

The Paradox of Diversity, Equity, and Inclusion Work

By Pamela Yaacoub



Pamela Yaacoub is an associate at MoloLamken LLP. She previously clerked for Hon. Jane Kelly on the U.S. Court of Appeals for the Eighth Circuit and for Hon. Edmond E. Chang on the U.S. District Court for the Northern District of Illinois. ©2021 Pamela Yaacoub. All rights reserved.

Over the past few years, we have seen heightened recognition of the need for diversity in the legal profession. Law firms and other legal employers have undertaken a variety of different initiatives to demonstrate their commitment to diversity, equity, and inclusion (DEI), such as organizing panels to reach out to law students from underrepresented communities, setting up resumé workshops for first generation professionals, providing financial support for law school affinity groups, and establishing task forces to investigate internal barriers. This is undoubtedly a step in the right direction—but it also raises important questions. Who is doing the work to develop and implement DEI initiatives? And at what cost?

Invisible labor—a term rooted in the research of sociologists Arlene Daniels and Arlie Hochschild in the 1980s¹—describes work that is often unacknowledged and unpaid. In academia, for example, it “has been used to describe the unrecognized work underrepresented faculty members are called on to do by virtue of that status: mentoring students who see aspects of themselves in their professors ... or otherwise engaging in inclusion and diversity work.”² Research suggests that academic institutions often fail to tangibly value and compensate DEI work, and that minority faculty disproportionately shoulder the responsibility of such work at the expense of activities that might better serve their own career development.³ Significantly, the disparity in who performs DEI work—and the resulting inequity between minority and nonminority individuals—is not unique to academia. It has also been observed in tech, law, and other industries.⁴ Attorneys of color, especially, can frequently be expected to speak on diversity panels, serve on diversity committees, meet separately with “diverse” candidates during the recruitment process, appear in pitches to prospective clients (including on matters they are not ultimately staffed on), and organize resumé workshops, book discussions, implicit bias trainings, and other DEI-related events. They are, in other words, unfairly expected to solve a problem they did not create.

To be sure, this is often a necessary burden—and at times even a welcome one. Minority attorneys may be motivated to engage in DEI work because they

“seek[] a community that reflects their experiences”—and because they are more likely to notice and understand problems like racism and to be “aware of the institutional stumbling blocks to meaningful inclusion and equity.”⁵ As an Arab-American woman and immigrant, just a few months out of law school, I remember feeling that I had more in common with the clients I represented in asylum cases than with my colleagues. I felt honored and privileged to be able to help my community and to provide empathetic representation, but I also felt isolated and alienated in my profession. This isolation—the lack of peers and mentors with similar experiences—makes it that much more difficult for minority attorneys to raise concerns and to challenge problematic workplace policies and practices. It is for these reasons that I have enthusiastically volunteered to organize and participate in DEI initiatives throughout my career. I try to be intentional about using my privilege to mentor students of color—to help them build a network that so many of their peers are already born into, and to share some of the lessons I have learned while navigating what is still a very white, male, and classist industry.⁶ All this to say: many minority attorneys engage in DEI work not just because they are asked to (or because they are often more qualified to), but also because they themselves are passionate about rectifying the inequities within the legal profession. On the flipside, the lack of participation in DEI initiatives from nonminority attorneys may even stem from a well-intentioned desire to not take up more space—to allow minority attorneys to lead.⁷ Nevertheless, and although minority attorneys *should* be empowered to lead and shape DEI work (if they want to), it remains the duty of nonminority attorneys—and legal institutions as a whole—to practice allyship: to educate themselves on issues of racism and inequality, to speak up against policies and practices that might be harmful (or even just counterproductive), to listen to diverse voices and be open to creative solutions, and to actively share in the responsibilities of creating a diverse and inclusive workplace.⁸

Moreover, as others have observed, allowing the expectation that minority attorneys will “shoulder

the burden of identifying and solving issues relating to diversity” to become the default can “operate[] to the detriment of minority attorneys, particularly if law firms expect them to assist with diversity, equity, and inclusion efforts and to bill the same hours as their nonminority counterparts.”⁹ This means that, too often, minority attorneys are either getting paid the same—if not less¹⁰—than their white counterparts to do *more* work, or they are expected to perform DEI work at the expense of their own professional development. Neither scenario is acceptable. Employers must take concrete steps to ensure that DEI work is *actually* targeted at fostering diversity, equity, and inclusion, including by not harming the very people it is intended to serve. In academia, for example, some universities have mandated that “faculty contributions to diversity receive recognition and reward in the academic review process,”¹¹ while others have developed comprehensive strategic plans and working groups for improving DEI.¹² In the legal profession, employers could also participate in organizations like the Leadership Council on Legal Diversity (LCLD); sponsor minority attorneys for mentorship and professional development programs, such as LCLD’s Fellows Program; support pipeline-focused initiatives, such as the ABA’s Judicial Intern Opportunity Program; host implicit bias seminars and trainings; and, when choosing causes to support, select organizations that focus on issues of social inequality more broadly.¹³

