

Don't Talk About It, Be About It: How to Move the Needle on Social Justice

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Recent police killings of unarmed black Americans in Louisville, Kentucky, and Minneapolis, Minnesota, have garnered international attention. As citizens gathered in cities across the United States of America to protest racial inequities, companies and celebrities issued statements about diversity and injustice, ranging from forceful calls for change to platitudes encouraging listening sessions and faith for the future. Likewise, law firms and the American Bar Association made statements of their own, vowing to help implement solutions.

Law firms are community leaders, and when they spring into action to respond to natural disasters, the border crisis and COVID-19, they achieve great results. Sadly, many of the corporate statements and social media posts about police killings of unarmed black Americans lack actionable guidance.

"Faith without works is dead," and if our commitment to equality is bona fide, we must actually do the work to achieve equality. Listed below are four commitments law firms can make to birth tangible, lasting change on the legal community and on our state.

1. Commit to yearly, mandatory implicit bias training for all attorneys and staff.

Implicit bias describes the automatic and unintentional expectations or assumptions that impact our understanding, actions and decisions. Because these biases are unconscious, they affect how we treat and think about others, even if we believe ourselves to be well-meaning.

Implicit bias training can raise people's awareness about their own unconscious prejudices. Recurring bias training coupled with the open discussion of bias can change attitudes and positively impact organizational culture.

2. Commit to the implementation of objective metrics for assigning work to all attorneys.

A 2014 Nextions experiment highlights how work product from black attorneys is judged differently than the work of their peers. Sixty law firm partners were asked to participate in a study on "writing competencies of young attorneys." Each partner was instructed to evaluate the same legal memo which, unbeknownst to them, was drafted by a consulting firm. Half the partners were told that the memo was written by a young black attorney. The other half were told that the young attorney was white.

On a five-point scale, the "black" memo averaged a 3.2/5.0 rating, while the "white" memo averaged a 4.1/5.0 rating. Further, the "white" memo received more positive qualitative feedback than did the "black" memo.

The results of this experiment (and others like it) should concern every legal professional. If a hypothetical black attorney can face unwarranted discrimination under experimental conditions, then black attorneys will face discrimination in the real world, too. As attorneys know all too well, a single negative work review will adversely impact chances of receiving future projects from assigning attorneys. If word of this "bad work product" hits the firm gossip mill, chances of working with other assigning attorneys will also diminish.

If black attorneys are more likely to receive poor reviews for work of the same caliber as their white counterparts, then black attorneys are less likely to receive future projects from assigning attorneys. Firms should ensure black attorneys are being given the same quantity and quality of assignments as their counterparts. When black attorneys receive harsh criticism, firms should consider whether the criticism is fair in light of the circumstances.

3. Commit to making the profession more diverse through hiring and retention of black attorneys.

As of 2019, black people represented just 5% of total lawyers in the United States, but the U.S. population is 13.4% black. Despite law firms' pipeline efforts, this number is virtually unchanged from 2009, when 4.8% of lawyers were black. The 2019 statistic is a marginal uptick from 2000, when 3.9% of lawyers were black.

Law firms have enormous persuasive power over law schools. Firms can encourage law schools to recruit more black students. Average law school debt for black students is \$198,760, almost double that of their white counterparts and nearly \$50,000 more than Hispanic students. Firms should urge law schools to provide blacks students with financial support, and perhaps firms could assist the schools in their scholarship efforts.

Given that only 2% of partners in the Am Law 200 are black, firms can commit to hiring more black attorneys. Five Texas law firms made the 2020 Am Law 100. According to the ALM Intelligence Diversity Scorecard, those firms have a total of 3,047 attorneys; however, only 78 of those 3,047 attorneys are black and only 21 are partners. Put simply, blacks make up less than 3% of attorneys at five of the largest Texas firms. Attorneys have a duty to promote justice in all arenas. Firms have an obligation to lead inclusion efforts, not bring up the rear.

Regarding promotion, firms must commit to giving black attorneys the same support and guidance—formal and informal—as other attorneys. Many minority attorneys report feelings of alienation, especially without the backing of an ally in a firm leadership position. In an act of tokenism, firms use minorities to attract new business, recruit diverse law students and bolster their firms' social justice efforts. Black attorneys are pressured to assimilate, seem "race neutral" and represent their entire race. Without mentors and role models, black attorneys must meet their billable hour requirements while bearing the brunt of race work. White attorneys do not face the same pressures, because the legal system operates as if achieving racial equality is naturally the work of minorities.

It should be no surprise then that promising black attorneys (especially black women) often exit their firms or the practice of law. As Paula T. Edgar, the immediate past-president of the Metropolitan Black Bar Association, told Bloomberg Law in 2017, "They leave because the firm culture is not conducive to success for people of color or people of color who are women."

Firms must commit to supporting black attorneys, starting with intentional efforts aimed at preparing black attorneys for partnership. All attorneys must be active participants in diversity and inclusion work, even those attorneys who "just don't get it." When certain attorneys or specialty groups seem incapable of retaining black attorneys, firm leadership should treat the issue with solemnity. If certain attorneys or specialty groups repeatedly caused a firm to lose clients, the firm's leadership would tailor-make solutions and implement improvement plans. Leadership should keep the same energy with respect to retention of black attorneys.

Firms and their attorneys can no longer afford to silently support black attorneys, who are often working double time to get half as far. Racial inclusion must be a priority for firm leadership, and it must be managed like any other business imperative.

4. Commit to self-education and action on issues of race, systemic oppression and privilege.

It is unquestionable that all attorneys lead privileged lives. Many attorneys have never directly dealt with racial injustice, police violence or workplace discrimination. Unfortunately, these are things with which black attorneys and black staff members are intimately acquainted. Like everyone, black people try to keep their personal stress out of

the office. However, unlike other people, the source of the stress—systemic oppression—impacts how black people are treated at work.

No one blames white attorneys for systemic oppression, but everyone has a responsibility to confront inequity and share in the solution. Attorneys can use their fine-tuned research and advocacy skills to evaluate the disparities in police encounters and contact local leaders to push for change. Attorneys can evaluate their workplaces and encourage management to increase internal diversity efforts. Attorneys and firms can amplify voices of black attorneys and encourage their substantive contributions. Realizing that attorneys have traditionally failed at creating cross-racial relationships, firm leaders should intentionally mentor and sponsor black attorneys. Firms can increase the number of black vendors they use and entreat existing vendors to diversify their ranks. Attorneys should initiate more discussions about race and privilege with their non-black colleagues and friends.

The suggestions listed above are things my firm is already working on, and I encourage others to do the same. Although nothing is novel about police violence and subsequent protests of that violence, this moment feels different. We are at a tipping point. Will we continue to be oblivious to others' plight? Will we keep quiet for fear of saying the wrong thing, or will we forge ahead, realizing that the true failure is in not trying? Will we sympathize, or will we empathize?

If we do this correctly, we can move closer to the American ideal of liberty and justice for all. If we waste this moment, we will certainly be here again, talking past each other, waiting for future generations to cure the ills of our society.

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