

Lost in Translation

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“People fail to get along because they fear each other. They fear each other because they don’t know each other. They don’t know each other because they have not properly communicated with each other.”

— Rev. Martin Luther King, Jr.

Diversity in Practice Management and Navigating Generational Divides

It is axiomatic that good communication leads to good leadership and good management. Since persuasive writing and speech are important aspects of the skill set for lawyering, attorneys often assume that they are also

good managers. After all, don’t we *communicate* for a living?

Many of us have learned the hard way that writing a brief or making an oral argument is not akin to the day-to-day grind of business management and firm leadership. The delicate balance of encouraging good work product, training young lawyers to be well-skilled and analytical, balancing mature (or immature) egos, and pleasing clients is not easily achieved. Clients, employees, staff, associates, and partners all have a distinct and individual prism through which they see and hear the world around them.

The keys to growing and managing the practice of law in the twenty-first century are to acknowledge those prisms while simultaneously identifying and highlight-

ing their points of intersection. To do this, firm leaders must be aware of implicit bias and acknowledge inequitable traditions and assumptions. Firm leaders should strive to listen and be heard across cultural, generational, and gender differences. Communication and management skills are best honed through mutual understanding and respect. Understanding and respect are not automatic: managers should take the time and make the effort.

It is true that such time and effort take away from what law firms have historically identified as productivity or the “bottom line.” Traditional management styles have insisted that effort and initiative originate with subordinates, but the result is increasingly poorer outcomes for firms. Open management styles may well feel less than

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concrete and logical. They may require flexing the muscles of empathy in addition to intellect. They may require the resurrection of skills long left dormant. Any discomfort should be transitory, however.

If a successful practice requires that we learn how engineers build skyscrapers, or how accountants do calculations, or how doctors diagnose, surely law firm leaders are up to the challenge of learning how to communicate and manage across cultural and generational barriers. Firm leaders who find that their message sometimes gets “lost in translation” may be well-served by considering the best practices identified below.

What's Diversity Got to Do with It?

According to a recent demographic analysis conducted by the Pew Research Center, by 2055, the United States will no longer have a single racial or ethnic majority. Similarly, the U.S. Bureau of Labor Statistics predicts that the growth of minorities in the United States workforce will double within the next 25 years. This trend will certainly affect the legal profession.

Currently, lawyers of color constitute only 8 percent of the law firm equity partners. Among this small percentage of equity partners of color, even fewer are women. The typical firm has 105 white male equity partners, seven minority male equity partners, 20 white female equity partners, and two minority female equity partners. Women comprise only 24 percent of Hispanic equity partners, 33 percent of black equity partners, and 29 percent of Asian equity partners. Moreover, few so Native American and Asian Pacific equity partners were identified that the median reported for both men and women was zero. See Nat'l Ass'n Women Lawyers (NAWL), *Report of Ninth Annual NAWL National Survey 6* (2015).

The lack of proportionate representation and diversity on the managerial level of firms has led to a wage gap and unequal access to opportunities for growth within the legal profession. In 2015, the U.S. Bureau of Labor Statistics reported that women lawyers' salary was only 89.7 percent of male lawyers' salary. See U.S. Bureau Labor Statistics, *Highlights of Women's Earnings 2015, Table 2* (2015), <https://www.bls.gov/home.htm>, See also Am. Bar Ass'n Comm'n on Women, *A Current Glance at Women in the Law*, (Jan. 2017),

<https://www.americanbar.org>. A report released in 2018, by the American Bar Association and the Minority Corporate Counsel Association (MCCA), and prepared by the Center for WorkLife Law at the University of California, Hastings, found that only 63 percent of white women, 59 percent of men of color, and 53 percent of women of color, reported that they had equal opportunities for high-quality assignments, compared with 80 percent of white men. Joan C. Williams *et al.*, *You Can't Change What You Can't See: Interrupting Racial and Gender Bias in the Legal Profession* (Am. Bar Ass'n & Minority Corp. Counsel Ass'n, 2018), <https://www.americanbar.org>. These numbers may well explain why many firms are finding it difficult to prosper.

