

**Metrics for Success:
Measurement in Diversity Initiatives**



Creating Pathways to Diversity®

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MINORITY CORPORATE COUNSEL ASSOCIATION

Creating Pathways To Diversity Research Report

INTRODUCTION

Human resources-based initiatives like diversity must report their contribution and performance like any other organizational entity or initiative. The lack of measurement practices for diversity sets it apart from the rest of the performance areas of the company and makes it less accountable. As a result, many executives still view it as a “soft issue” or one that the company is doing only to appease public opinion.

If diversity professionals within the legal department want to be effective communicators of value added to the bottom line, it is vital to build rapport with your audience. The business case and rationale for diversity initiatives must be linked to strategic business objectives and initiative results must be displayed and communicated in financial and anecdotal terms. The need to measure diversity results is fundamental to building an inclusive work environment. All levels of the organization must be held accountable to make certain every asset and human resource of the organization has an opportunity to be developed and utilized. Those departments that have the ability to measure, analyze, monitor, and report this value in a language that the organization understands will become strategic partners in growing the business’ future. As competitive pressures, globalization, and other issues become more prevalent, measuring diversity results will become fundamental.

Measuring your diversity initiatives helps to put form, shape, meaning, value, accountability, follow-through, and forward progress into your diversity efforts. It helps

move the needle from diversity as a conceptual framework to diversity as a valued, integrated, benefit-generating aspect of organizational life.

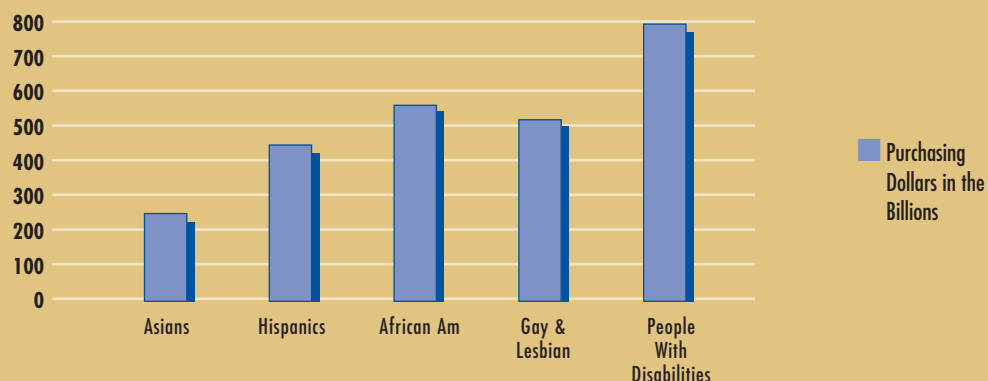
When most attorneys think of “metrics” they envision a formula of some type designed to track one’s success or failure on a business strategy where each variable or factor reflects some element of expense or profit. The result or product of the calculation should show a net gain or loss in dollars. Part of this apprehension is linked to the general lack of understanding of the link between diversity and the company bottom line.

Business Case for Diversity

The business case for diversity is becoming increasingly clear as new data concerning the rapid demographic changes within the United States and all over the world are brought to light. Externally, companies that want to be competitive will have to be diverse because their customers are becoming more diverse, both abroad and in the United States. The chart bellows demonstrates the purchasing power of a variety of diverse segments of the U.S. population. The shift to a service economy only increases the value of diverse employees who may be better able to “read” and negotiate with such customers.

Law departments not taking diversity seriously are already losing money because they are:

Figure 1: Purchasing Dollars of Protected Classes (in \$ Billions)



Source: Selig Center for Economic Growth, Multicultural Marketing (2000)

- Forfeiting the best legal talent to competitors by doing nothing about the unacceptably high levels of attrition among all attorneys.
- Paying high recruitment costs for diverse candidates, money squandered when those attorneys leave within four years for a more supportive environment.
- Sustaining damage to their reputation from discrimination litigation, which generates negative publicity and increases the costs of recruitment and retention of new associates.
- Not receiving the full return from employees, either by failing to make diversity a strategic advantage in tapping emerging markets or by failing to increase productivity through more open communication and problem-solving.

Only when diverse workforce resources are recruited, retained, valued, supported, developed and included can they be leveraged to make a measurable difference in organizational performance. The strategic and economic value of diversity initiatives will become critical as organizations seek to tap into the domestic and global marketplace. Globalization, competitive pressures, multi-national partnerships, acquisitions and mergers, foreign sourcing, Six-Sigma quality initiatives, and increased demands for improved shareholder value are redefining the way business is done.

Benefits of Measurement in Diversity Initiatives

When diversity initiatives are developed and effectively managed through measurement, the department and organization experience direct and indirect benefits, including:

- Reduced or mitigated labor and employment risk;
- Enhanced ability to advise and counsel clients based upon improved diversity awareness and competency;
- Increased ability to develop, monitor, and evaluate programs addressing recruitment and retention;
- Accelerate, leverage, and sustain human capital investments;
- Improved company reputation as advocates of innova-

tion, leadership and diversity, making it more attractive to minority and women candidates;

- Identifying where money is being lost or gained and where to go in the future to increase gains and decrease costs. This can include better financial management, reduced labor and employment costs, and better targeting of spending on improvements and interventions. This leverages diversity as a vital strategic resource that builds inclusion and creates a competitive advantage; and
- Providing new models for diversity efforts and innovative future diversity strategies and programs that build the organization as an “Employer of Choice”.

The Role of Diversity Metrics

“Diversity metrics” are specific quantitative and qualitative measures of diversity and their impact, which help to translate business strategy into action by measuring the financial and non-financial value of diverse workplace and external environmental performance. “Diversity metrics” are specific quantitative and qualitative measures of diversity, which help to translate business strategy into action by measuring the financial and non-financial value of diverse workplace and external environmental performance. They are necessary to: 1. identify the specific challenges facing each law department; 2. track the progress of initiatives that are in place; and 3. isolate differences between demographic groups within the law department on important employment statistics such as retention, voluntary turnover, and/or promotion rates.

Calculating diversity metrics is not complicated. It involves the use of basic mathematical processes, functions, and principles. If you can add, subtract, multiply, and divide you will be able to calculate the diversity metrics for your organization. To appreciate the utility of diversity metrics, it is necessary to understand what we mean when we use the terms diversity or inclusion. As a workplace issue, diversity encompasses changes in the demographic makeup of employees at all levels of the company and also addresses work/ life balance issues, language(s) or skill set(s) representation, inter- and intradepartmental communication as well as traditional concerns of race, ethnicity, religion, gender, or sexual orientation. Inclusion seeks to create a culture where each individual can thrive and contribute to the organization.

Metrics For Success: Measurement in Law Department Diversity Initiatives

In 2000, MCCA launched the first phase of a three-year research effort called *Creating Pathways to Diversity®* (*Pathways*). The goal was to provide solutions for law departments to increase the diversity of their legal staff through internal and external collaborative initiatives. The research revealed that, with respect to their diversity efforts, most corporate law departments can be placed on a spectrum from compliance with federal regulations to inclusion. The *Pathways* concept is as follows:

- **Compliance** brings people into an organization.
- **Diversity** demonstrates an appreciation for their differences.
- **Inclusion** creates an environment in which people want to stay.

Their transition and progress through these stages is facilitated by integrated initiatives that align diversity goals with strategic, business goals.

Furthermore, *Pathways* revealed that all attorneys, not just minorities and women, benefit from a successful diversity program.

1. The company gains a strategic advantage by leveraging differences to tap emerging markets and solve complex business problems;
2. Productivity and innovation are improved by eradicating communication barriers between people of different backgrounds, ages, sexual orientation, ethnicity and/or culture;
3. Resources that were previously unavailable to attorneys, such as flexible work arrangements or on-site day care, which make balancing work and personal commitments easier, become accessible;
4. Career growth opportunities are enhanced through mentoring and developmental training; and
5. Peer or affinity groups (e.g. Gay and Lesbian Task Force, Muslim Employee Network), which are very important to diverse attorneys are provided support and resources.

Continuing its tradition of innovative research in diversity, MCCA, enlisted the assistance of pioneer diversity

metrics author Dr. Edward E. Hubbard and The Hubbard Diversity Measurement and Productivity Institute, and Attorney Reginald E. Jones, a thought-leader on employment-related issues. The result is *Creating Pathways to Diversity® — Metrics for Success: Measurement In Diversity Initiatives*, which is designed to:

- Define and delineate several metrics that will assist corporate law department with all aspects of their diversity initiatives, including recruitment, retention, and promotion of attorneys in small (less than 25 attorneys), medium (25 – 60), and large (60+) corporate legal departments; and
- Provide methods and formulas that the legal department diversity committee can use to re-organize and track data, traditionally kept by the human resources department, into a format that provides meaningful insight into the department's progress in recruitment, retention, and employee attitudes.

To effectively analyze your diversity efforts, you can use a step-wise measurement approach:

Step 1: Become an Informed User of Diversity Data

Step 2: Prepare to Collect and Analyze the Diversity Data

Step 3: Determine the Relationships and Trends

Step 4: Present Observations to Appropriate Audiences

Step 5: Facilitate Problem-Solving

Step 6: Develop Action Plan and Follow-Through

Calculating diversity metrics requires the basic arithmetic functions: addition, subtraction, division and multiplication of factors that represent the specific variable(s) of interest.

In this report, MCCA outlines several metrics for law departments in the Compliance, Diversity and Inclusion phases of a long-term initiative to change the culture, productivity, and complexion of the law department.

In this report, MCCA presents the results of the *Creating Pathways to Diversity®: Measurement in Law Department Diversity Initiatives* study. The metrics presented are not the garden-variety statistics required of publicly traded companies by the Office of Equal Employment Opportunity. *Measurement In Law Department Diversity Initiatives* is designed to provide you with a step-by-step set of processes and techniques to measure your diversity initiative results as you work through the stages of "Compliance" and "Diversity" to build a culture of "Inclusion".

This report is designed to help you apply measurement approaches that are appropriate for various stages of diversity progression. Through application of the metrics approach, you will move beyond a basic level of diversity functioning to reach the higher levels of performance.

The true value of a measurement system becomes apparent only when you understand each component of the formula and apply the measure(s) to your specific situation. Each diversity measure will be presented using the following general analysis format as appropriate:

- Diversity measure
- Measure description
- Suggested use/purpose
- Formula elements
- Formula example
- Key analysis or processing questions to examine

In addition, at the end of each major *Pathways* stage (Compliance, Diversity, and Inclusion) a sample “Family of Measures Index” will be developed using a select group of measures to demonstrate how the measures can be used to report overall performance as part of a “diversity measurement scorecard system”. Measures used are for illustration purposes only. The Family of Measures you build to reflect diversity scorecard performance at each stage of your legal department’s development will depend upon the specific needs of your department and the organization.



DIVERSITY METRICS AND REVERSE DISCRIMINATION

Collision Course or Avoidable Collision?

By Reginald E. Jones

The idea of diversity metrics is taboo to most Labor and Employment Relations attorneys because of the perceived similarity to illegal quotas or other measures designed to “count heads”.

1. *What are the legal pitfalls of establishing metrics for a corporate diversity initiative? Are certain types of metrics to be avoided or encouraged? What solutions are there for employers who want to know that their diversity initiatives are being effective?*

A. The legal danger lies in the overlap of diversity programs with affirmative action plans and the issue of quotas. The simple fact that underlies the entire discussion of diversity metrics is that diversity initiatives and affirmative action plans are not the same thing. While the two practices do have elements in common (most notably the standard EEO categories of race and sex), diversity encompasses considerations far beyond the differences and similarities that make up the legal world of EEO and affirmative action. To the extent that there are legal pitfalls associated with establishing metrics in a diversity program, those pitfalls extend from these areas of overlap with the EEO categories.

Further, it is necessary to broaden one's focus when speaking of diversity metrics. The common sense, first impression of this term is a measure (or count) of the number of employees or applicants who are not “of the majority” (i.e., who are other than white males). Thus, if an employer has X diverse employees at the outset of a diversity program, and X + Y diverse employees after the program has been in effect for some time, the increment (Y) in the number of diverse employees constitutes one measure of the success of the program, specifically the increase in representation of such employees.

However, as the MCCA Report *Metrics for Success: Measurement in Diversity Initiatives* (“MCCA Report”) ably points out, this is not the only way, and perhaps not even the preferable way of measuring the impact of diver-

sity initiatives. However, because it is the most obvious and prevalent, it is also the method most likely to run afoul of the generally inhospitable law governing affirmative action programs.

With the above caveats firmly in mind, it is fair to state that any program or initiative that involves specific goals for employment of minorities and women, including a plan that links managers' compensation to the achievement of those goals, raises a legal risk. The nature of the risk lies in the area commonly referred to as “reverse discrimination” in which, typically, white males allege that their (statutory or constitutional equal protection) rights have been violated by means of a preference in employee selection for minorities or women. While such cases are statistically rare, they have been both most numerous and most successful when raised as challenges to affirmative action programs.

An employer who selects employees based on race or sex violates Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000-e *et seq.*, absent a valid affirmative action plan. To justify such a plan under Title VII, an employer must show that a “manifest imbalance” exists in traditionally segregated job categories in the workforce, and also must show that the affirmative action plan does not “unnecessarily trammel” the rights of nonminority employees. If the employer is unable to make these showings, any reliance on the plan in selecting employees violates Title VII. Thus, any programs adopted by an employer to “increase diversity” within the ranks of its workforce, and which programs include the categories of race and sex in the definition of diversity, risk reverse-discrimination challenges by nonminority employees and candidates.

There is a very common sense answer to the question of which diversity metrics employers should avoid to prevent affirmative action related problems. Any measurement of employee selection **results** (e.g., numbers of hires, promotions, etc.) that is or can readily be characterized as a “quota” must be avoided at all costs. Of course, the question of what is or is not a quota is not a matter of precise definition. At a minimum, however, where sex and race constitute or are included within the definition of diversity, an employer must be able to justify

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the need to increase their representation by showing an existing imbalance or under-utilization of those categories of employees. With such a showing, even stated goals for the hiring or promotion of minorities or women should be able to withstand judicial scrutiny. On the other hand, where an employer cannot demonstrate such statistical shortcomings in its inclusion of minorities and women, its efforts will only be fully legally defensible to the extent that they are limited to increasing the pool of qualified candidates who are minorities or women.

2. *Can a company be held legally accountable for the information contained within internal audits?*

A. Yes, but it is still preferable for the company to know its diversity facts rather than to proceed in ignorance. Diversity initiatives should not be launched in an information vacuum. In other words, there should be some basis, some perceived shortfall or deficiency that an initiative is directed toward remedying, or some objective (e.g., increased team work and productivity) that diversity management can help the company achieve. Ideally, diversity efforts are initiated after the company has engaged in a certain amount of critical self-examination to reveal the traits that diversity efforts will be used to address. The diversity audit is the preferred method of gathering the type of information needed for a targeted diversity initiative. By its very nature, such an audit is a “warts and all” review of the company’s policies, practices and procedures. It can and should uncover those areas in which the company is performing properly as well as those in which performance is below expectations. The latter may well include instances in which the company’s performance is not only below expectations, but is also in violation of various legal standards. Thus, the question becomes whether it is worthwhile to investigate and understand a company’s problems in an honest attempt to control/solve them, or would the company be better served by allowing any dirty little secrets to remain hidden from public view. The diversity principle which answers this question is that you cannot get to where you want to go unless you know where you are now. An employer is always better served by uncovering negative facts on its own than having them presented as the result of discrimination charge investigations or pretrial discovery.

The problem here is that while diversity management theory is not directed primarily toward compliance with workplace laws and regulations, it must be carried out within the sphere of influence proscribed by those laws and regulations. The question of employer liability for information uncovered by internal audits presents another situation in which the interface with the legal world

creates problems for an employer attempting to “do the right thing” by managing workplace diversity. The matter has a few dimensions. First, there is the question of confidentiality of the information. It would not be unreasonable to expect that such a critical self-examination would be something that a company could keep to itself, sharing it with only those in the company who would have responsibility for remedial activities. Following such procedure will allow the company to keep the information confidential so long as no charge of discrimination or litigation related to that information is filed. However, once a charge investigation or pre-trial discovery process is commenced, the liberal discovery rules in federal and most state courts generally do not protect such information from disclosure in response to a request for relevant information by an opposing party. More protection will be afforded to such information if it is gathered under the direction of legal counsel and in anticipation of litigation. In such instance, the attorney-client privilege will offer limited protection from disclosure.

The second dimension of the problem is more a managerial concern than strictly a legal one. However, it too can manifest itself in the litigation process. Once a diversity audit is initiated and employees become aware of its existence, expectations are raised that action will be taken to address whatever diversity problems are plaguing the company. If the company fails to take the necessary steps to demonstrate its good faith in carrying them out, the resulting employee disillusionment will further complicate workplace management. Moreover, to the extent that legally actionable issues were identified in the audit (e.g., gender-based pay disparities), the failure of the company to correct those issues may form a separate basis for allegations of intentional or knowing discrimination, subjecting the employer to increased levels of potential liability.

3. *Do incentives to increase the number of minorities and women employees, managers, and executives set the stage for reverse discrimination lawsuits?*

A. Incentives to increase minorities and women in a workforce do set the stage for reverse discrimination lawsuits, but such suits are not inevitable. When challenged in court, a diversity program that has among its objectives increasing the number of women and minority employees will be analyzed under the legal principles governing affirmative action plans. The only legitimate basis for a reverse discrimination lawsuit is an employee selection practice that is based on race or gender. The risk of a reverse discrimination lawsuit is directly proportional to the extent to which allegedly disadvantaged whites or males can characterize an employer’s selection process as

granting unlawful preferences to minorities or women. (See discussion of affirmative action and reverse discrimination in answer to question one.)

Thus, in a very real sense, one way to minimize the risk of reverse discrimination allegations is to take no action whatever to increase employment of women or minorities. Such an extreme is probably unnecessary for, not to mention unacceptable to, most conscientious employers. However, since diversity extends beyond sex and race, a program that focuses on other human differences and similarities is theoretically possible. Of course, a more practical approach would be to focus diversity incentives tied to race and sex on increasing the pool of qualified candidates or applicants rather than increasing the numerical representation of minority or women employees. In that vein, an employer interested in increasing the representation of minorities and women in its workforce can lawfully measure the activities of its managers in achieving that objective by such means as:

- Monitoring increases in the advertising of available positions in a broad spectrum of publications, including those that have predominantly minority or women subscribers/readers;
- Encouraging increased recruitment at colleges, universities or other educational institutions that have predominantly minority or women students;
- Increasing contacts with minority civic and professional organizations, listing open positions with them, and soliciting applications from their constituents and members;
- Raising the company's profile for potential minority and women candidates by participating in minority or women's job fairs;
- Directing recruiters to find diverse pools of applicants for open positions, and increasing usage of recruiters that specialize in placement of qualified minorities and women; and
- Increased posting of open positions on the Internet.

4. *What arguments have employers used to combat reverse discrimination lawsuits? How about racial discrimination suits brought by disgruntled employees of color? Can metrics show good intent on behalf of the company?*

A. There are many arguments, but it is clear that the courts award no special status to employer actions tak-

en **“to increase diversity.”** Employers faced with reverse discrimination lawsuits can be thought of as being caught between the proverbial “rock and a hard place.” Typically, the numbers of minority and women employees in their workforces do not mirror the availability of qualified minorities and women in the surrounding area. This statistical shortfall, or under-utilization, is often enough in itself to subject the employer to close EEO scrutiny. Whether it comes from governmental EEO enforcement agencies, civil rights organizations, or aggressive plaintiffs’ attorneys with an employer’s own employees and applicants in tow, the focus is on determining whether intentional or unintentional discrimination is the cause of the unbalanced workforce composition. The corporate threat inherent in these facts, in terms of litigation costs, liability exposure and negative publicity, have led many companies to undertake efforts to balance the composition of their workforces. Such affirmative efforts may or may not have the desired effect of increasing the representation of women and minorities. Another effect sometimes produced, however, is the resistance encountered from non-minorities and males who believe that such affirmative efforts unfairly deprive them of their equal protection rights within those workforces.

In reverse discrimination lawsuits, employers have adopted a range of defenses that are as varied as the facts underlying the individual cases. The most effective defense to a claim by a nonminority or male plaintiff that his failure to be selected for the position in question resulted from an employer preference for a minority or woman is proof that the selection decision, in fact, was based on a nondiscriminatory analysis of the existing facts, such as seniority or other relative qualifications of the applicants. (Note: This defense is equally applicable to race or sex discrimination claims by minorities or women.) Thus, if neither race nor sex were factors in the decision, the plaintiff’s claim will fail. However, the plaintiff can further challenge the employer’s decision by producing evidence that the nondiscriminatory reason offered is merely a cover story and that race or sex was the true basis. In order to prevail, plaintiffs must offer evidence that undercuts the credibility of the employer’s explanation, making race or sex the more plausible basis. It is here that some reverse discrimination plaintiffs point to an affirmative action plan as demonstrating an employer’s unlawful preference for minorities or women. Obviously, the mere existence of an affirmative action or diversity plan does not establish an unlawful preference. It becomes a matter for the trier of fact to determine which version will prevail.

Where the employer’s statistical shortfall or under utilization has been the subject of a court order and/or an enforcement agency (e.g., EEOC) consent decree, employer

actions in accordance with a resulting affirmative action plan will generally prevail against reverse discrimination claims. Thus, the employer defense here is essentially that the action was taken pursuant to the legal mandate of court. This also pertains to government contractor employers whose affirmative action plans are adopted in accordance with Office of Federal Contract Compliance Programs (OFCCP) regulations and monitored by that agency. Obviously, where an affirmative action or diversity plan is entered into voluntarily by an employer, the defense that “the government made me do it” is not available. To successfully defend a voluntary affirmative action plan against a reverse discrimination lawsuit, an employer must show that a “manifest imbalance” exists in traditionally segregated job categories in the workforce, and also must show that the affirmative action plan does not “unnecessarily trammel” the rights of nonminority employees. Where this defense is not factually available, employers still can successfully assert the defense that their affirmative action or diversity plans were limited to increasing the pool of qualified candidates who are minorities or women. (See discussion in answer to question number one.)

As a practical matter, an employer’s efforts to establish diversity metrics can be an element in demonstrating its good faith in the equal employment opportunity arena. This is more a matter for consideration in actions by minorities and women than in reverse discrimination situations. Thus, where a sex or race discrimination challenge is based on a statistical analysis of the workforce, the seriousness of an employer’s intentions can be attested to by recounting its activities, including efforts to assure that those activities have the desired effects. Metrics is one way in which employers can accumulate this type of data.

5. *Do metrics as discussed within the final report constitute just another form of Affirmative Action/EEO reporting or are they, as MCCA intends, useful tools law departments can use to strengthen their diversity management programs?*

A. Diversity metrics and Affirmative Action/EEO reporting mechanisms are different from one another. This question again points to the fact that affirmative action and diversity are related on several levels. The answer must again spring from the fact that while related, they are not the same thing. The differences between affirmative action/EEO reporting and diversity metrics are truly elemental. The former are measures of representation, counting the numbers of minorities and women in the workforce, applicant pool, and marketplace. Through comparisons and projections these measures pro-

vide employers and government enforcement agencies with idealized portraits of what a given workforce should look like. At bottom, affirmative action success or failure is measured by how nearly one can approach the idealized workforce demographics. The focus in affirmative action is on representation within the workforce. No consideration whatsoever is given to the business needs or objectives of the employer.

Diversity metrics include the same measures as affirmative action, but go much further to measure the impact and effectiveness of diversity initiatives not only on workforce composition, but also on productivity, creativity, profitability, team work, customer service, product development, and other elements of enterprise success. In diversity you never have to forget that the employer is first and foremost a business enterprise operating with a profit motive. The focus of diversity management does not stop at workforce composition. Rather, it goes on to consider ways and means to make the employer a better business enterprise. The innovative metrics outlined in the MCCA report *Metrics for Success: Measurement in Diversity Initiatives* will assist law departments in adapting and fine tuning their diversity efforts to achieve maximum effect.

This proposes 41 different metrics for diversity-minded legal employers to use in assessing the value and effectiveness of their programs. While some of these include demographic representation considerations familiar from affirmative action, the majority present new measures like “Diversity Return on Investment” and “Productivity Comparison Between Heterogeneous and Homogeneous Teams.” None of these new metrics seem subject to the pitfalls that foiled the “equal outcomes” affirmative action measures so often attacked, and defeated, in reverse discrimination lawsuits. At the same time, they are better geared to providing a true reading of the value added to the business enterprise by diversity efforts.

Reginald Jones is a Washington, D.C.-based labor and employment attorney who formerly served as a Commissioner of the U.S. Equal Employment Opportunity Commission, where he authored the agency report of “Best EEO Practices” of private sector employers. He also was formerly chief counsel to the U.S. Senate Committee on Health, Education, Labor and Pensions and was involved in the passage of such legislation as the ADA, FMLA and Civil Rights Act of 1991.

SETTING THE STAGE

Developing a Diversity Measurement Mindset

It is the responsibility of senior management to provide vision and convey a high level of commitment to the success of the diversity program while legal managers, supervisors, and diversity practitioners assigned responsibility by the general counsel have the charge of implementing initiatives tied to the organization's strategy, tracking, and measuring its impact. Clearly, you cannot manage what you cannot measure and you cannot fix what you know nothing about. Metrics are the guide to identify the challenges and to monitor how the organization's culture, representation and/or performance changes as a result of diversity tactics. "Diversity metrics" are the set of quantitative and qualitative measures of the impact of various aspects of an overall diversity program. Tracking the metrics enable you to translate business strategy into action

can be added only if the strategic goals and objectives of the organization are used as the guiding area of focus.

When choosing one diversity measure over others to build a diversity performance system, keep in mind that what you select will be seen as a reflection of what is valued by the department. If the focus of this effort is to improve recruitment and retention of new law clerks and attorneys at entry levels, the diversity measurement strategy must reflect that focus. Likewise, if your goal is to reduce cost and improve the range of selection of law professionals from diverse backgrounds, you should use those types of metrics to drive the change in that direction. Diversity measures are simply tools to help you create the organizational change you want to achieve (in this case, an inclusive, diversity-friendly environment that is leveraged for strategic organizational performance).

Figure 2: Priorities of Average and Top Performing Companies

Top Performer Priorities	Average Performer Priorities
<ul style="list-style-type: none">■ Teamwork■ Customer focus■ Fair treatment of employees■ Initiative and innovation	<ul style="list-style-type: none">■ Minimizing risk■ Respecting the chain of command■ Supporting the boss■ Making budget

by measuring the financial and non-financial value of a diverse workplace and external environmental performance. *Diversity metrics are "not about counting heads, its about making heads count through utilization!"*

The business case and rationale for diversity in corporate law departments must be linked to strategic business objectives. The results of diversity initiatives must be reported in financial terms. Doing this effectively requires a financial performance mindset that integrates diversity with other key law department and business strategies that are measured on a regular basis.

