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The “Diversity Bonus”:

What Public Interest Law Firms Have Missed Regarding Diversity

BY WILLIAM KENNEDY

Why do we seek a diverse staff in social justice law firms?¹ Nonprofit leaders often articulate a few reasons. First, having staff that mirror the diversity of the communities we serve offers language, cultural, and affinity skills that enhance outreach and services. It helps us achieve our mission and builds trust. Second, antidiscrimination laws mandate the adoption of policies that seek a diverse hiring pool. We do it to comply with the law. Third, affirmative action goals reflect a commitment that is moral and pragmatic and enhances public perception of the social justice community. While these commitments can result in beneficial changes in office policies, they often yield only minimal investments in diversity. For most social justice law firms, the commitment is moral and pragmatic but based mostly on metaphors. These stated reasons miss the point—diversity makes us smarter and better able to respond to change.

Here I explore the substantial body of work grounded in social science, cognitive science, and, most important, mathematics, proving that incorporating diverse decision making into an office can result in a “diversity bonus” to improve performance

1 I use the term “social justice law firms” here to encompass legal organizations that others may refer to as “public interest,” “nonprofit,” “legal services,” or “legal aid.”

$$\text{Crowd Error} = \text{Average Error} - \text{Diversity}$$
$$(c - \theta)^2 = \frac{1}{n} \sum_{i=1}^n (s_i - \theta)^2 - \frac{1}{n} \sum_{i=1}^n (s_i - c)^2$$

Figure 1. The Diversity Prediction Theorem from Prof. Scott E. Page, *THE DIVERSITY BONUS: HOW GREAT TEAMS PAY OFF IN THE KNOWLEDGE ECONOMY* (2017).

and fight entropy.² Moreover, incorporating diverse decision making into an office can spur innovation that will move a social justice law firm closer to achieving its collective mission of securing equal justice for all.

Here I rely heavily on the research of Prof. Scott E. Page and others who have spent the last decade examining the ways successful institutions incorporate diversity in decision making.³ This body

2 The “diversity bonus,” a phrase used by Prof. Scott E. Page, describes the improvement in prediction and performance in complex problem solving when tackled by cognitively diverse teams (SCOTT E. PAGE, *THE DIVERSITY BONUS: HOW GREAT TEAMS PAY OFF IN THE KNOWLEDGE ECONOMY* (2017)). “Entropy” is the process through which “[c]losed systems inexorably become less structured, less organized, less able to accomplish interesting and useful outcomes, until they slide into an equilibrium of gray, tepid, homogeneous monotony and stay there” (STEVEN PINKER, *ENLIGHTENMENT NOW: THE CASE FOR REASON, SCIENCE, HUMANISM, AND PROGRESS* 15 (2018)).

3 Scott E. Page, Ph.D., is the Leonid Hurwicz Collegiate Professor of Complex Systems, Political Science, and Economics at the University of Michigan; he is also external faculty for the Santa Fe Institute, an interdisciplinary think tank devoted to the study of complexity.

of work makes clear that operationalizing diversity can make an office smarter, more robust, and better able to respond to the shifting landscape upon which our work unfolds. To secure and use the benefits of the diversity bonus, our institutions and way of thinking must change.

The Power of Diversity

The idea that combinations of things can be more amazing than the things themselves holds true for neurons, for Legos, and even for people. Teams of people can accomplish things that no individual could do alone. (SCOTT E. PAGE, *THE HIDDEN FACTOR: WHY THINKING DIFFERENTLY IS YOUR GREATEST ASSET* [2012])

Discussions of diversity, equity, and inclusion are often framed as “the right thing to do.” These moral justifications

Diversity makes us smarter and better able to respond to change.

are shifting sands upon which to build our policies and structures. Morality is individual and relative, and it shifts between social networks and context. Too often, discussions of diversity unfold in the province of rationalization, employed to affirm the virtue of our decisions—to make us feel better about ourselves. In the moral world, leaders can pick and choose the aspects of diversity that they wish to engage. The moral commitment is important but not enough to secure a “diversity bonus.” To do that, we must commit to science that is objective and measurable.⁴

Scientists who research decision making have come to understand these three fundamental truths. First, in any decision that requires prediction, evaluation, innovation, strategizing, or complex problem solving, groups make better decisions than individuals.⁵ Second, cognitively diverse groups make better decisions than homogeneous groups.⁶ Third, in complex or predictive decision-making teams, experience and “diversity” are of equal value.⁷

These findings, supported by mathematical models, allow us to move beyond metaphors and morality and establish the value of diversity with objective proofs. Further, the mathematics allow

a more nuanced understanding of the value of diversity that is measurable.⁸

The Mathematics of Diversity

In *Diversity and Complexity* Professor Page presents the mathematics that measures the impact of diversity on group decision making. These peer-reviewed equations shift the discussion of diversity’s value from morality and equity to measurable indicators of success and performance.⁹

The research establishes that when cognitively diverse teams bring different perspectives, categories, heuristics, and models to problem solving, these different viewpoints and skills combine to create new analytical tools and new methods of engagement that can offer breakthrough solutions.¹⁰

These peer-reviewed equations shift the discussion of diversity’s value from morality and equity to measurable indicators of success and performance.

