Organizational Citizenship Through Talent Management: An Alternative Framework to Diversity in Private Practice

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"This is a journey, not a destination."[1]

Despite an increase in the enrollment of women and minorities in law school, female and minority attorneys opting to work at law firms find themselves walking through a revolving door. The high attrition rates of these attorneys have persisted during a period in which many law firms have adopted diversity initiatives with the explicit goal of attracting and retaining minority attorneys. This Note examines an initiative outside of the law firm context in order to provide insight into the failures of law firm diversity programs and prospects for reform. The catalyst for this alternative approach to promoting racial and gender equality is an innovative initiative designed to increase the retention and promotion of women in the workplace at Deloitte & Touche USA LLP. The strategies employed by Deloitte include: (1) the development of all employees, premised on the assumptions that everyone has the capacity to improve, should be given the opportunity to flourish within the organization, and should engage with

    1. Arin N. Reeves, *Diversity in Dollars and Sense*, DIVERSITY & THE BAR, Nov. 22, 2002 (quoting F. Duane Ackerman, chairman and CEO of BellSouth).

the organization as a full participant; (2) an understanding of the psychological approaches to individual and organizational learning so as to effectuate learning from error and engagement with the organization; and (3) the creation of processes and conditions that support these kinds of changes over time. Despite the challenges facing law firms in implementing these concepts, the opportunity has presented itself for law firms to reassess and reshape their traditional understandings.

I. INTRODUCTION

Law firms have invested substantial resources in diversity initiatives intended to attract and retain members of underrepresented groups.[2] Even with respect to this goal, many of these programs have been unsuccessful.[3] While racial and ethnic minorities comprise approximately 30% of the United States population, total minority representation among lawyers is less than 10%.[4] Over the past ten years, the enrollment of women and minorities in law school has increased, with the enrollment of women rising from 43% to 49%, and the enrollment of minorities rising from 15% to 20%.[5] Despite this increase in law school enrollment, female and minority attorneys opting to work at law firms find themselves walking through a revolving door. According to a national survey, while "9.2% of all associates leave during their

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2. *See* Arin N. Reeves, *Five Principles for Creative Diversity in Law Firms*, PRAC. LAW., Oct. 2002, at 42 (stating that, according to an informal survey conducted by The Athens Group, the number of law firms committing resources to achieving diversity has nearly doubled over the last 10 years); *see generally* VERA DJORDJEVICH, VAULT/MCCA GUIDE TO LAW FIRM DIVERSITY PROGRAMS (2008 ed.) (2007).

3. *See* David B. Wilkins & G. Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis*, 84 CAL. L. REV. 493, 546–47 (1996) (confronting an apparent paradox in that, notwithstanding the vast sums that firms spend annually on recruiting, they collect little information about a law student's substantive legal knowledge or skills, and the information that they do acquire is usually ignored).

4. A.B.A. COMM'N ON RACIAL & ETHNIC DIVERSITY IN THE PROFESSION, STATISTICS ABOUT MINORITIES IN THE PROFESSION FROM THE CENSUS (2000), *available at* http://www.abanet.org/minorities/links/2000census.html; *see* Laura B. Shrestha, *The Changing Demographic Profile of the United States*, CRS Report for Congress, May 5, 2006, *available at* http://usa.usembassy.de/etexts/soc/crs_demographics050506.pdf.

5. NAT'L ASS'N FOR LAW PLACEMENT BULLETIN, JOBS FOR NEW LAW GRADUATES — TRENDS FROM 1994–2004 (July 2005), *available at* http://www.nalp.org/content/index.php?pid=319. *But see* Cristina Quintero & Jeffrey Penn, *A Disturbing Trend in Law School Diversity*, 2007, http://www2.law.columbia.edu/civilrights (recognizing that even though African-American and Mexican-American students have "applied to law schools in relatively constant numbers over the past 15 years," their representation in law schools has fallen despite an increase in the leading indicators traditionally used by law schools to determine admissibility).

first year, the attrition rate for minority men and women during that same period is 11.5% and 12.1% respectively."[6] By year four, when lawyers typically begin to assume senior associate duties, 68% of minority men and 64.4% of minority women have left, as compared with 52.3% and 54.9% of men and women overall, respectively.[7] Law firm attrition rates for minority women are the highest of any group: 12.1% of minority women leave within their first year of practice and more than 81% leave within their first five years.[8]

These high attrition rates have persisted during a period in which many law firms have adopted diversity initiatives with the explicit goal of attracting and retaining minority attorneys.[9] The inability of law firms to achieve this goal provides insight into the failures of current diversity initiatives to address the underlying dynamics contributing to the revolving door for minority associates. Many of these programs simply add a layer of training, networking, and mentoring opportunities without addressing the institutional and cultural baseline contributing to the high attrition rate.[10] The current literature focuses on understanding the failures of these programs.[11] This Note examines an initiative

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6. David B. Wilkins, *Five Reasons Why Law Firms Are Not Making Progress on Diversity*, 13 CBA RECORD 20, 21 (May 1999); ELIZABETH CHAMBLISS, ABA COMM. ON RACIAL AND ETHNIC DIVERSITY IN THE PROFESSION, MILES TO GO 2000: PROGRESS OF MINORITIES IN THE LEGAL PROFESSION 11 (2000).

7. U.S. EQUAL EMPLOYMENT OPPORTUNITY COMM'N, DIVERSITY IN LAW FIRMS, (2003), http://www.eeoc.gov/stats/reports/diversitylaw/index.html (citing The NALP Foundation for Law Career Research and Education, *Keeping the Keepers II: Mobility and Management of Associates*); Wilkins, *supra* note 6.

8. ELIZABETH CHAMBLISS, ABA COMM'N ON RACIAL AND ETHNIC DIVERSITY IN THE PROFESSION, EXECUTIVE SUMMARY: MILES TO GO: PROGRESS OF MINORITIES IN THE LEGAL PROFESSION (2005), *available at* http://www.abanet.org/abastore/products/books/abstracts/4520014_2005%20execsumm.pdf; Deborah Epstein Henry, *Facing the FACTS: Introducing Work/Life Choices for All Firm Lawyers Within the Billable Hour Model*, DIVERSITY & THE BAR, Nov.–Dec. 2007, at 17 & 22, n.15 (citing Paula A. Patton and Cynthia L. Spanhel, *Toward Effective Management of Associate Mobility — A Status Report on Attrition*, (NALP Foundation, Overton Park, Kan.), 2005, at 21, 24).

9. *See supra* notes 5–7; *see also* Reginald E. Jones, *Law Firm Diversity Initiatives*, THE METRO. CORP. COUNS., Feb. 2004, at 28, *available at* http://www.metrocorpcounsel.com/pdf/2004/February/28.pdf (stating that "nearly every major American law firm has launched diversity initiatives").