Remember, diversity management is the process of planning for, organizing, directing and supporting the collective mixtures in organizations (that is, things like race, gender, learning work styles, technical expertise, cross-functional team behaviors, diverse client groups, etc.) in a way that adds value to organizational performance. Value

There is a strong link between profitability and how well the organizational climate and culture is managed. A study completed by the Hay Group appeared in Fortune Magazine as a sidebar to an article on the 100 most admired companies in the world ("1998 Survey: The World's Most Admired Companies", Fortune, October 26, 1998). According to the study leader, Bruce Pfau of the Hay Group, "the single best predictor of overall excellence was a company's ability to attract, motivate and retain talent. CEO's said that corporate culture was their most important lever in enhancing this key capability."

The Hay Group's in-depth study compared the cultural priorities listed in the top companies (in the Fortune™ survey) to the average performers. The results highlighted some powerful and useful distinctions: The elements of the top performing organizations reflect the content and values of an inclusive, diverse work environment. What these organizations have already discovered is that people

truly are an organization's most important asset. Building an inclusive, diversity-friendly culture allows people to do their absolute personal best work!

A Causal Model for Understanding a Diversity Management Climate

Good performance and poor performance have structure, dimensions, elements, and other causal factors that produce the results achieved (or not achieved). If diversity is tied to, integrated with and measured as a part of the business, then it behooves us to know how business is created and what drives organizational performance.

What is Organizational Climate and Diversity Climate?

The notion of *organizational climate* is a metaphor; it is the "atmosphere of the workplace," or the answer to the question, "what is it like to work here?" "Diversity climate" can be defined as the "atmosphere of valuing, managing, and utilizing differences similarities in the workplace", or the answer to the question, "what is it like to work here as a person with differences?" It is a complex mixture of feelings, perceptions, expectations, norms, values, policies, and procedures that summarize the statements of "the way we do things around here when differences are involved" – it is, in effect over time, the "culture" of the organization.

The organizational climate is the relatively enduring set of internal characteristics of the organization:

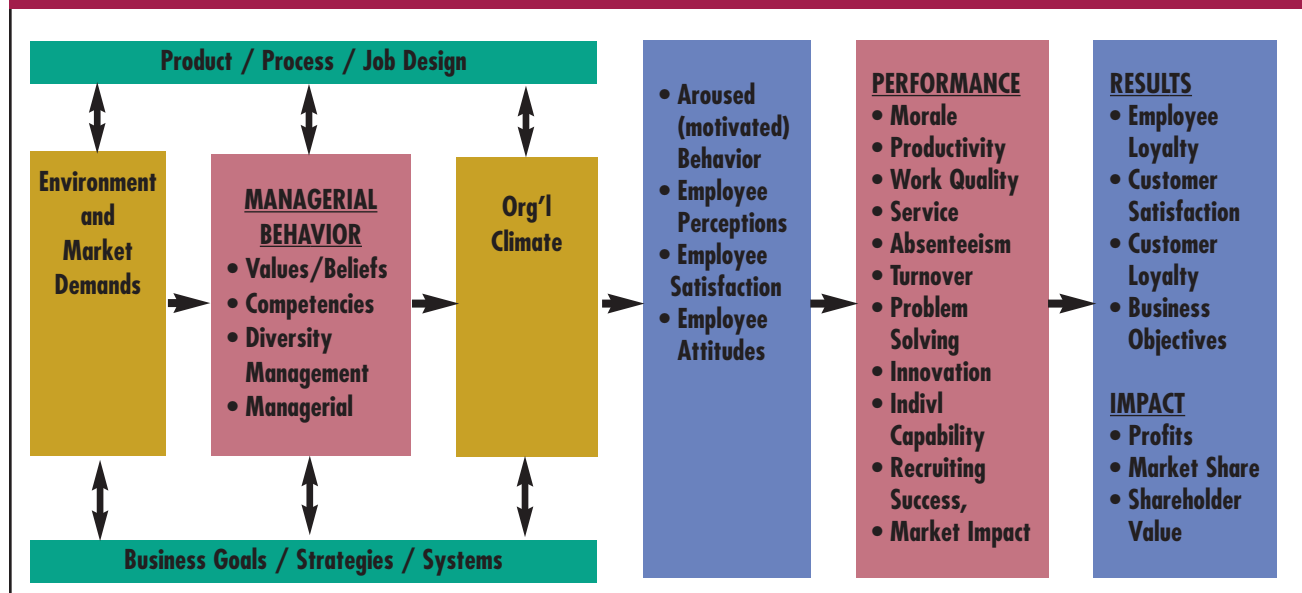
- Differentiate one workplace from another;
- Is related to, but distinct from, the more "objective" properties of the workplace (such as size, structure, job design, etc.);
- Is perceived and experienced by individuals (either directly or indirectly);
- Can be described and measured in fairly specific terms by questioning individuals or observing the flow of work behavior;
- Influences individuals' motivation and behavior on the job, and
- Can be changed through conscious and direct management.

Why is Diversity Climate Important?

"Climate" affects individuals and organizational performance by arousing the motivated behavior of individuals. The assessment of climate and culture provides management a "reading" of how well the various aspects of the organization (e.g., technology, strategic planning, job design, management systems and procedures) are positively integrated in the eyes of individual employees of the organization.

"Diversity climate" is built upon these same principles and effects as organizational climate. However, diversity

Figure 3: Causal Model of a Diversity Management Climate, Performance and Results



climate takes the temperature of diverse sectors of employees. The following Causal Model of a Diversity Management Climate, Performance and Results illustrates the integration of key aspects of the organization and department and their potential impact on a diverse law department.

Managers greatly influence the development of patterns in the organization's climate through their style and practices. Each manager comes to the organization with his or her own values and beliefs, technical competencies and "diversity management" skills. Depending upon the influence of the manager's values and belief systems about people who are different, he or she will create a motivating or de-motivating climate, which typically translate into his or her diverse workforce managerial style.

The diversity climate created by a manager has an "immediate impact" on the diverse workforce. If women and minority lawyers don't feel valued, included, see opportunities to move up in the organization and have access to developmental assignments, their motivation levels will suffer and they will not contribute as fully to the organization. In organizations with a diminished diversity climate, there is a negative impact on such factors as morale, productivity, work quality, service to clients and co-workers, absenteeism, etc. Left unchecked, these factors will affect longer-term business results such as billable hours, employee loyalty, customer service, internal and external customer satisfaction, etc., which in turn will impact strategic performance areas such as profits, expense control and ultimately, shareholder value.

Building a diversity climate where employees can do their absolute, personal best work is critical for department and organizational performance. Corporate law departments must build a measurement mindset to examine both the tactical and strategic processes that drive excellence in diversity. To be effective, these diversity measurement processes must be both linked and aligned for measurable performance improvement.

Building a Diversity Analysis Process

Diversity measurement processes can provide valuable information about your diversity efforts. Diversity metrics are not about numbers or an end (outcome) in themselves. They help you discover relationships in data and help identify problem areas as indicators of reality versus intuition. You will find them strategically invaluable for building an inclusive, diverse work environment where law department personnel can obtain feedback on their diversity change efforts.

To effectively analyze your diversity efforts, you can use a step-wise measurement approach that assesses diversity as strategic asset:

Step 1: Become an Informed User of Diversity Data

Step 2: Prepare to Collect and Analyze the Diversity Data

Step 3: Determine the Relationships and Trends

Step 4: Present Observations to Appropriate Audiences

Step 5: Facilitate Problem-Solving

Step 6: Develop Action Plan and Follow-Through

Step 1: Become an Informed User of Diversity Data

Pathways identified several factors critical to a law department's successful move from compliance to inclusion. Chief among these factors were:

- The alignment of diversity activities with long-term, corporate-wide strategic initiatives;
- Commitment from senior management that translates to measurable objectives at the business unit level;
- The establishment of metrics for accountability;
- Compensation of senior management in legal departments tied to results of diversity efforts; and
- Substantive training programs.

In order for diversity to work as a strategic and competitive advantage, it must be understood as an important part of the organization's business goals and strategies. Diversity processes are not created purely for diversity sake. Albeit, utilizing the diversity potential that is available within the community and the organization may be the *moral* thing to do. However, it is also the *right* thing for business. Diversity should be implemented to help the law department make a measurable difference in organizational performance. To do this, diversity must be linked and aligned with the strategic goals of the organization.

Gaining an Awareness of Diversity's Link to Strategy

There are a variety of ways you can enhance your understanding of diversity and its impact on the corporate workplace to build an effective measurement system. Some of these methods include the following:

- Review the Strategic Business Plan;

- Review past and future litigation requirements that may affect the legal department's performance;
- Interview senior leaders regarding the top 10 business priorities;
- Examine changing demographics of litigants, judges, juries, clerks, elected officials, etc., that the legal staff must interact with, understand, and influence;
- Take note of important cases that have set precedent around issues of diversity, size of the judgments or settlements, etc.;
- Examine the law department's practices in light of "best/recommended practices" and corporate and community citizenship;
- Review changing culture, values, and styles of the workforce;
- Examine diverse styles of communication, language, and other variables that must be understood for success; and
- Review new and/or growing marketplace norms.

Examining these and other issues on a regular basis is critical for effectively aligning and linking diversity strategies to achieve measurable success.

Conversely, *Pathways* uncovered two key scenarios within corporate law departments that create substantial barriers to the advancement of diversity initiatives:

- The law department does not effectively harness the necessary resources to translate its initiatives into measurable goals that are fully aligned with the department's overall business objectives; and
- The law department focuses most of its attention on the recruitment of minorities and women to the detriment of critical career development and retention activities.

The focus of diversity measurement processes in this report is to help overcome the barriers and create a roadmap to achieve the critical success factors required to build an inclusive legal organization. Becoming informed on diversity issues and their connection to the organization's strategy is the first step for measurement success.

Step 2: Prepare to Collect and Analyze the Diversity Data

MCCA's first *Creating Pathways to Diversity*® study closely examined the practices of 16 corporate law departments in the United States. That examination revealed most corporate law departments fall into one of three categories:

- **Compliance** – demonstrating a general commitment to increasing minority representation within the department. "Compliance brings people into the organization";
- **Diversity** – involving a higher level of commitment to diversity activities, accompanied by the strong support of senior management and the development of programs designed to recruit and retain minority and women attorneys. "Diversity demonstrates an appreciation for their differences"; and
- **Inclusion** – demonstrating the highest level of commitment and characterized by the integration and measurement of diversity initiatives with the corporation's long-term strategic goals. "Inclusion creates an environment in which people want to stay".

This three-tiered framework will be used as a lens to build the diversity measurement strategy and identifies measures to use in each category along the continuum.

Begin your analysis in steps:

1. Determine at what level your department is operating: compliance, diversity, or inclusion.
2. Gather empirical data such as talent pipeline figures, recruitment and hiring data, employee opinion surveys, litigation costs, turnover, training, supplier diversity, career path and succession planning records, promotions numbers, diversity awards received, financial performance information, etc.
3. Check the data. Review the formulas for calculation, making certain all of the elements are reflected in the calculation and summary and identify all of the variables that may be significant to respond to the issues.
4. Develop your research questions and "mock" summary reports to preview how the final results will be displayed.

Step 3: Determine the Relationships and Trends

The diversity measurements you calculate allow a variety of paths for analysis. The following investigative questions will help determine the relationships and trends in

the data. Ask these and other questions to help unveil patterns in the data.

Examine the Facts

- What does the diversity representation profile really look like?
- How many minorities and/or women are being hired?
- How many minorities and/or females are in key legal department leadership roles?
- What is the attrition rate for various employee segments: interns, law clerks, junior attorneys, senior attorneys, minority support staff, etc.?
- How many diversity awards have we received based upon our demonstrated performance?
- What diverse talent pipeline systems are in place to support diverse workforce recruitment, hiring and retention?
- What is the number and percentage of minority-owned law firms that we used on projects versus others?
- What percentage of the engagement partners managing our corporate accounts at majority owned firms are minorities and/or women?
- What developmental assignments do we give minority and women lawyers versus others?
- What percentage of the law department's work at a majority-owned firm is being billed and handled by minority or women lawyers at the firm?

Examine the Relationships

- Which law department employee group is more likely to be hiring?
- Which law department employee group is more likely to be terminating (voluntarily and involuntarily)?
- Which law department employee segment is younger? Older?
- Which law department employee segment has the shortest length of service?
- How do the salaries of men and women at equivalent career levels compare?

- How many summer interns and law clerks convert and become full-time employees when their intern or clerkship program is completed?

Examine the Trends

- Which law department employee groups are growing the fastest?
- Which law department employee groups are staying the shortest time before terminating?
- Which law department employee groups have degrees and expertise that is not being used?
- What is the average age of employees holding key strategic positions in the law department? Is it increasing or decreasing?
- How are litigation costs changing by type and level?
- In which areas should we have utilized external minority and/or women law firms more?
- Which law department positions take the longest time to fill?
- How do our results compare to other corporate law departments?
- What have we learned from exit interviews over time and their relationship to the numbers we have seen?

Step 4: Present Observations to Appropriate Audiences

Like any other presentation you make, sharing your observations regarding the diversity calculation you have completed must be designed to suit the appropriate audience. A few key things should be kept in mind as you prepare to give your presentation:

- Make certain you chose the right forum for discussion. Often executives prefer a short summary prior to the meeting and a short 1-hour briefing to ask questions;
- It is also important to share the observations in a variety of media and forums such as staff meetings, newsletters, "Lunch-n-Learn", etc.;
- During the presentation, present just the facts you've uncovered. There is no need to justify why the data appears as it does. Explore this in discussion;
- Highlight potentially significant patterns, such as high

turnover among minority attorneys, increase in the number of interns report experiencing very abrasive management styles, law personnel who are prepared for and express interest in developmental assignments, etc.;

- It is often helpful to point out what was not known prior to the analysis and what is known now (or what you think you know); and
- Be certain to suggest alternative solutions to any problems raised but do not attempt to solve the problem during the presentation. This involves further steps.

Step 5: Facilitate Problem-Solving

During the problem-solving step it is important to identify the links between perception and reality. For example, if law department staff (based upon the % of favorable response data) perceives an issue as real, they act upon it as if it is real. It doesn't matter whether someone else agrees with that perception.

In addition, issues of "cause and effect" must be sorted out. If the data suggests that there is high turnover among women and minorities, the organization does not have a "turnover problem". Turnover is a "result" or "effect" that was created. In this example, the "cause" of turnover is what needs to be investigated as the "problem".

Step 6: Action and Follow-through

In order for progress to be made, action and follow-through are required. Key questions to deal with at this stage include:

What actionable recommendations were proposed based upon the data presented? To make effective decisions about the data, stick to the following guidelines:

1. Attack the "root" cause, not the symptom.

2. Understand the cost-benefits (look deeper than just the obvious costs).
3. Determine the likelihood that the results will be reasonable and measurable.
4. Obtain commitment at all levels, especially senior management.
5. Coordinate efforts across multiple solutions to build synergy.
6. Track results.
7. Change your course of action when the data and/or objectives warrant it.

Ask the following questions:

- Is the department following the proposed plan?
- Did the actions taken make a difference towards building a more inclusive organization?
- What results have you obtained from surveys, interviews, etc.?
- What has changed in the measured data?
- What worked and what did not?
- What successes or failures did similar law departments have?

By using these six simple steps as a diversity analysis strategy, you will be able to effectively assess the impact of your diversity efforts. With this six-step framework in mind, you are ready to examine the measures that may be appropriate for each pathway along your diversity continuum.

A Diversity Measurement Roadmap

The following diversity measurement roadmap will help you navigate through each of the categories along the continuum to an inclusive workplace:

- **Compliance** brings people into an organization.
- **Diversity** demonstrates an appreciation for their differences.
- **Inclusion** creates an environment in which people want to stay.

Category	Measure Definition
COMPLIANCE LEVEL METRICS <ul style="list-style-type: none"> • Minority and Women Talent Pipeline • Representation • Litigation Costs re Discrimination or Other Complaints • Retention/ Turnover Rates 	<p>Pipeline Measures</p> <ul style="list-style-type: none"> • Minority Enrollment in Clerkship/ Internship Program • Minority Completion of Clerkship/ Internship Program • Conversion of Minority Clerks/ Interns to Full-time Employees • Percentage of Minority Law Student Scholarships Given • Entry Level Positions Filled by Minorities/ Women • Diversity of New Hires <p>Representation Measures</p> <ul style="list-style-type: none"> • Demographic Representation in Total Population of Attorneys • Demographic Representation Among Law Clerks • Demographic Representation Among Junior Attorneys • Demographic Representation Among Senior Managers <p>Retention Measures</p> <ul style="list-style-type: none"> • Cost of Diversity-Related Litigation • Hiring Rate of Women and Minorities Interviewees (by level) • Turnover of Junior Attorneys • Turnover of Diverse Attorneys • Turnover of Senior Managers • Turnover of Diverse Attorneys by Length of Service • Turnover of Diverse Attorneys by Age and Position
DIVERSITY LEVEL METRICS <ul style="list-style-type: none"> • Demographic representation at various corporate salary grades, management levels and practice areas • Reasonable Accommodation • Knowledge Development • Promotion • Employee Satisfaction • Level of Senior Management Commitment • Diversity Objectives Achieved • Supplier Diversity • External Recognition 	<p>Internal</p> <ul style="list-style-type: none"> • Demographic Representation by Corporate Grade, Management Level and Practice Area • Percentage of Diversity-Competent Legal Staff • Promotions by Demographic Group and Corporate Grade • Pay Equity Analysis • Work Environment Audit: Weighing Favorable Responses • Participation in Minority Networks • Completion of Diversity Goals <p>External</p> <ul style="list-style-type: none"> • Dollars spent with Minority and Women-Owned Law Firms • Dollars spent with MWBEs and/or Suppliers • Percentage of Minority/ Women Outside Counsel Assigned to Legal Matters • Dollars Spent with Firms with Minority and/or Women Engagement Partner • Percentage of Billable Hours of Minorities/ Women At Majority-Owned Firms

Category	Measure Definition
INCLUSION LEVEL METRICS	
Summary Lead Indicators <ul style="list-style-type: none"> • Human Capital Readiness Level • Human Capital Competence Level • Human Capital Commitment Level • Human Capital Satisfaction Level • Climate Impact • Human Capital Depletion Rate and Cost 	Summary Lead Indicators <ul style="list-style-type: none"> • Diversity of Pipeline for Key Positions • Commitment of Minorities/ Women • High Job Satisfaction Among Women and Minorities • Work Environment Audit: Weighing Favorable Responses • Voluntary Separation As a Percentage of Minority Head Count
Key Inclusion Metrics <ul style="list-style-type: none"> • Culture and Systems • Career Path • Succession Planning • Work-life programs • Leadership Accountability • Compensation Equity • Compensation based Objectives • Skill and Language Use • Diversity Return on Investment • Productivity 	Key Inclusion Metrics <ul style="list-style-type: none"> • Diversity “Neutral” Policy Changes • Achievement of Individual Development Plans by Level and Position • Diversity of Succession Pool by Level, Group and Position • Promotion by Group and Level • Utilization of Diversity Programs • Bilingual Legal Personnel by Position and Level • Diversity Return On Investment (DROI) • Productivity Comparison Between Heterogeneous and Homogeneous Teams

Compliance Metrics

Building A Compliance Metrics Index

At bare minimum, corporate law departments must track diversity compliance regarding basic issues of workforce representation, costs of voluntary and involuntary turnover, and financial and other impacts of litigation.

Compliance Level Definition

Pathways defined “Compliance” level diversity as “demonstrating a general commitment to increasing minority representation within the department”. It presupposes cursory attention to diversity in compliance with EEO and Affirmative Action laws or concern with “representation level” mixtures of diverse people in the law department. At the compliance level, the commitment to diversity focuses primarily on meeting a representation standard of diversity and not doing anything that fails to comply with the law.

Building a Compliance Level Index

When building an index for measurement at the compliance level, typical critical success factor include focusing on measurement areas such as:

Minorities and Women Talent Pipeline

- Representation
- Litigation Cost due to Discrimination or Other Complaints
- Retention
- Turnover Reduction

Sample measures to drive the Compliance Index are shown below. All measures are built using the following format:

- Diversity Measure
- Measure Description
- Suggested Use/Purpose
- Formula Elements
- Example
- Key Analysis and/or Processing Questions to Examine for this Measure

■ Possible Graphic Representation

The diversity measures that follow can be used to analyze compliance level metrics that lay the foundation for the road towards inclusion.

Pipeline Metrics

- Minority Enrollment in Clerkship/ Internship Program*
- Minority Completion of Conversion of Minority Clerks/Interns to Full-time employees
- Percentage of Minority Law Student Scholarships Given
- Entry Level Legal Positions filled by Minorities

Representation Metrics

- Demographic Representation among Law Clerks
- Demographic Representation among Junior Attorneys
- Demographic Representation among Senior Attorneys
- Demographic Representation in Total Population of Attorneys

Retention Metrics

- Cost of Diversity-Related Litigation
- Hiring Rate of Women and Minority Interviewees (By Level)
- Turnover of Law Clerks
- Turnover of Junior Law Attorneys
- Turnover of Diverse Attorneys
- Turnover of Senior Managers
- Turnover of Diverse Attorneys by Length of Service
- Turnover of Diverse Attorneys by Age and Position

Figure 4: Sample Diversity Metric: Cost Per Diversity Hire

Element	Application
DIVERSITY MEASURE	COST PER DIVERSITY HIRE
MEASURE DESCRIPTION	<p>This measure is designed to help you analyze the cost to bring each diversity hire into the organization. At first blush, the Cost per Diversity Hire measure can be thought to consist of only direct costs for advertising and agency fees. However, when you dig deeper, there are a number of other costs associated with this measure. These costs are described below.</p>
SUGGESTED USE/PURPOSE	To examine staffing costs by diversity dimension.
FORMULA ELEMENTS	<p>CPDH = $\frac{(Ad + AF + ER + T + Relo + RC)}{DH} + 10\%$</p> <p>Where:</p> <ul style="list-style-type: none"> • CPDH = cost per diversity hire • Ad = advertising fees paid to generate applicants (e.g., \$12,000). • AF = agency fees paid to generate applicants from an agency or non-traditional recruiting source, and even temporary workers (e.g., \$6,000). • ER = employee referral bonus for current employees who bring in qualified applicants (e.g., \$1000). • T = travel expenses associated with hire (e.g., \$5,000) • Relo = relocation expenses associated with hire (e.g., \$22,000). • RC = recruiters' salary and benefits costs multiplied by the number of hours spent per job (e.g., \$9,000). • +10% = all other staff time--e.g., clerks, hiring department staff and management is part of the 10 percent miscellaneous cost variable. • DH = total diversity hires (e.g., 35)
EXAMPLE	<p>CPDH = $\frac{(Ad + AF + ER + T + Relo + RC)}{DH} + 10\%$</p> $= \frac{12000 + 1000 + 6000 + 5000 + 15000 + 9000}{35} + 10\%$ $= \frac{\$52800}{35}$ $= \$1508.57$ <p>Note: Quite often positions may be filled without incurring any significant travel and relocation expenses. Then all of a sudden you may spend \$25,000 or more on one diverse workforce hire (especially a General Counsel hire). If you simply combine that one new hire with the 10 preceding diversity hires, where you spent less than \$5,000 total, the resulting average cost per diversity hire will be skewed. The number will be misleading and totally non-indicative of what has happened over the last 11 diversity hires.</p> <p>The \$25,000 will be added to the total cost of hiring for the month. However, it will probably be appropriate to report two sets of figures. One with hires that did not require relocation. The other with those in which there were relocations. Not only is this more truthful, it provides management with an appreciation for the impact of relocation expenses on the bottom-line. Your job is not only to show management how effectively you are managing the diversity change process, but also to show them how the job could be done better. If you can come up with a plan to improve or leverage local resources for diverse work force talent, you can probably get support from your organization's management.</p>

Element

Application

Notes (cont.):

Recruiters' salary and benefits costs are multiplied by the number of hours spent per job.

All other staff time--e.g., clerks, hiring department staff and management-- is part of the 10 percent miscellaneous cost variable. As such, MCCA does not recommend that you spend a lot of time working it out. However, if you feel you must, here are a few tips.

The calculation and allocation of staff time can also quickly become an indecipherable mess unless you establish an accounting method and stay with it. The simplest way to reduce this problem to a manageable and understandable variable is to introduce standard labor costing. By borrowing a leaf from manufacturing's book, you can determine the normal cost of an employee hour of work and set that as your standard rate. For example, a clerk's standard rate could be determined in the following manner:

Salary (converted to hourly rate)	\$8.25
Benefits (30% of salary)	2.93
Overhead charge (space, equipment, etc.)	4.65

Total	\$15.83
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The standard rate you will apply to all staff time calculations where a clerk is involved would be \$15.83.

In time you will be able to develop an average number of hours that are expended in the pursuit of a group of new hires. Let's say, as an example, you find that the recruitment coordinator spends 1-1/2 hours on the average per diversity hire. If you multiply \$15.83 times 1-1/2 the product is \$28.75, which becomes the standard cost of an employment clerk's time for each diversity hire that the coordinator assists with. Multiply \$28.75 times the number of hires that month and you have one component of the total month's cost of hiring. The same process is then applied to recruiters, receptionists, records clerks, and anyone else in the department who is involved in hiring. You may even choose to allocate a portion of your time as diversity manager. The process may need to be recomputed for different types or levels of jobs since it usually takes more time to hire managerial employees versus entry-level employees.

KEY ANALYSIS OR PROCESSING QUESTIONS TO EXAMINE FOR THIS MEASURE

- How does this dollar amount compare by department, area, or region?
- How does this figure compare with others in our industry? Our competition?
- What are the business implications and consequences of this number based upon the organization's strategic objectives?
- What should our next steps be in light of this information? Why? When? Who? How?
- What barriers exist?

Metric 1: Demographic Representation in Total Population of Attorneys

Element	Application
DIVERSITY MEASURE	#/% Minority and Women Attorneys versus Total Attorneys
MEASURE DESCRIPTION	This measure is designed to help you analyze the number and percent of attorney positions filled by minorities and women.
SUGGESTED USE/PURPOSE	To examine the level of impact of minority and women hiring practices by the Law Department for Attorney positions.
FORMULA ELEMENTS	$\#/\% \text{ MWA} = \frac{\text{NMA or NWA}}{\text{TAP}} \times 100$ <p>Where:</p> <ul style="list-style-type: none"> • MWA = Percentage of Minorities and Women in Attorney Positions • NMA = Number of Minority Attorneys (e.g., 6) • NWA = Number of Women Attorneys (e.g., 27) • TAP = Total Number of Attorney Positions (e.g., 78)
EXAMPLE	$\#/\% \text{ MWA} = \frac{6}{78} \times 100$ $= 7.7\%$
KEY ANALYSIS OR PROCESSING QUESTIONS TO EXAMINE FOR THIS MEASURE	<ul style="list-style-type: none"> • How does this percentage compare by location or region? • How does this figure compare with others in our industry? Our competition? • What are the business implications and consequences of this number based upon the organization's strategic objectives? • What should our next steps be in light of this information? Why? When? Who? How? • What barriers exist?

