

Modern Legal Practice

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The Lawyer's Guide to Mentoring

by Ida Abbott

Reviewed by Rebecca Normand-Hochman

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Client teams: an innovative approach to reducing unconscious bias and differentiating through difference

Kelly M Brown

Client teams can serve as an innovative approach for bringing together a broad mix of people across a firm in ways that reduce unconscious bias and leverage diversity as part of a business differentiation strategy to deepen client relationships and grow business.

I. Introduction

In an IBM global CEO study of more than 1,500 CEOs across 33 industries and 60 countries, CEOs identified creativity as the most important leadership competency for the future for navigating increasingly complex business environments.¹ Increasing business complexity generates the need for creative and innovative legal solutions. In-house counsel are calling on law firms to increase diversity on matter teams. One reason is to help their companies tap into the creativity and innovation that decades of research – across the fields of science, economics, social science and psychology – show diverse teams can generate.² As HP's chief legal officer and general counsel, Kim Rivera, notes in connection with HP's decision to direct more business to firms that build diverse legal teams: "This is important to us. It's so important to drive performance and innovation that it's going to be mandatory".³

This article focuses on how law firms can use diversity and inclusion as part of a business differentiation strategy that drives revenue and profitability. It covers four key areas. First, it explores an emerging opportunity for law firms to use diversity and inclusion as part of a business differentiation strategy. Second, it looks at the challenge unconscious bias can pose to pursuing such a strategy. Third, it examines approaches to mitigating unconscious bias that focus on building effective interactions among people across differences (intergroup contact). Fourth, it illustrates how to apply intergroup contact within the context of building diverse client teams. The client team structure is used as a practical example for how to design effective interactions across differences to reduce unconscious bias. The client team structure is also used as a practical way to illustrate how diversity can be used as part of a business differentiation strategy to deepen client relationships and grow business.

II. The emerging opportunity: diversify to differentiate

Michael Porter is recognised as one of the world's most influential business thinkers and the father of modern business strategy. As he puts it: "Competitive strategy is about being different".⁴

The 2008 economic downturn uncovered inefficiencies in the global market for legal services, magnified by client demands for law firms to deliver greater productivity, predictability and pricing flexibility. In response, most law firms focused on increasing operational effectiveness through cost-reduction strategies and improvements in matter management, using approaches that were mostly similar across firms. But as Porter cautions, such undifferentiated approaches lead to competitive convergence and do not translate into sustainable profitability. To create long-term competitive advantage, in addition to operational effectiveness, a law firm needs difference – developing a strategic position that delivers value that is different from that of rivals, either by doing different things or by doing similar things in different ways (Porter 1996).

In addition to client demands for law firms to increase their operational effectiveness, more recently, clients have begun to place growing importance on increasing the diversity of their outside legal teams. For those law firms that meet this client demand for diversity, they will both address an issue of growing importance to clients and position themselves to leverage diversity and inclusion as part of a business differentiation strategy. Effectively bringing together the unique mix of diversity a firm cultivates offers the opportunity to develop strategic positions that deliver client value that is different from that of rivals. Porter describes this as creating 'fit' among a system of activities, emphasising that when an organisation's unique mix of activities complement and reinforce each other, it creates a sustainable competitive advantage.

There are four factors which signal that in-house counsel will likely accelerate their focus on increasing diversity in outside legal teams, thus creating an emerging opportunity for law firms to diversify to differentiate:

- increased focus on diversity and inclusion at the corporate level of client organisations;
- greater sophistication in how clients are using legal analytics;
- increased use of legal department law firm preferred provider panels (convergence); and
- the rise of legal department operations professionals.

(1) Corporate-level diversity

Organisations are increasing their focus on diversity and inclusion as a total enterprise, not just within their legal departments. One reason is that the proportion of diverse consumers is growing in size and purchasing power. For example, research from Nielson shows US multicultural buying power has grown at double the rate of total US buying power. A second reason is an increasingly diverse talent base, just as the consumer base is becoming more diverse. Millennials are currently the most diverse adult generation in US history and the largest generation in the US labour force.⁵ A third reason is growing evidence of diversity's positive impact on business. Research shows that as racial and gender diversity increase, so do sales revenue, number of customers and profits.⁶ In a study of more than 1,700 companies across eight countries and a number of industries, researchers found the most diverse enterprises were also the most innovative.⁷ A growing body of research also shows that diverse teams outperform homogenous teams, driven by an increase in creativity and innovation and higher quality decision-making (Phillips 2014).