Diversity within the workforce recognizes an appreciation for distinct differences among people, including, but not limited to, race, gender, sexual orientation, ethnic groups, age, religion, citizenship status, military service, political beliefs, and mental and physical conditions. The statistics cited above establish that diversity remains aspirational for our profession. Firms on the front lines of that aspiration acknowledge that a non-diverse work place often negatively affects the experience of minority and women lawyers. The best diversity initiatives reflect an understanding of the difference between equality and equity, which are not synonymous. While equality refers to equal treatment, equity addresses the effect of providing every individual with tools to be successful.

In 2015, the Supreme Court for the first time acknowledged unconscious bias in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.* In this case Supreme Court considered challenges to the Fair Housing Act of 1968, which forbids “disparate impact” discrimination—actions or practices that appear neutral on the surface but are racist in practice. According to Justice Kennedy, focusing on the disparate impact of a policy, rather than disparate treatment, acknowledges the role of “the unconscious prejudices and disguised animus that escape easy classification as disparate treatment.”

By embracing diversity initiatives aimed at equity and inclusivity, firms will be tak-

ing positive steps toward addressing the effects of unconscious prejudice and unintended disparate impact. Organizations that incorporate diversity and inclusion efforts into their culture and management practices hold a distinct advantage when it comes to recruiting, hiring, and retaining talent.

Firm leaders should strive to listen and be heard across cultural, generational, and gender differences.

Rewards for Embracing Equity, Inclusion, and Diversity

Equity and inclusion initiatives not only rectify homogeneity in a workplace, they also provide long-term benefits. According to cumulative Gallup Workplace Studies, companies with inclusive cultures do better on the following indicators than those companies that are not inclusive: customer satisfaction is 39 percent higher, productivity is 22 percent greater, profitability is 27 percent higher, and turnover is 22 percent less. Marcus Robinson, Charles Pfeffer, & Joan Buccigrossi, *Business Case for Inclusion and Engagement* (wetWare, Inc., 2003). Gender diversity in the workplace also has positively influenced productivity, due in large part to the diverse set of skills brought by a diverse set of employees. See Sara Ellison & Wallace P. Mullin, *Diversity, Social Goods Provision, and Performance in the Firm*, 23 J. Econ. & Mgmt. Strat. 465–481 (2014). Moreover, decades of research regarding social, gender, and racial diversity confirm that socially diverse groups enhance innovative thought, problem solving, and creativity. See Katherine W. Phillips, *How Diversity Makes Us Smarter*, *Scientific Am.* (Oct 1, 2014), <https://www.scientificamerican.com>.

Studies have also shown that companies with inclusive cultures have a lower turnover, thereby allowing firms to bypass employee turnover costs, hiring costs, training costs, opportunity costs, morale costs, and the bottom line. See F. John Reh,



Learn About the Cost of High Employee Turnover, The Balance, Careers (updated June 23, 2018), <https://www.thebalancecareers.com>. A 2014 survey conducted by Glassdoor found that two-thirds of the job applicants who were surveyed, including women, minorities, and veterans, consider diversity to be an important part of deciding where they want to work. Press Release, Glassdoor, *Two-Thirds of People Consider Diversity Important When Deciding Where to Work*, Glassdoor Survey (Nov. 17, 2014), <https://www.glassdoor.com>. See also Chirag Kuklarni, *Three Ways It Pays to Create a Diverse Workplace*, Entrepreneur (Apr. 25, 2018), <https://www.entrepreneur.com>. This survey suggests that firms that offer a diverse environment will become more attractive to top talent. By investing in retaining their associates and personnel, law firms will also be able to avoid turnover costs and maintain morale, which ultimately benefit the bottom line of the firm. Caroline Turner, *The Business Case for Gender Diversity: Update 2017*, Huffington Post (Apr. 30, 2017), via <https://www.huffingtonpost.com>.