Indeed, the mathematical proof, the diversity prediction theorem, captures the basic truth that group errors in prediction and complex problem solving are mitigated by diverse membership in the group. (See fig. 1.) This is not a feel-good statement. It is a mathematical fact. Without diversity,

homogeneous groups, however talented, may find an upward limit to success.¹¹

In his lecture series, *The Hidden Factor: Why Thinking Differently Is Our Greatest Asset*, Professor Page shares several stories of diverse teams that joined together to solve difficult and complex problems. Most interesting is the story of the million-dollar Netflix challenge to find a new algorithm to predict a subscriber’s movie preferences. In that competition, the best minds fell short of achieving the 10 percent improvement the prize required. When all groups failed to meet the goal, Netflix extended the contest deadline. The winning entry merged the diverse approaches of more than 40 groups into the prize-winning algorithm.¹²

This example reveals the truth of the diversity prediction theorem that when diverse problem-solving approaches are merged, they fundamentally alter the

nature of the group’s engagement. Diverse groups are far more likely to process facts carefully when they assume that their perspective, model, or heuristic may be challenged.¹³ When the group considers

4 I use the word “science” here to refer to the convergence of social science, cognitive science, and mathematics.

5 See PAGE, *THE DIVERSITY BONUS*, *supra* note 2, at 55, 74. See also [re:Work with Google. Why the Best People Don’t Mean the Best Teams: Scott Page, University of Michigan](#), YouTube (May 24, 2016).

6 PAGE, *THE DIVERSITY BONUS*, *supra* note 2, at 74, 105. The degree of correlation between identity diversity and cognitive diversity is high but not perfect. Identity strongly determines the way in which a person experiences the world, but no identity is 100 percent predictive of a person’s cognitive diversity (*id.* at 24–27, 230–36). Adaptation and acculturation can affect a person’s cognitive process.

7 *Id.* at 105.

8 Information on specific mathematical models is beyond the scope of this article but can be found in SCOTT E. PAGE, *DIVERSITY AND COMPLEXITY* (2011), and SCOTT E. PAGE, *THE DIFFERENCE: HOW THE POWER OF DIVERSITY CREATES BETTER GROUPS, FIRMS, SCHOOLS, AND SOCIETIES* (2007).

9 See PAGE, *DIVERSITY AND COMPLEXITY*, *supra* note 8.

10 See PAGE, *THE DIVERSITY BONUS*, *supra* note 2, at 221. Heuristics are the cognitive tools or shortcuts one uses for problem solving.

11 See *id.* at 72.

12 In 2006 Netflix offered a million-dollar prize for anyone who could produce an algorithm to improve by 10 percent its prediction of what movies a consumer would next want to watch. No single group was able to do so, with BellKor coming the closest with an improvement of approximately 8.43 percent. Only when BellKor partnered with Big Chaos and merged over 800 separate approaches were they able to submit a winning algorithm (see SCOTT E. PAGE, *THE HIDDEN FACTOR: WHY THINKING DIFFERENTLY IS YOUR GREATEST ASSET* [2012]; see also PAGE, *THE DIVERSITY BONUS*, *supra* note 2, at 31–37, 50–51).

13 See PAGE, *THE HIDDEN FACTOR*, *supra* note 12, at 59–65 (Lecture Nine: Problem Solving). See also [David Dobbs, The All White Jury v. The Diverse: Evidence, for a Change](#), *SCIENTIFIC AMERICAN* (July 17, 2007).

Diverse groups are far more likely to process facts carefully when they assume that their perspective, model, or heuristic may be challenged.

the perspective of someone who is outside the majority, the members may experience friction or discomfort, but the payoff can be quite large. The application of these principles to problem solving is called "diversity logic."¹⁴ Groups with cognitive diversity are far more likely than homogeneous groups to refine old approaches and develop innovative approaches.¹⁵

Applying Diversity Logic to Social Justice Practice

Social justice practitioners often engage in prediction and complex problem solving that would benefit from diverse thinking. *How do we frame these pleadings? What argument would work well in this forum? How will this remedy play out in the various client communities we serve? How do we*

legal dimensions. Poverty and opportunity are themselves complex systems challenging us to consider the impact of our interventions on all points in the systems and to be innovative. By mathematical proof, the science establishes that diverse problem-solving teams will outperform a collection of the best individual problem solvers, improving performance and nurturing innovation when faced with these sorts of complex questions and systems.¹⁶ Our challenge is to incorporate this science into our social justice practice.

