

# Table of contents

<b>Preface</b> _____ 5	<b>The new normal: remote working, billing and law firm activism</b> _____ 137
Peter Zeughauser Zeughauser Group	Alex Dimitrief Zeughauser Group
<b>How to revisit your strategic plan in the wake of the pandemic</b> _____ 7	<b><i>Pro bono</i> post-pandemic: our evolving commitment to serving others</b> _____ 151
Peter Zeughauser Zeughauser Group	Sara Andrews Lisa Dewey Anne Geraghty Helms DLA Piper
<b>Talent management trends in post-pandemic law firms</b> __ 27	<b>How firms are leveraging technology and data to drive strategy, efficiency and client relationships</b> __ 171
Jennifer Bluestein Perkins Coie LLP	David Cunningham Reed Smith
<b>How firms can successfully build culture remotely</b> ____ 49	<b>COVID-19's impact on lawyer innovation and decision making</b> _____ 185
Naomi Beard Nelson Naomi Beard & Associates	Randall Kiser DecisionSet®
<b>The accelerated pursuit of racial equity in law firms</b> __ 99	
Tiffani G Lee Holland & Knight LLP	
<b>Building client relationships in a hybrid world</b> _____ 113	
Michelle Holford Slaughter and May	

**Law firm real estate:  
emerging considerations  
in a post-COVID-19  
environment \_\_\_\_\_ 201**

Matt Brainard  
Savills  
Tiffany Winne  
Stream Realty Partners

**Effective financial  
management  
post-pandemic \_\_\_\_\_ 215**

Thomas P Fitzgerald  
Winston & Strawn

**Well-being of partners  
and the workforce \_\_\_\_\_ 227**

Eric Ho  
Health for Success

**About the authors \_\_\_\_\_ 251**

# The accelerated pursuit of racial equity in law firms

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## 1. Introduction

The year 2020 was unprecedented – a global health pandemic caused by the COVID-19 virus that disproportionately affected people of colour, an economic downturn, and racial justice issues sparked by the killing of George Floyd while in police custody. These events created a perfect storm that may make 2020 an inflection point in Big Law as it relates to diversity, equity and inclusion (DEI).

This chapter highlights some of the accelerating trends related to racial/ethnic diversity in Big Law and the pursuit of racial equity, specifically: (1) openly confronting race and racism; (2) embracing collaboration and coalition-building; (3) empowering and elevating DEI professionals; (4) engaging and equipping inclusive leaders; and (5) ensuring accountability through internal and external stakeholders.

## 2. Background: two phases of the pandemic

When assessing Big Law's focus on DEI, it may be helpful to bifurcate the pandemic between the early months of the pandemic, ie, before George Floyd was killed, and the later months of the pandemic, ie, after George Floyd was killed. In the early months, Big Law firms focused on figuring out how to promote inclusion and connection in a remote workplace, keep their DEI efforts visible, and provide support and resources to working parents and caregivers who were disproportionately impacted by having to juggle work with home responsibilities.<sup>1</sup> As firms began to make difficult decisions

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1 The impact of the pandemic on working parents and caregivers, especially women, has been well documented. See, eg, Dylan Jackson, "Big Law's Working Parents are Hurting. Money is Not the Answer", *The American Lawyer*, 26 January 2021; Whitney Bears and Malini Nangia, "'My Career is Basically Over': Working Parents Offer Pleas for Empathy from Law Firms", *The American Lawyer*, 19 January 2021.

to furlough or terminate personnel, industry leaders worried that those employment decisions would disproportionately impact attorneys from traditionally underrepresented groups, specifically women and racial/ethnic minorities.<sup>2</sup>

Any concern that law firms' focus on DEI would stall in the pandemic abruptly changed on 25 May 2020. On that day, we experienced the traumatic horror of watching the eight minutes and 46 seconds during which George Floyd was killed while in police custody. The killing of George Floyd – preceded by the close-in-time killings of Breonna Taylor and Ahmaud Arbery – was a powerful accelerant that sparked an outpouring of grief, outrage, activism and sustained protests against police brutality and systemic racism. That killing also shifted law firms' attention to racial justice and racial equity as part of their DEI efforts.