10. Susan P. Sturm, *From Gladiators to Problem-Solvers: Connecting Conversations About Women, the Academy, and the Legal Profession*, 4 DUKE J. GENDER L. & POL'Y 119, 122 (1997) (recognizing that "reforms framed narrowly around the concerns of particular marginalized groups do not alter the cultural and institutional baseline").

11. For a criticism of the use of racial preferences by law firms, see Richard H. Sander, *The Racial Paradox of the Corporate Law Firm*, 84 N.C. L. REV. 1755 (2006). According

outside of the law firm context in order to provide insight into the failures of law firm diversity programs and prospects for reform. This initiative presents an alternative approach to promoting racial and gender equality, provides key elements generalizable to the law firm context, and serves as a critical lens to spawn innovation that is more likely to be effective than current models.

The catalyst for this new paradigm is an innovative initiative designed to increase the retention and promotion of women in the workplace at Deloitte & Touche USA LLP ("Deloitte"), a large professional services firm. By implementing a series of programs, Deloitte has combined its "talent management" system with unique features to address the specific circumstances of underrepresented groups. The Deloitte case study will demonstrate that effective and legitimate programs can be created in ways that accomplish the following: adequately define the problem and the goal, examine the ways in which organizational culture and the underlying structures of the organization have exacerbated the problem, and embrace sustainable change.

In addition to its noteworthy success in eliminating the turnover gap between men and women,[12] Deloitte's program provides an informative lens for law firms because it puts into practice strategies that research has shown to be effective in achieving a more inclusive organization. These strategies include: (1) the development of all employees, premised on the assumptions that everyone has the capacity to improve, should be given the opportunity to flourish within the organization, and should engage with the organization as a full participant;[13] (2) an understanding of the psychological approaches to individual and organizational

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to Professor Sander, there is an "apparent racial paradox because blacks are overrepresented at law firms as summer associates and first-year associates, but they are underrepresented among the ranks of new partners." *Id.* at 1759. Professor Sander attributes this paradox not to the failure of diversity initiatives but to "the use of large preferences by firms [which] lead[ ] to disparities in expectations and performance that ultimately hurt the intended beneficiaries of those preferences." *Id.*

12. DELOITTE & TOUCHE USA LLP, THE INITIATIVE FOR THE RETENTION AND ADVANCEMENT OF WOMEN 2006 ANNUAL REPORT 2 (2006) [hereinafter DELOITTE 2006 ANNUAL REPORT].

13. *See infra* notes 186–194 and accompanying text. Professor Sturm refers to this idea as "institutional citizenship." Susan Sturm, *The Architecture of Inclusion: Advancing Workplace Equity in Higher Education*, 29 HARV. J.L. & GENDER 247, 250 (2006). As an extension of her work, I use the term "organizational citizenship" instead of "institutional citizenship" in order to emphasize the importance of citizenship outside of the education context. *See id.*

learning so as to effectuate learning from error and engagement with the organization;[14] and (3) the creation of processes and conditions that support these kinds of changes over time.[15] The goal of this Note is not to promote a one-size-fits-all model, but to use this innovative approach as a way of stimulating the reexamination of traditional diversity initiatives.

Part II of this Note describes current law firm diversity paradigms and addresses their inadequacies. Part III provides an overview of Deloitte and the organizational transformation it has created, using its Women's Initiative as a case study. Part IV extracts the conceptual components from this initiative, addresses the challenges facing law firms in implementing these components into their respective organizations, and provides a brief overview of the changes already taking place in some law firms. This Note suggests that, despite the differences between a professional services firm such as Deloitte and law firms, the Deloitte case study offers an effective methodology for achieving racial and gender equality in the law firm setting.

II. CONTEMPORARY DIVERSITY INITIATIVES

The traditional law firm diversity program fails to achieve even a narrowly defined benchmark of recruiting and retaining underrepresented groups. According to a recent survey of law office diversity programs, "[t]he major objectives of the [average] program are recruitment and retention of legal personnel (lawyers and other legal staff) who will diversify the organization's human resources on the basis of race, gender, national origin, cultural background, and sexual orientation."[16] Many contemporary diversity programs are similar,[17] with firm initiatives including targeted recruitment, diversity training,[18] support for affinity

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14. *See infra* notes 195–212 and accompanying text.

15. *See infra* notes 213–222 and accompanying text.

16. EVELYN GAYE MARA, NAT'L ASS'N FOR L. PLACEMENT BULL., SURVEY OF LAW OFFICE DIVERSITY PROGRAMS (July 2005), *available at* http://www.nalp.org/assets/library_2/262_0705divsurvey.pdf.

17. Virginia Grant Essandoh, *Good Housekeeping*, LEGAL MGMT., Oct.–Nov. 2007, at 74.

18. The purpose of diversity training programs is to educate partners and associates. Tiffani N. Darden, The Law Firm Caste System: Constructing a Bridge Between Workplace Equity Theory & the Institutional Analyses of Bias in Corporate Law Firms, 1, 42 (2008) (unpublished manuscript, on file with author). The programs are not accompa-

groups, relationships with minority bar associations, formal mentoring, community outreach, diversity scholarships, participation in minority law student job fairs, and advertisements in minority publications.[19]   These activities, though prevalent, do not effectively advance and develop attorneys of color because they fall short of enabling these attorneys to fully participate in the organization.[20]   These interventions adopt what David Thomas and Robin Ely have referred to as an "assimilation" or "differentiation" paradigm as their approach to diversity. These programs focus on behavior at the individual level and consequently "leave the social context untouched, tending to systematically reproduce misconduct."[21] Although formal mentoring and relationships with minority bar associations, for example, provide minority attorneys with a social outlet, this outlet alone is insufficient to combat the traditional law firm structure. Law firms operating under either the assimilation or differentiation paradigm have seized the opportunity to introduce women and minority attorneys into the workforce, but they have been unable to retain these attorneys because both paradigms leave in tact the conditions and practices that pose barriers to advancement. Unless organizational structures are fundamentally redesigned, traditional diversity programs that do not alter those structures but merely "add on" to the existing structure will continue to serve a superficial role and fail to achieve the benefits of diversity.

   Identifying the limitations of the assimilation and differentiation approaches to diversity, David A. Thomas and Robin J. Ely have recognized the emergence of an innovative paradigm, the integration paradigm, capable of sustaining the benefits of diver-

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nied by any incentive to institute the encouraged practices. *Id.* Furthermore, the programs fail to hold individuals accountable for their own behavior. *Id.* Given these limitations, diversity training, standing alone, is incapable of creating an inclusive work environment. *Id.*

   19.   *See* DJORDJEVICH, *supra* note 2; MARA, *supra* note 16.