(2) Legal analytics

Another factor that will likely accelerate the in-house counsel push for more diversity on matter teams is their increasing use of legal analytics. What began as technology tools to help legal departments manage outside counsel billing and invoices, has evolved into more sophisticated uses of data. Greater access to comparative billing information has allowed legal departments to more easily benchmark law firm rates, alternative fee arrangements and billing practices.

Legal departments are also using more matter-level metrics to determine optimal staffing mixes to reduce costs, and to gain greater transparency into the diversity mix on matter teams. Legal department requests for diversity data are evolving beyond firm-level data to more granular matter-level insight, including utilisation of diverse attorneys and, in some cases, billing credit. Data and technology companies, such as LawyerMetrix, are using data science to help legal departments gain greater insight into comparative diversity data. The use of this type of comparative data accelerates the ability of legal departments to drive increases in diversity on matter teams.

(3) Convergence

Legal departments have been increasing the use of preferred provider panels as a way to manage legal fees, increase operating efficiencies and spur innovation in the delivery of legal services. The preferred-provider structure makes it easier for legal departments to gather law firm diversity statistics, make diversity comparisons across firms, implement diversity mandates and reward firms that meet diversity targets. There is a growing list of legal departments that have instituted bonuses and holdbacks to incentivise law firms to increase diversity on matter teams. Many legal departments are also signatories to American Bar Association (ABA) Resolution 113, which encourages legal departments to direct a greater percent of legal spend to diverse attorneys. All else being equal between two preferred-provider-panel firms, diversity can serve as a deciding factor between which firm remains on a panel and which loses its place.

(4) Legal operations professionals

Legal operations professionals are a growing presence in corporate legal departments. They work closely with general counsel to optimise in-house business operations, including legal spend, legal analytics, vendor management and strategic planning. The Corporate Legal Operations Consortium (CLOC) is a rapidly growing membership organisation of 1,700 global legal operations professionals across more than 800 companies. CLOC recently launched a diversity and inclusion initiative focused on diversity as a business issue. This presents the fourth factor likely to accelerate the focus on diversity and inclusion by legal

What began as technology tools to help legal departments manage outside counsel billing and invoices, has evolved into more sophisticated uses of data.

Law firms that increase diversity will position themselves to respond to what clients want. And law firms that leverage diversity in ways that deliver unique value to clients will position themselves for sustainable competitive advantage.

departments, and directly relates to two of the other noted factors – legal analytics and convergence. A 2016 study by Acritas Research lends support to CLOC’s focus on diversity as a business issue. Acritas studied the performance ratings clients gave law firms across several areas, and mapped those ratings to the diversity composition of matter teams. Acritas found that diverse law firm teams outperformed less diverse teams across several key performance indicators, including value delivered, responsiveness, commerciality, efficiency and strength of relationship. And law firms with higher levels of diversity received a higher percent of client legal spend and a higher recommendation rate.

These four factors – heightened focus on diversity at the corporate level; increased use of legal analytics; convergence; and the rise of legal operations professionals – combine in ways that give legal departments the incentive and tools to accelerate their focus on diversifying outside legal teams. Law firms that increase diversity will position themselves to respond to what clients want. And law firms that leverage diversity in ways that deliver unique value to clients will position themselves for sustainable competitive advantage. But before law firms can increase the diversity of matter teams, and leverage diversity as part of a differentiation strategy to drive revenue and profitability, they will first have to overcome the challenge of unconscious bias.

III. The challenge: unconscious bias

On average, the number of women and minority law school graduates and incoming law firm associates has increased over the last decade. But attrition rates for women and minority attorneys in law firms are disproportionately high, and diversity at the highest ranks in law firms continues to stagnate.⁸ Law firms are increasingly recognising the role unconscious bias plays in these disproportionate outcomes.