Of course, there is no one-size-fits all, and a holistic, multifaceted approach is likely crucial—particularly given that true diversity, equity, and inclusion is about more than just statistics. It is also an environment in which minority attorneys can be their full selves, without having to hide parts of their culture, or change their hairstyles, or refrain from reacting to political events. It is an environment in which leadership makes an effort to get to know minority attorneys and establish rapport with them, even, and *especially*, if they come from different backgrounds. An environment that never assumes what people’s families, obligations, or financial capabilities might look like. An environment that understands that working styles, productivity levels, and burnout thresholds can vary, including for attorneys with mental health issues or with neurodevelopmental conditions like ADHD. These things are not always tangible, nor are they easy to achieve. But progress in this area requires, at minimum, that the labor of minority attorneys in cultivating diversity, equity, and inclusion be recognized, valued, and compensated. ☉

Endnotes

¹Arlene Kaplan Daniels, *Invisible Work*, 34 SOC. PROBLEMS 403 (1987); ARLIE HOCHSCHILD, *THE MANAGED HEART: THE COMMERCIALIZATION OF HUMAN FEELING* (1983).

²Colleen Flaherty, *Undue Burden*, INSIDEHIGHERED (June 4, 2019), <https://www.insidehighered.com/news/2019/06/04/whos-doing-heavy-lifting-terms-diversity-and-inclusion-work>.

³*Id.*

⁴See, e.g., Holly Corbett, *The New Unpaid Office Housework for Women: Being DEI Leaders*, FORBES (Sept. 28, 2021), <https://www.forbes.com/sites/hollycorbett/2021/09/28/the-new-unpaid-office-housework-for-women-being-dei-leaders/?sh=67c01e2a56e8>; Shilpa Coorg & David Ramírez-Gálvez, *Retention Is Key to Meaningful Diversity At Law Firms*, LAW360 (Aug. 9, 2021), <https://www.law360.com/articles/1411047/retention-is-key-to-meaningful-diversity-at-law-firms>; Nitasha Tiku, *Tech companies are asking their black employee groups to fix Silicon Valley’s race problem – often for free*, THE WASHINGTON POST (June 26, 2020), <https://www.washingtonpost.com/technology/2020/06/26/black-ergs-tech/>.

⁵Flaherty, *supra* note 2.

⁶See American Bar Association, *Profile of the Legal Profession* 17-20 (July 2021), <https://www.americanbar.org/content/dam/aba/administrative/news/2021/0721/polp.pdf>; Hassan Kanu, *‘Exclusionary and classist’: Why the legal profession is getting whiter*, REUTERS (Aug. 10, 2021), <https://www.reuters.com/legal/legalindustry/exclusionary-classist-why-legal-profession-is-getting-whiter-2021-08-10/>.

⁷Julia Carpenter, *Minority employees are often asked to work ‘double duty’*, CNN BUSINESS (Nov. 30, 2018), <https://www.cnn.com/2018/11/28/success/diversity-work-burden/index.html>.

⁸*Id.*

⁹Coorg & Ramírez-Gálvez, *supra* note 4.

¹⁰See, e.g., *Out of the Black Box: Highlighting Central Myths of Gender Pay Disparity in the Legal Profession in 2020*, ATTORNEY AT LAW MAGAZINE (Nov. 11, 2020), <https://attorneyatlawmagazine.com/highlighting-central-myths-gender-pay-disparity-in-the-legal-profession-2020>; Stephen Miller, *Black Workers Still Earn Less Than Their White Counterparts*, SHRM (June 11, 2020), <https://www.shrm.org/resourcesandtools/hr-topics/compensation/pages/racial-wage-gaps-persistence-poses-challenge.aspx>.

¹¹UCOP Academic Personnel and Programs, *Evaluating Contributions to Diversity for Faculty Appointment and Promotion Under APM – 210*, University of California: Office of the President (Feb. 2017), <https://www.ucop.edu/faculty-diversity/policies-guidelines/eval-contributions-diversity.pdf>.

¹²*Strategic Plan*, UM DIVERSITY, EQUITY, & INCLUSION, <https://diversity.umich.edu/strategic-plan/> (last visited Jan. 20, 2022).

¹³See, e.g., *Diversity & Inclusion*, MOLOLAMKEN LLP, <https://www.mololamken.com/firm-diversity>.

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as the 2022 midterm elections approach, bringing the possibility of a shift in control of the Senate, the tension between tradition and pragmatism will be in sharp focus.

The importance of promptly filling federal bench vacancies with qualified judges cannot be overstated. The FBA and its members can play an important, nonpartisan role in continuing to encourage the president and Senate to work expeditiously together in this process to support and preserve an independent judiciary for the fair and efficient functioning of our judicial system, for the benefit of all Americans. ☉

Correction:

An error was noted in the “Beltway Bulletin” appearing on page 4 of the November/December issue of *The Federal Lawyer* (Vol. 68, Issue 6). The first sentence of the second paragraph should read:

“Article III, section 1 of the Constitution vests the judicial power in the Supreme Court and ‘such inferior courts as the Congress may from time to time ordain and establish.’”

The online version of the publication has been corrected.