After the killing of George Floyd, law firms were forced to openly confront issues of race and racism. They embraced the need to build coalitions to leverage their collective resources to drive change. DEI professionals emerged as strategic advisers, and the job market for such professionals exploded. DEI again became a leadership priority as law firm leaders had to attempt to evolve into more inclusive leaders. And clients continued to hold law firm leaders and their law firms accountable for DEI results. Each of these trends, which can accelerate transformational change in Big Law firms and the legal profession in years to come, is explored below.

### **3. Openly confronting race and racism<sup>3</sup>**

After the police killing of George Floyd, law firm leaders and DEI professionals quickly realised the need to openly confront issues of race and racism. They recognised that a racial reckoning was also happening inside their organisations. Conversations about race and racism within law firms were never so openly and broadly

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2 See, eg, Robert Grey, "Ten Ways to Avoid a Repeat of the Diversity Recession", *The American Lawyer*, 11 June 2020.

3 "Race" is a socially constructed system of categorising humans largely based on observable physical features such as skin colour, and on ancestry. There is no scientific basis for or discernible distinction between racial categories. "Racism" is a complex system of racial hierarchies and inequities, which operates at the micro or individual level and the macro or institutional/structural level. See "Equity v. Equality and Other Racial Justice Definitions", The Annie E Casey Foundation blog, 24 August 2020, [www.aecf.org/blog/racial-justice-definitions](http://www.aecf.org/blog/racial-justice-definitions).

had until after the killing of George Floyd. These topics were not new to DEI professionals and Black law firm leaders, and they were quick to amplify the significance of systemic racism and racial equity.<sup>4</sup>

Law firms embarked on a series of candid, courageous and uncomfortable conversations about difficult topics related to racial equity. Law firm leaders immediately scheduled town hall meetings to condemn racism and police brutality, express support and empathy for their Black employees, and reaffirm their commitment to DEI. Law firms also focused on education and learning on an individual and collective level by bringing in consultants and thought leaders to raise consciousness across the enterprise.<sup>5</sup>

Discussions about race and racism necessarily led to discussions about white privilege, white fragility, intersectionality, allyship and anti-racism.<sup>6</sup> Those conversations can become building blocks for cultural and structural change. They underscored the fact that just as racism is systemic, institutional and structural, racial equity must be pursued by removing systemic, institutional and structural barriers. Thus, these conversations were necessary but not sufficient to achieve racial equity in law firms.

If we apply Ibram X Kendi's definition of a 'racist policy' to law firms,<sup>7</sup> we can readily identify several law firm policies that create or

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4 See Maja Hazell, "The Crippling Impact of Anti-Black Racism, and How Allies Can Act Against It", *The American Lawyer*, 18 June 2020; Ayanna Alexander, "Black Firm Leaders Drive Big Law Social Justice Efforts", *Bloomberg Law*, 24 August 2020, <https://news.bloomberglaw.com/social-justice/black-firm-leaders-drive-big-law-social-justice-efforts>.

5 Enterprise-wide learning and discussion about these root causes is critically important. Law firms often train on unconscious biases without addressing their root causes and the stereotypes upon which they are premised.

6 See Peggy McIntosh, "White Privilege: Unpacking the Invisible Knapsack", *Peace and Freedom Magazine*, July/August 1989, at 10–12; Robin DiAngelo, *White Fragility: Why It's So Hard for White People to Talk About Racism* (2018, Beacon Press); Karen Catlin and Sally McGraw (editor), *Better Allies: Everyday Actions to Create Inclusive/Engaging Workplaces (2nd Edition)* (2020, Karen Catlin Consulting); Ibram X Kendi, *How to Be an Antiracist* (2019, Penguin Random House).

7 Kendi defines a 'racist policy' as any measure that produces or sustains racial inequity between racial groups. His definition includes "written and unwritten laws, rules, procedures, processes, regulations, and guidelines that govern people". See Ibram X Kendi, "Ibram X Kendi Defines What It Means to Be an Antiracist", 9 June 2020, book extract available at [www.penguin.co.uk/articles/2020/june/ibram-x-kendi-definition-of-antiracist.html](http://www.penguin.co.uk/articles/2020/june/ibram-x-kendi-definition-of-antiracist.html).

perpetuate inequity between racial groups.<sup>8</sup> And if we think about the stereotypes about Black people that were developed to justify racism – all based on fabricated notions of intellectual inferiority, aggression or laziness – we can better understand and confront the well-documented biases that stall the development, retention and promotion of Black attorneys. We can then honestly interrogate and change the law firm processes, practices and cultural norms that consistently produce racial inequity.