A couple of examples may be illustrative. A personal example of the value of diverse perspectives and heuristics comes from my home library. My wife and I have hundreds of books in our home. I organize books

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address displacement from gentrification? Whom do we hire for this job? Where do we advertise this job? One could list scores of challenges we face daily in which prediction is necessary. Social justice lawyers also engage complex systems to accomplish their goals. Courts are complex systems that challenge us to be strategic. Our clients' lives unfold in complex systems with interacting social, economic, and

by subject, author, and title, the Dewey Decimal way. This method makes sense to me, and it is the way that I learned to organize books. That is my heuristic, my cognitive shortcut. My wife organizes books by color. I always thought of this as a quaint and cute oddity that I could not quite comprehend in my privileged white

¹⁶ The mathematical proof here is the "Diversity Trumps Ability Theorem" (Scott E. Page, *Making the Difference: Applying a Logic of Diversity*, ACADEMY OF MANAGEMENT PERSPECTIVES, Nov. 2007, at 6). Creating these diverse teams may require us to break out of the "silos" that characterize much of social justice practice.

male mind.¹⁷ That is until I mis-shelved a book I was under pressure to find. Applying my cognitive shortcut to the problem, I had to look through each title, shelf to shelf, to find the book. This search could take a very long time. My wife, using her heuristic, told me, "It's green." This approach made my problem easy to solve. Mixing perspectives, models, and heuristics can help in a decision-making challenge by offering multiple approaches to problem solving.

A second example comes from social justice work. We were filing a proposal to expand services to the local Mien community (immigrants from Laos). The applicable grant required us to quantify the number of families that had migrated to our service area. My team approached the problem by examining statistics from the U.S. Department of State on the initial immigration and resettlement of Mien populations, but my team found no data on the secondary migration of Mien once they reached the United States. We tried using data from school ESL (English as a Second Language) classes and local nonprofit assistance agencies, but these data were insufficient. Then we presented the problem to our Mien clients, bringing diverse perspectives into the problem solving. We learned that we could approximate the number of Mien families quite well if we examined telephone listings, counting those names that begin with "Sae." We learned that when the Mien applied to be resettled in the United States, Thai immigration officials added "Sae," which means "surname" in Thai, to the twelve clan surnames of the Mien immigrants.¹⁸ The Chao family became Saechao; the Lee family became Saelee, the Phan family Saepphan, etc. We learned as well that the Mien had a dozen clan

¹⁷ Since I started talking to advocates about this body of science, I have received a number of photographs of home libraries that are also organized by color.

¹⁸ [Mien History](#), hilltribe.org (n.d.).

¹⁴ See PAGE, THE DIVERSITY BONUS, *supra* note 2, at 68–69, 130–32.

¹⁵ *Id.* at 55.

names. Using this model, we were able to approximate the number of families in our county to the satisfaction of our funder. A new perspective, cognitive shortcut, and model from our clients allowed us to secure project funding and expand culturally appropriate services to meet their needs.

The research makes clear that any issue requiring prediction or complex problem solving will benefit from this approach. Social justice lawyering presents a fertile ground to seed with the science and holds out the promise of reaping a diversity bonus.

Moving to Diversity Logic —an Illustration

Moving a program to diversity logic can be a difficult task. It requires introspection and a challenge to the status quo. An office must let go of some hierarchy and open the door to diverse group processing of the office's most important issues. To accomplish this transition, all staff must be clear on the fundamental goals of the social justice law firm and the client communities targeted in advocacy.

We will use the example of hiring, a complex task that requires evaluation and prediction, to help us unpack a diversity-logic approach. When hiring staff, we search for objective, quantifiable criteria to measure a candidate's skills, often leading to a side-by-side measurement of talent by score. Our matrix may include indices of talent such as grade point average, test scores, years of experience, language skills, cultural links to the community served, past relevant experience, or history of commitment to our cause. We rank the candidates by using a score that quantifies the criteria. An offer is made to the person with the highest score, applying merit-based logic to the task. Scientists use the term "the

meritocracy fallacy" to explain why this may not lead to the best selection.¹⁹

Assume that we have three candidates for two positions. The scores of two of the candidates meet the standards for eight out of the ten criteria. The third candidate scores seven out of the ten. It would be easy to conclude that offers should be extended to the two candidates who scored highest on the metrics of the talent scale. This would be a mistake.

Diversity logic compels us to look more deeply at the candidates and evaluate the "tools" that they will bring to teams. Studies have shown that the best team does not always include those people who score highest on a test. People are not numbers but vectors of tools and talents that must be evaluated in all their complexity with the understanding that both diversity and "talent" are necessary to create excellence.²⁰

If we understand the diversity prediction theorem and trust that diversity and

experience are both necessary to achieve excellence, our decision is not as simple.²¹ Taking another look at the same three candidates, we may find that the two top candidates scored well on the same eight criteria. The candidate who scored a seven did well on criteria on which the first two candidates did not. (See fig. 2.)