Metric 2: Diversity of New Hires

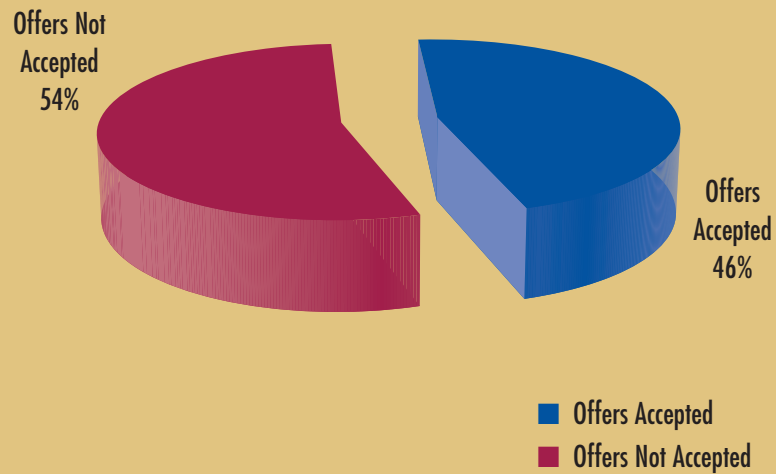
Element	Application
DIVERSITY MEASURE	Minority and Women Attorneys as a % of New Hires by Group
MEASURE DESCRIPTION	This measure is designed to help you analyze the percent of minority or women legal staff who are hired compared to all new hires.
SUGGESTED USE/PURPOSE	To examine the level of minority and women representation in the law department's hiring practices. This measure helps you analyze efforts to bring minorities and women into the organization as new hires. Data gathered for this measure should include an analysis for each demographic group (i.e., Asians, Hispanics, African Americans, Native Americans, etc.) and by level.
FORMULA ELEMENTS	$\% \text{ MWNH} = \frac{\text{NMNH or NWNH}}{\text{TNH}} \times 100$ <p>Where:</p> <ul style="list-style-type: none"> • % MWNH = Percentage of Minorities and Women Attorney Hires Compared to All Attorney New Hires • NMNH = Number of Minority Attorney New Hires (e.g., 5) • NWNH = Number of Women Attorney New Hires (e.g., 8) • TNH = Total New Hires (e.g., 36)
EXAMPLE	$\% \text{ MWNH} = \frac{5}{36} \times 100$ $= 13.9\%$
KEY ANALYSIS OR PROCESSING QUESTIONS TO EXAMINE FOR THIS MEASURE	<ul style="list-style-type: none"> • How does this percentage compare by location or region? • How does this figure compare with others in our industry? Our competition? • What are the business implications and consequences of this number based upon the organization's strategic objectives? • What should our next steps be in light of this information? Why? When? Who? How? • What barriers exist?

Metric 3: Hiring Rate of Women and Minority Interviewees (by Level)

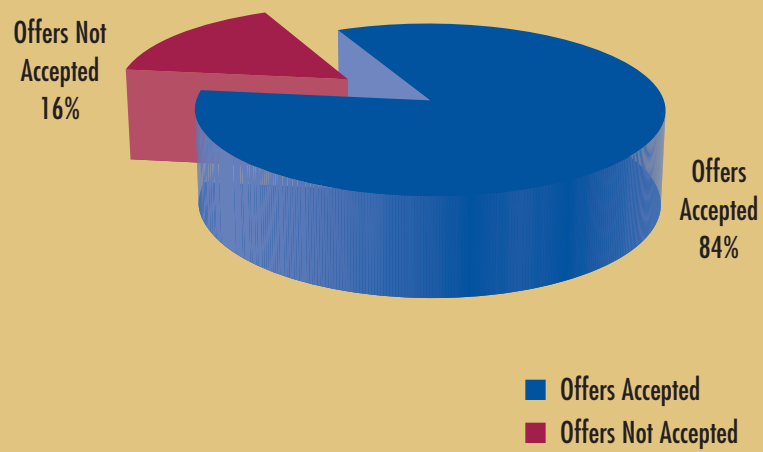
Element	Application
DIVERSITY MEASURE	Hiring Rate of Women and Minority Interviewees (by Level)
MEASURE DESCRIPTION	This measure is designed to help you analyze the organization's effectiveness in moving women and minority applicants from the hiring process "offer" stage to "acceptance". Comparisons are also made to determine the success of this process by level of the position.
SUGGESTED USE/PURPOSE	<p>To examine the impact of minority and women hiring practices by the law department and the ability to attract women and minority employees to come to work for the organization.</p> <p>It is important to check the impact of this process by "level" (e.g., Women Lawyers in Salary Band 12-17, 18-21, 22+) to determine what problems, if any, exist in bringing these groups into the employee population.</p>
FORMULA ELEMENTS	<p>% DHO = $\frac{MOA}{MOE} \times 100$</p> <p>Where:</p> <ul style="list-style-type: none"> • % DHO = Percentage of offers that result in a Women and Minority hire • NMOA = Number of Minority Offers Accepted (e.g., 42) • WOA = Number of Women Offers Accepted (e.g., 75) • MOE = Total Number Offers Extended to Minorities (e.g., 50) • WOE = Total Number Offers Extended to Women (e.g., 163)
EXAMPLE	$\begin{array}{rcl} \% & = \frac{42}{50} \times 100 & = \frac{75}{163} \times 100 \\ & = 84\% & = 46\% \end{array}$
KEY ANALYSIS OR PROCESSING QUESTIONS TO EXAMINE FOR THIS MEASURE	<ul style="list-style-type: none"> • How does this percentage compare by location or region? • How does this figure compare with others in our industry? Our competition? • What are the business implications and consequences of this number based upon the organization's strategic objectives? • What should our next steps be in light of this information? Why? When? Who? How? • What barriers exist?

**POSSIBLE GRAPHIC
ILLUSTRATION**

Women Accepting Law Dept. Positions (Hit Rate)



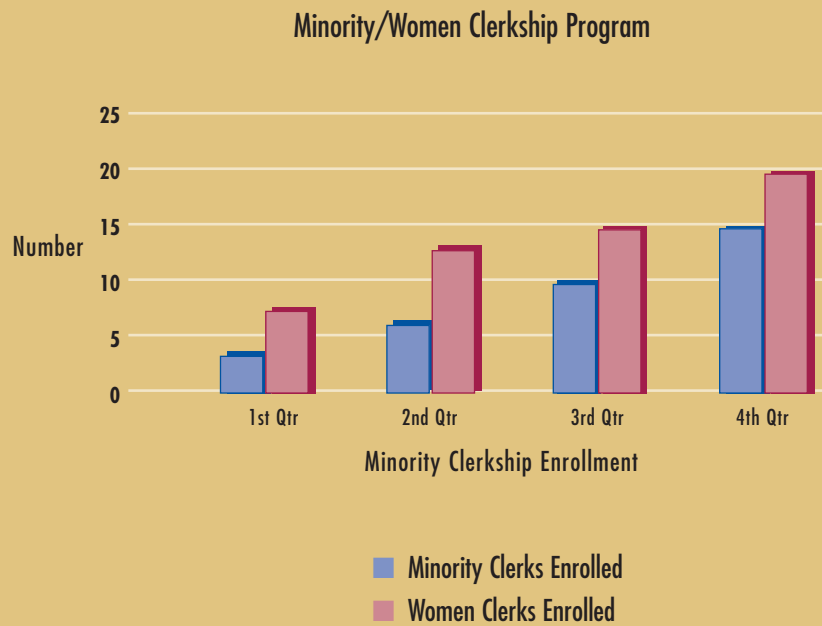
Minorities Accepting Law Dept. Positions (Hit Rate)



Metric 4: Minority Enrollment in Clerkship/ Internship Program

Element	Application
DIVERSITY MEASURE	#/% Minorities or Women Enrolled in Clerkship/ Internship Program
MEASURE DESCRIPTION	This measure is designed to help you analyze the number and percent of minorities or women enrolled in a corporate-sponsored clerkship program to increase the number of minority law clerks. This program might include students enrolled as 2nd or 3rd year law students.
SUGGESTED USE/PURPOSE	<p>To examine the level of minority/ women clerks' enrollment over time and the ability of the organization to create a law clerk pipeline to meet its organizational needs. If a small number of clerks are enrolled, it is more effective to list the "number" of clerks enrolled versus calculating the percentage. Percentages in a small population universe can distort the result.</p> <p>Example: Let's say for instance you have zero minority Law Clerks enrolled in your program and you add 4 clerks, percentage-wise that is a 400% increase for just 4 Clerks. Calculating the percentage of total they represent can be more reflective of actual progress i.e., 4 minority clerks divided by the total number of clerks in the program which is shown below.</p>
FORMULA ELEMENTS	$\% \text{ MCE} = \frac{\text{NMCE}}{\text{NC}} \times 100$ <p>Where:</p> <ul style="list-style-type: none"> • %MCE = Percentage of Minority/ Women Clerks Enrolled • NMCE = Number of Minority/ Women Clerks Enrolled (e.g., 4) • NC = Total Number of Clerks (e.g., 89)
EXAMPLE	$\% \text{ MCE} = \frac{4}{89} \times 100$ $= 4.5\%$
KEY ANALYSIS OR PROCESSING QUESTIONS TO EXAMINE FOR THIS MEASURE	<ul style="list-style-type: none"> • How does this percentage compare by location or region? • How does this figure compare with others in our industry? Our competition? • What are the business implications and consequences of this number based upon the organization's strategic objectives? • What should our next steps be in light of this information? Why? When? Who? How? • What barriers exist?

**POSSIBLE GRAPHIC
ILLUSTRATION**



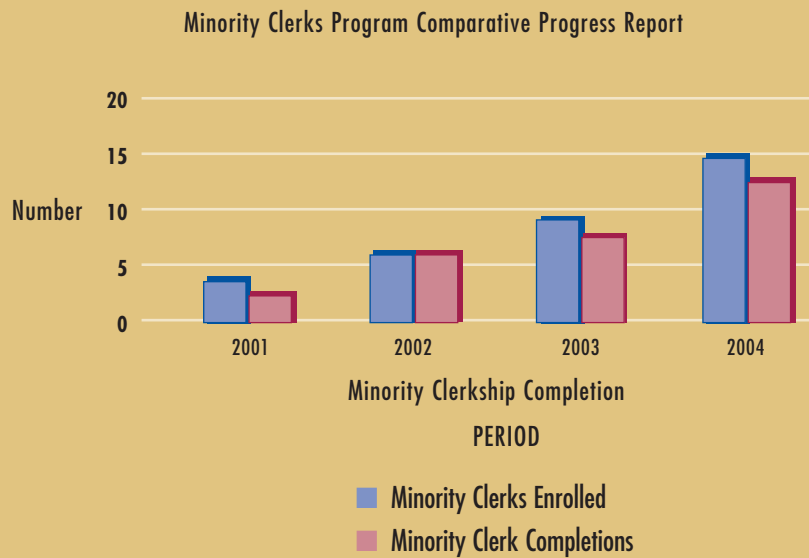
Metric 5: Minority Completion of Clerkship/ Internship Program

Element	Application
DIVERSITY MEASURE	#/% Minorities or Women Completing Clerkship/ Internship Program
MEASURE DESCRIPTION	<p>This measure is designed to help you analyze the number and percent of minorities or women completing the corporate-sponsored clerkship program to increase the number of minority/ women law clerks. This program might include students completing as 2nd or 3rd year law students.</p>
SUGGESTED USE/PURPOSE	<p>To examine the level of minority/ women clerks' completion of program over time and the ability of the organization to create a law clerk pipeline to meet its organizational needs. If a small number of clerks complete the program, it is more effective to list the "number" of clerks who completed versus calculating the percentage. Percentages in a small population universe can distort the result.</p> <p>Example: Let's say for instance you have zero minority Law Clerks who have completed the Clerkship program previously and you add 4 clerks, percentage-wise that is a 400% increase for just 4 Clerks. It is also important to create graphics that illustrate progress over time for this measure.</p>
FORMULA ELEMENTS	$\% \text{MCC} = \frac{\text{NMCC}}{\text{NMCE}} \times 100$ $\# \text{MJC} = \text{NC} - \text{NMCE}$ $\% \text{MJCC} = \frac{\text{MJCCT}}{\text{MJC}} \times 100$ <p>Where:</p> <ul style="list-style-type: none"> • % MCC = Percentage of Minority/ Women Clerks Who Completed, Compared to Total Clerk Completion • NMCE = Number of Minority/ Women Clerks Enrolled (e.g., 4) • NMCC = Number of Minority/ Women Clerks Who Completed the Program (e.g., 3) • NC = Number of Clerks (e.g., 89) • MJC = Majority Clerks Total (e.g., 85) • MJCCT = #Majority Clerks Completing the program (e.g., 61) • MJCC = Percentage of Majority Clerks Completing the program
EXAMPLE	$\begin{aligned} \% \text{MCC} &= \frac{3}{4} \times 100 \\ &= 75\% \end{aligned}$ $\begin{aligned} \# \text{MJC} &= 89 - 4 \\ &= 85 \end{aligned}$ $\begin{aligned} \% \text{MJCC} &= \frac{61}{85} \times 100 \\ &= 71.8\% \end{aligned}$ <p>Based upon this result, we could see that for this period minority Clerks had a slightly higher completion rate than the majority group clerks. This completion rate can also be compared by group (Asian, African-American, Hispanics, Women, etc.) and by period (monthly, quarterly, etc.).</p>

**KEY ANALYSIS OR
PROCESSING QUESTIONS
TO EXAMINE FOR THIS
MEASURE**

- How does this percentage compare by location or region?
- How does this figure compare with others in our industry? Our competition?
- What are the business implications and consequences of this number based upon the organization's strategic objectives?
- What should our next steps be in light of this information? Why? When? Who? How?
- What barriers exist?

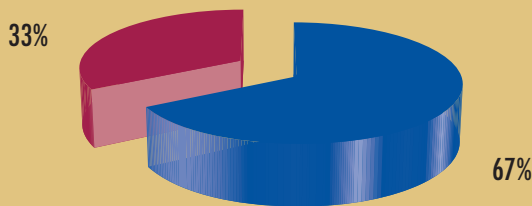
**POSSIBLE GRAPHIC
ILLUSTRATION**



Metric 6: Conversion of Minority Clerks/ Interns to Full-time Employees

Element	Application						
DIVERSITY MEASURE	#/% Minority Clerk Converting to Full-time Employees from Clerkship Program						
MEASURE DESCRIPTION	This measure is designed to help you analyze the number and percent of minorities or women enrolled in a corporate sponsored Clerkship program who convert to full-time employee status. This measure helps you track the organization's ability to attract and retain talent at the clerkship level to build resources for future requirements.						
SUGGESTED USE/PURPOSE	To examine the level of effectiveness of the Minority Clerkship Program to help build a diverse talent pool.						
FORMULA ELEMENTS	$\% \text{MCCV} = \frac{\text{NMCCV}}{\text{NCE}} \times 100$ <p>Where:</p> <ul style="list-style-type: none"> • %MCCV = Percentage of Minority Clerk Conversions • NMCCV = Number of Minority Clerks Conversions (e.g., 24) • NCE = Total Number of Clerks Enrolled (e.g., 37) 						
EXAMPLE	$\% \text{MCCV} = \frac{24}{37} \times 100$ $= 64.9\%$						
KEY ANALYSIS OR PROCESSING QUESTIONS TO EXAMINE FOR THIS MEASURE	<ul style="list-style-type: none"> • How does this percentage compare by location or region? • How does this figure compare with others in our industry? Our competition? • What are the business implications and consequences of this number based upon the organization's strategic objectives? • What should our next steps be in light of this information? Why? When? Who? How? • What barriers exist? 						
POSSIBLE GRAPHIC ILLUSTRATION	<p>Minority Clerks Converting to Full-Time Employees</p> <p>The bar chart displays two categories: 'Enrolled' and 'Converted'. The 'Enrolled' bar has a value of 37, and the 'Converted' bar has a value of 24. The y-axis is labeled 'Number' and ranges from 0 to 40 in increments of 10. The x-axis is labeled 'Minority Clerkship Conversions to Full-Time'. A legend indicates that the blue bars represent 'Minority Clerks'.</p> <table border="1"> <thead> <tr> <th>Category</th> <th>Number</th> </tr> </thead> <tbody> <tr> <td>Enrolled</td> <td>37</td> </tr> <tr> <td>Converted</td> <td>24</td> </tr> </tbody> </table>	Category	Number	Enrolled	37	Converted	24
Category	Number						
Enrolled	37						
Converted	24						

Metric 7: Percentage of Minority Law Student Scholarships Given

Element	Application						
DIVERSITY MEASURE	#/% Minority Law Students Receiving Corporate Scholarships versus All Law School Scholarships Given by Corporation						
MEASURE DESCRIPTION	This measure is designed to help you analyze the number and percent of minority law students receiving scholarships from the organization. This measure helps you track the organization's ability to support minority law student education to build a talent pipeline for future hiring. This is compared to all scholarships given.						
SUGGESTED USE/PURPOSE	To examine the level of numerical impact on the Minority Scholarship Program to help build a diverse talent pool.						
FORMULA ELEMENTS	$\# \text{MLS} = \frac{\text{NMLSG}}{\text{TLS}} \times 100$ <p>Where:</p> <ul style="list-style-type: none"> • #MLS = Number of Minority Law Student Scholarship • NMLSG = Number of Minority Law Scholarships Given (e.g., 15) • TLS = Total Law Student Scholarships Given (e.g., 45) 						
EXAMPLE	$\# \text{MLS} = \frac{15}{45} \times 100$ $= 33.3\%$						
KEY ANALYSIS OR PROCESSING QUESTIONS TO EXAMINE FOR THIS MEASURE	<ul style="list-style-type: none"> • How does this percentage compare by location or region? • How does this figure compare with others in our industry? Our competition? • What are the business implications and consequences of this number based upon the organization's strategic objectives? • What should our next steps be in light of this information? Why? When? Who? How? • What barriers exist? 						
POSSIBLE GRAPHIC ILLUSTRATION	<p style="text-align: center;">Minority Scholarship Recipients</p>  <table border="1"> <thead> <tr> <th>Category</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Scholarships Given to Others</td> <td>67%</td> </tr> <tr> <td>Scholarships Given to Minorities</td> <td>33%</td> </tr> </tbody> </table>	Category	Percentage	Scholarships Given to Others	67%	Scholarships Given to Minorities	33%
Category	Percentage						
Scholarships Given to Others	67%						
Scholarships Given to Minorities	33%						

Metric 8: Entry Level Positions Filled by Minorities/ Women

Element	Application															
DIVERSITY MEASURE	#/% Key Entry Level Legal Positions Filled by Minorities/ Women (other than clerks or interns)															
MEASURE DESCRIPTION	This measure is designed to help you analyze the number and percent of entry-level legal positions filled by minorities. These positions are usually those that serve as feeder positions for higher-level administrative and management responsibilities.															
SUGGESTED USE/PURPOSE	To examine the progress of minority/ women hiring by the law department at the entry level. This analysis should be conducted by group (male, female, Asian, African-American, Hispanic, etc.) and type of position.															
FORMULA ELEMENTS	$\#/\% \text{ KELP} = \frac{\text{NELPF}}{\text{NKELP}} \times 100$ <p>Where:</p> <ul style="list-style-type: none">• #/% KELP = Percentage of Entry Level Positions Filled by Minorities/ Women• NELPF = Number of Entry Level Positions Filled by Minorities/ Women (e.g., 6)• NKELP = Number of Key Entry Level Positions (e.g., 27)															
EXAMPLE	$\#/\% \text{ KELP} = \frac{6}{27} \times 100$ $= 22.2\%$															
KEY ANALYSIS OR PROCESSING QUESTIONS TO EXAMINE FOR THIS MEASURE	<ul style="list-style-type: none">• How does this percentage compare by location or region?• How does this figure compare with others in our industry? Our competition?• What are the business implications and consequences of this number based upon the organization's strategic objectives?• What should our next steps be in light of this information? Why? When? Who? How?• What barriers exist?															
POSSIBLE GRAPHIC ILLUSTRATION	<p>Minorities in Key Entry Level Positions Over Time</p> <table><tr><th>Year</th><th>Minority Employees in Key Positions</th><th>All Other Employees in Key Positions</th></tr><tr><td>2001</td><td>6</td><td>21</td></tr><tr><td>2002</td><td>7</td><td>23</td></tr><tr><td>2003</td><td>10</td><td>20</td></tr><tr><td>2004</td><td>9</td><td>23</td></tr></table> <p>■ Minority Employees in Key Positions ■ All Other Employees in Key Positions</p>	Year	Minority Employees in Key Positions	All Other Employees in Key Positions	2001	6	21	2002	7	23	2003	10	20	2004	9	23
Year	Minority Employees in Key Positions	All Other Employees in Key Positions														
2001	6	21														
2002	7	23														
2003	10	20														
2004	9	23														

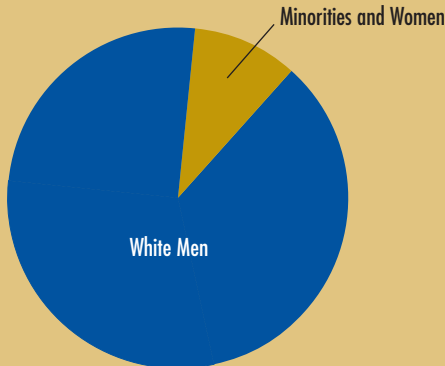
Metric 9: Demographic Representation Among Law Clerks

Element	Application																		
DIVERSITY MEASURE	#/% Minority and Women Law Clerks versus Total Law Clerks																		
MEASURE DESCRIPTION	This measure is designed to help you analyze the number and percent of law clerk positions filled by minorities and women.																		
SUGGESTED USE/PURPOSE	To examine the level of impact of minority and women hiring practices by the Law Department for law clerk positions.																		
FORMULA ELEMENTS	$\#/\% \text{ MWLC} = \frac{\text{NMLC or NWLC}}{\text{TLCP}} \times 100$ <p>Where:</p> <ul style="list-style-type: none">• #/% MWLC = Percentage of Minorities and Women in Law Clerk Positions• NMLC = Number of Minority Law Clerks (e.g., 6)• NWLC = Number of Women Law Clerks (e.g., 27)• TLCP = Total Number of Law Clerk Positions (e.g., 78)																		
EXAMPLE	$\#/\% \text{ MWLC} = \frac{6}{78} \times 100$ $= 7.7\%$																		
KEY ANALYSIS OR PROCESSING QUESTIONS TO EXAMINE FOR THIS MEASURE	<ul style="list-style-type: none">• How does this percentage compare by location or region?• How does this figure compare with others in our industry? Our competition?• What are the business implications and consequences of this number based upon the organization's strategic objectives?• What should our next steps be in light of this information? Why? When? Who? How?• What barriers exist?																		
POSSIBLE GRAPHIC ILLUSTRATION	<p>Minority and Women Representation Among Law Clerks</p> <table><thead><tr><th>Demographic Group</th><th>Count (e.g.)</th><th>Percentage (%)</th></tr></thead><tbody><tr><td>Minorities</td><td>6</td><td>7.7%</td></tr><tr><td>White Men</td><td>27</td><td>34.6%</td></tr><tr><td>Women</td><td>27</td><td>34.6%</td></tr><tr><td>Minority Women</td><td>6</td><td>7.7%</td></tr><tr><td>Total</td><td>78</td><td>100%</td></tr></tbody></table>	Demographic Group	Count (e.g.)	Percentage (%)	Minorities	6	7.7%	White Men	27	34.6%	Women	27	34.6%	Minority Women	6	7.7%	Total	78	100%
Demographic Group	Count (e.g.)	Percentage (%)																	
Minorities	6	7.7%																	
White Men	27	34.6%																	
Women	27	34.6%																	
Minority Women	6	7.7%																	
Total	78	100%																	

Metric 10: Demographic Representation Among Junior Attorneys

Element	Application								
DIVERSITY MEASURE	#/% Minority and Women Junior Attorneys versus Total Junior Attorneys								
MEASURE DESCRIPTION	This measure is designed to help you analyze the number and percent of junior attorney positions filled by minorities and women.								
SUGGESTED USE/PURPOSE	To examine the level of impact of minority and women hiring practices by the law department for junior attorney positions.								
FORMULA ELEMENTS	$\#/\% \text{ MWJA} = \frac{\text{NMJA or NWJA}}{\text{TJAP}} \times 100$ <p>Where:</p> <ul style="list-style-type: none">• #/% MWJA = Percentage of Minorities and Women in Junior Attorney Positions• NMJA = Number of Minority Junior Attorneys (e.g., 6)• NWJA = Number of Women Junior Attorneys (e.g., 27)• TJAP = Total Number of Junior Attorney Positions (e.g., 78)								
EXAMPLE	$\begin{aligned} \#/\% \text{ MWJA} &= \frac{6}{78} \times 100 \\ &= 7.7\% \end{aligned}$								
KEY ANALYSIS OR PROCESSING QUESTIONS TO EXAMINE FOR THIS MEASURE	<ul style="list-style-type: none">• How does this percentage compare by location or region?• How does this figure compare with others in our industry? Our competition?• What are the business implications and consequences of this number based upon the organization's strategic objectives?• What should our next steps be in light of this information? Why? When? Who? How?• What barriers exist?								
POSSIBLE GRAPHIC ILLUSTRATION	<p>Demographic Representation Among Junior Attorneys</p> <table><thead><tr><th>Category</th><th>Number</th></tr></thead><tbody><tr><td>Total</td><td>78</td></tr><tr><td>Women</td><td>27</td></tr><tr><td>Minority</td><td>6</td></tr></tbody></table>	Category	Number	Total	78	Women	27	Minority	6
Category	Number								
Total	78								
Women	27								
Minority	6								

Metric 11: Demographic Representation Among Senior Legal Managers

Element	Application
DIVERSITY MEASURE	#/% Minority and Women Senior Managers versus Total Senior Management Team
MEASURE DESCRIPTION	This measure is designed to help you analyze the number and percent of senior management positions filled by minorities and women.
SUGGESTED USE/PURPOSE	To examine the progress of minority and women hiring/ promotion practices by the law department for senior legal management positions.
FORMULA ELEMENTS	$\#/\% \text{ MWSLM} = \frac{\text{NMSLM or NWSLM}}{\text{TSMP}} \times 100$ <p>Where:</p> <ul style="list-style-type: none"> • #/% MWSLM = Percentage of Minorities and Women in Senior Legal Management Positions • NMSLM = Number of Minority Senior Legal Managers (e.g., 6) • NWSLM = Number of Women Senior Legal Managers (e.g., 27) • TSMP = Total Number of Senior Management Positions (e.g., 78)
EXAMPLE	$\#/\% \text{ MWSM} = \frac{6}{78} \times 100$ $= 7.7\%$
KEY ANALYSIS OR PROCESSING QUESTIONS TO EXAMINE FOR THIS MEASURE	<ul style="list-style-type: none"> • How does this percentage compare by location or region? • How does this figure compare with others in our industry? Our competition? • What are the business implications and consequences of this number based upon the organization's strategic objectives? • What should our next steps be in light of this information? Why? When? Who? How? • What barriers exist?
POSSIBLE GRAPHIC ILLUSTRATION	<p>Demographic Representation Among Senior Legal Managers</p>  <p>Senior Management</p>

Metric 12: Cost of Diversity-Related Litigation

Element	Application										
DIVERSITY MEASURE	Cost of Diversity-Related Litigation Over Time										
MEASURE DESCRIPTION	This measure is designed to help you analyze the dollar cost of diversity-related litigation over time.										
SUGGESTED USE/PURPOSE	To identify trends in diversity-related litigation										
FORMULA ELEMENTS	<p>\$DLit = \$DLit by Period</p> <p>Where:</p> <ul style="list-style-type: none"> \$DLit = Dollars in Diversity-Related Litigation by Period (e.g., month, quarter, year) 										
EXAMPLE	<p>SDLit1 = \$65,000 for February</p> <p>SDLit2 = \$110,000 for March</p> <p>SDLit3 = \$147,000 for April</p> <p>SDLit4 = \$275,000 for May</p>										
KEY ANALYSIS OR PROCESSING QUESTIONS TO EXAMINE FOR THIS MEASURE	<ul style="list-style-type: none"> How does this percentage compare by location or region? How does this figure compare with others in our industry? Our competition? What are the business implications and consequences of this number based upon the organization's strategic objectives? What should our next steps be in light of this information? Why? When? Who? How? What barriers exist? 										
POSSIBLE GRAPHIC ILLUSTRATION	<p>Diversity Litigation Costs Over Time</p> <table border="1"> <thead> <tr> <th>Period</th> <th>Diversity Litigation Dollars</th> </tr> </thead> <tbody> <tr> <td>February</td> <td>\$65,000.00</td> </tr> <tr> <td>March</td> <td>\$110,000.00</td> </tr> <tr> <td>April</td> <td>\$147,000.00</td> </tr> <tr> <td>May</td> <td>\$275,000.00</td> </tr> </tbody> </table>	Period	Diversity Litigation Dollars	February	\$65,000.00	March	\$110,000.00	April	\$147,000.00	May	\$275,000.00
Period	Diversity Litigation Dollars										
February	\$65,000.00										
March	\$110,000.00										
April	\$147,000.00										
May	\$275,000.00										

Metric 13: Turnover of Junior Attorneys

Element	Application
DIVERSITY MEASURE	% Minority and Women Junior Attorney Turnover by Group
MEASURE DESCRIPTION	This measure is designed to help you analyze the percent of minority or women junior attorneys who leave the organization voluntarily.
SUGGESTED USE/PURPOSE	To examine the level of minority and women turnover in the law department for junior attorney positions. Data gathered for this measure should include an analysis of both voluntary and involuntary turnover for each demographic group (i.e., Asians, Hispanics, African Americans, Native Americans, etc.) within this job classification.
FORMULA ELEMENTS	$\% \text{ MWJATO} = \frac{\text{NMJAL or NWJAL}}{\text{TJA}} \times 100$ <p>Where:</p> <ul style="list-style-type: none"> • % MWJATO = Percentage of Minority and Women Junior Attorneys who Turnover • NMJAL = Number of Minority Junior Attorneys who Leave (e.g., 4) • NWJAL = Number of Women Junior Attorneys who Leave (e.g., 7) • TJA = Total Number of Junior Attorneys (e.g., 36)
EXAMPLE	$\% \text{ MWJATO} = \frac{4}{36} \times 100$ $= 11.1\%$
KEY ANALYSIS OR PROCESSING QUESTIONS TO EXAMINE FOR THIS MEASURE	<ul style="list-style-type: none"> • How does this percentage compare by location or region? • How does this figure compare with others in our industry? Our competition? • What are the business implications and consequences of this number based upon the organization's strategic objectives? • What should our next steps be in light of this information? Why? When? Who? How? • What barriers exist?