Law firm leaders can no longer ignore the fact that systems of oppression and disadvantage as well as structural barriers to inclusion and equity exist within law firms. Just as they were created over time, they will have to be dismantled over time. Going forward, law firm leaders will need to play a key role in leading that transformational change. (See Section 6 below.)

#### **4. Embracing collaboration and coalition-building**

The global pandemic and racial reckoning provided unique opportunities for collaboration and coalition-building between law firms, law-related organisations and social justice organisations. Coalitions were formed to collaborate to support attorneys from traditionally underrepresented groups, to combat racial injustice in society generally, and to increase the pipeline of talent into the profession. By leveraging their collective power and resources, law firms made a significant impact within the pandemic and are poised to continue that impact in coming years.

##### **4.1 The belonging project**

Because the potential impact of the pandemic threatened the progress towards a more diverse legal industry, in early May 2020, Seyfarth Shaw LLP announced the launch of The Belonging Project, a first-of-its-kind nationwide collaborative initiative to proactively combat the effects of the pandemic on diversity in the profession.<sup>9</sup>

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8 If we disaggregate law firms' "diversity" data and focus on the outcomes for Black attorneys, the inequity is stark. The percentage of Black attorneys at US law firms took a full decade to recover after the Great Recession of 2008/2009. See 2019 Report on Diversity in US Law Firms (NALP, 2019), [www.nalp.org/uploads/2019\\_DiversityReport.pdf](http://www.nalp.org/uploads/2019_DiversityReport.pdf). In 2019, Black attorneys accounted for 4.76% of all associates, the highest level since reaching 4.66% in 2009. *Id.* at 5. Black attorneys account for less than 2% of partners among firms surveyed by NALP. *Id.* at 6.

9 See [www.seyfarth.com/the-belonging-project.html](http://www.seyfarth.com/the-belonging-project.html).

The Belonging Project provides a virtual hub for industry organisations, law firms, diverse law students, diverse attorneys and their allies to focus on advancing DEI during the pandemic and beyond. It offers a comprehensive suite of professional development resources, including virtual one-on-one coaching and mentoring plus webinars focused on personal and professional development topics. Legal organisations that initially collaborated with Seyfarth on The Belonging Project included Diversity Lab, the Association of Corporate Counsel's ACC Foundation, Minority Corporate Counsel Association, National LGBT Bar Association, National Asian Pacific American Bar Association, Hispanic National Bar Association, Corporate Counsel Women of Color, and California Minority Counsel Program. By 31 December 2020, the project boasted 27 confirmed partners.

#### 4.2 Law Firm Antiracism Alliance

Law firms also seized on the opportunity to leverage their collective resources to address systemic racism and racial injustice through *pro bono* work. In late June 2020, the Law Firm Antiracism Alliance (LFAA) was launched with 125 charter members.<sup>10</sup> LFAA's members are committed to using litigation and advocacy to overturn policies and laws that result in negative outcomes for people of colour. As outlined in the LFAA's charter, the group's aim is: "To leverage the resources of the private bar in partnership with legal services organisations to amplify the voices of communities and individuals oppressed by racism, to better use the law as a vehicle for change that benefits communities of color and to promote racial equity in the law." By bringing a racial justice lens to *pro bono*, the LFAA will tackle some of the broader issues that a single firm might be unable to tackle alone. As of 16 December 2020, 96 Am Law 100 firms have joined the LFAA (see Figure 1 below) and its total membership includes 287 law firms.

#### 4.3 Thrive Scholars Law Track

Another accelerating trend is the focus on the pipeline of talent into the profession. In addition to long-standing programmes such as Just the Beginning – A Pipeline Organization and the NALP/Street

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10 See Patrick Smith, "Over 125 Firms Have Joined the Law Firm Antiracism Alliance", *The American Lawyer*, 24 June 2020; Patrick Smith, "'We Have to Succeed': Law Firm Antiracism Alliance Holds First Summit", *The American Lawyer*, 31 July 2020.

Law Legal Diversity Pipeline Program, new pipeline initiatives were launched during the pandemic to target high-school students.