Applying diversity logic, we consider the tools a candidate possesses and realize that the person who brings new tools may result in a better long-term outcome. Rather than look at just the raw score, decision makers should look beyond and assess which candidate adds diverse tools to the office. The best team will not necessarily, per the scientific studies stated above, consist of the best-performing individuals. The best team will include diverse thinkers.²² Excellence is not in competition with diversity. Instead excellence requires diversity.²³ Selecting the person with diverse talents may be a better choice than selecting the person with the highest score, particularly when the skills that

CRITERIA	1	2	3	4	5	6	7	8	9	10
Candidate One	●	●	●	●	●	●	●	●	●	●
Candidate Two	●	●	●	●	●	●	●	●	●	●
Candidate Three	●	●	●	●	●	●	●	●	●	●

Figure 2. Talent logic versus diversity logic.

19 PAGE, THE DIVERSITY BONUS, *supra* note 2, at 128 (hiring using system of raw scores continues to be useful to select those who will engage in simple repetitive tasks but is not useful for position that tackles complex systems and could benefit from diversity bonus).

20 See PAGE, THE DIFFERENCE, *supra* note 8, at 165–67. See also [LinkedIn Editors, Diversity Creates Bonuses. It's Not Just a Nice Thing to Do](#), YOUTUBE (Sept. 20, 2017) (interview with Scott E. Page). I use the word "talent" here to reflect those indices measured in the hiring process. I do not imply that diversity is not, in itself, an index of talent. A staff member who brings cognitive diversity to problem solving will bring value and talent regardless of position or tenure.

21 PAGE, THE DIFFERENCE, *supra* note 8, at 165–67.

22 See PAGE, THE DIVERSITY BONUS, *supra* note 2, at 81. See also [re:Work](#), *supra* note 5.

23 See [LinkedIn Editors](#), *supra* note 20.

lead to a higher score are already well represented in the firm.²⁴

As an office moves beyond talent logic to diversity logic, each criterion in the selection process must be reevaluated by considering the firm's current talent pool and the need for diversity in each office. Many statistical models can perform the weighting, which is well beyond my scope here.²⁵

Preconditions for Change

In his book *The Diversity Bonus*, Professor Page describes necessary preconditions that set the stage for a diversity bonus.²⁶ They include reducing bias, identifying and reducing accumulated institutional bias, and supporting inclusion as a core value.

Reduce Bias

Bias reduction is an essential precondition for securing the diversity bonus. Managers and staff should be well trained in both explicit and implicit bias. Awareness of one's own bias is a necessary first step to debiasing office structures. The 22-page *Debiasing Techniques* guide produced by the Sargent Shriver National Center on Poverty Law's Racial Justice Training Institute is a good road map to follow for taking on bias in social justice law firms.²⁷ Eliminating bias must be a sustained effort. For example, Google's effort to create an inclusive environment was a major commitment. It spent no less than \$150 million on diversity initiatives in the workplace in 2015. In the same year, Apple spent \$50 million.²⁸ While we cannot match the financial investment

24 Adding the same tools multiple times diminishes the value of those tools, triggering the statistical theorem of diminishing returns to type (PAGE, *DIVERSITY AND COMPLEXITY*, *supra* note 8, at 9–10, 183–85, 194–95).

25 See *id.* (discussion of weighting). Professor Page points out, quoting the late statistician and rocker Tom Petty, that the "weighting" is the hardest part (see [tompetty, Tom Petty and the Heartbreakers—The Waiting](#), YouTube (Oct. 8, 2009)).

26 PAGE, *THE DIVERSITY BONUS*, *supra* note 2, at 211–18.

27 See [my Race Equity Project—Debiasing Techniques: A Pick List of Debiasing Techniques](#) (n.d.) (updated annually).

28 PAGE, *THE DIVERSITY BONUS*, *supra* note 2, at 209.

Excellence is not in competition with diversity. Instead excellence requires diversity.

of large tech firms, we do have resources in social justice law firms that could be pooled and leveraged to launch a serious effort. Through the Shriver Center's Racial Justice Training Institute, we know that nearly 200 advocates in 26 states have received training on implicit bias and debiasing. There are undoubtedly others. All are implementing and documenting their efforts unfolding in very different environments. Many have already begun implicit bias training in their offices and communities to set the stage for implementing diversity logic. Shared resources within the social justice community may be sufficient to launch a serious effort to evaluate and adapt structures, policies, and behaviors that stand in the way of the diversity bonus.²⁹

Identify Institutional Bias and Debias

One cannot overstate the accumulated

One cannot overstate the accumulated effect of bias hidden in our policies and practices.

effect of bias hidden in our policies and practices. Even policies dismissed as customs that have a *de minimis* effect on inclusive outcomes should be examined.