   20.   Law firms have recognized the need to make their cultures more welcoming to women and minorities, but have done so by implementing programs that are designed to "sensitize" the white males who run these organizations. David B. Wilkins, *Why Global Law Firms Should Care About Diversity: Five Lessons from the American Experience*, 2 EUR. J.L. REFORM 415, 423 (2000). "Although these initiatives may have some value, the obstacles facing women and minorities are predominantly structural, not attitudinal." *Id.*

   21.   Diane Vaughan, *Rational Choice, Situated Action, and the Social Control of Organizations*, 32 LAW & SOC'Y REV. 23, 34 (1998).

sity.[22] The discussion below briefly places contemporary diversity programs within the framework of the two current diversity paradigms identified by Thomas and Ely, addresses their inadequacies, and explores the integration paradigm as a vehicle for change.

A. ASSIMILATION PARADIGM

Most law firm diversity programs fall within the assimilation paradigm, which is focused on equal opportunity, fair treatment, recruitment, and compliance with federal regulations.[23] Premised on the notion that "we're all the same," the assimilation paradigm encourages and expects women and people of color to blend in.[24] Law firms operating under this paradigm have developed programs targeted to respond to the perception that women and people of color have been excluded from traditional mentoring and career-development programs.[25] Under this paradigm, however, progress is measured in terms of the organization's recruitment and retention goals rather than by its valuation and treatment of cultural differences, which affect the levels of participation of these underrepresented groups.[26]

While operating under this paradigm tends to increase demographic diversity at the hiring stage, the inclusion of members of underrepresented groups has not been achieved, as illustrated by the retention rates provided earlier. Furthermore, under this

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22. *See* David A. Thomas & Robin J. Ely, *Making Differences Matter: A New Paradigm for Managing Diversity*, HARV. BUS. REV., Sept.–Oct. 1996, at 79, 81–83.

23. Thomas and Ely also refer to this paradigm as the "discrimination-and-fairness paradigm." *See id.* at 83. It has been recognized that the "[e]xponential growth in large law firms cannot be sustained without making progress on diversity." Wilkins, *supra* note 20, at 419. "A firm that refuses to hire women and minorities would be shutting out approximately 70% of the talent pool," a self-defeating policy. *Id.* at 420; *see* Angela Brouse, Comment, *The Latest Call for Diversity In Law Firms: Is It Legal?*, 75 UMKC L. REV. 847, 851 (2007) (acknowledging that law firms that continue to ignore female and minority attorneys will end up overlooking many talented professionals). Furthermore, firms that hire women and minorities but fail to retain them will incur significant turnover costs. *Id.* The cost of losing a second-year associate, for example, can be as high as $250,000. *Id.* Regardless of size, to continue hiring, losing, and replacing talented attorneys is costly for any law firm. *Id.*

24. Thomas & Ely, *supra* note 22, at 82.

25. *See id.*

26. *Id.* Participation of these groups in law firms is also undermined by the way in which law firms are structured. Wilkins and Gulati, *supra* note 3, at 542.

paradigm, it is unlikely that firms will explore "how people's differences generate a potential diversity of effective ways of working, leading, viewing the market, managing people, and learning."[27] More importantly, with its emphasis on equal treatment, it subverts differences at the expense of employee motivation and satisfaction.[28] Without internalizing individual differences and understanding their value to the organization, law firms operating under this paradigm are unable to provide women and attorneys of color the opportunity to flourish within the organization. Frustration with the abysmal pace of integration in the world of elite corporate practice has increasingly caused diversity advocates in large law firms to turn from a message of "[integration is] the right thing to do" (which is the essence of the paradigm just described) to a message of "diversity is good for business" (which is the essence of the next paradigm) to pressure law firms to hire and advance minority attorneys.[29]

B. DIFFERENTIATION PARADIGM

A second law firm strategy, critically evaluated in an important article by David Wilkins, falls squarely within the differentiation paradigm.[30] This paradigm attempts to capitalize on group differences by matching diversity practices to business goals such as attracting a diverse clientele or satisfying client demands for a diverse workforce.[31] While the assimilation paradigm is based on the premise that "we're all the same," the differentiation paradigm is founded on the premise that "we celebrate

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27.   Thomas & Ely, *supra* note 22, at 82.

28.   *Id.*

29.   David B. Wilkins, *From "Separate is Inherently Unequal" to "Diversity is Good for Business": The Rise of Market-Based Diversity Arguments and the Fate of the Black Corporate Bar*, 117 HARV. L. REV. 1548, 1554 (2004). Justice Powell's opinion in *Regents of University of California. v. Bakke* was extremely skeptical of arguments for affirmative action based on "the remedying of the effects of 'societal discrimination,'" and the Supreme Court has continued in this tradition ever since. *See* Regents of Univ. of Cal. v. Bakke, 438 U.S. 265, 307–08 (1978). According to David Wilkins, given the Supreme Court's skepticism towards arguments for affirmative action arguments that are based on the need to remedy past or present societal discrimination, "[i]t is not difficult to see why market-based diversity arguments have come to dominate discussions about how to accelerate the slow pace of integration in corporate law firms." Wilkins, *supra*, at 1554.

30.   Wilkins, *supra*, note 29, at 1554.

31.   *See id*. at 1591–99.

differences."[32] The differentiation paradigm,[33] predicated on the acceptance and celebration of cultural differences, has resulted in the pursuit of niche markets by matching the demographics of the organization to those of critical consumer or constituent groups.[34]

The explosion of large law firms in size, geographic scope, and disciplinary reach combined with corporate clients' increasing demands and focus on the bottom line, has substantially pressured diversity advocates to justify their actions by relation to the marketplace.[35] Law firms operating under this paradigm of diversity being "good for business" have instituted programs targeted to respond to the perception that women and people of color can better serve or provide access to diverse clients.[36] While the paradigm's market-based motivation and the potential for competitive advantage are certainly strengths for any law firm,[37] cultural differences are usually emphasized without a critical assessment of how and why these differences matter.[38] Leaders are likely to pigeonhole these employees, thus leaving employees feeling exploited and excluded from other opportunities.[39] More gen-

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32.   Thomas & Ely, *supra* note 22, at 1.

33.   Thomas and Ely also refer to this paradigm as the "access-and-legitimacy paradigm." *Id.* at 7.

34.   *Id.*

35.   Wilkins, *supra* note 29, at 1555–56. Corporate America's embrace of market-related rationales for the increasing attention to diversity has also increased the pressure. *Id.* The fact that more than 470 general counsel of major corporations have committed to the "Diversity Statement of Principle," part of a project led by Charles Morgan, general counsel of Bell South, to encourage and support diversity in the workplace, seems to confirm that corporate America has fully embraced the business case for diversity and expects law firms to do the same. *See* Reeves, *supra* note 1.