Resources Describing Good Management Practices to Minimize or Negate Implicit Bias

Firms that thrive during these challenging economic times have reframed their management focus. Rather than looking to reduce or eliminate bias, they have consciously pursued inclusion. On a practical level, that means taking the time and effort to attract, recruit, train, and retain employees so as to increase gender and ethnic diversity. Best practices include the following:

- Create an inclusive work culture that values women and men equally.
 - Close the gender pay gap.
 - Involve men as gender diversity champions.
 - Implement flexible work programs such as part-time work, remote work, paid family leave, and unpaid leave.
 - Eliminate biases in evaluations and promotions.
 - Create networking opportunities for women.
 - Offer executive coaching for topics including negotiation for pay, management and mentoring. See Marjolein

Cuellar *et al.*, *Proven Measures and Hidden Gems for Improving Gender Diversity*, The Boston Consulting Group (Sept. 12, 2017), <https://www.bcg.com>.

- Set up a diversity council or committee with gender, cultural, and position representation.
- Reach out to minority bar associations for job postings.
- Encourage firm participation in national diversity and inclusion conferences as well as local women's and minority bar associations.
- Support lawyers who are involved in leadership roles in these professional organizations.
- Remove unconscious bias in recruitment.
 - Removing identifying personal information allows firms to create gender-blind shortlists for internal promotions. Firms can also make key decisions that are based more on hard data and less on subjective, qualitative elements, such as comments on a candidate's personality or personal circumstances.
- Standardize the integration and training process for associates, at least for the first three months.
- Assure that diverse individuals are involved in recruitment.
- Use gender-neutral language in job postings and job descriptions.
- Support internal affinity groups.
- Respect everyone's self-identification; call everyone by their preferred name and pronoun.
- Develop and enforce a zero-tolerance sexual harassment policy, and encourage open discussion about what constitutes harassment.
- Be willing to challenge your assumptions about an applicant's ability to perform the work: give people a chance to prove themselves.
- Measure and report diversity job satisfaction, turnover, and long-term diversity representation.
- Set up professional development programs that target diversity, including mandatory tracking for diverse attorneys' access to meaningful work assignments and marketing efforts.
- Create opportunities for both mentorship and sponsorship.

- A mentor is a source of guidance and advice.
- A sponsor advocates for an employee's perceived success.

The Intergenerational Name Game: What the Heck Is a "Centennial"?

New generations will keep coming. Understanding generational differences is important to diversity efforts.

Identifying the Generations

Recognizing that the Beatles landed in New York more than 50 years ago now, many nonetheless mark that event as a symbol of the historic divide between the generation of World War II veterans (b. 1925–1945), and the baby boomer (b. 1946–1964) generation. Watergate, followed by the AIDS epidemic and the Challenger disaster, are similarly identified as symbolic of the "new era" heralded by Gen Xers. Millennials (b. 1980–2000) came of age in a world where Oklahoma City was attacked by home-grown radicals, high schoolers in the Denver suburbs opened fire on their classmates, the World Trade Center was decimated by foreign radicals, and the digital world expanded. Gen Z, or "centennials," are the emerging generational cohort, identified as those who were born late in the 1990's and into the 2000s. These are the true digital natives. We may not yet see them as lawyers, but they will soon be staffing our firms and entering law school. Startlingly, centennials make up 25 percent of the country's population.

Just because we have labelled each group does not mean that these generations understand each other or communicate well. Boomers remember their parents complaining about rock music and long hair; Gen Xers are criticized for their lack of loyalty to hierarchy and tradition; and millennials are criticized as so digitally connected that they are personally disconnected and unambitious. "Centennials" are perhaps too young to be identified with any set of negative traits yet, but certainly they are likely to have even higher expectations that technology will promptly respond to and satisfy their needs.

Do Generational Issues Really Matter?

A diverse and healthy work force includes individuals of different backgrounds, eth-

nicities, genders, and ages. There is little doubt that the legal profession is “graying.” American Bar Association statistics show that the median age of lawyers in 1980 was 39, compared with age 49 in 2005 (which seems to be the last time that the ABA asked about age). Some reports indicate that only 4 percent of the lawyer population (pegged at 1.3 million in 2017) is under the age of 29.