One new initiative is the Thrive Scholars Law Track Program.<sup>11</sup> Launched in October 2020, the Thrive Scholars Law Track Program aims to create a greater pipeline of Black and Latinx attorneys into the legal profession. Thrive Scholars will provide these students with the full range of support beginning in their junior year of high school. In addition to providing financial support, participating law firms agree to provide mentorship and internships during college to enhance the students' exposure to opportunities in the legal profession, and the law firms may choose to hire one or more of the students from law school. Explaining the creation of the programme, Steve Stein, CEO of Thrive Scholars, said: "Data from our 20-year experience ... shows the talent pipeline expansion starts at the high school level. We are committed to grow this program through partnerships with law firms that are seeking to increase diversity in their firms and in the profession."

Pipeline initiatives such as the Thrive Scholars Law Track Program won't immediately resolve Big Law's challenge with underrepresentation of attorneys of colour. However, such initiatives should continue for their future benefit.

## 5. Empowering and elevating DEI professionals

One trend accelerated by the pandemic and racial reckoning was the employment, empowerment and elevation of DEI professionals in law firms. By the mid-2000s, dedicated DEI professionals working in US law firms was commonplace.<sup>12</sup> Hiring of DEI professionals had been on the rise for years but accelerated sharply in 2020.

After the killing of George Floyd, the job market for DEI professionals exploded, with several firms announcing the hiring or promotion of DEI professionals. Rarely a week passed without one or more firms announcing new DEI leaders.<sup>13</sup> In the last two months of 2020 alone, nine law firms announced high-level DEI leadership appointments.<sup>14</sup> Importantly, many of these DEI leaders were hired

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11 [www.thrivescholars.org/](http://www.thrivescholars.org/).

12 See *Examining the Role of the Law Firm Diversity Professional* (Minority Corporate Counsel Association, 2009).

13 See, eg, Erica Silverman, "Fox Rothschild Adds Diversity Officer Role to C-Suite, Tapping IP Partner", *The Legal Intelligencer*, 10 June 2020.

14 See Dylan Jackson, "Morrison & Foerster Upgrades Diversity Leadership to Client-Facing C-Suite Role", *The American Lawyer*, 18 December 2020.



or promoted into C-suite roles. The shift elevates the position in a way that allows DEI professionals to have more clout in their law firms and greater opportunity to impact change by working side by side with other law firm leaders.

Having an executive-level DEI leader is a positive step that shows a firm's commitment, but it is not a guarantee of results. Potentially, it ensures that DEI is always a factor in a firm's decision making if the DEI leader has a "seat at the table" when important decisions are made and can have direct input into those decisions. The ultimate effectiveness of a C-suite DEI professional will depend on several factors, including but not limited to, the level of authority the person in the position holds, the strength and clarity of the commitment to DEI from the entire executive suite as well as senior management, appropriate reinforcement of the DEI leader's message by senior management, and the amount of dedicated budgetary and staffing resources.

Coming out of the pandemic, the continued empowerment of DEI professionals will be an important factor in law firms' ability to accelerate their DEI accomplishments.<sup>15</sup> Going forward, DEI professionals will need to be disruptors as well as change agents. They will need to focus less on implementing programmes and more on challenging and changing practices and processes. Most importantly, their relationships with senior management of law firms must be interdependent.

## 6. Engaging and equipping inclusive leaders

Leaders are stewards of a law firm's culture. Their behaviours and mindsets reverberate throughout the organisation. What leaders say and do makes up to a 70% difference as to whether an individual feels included.<sup>16</sup> Thus, it came as no surprise that law firm personnel

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15 In addition to elevating the role of DEI professionals, law firms have also begun to value DEI work more generally. At the start of the pandemic, few law firms provided creditable hours for DEI work that was not *pro bono* work. See, eg, Patrick Smith, "Diversity Meets the Billable Hour at Dorsey Whitney", *The American Lawyer* (on law.com), 23 July 2019. Since the pandemic and racial reckoning, several firms have announced policies by which they will now give timekeepers creditable hours for DEI work. See, eg, Dylan Jackson, "Reed Smith Launches Diversity Billable Hour Credit for All Timekeepers", *The American Lawyer*, 27 January 2021; Meganne Tillay, "Hogan Lovells to Offer Billable Hour Credit for Diversity Efforts", *The American Lawyer*, 19 January 2021.