36.   *See* Thomas & Ely, *supra* note 22, at 7.

37.   *But see* Wilkins, *supra* note 29, at 1581 (stating that "[s]tatistics appear to confirm that the opening of new markets for U.S. law firms overseas has had little effect on the career prospects of American minorities"). Also, while there has been significant growth in minority purchasing power, most of these new minority consumers (and businesses) cannot afford the costly legal services of corporate lawyers. *Id.* at 1582.

38.   Thomas & Ely, *supra* note 22, at 7.

39.   *Id.* A large percentage of black lawyers are working in areas in which their race might be perceived as a credential, including labor and employment law ("which in large-law-firm speak is a euphemism for defending discrimination cases"), general litigation ("where the concentration of minorities in urban jury pools is increasingly significant"), and municipal bond practice ("where black city officials are often the individuals dispensing the work"). Wilkins, *supra* note 29, at 1595. The danger of course is that these practice areas become the only ones in which minorities are perceived to add value. *Id.* Furthermore, minority attorneys can find themselves being "matched" in areas in which they have no interest, an increasing problem for Latinos and Asians as a result of globalization.

erally, whether the world's demographic diversity will be good for law firms depends not on whether diversity is per se good for business.[40] Rather, the question is whether these institutions can learn how to compete in a global forum in which many of the conditions that created the American model of legal practice are no longer constant.[41]

C. AN ALTERNATIVE PARADIGM: DIVERSITY AS LEARNING AND EFFECTIVENESS

Ely and Thomas offer a third paradigm with considerable promise for addressing the cultural and institutional dynamics underlying the attrition problem.[42] This paradigm proceeds from the premise that, if built into the core practices of an organization, diversity operates as a crucial driver of learning and problem solving. A diverse work environment tends to reduce conflicts, resulting in higher productivity and employee retention.[43] Diversity within an organization also enhances the creativity of its employees and the quality of problem-solving.[44] Diverse teams approach situations from an extensive range of experiences, perspectives, and work styles, leading to unique solutions, all of which, in turn, develop relationships.[45] Workplace interactions among diverse associates and partners also create a sense of con-

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Id. Problems associated with race-matching and pigeonholing have exacerbated the high minority attrition rates. *Id.* at 1597. Women and minorities, however, are not the only new professionals entering private practice that firms must learn to incorporate if they are expecting to compete globally. Wilkins, *supra* note 20, at 421–22. To be global leaders, firms must find ways to integrate lawyers from other countries (and other legal traditions) as well. *Id.* at 422.

40. Wilkins, *supra* note 20, at 416.

41. *Id.*

42. *See* Thomas & Ely, *supra* note 22, at 9.

43. Robert D. Sloan, *Diversity Spotlight: Entergy Corp.*, 53 LA. B. J. 126, 127 (Aug.– Sept. 2005).

44. *See generally* SCOTT PAGE, THE DIFFERENCE: HOW THE POWER OF DIVERSITY CREATES BETTER GROUPS, FIRMS, SCHOOLS AND SOCIETIES (2007); Cynthia Estlund, *Putting Grutter to Work: Diversity, Integration, and Affirmative Action in the Workplace*, 26 BERKELEY J. EMP. & LAB. L. 1, 7 (2005).

45. Brouse, *supra* note 23, at 851, 859 (2007) (arguing that the Supreme Court's decision in *Grutter v. Bollinger* suggests that the diversity rationale could be extended to the law firm context). In the University of Michigan Law School admissions case, *Grutter v. Bollinger*, the Supreme Court recognized that diversity would make a classroom discussion "livelier, more spirited, and simply more enlightening and interesting when the students have the greatest possible variety of backgrounds." 539 U.S. 306, 330.

nectedness and belonging, which carries over into a better work product.[46] Normatively, contributions made by employees with diverse backgrounds further the law firm's mission of a productive and cohesive workforce while simultaneously improving the quality of society.[47] Collaboration and teamwork among diverse co-workers form interpersonal bonds, defeat stereotypes, and increase understanding across racial and gender lines, producing "civil spillover for the whole society."[48]

The integration paradigm, also referred to as the learning-and-effectiveness paradigm, provides a framework for an approach structured to realize the benefits of diversity.[49] While both the assimilation and differentiation paradigms have been shown to be successful in motivating managers to diversify their staffs, they usually prove unable to sustain the benefits from diversity.[50] A diversity program predicated on the integration paradigm, on the other hand, provides women and minorities with the opportunity to realize their full potential.[51] As Amartya Sen argues, "a more adequate way of considering 'real' equality of opportunities must be through equality of capabilities," which allows for an individual to pursue his or her objectives.[52] Consequently, a paradigm that, in effect, subverts cultural differences and separates the individual from his or her cultural identity, as with the assimilation paradigm, or that excludes individuals from mainstream work, as with the differentiation paradigm, denies the individual of his or her "freedom to achieve."[53] In order to become a full participant in an organization, an individual must be able to engage in an ongoing candid conversation with her employer without being presumed to be speaking from a specific set of experiences or to be representing only a small sector within the organization. Social justice, according to Iris Marion Young, requires society to

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46. Brouse, *supra* note 23, at 851, 859.

47. *Id.* at 858–59. *See* Sturm, *supra* note 10, at 124 (understanding that law schools and the legal profession have a special obligation to provide access as a result of their influence on public decision making).

48. Estlund, *supra* note 44, at 24, 25.

49. *See* Thomas & Ely, *supra* note 22, at 9.

50. Robin J. Ely & David A. Thomas, *Cultural Diversity at Work: The Effects of Diversity Perspectives on Work Group Processes and Outcomes*, 46 ADMIN. SCI. Q. 229 (2001).

51. *See* Sturm, *supra* note 13.

52. AMARTYA SEN, INEQUALITY REEXAMINED 6 (2004).

53. *See id.* at 4.

provide support for "the values that constitute the good life."[54] Young considers two values the most fundamental: "(1) developing and exercising one's capacities and expressing one's experience, and (2) participating in determining one's action and the conditions of one's action."[55] In order to effectively achieve these values, an alternative paradigm must allow for such freedoms as the freedom to identify and the freedom to participate.[56]

While there are very few studies that assess diversity-performance hypotheses using objective measures, a study of the relationship between race and gender diversity and business performance has shown few positive or negative direct effects of diversity on performance.[57] There was some promising evidence, however, to suggest that diversity, under certain conditions, could enhance performance, namely when organizations foster an environment that promotes learning from diversity.[58] These findings illustrate the important of context in determining the nature of diversity's impact on performance.[59] An alternative paradigm

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54. IRIS MARION YOUNG, JUSTICE AND THE POLITICS OF DIFFERENCE 37 (1990).

