



Data Must Drive Diversity to Make a Meaningful Impact

As the old adage goes, what gets measured gets done. After all, when most of us work toward physical fitness goals, to mark progress, we count repetitions. When we run or walk, we mark the distance. To achieve those same fitness goals, some of us track calories burned. Some of us bravely step upon bathroom scales. To assess the state of our physical health, we record vital signs such as blood pressure, cholesterol or pulse rate.

In our professional lives, we use scorecards, dashboards and other tools to ensure that our sense of progress is validated by specific, measurable, quantifiable data. Sellers of goods track inventory, sales and the costs of goods, breakage and loss and price mix to measure profitability and return on investment. For those in the service industry, time is their stock and trade. So we assiduously monitor our use of time. Captured time, billable and otherwise, is the means by which we assess our performance as profit centers. We balance direct revenue generation activity with other indirect time investments such as business development, talent acquisition and development, brand building, intelligence gathering, trend analysis, goodwill and philanthropy.

The entirety of our professional and personal lives is informed by data and related analytics. Nothing can be objectively assessed without data. A good feeling or sense of progress, while important, is not a substitute for a measurable sense of return on investment, whether time or resources. And so it is that our work to achieve progress in diversity and inclusion in our profession must move beyond sentiment and best efforts to measurable progress and accountability.

In the earlier days of the legal profession's D&I journey, the work focused on rooting out overt racism, sexism and a host of other -isms. Early D&I champions worked to eradicate deeply rooted, systemic and, in some instances, intentionally placed institutional barriers and perceptions that rendered women and racial minorities virtually invisible in large law firms. These early efforts often resulted in well-intentioned focus on anecdotal proof points of progress. These early efforts also focused D&I work on community and pipeline initiatives as long-term investments to diversify the private law practice at its highest levels—Big Law.

To raise visibility, early D&I work led to the creation of a host of legal profession diversity awards to recognize good intentions and baby steps. We proliferated professional diversity organizations and rankings and embedded diversity professionals as subject matter experts within our national law firms.

As a community of lawyers, we elevated our profession's D&I discourse to heights previously unseen. Virtually every law firm of any size and profile now proudly promotes its commitment to meaningful inclusion in Big Law. Back then, we celebrated one-off instances of progress as a handful of women and minority lawyers in our respective firms and law departments seemed to defy professional gravity. Progress has been both slow and fleeting. To be sure, good work has been done on this front for which we all should be collectively proud.

But, as the saying goes, facts can be stubborn things. And, as we lawyers say, the facts here are largely undisputed. Over the past 20 years—since then-BellSouth General Counsel Charles Morgan sent a message to his outside lawyers calling for “Diversity in the Workplace,” a statement ultimately signed by 500 other general counsel—the numbers have not improved meaningfully. Though women currently account for about half of all law school graduates, female Big Law partners as a percentage of all Big Law partners remains stalled below 25%, having moved less than 5% in 10 years.

Similarly, racial and ethnic minorities (all minority groups combined) at the Big Law partnership level remain largely stagnant at less than 10%. Worse yet, the numbers for specific racial and gender groups paint an even bleaker picture. Most alarming is the predicament of Black female Big Law partners, who barely register a single percentage point after decades of focus by the profession and many seemingly well-intentioned firms. In a 2016 piece, the ABA reported that minority women are literally “disappearing” from Big Law. What have we been missing?

Perhaps what we have been missing is consideration of the role that data analytics and a renewed focus on the return on investment of our profession's D&I efforts plays in achieving sustainable progress. Maybe our current investments, while beneficial at some level, don't translate to real, measurable and sustained progress.

In assessing the health of our firms and practices, we leverage a seemingly endless array of metrics, dashboards and analytics. We measure and copiously track billable hours. We measure realization rates, per partner profits, marketing and business development investments all in an effort to determine whether and the extent to which those investments tie to new business for the firm.

At our law firms, we measure and attempt to quantify our recruiting and professional development efforts. We track and measure the administrative costs of running and growing our practices. We measure the things that burden our business from attrition (regrettable losses), excess capacity to write-offs. In short, we measure just about everything that is measurable in any way, and we attempt to quantify some things that do not lend themselves to easy measurement. For instance, we try to gauge subjective drivers of our practices such as client satisfaction and firm reputation. By harnessing “big data,” we aspire to practice law more efficiently, effectively and profitably.

During my in-house days, my law department attempted to measure and compare our outside law firms using rough proxy D&I metrics in survey form. We probed “out group” associate attrition rates in comparison to associate attrition rates in the main. We asked our firms to identify their least diverse practice groups and challenged them to consider why those practice groups seemed to lag in an effort to root out potential pockets of intransigence. We asked firms how much they budgeted for D&I work and how those resources were targeted as to allow us to assess whether resource outlays corresponded to the most pronounced gap areas. We asked whether our partner firms conducted exit interviews for

departing diverse lawyers to better understand why talented lawyers perceived their highest and best professional opportunity elsewhere.

With the responses that our firms submitted, we created a score card assigning numeric values to their responses. This data, though unscientific, enabled rich discussions about successes, best practices as well as opportunities for focus and improvement. There remains much work to be done.

In the final analysis, we all know what makes young lawyers of any background successful. They need what Malcolm Gladwell described as “meaningful work.” They need opportunities for client contact. They need stretch opportunities and chances to exhibit “heroism.” They need not just professional mentors but professional sponsors—powerful and consequential folks within the firm to serve as advocates and coaches. We all know that nobody makes partner on their own. Firms that aspire to move this most intractable of needles will need to pivot from the aspirational and philosophical to the tactical. And for those who lean into this work, there must be both rewards and, in some instances, consequences. Because in the final analysis, what gets measured gets rewarded and what gets rewarded gets done.

Partners John Lewis, Jr. and Buffy J. Mims co-chair Shook, Hardy & Bacon’s Diversity Initiative and collaborate with Shook’s Diversity Director Lolly Cerda. The premiere trial firm has more than 500 lawyers in 15 locations including Denver.