16 Juliet Rourke and Andrea Titus, "The Key to Inclusive Leadership", *Harvard Business Review*, 6 March 2020. The authors identified six signature traits of inclusive leaders: visible commitment, humility, awareness of bias, curiosity about others, cultural intelligence and effective collaboration. *Id.*

focused critically on their leaders' responses to the pandemic and racial reckoning.

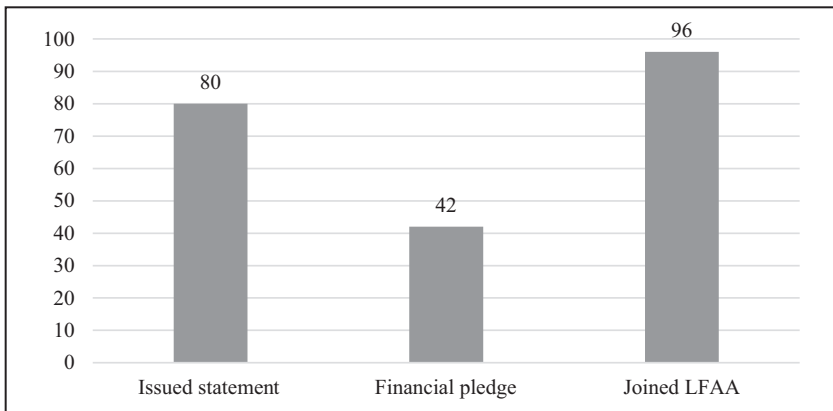
### 6.1 DEI as a leadership priority

Judging by their responses to the killing of George Floyd and resulting social unrest, DEI and racial equity is now top of mind for law firm leaders. After the killing of George Floyd, they issued statements (internal and external), hosted town hall meetings, pledged financial support to fight racial injustice, and teamed up to form the Law Firm Antiracism Alliance (see Figure 1).<sup>17</sup>

In addition to the statements and pledges, senior law firm leaders were forced to look inward and give more attention to race equity issues within their own organisations, including the structural and cultural barriers to equity and inclusion. The impact of unconscious biases on key decision points, processes and practices could no longer be ignored. The lack of metrics around law firms' DEI efforts could no longer be ignored. And law firm leaders could no longer ignore their obligation to re-engage on an individual and organisational level to drive progress and change.

In October 2020, the Leadership Council on Legal Diversity, an organisation whose membership includes more than 300 managing

**Figure 1. Am Law 100 firms' responses to racial injustice (2020)**



17 Sources: "Law Firms Voice Support for Change – and Pledge to Donate and Take Action", *The American Lawyer*, 18 June 2020, with independent supplemental research by Holland & Knight's Research Services Department. Firms counted as having issued statements include those that issued internal and/or external statements. The amount pledged by the 42 firms who made a financial pledge totalled approximately \$41,050,000 towards racial justice organisations and initiatives.

partners, chairpersons, general counsel and chief legal officers, launched its Leaders at the Front initiative to keep DEI at the top of each member's agenda.<sup>18</sup> As part of the initiative, members were asked to prepare what will become a public pledge that includes a personal commitment to improving diversity, an organisational commitment, and a set of metrics that can be used to annually evaluate progress. If a significant portion of the LCLD's law firm members follow through on their pledges, DEI and racial equity in law firms will be propelled forward in a meaningful way.

The organisational commitments made by these law firm leaders will be particularly important because senior leaders are best positioned to set the tone, pace and priority of cultural transformation and removal of structural barriers. They have the power and influence to ensure that DEI is a consideration in all major law firm decisions – from partner promotions to leadership selection or appointment to the allocation of work and business development opportunities. They have the power and influence to ensure that equity is woven into the fabric of the firm by regularly assessing all policies, practices and procedures, both formal and informal, to ensure they are equitable and bias-free. They have the power and influence to commit firm resources to assess and change key talent management processes, particularly recruiting, work allocation, performance evaluation and feedback, and education and training programmes, to interrupt bias, address systemic impediments to equity, and ensure fair and equitable outcomes.

## 6.2 Developing inclusive leaders at all levels of the firm

To fulfil their pledges and back up their bold statements with action, law firm leaders will have to develop inclusive leadership competencies themselves and develop inclusive leaders at all levels of the firm, particularly in middle management.