Professor Page measured the effect of bias against women and minority associates

29 The Racial Justice Training Institute at the Sargent Shriver National Center on Poverty Law has created a national network of racial justice advocates who could be engaged in this effort ([Sargent Shriver National Center on Poverty Law, Racial Justice Training Institute](#) (n.d.)). The Race Equity Project has developed training tools that are available through the Racial Justice Training Institute.

seeking partnership status in private law firms. He offers the following thought experiment: Suppose that for one to make senior partner at a law firm, a person must pass 10 hurdles.³⁰ These hurdles could include performing well in an interview, attracting a new client, successfully litigating, or excelling in a leadership role. Each hurdle is a win-or-lose proposition. A person with a 50 percent chance of success at each juncture stands a 1-in-1,000 chance of passing all 10 and becoming a partner. If we assume only a small amount of bias exists toward women and minorities so that they are 10 percent less likely to earn a promotion, they pass each hurdle only 40 percent of the time.³¹ Because of the compounding of this small amount of bias, minority candidates have a 1-in-10,000 chance of becoming a partner; this is one-tenth of the chance of candidates

facing no bias. The math reveals that this small amount of bias produces 90 percent fewer women and minorities at the top.³²

How exactly does bias seep into our policies and practices? One study found that

30 See PAGE, *THE DIVERSITY BONUS*, *supra* note 2, at 214–16.

31 Bias in evaluation and mentorship are common in law firms (see [Russell G. Pearce et al., Difference Blindness vs. Bias Awareness: Why Law Firms with the Best of Intentions Have Failed to Create Diverse Partnerships](#), 83 *FORDHAM LAW REVIEW* 2407 (2015)).

32 One can see similar impediments in the nonprofit legal services structures and may explain why the leadership, even today, is largely white (see [Legal Services Corporation, Grantee Staffing](#) (n.d.)).

in hiring or evaluations, people err toward homogeneity, believing that people like them are smarter. As a result, white leaders may demonstrate an implicit bias in favor of people who look like them.³³ Studies also demonstrate that mentoring is enhanced when the mentor and mentee are from the same identity group. Mentors give less time and critical judgment to mentees who are perceived to be different from themselves. When this happens, differences in the quality of law firm mentoring

the true power that diversity brings. Deep engagement by diverse groups could maximize bonuses leading to a more effective and robust organization. Without introspection and a comprehensive examination of existing structures by diverse teams, however, these barriers will not be dismantled.

Support Inclusive Decision Making as a Core Value

Establishing inclusion as a core value takes work. Sharing the science may set the

Stage 1: Moral Commitment to Inclusion

Many are drawn to a social justice law practice for moral reasons. The concepts of equality, inclusion, and the intrinsic value of each human being are often the grounds upon which we stand in our advocacy. Whether motivated by religion, a sense of justice, a commitment to equity, shared struggle, or a response to a personal calling, a moral compulsion is common among social justice advocates. We seek diversity for moral reasons.

As diversity in the United States has changed, our advocacy often challenges America's troubled past to extend the moral imperatives of inclusion and opportunity to marginalized persons or groups.³⁸ We seek diversity in our advocacy for normative reasons and to construct opportunity pathways to all, regardless of their identities.

Morality is a personal and seldom a collective trait. It has no orthodoxy. It can shift with the wind and is a weak foundation for institutional change. For example, disturbingly some in the social justice community use moral grounds to argue that diverse staff hinder performance by creating friction and conflict over goals and methodologies. They seek instead the comfort that comes from "in group" collaboration, where the explicit and implicit perceptions and assumptions of the dominant group are unquestioned. A program that falls into this trap trades effectiveness and innovation for comfort.³⁹

³⁸ From 1900 to 1940, approximately 90 percent of the U.S. population was white; almost all of the remainder of the population identified as being black or African American, and Hispanics constituted fewer than 5 percent of the population (FRANK HOBBS & NICOLE STOOBS, U.S. CENSUS BUREAU, *DEMOGRAPHIC TRENDS IN THE 20TH CENTURY* (Nov. 2002)). By 2010 the percentage of non-Hispanic whites was less than 64 percent of the population (KAREN R. HUMES et al., U.S. CENSUS BUREAU, *Overview of Race and Hispanic Origin: 2010* (March 2011)). Projections now show that by 2050 whites will no longer be a majority of the population (WILLIAM H. FREY, BROOKINGS INSTITUTION, *The U.S. Will Become "Minority White" in 2045*, *Census Projects*, THE AVENUE (March 14, 2018)).

³⁹ This is why we say in the race equity movement, "Comfort is our enemy."

Sharing the science may set the stage for change by taking the discussion of diversity's value out of the shifting sands of morality or compliance.

add to the barriers to upward mobility.³⁴

If the thought experiment above is used, based only on bias in favor of people like you and the resulting unequal mentorship, a systemic problem of accumulated bias would develop, thereby decreasing the number of women and minorities making partner.³⁵ Remediating bias requires introspection, analysis, and basic training in implicit and explicit bias, in all its manifestations.

A social justice law firm could begin by constituting diverse groups to examine office structures to uncover systems and practices that are targets for debiasing. Diverse groups may uncover heretofore "hidden" structures and norms that accumulate bias and sustain the structures that restrain

stage for change by taking the discussion of diversity's value out of the shifting sands of morality or compliance. Support from social justice law firm leaders is a start, but meaningful inclusion requires a more organic bottom-up process guided by managers who shape behavior, motivate and inspire employees, guide actions, and create meaning.³⁶ Inclusive culture allows people to use all the tools that they bring to a task. To do so, staff must feel safe, respected, and validated. Managers will be challenged to train and reorient staff to diversity logic and team problem solving and must learn effective ways of enforcing inclusion as a core value.

