

In internal investigations, diverse teams are better

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Diverse investigative teams can elicit more information from interviewees and can conduct more thorough, thoughtful, and inclusive inquiries than teams lacking diversity, argue Gibson Dunn & Crutcher's Karin Portlock and Jabari Julien.

As the corporate workforce has increasingly diversified in recent years, clients are more closely scrutinising the diversity of their outside counsel, demanding now more than ever that law firms ensure legal teams are comprised of attorneys of varying races, ethnicities, backgrounds, and experiences. This push has emerged from a clearer understanding of how diverse teams drive better results for clients. And while the benefits of diverse teams are compelling

and apparent in many contexts, diverse teams offer significant advantages in internal investigations where diverse teams are best positioned to elicit more information from diverse interviewees and can conduct more thorough and culturally competent investigative inquiries than teams lacking diversity.

Calls for more diverse legal teams have grown louder in part due to developments in our understanding of the pitfalls of homogenous teams. What the research reveals is that diverse teams are better equipped to overcome the shortcomings of homogenous teams and produce efficacious results where “strong, homogenous culture[s]” can “stifle the natural cognitive diversity in groups through the pressure to conform.” Diversity is therefore hugely beneficial in team settings because it potentially “generate[s] accelerated learning and performance in the face of new, uncertain, and complex situations.”

As our appreciation of the strengths of diverse teams has grown, so has diversity at all levels of the corporate workforce. Boards of directors and corporate officers increasingly display more diversity in regards to gender, social class, nationality, and race and ethnicity, and the percentage of directors who are racial minorities is at a record high. Data collected from the Bureau of Labor Statistics shows that the percentage of black and latinx workers in managerial and professional positions has doubled since 1995, and representation of these two groups is growing in the finance and technology sectors specifically. At the same time, many major companies are outpacing national statistics by setting internal benchmarks to diversify their ranks. In recent years, numerous companies have launched initiatives to further accelerate the diversification of their staff. And this trend looks set to continue. On 6 August, the SEC voted to approve new listing rules submitted by Nasdaq to advance board diversity. Under the new rules, certain Nasdaq-listed companies are required to annually disclose statistical information about the board’s diversity characteristics and include (or provide an explanation for not including) a certain number of diverse directors.

As corporate clients continue to strive for greater diversity at all levels of the company, the key benefit of diverse investigative teams becomes evident: They can better earn the trust of a diverse corporate workforce in conducting sensitive internal investigations by eliciting more information in the investigative process from diverse interviewees, driving more thorough results.

To better understand the advantages of a diverse investigative team in the interviewing context, 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. 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,” whereas discordant physician-patient relationships (in terms of race, ethnicity, or language) have higher rates of miscommunication and other negative effects. 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 Department of Justice and the 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.” According to the report, cultivating the citizens’ belief that law enforcement organisations “represent them, understand them, and respond to them” would help deepen trust in law enforcement, among other benefits.

Drawing 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 internal investigations can reach all corners of a company, touching a range of employees and stakeholders from C-suite executives to staff – employees who are increasingly diverse and come from of a wide range of races and backgrounds. 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.

As an added bonus, diverse investigative teams are more likely to carefully consider the facts, problem-solve more creatively and thoroughly, and arrive at thoughtful and accurate conclusions. These skills further enhance the benefits of diverse teams in internal investigations, which are exercises in issue-spotting and collective problem-solving. 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." The mere presence of a diverse juror 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 their deliberations.

Research further shows that diversity within teams promotes hard work and creativity "by encouraging the consideration of alternatives even before an interpersonal interaction takes place." 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. And this open-mindedness promotes another beneficial behaviour among diverse teams: constructive criticism. With their differing races, genders, and other dimensions, diverse team members "bring unique information and experiences to bear on the task at hand," which improves the team's overall ability to perform and innovate. 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, diverse teams can uniquely strengthen the investigative process with more thorough deliberation and issue-spotting and more effective problem-solving.

In addition to the improved results that diverse teams are able to deliver in both problem solving and investigative tasks, building diverse teams also benefits team members themselves. Studies have shown that diverse teams “experience better general health and happiness than non-diverse teams.” Researchers have identified “psychological safety” – defined as “a shared belief held by members of a team that the team is safe for interpersonal risk-taking” – as the key to creating an inclusive workplace and ensuring that these benefits are realised. Cultivating this shared belief enhances the experiences of individual team members, while also maximising the improvements in performance and innovation inherent in diverse teams.

In our practice, we have seen many ways in which our diversity and experiences have enhanced investigations for our clients. Whether it’s interviewing a senior official sharing the experience of being tokenised 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, thoughtful, structural client solutions, examples of how diverse perspectives strengthen the investigative process abound.

The advantages of diversity within our profession are widely understood, and these advantages are particularly compelling in the context of internal investigations as the corporate workforce is becoming increasingly diverse. As a result, diverse investigative teams can elicit more information from diverse interviewees and can conduct more thorough, thoughtful, and inclusive inquiries than teams lacking diversity. The lesson from this wealth of evidence is clear: clients should enlist diverse investigative teams to deliver the best results.

Gibson Dunn summer associate Mary Otoo contributed to this piece.