### (a) *Inclusive leadership defined*

Inclusive leadership refers to the leadership traits and competencies required to activate and leverage diversity. While many definitions and studies of inclusive leadership exist, perhaps the most useful

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18 Ruigi Chen, "Leadership Council on Legal Diversity Calls for Pledges", *Bloomberg Law Business & Practice*, 22 October 2020, <https://news.bloomberglaw.com/business-and-practice/leadership-council-on-legal-diversity-calls-for-personal-pledges>. See also [www.lclldnet.org/leaders-at-the-front/](http://www.lclldnet.org/leaders-at-the-front/).

**Figure 2. Inclusive leadership model**

<i>Intrapersonal Dimensions</i>	Inclusive Leadership Competencies	<i>Interpersonal Dimensions</i>
Reading Situations and Challenges	 Innovative Collaboration	Leveraging Differences to Win
Reflecting with Empathy	 Empowering Others	Developing with Feedback
Holding Self Accountable	 Courageous Accountability	Holding Others Accountable
Identifying Motivation, Privilege & Acumen	 Awareness & Clarity	Fostering Open Dialogue

definition and framework for the legal industry can be found in the Inclusive Leadership Model (see Figure 2) developed by Russell Reynolds Associates and used by the Minority Corporate Counsel Association (MCCA).<sup>19</sup>

The model is based on the finding that inclusive leaders excel in four key areas (the ‘Inclusive Leadership Competencies’) that operate on both intrapersonal and interpersonal dimensions: innovative collaboration; empowering others; courageous accountability; and awareness and clarity. Inclusive leaders bring awareness and clarity to problem areas in DEI, they practise courageous accountability to help resolve those problems, empower others, and foster innovative collaboration to unlock the unique contributions of each person in a group.<sup>20</sup>

**(b) Middle management: an area of opportunity**

Going forward, in addition to inclusive leadership at the top, law firms should focus equally on developing inclusive leaders in middle management. Middle managers such as practice group leaders and team leaders have important practice management roles in law firms. For example, they have a much greater role in hiring, work

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19 Jean Lee, Sophia Piliouras, Cynthia Dow, Jacob Martin and Tina Shah Paikeday, *Unleashing the Power of Diversity Through Inclusive Leadership* (Minority Corporate Counsel Association and Russell Reynolds Associates, 2019), at 16. The Inclusive Leadership Model is reprinted here with the permission of the Minority Corporate Counsel Association.

20 *Ibid.*

assignments, feedback, evaluations and promotion decisions than does senior management. Thus, their decisions to distribute work equitably or to provide timely, constructive and actionable feedback is critically important to attorney development and ultimately attorney retention.

A manager's inclusive leadership behaviour has a direct link to an employee's sense of inclusion and belonging.<sup>21</sup> On the Inclusion Index, attorneys of colour are less likely to feel they belong than others.<sup>22</sup> The main factor behind those low belonging scores is the sense that law firms and corporate legal departments allow bias to impact hiring and promotion processes, thus limiting their opportunities.<sup>23</sup> A lack of inclusive leadership by team and practice group leaders will have a direct and detrimental impact on employee engagement, morale and motivation. Thus, equipping middle management to be inclusive leaders and holding them accountable is key. Law firms' senior leaders must hold practice group and team leaders responsible for developing inclusive leadership competencies and using them to recruit, retain and promote diverse talent.

Equipping law firm leaders to be inclusive leaders will be of utmost importance coming out of the pandemic and racial reckoning. Developing inclusive leaders at all levels of the law firm will increasingly become a competitive advantage. Without them, law firms will struggle to maintain and activate their diversity.<sup>24</sup>