Metric 14: Turnover of Diverse Attorneys

Element	Application
DIVERSITY MEASURE	% Diverse Attorney Turnover by Group
MEASURE DESCRIPTION	This measure is designed to help you analyze the percentage of minority or women attorneys who leave the organization voluntarily.
SUGGESTED USE/PURPOSE	To examine the level of minority and women turnover in the law department for attorney positions. Data gathered for this measure should include an analysis of both voluntary and involuntary turnover for each demographic group (i.e., Asians, Hispanics, African Americans, Native Americans, etc.) within this job classification.
FORMULA ELEMENTS	<p>% MWATO = $\frac{\text{NMAL or NWAL}}{\text{TA}} \times 100$</p> <p>Where:</p> <ul style="list-style-type: none"> • % MWATO = Percentage of Minority and Women Attorneys who Turnover • NMAL = Number of Minority Attorneys who Leave (e.g., 4) • NWAL = Number of Women Attorneys who Leave (e.g., 7) • TA = Total Number of Attorneys (e.g., 36)
EXAMPLE	<p>% MWATO = $\frac{4}{36} \times 100$</p> <p>= 11.1%</p>
KEY ANALYSIS OR PROCESSING QUESTIONS TO EXAMINE FOR THIS MEASURE	<ul style="list-style-type: none"> • How does this percentage compare by location or region? • How does this figure compare with others in our industry? Our competition? • What are the business implications and consequences of this number based upon the organization's strategic objectives? • What should our next steps be in light of this information? Why? When? Who? How? • What barriers exist?

Metric 15: Turnover of Senior Managers

Element	Application
DIVERSITY MEASURE	% Minority and Women Senior Management Turnover by Group
MEASURE DESCRIPTION	This measure is designed to help you analyze the percent of minority or women senior managers who leave the organization voluntarily.
SUGGESTED USE/PURPOSE	To examine the level of minority and women turnover in the law department for senior management positions. Data gathered for this measure should include an analysis of both voluntary and involuntary turnover for each demographic group (i.e., Asian, Hispanics, African Americans, etc.) within this job classification.
FORMULA ELEMENTS	$\% \text{ MWSMTO} = \frac{\text{NMSML or NWSML}}{\text{TSM}} \times 100$ <p>Where:</p> <ul style="list-style-type: none"> • % MWSMTO = Percentage of Minorities and Women Senior Managers who Turnover • NMSML = Number of Minority Senior Managers who Leave (e.g., 4) • NWSML = Number of Women Senior Managers who Leave (e.g., 7) • TLC = Total Number of Senior Managers (e.g., 36)
EXAMPLE	$\% \text{ MWLCTO} = \frac{4}{36} \times 100$ $= 11.1\%$
KEY ANALYSIS OR PROCESSING QUESTIONS TO EXAMINE FOR THIS MEASURE	<ul style="list-style-type: none"> • How does this percentage compare by location or region? • How does this figure compare with others in our industry? Our competition? • What are the business implications and consequences of this number based upon the organization's strategic objectives? • What should our next steps be in light of this information? Why? When? Who? How? • What barriers exist?

Metric 16: Turnover of Diverse Attorneys by Length of Service

Element	Application																											
DIVERSITY MEASURE	#/% Women and Minorities Analysis by Length of Service and Turnover by Group by Position																											
MEASURE DESCRIPTION	This measure is designed to help you analyze the number and percent of minorities and women turnover arranged by their length of Service.																											
SUGGESTED USE/PURPOSE	To examine the impact of minority and women retention practices by the law department and the impact of these practices over time based upon length of service.																											
FORMULA ELEMENTS	<div>#/% MWTOLOS = $\frac{\text{NMTLOS or NWTLOS}}{\text{TTOLOS}} \times 100$</div> <div>Where:</div> <div><ul style="list-style-type: none">• #/% MWTOLOS = Percentage of Minorities and Women Turnover by Length of Service• NMTLOS = Number of Minority Turnover by Length of Service (e.g., 12)• NWTLOS = Number of Women Turnover by Length of Service (e.g., 28)• TTOLOS = Total Turnover by Length of Service (e.g., 138)• TMALOS = Total Minority Attorneys in this Length of Service Category (e.g., 26)</div>																											
EXAMPLE	<div>#/% Minority Attorney T/O with 1 year or less = $\frac{12}{138} \times 100$</div> <div>= 8.7% of Total Attorneys in this LOS Group</div> <div>#/% Minority Attorney T/O with 1 year or less = $\frac{12}{26} \times 100$</div> <div>= 46.2%</div> <div>That is, 46.2% of All <u>Minority</u> Attorneys in this length of service group who are leaving voluntarily.</div>																											
KEY ANALYSIS OR PROCESSING QUESTIONS TO EXAMINE FOR THIS MEASURE	<ul style="list-style-type: none">• How does this percentage compare by location or region?• How does this figure compare with others in our industry? Our competition?• What are the business implications and consequences of this number based upon the organization’s strategic objectives?• What should our next steps be in light of this information? Why? When? Who? How?• What barriers exist?																											
POSSIBLE GRAPHIC ILLUSTRATION	<div>Fig. 5: Length of Service And Turnover Profile Analysis for Minority Attorneys</div> <table><tr><th>Length of Service</th><th>% Active</th><th>% Terminations</th></tr><tr><td>Under 1 year</td><td>12.1</td><td>46.2*</td></tr><tr><td>1 – 1.9</td><td>13.2</td><td>25.1*</td></tr><tr><td>2 – 2.9</td><td>15.1</td><td>19.9</td></tr><tr><td>3 – 3.9</td><td>13.4</td><td>15.7</td></tr><tr><td>4 – 4.9</td><td>8.9</td><td>11.1</td></tr><tr><td>5 – 9.9</td><td>18.7</td><td>9.6</td></tr><tr><td>10 – 19.9</td><td>14.8</td><td>5.3</td></tr><tr><td>20+</td><td>3.7</td><td>1.7</td></tr></table> <div>* Key area to begin analyzing why terminations in this category are as high as they appear</div>	Length of Service	% Active	% Terminations	Under 1 year	12.1	46.2*	1 – 1.9	13.2	25.1*	2 – 2.9	15.1	19.9	3 – 3.9	13.4	15.7	4 – 4.9	8.9	11.1	5 – 9.9	18.7	9.6	10 – 19.9	14.8	5.3	20+	3.7	1.7
Length of Service	% Active	% Terminations																										
Under 1 year	12.1	46.2*																										
1 – 1.9	13.2	25.1*																										
2 – 2.9	15.1	19.9																										
3 – 3.9	13.4	15.7																										
4 – 4.9	8.9	11.1																										
5 – 9.9	18.7	9.6																										
10 – 19.9	14.8	5.3																										
20+	3.7	1.7																										

Metric 17: Turnover of Diverse Attorneys by Age and Position

Element	Application																																				
DIVERSITY MEASURE	#/% Women and Minority Turnover by Age, by Group, by Position																																				
MEASURE DESCRIPTION	This measure is designed to help you analyze the number and percent of minority and women turnover arranged by their age.																																				
SUGGESTED USE/PURPOSE	To examine the impact of minority and women retention practices by the law department and the impact of these practices over time based upon age.																																				
FORMULA ELEMENTS	$\#/\% \text{ MWTOA} = \frac{\text{NMTOA or NWTOLA}}{\text{TTOA}} \times 100$ <p>Where:</p> <ul style="list-style-type: none">• #/% MWTOA = Percentage of Minorities and Women Turnover by Age• NMTOA = Number of Minority Turnover by Age Group (e.g., 12)• NWTOLA = Number of Women Turnover by Age Group (e.g., 28)• TTOA = Total Turnover by Age Group (e.g., 138)• TMAA = Total Minority Attorneys in this Age Group (e.g., 26)																																				
EXAMPLE	$\begin{aligned} \#/\% \text{ Minority Turnover in the 25 – 29.9 Age Group} &= \frac{12}{138} \times 100 \\ &= 8.7\% \end{aligned}$ $\begin{aligned} \#/\% \text{ Minority Turnover in the 25 – 29.9 Age Group} &= \frac{12}{26} \times 100 \\ &= 46.2\% \end{aligned}$ <p>That is, <u>46.2%</u> of All <u>Minority</u> Attorneys in this age group who are leaving voluntarily.</p>																																				
KEY ANALYSIS OR PROCESSING QUESTIONS TO EXAMINE FOR THIS MEASURE	<ul style="list-style-type: none">• How does this percentage compare by location or region?• How does this figure compare with others in our industry? Our competition?• What are the business implications and consequences of this number based upon the organization’s strategic objectives?• What should our next steps be in light of this information? Why? When? Who? How?• What barriers exist?																																				
POSSIBLE GRAPHIC ILLUSTRATION	<table><tr><th>Age Group</th><th>%Hires</th><th>%Active</th><th>%Terminations</th></tr><tr><td>Under 25</td><td>8.9</td><td>2.9</td><td>0.7</td></tr><tr><td>25 – 29.9</td><td>25.3</td><td>8.8</td><td>17.5*</td></tr><tr><td>30 – 34.9</td><td>12.7</td><td>12.9</td><td>25.2*</td></tr><tr><td>35 – 39.9</td><td>19.0</td><td>18.2</td><td>24.5*</td></tr><tr><td>40 – 49.9</td><td>19.0</td><td>29.8</td><td>25.9*</td></tr><tr><td>50 – 54.9</td><td>5.1</td><td>12.1</td><td>4.2</td></tr><tr><td>55 – 59.9</td><td>6.3</td><td>9.6</td><td>2.1</td></tr><tr><td>60+</td><td>3.8</td><td>5.7</td><td>0</td></tr></table> <p>* Key area to begin analyzing why terminations in this category are as high as they appear.</p>	Age Group	%Hires	%Active	%Terminations	Under 25	8.9	2.9	0.7	25 – 29.9	25.3	8.8	17.5*	30 – 34.9	12.7	12.9	25.2*	35 – 39.9	19.0	18.2	24.5*	40 – 49.9	19.0	29.8	25.9*	50 – 54.9	5.1	12.1	4.2	55 – 59.9	6.3	9.6	2.1	60+	3.8	5.7	0
Age Group	%Hires	%Active	%Terminations																																		
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60+	3.8	5.7	0																																		

Figure 6: Sample Age and Termination Profile Analysis for Minority Attorneys

Age and Termination Profile – Analysis for Minority Attorneys			
Age Group	%Hires	%Active	%Terminations
Under 25	8.9	2.9	0.7
25 – 29.9	25.3	8.8	17.5*
30 – 34.9	12.7	12.9	25.2*
35 – 39.9	19.0	18.2	24.5*
40 – 49.9	19.0	29.8	25.9*
50 – 54.9	5.1	12.1	4.2
55 – 59.9	6.3	9.6	2.1
60+	3.8	5.7	0

* Key area to begin analyzing why terminations in this category are as high as they appear.

Advanced Methods: the Family of Measures

Sometime there is a tendency to search for single-answer models for measuring the success of diversity processes or programs. In fact, an employer of choice organization needs to monitor a range of variables. This range or “family of variables” can include representation, climate, client/community partnerships, productivity, financial return, etc.

The creation of a measurement system cannot be a mechanical modeling exercise. It must be preceded by an inspection of the basic objectives regarding organizational performance as well as by an assessment of the desired quality of work-life. Developing actual measures is easy compared to the amount of time that should be spent thinking about what is important to the organization’s diversity initiatives and the expectations of the measurement activity.

The Family of Measures method allows you to predetermine goals for each of the “family” members and give points along a 0-10 point scale as improvement is made. Each member of the family is weighted according to priority. Then the weighted performance scores of the members are aggregated to a single performance score for the diversity initiative, the department, the unit, and the organization. The overall results can be used for general motivational purposes, whereas the individual measures are used more diagnostically.

How to Construct a Family of Measures Matrix

The procedure that follows outlines the process for constructing a Family of Measures Matrix that can be used as a diversity measurement scorecard to reflect performance at each *Pathways* level. The example illustrates a family of measures with four interrelated, yet separate, aspects of performance within the diversity compliance arena for a corporate legal department. The measures were created after group reflection on the organization’s mission, goals, and objectives.

Figure 7: Family of Measures – Compliance Level

Dimension	Description
Focus	<ul style="list-style-type: none"> ■ Pathways: Compliance Level Performance
Mission	<ul style="list-style-type: none"> ■ To acquire, retain, and promote the best and brightest workforce talent available.
Strategic Objectives	<ul style="list-style-type: none"> ■ Increase by 25% the percentage of minority law clerks and interns ■ Retain female junior attorney candidates beyond the 3-year mark ■ Increase by 15% the diverse applicant pool for Asian, Hispanic and African American Attorneys ■ Reduce by 20% the turnover of female support staff ■ Increase by 15% the pool of promotion-ready minorities for all Junior Attorney jobs
Candidates for Family of Measures	<ul style="list-style-type: none"> ■ #/% Increase in minority law clerks by group ■ #/% Increase in minority interns by group ■ Survival/loss rate % of female junior attorney candidates by length of service ■ #/% Increase in African American and Hispanic attorneys in the applicant pool ■ #/% Reduction in turnover of female support staff ■ % Termination rate by reason for leaving among support staff ■ #/% Increase in promotion-ready minority junior attorneys ■ % of Individual Development Plans (IDPs) Achieved among minority junior attorneys
Final (weighted) Family of Measures	<ul style="list-style-type: none"> ■ Percentage of promotion-ready minority junior attorneys by group (age, race, sex, legal specialty, salary grade, performance level) (40%) ■ Survival/loss rate % of female junior attorneys (30%) ■ Termination rate by reason for leaving: lack of career opportunities (15%) ■ #/% Increase in African American and Hispanic Attorneys' percentage in the applicant pool (15%)

Once the basic family of measures has been identified, the following steps should be completed to create the Family of Measures Scorecard Index.

Step 1: Develop an appropriate family of measures for the applicable diversity *Pathways* level to be measured. Four to six distinct diversity measures is normal. Some of them may be interrelated, but are perceived differently by different people, which means they can be measured differently.

Step 2: Insert those measures as column heads on the Family of Measures Matrix. Develop a weighting of the relative importance of those measures that adds to 100 percent and insert those values in the row identified as weight. Though all of the measures are important, the example will emphasize the number of promotion-ready minority junior attorneys and the survival/loss rate % of female junior attorneys.

Figure 8: Sample Compliance Level Scorecard

Sample Compliance Level Scorecard					
Productivity Criteria		Promotion-Ready Minority Junior Attorneys	Survival Rate % of Female Junior Attorneys	Termination Rate %/ Lack of Career Opportunity	% Increase in Minority Attorneys vs. Applicant Flow
Performance		33	71	20	30
Stretch Value	10	49	94	5	55
	9	45	89	8	49
	8	41	83	11	45
Target Value	7	37	77	14	41
	6	33	71	17	37
Values	5	29	66	19	33
	4	25	61	21	29
Base Value	3	21	56	23	25
	2	17	51	25	21
	1	13	46	27	17
	0	10	41	29	13
Score		6.0	6.0	4.5	4.2
Weight		40	30	15	15
Value		240	180	67.5	63
INDEX:	550.5 *				

* This index score is 550.5 points out of a possible perfect score of 1,000.

Step 3: Calculate or assume a base value for each measure. The base may be the value of the most recent quarter or year, a current standard, or a long-term average. It might even be an intelligent guess, if the measurement effort is just starting. The base value should be inserted in row 3.

Step 4: Develop as collaboratively as possible a target or goal for a future time period (three years from now, for example) for each measure. Insert those values in row 7. The amount of effort required to go from the base num-

ber in row 3 to the goal in row 7 should be comparable for each column — not in absolute numbers or percentages, but rather in overall difficulty of each challenge. In addition, set a stretch value at row 10 that reflects exceptional performance far beyond the target level value in row 7.

Step 5: Fill in the values in each column for rows 4 through 7 as well as rows 8 and 9. If the difficulty of going from one level of performance to another is linear, then the progression of the values could be geometric. If

the compounded growth rate required to go from row 3's value to row 7's value is 8 percent, then each value in the column would increase about 8 percent. A simple way to work these numbers is to use a straight line on semi-log graph paper. If, however, the "going gets tougher" as you approach row 10's target, a curvilinear pattern is appropriate. For example, the increment between rows 3 and 4 might be a 12 percent increase, followed by 10 percent, 8 percent, and so on, to where the increment between rows 9 and 10 is only 3 percent. This is found in measures that approach 100 percent, such as a customer satisfaction score or a diverse employee survival rate score.

Step 6: Fill in the values from rows 2 to 0 using the same logic as in step 5. Recognize that going substantially below the 0 value may force starting over, so think of the 0 value as intolerable or outrageously bad.

Step 7: Eventually the first new measuring occurs in a month, a quarter, or even a year (quarterly is usually recommended.) Insert the actual values in the Performance row. Locate those values in their respective columns and read the corresponding value or score from the row numbers. In general, it will be necessary to interpolate between whole row numbers. Thus, if row 5's total value is 157 and row 4's total value is 149, an actual value of 152 would earn an approximate score of 4.4 (4.0 + 3/8 of 1.0). Insert the interpolated score in the row called "Value".

Step 8: Multiply the score by the weight in each column and place those results in the Value row. Add across the values numbers and put the total in the index box. That

is the final score for the family of measures for the current time period. Assuming reasonable consistency in the amount of "stretch" from 3 to 7 and 8 to 10 in each department and/or process being measured, the absolute scores can be roughly compared across the organization as indicators of progress even though the specific measures will normally be quite different.

Though it may take a bit more time, the Family of Measures is an excellent method for providing an aggregate, motivational evaluation of your organization's diversity initiatives.

Using a Compliance Scorecard Index

The family of measures method provides an excellent basis for constructing a diversity measurement scorecard to track progress from Compliance to Diversity to Inclusion. The example discussed above reflects a Compliance level scorecard. Here's how the example is calculated. We will review the calculation for the first three measures to give you a feel for how the process works.

After a period of 1 year, using the Corporate Legal Department's Diversity Measurement Scorecard, the department achieved the following performance in the Compliance Area:

1. During the year, department increased the "#/% Promotion-ready minority Junior Attorneys" measure from a baseline of 21% at the beginning of the year to a



performance level of 33% by the end of the year. So, % **Promotion-ready Minority Junior Attorneys** = 33%. If you look up 33% in the range under this measure on the Scorecard, you find that 33% gets a value of "6". Since it was weighted in importance as 40% of the total index score (see weight), the "Value" to the Compliance Scorecard is $6 \times 40 = 240$ points.

2. During the year, the legal department increased female Junior Attorney retention by reducing the "Turnover %" and increasing the Survival % rate from a baseline of 56% at the beginning of the year to a performance level of 71% by the end of the year. So, **Survival Rate % of Female Junior Attorneys** = 71%. If you look up 71% in the range under the Survival % Rate measure on the Scorecard, you find that 71% is a value of "6". Therefore, the Compliance score on this measure gets a value of "6". Since it was weighted in importance as 30% of the total index score (see weight), the "Value" to the Law Department's Scorecard is $6 \times 30 = 180$ points.

3. During the year, the law department improved its diverse workforce Termination Rate (based upon a lack of career opportunities in the department) from a baseline of 23% at the beginning of the year to a performance level of 20% by the end of the year. So, **Termination Rate % by Reason** = 20%. If you look up 20% in the range under the "Termination Rate % by Reason" measure on the

Scorecard, you find that 20% is between a value of "4" and "5". The Scorecard rule is that it's necessary to interpolate between whole row numbers. Thus, if row 5's total value is 19 and row 4's total value is 21, an actual value of 20 would earn an approximate score of 4.5 ($4.0 + 1/2$ of 1.0). Insert the interpolated score in the row called "Value". Since it was weighted in importance as 15% of the total index score (see weight), the "Value" to the Compliance Scorecard is $4.5 \times 15 = 67.5$ points.

4. And so on...

At the bottom of the index, you see a Scorecard "Index" = to 550.5 points (the total of all of the "Value" calculations: $240 + 180 + 67.5 + 63$). This is out of a possible 1000 points. To see how the organization scored overall on the Compliance Scorecard use the "Scorecard Rating" breakpoints shown here.

Scorecard Rating:

Superior: 900 - 1000

Average: 600 - 899

Below: 300 - 599

This score is compared over time to identify the trend in performance. The "Scorecard Rating" breakpoint levels are set by the diversity task force within the legal department.



Diversity Metrics

Moving from Compliance to Diversity

In order to advance your diversity efforts beyond the Compliance level to the second phase, the Diversity level, it is necessary to focus diversity measurement and analysis at a deeper level that addresses key result areas such as reasonable accommodation, knowledge development, promotion, employee satisfaction, level of senior management commitment, etc. This helps move your diversity process from a “maintenance” stage to a “proactive” program.

Building A Diversity Metrics Index

Compliance level metrics helped lay the foundation. Diversity level metrics help you take an in-depth look at representation and retention, then advance the process towards inclusion by building diversity infrastructure, systems, and capability.

Diversity Level Definition

MCCA defines the Diversity level as involving a higher level of commitment to diversity activities, accompanied by the strong support of senior management and the development of programs designed to recruit and retain minority and women attorneys.

Building a Diversity Level Index

When building an index that reflects measurement at the Diversity level, typical critical success factor include:

- Demographic representation at different corporate salary grades, management levels and practice areas
- Reasonable Accommodation
- Knowledge Development
- Promotion
- Employee Satisfaction
- Level of Senior Management Commitment
- Diversity Objectives Achieved
- Supplier Diversity
- External Recognition

Sample Measures to Drive the Diversity Index

- Demographic Representation by Corporate Grades, Management Level and Practice Area
- Percentage of Diversity Competent Legal Staff
- Demographic Group and Corporate Grade Promotions
- Pay Equity Analysis
- Work Environment Audits Weighing Favorable Responses
- Participation in Minority Networks
- Completion of Diversity Goals
- Dollars Spent with Minority or Women-Owned Law Firms
- Dollars Spent with Firms with Minority and/or Women Engagement Partners
- Dollars Spent with MWBEs and/or Suppliers
- Percentage of Billable Hours of Minorities/Women At Majority-Owned Firms

Metric 18: Demographic Representation by Corporate Grade, Management Level and Practice Area

Element	Application
DIVERSITY MEASURE	Demographic representation of minority and women legal staff at different corporate grades, management levels, and practice areas (example, number of minority and women attorneys in salary grades 15 - 19).
MEASURE DESCRIPTION	This measure is designed to help you analyze the number and percent of minorities and women in the legal staff who hold key organizational positions, the attainment of which represent career progress and "diversity density".
SUGGESTED USE/PURPOSE	<p>To examine the impact of minority and women hiring practices by the law department in achieving "diversity density". By arraying these data for each category of measurement a picture of the organization's commitment begins to emerge. This data array should include examining the diversity representation reflected in:</p> <ul style="list-style-type: none"> • Salary Grade Levels • Key Areas of Practice • Key Management Positions • Key Litigation Projects • Key Developmental Assignments • Key Staff Roles
FORMULA ELEMENTS	$\#/\% \text{ MWKLS} = \frac{\text{NMKLP or NWKLP}}{\text{TKLP}} \times 100$ <p>Where:</p> <ul style="list-style-type: none"> • #/% MWKLP = Percentage of Minorities and Women in Key Legal Positions • NMKLP = Number of Minorities in Key Legal Positions (e.g., 14) • NWKLP = Number of Women in Key Legal Positions (e.g., 19) • TKLP = Total Number of Key Legal Positions (e.g., 140)
EXAMPLE	$\#/\% \text{ MWKLP} = \frac{14}{140} \times 100$ $= 10\%$
KEY ANALYSIS OR PROCESSING QUESTIONS TO EXAMINE FOR THIS MEASURE	<ul style="list-style-type: none"> • How does this percentage compare by location or region? • How does this figure compare with others in our industry? Our competition? • What are the business implications and consequences of this number based upon the organization's strategic objectives? • What should our next steps be in light of this information? Why? When? Who? How? • What barriers exist?

