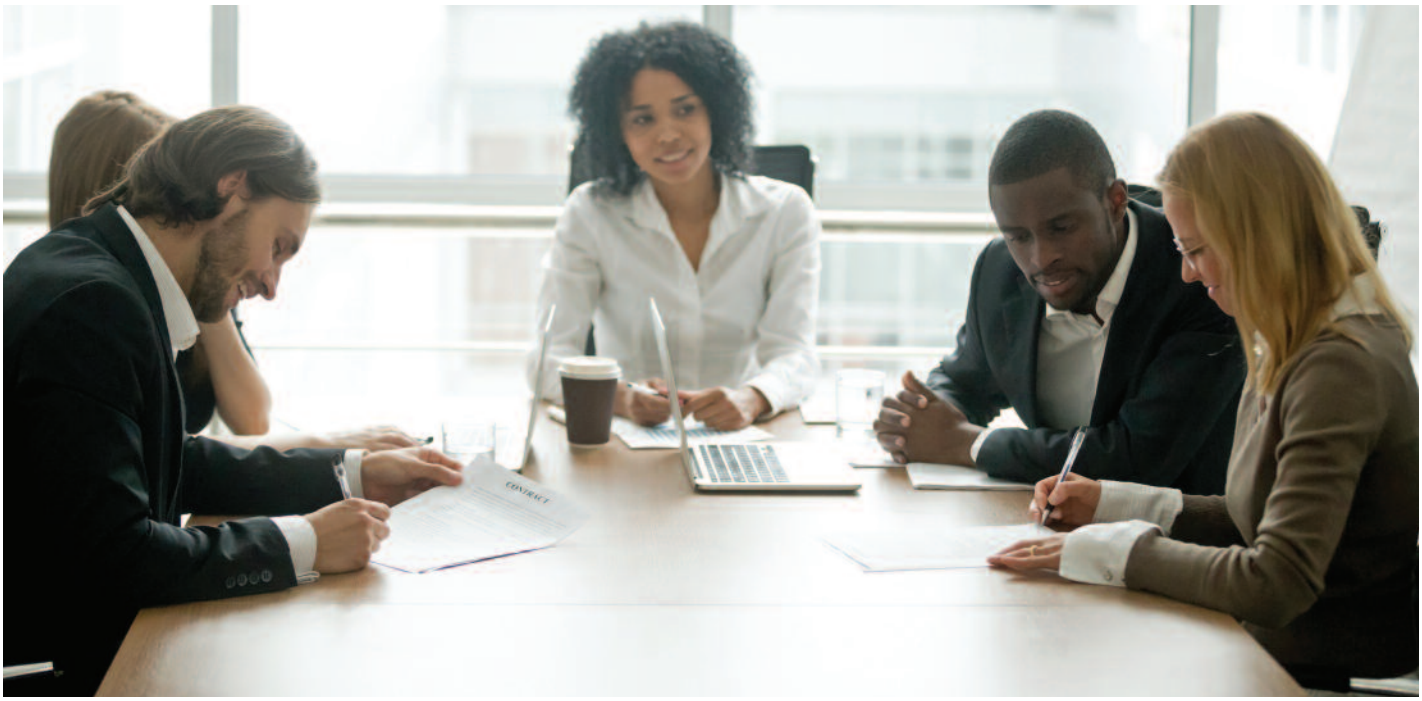

The Economic Basis for Greater Diversity in the Legal Profession

by Robert L. Johnson

In the legal field, recent research has shown that fielding legal teams with diverse talent produces better results. A recent study performed by the global market research firm Acritas found that mixed-gender legal teams performed better for their corporate clients than those of only one gender.[1] The research was based on 2,000 interviews with approximately 1,000 legal decision makers at organizations across 55 countries with $50 million or more in revenue.[2] Using 12 performance categories, Acritas found that mixed-gender teams performed better than single-gender teams in each category, with the largest gains in performance found in strength of relationships, consistency and responsiveness.[3] The Acritas research showed that legal teams with a broad range of thought from people with different backgrounds, races, genders and socioeconomic status increased the quality of law firm groups.[4] The increase in quality of legal services benefits corporate clients served by such firms.[5] The Acritas research is similar to internal research already performed in other industries, whereby corporate clients saw returns on their investments in supplier diversity.[6]

To understand where the legal field stands today, it makes sense to take a look at how the economic basis for diversity in the legal profession grew.