Unconscious (or implicit) bias, more formally known as implicit social cognition, is part of how our brains work – the thinking that happens on autopilot versus the more deliberate, conscious thinking. Implicit cognition is what causes a person to have a reflex reaction based on pre-programmed mental associations of which a person is not consciously

aware. This leads to both favourable and unfavourable assessments of other people based on how they look, where they live, how they talk or any other number of factors. And unconscious bias causes people to gravitate to those who are like themselves, limiting the scope of people they interact with. Marianne Bertrand, a professor of economics at the University of Chicago Booth School of Business, highlights what she describes as the ‘world of evidence’ researchers have accumulated over the years using all types of research methods – correspondence studies, audit studies, controlled lab experiments and neuroscience studies – demonstrating that unconscious bias exists.⁹

The research and neuroscience experiments conducted by Susan Fiske, a social psychologist at Princeton known for her work in social cognition, reveals that even when organisations and individuals genuinely believe in impartiality and meritocracy, unconscious bias still unknowingly creeps into individual and organisational decision-making.¹⁰ This unwittingly impacts decisions in the areas of hiring, promotion, performance evaluation, compensation and career development, all without any negative intent on the part of an organisation or the individuals within the organisation.

For example, in a research study on implicit bias in law firms, a consulting firm designed a writing experiment in which it distributed a memo to a group of partners across five law firms. They told half the partners that the writer was a white male third-year associate, and the other half that the writer was a black male third-year associate. Partner assessment of the quality of writing differed based on the race assigned to the associate. Partners gave the white associate a rating of 4.1 out of 5.0, and the black associate a rating of 3.2 out of 5.0 for the same fictional memo. Also, partners commented that the white associate had potential and good analytical skills. But they said the black associate’s writing needed a lot of work and was “average at best”.¹¹

One of the most popular approaches for trying to mitigate unconscious bias is diversity awareness training. US corporations spend billions of dollars annually on diversity training, but extensive research out of Harvard analysing three decades of data across 800 US companies shows diversity training has not

An environment that values different identities, perspectives, experiences and approaches to work creates a learning-based culture that pulls from broad knowledge and networks, fostering an inclusive environment.

been effective at reducing unconscious bias or increasing workplace diversity.¹² On the other hand, eight decades of research shows that increasing contact among people across different backgrounds (intergroup contact) is effective at reducing bias. When done well, increasing the amount, quality and impact of interactions among people across differences has the potential to enable law firms to reduce unconscious bias, increase diversity on matter teams, and leverage diversity as part of a differentiation strategy that drives revenue and profitability.

IV. Overcoming the challenge of unconscious bias: intergroup contact

Intergroup contact is people interacting across differences. Extensive research shows that increasing and facilitating interactions among people across differences in pursuit of common goals can reduce bias, increase diversity and get the most benefit from diversity. The research on intergroup contact runs deep, spanning the 1940s to recent research from Harvard. The late Harvard psychologist, Gordon Allport, is credited with developing intergroup contact theory (also known as contact hypothesis), based in part on research by the US Army from World War II that showed significant reduction in prejudice by whites who served side-by-side with black soldiers in integrated combat units.¹³ Thomas Pettigrew and Linda Tropp, two of the most prolific scholars on intergroup contact, have found universality in intergroup contact, discovering the positive effects of intergroup contact across 38 countries and a variety of groups, not limited to gender, racial or ethnic categories.¹⁴ But contact by itself is not necessarily enough to generate the positive effects of intergroup contact. Organisations must strive to foster quality interactions. There are three building blocks that can help foster quality interactions among people across differences (intergroup contact), described in this article as: inclusion-based learning; interaction metrics; and inclusion-centred design.

(1) Inclusion-based learning

How an organisation views and treats diversity can impact the extent to which an organisation reaps

organisational benefits from diversity. In research by Harvard professors Robin Ely and David Thomas, they found that one of the most favourable environments for fostering quality interactions across differences is one where organisations treat diversity as a learning resource integral to organisational functioning.¹⁵ An environment that values different identities, perspectives, experiences and approaches to work creates a learning-based culture that pulls from broad knowledge and networks, fostering an inclusive environment. In contrast, Ely and Thomas found that when an organisation treats diversity merely as a means for ensuring social justice or gaining access to diverse markets, it can have a limiting effect on an organisation's ability to reap the full benefits of diversity.

