

Law Firm Talent Must Reflect Shifting US Demographics

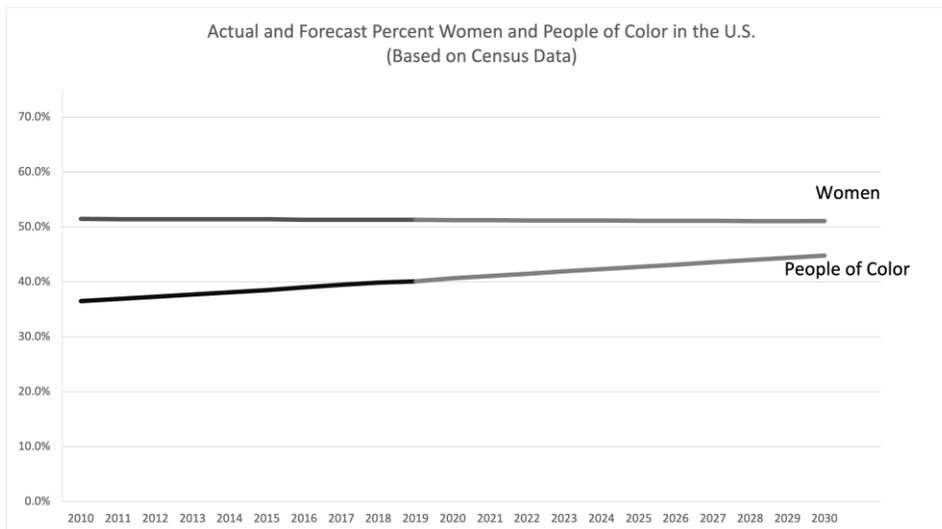
By **Stephanie Scharf and Roberta Liebenberg** (June 16, 2021)

As this article is being written, the U.S. is in the midst of a demographic change that will have enormous consequences for all businesses, including the business of law.

Women have remained around 50% of the U.S. population for many decades and, as shown in Chart 1, are projected to stay at that level going forward.[1]

Substantial increases, however, are taking place in levels of racial and ethnic diversity. By 2030, approximately 45% of the U.S. population will be people of color.[2] Over time, by 2046, the minority population will become a majority.[3]

Chart 1



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The legal profession will see comparable demographic changes.

Today, over 50% of law school enrollees are women and over 30% are students of color. We expect those trends to continue.

One result will be that any organization unable to recruit, retain and advance female lawyers and lawyers of color into midlevel and senior roles will — in short order — be starved for the diverse talent that will make up a large segment of the legal profession.

Understanding the broader culture in which a business operates, including how to recruit and advance personnel from diverse backgrounds, has become imperative.

Why is diversity important to the success of a business? More than a decade of studies and commentaries consistently show that people from diverse backgrounds, working together, produce more innovation and achieve better solutions and results.

Even the conflicts arising from diverse perspectives, if managed correctly, will increase innovation as well as improve creativity and the quality of the work. As sociologist Cedric Herring put it so well, "Diversity is related to business success because it allows companies to think outside the box by bringing previously excluded groups inside the box. This process enhances an organization's creativity, problem-solving, and performance." [4]

There is also the cumulative impact of successful diversity initiatives: The organization that effectively promotes personnel from diverse backgrounds will be increasingly able to attract and retain a broad range of diverse talent.

The current and projected demographic statistics demonstrate the increasing diversity of our society and the talent pool that will be available in the legal profession, particularly to law firms.

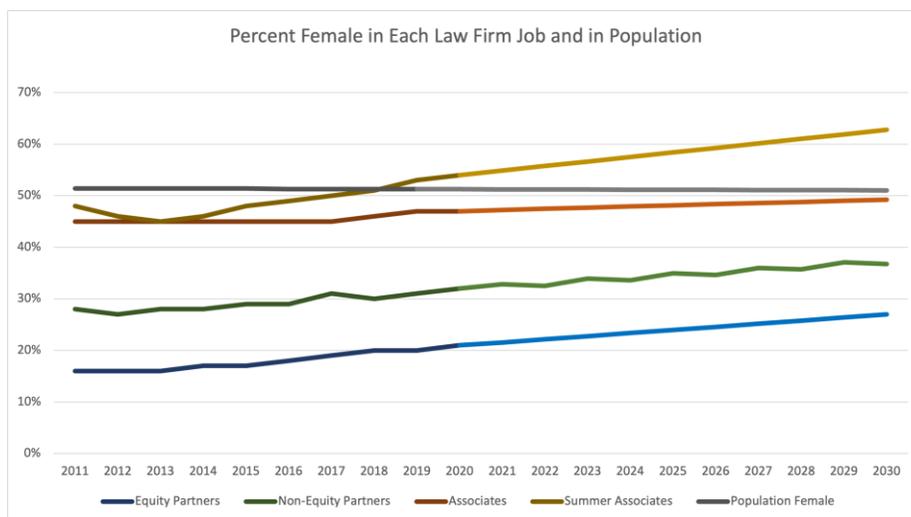
Firms that are able to successfully hire, retain and advance female lawyers and lawyers of color will have a competitive advantage.