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- 21 Drika J Travis, Emily Shaffer and Jennifer Thorpe-Moscon, *Getting Real About Inclusive Leadership: Why Change Starts With You* (Catalyst, 2019). Catalyst's inclusive leadership model features two complementary dimensions – leading outward and leading inward – and six core behaviours: accountability, ownership, allyship, curiosity, humility and courage. *Id.*
- 22 Jean Lee, Sophia Piliouras, Cynthia Dow, Enrique Cabrera-Caban, Tina Shah Paikeday and Alix Stuart, *Leading Through Crisis (Executive Summary)* (Minority Corporate Counsel Association and Russell Reynolds Associates, Inc., 2020), at 3.
- 23 Jean Lee, Sophia Piliouras, Cynthia Dow, Jacob Martin and Tina Shah Paikeday, *Unleashing the Power of Diversity Through Inclusive Leadership* (Minority Corporate Counsel Association and Russell Reynolds Associates, 2019), at 8.
- 24 Law firms seeking to develop inclusive leaders can expect to encounter headwinds. Some will be based on the nature of most law firms, in which partners operate with a certain level of independence and autonomy. In addition, when it comes to intrafirm interactions, lawyers and law firm leaders can be surprisingly conflict-avoidant when conflict and discomfort is necessary in DEI work. Culture change is always daunting and difficult work given inertia, resistance to change and satisfaction with the status quo. And on an individual level, not everyone in a law firm will want to do the work of becoming an inclusive leader. He/she may exhibit resistance (passive or active), scepticism or even backlash. Overcoming these barriers and resisting these headwinds is the difficult but important work of the senior leader seeking to drive transformational change in a law firm.

## **7. Ensuring accountability through internal and external stakeholders**

Now that law firm leaders have made bold statements about their commitment to DEI, racial justice and racial equity, expectations of their internal and external stakeholders are high. There are expectations of progress and not just pledges. These leaders will be held accountable for actions, outcomes and results because words of commitment are no longer enough.

### **7.1 Internal stakeholders expect action from law firm leaders**

Law firms' internal stakeholders – their employees – are watchful and wary. Statements of commitment have been made before. If law firm leaders do not follow through on their bold statements, they risk losing talent at all levels, engagement and morale will suffer, and their credibility will be lost. The 2020 Inclusion Index Report found that attorneys rated their organisations lower on the Inclusion Index factors than they did in previous years, and all ratings were lower than those at other professional services firms.<sup>25</sup> Those lower ratings may indicate that those inside law firms are comparing their leaders' statements with their actions and finding them disappointingly unaligned.

### **7.2 Client pressures on outside counsel firms will increase**

In addition to internal stakeholders, law firm leaders will increasingly be held accountable by key external stakeholders, namely clients and potential clients. In recent years, client pressure on Big Law to advance DEI became more insistent. For example, in January 2019, more than 170 general counsel and chief legal officers signed an open letter to Big Law firms urging them to take action to achieve diversity in the workplace and confirming that they would prioritise their legal spending with those firms that commit to DEI.<sup>26</sup> The general counsel signatories were motivated

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25 Jean Lee, Sophia Piliouras, Cynthia Dow, Enrique Cabrera-Caban, Tina Shah Paikeday and Alix Stuart, *Leading Through Crisis (Executive Summary)* (Minority Corporate Counsel Association and Russell Reynolds Associates, Inc. 2020), at 2. The Inclusion Index factors include: working across differences, leveraging different perspectives, workplace respect, voice and influence, employee recruitment, development and retention, accommodating differences, organisational fairness and leadership commitment.

26 Christine Simmons, "170 GCs Pen Open Letter to Law Firms: Improve on Diversity or Lose our Business", *The American Lawyer*, 27 January 2019. More than 240 general counsel and corporate legal officers eventually signed the letter.

after seeing the lack of diversity reflected in some firms' partnership announcements the prior year. They sought to stress to law firm partners that they collectively control legal budgets in the range of hundreds of millions of dollars and were demanding accountability and change.<sup>27</sup>

Client pressure intensified during the pandemic. Early in the pandemic, clients expressed their concern that firms not use the pandemic and economic downturn as an excuse to "back-burner" their commitment to DEI.<sup>28</sup> In August 2020, Simon Zinger, then-Group General Counsel of the Dentsu Aegis Network, led an effort to launch "The General Counsel Oath" initiative, the goal of which was to leverage the collective power of in-house lawyers to make meaningful progress across the legal profession in the areas of DEI.<sup>29</sup>

Client pressure on Big Law firms will likely continue to accelerate. As one example, in January 2021, the then-general counsel of the Coca-Cola Company announced new diversity and inclusion requirements for its outside counsel firms requiring them to give a portion of work to Black attorneys and withholding a non-refundable 30% of fees from those that fail to meet certain diversity metrics. Outside counsel must staff new matters for the company with at least 30% of diverse lawyers, with at least half of them being Black.<sup>30</sup> Perhaps expressing the general sentiment of in-house lawyers, then-General Counsel Bradley Gayton said:<sup>31</sup>