(2) Interaction metrics

For people to engage in learning across differences and reap the benefits of intergroup contact, organisations need to strategically and intentionally sow seeds of interaction. This includes understanding the formal and informal networks where vital interactions take place within an organisation, and prioritising the most strategic interactions that can position people to gain access to the knowledge and networks needed to advance and develop. Research shows that unconscious bias can lead to underrepresented groups being inadvertently left out of the informal networks through which work, client development and other professional development opportunities arise.¹⁶

(3) Inclusion-centred design

In the workplace, how an organisation designs work assignment processes, performance review systems, and even team meetings impacts the ability to draw on 100% of the talent pool. Iris Bohnet, an acclaimed behavioural economist from Harvard, stresses: "Bias is built into our practices and procedures, not just into our minds".¹⁷ The seeming absence of a design choice is a design choice. For example, many law firms choose a 'free market' work assignment system, whereby work is assigned through an informal system of interactions with colleagues. But as previously noted, research shows that people in underrepresented groups are often unintentionally left out of such informal networks.¹⁸

A seemingly impartial choice for how to assign work creates a blueprint for how people will interact with each other and how important professional and client development opportunities flow through a firm, having a disproportionately negative impact on those in underrepresented groups. For law firms to attract, retain and advance diverse talent to increase the diversity on matter teams and leverage diversity, intentionally designing organisational processes and systems with inclusion in mind is essential.

These three building blocks – inclusion-based learning; interaction metrics; and inclusion-centred design – combine in ways that foster the type of quality interactions among people across differences (intergroup contact) shown to reduce unconscious bias, increase diversity and get the most benefit from diversity. The client team structure is a practical and effective way for putting intergroup contact and these three building blocks into practice, with the added benefit of bringing people together in ways that can deepen client relationships and grow business.

V. Client teams: intergroup contact in practice

Client teams serve as an effective structure for law firms to apply the principles of intergroup contact in ways that reduce unconscious bias and meet client expectations to increase diversity on matter teams. But the real power of diverse client teams is that they offer law firms a path for differentiation that can

deliver a competitive advantage, revenue growth and sustainable profitability. Client teams provide a natural vehicle for achieving the strategic ‘fit’ across activities highlighted at the beginning of this article that Porter identifies as essential for creating sustainable competitive advantage and profitability. Porter advises that creating strategic fit is one of the hardest things for a company to achieve because it calls on a company to successfully harmonise decisions and actions across separate functions (Porter 1996). In the context of a law firm, this includes integration (intergroup contact) across different practice groups, industry groups, matter teams, offices, clients and operational functions. Client teams provide a natural structure for firms to bring together a broad mix of people across a firm, and to leverage that unique mix of identities, perspectives, knowledge and experiences to develop a strategic position that delivers unique value to clients.

The following is a five-step framework for how a law firm can apply the principles of intergroup contact within the context of the client team structure.

1. Commit to intergroup contact through client teams

The first and most important step is to establish partner and firm leadership commitment to using the client team framework to increase the amount, quality and impact of interactions across differences. One of the basic requirements for effectively designing and implementing any organisational strategy is for leaders to demonstrate a clear commitment. The decision to pursue a strategy of building diverse client teams to reduce unconscious bias, increase diversity on matter teams and benefit from 100% of the talent pool is no different. As Porter states: “With so many forces at work against making choices and tradeoffs in organizations, a clear intellectual framework to guide strategy is a necessary counterweight”.¹⁹

2. Assess interaction potential when selecting clients

To reap the benefits of a strategy to build diverse client teams, law firms need to select those client relationships most likely to provide the greatest opportunities for sowing seeds of interaction among people across differences. This requires three key steps:

- Seek input from relationship partners to uncover opportunities for growing and expanding client relationships.
- Use that input as part of a conflicts analysis to map possible paths for growth and potential negative impacts on other growth opportunities. Relatedly, conduct data analysis examining practice area growth and attrition trends and financial measures to gain additional insight into possible growth opportunities.