Metric 19: Percentage of Diversity-Competent Legal Staff

Element	Application
DIVERSITY MEASURE	#/% Diversity-Competent Legal Staff Members
MEASURE DESCRIPTION	This measure is designed to help you analyze the number and percent of legal department staff who have successfully mastered specific diversity skills and competencies taught and tested during their participation in diversity training.
SUGGESTED USE/PURPOSE	This measure is more than a measure of attendance. The participant must be able to demonstrate the use of the diversity skill or competency with at least 80% accuracy. For example, if one of the skills taught during the session was a six-step process for handling intercultural conflict, the participant must be able to complete the interaction with at least 80% of the competency behaviors performed accurately. Usually this will be tested in a role-play or skill practice during the training with others looking on and scoring the behaviors using a behavioral observation checklist.
FORMULA ELEMENTS	There is no formula for this measure. The organizational entity responsible for monitoring and assessing the impact of diversity training can periodically check the level of "competency" of the legal staff when monitoring situations where the competencies were required (i.e., when an intercultural conflict occurs or has been documented).

Metric 20: Promotions by Demographic Group and Corporate Grade

Element	Application								
DIVERSITY MEASURE	#/% Minority and Women Legal Staff Promotions by Level by Group Compared to Total Number of Promotions								
MEASURE DESCRIPTION	This measure is designed to help you analyze the number and percent minorities and women receiving promotions by level by group as compared to the total number of people receiving promotions. The period for measurement should be defined.								
SUGGESTED USE/PURPOSE	To examine the progress of career development practices for minorities and women by the law department that have aided in promotions over a defined time period.								
FORMULA ELEMENTS	$\#/\% \text{ MWPRO} = \frac{\text{NMPRO or NWPRO}}{\text{TPRO}} \times 100$ <p>Where:</p> <ul style="list-style-type: none"> • #/% MWPRO = Percentage of Minorities and Women Promoted Compared to the Total Promoted • NMPRO = Number of Minority Promotions (e.g., 12) • NWPRO = Number of Women Promotions (e.g., 28) • TPRO = Total Number of People in Department who were Promoted (e.g., 138) 								
EXAMPLE	$\#/\% \text{ MWPRO} = \frac{12}{138} \times 100$ $= 8.7\%$								
KEY ANALYSIS OR PROCESSING QUESTIONS TO EXAMINE FOR THIS MEASURE	<ul style="list-style-type: none"> • How does this percentage compare by location or region? • How does this figure compare with others in our industry? Our competition? • What are the business implications and consequences of this number based upon the organization's strategic objectives? • What should our next steps be in light of this information? Why? When? Who? How? • What barriers exist? 								
POSSIBLE GRAPHIC ILLUSTRATION	<p>Minority and Women Legal Staff Promotion Compared to Total Number of Promotions (1997 - 2002)</p> <table border="1"> <caption>Minority and Women Legal Staff Promotion Compared to Total Number of Promotions (1997 - 2002)</caption> <thead> <tr> <th>Demographic Group</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>All Others Promoted</td> <td>71%</td> </tr> <tr> <td>Women Promoted</td> <td>20%</td> </tr> <tr> <td>Minorities Promoted</td> <td>9%</td> </tr> </tbody> </table> <p>Legend: ■ Minorities Promoted ■ Women Promoted ■ All Others Promoted</p>	Demographic Group	Percentage	All Others Promoted	71%	Women Promoted	20%	Minorities Promoted	9%
Demographic Group	Percentage								
All Others Promoted	71%								
Women Promoted	20%								
Minorities Promoted	9%								

Metric 21: Pay Equity Analysis

Element	Application
DIVERSITY MEASURE	Percentage of Gender-Based Pay Differential
MEASURE DESCRIPTION	This measure helps to identify if there are pay differences that exist by gender. The same analysis may be used to review pay differences by race.
SUGGESTED USE/PURPOSE	To gain insight into historical pay rates by gender or race. This measure helps the organization gauge whether inequalities in pay exist and provides a foundation on which to correct the problem.
ADDITIONAL ANALYSES	This measure focuses on salary differences on a gross salary basis. As with most other measures, this one can be computed by diversity dimension and group to find where gender-based pay differential exists to set priorities and goals for correction. For example, some jobs may have a disproportionate share of these differences and may warrant a higher priority.
FORMULA ELEMENTS	$\text{GBPD} = \frac{\text{TSBG}}{\text{TS}}$ <p>Where:</p> <ul style="list-style-type: none"> • GBPD = Gender-based pay differential percentage • TSBG = Total salaries paid by gender (e.g., \$880,000 to males, \$290,000 to females) • TS = Total salaries paid (e.g., \$1,170,000)
EXAMPLE	$\begin{aligned}\text{GBPD} &= \frac{\$880,000}{\$1,170,000} \\ &= 75.2\% \text{ for males}\end{aligned}$ $\begin{aligned}\text{GBPD} &= \frac{\$290,000}{\$1,170,000} \\ &= 24.8\% \text{ females}\end{aligned}$ <p>Difference: 75.2% - 24.8% = 50.4%</p>
KEY ANALYSIS OR PROCESSING QUESTIONS TO EXAMINE FOR THIS MEASURE	<ul style="list-style-type: none"> • How does this percentage compare by location or region? • How does this figure compare with others in our industry? Our competition? • What are the business implications and consequences of this number based upon the organization's strategic objectives? • What should our next steps be in light of this information? Why? When? Who? How? • What barriers exist?

Metric 22: Work Environment Audit: Weighing Favorable Responses

Element	Application																
DIVERSITY MEASURE	% Favorable Response on Culture and Systems Audit, especially Senior Management Commitment and Diversity Issues by Group																
MEASURE DESCRIPTION	This measure is designed to help you analyze the percentage of favorable responses received on a cultural and systems audit assessments by question.																
SUGGESTED USE/PURPOSE	To examine the level of favorable perceptions that exists among law department staff by group to determine if there are any perceived problems in the areas surveyed. These responses can also be compared against internal or external benchmarks.																
FORMULA ELEMENTS	$\% \text{ FR} = \frac{\text{NFR}}{\text{TPQR}} \times 100$ <p>Where:</p> <ul style="list-style-type: none">• % FR = Percentage of Favorable Responses on a Culture and Systems Surveyed Item• NFR = Number of Favorable Responses (e.g., 34)• TPQR = Total Possible Question Responses (e.g., 42)																
EXAMPLE	$\% \text{ FR} = \frac{34}{42} \times 100$ $= 81\%$																
KEY ANALYSIS OR PROCESSING QUESTIONS TO EXAMINE FOR THIS MEASURE	<ul style="list-style-type: none">• How does this percentage compare by location or region?• How does this figure compare with others in our industry? Our competition?• What are the business implications and consequences of this number based upon the organization's strategic objectives?• What should our next steps be in light of this information? Why? When? Who? How?• What barriers exist?																
POSSIBLE GRAPHIC ILLUSTRATION	<p>% Favorable Response on Culture and Systems Audit</p> <table><thead><tr><th>QUESTIONS</th><th>Minorities</th><th>Women</th><th>All Others</th></tr></thead><tbody><tr><td>Leadership Commitment</td><td>62</td><td>73</td><td>91</td></tr><tr><td>Seeks Input</td><td>56</td><td>61</td><td>84</td></tr><tr><td>Bias-Free Policies</td><td>67</td><td>81</td><td>88</td></tr></tbody></table>	QUESTIONS	Minorities	Women	All Others	Leadership Commitment	62	73	91	Seeks Input	56	61	84	Bias-Free Policies	67	81	88
QUESTIONS	Minorities	Women	All Others														
Leadership Commitment	62	73	91														
Seeks Input	56	61	84														
Bias-Free Policies	67	81	88														

Metric 23: Participation in Minority Networks

Element	Application
DIVERSITY MEASURE	#/% Participation by level in Minority Networks
MEASURE DESCRIPTION	This measure is designed to help you analyze the percentage of participation in minority network groups.
SUGGESTED USE/PURPOSE	To examine the level of participation and support of minority network groups. These responses can also be compared against internal or external benchmarks.
FORMULA ELEMENTS	$\% \text{ PLMN} = \frac{\text{NP}}{\text{TD}} \times 100$ <p>Where:</p> <ul style="list-style-type: none"> • % PLMN = Percentage Participation Level in Minority Network Groups • NP = Number Participating (e.g., 34) • TD = Total Department (e.g., 242)
EXAMPLE	$\% \text{ FR} = \frac{34}{242} \times 100$ $= 14\%$
KEY ANALYSIS OR PROCESSING QUESTIONS TO EXAMINE FOR THIS MEASURE	<ul style="list-style-type: none"> • How does this percentage compare by location or region? • How does this figure compare with others in our industry? Our competition? • What are the business implications and consequences of this number based upon the organization's strategic objectives? • What should our next steps be in light of this information? Why? When? Who? How? • What barriers exist?

Metric 24: Completion of Diversity Goals

Element	Application												
DIVERSITY MEASURE	Percentage of Diversity Goals Completed												
MEASURE DESCRIPTION	<p>This measure is designed to gauge (against the organization's plan) the percentage of diversity initiatives that are completed. It serves as instant feedback at a gross level to report the level of progress being made. These goals should be tied to the manager's and/or leader's compensation and bonus to serve as an incentive for completion.</p>												
SUGGESTED USE/PURPOSE	<p>To quantify the progress and movement towards an inclusive, diverse work environment.</p> <p>Other analyses that are useful to this form of tracking include:</p> <ul style="list-style-type: none"> • Number of diversity goals completed by department • Number of diversity goals assigned by department 												
FORMULA ELEMENTS	<p>% DGC = (total number goals completed /total number diversity goals)* 100</p> <p>Where:</p> <ul style="list-style-type: none"> • %DGC = percentage of diversity goals completed • TNGC = total number of diversity goals completed (e.g., 16) • TDG = total diversity goals (e.g., 57) 												
EXAMPLE	<p>% DGC = (16/57)*100 = (.2807) x 100 = 28.1%</p>												
KEY ANALYSIS OR PROCESSING QUESTIONS TO EXAMINE FOR THIS MEASURE	<ol style="list-style-type: none"> 1. Is the percentage acceptable? 2. Is it on target with the planned diversity change effort? 3. How does this percentage compare by area, location? 4. How does this figure compare with others in our industry? Our competition? 5. What are the business implications and consequences of this number based upon the organization's strategic objectives? 6. How does this number compare with best practices standards for this type of data and the number of weeks or months we have been working on these objectives? 7. What should our next steps be in light of this information? Why? When? Who? How? 8. What barriers exist? 												
POSSIBLE GRAPHIC ILLUSTRATION	<p>% Diversity Goals Completed</p> <table border="1"> <caption>% Diversity Goals Completed Data</caption> <thead> <tr> <th>Category</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Completed & Implemented</td> <td>27%</td> </tr> <tr> <td>In-Process</td> <td>24%</td> </tr> <tr> <td>Currently Evaluating</td> <td>38%</td> </tr> <tr> <td>No Plan to Address</td> <td>8%</td> </tr> <tr> <td>No Plan to Address</td> <td>3%</td> </tr> </tbody> </table>	Category	Percentage	Completed & Implemented	27%	In-Process	24%	Currently Evaluating	38%	No Plan to Address	8%	No Plan to Address	3%
Category	Percentage												
Completed & Implemented	27%												
In-Process	24%												
Currently Evaluating	38%												
No Plan to Address	8%												
No Plan to Address	3%												

Metric 25: Dollars spent with Minority and Women-Owned Law Firms

Element	Application										
DIVERSITY MEASURE	Dollars spent with Minority and Women-Owned Law Firms										
MEASURE DESCRIPTION	This measure is designed to help you analyze the dollars spent in support of supplier diversity goals over time.										
SUGGESTED USE/PURPOSE	To identify trends in supplier diversity progress for MWBE Law Firms based on dollars spent.										
FORMULA ELEMENTS	<p>\$MWBE Law Firms = \$MWLS by Period</p> <p>Where:</p> <ul style="list-style-type: none"> \$MWLS = Dollars spent with MWBE Law Firms by Period (e.g., month, quarter, year) 										
EXAMPLE	<p>\$MWLS1 = \$65,000 for February</p> <p>\$MWLS2 = \$110,000 for March</p> <p>\$MWLS3 = \$147,000 for April</p> <p>\$MWLS4 = \$275,000 for May</p>										
KEY ANALYSIS OR PROCESSING QUESTIONS TO EXAMINE FOR THIS MEASURE	<ul style="list-style-type: none"> How does this percentage compare by location or region? How does this figure compare with others in our industry? Our competition? What are the business implications and consequences of this number based upon the organization's strategic objectives? What should our next steps be in light of this information? Why? When? Who? How? What barriers exist? 										
POSSIBLE GRAPHIC ILLUSTRATION	<p>Dollars Spent with MWBE Suppliers</p> <table border="1"> <thead> <tr> <th>Period</th> <th>MWBE Supplier Diversity Dollars</th> </tr> </thead> <tbody> <tr> <td>February</td> <td>\$65,000</td> </tr> <tr> <td>March</td> <td>\$110,000</td> </tr> <tr> <td>April</td> <td>\$147,000</td> </tr> <tr> <td>May</td> <td>\$275,000</td> </tr> </tbody> </table>	Period	MWBE Supplier Diversity Dollars	February	\$65,000	March	\$110,000	April	\$147,000	May	\$275,000
Period	MWBE Supplier Diversity Dollars										
February	\$65,000										
March	\$110,000										
April	\$147,000										
May	\$275,000										

Metric 26: Dollars Spent with MWBEs and/or Suppliers

Element	Application
DIVERSITY MEASURE	#/% Diverse Suppliers Utilized
MEASURE DESCRIPTION	This measure is designed to help you analyze the percentage of MWBE Law Firms participating in law department projects
SUGGESTED USE/PURPOSE	To examine the level of participation and support of MWBE Law Firms. These responses can also be compared against internal or external benchmarks
FORMULA ELEMENTS	<p>% MWBE Firms Used = $\frac{\text{NMFU or NWFU}}{\text{TFU}} \times 100$</p> <p>Where:</p> <ul style="list-style-type: none"> • % MWBE Firms Used = Percentage Actual Participation of MWBE Law Firms • NMFU = Number Minority Firms Participating (e.g., 3) • NWFU = Number Women Firms Participating (e.g., 4) • TFU = Total Firms Used (e.g., 35)
EXAMPLE	<p>#/% MWBE Firms Used = $\frac{3}{35} \times 100$</p> <p>= 8.6%</p>
KEY ANALYSIS OR PROCESSING QUESTIONS TO EXAMINE FOR THIS MEASURE	<ul style="list-style-type: none"> • How does this percentage compare by location or region? • How does this figure compare with others in our industry? Our competition? • What are the business implications and consequences of this number based upon the organization's strategic objectives? • What should our next steps be in light of this information? Why? When? Who? How? • What barriers exist?

Metric 27: Percentage of Minority/ Women Outside Counsel Assigned to Legal Matters

Element	Application
DIVERSITY MEASURE	% Women/Minority Attorneys at Majority Owned Firms who are assigned to company's legal matters
MEASURE DESCRIPTION	This measure is designed to help you analyze the percentage of women/minority attorneys at majority owned firms who are potentially positioned to "inherit" the company's book of business after the current engagement partner's retirement
SUGGESTED USE/PURPOSE	To examine the level of participation and support of strategic partners in diversity efforts. Tracking this statistic can also help law departments that have limited career options for in-house attorneys to identify potential openings at other firms outside the organization and/or when hiring identify outstanding candidates for positions within the law department.
FORMULA ELEMENTS	$\% \text{ MWALM} = \frac{\text{NMWALM}}{\text{TFALM}} \times 100$ <p>Where:</p> <ul style="list-style-type: none"> • % MWALM = Percentage of Minorities and Women Assigned to Legal Matters • NMWALM = Number of Minorities or Women Assigned to Legal Matters (e.g., 3) • TFALM = Total number of Firms Assigned to Legal Matters (e.g., 35)
EXAMPLE	$\% \text{ MWPI} = \frac{3}{35} \times 100$ $= 8.6\%$
KEY ANALYSIS OR PROCESSING QUESTIONS TO EXAMINE FOR THIS MEASURE	<ul style="list-style-type: none"> • How does this figure compare to the overall diversity numbers within the law firm for minority and women attorneys? • How does this figure compare to the diversity numbers for minority and women attorneys in the law department? (e.g., if the percentage of women lawyers in the firm equals 25 percent but the percentage of women attorneys working on the company's legal matters is only 10 percent, the company would not appear to be receiving the levels of diversity available within the firm. In this case, additional questions might be asked to determine whether the company's legal needs are in areas of law for which the firm lacks significant numbers of women attorneys?) • How does this figure compare with others in our industry? Our competition? • What are the business implications and consequences of this number based upon the organization's strategic objectives? • What should our next steps be in light of this information? Why? When? Who? How? • What barriers exist?

Metrics 28: Dollars Spent with Firms with Minority and/or Women Engagement Partners

Element	Application															
DIVERSITY MEASURE	\$ Spent with Majority-Owned Firms Where Engagement Partner is a Women or Minority															
MEASURE DESCRIPTION	This measure is designed to help you analyze the dollars spent in support of minority and women engagement partners at majority-owned firms															
SUGGESTED USE/PURPOSE	To identify trends in supplier diversity progress for majority law firms based on dollars spent.															
FORMULA ELEMENTS	<p>\$ Maj Law Firms with MWEP = \$MWEP spent by Period</p> <p>Where:</p> <ul style="list-style-type: none">• \$MWEP = Dollars spent with Minority or Women Engagement Partners from Majority Law Firms by Period (e.g., month, quarter, year)															
EXAMPLE	<p>SMWEP1 = \$65,000 for February SMWEP2 = \$110,000 for March SMWEP3 = \$147,000 for April SMWEP4 = \$275,000 for May</p>															
KEY ANALYSIS OR PROCESSING QUESTIONS TO EXAMINE FOR THIS MEASURE	<ul style="list-style-type: none">• How does this percentage compare by location or region?• How does this figure compare with others in our industry? Our competition?• What are the business implications and consequences of this number based upon the organization’s strategic objectives?• What should our next steps be in light of this information? Why? When? Who? How?• What barriers exist?															
POSSIBLE GRAPHIC ILLUSTRATION	<p>Dollars Spent with MWEP Suppliers at Majority-Owned Firms</p> <table><thead><tr><th>Period</th><th>MWEP \$</th><th>All \$</th></tr></thead><tbody><tr><td>February</td><td>\$1,000,000</td><td>\$65,000</td></tr><tr><td>March</td><td>\$1,000,000</td><td>\$110,000</td></tr><tr><td>April</td><td>\$800,000</td><td>\$147,000</td></tr><tr><td>May</td><td>\$900,000</td><td>\$275,000</td></tr></tbody></table>	Period	MWEP \$	All \$	February	\$1,000,000	\$65,000	March	\$1,000,000	\$110,000	April	\$800,000	\$147,000	May	\$900,000	\$275,000
Period	MWEP \$	All \$														
February	\$1,000,000	\$65,000														
March	\$1,000,000	\$110,000														
April	\$800,000	\$147,000														
May	\$900,000	\$275,000														

Metric 29: Percentage of Billable Hours of Minorities/ Women At Majority-Owned Firms

Element	Application
DIVERSITY MEASURE	% Majority-Owned Firm Billable Hours to Total Hours that Services Delivered by Minority or Women Attorneys
MEASURE DESCRIPTION	This measure is designed to help you analyze what percent of majority-owned firms' billable hours to total hours are delivered by minority or women attorneys.
SUGGESTED USE/PURPOSE	To examine the level of participation and support of strategic partners in diversity efforts. Tracking this statistic can also help law departments that have limited career options for in-house attorneys to identify potential openings at other firms outside the organization and/or identify outstanding candidates for positions within the law department.
FORMULA ELEMENTS	$\% \text{ MajMWTBH} = \frac{\text{NMWATBH}}{\text{MajTBH}} \times 100$ <p>Where:</p> <ul style="list-style-type: none"> • % MajMWTBH = Percentage of Majority Firm Minority and Women Total Billable Hours • NMWATBH = Number Minority or Women Attorneys (e.g., 19,920) • MajTBH = Majority Firm Total Billable Hours (e.g., 350,000)
EXAMPLE	$\% \text{ MajMWTBH} = \frac{19920}{350,000} \times 100$ $= 5.7\%$
KEY ANALYSIS OR PROCESSING QUESTIONS TO EXAMINE FOR THIS MEASURE	<ul style="list-style-type: none"> • How does this percentage compare by location or region? • How does this figure compare with others in our industry? Our competition? • What are the business implications and consequences of this number based upon the organization's strategic objectives? • What should our next steps be in light of this information? Why? When? Who? How? • What barriers exist?

Inclusion Metrics

Moving from Diversity to Inclusion

In order to build your diversity efforts towards the “Inclusion Level”, it is necessary to focus your diversity measurement efforts at an even deeper level that addresses key result areas such as fully represented candidate pools at all levels for promotion and succession planning, diversity-friendly policies, General Counsel placements, minority attorneys and staff who meet competence standards for placement outside the law department in key corporate departments or operations, minority and women individual development plans (IDPs) achieved by position level. It is also important that the definition of diversity be broad and inclusive, capturing all employee segments – gender, race, ethnicity, religion, sexual orientation, disability, etc. This helps move the diversity process from a “proactive” stage to a “strategic capability” stage that promotes full utilization of all people.

Building An Inclusion Metrics Index

Diversity level metrics foster a wider spread utilization of diversity measurement to help assess the impact of diverse workforce representation and retention, promotion, employee satisfaction, building commitment throughout the organization. Inclusion Level metrics help you integrate diversity into the law department’s way of operating and utilize diverse workforce talent and processes as a strategic resource for meeting goals and objectives.

MCCA defines the *Inclusion* level as demonstrating the highest level of commitment and characterized by the integration and measurement of diversity initiatives with the corporation’s long-term strategic goals.

Building An Inclusion Level Index

When building an index that reflects measurement at the Inclusion level, typical critical success factors include:

Summary Lead Indicators

- Human Capital Readiness Level
- Human Capital Competence Level
- Human Capital Commitment Level
- Human Capital Satisfaction Level
- Climate Impact

- Human Capital Depletion Rate and Cost

Key Inclusion Metrics

- Culture and Systems
- Career Path
- Succession Planning
- Work-life programs
- Leadership Accountability
- Compensation Equity
- Compensation-based Objectives
- Verbal Skill and Knowledge Language Other Than English
- Diversity Return on Investment
- Productivity

Sample measures that drive the Inclusion Index

Summary Lead Indicators

- Diversity of Pipeline for Key Positions
- Commitment of Minorities and Women
- High Job Satisfaction Among Women and Minorities
- Work Environment Audit: Weighing Favorable Responses
- Voluntary Separation as a Percentage of Minority Head Count

Key Inclusion Metrics

- Diversity “Neutral” Policy Changes
- Achievement of Individual Development Plans by Level and Position
- Diversity of Succession Pool by Level and Position
- Promotions by Group and Level
- Utilization of Diversity Programs
- Bilingual Legal Personnel by Position and Level
- Diversity Return on Investment (DROI)
- Productivity Comparison Between Heterogeneous and Homogeneous Teams
- \$ Return on investment on key diversity initiatives (DROI)
- Productivity as measured by output quantity, quality and time to complete client projects – Homogeneous versus Heterogeneous (diverse) Legal Teams

Summary Lead Indicators

Corporate law departments depend on their human capital to attain their objectives. People leverage these human assets to achieve their mission and produce for the organization. Therefore, leading indicators should be focused on the characteristics of the workforce. To the experienced eye, they paint a picture of how well the department is positioned for the future. The metrics cover issues such as preparedness, competence, job satisfaction, commitment, and depletion (loss through turnover). They can be viewed on their own merit or combined with other diversity measures to create a diversity measurement scorecard.

Preparedness Measures

There are two measures of preparedness: competence and readiness. The “competence” level is simply the percentage of minorities and women who have demonstrated the skill and knowledge that make them able to meet current and near-term future performance requirements in their current jobs. “Readiness” reflects the percentage of minorities and women who can step into a position above them on short notice.

The future is unpredictable. The department may never know when a key talent will decide to leave or will need to be transferred to support another legal department initiative. Clearly, if the department has backup talent ready to step in immediately, the organization is better prepared for the future than if it would suffer a void for any significant period of time. The one unequivocal demand is a clear description of the required capabilities.

The two preparedness measures – competence and readi-

ness – are testable against a set of standards that you establish. If you detail the requirements for key law department jobs, it should be a simple matter to assess how close the minority and women incumbents or candidates are to attaining them.

Employee Mindset Measures

A second set of predictors deal with the veiled attitudes and feelings of the workforce. Indicators of mindset of the workforce are important. It doesn’t take a great deal of imagination to foresee that dissatisfied employees or employees who have concerns about the culture are unlikely candidates for longevity awards. Very seldom do employees tell us directly that they are unsatisfied. They give subtle signals such as solemn faces, not volunteering for projects, being absent, or working at a slower pace than normal. Surveys of commitment, job satisfaction, culture, and climate yield data points that can be tracked periodically.

Indirect Signals

There is another two-part indicator that is not necessarily a direct leading indicator but is useful to monitor and stimulate action before a major loss occurs. It is depletion rate and cost. Typically, when a person leaves an organization it is called turnover. However, since people are really an asset and resource to the department, when people leaves, the department’s human capital resources are depleted. In general, when a person leave, it costs 1.5 times the salary of the person leaving to replace them with another. The bottom-line is that depletion rates and costs not only cost the department today; it leaves the organization vulnerable in its near-term future until someone replaces the employee who left.

Metric 30: Diversity of Pipeline for Key Positions

Element	Application
DIVERSITY MEASURE	#/% Key law positions with at least one fully-qualified woman or minority ready in the candidate pool (Readiness Level)
MEASURE DESCRIPTION	This measure is designed to help you analyze the number and percent of women or minorities who meet all of the requirements as a fully-qualified candidate for key law positions by level by group
SUGGESTED USE/PURPOSE	This measure is designed to help analyze the department's readiness level to fill key law department positions at the next level with a diverse slate of candidates. It requires an analysis of the "full" readiness of minorities (all demographic groups) and women to be a part of the candidate selection pool. A key question to ask is "Based upon the key legal position we want to fill, how far down in the organization do we have to reach to find a minority or woman who would be the next person in line to fill this position?"
FORMULA ELEMENTS	There is no formula for this measure. The organizational entity responsible for monitoring and assessing the organization's career development and succession planning should periodically check the level of "readiness" for all key legal positions such that a diverse candidate slate is available. A diverse candidate slate is defined as " <u>at least</u> " one minority and one woman in the candidate pool. There should be "more than one" of each qualified to be in the candidate pool, however, there must be at least one of each group in the candidate pool.

