

The Case For Diversity In Internal Investigation Teams

By **Karin Portlock and Jabari Julien** (March 10, 2021, 2:51 PM EST)

In recent years, corporate clients have increased pressure on outside counsel to staff diverse teams. As national conversations on race and equity have moved to the forefront, these calls have grown even louder.[1]

Diverse legal teams offer significant benefits in the counseling of institutional clients, and one context in which diversity is often lacking but offers significant value is in internal investigation. Diverse investigative teams can deliver efficacious results by conducting comprehensive and culturally competent inquiries and can solve problems more thoroughly and creatively than teams lacking diversity.

The case for a diverse workforce has been well-documented. Extensive research confirms that fostering workplace diversity can lead to improved business outcomes. Diverse companies have higher financial returns and outperform competitors.[2] But additional research into the work of diverse teams gives important insight into the benefits of diversity in problem-solving settings.

Drawing on this evidence, the benefit of diverse investigative teams is twofold: They can conduct more thorough and culturally competent inquiries as a result of improved problem-solving and issue-spotting in diverse groups, and they can better earn the trust of interviewees, eliciting more information in the investigative process.

Internal investigations are exercises in issue spotting and collective problem-solving. Teams work together to get to the bottom of complex and highly sensitive matters and must collaborate effectively in order to design and execute an effective investigative plan. Research into jury composition as it relates to deliberations has shown that increased diversity is linked to improved group decision making.

In a 2006 study, researcher Samuel R. Sommers divided participants into six-person mock juries, then asked each panel to determine a Black defendant's guilt after viewing a video of a criminal trial involving a white victim. The study revealed that heterogenous groups "deliberated longer and considered a wider range of information than did homogenous groups." [3]

The mere presence of a juror from a minority group prompted the jury to raise more case facts and make fewer factual errors. Culturally diverse groups were also more likely to raise race-related issues in



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their deliberations.[4]

A 2014 essay by professor Katherine Phillips further reported that diversity within teams promotes hard work and creativity "by encouraging the consideration of alternatives even before an interpersonal interaction takes place." [5] The simple act of adding diversity to a group cultivates a belief among members that differences of perspective and information might exist among them, and that belief encourages members to be more diligent and open-minded.[6]

And this open-mindedness promotes another beneficial behavior among diverse teams: constructive criticism.[7]

With their differing races, genders and other dimensions, members of a diverse team "bring unique information and experiences to bear on the task at hand," which improves the team's overall ability to perform and innovate, according to Phillips' report.[8] As a result, diverse teams are more likely to share and fully discuss unique information and consider that information more deliberately and with a greater breadth of experiences and perspectives, leading the team to better solutions.

These advantages of diversity in group decision making have valuable implications for internal investigations.

Diverse teams tend to approach problems with more creativity and process facts more carefully than homogenous ones. As a result, diverse teams arrive at more thoroughly reasoned solutions. In the context of internal investigations, this means diverse teams can uniquely strengthen the investigative process with more thorough deliberation and issue spotting and more effective problem-solving.

Diverse teams also have a distinct advantage in another core task of internal investigations: interviewing.

Evidence from a variety of contexts confirms that interviewers from minority groups can better elicit information from minority interviewees, yielding more information in sensitive inquiries. To better understand the unique benefits of diverse investigative teams, analogy to the medical context is informative.

There is overwhelming evidence that positive physician-patient relationships lead to more successful medical interviews and therefore better health outcomes.[9]

And evidence further shows that patients who share cultural beliefs, values, experiences or languages with their doctors "trust their doctors more, are treated with greater respect, and communicate more effectively with their doctors," according to a 2005 University of Pittsburgh School of Law paper,[10] whereas discordant physician-patient relationships (in terms of race, ethnicity or language) have higher rates of miscommunication and other negative effects.[11]

The task of the doctor interviewing the patient is similar to that of an investigating attorney: to elicit sensitive and important information about which the interviewee may feel some trepidation in sharing in order to devise an appropriate treatment plan.