An Institution's Journey Toward Diversity Logic

For an institution to shift toward diversity logic, it must complete five stages.³⁷ The first three stages should be recognizable to social justice practitioners. To move beyond Stage 3, practitioners should embrace the mathematics and science.

³⁶ PAGE, *THE DIVERSITY BONUS*, *supra* note 2, at 216–18.

³⁷ PAGE, *THE HIDDEN FACTOR*, *supra* note 12, at 17–23 (Lecture Three: Diversity Squared).

³³ Danielle Allen, *Toward a Connected Society*, in OUR COMPELLING INTERESTS: THE VALUE OF DIVERSITY FOR DEMOCRACY AND A PROSPEROUS SOCIETY 71 (Earl Lewis & Nancy Canter eds., 2016).

³⁴ See Monique R. Payne-Pikus et al., *Experiencing Discrimination: Race and Retention in America's Largest Law Firms*, 44 *LAW AND SOCIETY REVIEW* 553 (2010).

³⁵ Other examples, such as the quality of legal work assigned and the different evaluations given for similar or the same behavior (e.g., assertive man versus aggressive woman), demonstrate institutional bias against women and minorities.

Some argue, again on moral grounds, that managing competing perspectives results in inefficiency and reduced services to our clients. As a privileged white male with 44 years in social justice law, I have, regrettably, made these arguments myself.

Still others in our community suffer from diversity fatigue, a type of moral exhaustion. They understand that they cannot, for political reasons, disengage from

a loosely constructed commitment and is often interpreted by staff as another burden thrust upon them by a compliance officer. Without understanding the diversity bonus, they may feel that because of who we are, these laws were not meant for us.

Part of the problem at this stage is that the organization has no well-articulated valuation of diversity, only risk avoidance. When the objective value of diversity

the idea that diversity can create better outcomes by opening up a larger talent pool.

None of these epiphanies, however, leads to the genuine integration of diverse staff into the heart of the office. In fact, failure to understand the value of diversity in decision making can result in the exploitation of diverse staff by placing them in a box where their value is defined only by the unique skills, such as a language, that they bring to service delivery. The sequestration of staff only to jobs requiring their unique talents may target talent but may limit their advancement and any possibility of a diversity bonus. Alienation and disaffection may follow, making retention of diverse staff difficult.

At least three structural impediments hamper social justice law firms' efforts to move beyond Stage 3 in the journey toward diversity. First, the "starting line" effect, which says that you cannot give one group a 50-yard head start in a 100-yard race. Adding diversity now does not immediately remedy past exclusion. We must guard against inviting diverse staff to participate in important decision-making or planning tasks and expect them to conform, without question, to past processes that were created without diverse input. If the leadership of an organization has achieved comfort with its operations and policies, it may not question the underlying assumptions that created them. New viewpoints that question those assumptions may trigger resistance or even backlash unless the leadership truly understands that incorporating diversity in decision making, hard as it may be, will improve the performance of the office, fight entropy, and fortify the organization in a changing environment.

The second impediment is what Professor Page calls the "smart-just-like-me" effect and cognitive scientists call "comfortable

The failure to link internship programs to office hiring standards may create a backdoor to hiring that compromises the goal of diversifying staff.

discussions of morality, but their attitude and demeanor openly reflect that they would rather not be discussing diversity. They may have achieved a status that allows them to work alone, a privilege that they may fight hard to maintain. They do not yet understand that diverse teams add value to the office's bottom line. This attitude frames a management challenge many social justice law firms must prepare to face should they seek to secure the improved performance and robustness that comes from diverse decision making.

Stage 2: Legal Mandates

In Stage 2 of the journey we frame diversity as a legal issue, and compliance within a regulatory structure becomes the primary focus. Compliance is, by its nature, a bottom-line task too often focusing on risk avoidance. Even social justice law firms that subscribe to the regulatory purpose may seek to preserve flexibility in their adopted policies, leaving them vague and open to interpretation. Some may believe that we are good people and should be trusted to respond to changing imperatives, demands, and situations. The legal framework offers no more than backstop relief. It is, at best,

as an enhancement to decision making is understood, the social justice law firm can move beyond compliance and begin the restructuring that renders the institution more powerful and robust.

Stage 3: The Bigger Pool

The third stage begins with the realization that diversity creates a bigger talent pool from which to draw our staff. We learn that having a diverse staff often brings language, cultural, and affinity skills shared with the diverse communities we serve. These talents and skills allow a social justice law firm to reach deeper into communities, shaping better remedies. In legal cases where race or ethnicity plays a role, diversity helps us move away from a color-blind approach that treats all social security disability cases or eviction actions the same. We gain the insight that cases are not fungible and that diverse clients may require diverse approaches to advocacy. In this way the bigger-pool logic moves our attention away from moral and legal grounds to the pragmatic grounds of expanding talent to achieve the social justice mission of our law firm. We embrace

egalitarianism." Diverse staff may experience it as "in-group preference." Once again, comfort is at the root. If we are more comfortable in groups where perceptions, heuristics, models, and assumptions are not questioned, then decisions are more efficiently made, although they may be narrow and uninformed. This exclusive decision-making process could be remedied by the inclusion of diverse perspectives, which would open the door to the innovation and vibrancy that are the characteristics of the diversity bonus.