55. *Id.* (internal citations omitted).

56. *See generally* SEN, *supra* note 52 (stating that there is a distinction between "*achievement* and the *freedom* to achieve.") The freedom to identify and the freedom to participate are named as members under the umbrella of the freedom to achieve, thus dealing with the limitations of the assimilation and differentiation differences.

57. *See* Thomas Kochan et al., *The Effects of Diversity on Business Performance: Report of the Diversity Research Network*, 42 HUM. RESOURCE MGMT. 3 (2003); Wilkins, *supra* note 29, at 1575 (stating "there is no a priori reason to believe that corporations will be better served simply by substituting 'average' black lawyers for the 'average' white ones that they currently employ"). *But see* Cynthia L. Estlund, *Working Together: The Workplace, Civil Society, and the Law,* 89 GEO. L.J. 1, 3 (2000) (describing the workplace as "the single most important site of cooperative interaction and sociability among adult citizens outside the family"). According to Cynthia Estlund,

> The lesson we learn from them [organizational diversity studies] depends on the question we ask. If the question is whether diverse groups are likely to perform and get along better or worse than homogeneous groups, the answer seems to be that "[u]nless steps are taken to actively counteract [the negative] effects, . . . by itself, diversity is more likely to have negative than positive effects on group performance." But if diversity is a given — as it is in this society — and the question is whether intergroup relations will be better with more rather than less interpersonal interaction and cooperation across group lines, the answer seems to be clear: constructive, cooperative intergroup contact tends to improve intergroup attitudes and relations.

Id. at 28 (citation omitted). According to the study performed by Kochan and other researchers, when racial diversity was shown to have a negative effect, it was mitigated by efforts such as training and development-focused initiatives. Kochan et al., *supra*, at 17.

58. Kochan et al., *supra* note 57, at 17; *see* PAGE, *supra* note 44.

59. Kochan et al., *supra* note 57, at 17.

must consequently look beyond the "business case" for diversity (or at the very least, reframe it).[60]

As mentioned earlier, Thomas and Ely suggest a new paradigm, the integration paradigm,[61] which transcends both assimilation and differentiation because of its ability to promote equal opportunity and to value cultural differences.[62] Thus, it possesses the positive features of both previously described paradigms.[63] This new model has been embraced by Deloitte and others as the basis for their diversity initiatives.[64] This model builds on the idea that, if organized to develop people's capabilities and to integrate and learn from different perspectives, diversity will enhance the capacity of the organization to solve complex prob-

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60.   *See id.* at 18 (stating that diversity is both a "labor-market imperative and societal expectation and value"); Wilkins, *supra* note 29, at 1599 (arguing that diversity advocates seeking to build the business case must also illustrate that their arguments include a vision of social justice).

61.   Thomas and Ely also refer to this paradigm as the "learning-and-effectiveness paradigm." Thomas & Ely, *supra* note 22, at 9.

62.   *See id.* at 1.

63.   *See id.* at 1. In order for a new paradigm to be able to sustain the benefits from diversity, it must "reclaim the soul of the legal profession." Sturm, *supra* note 10, at 122 (suggesting that a move from understanding the role of a lawyer as gladiator to lawyer as problem-solver will enrich the future of the legal profession as well as the future of underrepresented groups in the legal profession).

64.   As the author understands it, a law firm that frames itself on the integration paradigm must combat the organizational structures hindering the advancement of minority attorneys. Embracing this paradigm in reality requires, at the outset, accurate and objective information, which may be gathered in a number of ways. According to Professor Darden, "[b]y enacting mediated feedback sessions through the evaluation process, law firms fill a void on the subjectivity side of law firm evaluations by providing reasons for the lackluster evaluation and critical feedback to associates, and simultaneously, the process educates partners on formerly unrecognized structural barriers and individual cognitive biases." Darden, *supra* note 18, at 19. In addition to an interactive evaluation process, management-based regulation has been offered as a potentially effective tool to address structural discrimination. *See* Note, *A Proposal for Law Schools to Combat Structural Discrimination at Law Firms through Management-Based Regulation*, 120 HARV. L. REV. 2156, 2157 (2007). This system "mandates that regulated firms engage in an internal review process to locate possible sources of a social problem and then engage in planning, usually in cooperation with experts, to create a strategy for eliminating these firm-specific sources." *Id.* The Note recognizes that management-based regulatory regimes have been successful in other contexts, including pollution prevention and food and industrial safety. *See id.* at 2159–60. A federal law aimed at decreasing the disproportionate detention of minority juveniles through state examination of the decision points in the juvenile justice system, identification of the points in the process that may contribute to the disproportionate detention of minorities, and yearly reporting about planning serves as another successful federal program that uses a management-based approach to identify and address structural discrimination. *Id.* at 2160.

lems.[65] Although retention is an insufficient goal in and of itself
as a result of its inability to adequately address second genera-
tion bias and exclusion,[66] it serves as an important metric of an
organization's willingness to develop all of its employees. Reten-
tion should be considered an integral component of any frame-
work, but if racial and gender equality in the workplace is ever
going to be achieved, it cannot exist in isolation.[67]

It is imperative that race and gender be reconceptualized in
relation to each other and to the "project of progressive institu-
tional change."[68] Initiatives tailored to racial diversity are bound
to fail unless they are considerate of the experiences of other un-
derrepresented groups.[69] While identity is not fungible, a singu-
lar focus on any particular identity may ignore the differences
and contributions of others.[70] Dynamics accounting for racial and
gender under-participation differ in important ways. The diagno-
sis of the problem, however, does not warrant separating race
from gender initiatives because both attempt to address the same
underlying problem: the organizational structures that hinder

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65. *See* Thomas & Ely, *supra* note 22, at 10. *But see* Wilkins, *supra* note 29, at 1576
(noting that advocates have yet to develop a clear substantive account of how the unique
skills and experiences that minority attorneys bring to their work will increase the profits
of corporate firms or their clients). According to Wilkins, not every diverse viewpoint is
valued by the corporate world; more specifically, views that strongly challenge existing
practices are often not well received, even if fostering dissent is a way in which diversity
improves decisionmaking. *Id.* at 1587.

66. *See generally* Susan Sturm, *Second Generation Employment Discrimination: A
Structural Approach*, 101 COLUM. L. REV. 458 (2001).

67. *See id.* at 541.