Similar advantages to diversity have been observed in relationships between law enforcement officers and the communities they serve.

A 2016 report jointly published by the U.S. Department of Justice and the U.S. Equal Employment Opportunity Commission highlighted the importance of improving diversity within law enforcement for reasons that have implications in other investigative contexts where relationships that encourage trust and candor are key.

Specifically, increased diversity — defined as a multitude of factors, including race, gender, religion, sexual orientation, gender identity, language and more — serves "as a critically important tool to build trust with communities."^[12] According to the report, cultivating the citizens' belief that law enforcement organizations "represent them, understand them, and respond to them" would help deepen trust in law enforcement, among other benefits.^[13]

Building on this evidence, diverse investigative teams will be better equipped to build trust and communicate with an increasingly diverse set of interviewees within institutional clients. As an added bonus, diverse investigative teams are more likely to carefully consider the facts, solve problems more creatively and thoroughly, and arrive at a thoughtful and accurate conclusion.

Workplace investigations can benefit significantly from diverse investigative teams, particularly when allegations involve race, since diverse teams are more likely to spot race-related issues. But the advantages of diverse teams extend far beyond investigations involving race.

Internal investigations can reach all corners of a company, touching a range of employees and stakeholders from C-suite executives to staff — employees of a wide range of races and backgrounds and all variety of personal perspectives and experiences. As a result, in every internal investigation involving inquiries of a diverse workforce, diverse investigative teams can dig deeper than homogenous ones, and ensure a comprehensive review of issues and maximum information collection from all variety of subjects.

In our practice, we have seen many ways in which diversity in teams has enhanced investigations. Whether it's interviewing a senior official sharing the experience of being tokenized and understanding how that experience might inform boardroom communication and decision-making dynamics, or examining sensitive allegations of workplace misconduct and race-based discrimination to identify creative, structural client solutions, examples of how diverse perspectives strengthen the investigative process abound.^[14]

To ensure that diverse teams are being built, attorneys and clients alike must be intentional in staffing and hiring decisions to avoid the natural impulse to select team members who are similar and familiar to them. Though staffing teams with individuals with whom we are comfortable seems intuitive, this natural gravitational pull toward those with whom we share much in common limits us from seeing the benefits of those who think differently and have different backgrounds and experiences.

According to a 2016 Harvard Business Review report, without critically examining staffing and hiring decisions through the lens of diversity, homogenous teams are likely to persist, because it feels easier within such teams for members to "readily understand each other, and collaboration flows smoothly, giving the sensation of progress."^[15] But, as the research confirms, this progress is illusory.

"[W]orking on diverse teams produces better outcomes precisely because it's harder," the report noted.^[16] This cognitive strain encourages team members to think more carefully and methodically, improving the team's ability to make accurate decisions and solve problems creatively — inuring to the client's benefit.

Accordingly, for law firms to build diverse teams, they must be mindful of the many benefits of recruiting diverse team members even though diverse staffing may not come naturally. By embracing the idea of working with team members who bring varying perspectives and experiences, and staffing teams accordingly, law firms can ensure that the team experiences the benefits of diversity and delivers improved results to clients.

Law firms can take concrete steps to ensure the intentionality of staffing decisions so that diverse investigative teams are being built.

For example, they can invest in programs to improve the recruitment, retention and advancement of lawyers from underrepresented groups so that such lawyers are widely represented and are cultivated for leadership.^[17] These actions promote a culture that values diversity and encourages the thoughtfulness and deliberateness that is needed for law firms to make staffing decisions with diversity at top of mind.

We all know that diversity benefits our profession in myriad ways. And in the context of internal investigations, there is strong evidence that diverse teams can deliver measurably better results than teams lacking diversity — all while fostering a group culture that is more diligent, open-minded and inclusive.