While waiting for the “old guy” to retire was part of the advancement process in 1990s, these days, the office may well be empty, and the firm shuttered, when the last “old guy” retires. Business survival requires better communication with and understanding of the younger generation.

Toxic Talk Is Not Productive

Complaining, gossiping, and venting (dare we mention “ranting”?) may feel good in the moment. However, giving voice to frustration or disappointment in a vacuum seldom renders positive results. Good managers treat each employee as an individual rather than as a representative of his or her ethnicity, race, age, or gender. Good managers communicate expectations and ask for feedback about whether the expectations are realistic. Good managers recognize that there is room for individualism or creativity in each task, assignment, or project.

Focus on Similarities

As much as generational differences exist, so, too, do generational similarities. Focusing on mutual values can help identify those similarities. All generations value the following:

- meaningful work;
- the opportunity to grow and learn as a professional;
- feeling appreciated;
- knowing that their input matters;
- relief from intense stress;
- some control over their work; and
- opportunities for advancement.

Recognizing Differences Is Not Self-Defeating

Not everyone thinks the way that you do. Not everyone communicates the way that you do. Even though your way is the better way (even though you sign the checks), respecting differences in communication

styles, motivation, and reward systems can improve outcomes as well as the bottom line. Analyzing the style and approach that gets the best result *is* worth the time and effort in these areas:

- Ask yourself, what technical expectations do you have, and do others’ abilities match?
 - Can you solve the problem by training?
- Managers should strive to adjust communication to align with generational styles.
 - Let the younger folk know that you are trying.
- Subordinates should strive to adopt communication styles in keeping with office culture.
 - Feel free to discuss office culture openly.
- Implement reward systems that account for differing motivations.
- Acknowledge the effort to accomplish work–life balance.
- Value employee opinions and create environments that demonstrate that their opinions are valued.

Establish Workplace Etiquette

We all learn by example, and no one is too old to learn new ways of doing things. Respect is crucial, as are clearly delineated expectations, described in a conversation rather than by fiat.

- Mentoring is a two-way street.
- Be flexible and patient.
- Be courteous.
- Assign tasks in context.
- Break up the routine.
- Provide regular feedback.
- Be open to technology.
- Offer opportunity.
- Dress to show respect.

Introspection and a Dash of Humility Never Hurt Anyone

As experienced as managers are, they can *occasionally* be wrong. Establishing policies and practices that feature some humility can be very effective.

- Implement a two-way mentoring program between younger and seasoned attorneys.
- Spend time and energy understanding the triggers that make people want to leave.
- Institute a holistic evaluation process.
- Facilitate dialogues within work teams.

- Consider generational differences when assigning work—and acknowledge that you have.
- Encourage intergenerational dialogue.

Remembering the Bottom Line

Promoting diversity from the management level down to the office staff is certainly challenging. However, clinging to

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outmoded models is not simply socially and morally antiquated; it is likely to be economically disastrous for your firm. Most importantly, define success, reward it when it happens, and acknowledge that much can be learned from a misstep. Meeting the diversity challenge head-on is sure to increase workplace satisfaction, which in turn will improve client service and profitability.

Additional Resources

- Am. Bar Ass’n Diversity & Inclusion 360 Comm’n, *Implicit Bias Videos and Toolkit*, <https://www.americanbar.org/aba.html>.
- DRI Diversity Comm., *Diversity and Inclusion Tool Kit: A Resource for Law Firms, Corporations, and State and Local Defense Organizations* (DRI, 2015), <https://www.dri.org>.
- Nat’l Ass’n for Law Placement, *Diversity Best Practices Guide* (2016 ed.), <https://www.nalp.org/home>.
- Joan C. Williams *et al.*, *You Can’t Change What You Can’t See: Interrupting Racial and Gender Bias in the Legal Profession* (Am. Bar Ass’n & Minority Corp. Counsel Ass’n, 2018).