*The hard truth is that our profession is not treating the issue of diversity and inclusion as a business imperative. We are too quick to celebrate stagnant progress and reward intention. We have a crisis on our hands and we need to commit ourselves to specific actions that will accelerate the diversity of the legal profession ... We will no longer celebrate good intentions or highly unproductive efforts that haven't*

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- 27 Sara Deeter, "Michelle Fang is Disrupting the Legal Industry", *Modern Counsel*, 14 October 2019.
- 28 Jessica L Mazzeo, "In-House Perspective on Diversity, Inclusion and Equity During a Pandemic", *The Legal Intelligencer*, 14 May 2020.
- 29 Monidipa Fouzder, "General Counsel Oath Seeks to Promote 'Positive' Change", *The Law Society Gazette* (28 August 2020). The full text of The General Counsel Oath can be found at <https://generalcounseloath.com/>.
- 30 Phillip Bantz, "Coca-Cola General Counsel Says Diversity Efforts Aren't Working, Unveils New Guidelines", *Law.com Corporate Counsel*, 28 January 2021, [www.law.com/corpcounsel/2021/01/28/coca-cola-general-counsel-says-diversity-efforts-arent-working-unveils-new-guidelines/](http://www.law.com/corpcounsel/2021/01/28/coca-cola-general-counsel-says-diversity-efforts-arent-working-unveils-new-guidelines/).
- 31 [www.linkedin.com/pulse/open-letter-commitment-diversity-belonging-outside-counsel-gayton/](http://www.linkedin.com/pulse/open-letter-commitment-diversity-belonging-outside-counsel-gayton/).

*and aren't likely to produce better diverse staffing. Quite simply, we are no longer interested in discussing motivations, programs, or excuses for little to no progress – it's the results that we are demanding and will measure going forward.*

While The Coca-Cola Company later moved Gayton out of the general counsel role and paused implementation of the diversity requirements he announced,<sup>32</sup> law firms should expect stricter requirements from other in-house counsel going forward. They will continue to call out the dissonance between what firms are saying and the results they are seeing. Some of them seem to have abandoned the “carrots” approach and are now opting for “sticks”.

## **8. Conclusion**

Pursuing racial equity will be an important aspect of diversity, equity and inclusion work in US law firms for the indefinite future. Whether law firms move closer to that goal will depend on what they do next. Will senior leaders continue to treat DEI as a priority? Will they continue to look inward to confront the systemic impediments to equity in their policies, processes and practices? Will law firms continue to develop inclusive leaders? Will they continue to embrace coalition-building? Will their DEI professionals continue to sit at the management table as strategic advisers? Or will they return to the status quo without backing up their bold words with equally bold action. Was 2020 a flashpoint or a turning point? Only time will tell.

*This chapter “The accelerated pursuit of racial equity in law firms” by Tiffani G Lee of Holland & Knight LLP is from the title Accelerating Trends in Law Firms published by Globe Law and Business.*

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32 Brian Baxter, “Coca-Cola Shakes Up In-House Legal Team, Swapping Out Gayton”, *Bloomberg Law*, 21 April 2021, <https://news.bloomberglaw.com/business-and-practice/coca-cola-shakes-up-in-house-legal-team-switching-out-gayton>.



# Accelerating Trends in Law Firms

## Accelerating Trends in Law Firms

The global pandemic and resultant economic disruption are accelerating many challenging trends for law firms around the world with unprecedented velocity. Law firm leaders, individual practitioners, executives, bankers and clients are all faced with growing uncertainty about the future and are looking for resources to help navigate rapid change.

This book, edited by Peter Zeughauser and written by renowned industry experts, provides valuable insights and guidance on these trends and how best to harness them for continued success.

The key issues discussed include:

- why, when and how to revisit your strategy plan;
- talent management trends;
- how to leverage social responsibility and *pro bono* programmes;
- using technology and data to drive strategy and client relationships;
- diversity and inclusion;
- building client relationships;
- effective financial management; and
- well-being in the workforce.

*Accelerating Trends* also considers the impact of remote working on the legal profession and explores how to build a strong culture with a remote workforce, how to reduce your real estate costs and how remote working has affected innovation and decision making.