68. Sturm, *supra* note 10, at 124. On a strategic level, initiatives framed around
specific underrepresented groups do not alter the organizational culture. *Id.* at 122. Con-
sequently, narrowly tailored reforms reinforce the status quo. *Id.* For example, a para-
digm that treats race and gender as add-ons implicitly legitimizes a culture that is fun-
damentally flawed. *See id.* at 123. On a normative level, the legal profession cannot legi-
timize its moral statute if it continues to systematically exclude and undervalue underre-
presented groups. *Id.* (citing Susan Sturm & Lani Guinier, *The Future of Affirmative
Action: Reclaiming the Innovative Ideal*, 84 CAL. L. REV. 953, 1031 (1996)); *see* Wilkins and
Gulati, *supra* note 3, at 614 (stating that "[t]he fact that the country's most prestigious
law firms are nearly as segregated today as the entire legal system was forty years ago
stands as a constant rebuke to the profession's attempt to claim the noble side of this
heritage."). The legitimacy of the legal profession thus requires that opportunities be
given in a fair and inclusive manner. *See* Sturm, *supra* note 10, at 123.

69. *See* Sturm, *supra* note 10, at 123 (arguing that an exclusive focus on women's
experience is difficult to justify when those experiences are not necessarily shared by all
women and may be shared by members of other groups).

70. *Id.* at 124.

the advancement of minorities.[71] Intervening effectively requires that these problems be addressed simultaneously, even if differences in the nature of the problem require differences in strategy.[72] Full participation of women and people of color in the legal profession depends on retheorizing the institution as a whole.[73]

III. THE WIN STORY: A CASE STUDY OF ORGANIZATIONAL CITIZENSHIP THROUGH TALENT MANAGEMENT

Deloitte's Women's Initiative ("WIN"), an example of the integration paradigm at work, has cut the attrition rate and enhanced the capacity of individuals to contribute effectively to the organization's work. In 1992, Deloitte implemented WIN, which has evolved into a powerful engine for innovation.[74] With more than thirty-seven thousand partners, principals and employees; offices in ninety cities within the Unites States; and revenues of approximately $9 billion in 2006, Deloitte is one of the world's largest professional services organizations.[75] WIN's achievements in retention and talent development reveal important lessons for achieving meaningful change.[76] Illustrative of the fundamental notion described earlier that retention, though insufficient by itself, can serve as an important metric, the first component of WIN — achieving retention — is directly connected to the second component — capacity building — which adds value to the talent

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71. Susan Sturm, *Conclusion to Responses The Architecture of Inclusion: Interdisciplinary Insights on Pursuing Institutional Citizenship*, 30 HARV. J. L. & GENDER 409, 423 (2007).

72. *Id.*

73. *See* Sturm, *supra* note 10, at 125–26.

74. This case study draws from a two-part case study prepared under the supervision of Professor Rosabeth Moss Kanter. *See* JANE ROESSNER, DELOITTE & TOUCHE (A): A HOLE IN THE PIPELINE, N9-300-012 (Sept. 28, 1999) [hereinafter DELOITTE & TOUCHE (A)]; JANE ROESSNER, DELOITTE & TOUCHE (B): CHANGING THE WORKPLACE, N9-300-013 (Sept. 28, 1999) [hereinafter DELOITTE & TOUCHE (B)]. I am drawing particularly on the case study analysis developed by Professor Sturm in *Second Generation Employment Discrimination*, *supra* note 66. It is supplemented by the DELOITTE 2006 ANNUAL REPORT, *supra* note 12, and Cathleen Benko and Anne Weisberg's book entitled *Mass Career Customization*, *infra* note 75.

75. CATHLEEN BENKO & ANNE WEISBERG, MASS CAREER CUSTOMIZATION: ALIGNING THE WORKPLACE WITH TODAY'S NONTRADITIONAL WORKFORCE, 120–21 (2007).

76. Note that WIN can be considered a practical example of the learning-and-effectiveness paradigm proposed by Thomas and Ely due to Deloitte's internalization of the differences between men and women and the dissimilar ways both were treated. *See* Thomas and Ely, *supra* note 22, at 10.

management approach to combating racial and gender inequality through the development and advancement of individuals.

A.   DEFINING THE PROBLEM AND THE GOAL

WIN resulted from the CEO's perception that a gender gap in the retention and promotion of women reflected "the firm's inability to develop talent throughout the pipeline to partnership."[77] Although Deloitte was hiring men and women at the entry level in approximately equal numbers and investing heavily in training, women were leaving at a much higher rate.[78] This gender gap in attrition, at that time 7%, was expensive because (1) replacement of the departing employee with another was estimated conservatively to cost the equivalent of twice his or her annual compensation,[79] and (2) the leaky pipeline made it difficult to compete and grow.[80] Mike Cook, then Chairman and CEO of Deloitte, viewed the hole in the pipeline not solely as a gender problem of retaining women, but as a business problem.[81] In an industry defined by a fierce competition for talent, a talent hemorrhage of this magnitude would hinder the firm's ability to service its clients effectively.[82] Thus, rather than defining the problem narrowly in terms of retention (as many law firms currently do),[83] Deloitte defined the problem more broadly as a strategic business issue.[84] Because he understood the problem faced by Deloitte in broad terms, Cook's articulated goal was inclusive and expansive: the creation of a firm in which all employees achieved their ful-

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77.   E-mail from Anne Weisberg, Director in Talent, Deloitte & Touche (Sept. 15, 2008) (on file with author).

78.   BENKO & WEISBERG, *supra* note 75, at 121.

79.   By conservative estimates, it costs a law firm $200,000 to $500,000 to replace a second-year associate. Henry, *supra* note 8, at 16.

80.   BENKO & WEISBERG, *supra* note 75, at 121.

81.   DELOITTE & TOUCHE (A), *supra* note 74, at 4.

82.   *See id.*

    Cook picked up his legal pad and sketched a graph of his own. The line on top
    indicated the steadily upward rate of women being hired by Deloitte. The line
    below it, trending steadily downward, indicated the rate of retention of women.
    He called it "The Stupid Curve": it didn't take a rocket scientist — or even an ac-
    countant — to recognize that the growing area in the middle was the problem.

Id. at 1.

83.   *See, e.g.*, MARA, *supra* note 16.