Client Teams Checklist	
Five steps for using client teams to apply the principles of intergroup contact as a path for reducing unconscious bias and differentiating through difference for competitive advantage.	
	Commit to intergroup contact through client teams: Establish partner and firm leadership commitment for using the client team structure to increase diversity on matter teams and benefit from 100% of the talent pool.
	Assess interaction potential when selecting clients: Talk with clients, assess growth opportunities, and conduct a conflicts analysis to identify client relationships that offer the greatest potential for increasing interaction across differences.
	Build teams using a broad lens of inclusion: In addition to partners, include associates at various levels of seniority and representatives from operational functions to leverage multiple perspectives for creating unique client value.
	Design team structures for learning & inclusion: Create various avenues for input and dissenting views to guard against groupthink. Use simple strategy tools and action-planning tools to foster broad involvement across the team.
	Repeat & thrive: Start small by beginning with a pilot programme. Seek client input to assess which approaches are having the greatest impact. Use this learning and insight to scale efforts.

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*Client teams can serve as an innovative approach
for reducing unconscious bias and meeting client expectations
for increasing diversity on matter teams.*

- Talk to clients to gain a deeper understanding of potential opportunities (and seek related commitments from clients who have expressed a desire for more diversity on matter teams).

3. Build teams using a broad lens of inclusion

Approach client team composition with a broad lens of inclusion. Because client teams are about deepening and expanding client relationships across practices, industry groups and offices, they are not limited by historical or current client work. Use the interaction assessment (from Step 2) to assess how potential client opportunities map to practice groups and diversity within those practice groups to build a client team that is as diverse as possible. Include associates at various levels of seniority. That paves the path for natural mentorship and sponsorship opportunities within the context of a client team. Also, include representatives from various operational functions. Using client teams as a hub that brings together multiple functional touch points within a firm provides a way to incorporate learning and perspectives about a client relationship from various vantage points. That creates opportunities to design unique value propositions and increase operational effectiveness in ways that are differentiated.

4. Design team structures for learning and inclusion

When designing team composition, be aware of the potential impacts of group dynamics. For example, ensure there is sufficient representation of diverse perspectives. Also, create various avenues for input, including ways for people to express dissenting views, to guard against group conformity. Collectively design group communication norms. Provide team leaders

with tools or coaching on inclusive leadership to help them bring out the best in diverse teams. Consider co-team leadership as a way to expand leadership development opportunities for diverse groups of attorneys. Use simple strategy tools, such as a SWOT analysis framework, to provide a way for everyone to contribute, benefit and learn from the diverse perspectives within the team. And use simple action-planning tools to foster broad involvement across the team, including in pitch and other client development opportunities.

5. Repeat and thrive

Start small to learn what works. Begin with a pilot programme. Each client relationship is unique and each client team will be unique. Select a simple set of metrics to monitor progress across teams and to learn which approaches are having the greatest impact (be sure to gather client feedback as part of that process). Use this learning and insight to scale efforts.

VI. Conclusion

Client teams can serve as an innovative approach for reducing unconscious bias and meeting client expectations for increasing diversity on matter teams. And client teams provide a natural structure for a law firm to bring together a broad mix of people and leverage their unique mix of identities, perspectives, knowledge and experiences to design a differentiation strategy that delivers unique value to clients, paving the way for increased revenue and sustainable competitive advantage and profitability.

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Kelly M Brown is a former business lawyer at a top 50 global law firm where she served as chief of staff to the firm Chair, led diversity strategy efforts across multiple areas, and launched and led the firm's key client programme. She earned her MBA from the Wharton business school where she was a research fellow with the Mack Institute for Innovation Management. Kelly is now principal adviser at BSD Strategy Group, a people interaction design firm that helps professional services firms design strategies for increasing the number, quality and impact of interactions among people across differences.

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- 18 See research by McKinsey & Company and LeanIn.Org, referenced in footnote 16 above.
- 19 See Michael E Porter, "What is Strategy?" *Harvard Business Review* (November–December 1996) (Porter 1996).

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