Third, structures set up by past policies, adopted for entirely different reasons, end up producing outcomes that stymie the diversity bonus. For example, the failure to link internship programs to office hiring standards may create a backdoor to hiring that compromises the goal of diversifying staff. A person who can afford to volunteer for a summer may develop strong relationships that give an inside track to a job with the organization. This familiarity may effectively bias the decision makers in favor of the intern and undermine the firm's shift from "talent logic" to "diversity logic." Diversity logic suggests that application of the same standards would mitigate potential bias.⁴⁰

Stage 4: Embracing the Diversity Bonus

The fourth stage unfolds when a social justice law firm learns the math and embraces diversity logic, believing finally that increased productivity and innovation come from diverse perspectives, heuristics, models, and categories working together. Leaders begin creating teams to institute diversity logic to open up pathways to unleash the power of diversity.

Management and staff must understand that people from distinct identity groups have distinct experiences and filter their

experiences through their identities. This guides how they think about the world; as such, those from distinct identity groups experience a different world and will approach it differently. This is precisely the cognitive diversity that a social justice law firm needs for securing the diversity bonus.

Cognitive diversity is born from the stories we hear as children, the customs we have in our community, the books we read, the movies we watch, the music we listen to, and the stories our families tell. It is nourished by the parables and myths that we hear in our communities and that become the analogies we use in our thought processes. Sharing cognitive diversity in a team can expose the assumptions and models to which the existing decision-making structures blindly subscribe. Once ex-

Groups committed to diversity logic find excitement at the possibility that innovative approaches may be discovered.

posed, they may be affirmed, reconsidered, or improved by merging diverse perspectives, heuristics, and models offered by diverse team members. Combining diverse approaches can open doors to increased productivity.⁴¹ This is the diversity bonus.

Institutions must give up some of their hierarchy in favor of a team approach to practice. Diverse teams that mix talent or tenure with diverse perspectives can tackle office policies and priorities great and small, such as hiring, priority setting, case selection, case handling, training, outreach,

and fund-raising. When assembled with diversity in mind and, importantly, with the orientation that competition of perspectives can improve performance, diverse teams can transform social justice law firms.

An important proviso: Not all diverse groups succeed. Some are dysfunctional, characterized by lack of trust, no mutual respect, and failure to validate another's opinion or concerns. Robin Ely and David Thomas at Harvard examined the impact of "attitude" on dysfunction in diverse working groups and revealed interesting results. Some dysfunction, their research found, results from an attitude, held by those in the dominant group or those new to the process, that diverse participants have a seat at the table for political reasons. This attitude brings pessimism and resistance

that may infect the interactions of the team. Alternatively, groups committed to diversity logic find excitement at the possibility that innovative approaches may be discovered. If one believes diversity to be useful, it will be. If one sees diversity as an unnecessary burden, it will lead to dysfunction.⁴² That expectations shape behavior should not be surprising. As a result, new management skills are necessary in a workplace pursuing a diversity bonus.⁴³ To find success, staff need a strong

41 See Page, *Making the Difference*, *supra* note 16, at 13 ("These two theorems—The Diversity Trumps Ability Theorem and the Diversity Prediction Theorem—provide a foundation for claims that diversity provides benefits. That is, as they say, a good thing. But feeling good is not enough. Organizations can use this logic as more than a justification for policies that seek out diverse employees. Organizations can leverage this logic to be more innovative and productive.").

42 Robin J. Ely & David A. Thomas, *Cultural Diversity at Work: The Effects of Diversity Perspectives on Work Group Processes and Outcomes*, 46 *ADMINISTRATIVE SCIENCE QUARTERLY* 229 (2001). See Samuel R. Sommers, *On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations*, 90 *JOURNAL OF PERSONALITY AND SOCIAL PSYCHOLOGY* 597 (2006).

43 PAGE, *THE DIVERSITY BONUS*, *supra* note 2, at 210.

40 PAGE, *THE HIDDEN FACTOR*, *supra* note 12, at 17–23 (Lecture Three: Diversity Squared).

orientation to the new paradigm and trust that their participation will be genuine.⁴⁴

Not all types of diversity result in a diversity bonus. The literature makes a distinction between diversity characterized as “fundamental preferences” and “instrumental preferences.”⁴⁵ The former relates to a commitment to the mission; the latter relates to the approach taken to achieve the goals of the mission. The competition of diverse approaches, “instrumental preferences,” is what leads to better outcomes. When managing a meeting where people disagree, leaders must ask themselves: Is the friction relating to a fundamental disagreement or an instrumental disagreement? If it is the former, then the leader must stop and reorient the group to the mission (the fundamental goal) and the task under consideration (the instrumental means to achieving the goal). No organization will be able to make good decisions consistently if the group cannot agree on the fundamental objectives. Once again, good leadership is essential.