84.   *See id.*

lest potential and rose through the organization, a goal law firms problematically do not desire to achieve.[85]

B.   ROOT CAUSE ANALYSIS

In order to realize his vision, Cook established the Task Force on Retention and Advancement of Women ("Task Force").[86] As chair of the Task Force, Cook gave it the responsibility of explaining the high turnover rate for women and determining how to address the trend.[87] In selecting the Task Force members, he was careful to include a cross-section of the organization that varied in gender, age, geography, and marital status.[88]

The Task Force began by examining Deloitte's personnel records for the previous three years to identify patterns in hiring, promotion, and attrition.[89] The data revealed that "although men and women left the firm in roughly equal numbers at the entry level, at higher and higher levels, women were leaving at an ever-increasing rate."[90] The Task Force then hired Catalyst, a non-profit research organization that advises corporations on how to advance women.[91] Catalyst interviewed 40 high-potential women who had left Deloitte in the previous year. These interviews told an unexpected story: "Over 70% of the women who had left Deloitte were still employed full-time one year later. Another 20% were working part-time at other firms. Fewer than 10% were at home with small children, and even they intended to return to full-time work in the near future."[92] Catalyst also interviewed 500 people throughout Deloitte in small, all-men and all-women focus groups.[93] The interviews revealed disappointment at a lack of mentoring and professional opportunities and a universal con-

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85.   BENKO & WEISBERG, *supra* note 75, at 121. *See* Wilkins & Gulati, *supra* note 3, at 541.

86.   E-mail from Anne Weisberg, Director in Talent, Deloitte & Touche (Aug. 3, 2008) (on file with author).

87.   DELOITTE & TOUCHE (A), *supra* note 74, at 4.

88.   *Id.*

89.   *Id.* at 5.

90.   *Id.*

91.   *Id.*

92.   *Id.*

93.   *Id.*

cern about work-life issues (contrary to the assumption that work-life balance was a "women's issue").[94]

Serving as a marker of the firm's preliminary root cause analysis by asking the "why" question,[95] the Catalyst report identified three crucial areas related to the advancement and retention of women: (1) a male-dominated work environment; (2) opportunities for career advancement; and (3) work/life balance.[96] The Task Force presented its findings and preliminary recommendations to the Management Committee.[97] While initially skeptical, the Management Committee, with the help of senior women partners validating the Task Force's findings, and with the support of firm leadership, eventually recognized that women faced significant obstacles, which had to be addressed.[98]

C. IMPLEMENTATION

In April 1993, Mike Cook held a press conference to formally announce the "Initiative for the Retention and Advancement of Women."[99] He also named an external advisory group, the "Council on the Advancement of Women," which would meet quarterly to monitor and continually challenge the firm's performance and goals with respect to WIN.[100] The external advisory group, composed of business members, was chaired initially by Lynn Martin, former Secretary of Labor, and is currently chaired by Dr. Sally Ride.[101] The role of the Council was (and continues to be) "to provide external accountability in much the same way that shareholders do with a public company," thus making a firm statement about the importance of WIN considering Deloitte is a private partnership.[102] Internally, WIN was run by the Task Force, headed by a partner who previously served on the initial task force.[103]

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94. *See id.*; BENKO & WEISBERG, *supra* note 75, at 122.

95. *See* Susan Sturm & Howard Gadlin, *Conflict Resolution and Systemic Change*, 2007 J. DISP. RESOL. 1, 43 (discussing the importance of a root cause methodology).

96. DELOITTE & TOUCHE (A), *supra* note 74, at 6. For a continuing discussion of the root cause analysis performed by Deloitte, see *infra* Part III.C.

97. DELOITTE & TOUCHE (A), *supra* note 74, at 6.

98. *Id.* at 7.

99. DELOITTE & TOUCHE (B), *supra* note 74, at 1.

100. *Id.*

101. E-mail from Anne Weisberg, *supra* note 77.

102. *Id.*

103. DELOITTE & TOUCHE (B), *supra* note 74, at 2.

Framing its work around the three areas identified by Catalyst, the Task Force designed a series of operational changes.[104]

Three principles guided the implementation of these changes associated with WIN.[105] First, in order to prevent the "kiss of death" and to provide legitimacy, operational changes had to be driven through line management rather than Human Resources.[106] Second, Deloitte needed to declare its commitment to WIN both internally and externally.[107] Third, the firm had to build an accountability structure.[108]

Dedicated to uncovering the root causes of the gender gap, the Task Force began by examining the assignment process — monitoring assignments to determine whether and where gender bias existed.[109] The Task Force discovered that on the accounting side, "women's assignments tended to be clustered in not-for-profit companies, health care, and retail . . . Women were rarely assigned to such high-potential areas as mergers and acquisitions."[110] Critical factors affecting career advancement included "the type of industry you were working for, the type of project you were on, and who was leading it."[111] Moreover, the assignment process was not clearly defined before WIN.[112] In response to these problems, the Task Force prioritized visibility.[113] As part of the newly required annual assignment reviews, office managing partners analyzed all of the service lines in their office and listed the top assignments, identifying the individuals who worked on them, and breaking them down by gender.[114] Until the implementation of the assignment review, many offices had no idea that such disparities existed.[115]

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104. *Id.*
105. *Id.* at 5.
106. *Id.* According to the National Human Resources Director, it would have been the kiss of death for WIN to have been perceived as "an HR thing." *Id.*
107. *Id.*
108. *Id.*
109. *Id.*
110. *Id.*
111. *Id.*
112. *Id.* at 6.
113. *See id.*
114. *Id.*
115. *Id.*

Another key issue addressed by the Task Force was flexible work arrangements ("FWAs").[116] On paper, Deloitte had a competitive program allowing such arrangements.[117] However, "[t]he problem was people didn't want to use them . . . because the culture didn't support them."[118] Two principles guided the use of FWAs: (1) they were temporary; and (2) opting for flexible work would only change the timing of a person's advancement, not hinder it.[119] After the first person was made a partner while on a FWA, skeptics became believers.[120] The firm also instituted the "3-4-5" program for consultants, which reduced the amount of time they would be working away from their home office.[121]

Despite these changes with respect to flexible FWAs, internal and external research led to the conclusion that flexibility continued to be *the* top issue affecting women in the workplace.[122] The effort resulted in a series of interesting conclusions; among them was that while the demand for FWAs was higher than at any earlier point, stigma attached to those employees seeking FWAs.[123] In order to address these challenges, Deloitte had to redefine its initiative in a way that would produce an environment reflective of Cook's vision.

Mass career customization ("MCC") ultimately serves as another part of the solution to the challenges facing Deloitte in the work-life balance arena. As defined, "MCC supports a customized approach to career development that engages the individual as a partner in his or her development — and signals the organization's commitment to each individual's growth."[124] Because the static assumption that each employee should conform to the traditional full-time standard is decreasing in relevance,[125] MCC

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116. *See id.*

117. *Id.*

118. *Id.*

119. *Id.* at 7.

120. *See id.*

121. *Id.* Rather than being on the road from Sunday night to Friday night, as a result of the 3-4-5 program, "consultants would be out of town three nights a week, working in the client's office four days a week, and in the home office on the fifth day." *Id.*

122. Benko & Weisberg, *supra* note 75, at 124.

123. *Id.* at 124–26.