Corporate Clients and Supplier Diversity

Supplier diversity is a proactive business model that encourages the use of suppliers that are owned by minorities; women; veterans; lesbian, gay, bisexual or transgender (LGBT) persons; service-disabled veterans and other historically underutilized business owners.[7] Supplier diversity is also a means to provide diverse suppliers with equal access to commercial sourcing and purchasing opportunities.[8] Supplier diversity promotes supplier participation that reflects the diversity of a company's customer base and the diverse business community.[9] To qualify as diverse, suppliers generally must show at least 51 percent ownership and control by a diverse party.[10]

Historically, supplier diversity was viewed as part of corporate social responsibility. It began in the late 1960s[11] and early 1970s[12] in the United States in conjunction with the Civil Rights Movement. Through executive orders and federal legislation, minority-owned firms were provided opportunities to bid on government projects and those of major corporations supplying the government.[13] Until recently, supplier diversity was largely viewed as a feel-good extracurricular activity.[14]

The effects of globalization and the increase in the minority population have led corporations to evaluate their diversity

track records in their purchasing decisions.[15] As a result of rapidly changing demographics, today's purchasers are markedly different from those of the 20th century.[16] The U.S. population is becoming more diverse as minority populations expand.[17] Given current population growth rates, the U.S. population will become "majority minority" in 2044.[18] Based on economic forecasts, by 2045 minority purchasing power is projected to reach $4.3 trillion.[19]

The increases in the size and purchasing power of minorities have led many Fortune 500 companies to shift away from compliance-driven programs to strategic sourcing driven by procurement and marketing strategies.[20] Examples of compliance-driven programs are ones that ensure companies meet compliance requirements mandated by their public-sector customers; for example, the U.S. federal government requires that any company that provides goods and services to it, above a certain minimum level, meet aggressive goals of subcontracting spend with a list of enumerated categories of underrepresented small businesses.[21]

As companies continue to seek to reach increasingly diverse consumer bases, the move beyond corporate social responsibility drivers comes down to the simple fact that it makes good business sense to expand corporate growth through supplier diversity, given that certified minority and women-owned business enterprises (MWBEs) have increased 38 percent since 2007.[22]

Forward-thinking companies understand the business case for having minority suppliers and how it provides them with an advantage in the global marketplace.[23] Many certified MWBEs have cultural, language, and business ties to their countries of origin.[24] Modern global brands are now utilizing supplier diversity as a strategic sourcing tool to improve business efficiency and obtain more competitive pricing for goods produced. Fortune 500 companies have begun to integrate their supplier diversity programs into corporate branding strategies to support sales and gain access to new cultural markets.[25] On average, supplier diversity programs added to the bottom line for every dollar spent in procurement operation costs.[26] Companies that invested in supplier diversity saw improved quality and were often able to obtain other benefits, such as increased market share and access to new revenue streams.[27]

Moreover, companies bringing additional suppliers into their supply chains naturally promote competition from potential and existing suppliers. Effective supplier diversity programs identify potential suppliers that can put a broad range of goods and services into supply chains, thereby increasing vendor competition, increasing the quality of goods and services, and potentially cutting costs.[28]

As it pertains to innovation, global brands have started to see that supplier diversity programs promote the growth of their businesses through increased market share, rising customer bases, stronger share prices, faster innovation cycles, and stronger brand awareness and loyalty.[29] In a recent *Harvard Business Review* survey of 1,700 companies across eight countries, companies from different industries and sizes were evaluated for diversity in management positions. Companies with above average total diversity on average had 19 percent higher innovation revenues and nine percent higher earnings before interest and taxes (EBIT).[30]

Something else forward-thinking companies understand is that if they continue to use the same suppliers, they run the risk of creative stagnation. Successful companies recognize that by adding new, diverse suppliers to their supply chain, they are better able to promote innovation through new products and services.[31] In an effort to continue the progress of previous diversity efforts, many global brands are now taking on diversity strategically by aligning it with wider corporate social responsibility policies.[32] These corporate responsibility initiatives are among the fastest growing trends in corporations today, especially by expanding to human resources, brand management and risk management.

Corporate Clients' Requirements for Outside Law Firm Diversity

Diversity, and the need for it, is fast becoming more important in the legal community. For example, until recently corporate legal departments were hesitant to put specific metrics on diversity expectations, despite the fact that they were already using metrics to track the business aspects of law firm performance.[33] However, as corporations faced customer demands for diversity, many began to feel more pressure to diversify their ranks, and are now beginning to require their outside counsel meet specific diversity metrics.[34] Many corporate legal departments aren't just asking outside counsel to field diverse groups of attorneys, they are asking those firms to put attorneys in leadership positions and to provide the data to demonstrate their efforts.[35] Important examples are the following:

- HP Inc. will withhold payment on up to 10 percent of bills from firms that do not meet or exceed the company's diverse staffing requirements. Outside counsel must have at least one diverse firm relationship partner, and at least one woman or racially/ethnically diverse lawyer, each managing or performing at least 10 percent of the billable hours worked on HP matters, to avoid the potential fee cut.[36]
- Xcel Energy eliminated its detailed outside counsel survey in favor of scoring and ranking its outside firms on several factors, including a demonstrated commitment to diversity and inclusion. In addition to reviewing diversity statistics, Xcel will assess

whether diverse lawyers at its firms have access to meaningful work opportunities. Outside counsel can review the standings to see where they rank on each factor. Otherwise, the standings are anonymous for the nearly 30 firms on the list. Xcel's legal group anticipates the prospect of being ranked against their peers will motivate its outside counsel to take the necessary steps to increase diversity.[37]

- Macy's requires firms identify in their e-billing systems the ethnicity and race, among other criteria, of the attorneys working on its matters.[38]
- MetLife hosted a meeting with firms at which a June 2018 deadline was set for outside counsel to come up with internal plans to make sure the junior diverse talent at those firms has the sponsorship of the senior lawyers and they get the best mentoring they can provide. MetLife evaluates the results in 2018, and underperforming firms must then work with the general counsel on a plan going forward.[39]
- Microsoft offers two-percent bonuses on the prior year's fees to its premier provider firms if they reach quantifiable diversity goals. Other bonuses are given to firms that hit other benchmarks, such as partner and management committee diversity, diversity of relationship partners, and diversity of partners who billed for Microsoft matters based on the number of hours. Over the years since rolling out this program, Microsoft has greatly increased the diversity of its outside counsel teams.[40]
- Facebook requires outside counsel to field legal teams that are at least 33 percent women and ethnic minorities. Facebook also requires its outside counsel show they "actively identify and create clear and measurable leadership opportunities for women and minorities" when they represent Facebook in litigation and other legal matters. Such opportunities include serving as client relationship managers and representing Facebook in the courtroom.[41]
- In the summer of 2014, Walmart, DuPont, General Mills, and Verizon launched the Engage Excellence program, whereby each company committed a portion of its legal spend to diverse lawyers in hopes of advancing them within their law firms. Engage Excellence was designed to ensure diverse lawyers have the opportunity to serve in leadership roles on significant client matters and receive credit for the work. The intention is to create a pipeline of next-generation lawyers moving up through the ranks of law firms and have diverse junior lawyers work on the matters with senior lawyers to gain the skills and experience necessary for their advancement. The program requires diverse teams to work on their outside legal matters and the law firms to certify that the diverse lead lawyers hired receive financial credit as originators of these matters. The goal is that half of the diverse/LGBT lawyers will be women.[42]

Mansfield Rule is Supported by More Than 55 Corporate Legal Departments

Another example of corporate clients' intention to increase the diversification of the legal profession and their outside counsel is the Mansfield rule.[43] The Mansfield rule was inspired by the National Football League's (NFL's) Rooney rule, which was created by the late Dan Rooney in 2003 and is now supported by his son, Art Rooney II, president of the Pittsburgh Steelers.[44] The Rooney rule requires every NFL team to interview at least one minority candidate for head coach vacancies. In the years following its implementation, the number of minorities hired to fill head coach positions doubled. Recent research shows that a diverse candidate is about 20 percent more likely to fill an NFL head coaching vacancy during the Rooney era than before the rule was introduced.[45]

The Mansfield rule was one of the winning ideas from the 2016 Women in Law Hackathon that was hosted by Diversity Lab in collaboration with Bloomberg Law and Stanford Law School.[46] The rule was named after Arabella Mansfield, who was the first woman admitted to the practice of law in the United States.[47] The Mansfield rule measures whether law firms have affirmatively considered women lawyers and attorneys of color in at least 30 percent of the candidate pool for promotions, senior-level hiring, and significant law firm leadership roles, including: 1) equity partner promotions; 2) lateral partner and mid/senior-level associate searches; 3) practice group and office head leadership; 4) executive committee and board of directors; 5) partner promotions/nominations committee; 6) compensation committee; and 7) chairperson/managing partner. Currently, more than 55 corporate legal departments have signed on to support the Mansfield rule.[48]

Conclusion

The changing market dynamics brought about by globalization and the growth of the minority population have presented opportunities for law firms that are willing to challenge conventional thinking and take new approaches to delivering legal services. As corporate clients reach more diverse customers and adopt supplier diversity programs, their in-house corporate legal departments have begun to insist that outside legal counsel carry out their diversity values. This shift has provided an opportunity for law firms, especially those representing companies with robust supplier diversity programs, to use supplier diversity to complement existing workplace diversity programs. In a highly competitive legal industry, a law firm's commitment to increasing and retaining a diverse legal force can

provide strategic advantages in terms of sourcing, request for proposal competition, and business generation from major corporations, as well as increase the quality of work performed. ⚖

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