Over the past few decades, law firms did not necessarily take a long-term view of recruiting and advancing lawyers into senior positions, instead relying on the idea that lawyers can be recruited when needed and that it is mostly a matter of compensation.

But while some lawyers may go to the highest bidder — which carries its own long-term risks — our research suggests that many female lawyers and lawyers of color care as much, if not more, about the culture of firms where they work, and whether that culture is genuinely inclusive, welcoming and appreciative of the differences they bring to the table. [5]

Below we show data and percentages of female lawyers and lawyers of color in law firms from the past 10 years, which we used to forecast future percentages of female lawyers and lawyers of color at junior and senior levels. [6] Chart 2 shows past data and future projections for women in positions as summer associates, associates, nonequity partners and equity partners. We used the female population statistic as the context for these projections.

Chart 2



As shown in Chart 2, it is anticipated that women will represent more than 50% of summer associates, and that percentage will continue to increase over time.

Women will also represent nearly 50% of associates, although these numbers are slightly lower than the percentage of women now graduating from law school. That is because the category "associate" covers six or more years, and female associates begin to leave law firms more often and earlier than men, even before partnership decisions are made.[7]

But at the partner level, especially the equity partner level, women are projected to remain woefully underrepresented: Women are forecast to represent only 37% of nonequity partners and 27% of equity partners in 2030.

These disappointing projections are not attributable to a pipeline problem, as women have comprised approximately 50% of law students for the past several decades. Instead, there are many policies and practices in law firms that create obstacles to the advancement of women.

For example, in our 2019 "Walking Out The Door" report, we found that more experienced female lawyers reported that they were treated less favorably than their male peers in terms of access to business development opportunities, allocations of origination credit, salaries and bonuses, access to sponsors and opportunities to inherit clients as senior partners retire.[8]

These gender-based differences in work experiences amount to a "death by a thousand cuts"[9] and cause women to disengage from their firms in much larger percentages than men, ultimately walking out the door.

Many commentators, including the authors of this article, have noted the glacial rate of progress for promoting women into law firm leadership roles.[10] Clearly, unless there are intentional and meaningful changes in how firms treat their female lawyers, the future will not be much different from the past.