Metric 31: Commitment of Minorities/ Women

Element	Application						
DIVERSITY MEASURE	#/% Women and minority law department employees expecting to stay at least 3 years (Commitment Level).						
MEASURE DESCRIPTION	This measure is designed to help you analyze the level of law department personnel commitment as reflected in the percentage of favorable response received on a cultural and systems audit assessment by question.						
SUGGESTED USE/PURPOSE	To examine the level of commitment that exists among law department staff by group to determine if there are any perceived problems that must be addressed. These responses can also be compared against internal or external benchmarks.						
FORMULA ELEMENTS	$\% \text{ MWCL} = \frac{\text{NMWC}}{\text{TPMW}} \times 100$ <p>Where:</p> <ul style="list-style-type: none"> • % MWCL = Percentage of Minority and Women Level of Commitment to Stay with the Department at least 3 years • NMWC = Number of Favorable Responses from Minorities and Women Combined (e.g., 80) • AO = All Others Commitment (e.g., 137) • TPAO = Total Possible Responses All Others (e.g., 157) • TPMW = Total Possible Responses Minorities and Women (e.g., 142) 						
EXAMPLE	$\% \text{ MWCL} = \frac{80}{142} \times 100$ $= 56.3\%$						
KEY ANALYSIS OR PROCESSING QUESTIONS TO EXAMINE FOR THIS MEASURE	<ul style="list-style-type: none"> • How does this percentage compare by location or region? • How does this figure compare with others in our industry? Our competition? • What are the business implications and consequences of this number based upon the organization's strategic objectives? • What should our next steps be in light of this information? Why? When? Who? How? • What barriers exist? 						
POSSIBLE GRAPHIC ILLUSTRATION	<p style="text-align: center;">Minority and Women Human Capital Commitment Level</p> <table border="1"> <thead> <tr> <th>Category</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Actual Commitment</td> <td>56%</td> </tr> <tr> <td>Not Committed</td> <td>44%</td> </tr> </tbody> </table>	Category	Percentage	Actual Commitment	56%	Not Committed	44%
Category	Percentage						
Actual Commitment	56%						
Not Committed	44%						

Metric 31: High Job Satisfaction Among Women and Minorities

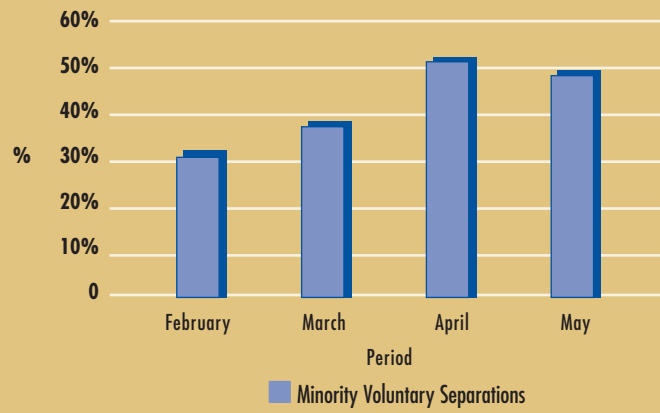
Element	Application						
DIVERSITY MEASURE	#% Women and Minority employees scoring in top quartile of the job satisfaction survey (satisfaction level)						
MEASURE DESCRIPTION	This measure is designed to help you analyze the level of law department personnel satisfaction as reflected in the percentage of favorable response (above 75th percentile) received on a cultural and systems audit assessment by question.						
SUGGESTED USE/PURPOSE	To examine the level of satisfaction that exists among law department staff by group to determine if there are any perceived problems that must be addressed. These responses can also be compared against internal or external benchmarks						
FORMULA ELEMENTS	$\% \text{ MWSat} = \frac{\text{NMWSat}}{\text{TPMW}} \times 100$ <p>Where:</p> <ul style="list-style-type: none"> • % MWSat = Percentage of Minority and Women Level of Satisfaction with the Department • NMWSat = Number of Favorable Responses from Minorities and Women Combined (e.g., 80) • TPMW = Total Possible Responses Minorities and Women (e.g., 142) 						
EXAMPLE	$\% \text{ MWSat} = \frac{80}{142} \times 100$ $= 56.3\%$						
KEY ANALYSIS OR PROCESSING QUESTIONS TO EXAMINE FOR THIS MEASURE	<ul style="list-style-type: none"> • How does this percentage compare by location or region? • How does this figure compare with others in our industry? Our competition? • What are the business implications and consequences of this number based upon the organization's strategic objectives? • What should our next steps be in light of this information? Why? When? Who? How? • What barriers exist? 						
POSSIBLE GRAPHIC ILLUSTRATION	<p style="text-align: center;">Minority and Women Human Capital Satisfaction Level</p> <table border="1"> <caption>Minority and Women Human Capital Satisfaction Level Data</caption> <thead> <tr> <th>Satisfaction Level</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Satisfaction in Top %tile</td> <td>56%</td> </tr> <tr> <td>Satisfaction Below %tile</td> <td>44%</td> </tr> </tbody> </table>	Satisfaction Level	Percentage	Satisfaction in Top %tile	56%	Satisfaction Below %tile	44%
Satisfaction Level	Percentage						
Satisfaction in Top %tile	56%						
Satisfaction Below %tile	44%						

Metric 33: Voluntary Separation As a Percentage of Minority Head Count

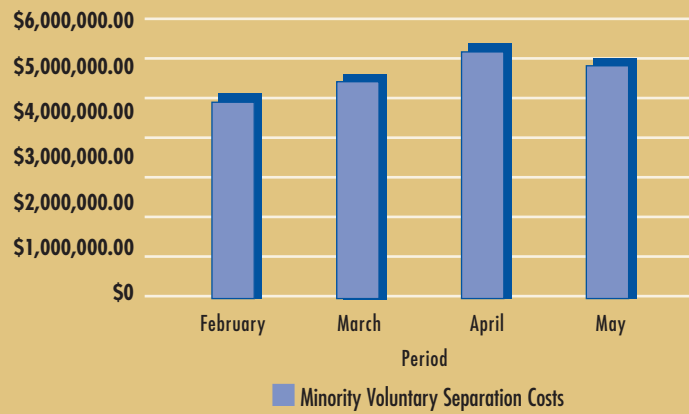
Element	Application
DIVERSITY MEASURE	Voluntary Separation as a percentage of minority head count and the cost of separations (depletion rate and cost)
MEASURE DESCRIPTION	This measure is designed to help you track the percentage of voluntary separations by minorities and the total dollar cost of those separations.
SUGGESTED USE/PURPOSE	To examine the level of impact that voluntary separations have had on the department.
FORMULA ELEMENTS	<p>$\% \text{ MVS} = \frac{\text{NMVS}}{\text{TMHC}} \times 100$</p> <p>Where:</p> <ul style="list-style-type: none"> % Minority Voluntary Separations = Percentage Minority Voluntary Separations NMVS = Number Minority Voluntary Separations (e.g., 45) TMHC = Total Minority Headcount (e.g., 142) <p>$\\$ \text{ MVSC} = \text{NMVS} \times (\text{MedSal} \times 1.5)$</p> <p>Where:</p> <ul style="list-style-type: none"> SMSC = Minority Voluntary Separations Cost NMVS = Number Minority Voluntary Separations (e.g., 45) MedSal = Median Salary for the Separation Group (\$65,000)
EXAMPLE	<p>$\% \text{ MVS} = \frac{45}{142} \times 100$ = 32%</p> <p>$\\$ \text{ MVSC} = 45 (\\$65,000 \times 1.5)$ = \$4,387,500</p>
KEY ANALYSIS OR PROCESSING QUESTIONS TO EXAMINE FOR THIS MEASURE	<ul style="list-style-type: none"> How does this percentage compare by location or region? How does this figure compare with others in our industry? Our competition? What are the business implications and consequences of this number based upon the organization's strategic objectives? What should our next steps be in light of this information? Why? When? Who? How? What barriers exist?

**POSSIBLE GRAPHIC
ILLUSTRATION**

Minority Human Capital Depletion Rate



Minority Human Capital Depletion Costs



Metric 34: Diversity “Neutral” Policy Changes

Element	Application
DIVERSITY MEASURE	#/% Policies Changed to “Diversity Friendly”
MEASURE DESCRIPTION	<p>These are “soft” measures to gauge whether policies and procedures have been examined and changed to support a more diversity-friendly climate. The following systems issues should be checked</p> <ul style="list-style-type: none"> • Number and type of policies and procedures assessed for diverse workforce impact • Number and type of policies and procedures changed to support diversity
SUGGESTED USE/PURPOSE	These measures help you monitor specific actions taken and changes made to strategically align law department operations with diversity initiatives.
FORMULA	There is no formula for this measure. The organizational entity responsible for monitoring the organization’s commitment to diversity can periodically scan policies to assess their consistency with diversity initiatives. In addition, the following form can be used for tracking purposes

Figure 11: Sample Progress Report on Employment Policy Changes

NUMBER	POLICY / PROCEDURE	DIVERSITY IMPACT	STATUS: CHANGE NO-CHANGE PENDING	COMMENTS
			C,NC,P	
2.1.1	Departmental Succession Planning	<p>In the past, this policy has been based upon talent pools that existed in our current divisional operations without regard to changing market demographics including minorities and women.</p> <p>In the future, we must assess changing demographic statistics to assess our compatibility with the available talent base.</p>	C	<p>This policy is slated for the September strategic business conference for all areas.</p> <p>A diverse, cross-functional task force is being convened to assess and report on specific data and plans by position at this meeting.</p>

Metric 35: Achievement of Individual Development Plans (IDPs) by Level and Position

Element	Application						
DIVERSITY MEASURE	#/% Women and Minority IDPs Achieved by position and level						
MEASURE DESCRIPTION	This measure is designed to help you track the number of Individual Development Plans (IDPs) Achieved. This measure is used instead of "number written" since many plans can be written for years but never actually achieved. Thus, whenever a minority or women is considered for a promotion or assignment, they would not possess the required skills or development for selection.						
SUGGESTED USE/PURPOSE	To examine the level of actual development achieved by minorities and women based upon their Individual Development Plans. This metric can be used in a random audit to randomly examine level of development that is supported by different areas of management. This helps to build organizational capability and prevent talent stagnation or plateaus.						
FORMULA ELEMENTS	$\% \text{ MWIDP Achieved} = \frac{\text{NMIDP Ach or NWIDP Ach}}{\text{TMIDP or TWIDP}} \times 100$ <p>Where:</p> <ul style="list-style-type: none"> • % MWIDP Achieved = Percentage Women and Minorities who Achieved the Items on their Individual Development Plans • NMIDP = Number Minorities who Achieved their IDP Development Tasks (e.g., 18) • NWIDP = Number Women who Achieved their IDP Development Tasks (e.g., 32) • TMIDP = Total Minority IDPs (e.g., 54) • TWIDP = Total Women IDPs (e.g., 67) 						
EXAMPLE	$\begin{aligned} \#/\% \text{ MIDP Achieved} &= \frac{18}{54} \times 100 \\ &= 33\% \end{aligned}$						
KEY ANALYSIS OR PROCESSING QUESTIONS TO EXAMINE FOR THIS MEASURE	<ul style="list-style-type: none"> • How does this percentage compare by location or region? • How does this figure compare with others in our industry? Our competition? • What are the business implications and consequences of this number based upon the organization's strategic objectives? • What should our next steps be in light of this information? Why? When? Who? How? • What barriers exist? 						
POSSIBLE GRAPHIC ILLUSTRATION	<p style="text-align: center;">Women & Minority IDP's</p> <table border="1"> <caption>Women & Minority IDP's Data</caption> <thead> <tr> <th>Category</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Not Achieved</td> <td>67%</td> </tr> <tr> <td>Minority IDPs Achieved</td> <td>33%</td> </tr> </tbody> </table>	Category	Percentage	Not Achieved	67%	Minority IDPs Achieved	33%
Category	Percentage						
Not Achieved	67%						
Minority IDPs Achieved	33%						

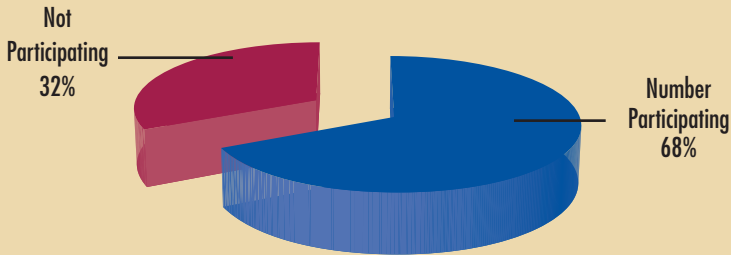
Metric 36: Diversity of Succession Pool by Level, Group and Position

Element	Application										
DIVERSITY MEASURE	#/% Women and Minority Attorneys in Succession Pool by level and position										
MEASURE DESCRIPTION	This measure is designed to help you track the number of minority and women attorneys in the succession planning pool by level and position.										
SUGGESTED USE/PURPOSE	This measure is used to check the utilization of talent in the law department and to determine if the career development systems are working to provide promotion-ready, competent people.										
FORMULA ELEMENTS	$\% \text{ MWSP} = \frac{\text{NMSP or NWSP}}{\text{TSPE}} \times 100$ <p>Where:</p> <ul style="list-style-type: none"> • % MWSP = Percentage Women and Minorities who are included in the succession plan by level by position • NMSP = Number Minorities in the Succession Plan (e.g., 18) • NWSP = Number Women in the Succession Plan (e.g., 32) • TSPE = Total Succession Plan Employees (e.g., 172) 										
EXAMPLE	$\begin{aligned} \#/\% \text{ MWSP} &= \frac{18}{172} \times 100 \\ &= 10.5\% \end{aligned}$										
KEY ANALYSIS OR PROCESSING QUESTIONS TO EXAMINE FOR THIS MEASURE	<ul style="list-style-type: none"> • How does this percentage compare by location or region? • How does this figure compare with others in our industry? Our competition? • What are the business implications and consequences of this number based upon the organization's strategic objectives? • What should our next steps be in light of this information? Why? When? Who? How? • What barriers exist? 										
POSSIBLE GRAPHIC ILLUSTRATION	<p style="text-align: center;">Minorities Included in Succession Plans</p> <table border="1"> <thead> <tr> <th>Period</th> <th>Minorities Included in Succession Plans (%)</th> </tr> </thead> <tbody> <tr> <td>February</td> <td>10.5</td> </tr> <tr> <td>March</td> <td>15.0</td> </tr> <tr> <td>April</td> <td>18.5</td> </tr> <tr> <td>May</td> <td>17.5</td> </tr> </tbody> </table> <p style="text-align: center;">■ Minorities Included in Succession Plans</p>	Period	Minorities Included in Succession Plans (%)	February	10.5	March	15.0	April	18.5	May	17.5
Period	Minorities Included in Succession Plans (%)										
February	10.5										
March	15.0										
April	18.5										
May	17.5										

Metric 37: Promotion by Group and Level

Element	Application
DIVERSITY MEASURE	#/% Women and Minority Promotions by level by position
MEASURE DESCRIPTION	This measure is designed to help you track the number of minorities and women promoted within the department by level and by position. This metric serves as an indirect measure of pipeline utilization for strategic capability development.
SUGGESTED USE/PURPOSE	To examine the level of actual development and use of skills within the ranks of minorities and women. This measure can be to examine level of development that is supported by different areas of management. This helps to build organizational capability and prevent talent stagnation or plateaus. The measure should be taken over a defined period of time to track progress.
FORMULA ELEMENTS	$\#/\% \text{ MWPromo} = \frac{\text{NMPromo or NWPromo}}{\text{TM or TW}} \times 100$ <p>Where:</p> <ul style="list-style-type: none"> • #/% MWPromo = Number or Percentage Women and Minorities promoted to higher levels of responsibility in the department • NMPromo = Number Minorities Promoted (e.g., 5) • NWPromo = Number Women Promoted (e.g., 16) • TM = Total Minorities (e.g., 54) • TW = Total Women (e.g., 67)
EXAMPLE	$\#/\% \text{ MWPromo} = \frac{5}{54} \times 100$ $= 9.3\%$
KEY ANALYSIS OR PROCESSING QUESTIONS TO EXAMINE FOR THIS MEASURE	<ul style="list-style-type: none"> • How does this percentage compare by location or region? • How does this figure compare with others in our industry? Our competition? • What are the business implications and consequences of this number based upon the organization's strategic objectives? • What should our next steps be in light of this information? Why? When? Who? How? • What barriers exist?

Metric 38: Utilization of Diversity Programs

Element	Application						
DIVERSITY MEASURE	#/% Program Utilization (work/life programs, leadership development, educational training, community programs, affinity groups, etc.) as measured by participation and/or attendance						
MEASURE DESCRIPTION	This measure is designed to help you track the usage of work/life, leadership, and other diversity programs as measured by the department's percentage of participation in these offerings.						
SUGGESTED USE/PURPOSE	To examine the level of actual use of the diversity programs that is aimed to improve diversity climate, awareness, and skills.						
FORMULA ELEMENTS	$\% \text{ PrgUtil} = \frac{\text{NP}}{\text{TPP}} \times 100$ <p>Where:</p> <ul style="list-style-type: none"> • % PrgUtil = Percentage Program Utilization • NP = Number Participating (e.g., 65) • TPP = Total Possible Participants (e.g., 95) 						
EXAMPLE	$\% \text{ PrgUtil} = \frac{65}{95} \times 100$ $= 68.4\%$						
KEY ANALYSIS OR PROCESSING QUESTIONS TO EXAMINE FOR THIS MEASURE	<ul style="list-style-type: none"> • How does this percentage compare by location or region? • How does this figure compare with others in our industry? Our competition? • What are the business implications and consequences of this number based upon the organization's strategic objectives? • What should our next steps be in light of this information? Why? When? Who? How? • What barriers exist? 						
POSSIBLE GRAPHIC ILLUSTRATION	<p style="text-align: center;">% Program Utilization</p>  <table border="1"> <caption>% Program Utilization Data</caption> <thead> <tr> <th>Category</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Number Participating</td> <td>68%</td> </tr> <tr> <td>Not Participating</td> <td>32%</td> </tr> </tbody> </table>	Category	Percentage	Number Participating	68%	Not Participating	32%
Category	Percentage						
Number Participating	68%						
Not Participating	32%						

Metric 39: Bilingual Legal Personnel by Position and Level

Element	Application						
DIVERSITY MEASURE	#/% Bilingual Legal Personnel by position and level						
MEASURE DESCRIPTION	This measure is designed to help track the bilingual capability of the diverse legal workforce. This capability is critical and a competitive advantage, especially when working in venues that require language flexibility. In this diverse society, language flexibility is a key strategic advantage.						
SUGGESTED USE/PURPOSE	To examine the level of language capability that exists among legal personnel by level and by position. This statistic should be checked periodically to make certain full use of these employee assets are employed. Utilization of these skills helps demonstrate an inclusive environment where all difference are valued and utilized.						
FORMULA ELEMENTS	$\#/\% \text{ BLLP} = \frac{\text{NBLE}}{\text{TE}} \times 100$ <p>Where:</p> <ul style="list-style-type: none"> • #/% BLE = Number or Percentage of Bilingual Legal Personnel • NBLE = Number Bilingual Employees (e.g., 22) • TE = Total Employees (e.g., 275) 						
EXAMPLE	$\#/\% \text{ BLLP} = \frac{22}{275} \times 100$ $= 8\%$						
KEY ANALYSIS OR PROCESSING QUESTIONS TO EXAMINE FOR THIS MEASURE	<ul style="list-style-type: none"> • How does this percentage compare by location or region? • How does this figure compare with others in our industry? Our competition? • What are the business implications and consequences of this number based upon the organization's strategic objectives? • What should our next steps be in light of this information? Why? When? Who? How? • What barriers exist? 						
POSSIBLE GRAPHIC ILLUSTRATION	<p>Law Department Language Capability Audit</p> <table border="1"> <thead> <tr> <th>Category</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Number With One Language Skill</td> <td>92%</td> </tr> <tr> <td>Number Bilingual</td> <td>8%</td> </tr> </tbody> </table>	Category	Percentage	Number With One Language Skill	92%	Number Bilingual	8%
Category	Percentage						
Number With One Language Skill	92%						
Number Bilingual	8%						

Metric 40: Diversity Return On Investment (DROI)

DROI Fundamentals

Annualized Values

The DROI formula presented here will use annualized values so that the first year impact of the diversity initiative's investment is developed. Using annualized values is becoming a generally accepted "best practice" for developing DROI in organizations. This approach is a conservative way to develop DROI, since many short-term diversity initiatives have added value in the second or third year. For long-term diversity initiatives, annualized values are inappropriate and longer time frames need to be used.

When selecting the approach to measure DROI, it is important to communicate to the target audience the formula used and the assumptions made to arrive at the decision to use it. This action can avoid misunderstandings and confusion surrounding how the DROI value was actually developed. Although several approaches can be described, two stand out as the preferred methods—the benefit/cost ratio and the basic DROI formula.

Benefit/Cost Ratio

One of the earliest methods for evaluating investments in diversity initiatives is the benefit/costs ratio (read as the benefits-to-costs ratio). This method compares the benefits of the program to the costs in a ratio. In formula form, the ratio is:

$$\text{BCR} = \frac{\text{Diversity Initiative Benefits}}{\text{Diversity Initiative Costs}}$$

In simple terms, the BCR compares the annual economic benefits of the diversity initiative to the cost of the initiative. A BCR of one means that the benefits equal the costs. A BCR of two, usually written as 2:1, indicates that for each dollar spent on the diversity initiative, two dollars were returned as benefits.

The following example will illustrate the use of the benefit/cost ratio. A diversity leadership initiative, designed for managers and supervisors, was implemented at an electric and gas utility. In a follow-up evaluation, action planning and business performance monitoring were used to capture benefits. The first year payoff for the initiative was \$1,077,750. The total fully-loaded implementation cost was \$215,500. Thus, the ratio was:

$$\text{BCR} = \frac{\$1,077,750}{\$215,500} = 5:1$$

For every one dollar invested in the diversity initiative, five dollars in benefits were returned.

The principal advantage of using this approach is that it avoids traditional financial measures so that there is no confusion when comparing diversity initiative investments with other investments in the organization. Investments in plants, equipment, or subsidiaries, for example, are not usually evaluated with the benefits/cost method. Some executives prefer not to use the same method to compare the returns in diversity with the returns on other investments. Consequently, this method for calculating diversity return on investment stands out as a unique type of evaluation.

Unfortunately, there is no standard as to what constitutes an acceptable benefits/cost ratio for diversity. A standard should be established within an organization, perhaps even for a specific type of diversity initiative. However, a 1:1 ratio is unacceptable for most programs, and in some organizations, a 1.25:1 ratio is required, where 1.25 times the cost is the benefit.

The DROI Formula

Perhaps the most appropriate formula for evaluating an investment in a diversity initiative is the net initiative benefits divided by costs. The ratio is usually expressed as a percent where the fractional values are multiplied by 100. In formula form, the DROI formula is expressed as:

$$\text{DROI}(\%) = \frac{\text{Net Diversity Initiative Benefits}}{\text{Diversity Initiative Costs}} \times 100$$

Net benefits are diversity initiative benefits minus the diversity initiative costs. The DROI value is related to the BCR by a factor of one. For example, a BCR of 2.45 is the same as a DROI value of 145%. This formula is essentially the same as ROI in other types of investments. For example, when a firm builds a new plant, the ROI is found by dividing annual earnings by the investment. The annual earnings are comparable to net benefits (annual benefits minus the cost). The investment is comparable to the diversity initiative costs, which represent the investment in the initiative.

A DROI on a diversity investment of 50% means that the costs are recovered and an additional 50% of the costs are reported as "earnings". A diversity investment of 150% indicates that the costs have been recovered and an additional 1.5 multiplied by the costs is captured

as “earnings.” An example illustrates the DROI calculation.

Magnavox Electronics Systems Company conducted utilizing diversity initiatives focused on an 18-week literacy program for entry-level electrical and mechanical assemblers (Ford, D, “Three Rs in the Workplace”, in “In Action: Measuring Return on Investment”, Vol.1, J. Phillips (Ed.), Alexandria, VA: American Society for Training and Development, 1994, pp85-104.) The results of the program were impressive. Productivity and quality alone yielded an annual value of \$321,600. The total fully loaded costs for the program were \$38,233. Thus, the diversity return on investment becomes:

$$\text{DROI}(\%) = \frac{\$321,600 - \$38,233}{\$38,233} \times 100 = 741\%$$

For each dollar invested, Magnavox received \$7.4 dollars in return after the cost of the program had been recovered.

Using the DROI formula essentially places diversity investments on a level playing field with other investments using the same formula and similar concepts. Key management and financial executives who regularly use ROI with other investments easily understand the DROI calculation.

While there are no generally accepted standards, some organizations establish a minimum requirement or hurdle rate for an ROI in human resource-based programs. An ROI minimum of 25% is set by some organizations. The same will eventually be true for diversity initiatives. This target value is usually above the percentage required for other types of investments. The rationale: the ROI process for human resources based initiatives is still relatively new and often involves some subjective input, including estimations (however, these estimates are no different than estimates of inflation, interest rates, mortgage rates, actuarial tables and the like). Because of that, a higher standard is required or suggested, with 25% being the desired figure for these organizations. There a DROI higher than 25% reflects a positive diversity value for the organization.

Metric 41: Productivity Comparison Between Heterogeneous and Homogeneous Teams

There is often a great deal of interest in whether homogeneous teams outperform heterogeneous teams. A lot depends on the objectives and the intended outcomes of the team effort for the department and/or the client. What the research has clearly shown is that diverse teams may take slightly longer to process the same data, however, the quality of the end product is often more innovative, and of higher perceived quality.

Before describing some specific strategies to convert either hard or soft data to productivity values for the team, the basic steps used to convert data are highlighted here. These steps should be followed for each data conversion process whether the unit of measure is quality, output quantity, or time.

Focus on the Unit of Measure. First, identify a unit of improvement. For output data, the unit of measure is the item produced, service provided or sale consummated. Time measures are varied and include items such as the time to complete a project, cycle time, or team response time. The unit is usually expressed as minutes, hours, or days. Quality is a common measure, and the unit may be one error, reject, defect, rework item or some outcome that is judged based upon a specific set of criteria that constitutes “quality” for that specific outcome. Soft data measures are varied, and the unit of improvement may include items such as a grievance, an absence, an employee turnover statistic, or a one-point change in the law department employee satisfaction index.