We may look to enterprises in Silicon Valley where the best leaders have taken great care to ensure that everyone understands the organization’s mission (fundamental preference goals) but leaves the selection of the instruments to achieve those goals to diverse teams.⁴⁶ The health care industry also offers insight into when and what type of issues benefit from diverse teams. Social justice law firms can find myriad possi-

bilities for diverse team decision making. This is the measure of our task ahead.

Stage 5: Restructuring Office Decision Making

In the fifth stage a social justice law firm restructures in pursuit of the diversity bonus. Implementing diversity logic implies accepting that rather than having a single cognitive approach to solve the law firm’s most important problems, the firm should have many approaches. It requires managing some dissonance and giving up some comfort. Restructuring is difficult and complex but fortunately can be done incrementally.

A firm could start with “hiring” or some aspects of “case handling” where diverse decision-making structures can be developed, tested, and measured. A social justice law firm with substantive units could begin the process with cross-unit work. Or it could bring staff at all levels into discussions of the law firm’s future. Most important, the firm could ensure that it has cognitively diverse teams to tackle its most urgent problems.

Leaders must take care in setting up teams. The diverse viewpoints of team members must be germane to the task at hand. No one would argue that a discussion of economic development would not benefit from hearing the diverse perspective of the community targeted by the project or that a health care problem should not include a diverse group. But would the selection of the carpet in the office’s reception area necessarily benefit from diverse input? Perhaps.

It may take time for the new structures to bear fruit, and so patience is necessary. In 1979, when the National Basketball Association introduced the three-point shot, with its 50 percent increase in value, few teams took advantage of the obvious benefit because the best teams did not have players

with the ability to score three-point shots. In time and with practice, the game was transformed.⁴⁷ Altering the way in which social justice law firms make complex decisions may take time and practice, but transformation is possible, and we may claim the full benefits of the diverse decision making.

Next Steps

Building a practice that uses the diversity bonus requires a commitment to sharing power and some appetite for disruption. Here are a few suggestions that leaders should consider. Future articles in CLEARINGHOUSE will go into detail on implementation, but many of these ideas are intuitive and can be pursued immediately:

1. Send a message from the top linking diversity to mission.
2. Provide implicit bias training and debias program operations.
3. Introduce diversity logic and group-processing skills to enable diverse teams to question the status quo.
4. Teach the science of diverse decision making.
5. Learn skills necessary to manage diverse teams to solve complex problems; mentor diverse staff on the value of their voice in team dynamics.
6. Link diverse teams to high-value opportunities (e.g., demonstration projects).
7. Support effort with analytics and data; provide recurring feedback loops that allow an office to measure progress.
8. Tie inclusive behavior to merit; reward those who advance diversity and inclusion.
9. Be patient with the process.

44 Professor Page and his colleague, Lu Hong, identified four conditions necessary for the new paradigm to unfold and allow diversity to trump ability: (1) the problem has to be hard; (2) the people have to be smart; (3) the people have to be diverse; and (4) the team needs to be reasonably big and chosen from a large pool (Page, *Making the Difference*, *supra* note 16, at 10–11).

45 PAGE, *THE DIFFERENCE*, *supra* note 8, at 256–57.

46 PAGE, *THE DIVERSITY BONUS*, *supra* note 2, at 216–18. Google allows employees to spend 20 percent of their time exploring their own projects. This flexibility led to the creation of Gmail and Google News (*id.* at 212).

47 PAGE, *THE DIVERSITY BONUS*, *supra* note 2, at 212.

10. Maintain humility in the face of diversity.⁴⁸

11. Practice, measure, share, and practice.

Few things are as difficult as launching a new way of doing things in a social justice law firm. The literature documents successful efforts to claim the diversity bonus made by tech giants, health care groups, and large corporate entities, but no one has funded studies to examine the effects in social justice law firms. As we learn, we will make mistakes. If we manage teams with a clear goal of doing things differently and making our offices smarter, more robust, and better able to respond to the shifting landscape upon which our work unfolds, we will need to share with one another our successes and failures. Our challenge is to remain united in our goals while, at the same time, engaging our differences.

When solving problems, diversity may matter as much, or even more than, individual ability. From this, we can infer that organizations, firms, and universities that solve problems should seek out people with diverse experiences, training, and identities that translate into diverse perspectives and heuristics.

(SCOTT E. PAGE, *THE DIFFERENCE: HOW THE POWER OF DIVERSITY CREATES BETTER GROUPS, FIRMS, SCHOOLS, AND SOCIETIES* 173 (2007))

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I plan to write future articles on debiasing recruitment, hiring, and retention and on using diversity logic to debias service delivery.

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⁴⁸ Page, *Making the Difference*, *supra* note 16.