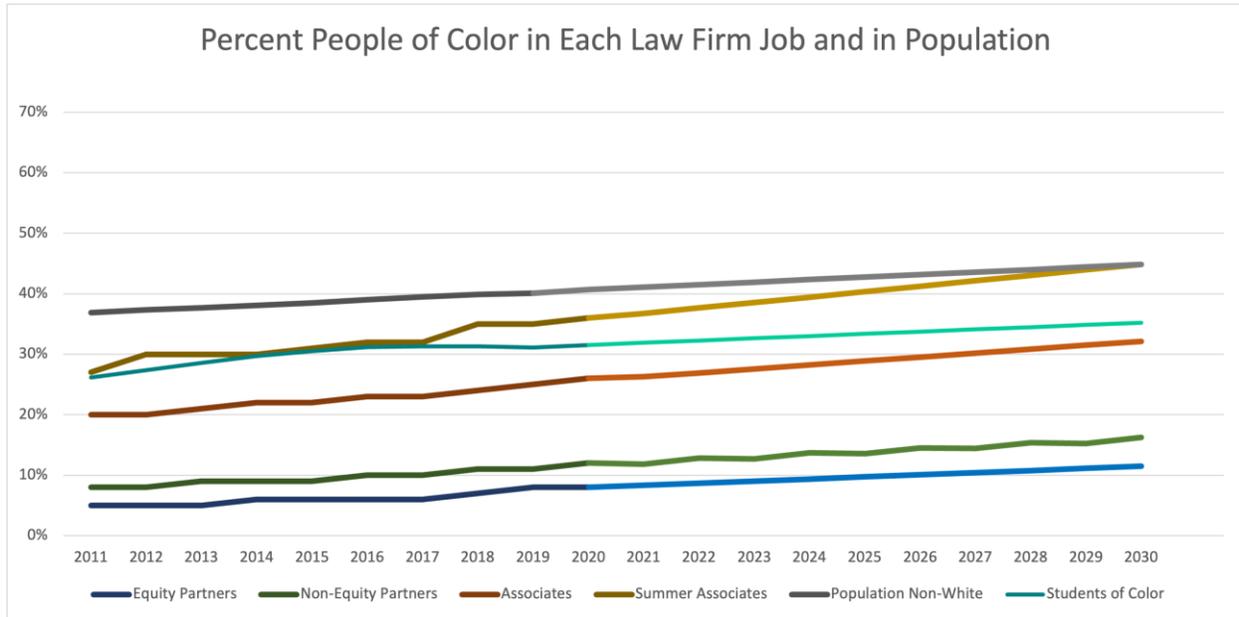
Moreover, our forecast does not factor in the very real possibility that the pandemic may result in more women, especially those with younger children, electing to downsize their careers by working part-time or leaving the practice of law altogether.[11] A possible exodus of female attorneys would undo even the modest gains that were made prior to the pandemic.

Chart 3 shows past data and future projections for lawyers of color. For the past 10 years, law school classes have increased their levels of racial and ethnic diversity so that today, over 32% of students enrolled in law schools are students of color.[12]

We forecast that trend to continue, with students of color representing 35% of all law students in 2030.

Today, 36% of summer associates are students of color,[13] and we project that number will also increase to 45% by 2030. Summer associate hiring of law students of color is robust. In fact, more students of color are hired in law firms at the summer associate level than would be expected by their law school numbers.

Chart 3



Both past and projected data show that the decline begins at the associate level. Lawyers of color now account for 26% of associates, fewer than the population of law students of color would predict.

There is a projected increase in the percentage of nonequity partners of color between today (11.8%) and 2030 (18%), although that increase is still far less than would be expected by the percentages of law students and associates of color.

The forecast is more discouraging at the equity partner level. Today, the typical firm's equity partnership is 8.1% lawyers of color,[14] and that is projected to be 11% in 2030.

These forecasts show consistently fewer female lawyers and lawyers of color in the upper ranks of firms than are available to recruit and advance.

If your firm falls below the norm for hiring, retaining and advancing female lawyers and lawyers of color, there should be real cause for concern as to how it will fare long-term. And even if your firm is somewhat above the norm, there is still cause for concern.

Why? Because the demographic trends show the need to recruit and retain substantially more female lawyers and lawyers of color to truly represent the increasingly diverse general population and legal profession.

As we explain below, there is still time for firms to change the course of their own trajectories, although there is no time to waste in doing so.

Closing the Gaps

In 10 years, a far larger number of lawyers than ever before will be women and people of color. By 2030, the majority of baby boomer lawyers — who entered the profession before 1989, and were largely white and male — will be over age 70 and typically retired from the practice of law.

It is no exaggeration to say that these demographic changes will frame a law firm's destiny — if not today, then surely in the next five to 10 years.

Our forecasts, however, are not written in stone. On the contrary, we present them as a wake-up call for firms to adjust their current course in ways that will enhance their ability to hire and retain the diverse range of lawyers that the legal profession has to offer.

Our research and consulting work have led us to focus on specific techniques to foster change. We have seen that even small adjustments can make a large difference.

The process is straightforward and transparent. It does not take years. It does not have to be perfect, and it will yield results. The most important step is to get started.

The core principles we set forth below can be used to define, measure and meet goals for change.

1. Set a two-year goal.

Our experience is that one year is not enough and three years or longer can be affected by changes in leadership or other internal factors. We strongly recommend setting a specific goal with a concrete, measurable outcome.

For example, a goal could be established to ensure the retention of double the number of midlevel lawyers of color. Another goal may be to increase by 25% the retention of midlevel female lawyers.