Determine the Value of Each Unit. Place a value (V) on the unit identified in the first step. For measures of law team production, quality, cost, and time, the process is relatively easy. Most organizations have records or reports reflecting the value of items such as one unit of production (billable hours to produce an item), settlement costs, wages per hour, etc. Soft data are more difficult to convert to a value, since the cost of one absence, one grievance, or a one-point change in the diversity attitude survey is often more difficult to pinpoint. When more than one value is available, either the most credible or the lowest value should be used.

Calculate the Change in Performance Data.

Calculate the change in output data after the effects of the diversity initiative have been isolated from other influences. The change (DP) is the performance improvement, measured as hard or soft data that is directly attributable to the diversity initiative. The value

may represent the performance improvement for individuals, a team, a group or several groups of participants or an organization.

Determine an Annual Amount for the Change.

Annualize the DP value to develop a total change in the performance data for one year. This procedure has become a standard approach with many organizations that wish to capture the total benefits of the diversity initiative. Although the benefits may not be realized at the same level for an entire year, some diversity initiatives will continue to produce benefits beyond one year. Therefore, using one year of benefits is considered a conservative approach.

Calculate the Total Value of the Improvement.

Develop the total value of improvement by multiplying the annual performance change (DP) by the unit value (V) for the complete performance group in question. For example, if one law team for a diversity initiative is being evaluated, the total value will include the total improvement for all participants in the team. This value for annual diversity initiative benefits is then compared to the cost of the diversity initiative usually through the diversity return on investment (DROI) calculation.

Strategies for Converting Data to Monetary Values

An example taken from a cross-functional team building initiative in a law department describes the five-step process of converting data to monetary values. This initiative was developed and implemented after a needs assessment revealed that a lack of diverse workgroup teamwork was causing an excessive number of grievances. This diversity initiative was designed to reduce the number of grievances filed after step two in a multi-step grievance process. This is the step in which the grievance is recorded in writing and becomes a measurable “soft” data item that could get escalated to a formal grievance after this step. Therefore, the actual number of grievances resolved at step two in the grievance process was selected as an output measure. The table diagram below illustrates the steps taken to assign a monetary value to the data. The total monetary impact of this diversity initiative was \$546,000.

There are a number of strategies available to convert data to monetary values. This is just one example of the basics you can use to evaluate your department’s impact utilizing inclusive diverse workforce development techniques.

Figure 12: Converting Team Productivity Values to Monetary Values

Setting: Diverse Workgroup Teambuilding Initiative in a Law Department	
Steps	Description
1	<u>Focus on a Unit of Improvement</u> One grievance reaching Step two in the four-step grievance resolution process
2	<u>Determine a Value of Each Unit</u> Using internal experts—the Labor Relations staff and the Diversity Staff—the cost of an average grievance was estimated to be \$6,500 when considering time and direct costs. ($V = \$6,500$)
3	<u>Calculate the Change in Performance Data</u> Six months after the initiative was completed, total grievances per month reaching step two declined by ten. Seven of the ten grievance reductions were related to the diversity initiative as determined by Law Department supervisors (<i>Isolating the Effects of Diversity</i>)
4	<u>Determine an Annual Amount for the Change</u> Using the six month value, seven per month, yields an annual improvement of 84 (ΔP)
5	<u>Calculate the Annual Value of the Improvement</u> $\begin{aligned} \text{Annual Value} &= \Delta P \times V \\ &= 84 \times \$6,500 \\ &= \$546,000 \end{aligned}$

Creating an “Inclusion” Level Scorecard Index

The procedure for constructing a Family of Measures oriented scorecard for the Inclusion level is similar to the Compliance and Diversity level scorecards. The example shown below illustrates a family of measures with four interrelated, yet separate, aspects of performance for a corporate legal department at the Inclusion phase of the

Pathways diversity continuum. The measures were created after group reflection on the organization’s mission, goals, and objectives.

Once the basic family of measures has been identified, an Inclusion Level Scorecard can be created to assess the law department’s progress.

Figure 13: Family of Measures – Inclusion Level

Dimension	Description
FOCUS	<input type="checkbox"/> Pathways: Inclusion Level Performance
MISSION	<input type="checkbox"/> Demonstrate a full integration and utilization of diversity as a strategic resource designed to meet the goals and objectives of the organization
STRATEGIC OBJECTIVES	<input type="checkbox"/> Maintain at Least an 85% Human Capital Readiness Level by 30% the percentage of Minority Law Clerks and Interns with Disabilities <input type="checkbox"/> Maintain at Least a 95% Favorable Response from all Groups on Climate Impact Level <input type="checkbox"/> Reduce the Human Capital Depletion Rate to Less than 5% <input type="checkbox"/> Increase the Number of Women and Minorities Trained in Key Strategic Legal Capability Competency Areas
CANDIDATES FOR FAMILY OF MEASURES	<input type="checkbox"/> #/% Increase in the Number of Key Law Positions with at Least One Fully Qualified Women and Minority Person Ready in the Candidate Pool <input type="checkbox"/> #/% Increase in Women and Minorities who rate the Law Department Climate at 95% Favorable <input type="checkbox"/> Reduce the Voluntary Separation Rate as a Percentage of Minority Head Count to Less than 5% <input type="checkbox"/> #/% Women and Minorities Trained in Key Strategic Legal Competency Areas
FINAL (WEIGHTED) FAMILY OF MEASURES	<input type="checkbox"/> #/% Increase in the Number of Key Law Positions with at Least One Fully Qualified Women and Minority Person Ready in the Candidate Pool <input type="checkbox"/> #/% Increase in Women and Minorities who rate the Law Department Climate at 95% Favorable <input type="checkbox"/> Reduce the Voluntary Separation Rate as a Percentage of Minority Head Count to Less than 5% <input type="checkbox"/> #/% Women and Minorities Trained in Key Strategic Legal Competency Areas

Figure 14: Sample Inclusion Level Scorecard

Sample Inclusion Level Scorecard					
Productivity Criteria		% Positions with at Least One Qualified Woman and Minority Candidate	% Women Minority Rating Climate 95% Favorable	% Minority Voluntary Separation Rate Less than 5% of Minority Head Count	% Women and Minority Trained in Key Competency Areas Etc.
Performance		25	57	62	40
Stretch Value	10	95	98	98	95
	9	85	97	95	85
	8	75	96	92	75
Target Value	7	65	95	89	65
	6	55	68	86	55
Values	5	40	66	80	40
	4	30	61	74	30
Base Value	3	25	56	71	25
	2	17	51	65	17
	1	13	46	62	13
	0	10	41	61	10
Score		3.0	3.2	1.0	5.0
Weight		35	25	20	20
Value		105	80	20	100
INDEX:	305 *				

* This index score is 305 points out of a possible perfect score of 1,000.

Using an Inclusion Scorecard Index

The family of measures method, again, provides an excellent basis for constructing an Inclusion Level measurement scorecard to track progress in the Inclusion Level strategic initiatives. The example discussed above reflects an Inclusion Level scorecard. Here's how the example is calculated. We will review the calculation for the first three measures to give you a feel for how the process works.

After a period of 1 year, using the corporate legal department's Diversity Measurement Scorecard, the department achieved the following performance in the Inclusion Area:

1. During the year, the department increased the "Percentage of Positions with at Least One Qualified Women and Minority Candidate" measure from a baseline of 20% at the beginning of the year to a performance level of 25% by the end of the year. So, the percentage of **Positions with at Least One Qualified Women and Minority Candidate** = 25%. If you look up 25% in the range under this measure on the scorecard, you find that 25% gets a value of "3". Since it was weighted in importance as 35% of the total index score (see weight), the "Value" to the Inclusion Scorecard is $3 \times 35 = 105$ points.
2. During the year, the legal department just barely in-

creased the number of women and minorities giving the Climate a 95% Favorable rating. They achieved a performance level of only 57% by the end of the year. So, the number or percentage of **Women and Minorities Rating Climate 95% Favorable** = 57%. If you look up 57% in the range under the #% Women and Minorities Rating Climate 95% Favorable measure on the Scorecard, you find that 57% is between a value of "3" and "4". The Scorecard rule is that it's necessary to interpolate between whole row numbers. Thus, if row 4's total value is 61 and row 3's total value is 56, an actual value of 57 would earn an approximate score of 3.2 (3.0 + 1/5 of 1.0). Insert the interpolated score in the row called "Value". Since it was weighted in importance as 25% of the total index score (see weight), the "Value" to the Inclusion Scorecard is $3.2 \times 25 = 80$ points.

3. During the year, the law department reduced the Minority Voluntary Separation Rate and increased the number of Minority groups that have a separation rate less than 5% of their head count. They began from a baseline of 71% at the beginning of the year and reduced the separation rate to a performance level of 62% of the Minority Head Count by the end of the year. So, the percent of **Minority Voluntary Separation Rate Less than 5% of Minority Head Count** = 62%. If you look up 62% in the range under the Percentage of Minority Voluntary Separation Rate Less than 5% Minority Head Count" measure on the Scorecard, you find that 62% equals a value of "1". Insert this score in the row called "Value". Since it was weighted in importance as 20% of the total index score

(see weight), the "Value" to the Inclusion Scorecard is $1 \times 20 = 20$ points.

4. And so on...

At the bottom of the index, you see a Scorecard Index = to 305 points (the total of all of the "Value" calculations: $105 + 80 + 20 + 100$). This is out of a possible 1000 points. To see how the organization scored overall on the Inclusion Level Scorecard use the "Scorecard Rating" breakpoints shown here.

Scorecard Rating:

Superior: 900 - 1000

Average: 600 - 899

Below: 300 - 599

This score is compared over time to identify trends in performance. The "Scorecard Rating" breakpoint levels are set by the Diversity organization within the legal department.

By creating and utilizing *Compliance, Diversity, and Inclusion* Scorecards, departments are able to identify specific levels of performance and indicators of success. By calculating the return on investment of dollars allocated to a diversity initiative or showing the financial benefits of diversity benchmarked against previous years such as litigation costs by complaints/ grievances, productivity of homogeneous group vs. heterogeneous, diverse group, program utilization/participation rates and the like, the law department is able to target, assess and improve its performance along the path towards Inclusion.

Maintaining and Enhancing Your Diversity Advantage

Building Centers of Excellence

It is useful to think of the *Pathways to Inclusion* as a progressive process of fully utilizing all that an individual brings to the workplace and the process synergies that can be gained by fully integrating diversity in the way the law department gets things done. To fully achieve an Inclusive level of functioning, law departments will have to build communities of practice focused on diversity and create a Center of Excellence that integrates and utilizes the best practices and processes that emerge.

As a Center of Excellence, the law department must have General Counsel and top management commitment that diversity is strategically aligned with the organization's objectives and is fully supported at all levels. There must be broad ownership to utilize a wide range of diversity beyond race and gender (i.e., that defines diversity to include religion, ethnicity, sexual orientation, disability, etc.).

It is certainly not an overstatement that understanding the dynamics of change is essential to effectively measure the *Pathways* from *Compliance* to *Diversity* to *Inclusion*. Valuing, utilizing and measuring the impact diversity often represents a fundamental change in the way organizations have traditionally conducted business and usually met with some resistance. Law departments are no different. When an innovation or change like measuring a law department's implementation and integration of diversity, everyone will not immediately want to adopt it. Instead, this kind of change is typically greeted with enthusiasm by some, skepticism by many and even hostility by a few. Like any new idea, measuring the diversity *Pathways* moves through the organization, gaining momentum, and support in a predictable pattern.

In the early stages of introduction, this process will be adopted by a small group of idealistic, committed people. Later on after the trial and error stage is over and there are successful results to point to among early adopters, the majority of the law department will begin to buy-in. Eventually, if implementation is successful, development along the *Pathways* towards an inclusive, diversity supportive environment will become part of the mainstream law department culture with just a few laggards left to continue resisting it.

While there is always a small group ahead of the curve when it comes to accepting new ideas, most people will only adopt the *Pathways* measurement approach after sat-

isfying themselves that this change is not just a fad. They will first want to be certain that the change will not harm them and that it will lead to favorable results. In deciding whether or not to buy in, they will want to know how implementing and measuring the *Pathways* metrics will impact them personally as well as others. Some will require bottom-line evidence that taking the time to implement and measure their *Pathways* progress makes good financial and legal sense. Others will require assurances that the General Counsel and top management really support this change before they will adopt it. As with any new idea, there will also be a small segment of the department that never buys in – or is only willing to accept this change after the *Pathways* process is thoroughly institutionalized in the organization.

When the law departments recognizes the rich value and strategic advantage diversity can offer when all people are fully included and utilized, only then can it increase its effectiveness as an implementer of change to achieve a higher level of success.

Incorporating Metrics into Current or Future Diversity Plans

Often, the best place to start when incorporating metrics into current and future diversity plans is to examine and build on those things that are already being measured. For example, if measuring standard recruitment and retention efforts for attorneys is already in place, sorting the current data by demographic group (provided its being captured) is a next logical step. This facilitates an evolutionary path for diversity measurement within the law department.

Figure 15: Incorporation of Metrics Into Sample Diversity Plan

Dimension	Description
FOCUS	<input type="checkbox"/> Pathways: Inclusion Level Performance — U.S. Legal Department
MISSION	Create and Maintain: <ul style="list-style-type: none"> <input type="checkbox"/> A diverse workforce <input type="checkbox"/> An inclusive workforce <input type="checkbox"/> Business relations with a diverse pool of vendors
STRATEGIC OBJECTIVES	<ul style="list-style-type: none"> <input type="checkbox"/> Create and maintain at least a ____% diversity competent workforce (based upon identified group diversity skills and leadership competency model standards) <input type="checkbox"/> Create and Maintain a Balanced Workforce benchmarked against a combined profile of a diverse mix of Law School graduates (This graduate benchmarking profile would include Historically Black Colleges and Universities (HBCU), Hispanic Association of Colleges and Universities (HACU), traditional college, etc.) Civilian Labor Force and Graduation profiles could be used for staff groups who represent “other than attorneys” in the department <input type="checkbox"/> ____#/% New Hire Retention by Group beyond the 3-year mark (reflecting the objective to retain and advance the best talent effectively and without bias) <input type="checkbox"/> ____#/% Increase in number of High Potential Women and Minority Attorneys who meet competence standards for Key Internal Positions <input type="checkbox"/> ____#/% Increase in number of High Potential Women and Minority Attorneys who meet competence standards for Key External Positions (outside the Law Department in key corporate departments or operations, etc.) <input type="checkbox"/> ____% Favorable Response on Barrier-Free Workplace Survey by group (reflecting the objective to maintain an inclusive and barrier free workplace climate) <input type="checkbox"/> \$ XXX Spent with Minorities and Women who own and work for our vendors and service providers <input type="checkbox"/> etc.
CANDIDATES FOR FAMILY OF MEASURES	<ul style="list-style-type: none"> <input type="checkbox"/> % Diversity competent workforce <input type="checkbox"/> % Benchmark Profile Achieved <input type="checkbox"/> #/% New Hire Retention by Group beyond the 3 year mark (reflecting the objective to retain and advance the best talent effectively and without bias) <input type="checkbox"/> #/% Increase in number of High Potential Women and Minority Attorneys who meet competence standards for Key Internal Positions <input type="checkbox"/> #/% Increase in number of High Potential Women and Minority Attorneys who meet competence standards for Key External Positions (outside the Law Department in key corporate departments or operations, etc.) <input type="checkbox"/> % Favorable Response on Barrier-Free Workplace Survey by group (reflecting the objective to maintain an inclusive and barrier free workplace climate) <input type="checkbox"/> Dollars Spent with Minorities and Women who own and work for our vendors and service providers
FINAL (WEIGHTED) FAMILY OF MEASURES	<ul style="list-style-type: none"> <input type="checkbox"/> % Diversity competent workforce <input type="checkbox"/> % Benchmark Profile Achieved <input type="checkbox"/> #/% Retention by Group beyond the 3-year mark (reflecting the objective to retain and advance the best talent effectively and without bias) <input type="checkbox"/> #/% Increase in number of High Potential Women and Minority Attorneys who meet competence standards for Key External Positions (outside the Law Department in key corporate departments or operations, etc.) <input type="checkbox"/> % Favorable Response on Barrier-Free Workplace Survey by group (reflecting the objective to maintain an inclusive and barrier free workplace climate) <input type="checkbox"/> Dollars Spent with Minorities and Women who own and work for our vendors and service providers

Once the basic family of measures has been identified, an Inclusion level Scorecard can be created to assess the law department’s progress.

Figure 16: Sample Inclusion Level Scorecard for U.S. Law Department

Sample Inclusion Level Scorecard					
Productivity Criteria		% Benchmark Profile Achieved	% Diversity Competent Workforce	% /# New Hires Retained by Group Beyond the 3 Year Mark	% HiPo Women and Minority Trained in Key Competency Areas
Performance					
Stretch Value	10	98	95	98	95
	9	95	85	95	85
	8	92	75	92	75
Target Value	7	89	70	89	65
	6	86	60	86	55
Values	5	80	50	80	40
	4	74	40	74	30
Base Value	3	71	35	71	25
	2	65	25	65	17
	1	62	20	62	13
	0	61	19	61	10
Score					
Weight		25	25	20	20
Value					
INDEX:					

In accordance with previous scorecards, this Inclusion Scorecard could have Index value breakpoint levels to gauge the law department's success based upon its performance and results. This quantitative scorecard, combined with a qualitative assessment of diversity activities can produce a powerful standard to judge the organization's success!

Measuring Diversity: Success Story At Pitney Bowes

By BARBARA FRANKEL

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Many companies these days boast about their diversity progress. Looking at a corporation's organizational chart is a quick way to see if that talk is merely lip service or a serious long-term commitment. Examining the company's methods of measuring diversity implementation, from hiring practices to customer bases to Web initiatives, is an even more detailed way to get at the truth.

So said Henry O. Hernandez Jr., executive director, Global Diversity Leadership, Pitney Bowes Inc., speaking about "Diversity Metrics and Expected Outcomes: Knowing What and How to Measure for Results," at the Conference Board in New York City on March 14.

Hernandez should know. He works for a company that has demonstrated its commitment to diversity since the 1940s, a rarity in this country. In recent years, Stamford, Conn.-based Pitney Bowes Inc., the global provider of integrated mail and document management solutions, has stepped up the pace. Pitney Bowes has instituted a Diversity Task Force, a Diversity Strategic Planning Process, and made the critical decision to place both the business and human-resources diversity initiatives under one department and one leader, Hernandez.

The melding of what often are the two sides of corporate diversity is both unusual and forward thinking, Hernandez said. Hiring diverse people, and monitoring their progress, is essential to reaching the fast-growing multicultural markets. But too many companies keep the two functions separate, which could lead to separate agendas.

"We treat diversity as a foundational core value," Hernandez said. "... Markets and globalization, dealing with customers, that's what's driving a lot of this nowadays." More specifically, Pitney Bowes makes the growth of worldwide market share a strategic objective, along with speaking to customers, in this country and outside, "on their turf" and "in their language."

What's measured in hard numbers? Everything from minority and female representation in first-line supervisory, professional and sales positions to procurement from minority and women-owned businesses. On the latter front,

Hernandez noted that in an environment of declining procurement, Pitney Bowes last year actually increased procurement with minority- and women-owned businesses by 10 percent.

Much of the company's success in this area can be attributed to Web-based initiatives, including Pitney Bowes' new Web page that allows minority and women suppliers to register with the company. Web-based efforts, particularly Pitney Bowes' sponsorship of DiversityInc.com, are beneficial in measuring diversity because "we can see the performance of that site, in terms of click-throughs, impressions and business that comes from that site," Hernandez said.

Making diversity an intrinsic part of business decisions means sometimes refusing to sign deals with companies that don't value it, Hernandez said. But being true to the fundamental business goal of diversity transcends any one business contract.

Hernandez was appointed to his position last year, and has global responsibility for business and corporate initiatives throughout the company. His previous experience includes being Pitney Bowes' director of Business Diversity Development, and as a management consultant with Soza International.

The company categorizes its diversity elements into four parts – the workplace, business diversity (suppliers and markets), community relations, and the worldwide operating plan, including shareholder value.

Each of these segments is measured differently; Hernandez told the meeting of diversity professionals at The Conference Board, a non-profit agency that educates business professionals. And the overall plan linking each business unit also measures diversity achievement against corporate goals.

"It's strategic in the sense that we want it (diversity) linked to the operating plans. In terms of involvement, we have employees through our Diversity Leadership Councils that are involved in many of the activities that revolve around diversity. In fact, a lot of them take ownership and the lead for these activities," Hernandez said.

Hernandez' office reviews the Diversity Strategic Planning process' initial plans, at mid year and at the end of the year, and biannually holds a meeting to share best practices with the diversity Board of Directors, which are the leaders of many of the Diversity Leadership Council groups. Business Unit Diversity ratings are included in figuring bonuses for managers.

To get a top rating, a one, the units must show that all means of communication are used regularly to reinforce the diversity message, that unit leaders are role models and are involved in diversity activities, that diversity objectives are linked to operating plans, and that the diversity model is part of the strategic planning process.

Pitney Bowes examines its diversity success in many ways, Hernandez said, including employee-survey results, representation of women and minorities, checking how many "best companies" lists the company is on, and through anecdotes. The company's definition of diversity embraces culture, ethnicity, gender, religious preference, sexual preference and disabilities.

"Business diversity requires a culture shift," he said.

"We're trying to raise the bar ... you see the demographics – companies that don't do this by 2025, only 24 years from now, are they going to still be listed on Wall Street? I'd be willing to bet that those that don't are not going to be viewed as the industry leaders."



i. Discussion and Analysis of Legal Issues About Diversity

I. AFFIRMATIVE ACTION: DECISIONS BASED ON PROTECTED CHARACTERISTICS

Consideration of the lawfulness of affirmative action efforts to increase recruiting and/or hiring of minorities and women requires a preliminary overview of the law regarding racial preferences under affirmative action plans. Title VII generally prohibits an employer from making employment decisions based on race, color, religion, sex, or national origin of the applicant or employee. 42 U.S.C. Sec. 2000e-2(m). Where an employer has instituted a valid affirmative action plan, however, it may prefer persons of protected classes over nonminorities pursuant to the plan. See *United Steelworkers of America v. Weber*, 443 U.S. 193 (1979) (hiring of minority employees over white employees under a valid affirmative action plan did not violate Title VII); *Johnson v. Transportation Agency*, 480 U.S. 616 (1980) (hiring of female applicant over male applicant not a violation of Title VII where made pursuant to an affirmative action program). Courts will test the validity of an affirmative action plan by first determining if a “manifest imbalance” exists which reflects the under representation of minorities in “traditionally segregated job categories.” *Johnson*, 480 U.S. at 631. In making this determination, courts will compare the percentage of minorities in the employer’s workforce with the percentage in the area labor market or general population. If a manifest imbalance exists, the court will then examine whether the plan “unnecessarily trammels” the rights of nonminorities or creates a bar to their advancement. *Id.* at 639.

For example, the district court found that an employer’s affirmative action plan satisfied the *Weber/Johnson* standard in *Hondale v. University of Vermont*, 56 F.Supp. 2d 419 (D. Vt. 1999). There, the University

was required by the Office of Federal Contract Compliance Programs (“OFCCP”) to adopt an affirmative action plan (including goals and timetables to improve the representation of minorities and women in job categories where they were “underutilized.” The University had instituted a “Faculty Incentive Fund,” through which it occasionally awarded financial incentives to departments for hiring minorities. *Id.* at 423. However, because the funds were subject to availability, the hiring officials did not know whether the funds would be awarded to their departments when they made the decision to hire. *Id.*

The court determined that the employment goal at issue was designed to remedy a manifest imbalance in traditionally segregated job categories. The University had compared data on the availability of qualified faculty nationwide to the percentage of minorities it employed in the relevant job category. *Id.* at 422, 426. Further, the court found the goals did not “unnecessarily trammel” the rights of third parties, since they were revised annually, did not use set-asides or quotas and considered race only as a plus factor. *Id.* at 426.

If the affirmative action plan in question does not satisfy the above criteria, employment decisions made under the plan will violate Title VII. For example, in *Taxman v. Bd. of Educ. of Township of Piscataway*, 91 F.3d 1547 (3rd Cir. 1996), *cert. granted*, 117 S. Ct. 2506, *cert. dismissed*, 118 S. Ct. 595, the Third Circuit’s *en banc* decision found that the employer violated Title VII by terminating the plaintiff, a white female, pursuant to its “affirmative action plan.” The plan required the school district to select the most qualified candidate in employment decisions, but where two competent candidates had equal qualifications, candidates who were minorities “were recommended.” *Id.* at 1550. The court held that the plan did not satisfy the two-pronged *Weber/Johnson* analysis. First, it failed the “manifest imbalance” prong since the school had not compared its workforce to the relevant local la-

¹The court evaluated the affirmative action plan in the context of a motion in *limine*. The issue there was whether the employer could introduce evidence of the plan as a defense if the jury were to conclude that race was a factor in the failure to hire the plaintiff. *Id.* at 420

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bor force. Instead, it attempted to justify the plan as an effort to “increase diversity” in the school system, a purpose which the court found to be unlawful under Title VII. Only a remedial purpose could pass the court’s view of the applicable standard. *Id.* at 1563. Additionally, because the plan lacked goals or standards to narrowly tailor its scope, the court found that the plan unnecessarily trammelled the interests of non-minorities. *Id.* at 1564. *Accord Schurr v. Resorts Int’l Hotel, Inc.*, 1999 WL 1025324 (3rd Cir. 1999) (selection of minority employee over equally qualified nonminority applicant under non-remedial “affirmative action plan” violated Title VII, citing *Taxman*; since the plan was not based on any findings of past or present discrimination in the industry, it failed to satisfy the “manifest imbalance” prong of *Weber*). See also *Hill v. Ross*, 183 F.3d 586 (7th Cir. 1999) (reversing summary judgment for employer on male applicant’s refusal to hire claim; issue of fact existed as to whether employer’s reliance on non-remedial affirmative action plan in making gender-based hiring decision violated Title VII).

Similarly, in the educational context courts have also rejected affirmative action plans that were implemented in order to increase diversity. In *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996), *cert. denied*, 116 S. Ct. 2581, the Fifth Circuit, in an *en banc* decision, considered a challenge to a program at the University of Texas Law School which gave preferences to minority applicants, but which did not purport to have a remedial purpose. The court ruled that unless a racial classification was remedial in purpose, it violated the Equal Protection Clause of the Constitution. Moreover, the opinion noted that “any consideration of race or ethnicity by the law school for purposes of achieving a diverse student body is not a compelling interest.” *Id.* at 944-45. See also: *Johnson v. Bd. of Regents, Univ. of Georgia*, 263 F. 3d 1234 (11th Cir. 2001) (assuming student body diversity is compelling state interest, university admissions program fails to meet “narrow tailoring” test because its grant of bonus points to nonwhites was “mechanical” and “inexorable” while the availability of bonus points for other, non-racial factors was “severely limited”; *Podberesky v. Kirwin*, 38 F.3d 147 (4th Cir. 1994), *cert. denied*, 115 S. Ct. 2001 (1995) (scholarships reserved for African-American students, based on “reputation” of discrimination and hostile

campus climate insufficient to justify racial preference under the Equal Protection Clause); *Wessman v. Gittens*, 160 F.3d 790 (1st Cir. 1998) (assuming diversity is compelling state interest, allocation of available seats in public high school based on racial composition percentages violated Equal Protection Clause); *Eisenberg v. Montgomery County Public Schools*, 1999 WL 795652 (4th Cir. 1999) (granting plaintiff’s motion for preliminary injunction to compel his admittance to school program; assuming diversity is compelling state interest, denial of student’s request to transfer schools because of effect on racial composition violated Equal Protection Clause).

