essential to your businesses and to your personal success. The net result benefits us all: our society, our shareholders, the business we work for, and ourselves. It has worked extremely well for me, and more importantly, for my team.

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