Depending on an analysis of why lawyers leave, there are many possible strategies that can be formulated with appropriate metrics.

Whatever specific diversity goals are adopted, the organization should make them a priority with focused attention by those in charge.

2. Be proactive about getting multiple perspectives from all levels of the firm.

Take advantage of multiple viewpoints from lawyers at all stages in their careers, and do not rely only on lawyers in leadership. By doing so, there will be a greater likelihood of obtaining creative and innovative ideas, insights and suggestions.

Moreover, there will be less impact from unconscious biases, such as those in leadership hearing only from lawyers who share similar viewpoints.

Our experience is that eliciting viewpoints from lawyers at all different levels of the firm can lead to unexpected and positive ideas for a firm to implement.

3. Start early.

Many firms continue to operate under the traditional sink-or-swim notion that lawyers will either learn or they won't, and those that learn will stay.^[15] Often firms view junior and even midlevel lawyers as easily replaceable and believe that if an associate does not work out, there are always more to hire.

But that is the outdated mentality that has left firms with the conundrum they now face:

their lack of senior female attorneys and senior lawyers of color.

Ironically, it is those very lawyers that clients are increasingly insisting on using for their major matters. Indeed, by the time lawyers reach senior associate or partner-ready levels, it is typically too late to change their minds — and the firm's — about a long-term career with the firm.

Many firms, for example, seem flummoxed when female lawyers and attorneys of color are promoted to nonequity or equity partner, but then leave to go elsewhere.

That is why we especially emphasize both informal and formal methods to support associates as early as possible. These methods will enable firms and their associates — including women and people of color — to engage with each other in ways that benefit both client matters and mutual long-term commitments.

Some of the many ways in which firms can offer career support to associates from diverse backgrounds include making sure they have stretch assignments, the opportunity to be lead on a part of a case or deal, the guidance needed to learn from their mistakes, or recognition to the client for their work.

Steps can also be taken to help female lawyers and lawyers of color increase their visibility both within the firm and in the wider legal community. It may be as simple as inviting a lawyer to join a client dinner, speak at a CLE webinar or co-chair an event in the firm. These concrete actions cumulatively send the message that leaders are invested in the careers of female lawyers and lawyers of color.

Reconsidering how to recruit at the most junior levels is another approach to advance attorneys from diverse backgrounds. Firms can readily broaden their recruitment of students from law schools that may have a more diverse student body. Research has shown that many rainmakers tend not to have graduated from the top tier law schools. Life experiences, grit and ambition can translate into long-term success in firms.

4. Decide on what you will measure and track results.

To enable the firm to assess whether progress is being made and goals are being met, it is fundamental to measure what the firm seeks to change.

Some goals are measured with readily available data. As one example, if your goal is to hire more lateral female partners and partners of color, you can easily keep track of who is interviewed, from what sources, and who is hired. Or, if your goal is to eliminate disparities in compensation and promotions, a first step could be to review compensation and promotion histories to understand the points where implicit biases may come into play.

Other goals may require more nuanced measures of success.

We have found tailored surveys to be enormously helpful in formulating goals that can be prioritized and then to measure the extent of change over a certain time period. Surveys are particularly useful when they span a range of levels within an organization.

As an example, a firm could assess whether members of a team from diverse backgrounds are advancing with respect to assignments and working with clients, so they will have the necessary experience to be promoted to partner. The most effective team leaders could receive increased salaries and/or bonuses for advancing female lawyers and lawyers of

color into key roles for clients and leadership positions.

5. Pivot when needed.

Success is rarely a straight line. Our experience is that some new policies or practices will immediately take hold. But that is not always the case, and adjustments are often necessary.

After six months, you should have a sense of how your colleagues at all levels are reacting and whether the change process should continue as is, or if adjustments should be made.

6. Just do it.

There is no silver bullet and no one way to meet your goal.

The first six months will slip away sooner than you think. If there is no discernible change early in the process, it will send a contrarian message, and you will lose valuable time and momentum.

Build in milestones for short-term wins. A good deal of effective change turns on leadership, communication and follow-up. The particular technique is less important than what leaders say and do — which may include frequent communication, using metrics for regular assessments, reporting throughout the organization about progress, determining where you need help and continuing positive focus on long-term goals.

Conclusion

The past year has seen a strongly renewed focus on the need for racial equality in our country, and law firms have been outspoken in their professed commitment to that objective, just as they have long expressed support for gender equality.