In short, an employer’s generalized goal to increase the diversity of its workforce will not justify consideration of race or sex in employment decisions absent a program (whether it is called affirmative action or diversity or something else) that meets the standards of *Weber and Johnson*.

A. Cases Finding Sufficient Evidence of Unlawful Hiring Practices

An employer that makes employment decisions based on the race or gender of the applicant, even for the purpose of increasing diversity, violates Title VII in the absence of a valid affirmative action plan. Thus, the question arises whether a corporate diversity program that would either require or encourage a manager to make workplace decisions in order to meet stated goals for the employment of minorities or women would also violate Title VII. A number of court decisions have found employers’ hiring practices sufficiently questionable to raise factual issues for trial, despite claims that the practices aimed to increase workforce diversity.

B. Cases Involving Employment Decisions for “Diversity” Reasons

Reported cases support the conclusion that employers who make employment decisions based on race and gender, even where motivated by diversity concerns, violate Title VII absent an affirmative action plan that satisfies the *Weber/Johnson* standards. The Third Circuit in *Taxman*, *supra*, specifically rejected the employer’s

rationale that diversity in the workforce justified its decision to terminate the white plaintiff instead of another teacher who was African-American. The court held that all employment decisions based on race or gender violate Title VII, even if made to increase workforce diversity, where not made pursuant to a valid affirmative action plan. Further, the court held that diversity alone was an insufficient justification for establishing an affirmative action plan absent a history of discrimination to be remedied.

In *Stern v. Columbia University*, 131 F.3d 305 (2nd Cir. 1997), a divided panel of the Second Circuit reversed the district court's grant of summary judgment for the employer on the plaintiff's reverse discrimination claim. Plaintiff, a white male of European descent, had applied for a tenure position in the Spanish Department that was given to a Hispanic woman candidate. The University's affirmative action program required that all appointments be made after an exhaustive search for applicants, with special efforts to include women and minorities in the applicant pool. However, the plan provided that selection decisions were to be made on the basis of qualifications alone. While that program likely would have been upheld if followed, evidence offered on motion indicated that it was not. Specifically, the University initially attempted to circumvent the hiring process and simply appoint the Hispanic candidate. Moreover, statements that the plaintiff would not be awarded the position in any event and that the department needed more Hispanics raised triable issues of fact as to whether the plaintiff had been denied the position because of his nonminority status. 131 F.3d at 314.

In *Messer v. Meno*, 130 F.3d 130 (5th Cir. 1997), cert. den. 525 U.S. 1067, 119 S. Ct. 794 (1999), the court reversed the grant of summary judgment for the employer on plaintiff's reverse discrimination claim. The plaintiff, a white female, alleged that she was denied two promotions on the basis of her race. During plaintiff's employment, the employer adopted an "affirmative action plan" that promoted diversity in the workforce. The goal of the plan was to "achieve a workforce balanced with a proportionate number of minorities and women." *Id.* at 138. The employer's recruitment guidelines suggested that managers "survey their

staffing patterns, especially concerning race and sex, where vacancies occur," and stated that "balanced workforce considerations" should have "significant influence on employment decisions." *Id.* Under the plan, the employer analyzed statistics concerning the ethnic and gender makeup of its employees and applicants for employment. In court the employer argued that the plan was confined to recruitment efforts, while employment decisions were based solely on qualifications and merit, not race and gender. However, the plaintiff produced evidence, letters and memoranda, which provided that the plan's purpose was "to achieve a workforce balanced with a proportionate number of minorities and women in the population," as well as language indicating that balanced workforce considerations should be a factor in hiring decisions. Based on this evidence, the court determined the allegations that recruitment was not the only activity of the affirmative action plan, and that race and gender were factors in the selection decisions merited consideration at trial. *Id.* at 139.

In *Eastridge v. Rhode Island College*, 996 F. Supp. 161 (D. R.I. 1998), the district court denied the employer's motion for summary judgment on plaintiff's reverse discrimination claim under Title VII, where plaintiff alleged that he was not hired because of an affirmative action plan. Plaintiff applied for tenure in the Department of Modern Languages. The college's Affirmative Action Council had established percentage goals for the minority and female composition of the faculty in that Department. The hiring committee gave credit to plaintiff's experience, but ranked him second. It recommended hiring an African male applicant, because of his diverse cultural background and because he was a "member of a protected minority." *Id.* at 163. The chair of the department stated in a report that the selected applicant was an "excellent affirmative action candidate." *Id.* at 164. Even when the selected applicant declined the position, the plaintiff still was not given the job. Rather, the opening was canceled. The district court found the facts in "the record clearly raise an inference of discrimination" and denied summary judgment to the employer, without discussing the validity of the affirmative action plan. *Id.* at 167.

A court also denied an employer's summary judgment motion in *Ost v. Crotty*, 1989 WL 4490 (S.D.N.Y.

1989). There, the plaintiff's position with the New York City Department of Housing Preservation was reorganized, with most of his duties being transferred to a new position. Plaintiff applied for the position, but was passed over in favor of a black male who had been recruited through an affirmative action program designed to increase the diversity of the applicant pool for open positions. Plaintiff sued, alleging the City's affirmative action program deprived him of equal protection rights. The court specifically found that the plaintiff had produced enough evidence to raise an inference that defendant's minority recruitment plan may have pressured decision makers to hire minorities. These findings included:

- The fact that the Mayor wrote to all agency heads "exhorting them to recruit and hire qualified members of minorities for managerial positions," and advising that the Deputy Mayor would monitor and evaluate their minority recruiting statements;
- The fact that the Deputy Mayor monitored the agency minority recruitment statements asking specifically whether minority candidates were interviewed and, if not hired, why;
- The fact that the Deputy Mayor informed agency heads that where he felt a "repeated lack of cooperation and effort," the mayor's office would disapprove hiring requests;
- The fact that minority recruitment statements were routinely reviewed only in cases where nonminorities were selected for the open positions;
- The failure of the City to introduce evidence of its compelling interest in the racial classification or the details of the narrow tailoring of the plan.

Based on these findings, the court determined that a trier of fact could reasonably conclude that agency heads were under pressure to hire minorities from the recruitment program, thus violating the constitutional rights of the plaintiff. 1989 WL 4490 at 6-8.

See also *Hannon v. Chater*, 887 F. Supp. 1303 (N.D. Ca. 1995) (summary judgement denied where affirma-

tive action plan went beyond recruitment, including statements that it was implemented because of a "manifest imbalance" in the workforce, and its "objective" was to increase over a five-year period the numbers of minorities and women by specific percentages. *Id.* at 1309-10).

C. Cases Where Managers Were Rewarded for Hiring Minorities

Recent cases also illustrate the legal risk of a plan that rewards managers for hiring or promoting minority or female employees. In *Inzaina v. Federal Reserve Bank of Philadelphia*, 1998 WL 0221039 (E.D. Pa. 1998), the district court denied summary judgment in a Title VII reverse discrimination case where plaintiff alleged that he had been denied a promotion because of his gender. The court found that plaintiff had established a prima facie case of reverse discrimination because "[c]ertain managerial employees were commended for having identified minority and female candidates for promotion, and received favorable performance evaluations for so doing." 1998 WL 2221039, at *3. The triable issue of fact found by the court was whether the plaintiff was in fact more qualified than the recipient of the promotion.

A court also denied a motion for summary judgment in *Barnes v. Federal Express Corp.*, 1997 U.S. Dist. LEXIS 9882, 71 *Emp. Prac. Dec.* (CCH) P45014 (N.D. Miss. 1997). There, a white male plaintiff alleged that he had been terminated so that his supervisor could fill the position with a minority. The court found that the plaintiff had established a prima facie case, where he introduced evidence this his supervisors were "catching hell" from management for not hiring minorities, "and that one of his supervisors received a \$2,000 bonus for meeting minority hiring goals after terminating the plaintiff and replacing him with a black employee." 1997 U.S. Dist. LEXIS 9882, at *22. The court went on to find that sufficient evidence of pretext existed because plaintiff's performance had not been criticized until his supervisor "caught hell" for not hiring minorities. 1997 U.S. Dist. LEXIS 9882, at *31.

An interesting insight on this situation is presented by the decision in *Whalen v. Rubin*, 91 F.3d 1041 (7th

Cir. 1996). There the plaintiff appealed from the jury's determination that his employer did not discriminate against him in violation of the Title VII. Plaintiff, a white male, alleged that he was denied promotions by his employer due to an "affirmative action plan" which linked the compensation of managers and executives to their implementation of affirmative action goals. The employer acknowledged the policy existed, but claimed that it did not rely on the policy in its decisions not to promote plaintiff. At trial the plaintiff had introduced evidence of the bonus system to support his claim of discrimination, but the jury still found for the employer. *Id.* at 1044. Further, the circuit court sustained the district court's findings on appeal. *Id.* at 1046. The court specifically noted that the bonus plan was designed to "remedy the present imbalances of minorities and women in the managerial and executive ranks," and that plaintiff had indicated that managers were praised for their successes in hiring and developing minority employees. *Id.* at 1043.

D. Employment Decisions Under the Equal Protection Clause

Litigation decisions under the Equal Protection Clause present a similar analysis. In *Dallas Firefighters Ass'n v. Dallas*, 150 F. 3d 438 (5th Cir. 1998), *cert. den.* 526 U.S. 1038 (1999), the Fifth Circuit affirmed the district court's grant of summary judgment for the plaintiffs, who alleged that an affirmative action program adopted by the city for use in promotions violated their constitutional and statutory rights. Under the plan, the city promoted minority and female firefighters ahead of male, non-minority firefighters who had scored higher on promotional examinations. The court affirmed the district court's finding that the plan was not narrowly tailored, as there was no evidence of "egregious and pervasive" discrimination in the fire department that would warrant such a plan, noting that a statistical analysis reflecting the under representation of minorities in the department was insufficient to satisfy equal protection standards. *Id.* at 441. The court rejected the city's contention that alternative measures such as recruiting minorities and instituting a tutoring program were unsuccessful. Rather, the court concluded that the continued under representation of minorities did not

necessarily indicate that alternative measures were unsuccessful, merely that they operated more slowly than the affirmative action plan. *Id.*

The Fifth Circuit did uphold the city's selection of a minority candidate for the deputy chief position. Plaintiffs had argued at trial that the decision maker's statements, that he had selected the candidate because of his capabilities and that the appointment was made pursuant to the affirmative action plan, indicated that the decision violated Title VII. The district court's denial of summary judgment for the city on this issue was reversed on appeal. The court found the evidence indicated that the appointment was in fact based on "substantially more than [the candidate's] race," and the mere reference to the plan was insufficient to defeat the summary judgment motion. *Id.* at 442-43.

In *Lutheran Church - Missouri Synod v. Federal Communications Commission*, 141 F. 3d 344 (D.C. Cir. 1998), *pet. for reh'g denied*, 154 F. 3d 487 (1998), the court held that the regulations promulgated by the FCC violated the Equal Protection component of the Fifth Amendment. The EEO regulations adopted by the FCC impose two basic obligations on radio stations. Stations are forbidden to discriminate in employment against any persons "because of race, color, religion, national origin or sex." 47 C.F.R. Sec. 73-2080(a)(1997). Stations are also required to adopt an affirmative action "EEO program" targeted to minorities and women. 47 C.F.R. Sec. 73-2080(b)(C)(1997). Such a program must include:

a plan for (1) disseminating the equal opportunity program to job applicants and employees; (2) using minority and women specific recruiting sources; (3) evaluating availability of minorities and women in its recruitment area; (4) offering promotions to minorities and women in a nondiscriminatory fashion; and (5) analyzing its efforts to recruit, hire, and promote minorities and women. 47 C.F.R. Sec. 73-2080(c).

The court rejected the FCC's principal position on appeal, that the regulations should be regarded as doing no more than seeking nondiscriminatory treatment of women and minorities. It found that "the EEO regula-

tions before us extend beyond outreach efforts and certainly influence ultimate hiring decisions,” and that the regulations “obliged stations to grant some degree of preference to minorities in hiring.” 141 F.3d at 351. Moreover, the court found that “[t]he regulations pressure stations to maintain a workforce that mirrors the racial breakdown of their ‘metropolitan statistical area.’” *Id.* at 352. Although the FCC argued that its numerical guidelines, which it had recently deemphasized, should not be interpreted as a quota, the court stated:

We do not think it matters whether a government hiring program imposes hard quotas, soft quotas or goals. Any one of these techniques induces an employer to hire with an eye toward meeting a numerical target. As such, they can and surely will result in individuals being granted a preference because of their race.

Id. at 354.

Having found that the regulations imposed a racial preference in hiring, the court next considered whether, in accordance with the “strict scrutiny” doctrine, they could be justified as narrowly tailored to serve a compelling state interest. On this issue, the court found that the asserted goal of fostering “diverse” program content was not sufficient to support the regulations – both because that interest was not “compelling” and because, even if it were, the regulations are not narrowly tailored to support that objective. *Id.* at 356.

II. EFFORTS TO CREATE A DIVERSE APPLICANT POOLS ARE LAWFUL

The cases addressing the issue have been uniform in holding that an employer’s effort to increase the diversity of the applicant pool through outreach and recruiting practices does not violate Title VII, as such actions do not make employment decisions based on race. Rather, they merely increase the number of qualified candidates competing for a position. However, where evidence can be viewed as showing that employers went beyond simply increasing the diversity of the applicant pool, and actually gave preferences in hiring,

the employers are subject to findings that they acted unlawfully.

A. Title VII Cases

The principle that affirmative efforts to increase diversity in the applicant pool are lawful was articulated in *Duffy v. Wolfe*, 123 F.3d 1026 (8th Cir. 1997), *cert. den.* 523 U.S. 1137 (1998). In that case, the court held that evidence of the employer’s efforts to obtain a diverse pool of applicants was insufficient to support a finding of pretext, and upheld the district court’s grant of summary judgment for the employer. In *Duffy*, the plaintiff, a white male, sued a panel of judges from the United States District Court for the Southern District of Iowa for reverse discrimination after they selected a female applicant over plaintiff for the position of Chief U.S. Probation Officer for that District. Although the Eighth Circuit found plaintiff had established a *prima facie* case (based on one of the judges mentioning an interest in recruiting a female), it did not find sufficient facts to support his allegation that recruiting broadly for the positions constituted a pretext for reverse discrimination. *Id.* at 1037. “An employer’s affirmative efforts to recruit minority, female applicants does not constitute discrimination. An inclusive recruitment effort enables employers to generate the largest pool of qualified applicants, [and] helps to ensure that minorities and women are not discriminatorily excluded from employment. This not only allows employers to obtain the best possible employees, but it is ‘an excellent way to avoid lawsuits.’” *Id.* at 1039. See also *Barnhill v. City of Chicago, Police Department*, 142 F. Supp.2d 948 (N.D. Ill. 2001).

Similarly, in *Davidson v. Time, Inc.*, 972 F. Supp. 148 (E.D.N.Y. 1997), the district court granted summary judgment for the defendant on plaintiff’s reverse discrimination claim, holding that plaintiff did not create an issue of pretext with evidence that the defendant used a recruiting firm to identify minority candidates. *Id.* at 153. After Davidson, a white male, was terminated for unsatisfactory performance, the employer hired an African-American male to replace him. Plaintiff alleged that he was terminated to increase the numbers of minorities in the company, pointing to his replacement, as well as the use of the minority recruiting firm.

The court held that, assuming *arguendo* that plaintiff had satisfied a prima facie case, evidence that the employer used an executive search firm to identify minority candidates did not establish pretext. The court stated that Time's "race-conscious effort to ensure a balanced slate of candidates in no way established that the hiring of Davidson's replacement was race-based. . . . That an employer attempted to ensure that candidates of all races had an equal opportunity to vie for an available position is simply not evidence that the employer then relied on race as a determinative factor in deciding whom to hire." *Id.* 153-54.

The *Davidson* court cited *Silver v. City Univ. of New York*, 947 F. 2d 1021 (2nd Cir. 1991), in support of the proposition that minority recruiting is not a violation of Title VII. In *Silver*, the Second Circuit affirmed the grant of summary judgment for the employer on plaintiff's reverse discrimination claim. The white male plaintiff alleged that his employer denied him a position as a Distinguished Professor because of his race. His only evidence of disparate treatment was a memorandum which stated that lists of candidates for the position "should include a very significant representation of minorities and females." *Id.* at 1022. The court held that this document did not create an inference of discrimination. "[T]he memorandum in no way suggests that the appointment of Distinguished Professors should, or would be, race- or gender-based. It merely indicated that those considered for such an appointment would include scholars who were members of minority groups or were female." *Id.* See also *Brown v. Time, Inc.*, 1997 U.S. Dist. LEXIS 6227; 85 Fair Empl. Prac. Cas. (BNA) 738 (S.D.N.Y. 1977) (granting summary judgment to employer on plaintiff's failure to promote claim, where plaintiff alleged employer discriminated against white males pursuant to affirmative action policy; evidence of newsletter in which employer emphasized commitment to diversity and recruiting minorities failed to establish a policy of racially-based hiring decisions).

Similar consideration was given to this issue in *Hall v. Kutztown University*, 1998 U.S. Dist. LEXIS 138, 75 Fair Empl. Prac. Cas. (BNA) 1440 (E.D. Pa. 1998), where the district court granted summary judgment for

the defendant on the white male plaintiff's reverse discrimination suit. Plaintiff alleged that the university had discriminated against him based on his race and gender when it did not hire him as a tenure-track faculty member. The University had an "affirmative action policy," which provided that "it is lawful to consider race, ethnicity, and gender as additional criteria in a hiring decision." The University also had an "Affirmative Action Office" which advertised an open position to a wide variety of sources, including minority organizations, and wrote memos to faculty search committees encouraging them to interview minority applicants who met the qualifications of the position. After a position in the University was filled, the department was required to submit a form to the Affirmative Action Office detailing which candidates were interviewed and not interviewed including the reasons. The department commenced one search, which was aborted when the department did not select any minority or female applicants to interview.

Given that there was no evidence that the University had relied on the Affirmative Action Policy in making its selection decisions, the court held that mere existence of the policy itself was insufficient to establish discriminatory hiring at the University. 1998 U.S. Dist. LEXIS 138, at *103. Next, the district court held that neither the role nor the actions of the Affirmative Action Office in the hiring process established discrimination. The Office had no power of selection, rather only determining where advertisements were placed. Moreover, its memos to the search committees merely encouraged consideration of qualified minority candidates. Thus, their actions did not raise an inference of discrimination. 1998 U.S. Dist. LEXIS 138, at *106-07. Further, the termination of the first search did not indicate that the University was discriminating against white males, "It is not discrimination for an employer to seek to obtain a diverse job applicant pool or to recruit female and minority applicants. This is precisely what the Defendants seem to have been attempting. There is no evidence that any of the Defendants were exerting pressure on anyone to hire a woman or member of a racial minority to fill the position." 1998 U.S. Dist. LEXIS 138, at *115. See also *McHenry v. Pennsylvania State System of Higher Ed.*, 50 F. Supp.2d 401 (E.D.

Pa. 1999) (granting summary judgment for employer on plaintiff's discrimination claim in case also involving Kutztown University and very similar facts).

B. Consent Decree and Fair Housing Cases

In *Shuford v. Alabama State Bd. of Educ.*, 897 F. Supp. 1535 (M.D. Ala. 1995), the court, in approving a proposed consent decree, discussed the impact that an employer's affirmative recruiting of minorities and females had on Title VII liability. According to the court, race-neutral efforts, such as recruiting, constitute "inclusive" forms of affirmative action, which do not affect the selection process. "Rather, inclusive techniques seek to ensure that as many qualified candidates as possible make it to the selection process." *Id.* at 1551. "Inclusive techniques impose no or slight adverse effects on third parties. . . . Whites and men are harmed only by competition from qualified candidates, which is not an appropriate objection." *Id.* at 1552-54. The *Shuford* court also noted that for public policy reasons, employers must be able to affirmatively recruit for a diverse pool of candidates, noting, "If employers were not allowed to use recruitment procedures without a showing of discrimination sufficient to meet the traditional requirements of the equal protection clause and Title VII, they would be reluctant to pursue such procedures because they would open themselves up to liability, which might require paying damages." *Id.* at 1554.

In *Raso v. Lago*, 958 F. Supp. 686 (D. Mass. 1997), *aff'd on other grounds*, 135 F.3d 11 (1st Cir. 1998), a case involving housing discrimination claims, the court

held that attempts by the Department of Housing and Urban Development ("HUD") to attract minority candidates to a housing project did not violate the rights of a class of white applicants. Both its regulations and a consent decree required HUD to carry out a program to attract minority buyers or tenants to its projects. The court held that the defendants' attempt to market the units to minorities neither violated the white plaintiffs' equal protection rights nor discriminated against them under Title VI or VII. The defendants' outreach and affirmative recruitment of minorities served only to expand the pool of applicants, said the court. Since the actual selections were not made on the basis of race, the defendants' actions did not violate the rights of the plaintiffs. *Id.* at 703. The court's analysis did allow that a recruitment program might constitute discrimination where outreach and recruitment efforts became so focused and intense that the resulting applicant pool consisted solely of minorities, or where interested white applicants were steered away from applying. However, in the absence of evidence of such manipulation, the court found the recruitment permissible. *Id.* See also *South-Suburban Housing Center v. Greater South Suburban Bd. of Realtors*, 935 F.2d 868 (7th Cir. 1991), cert. den. 502 U.S. 1074 (1992) (real estate organization did not violate Fair Housing Act when it affirmatively marketed properties in a black neighborhood to prospective white buyers by placing advertisements in newspapers with a predominantly white circulation; plan did not deter prospective black buyers, but merely provided additional information to white buyers, thus increasing competition and promoting the goal of integration).

ii. Hubbard & Hubbard, Inc.

Dr. Edward E. Hubbard is President and CEO of Hubbard & Hubbard, Inc., Petaluma, CA, an international organization and human performance consulting corporation that specializes in techniques for applied business performance improvement, workforce diversity measurement, instructional design and organizational development.

He is the founder of the *Hubbard Diversity Measurement and Productivity Institute* and is also author of the groundbreaking books: "Measuring Diversity Results", "How to Calculate Diversity Return-on-Investment" and his soon to be released book: "Building a Diversity Measurement Scorecard".

Dr. Hubbard is one of the first metrics authors in the field of diversity. As a result of his extensive research in the area of diversity measurement and expertise in computer programming, he is one of the first to develop automated software technologies for measuring diversity return-on-investment and performance improvements.

He has performed client work in organizational change and diverse workforce integration for private companies, the U.S. Government, and corporate clients in the Far East and Pacific Rim. His work includes assisting organizations with staff development, quality improvement, performance improvement strategies, and restructuring work teams to utilize the strengths of a multiethnic workforce and handling diverse work group consolidations using self-directed work team and diversity return-on-investment measures and methods.

Dr. Hubbard is an internationally respected business consultant, trainer, former professor and Director at Ohio State University, a business professional at several Fortune 100 corporations, such as Computer Systems Analyst, Informatics Corporation, Computer Room Supervisor, Battelle Memorial Institute, Internal Consultant, Mead Corporation, and Director, Training and Organization Development for the 17 billion dollar McKesson Corporation.

Recently, Dr. Hubbard received double honors being

named to the prestigious Who's Who in Leading American Executives and Who's Who Worldwide of Global Business Leaders. Memberships are limited to those individuals who have demonstrated outstanding leadership and achievement in their occupation, industry or profession. Author of more than 37 books, some of his other book titles include: *The Hidden Side of Employee Resistance To Change*, *Managing Customer Service on the Frontline*, *Managing Your Business For Profitable Growth*, *Hiring Strategies For Long-Term Success*, *How To Start Your Own Business With Empty Pockets*, *Managing Organizational Change: Strategies For Building Commitment*.

Articles by Dr. Hubbard have appeared in magazines and newspapers such as Inc., Fortune, Cultural Diversity at Work, Next Step Magazine, Forbes, Diversity & the Bar, American Society for Training and Development Journal, Sonoma Business Magazine, Organization Development Network Journal, The Cleveland Plain Dealer, The Press Democrat, The Diversity Factor Magazine, and many others. He has also been featured in several films and management development videos, on radio programs, and is a regularly featured speaker, and keynote for national and international conferences, teleconferences, seminars, and workshops.

Dr. Hubbard is an expert in Organizational Behavior, Organizational Analysis, Applied Performance Improvement and Measurement Strategies, Strategic Planning, Diversity Measurement, and Organizational Change Methodologies.

Dr. Hubbard earned Bachelors and Masters Degrees from Ohio State University and earned a Ph.D. with Honors in Business Administration.

*Dr. Edward Hubbard
Hubbard & Hubbard, Inc.
International Organization and Human Performance Consulting Corp.
1302 Holm Road
Petaluma, CA 94954
Telephone: (707) 763-8380
Facsimile: (707) 763-3640
Email: edhub@aol.com*

iii. Reginald E. Jones [Former Commissioner U.S. Equal Employment Opportunity Commission]

As a Commissioner of the United States Equal Employment Opportunity Commission (1996 – 2000), Reg Jones Chaired the EEOC's Task Force to study and report on "best equal employment opportunity policies, practices and procedures in the private sector." Since joining the Washington, D.C., office of Ogletree, Deakins in October 2000, Mr. Jones has continued to focus, as he did at the Commission, on working with employers to find proactive strategies to prevent discrimination and achieve productive diversity in the workplace. He continues this work at Ogletree, Deakins by counseling employers on using workforce diversity practices and policies to achieve their corporate business objectives. Diversity program design, implementation and training are among the services Mr. Jones provides to clients.

Mr. Jones works with clients on designing, instituting, maintaining and trouble shooting their in-house ADR systems, and is available to serve as

a neutral arbitrator or mediator to assist parties in resolving workplace disputes.

Prior to the EEOC, Mr. Jones served as Labor and Employment Counsel to the leadership and senior members of the United States Senate Labor Committee (now Health, Education, Labor and Pensions). During his Senate tenure he was significantly involved in the enactment of many primary pieces of labor and employment legislation, including the Civil Rights Act of 1991, the Family and Medical Leave Act, and the Americans With Disabilities Act.

Jones works closely with the Ogletree Government Affairs ("OGA") subsidiary of the firm to address legislative and regulatory matters on behalf of the firm's clients.

Jones is admitted to the bars of the: Supreme Court of the United States, District of Columbia Court of Appeals, New York State Court of Appeals, United States Court of Appeals for the Second Circuit, U.S. District Court for the Southern District of New York, U.S. District Court for the Eastern District of New York. He received his J.D. from New York University Law School and an M.B.A. from NYU Stern School of Business in 1976.