The lesson is clear: For clients seeking outside counsel in sensitive and complex internal investigations, staffing a diverse investigative team is a critical and simple step to ensure the best results.

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[1] See Sara Randazzo, Law-Firm Clients Demand More Black Attorneys, Wall St. J. (Nov. 2, 2020), <https://www.wsj.com/articles/law-firm-clients-demand-more-black-attorneys-11604313000>.

[2] A 2015 survey conducted by McKinsey found that companies in the top quartile for ethnic and racial diversity were 35% more likely to have financial returns above national industry medians. Similarly, the survey revealed that companies in the top quartile of gender diversity were 15% more likely to outperform industry averages. See Vivian Hunt, Dennis Laydon, & Sara Prince, Why Diversity Matters, McKinsey & Co. (Jan. 1, 2015), <https://www.mckinsey.com/business-functions/organization/our-insights/why-diversity-matters>.

[3] Samuel R. Sommers, On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations, 90 J. Personality & Soc. Psychology 597, 606 (2006).

[4] Id.

[5] Katherine W. Phillips, How Diversity Makes Us Smarter, Scientific American (Oct. 1, 2014), <https://www.scientificamerican.com/article/how-diversity-makes-us-smarter/>.

[6] *Id.*

[7] David Rock, Heidi Grant, & Jacqui Grey, *Diverse Teams Feel Less Comfortable—and That's Why They Perform Better*, HARV. BUS. REV. (Sept. 22, 2016), <https://hbr.org/2016/09/diverse-teams-feel-less-comfortable-and-thats-why-they-perform-better> ("If, however, leaders can recognize that the debate and unfamiliarity that come with diversity is an important catalyst for creativity and deep thinking, they will invite it and celebrate it. And very likely, the organization—and everyone in it—will reap the rewards.").

[8] Katherine W. Phillips, *How Diversity Makes Us Smarter*, Scientific American (Oct. 1, 2014), <https://www.scientificamerican.com/article/how-diversity-makes-us-smarter/>.

[9] Susan Door Goold & Mack Lipkin, Jr., *The Doctor—Patient Relationship: Challengers, Opportunities, and Strategies*, J. Gen. Internal Med. S26 (1999).

[10] Janet W. Schofield et al., *Culture and Race in Provider-Client Relationships* (Univ. of Pittsburgh Sch. of Law Working Paper Series, Paper No. 21, 2005).

[11] See also Chinenye Nwabueze & Nancy Ncheta Nwankwo, *Ethnicity and Doctor-Patient Communication: An Exploratory Study of University of Abuja Teaching Hospital, Nigeria*, Society for Participatory Medicine (Oct. 7, 2016), <https://participatorymedicine.org/journal/evidence/research/2016/10/07/ethnicity-and-doctor-patient-communication-an-exploratory-study-of-university-of-abuja-teaching-hospital-nigeria/>.

[12] U.S. Dep't of Justice & U.S. Equal Emp. Opportunity Comm'n, *Advancing Diversity in Law Enforcement*, EEOC, <https://www.eeoc.gov/advancing-diversity-law-enforcement> (last visited Feb. 11, 2021).

[13] *Id.*

[14] Marilyn Batonga, *Diverse Teams Can Help Solve Challenges in Corporate Investigations*, NACD Board Talk (Dec. 1, 2020), <https://blog.nacdonline.org/posts/diverse-teams-corporate-investigations>.

[15] Rock, Grant, & Grey, *supra* note vii.

[16] Rock, Grant, & Grey, *supra* note vii.

[17] See, e.g., Brenda Sapino Jeffreys, *Gibson Dunn, Arnold & Porter Join Corporate Heavyweights in Black Equity Certification Program*, www.law.com/americanlawyer/2021/02/17/gibson-dunn-arnold-porter-join-corporate-heavyweights-in-black-equity-certification-program/ (last visited Feb. 25, 2021).