But the reality is that the pace of progress for both gender and racial equality at law firms has been unacceptably slow, and the numbers of female lawyers and lawyers of color in positions of leadership are still far too low.

More and more clients are increasing their demands that female lawyers and lawyers of color play meaningful roles on matters. Firms that fail to meet that need will find themselves losing business to others that are able to successfully recruit, retain and promote the widest range of talent that the legal profession has to offer.

The substantial demographic changes in the country and the legal profession can no longer be ignored. The future is now, and this should compel firms to take specific and concrete actions to disrupt the traditional paradigm of hiring, support and advancement.

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[1] Hobbs, F., Demographic trends in the 20th century(Vol. 4). US Department of Commerce, Economics and Statistics Administration, US Census Bureau. (2002); Lindsay M. Howden and Julie A. Meyer, Age and Sex Composition, 2010 Census Briefs. US Department of Commerce, Economics and Statistics Administration, US Census Bureau. (May 2011).<https://www.census.gov/prod/cen2010/briefs/c2010br-03.pdf>; United States Census Bureau, Quick Facts, Population Census (April 1, 2020). <https://www.census.gov/quickfacts/fact/faq/US/LFE046219#1>.

[2] U.S. Census Bureau. (2021).2010-2019American Community Survey 1-year Public Use Microdata Samples[CSV Data file]. Retrieved from <https://data.census.gov/cedsci/table?q=United%20States&tid=ACSDP1Y2019.DP05&hidePreview=false>.

[3] Id. Based on current reproduction trends, most non-immigration population growth will come from growth in the Hispanic, Asian and Black populations. Vespa J, Armstrong DM, Medina L. Demographic turning points for the United States: Population projections for 2020 to 2060. https://www.census.gov/content/dam/Census/library/publications/2018/demo/P25_1144.pdf. Even today, the underage 18 population is about 50% children of color. Child Trends, Racial and Ethnic Composition of the Child Population (December 13, 2018).

[4] Cedric Herring, "Does Diversity Pay? Race, Gender, and the Business Case for Diversity." *American Sociological Review*, 2009, Vol. 74:208-224 (April) at 220.

[5] Stephanie A. Scharf and Roberta D. Liebenberg, "Practicing Law in the Pandemic and Moving Forward." (American Bar Association, April 2021) at 42-48.

[6] Data in Charts 2 and 3 about legal positions in 2011-2020 are from National Association for Law Placement, Inc. (NALP), 2020 Report on Diversity in Law Firms (February 2021). https://www.nalp.org/uploads/2020_NALP_Diversity_Report.pdf. Forecasts for 2021-2030 were generated using an Exponential Smoothing (ETS) algorithm, which uses observed values at regular increments to predict continuation of trends through a specified date. Forecasts were implemented with the Excel FORECAST.ETS function.

[7] The National Association of Women Lawyers, 2020 Survey Report on the Retention and Promotion of Women in Law Firms, at 1; Roberta Liebenberg, "Too Many Senior Women Are Leaving The Profession," *Law Practice Today*, Nov. 14, 2018 ("glacial pace of progress"); "The 2020 Diversity Snapshot," *Law360*, Sept. 1, 2020 ("a legal industry determined to move the needle but succeeding at a glacial pace.").

[8] R. Liebenberg and S. Scharf, *Walking Out the Door: The Facts, Figures, And Future Of Experienced Women Lawyers In Private Practice* (American Bar Association, November 2019) at 5-8.

[9] Id. at 9 ("death by a thousand cuts").

[10] Id. at 7-9.

[11] Id. n. 6, Practicing Law in the Pandemic and Moving Forward at 19.

[12] 2011-2021 Enrollment DataSet, Analytix By Accesslex (2021), <http://analytix.accesslex.org/DataSet> (follow instructions posted on webpage to access Enrollment DataSet).

[13] Id. n. 7, 2020 Report on Diversity in Law Firms at 16.

[14] Id. at 18 (Feb. 2021).

[15] For a similar approach in the financial services industry, and how it is changing, see Merrills' New Training Sheds Sink Or Swim Mentality That Hampered Diversity. <https://www.advisorhub.com/merrills-new-training-sheds-sink-or-swim-mentality-that-hampered-diversity-exec/>.