124. *Id.* at 79.

125. According to Benko and Weisberg, MCC is a viable approach to matching the needs of the workforce with those of the workplace during a time of six converging trends: a shrinking pool of skilled labor, changing family structures, an increasing number of

embraces a more dynamic notion of fairness relative to each employee's work profile, which maps an employee's pace, workload, location/schedule, and role at a given point in time.[126] While studies suggest that the vast majority of individuals — more than 90% — have "standard" profiles (or profiles that reflect the traditional full-time standard), it is MCC's *option value* that provides the most benefit to the employer because of the greater job satisfaction that results from giving all employees decision-making power and options in managing their careers.[127] Consequently, implementing MCC provides real options for both the employer and the employee while simultaneously transforming the quality of the employer-employee relationship via an ongoing conversation.[128]

From its inception in 2004, MCC has been introduced and tested in various forums throughout Deloitte, most notably through implementation pilots within its most travel intensive and geographically dispersed business segment, Deloitte Consulting LLP.[129] As a result of the favorable findings of the first two pilots,[130] Deloitte has decided to implement MCC firm-wide.[131] MCC, originally "incubated" in WIN, is now a part of the firm's general Talent Agenda, illustrating the transcendence of work/life issues beyond gender and the ability of WIN to serve as an innovative engine for talent management across the firm.[132] While MCC has potential in recruiting and retention, it is impor-

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women in the workforce, changing expectations of men, the expectations of Generations X and Y, and the impact of information and communications technologies. *See id.* at 6.

    126.   *Id.* at 87.

    127.   *See id.* at 8.

    128.   Similarly to the way in which an MCC dialogue between an employee and her supervisor allows the employee to actively engage in the management of her career, the mediation process proposed by Darden for law firms provides valuable information to and from the associates, and also "elevates their position to participants in self-determining their career trajectory while contributing to the firm's progress toward an equitable workplace." Darden, *supra* note 18, at 43.

    129.   BENKO & WEISBERG, *supra* note 75, at 127.

    130.   Round 1 pilots focused at the project level and showed, *inter alia*, that MCC can work in client service while improving morale and productivity. Round 2 pilots were designed to build from this core understanding, integrating MCC with the annual talent cycle. *Id.* at 132, 139.

    131.   E-mail from Anne Weisberg, *supra* note 86.

    132.   *Id.*

tant to note that it is "meant to function within an organization's overarching talent management systems and processes."[133]

In addition to addressing flexible work arrangements, the Task Force also reviewed every policy for gender bias.[134] In place of the "no nepotism" rule,[135] for example, the Task Force recommended a "no supervision" rule, which stated that "professionals could not supervise anyone on an engagement or in a department to whom they were married or related, or with whom they had a significant relationship."[136] The new policy thus avoided favoritism while eliminating the unintended consequences of the old policy.[137]

To raise awareness of the gender dynamics at Deloitte, the Task force worked with a consulting firm to develop a two-day workshop called "Men and Women as Colleagues."[138] Through discussion, video, and examining case studies, the workshop explored the differences in perception between men and women in the workplace.[139] The CEO attended the first workshop, committing two days of his time, followed by the entire board of directors, the Management Committee, and the office managing partners.[140] After this showing of high level commitment, the firm's entire management staff attended the workshop in groups of twenty-four.[141]

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133.   BENKO & WEISBERG, *supra* note 75, at 98.
134.   DELOITTE & TOUCHE (B), *supra* note 74, at 7.
135.   The nepotism rule "said that no relatives, friends, or close personal acquaintances of employees could work for the firm — typical of most companies. But the Task Force realized that this often had severe consequences for women." *Id.*
136.   *Id.*
137.   *Id.*
138.   *Id.* at 2.
139.   *Id.* According to a female partner at Deloitte, the lessons of the workshop gradually began seeping into the practice of the firm. For example, in evaluation sessions people began to be aware of the different and unchallenged language that was used for men and women. As another female partner put it, "Women get evaluated on their performance; men get evaluated on their potential." *Id.* at 4.
140.   *Id.* at 2.
141.   *Id.*
  The workshop was not typical of Deloitte training sessions. People were used to technical training: to learn about something needed in their work, with specific answers. This was different: most people left with more questions than they went in with . . . Although some attendees came away from the workshop feeling it was a waste of time, the Task Force achieved its goal of converting a core group — a critical mass of 25% to 30%.
Id. at 3.

Commencing with "Men and Women as Colleagues," Deloitte continued to deliver a number of activities including networking, mentoring, coaching and professional development programs to provide women (and men) with more opportunities to succeed.[142] Personal Pursuits, for example, provides former employees with the opportunity to remain connected to the organization and maintain the tools and relationship they will need once they are ready to return.[143] In addition to the firm's dedication to maintaining professional relationships with former employees, Deloitte has also recognized the importance of developing the skills of its current employees in its quest to create a workforce that is able to reach its fullest potential.[144] Women as Buyers, actively piloted in 2006, served as a response to the increasing need, particularly for Deloitte's male employees, "to better understand the processes, preferences and styles of the growing segment of women buyers."[145] Offered to a one-third/two-thirds mix of female and male partners, principals and directors, the successful workshops offered presentations, interactive discussion, and client examples that addressed topics such as communications, relationships and decision-making styles.[146]

In implementing these operational changes, Deloitte installed a system of accountability, but only after WIN was well underway.[147] Ultimately, the responsibility fell on the individual offices to implement the necessary changes.[148] The accountability struc-

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142. *See* DELOITTE 2006 ANNUAL REPORT, *supra* note 12, at 21.

143. *Id.* at 35. Personal Pursuits provides participants with a number of resources to keep connected with the organization, to stay current in the industry, and to remain technically proficient. *Id.* These resources include mentors, career coaches, short-term work assignments, and training that keeps former employees up-to-date. *Id.* Piloted in 2005, Personal Pursuits was implemented organization-wide to all eligible employees in 2006 and has since been praised by the likes of *Fortune* magazine, *Working Mother* magazine, The Conference Board, and Families & Work Institute. *Id.*

144. *See generally* DELOITTE 2006 ANNUAL REPORT, *supra* note 12.

145. *Id.* at 35. Working with the Trendsite Group, Deloitte completed a year's worth of research, created a curriculum, and piloted "Women as Buyers." *Id.*

146. *Id*. A staggering 97% of participants responded that they better appreciated the differences between men's and women's professional buying preferences. *Id.* Because of the exceptional response, Deloitte plans on continuing to offer the workshops in the future. *Id.*

147. DELOITTE & TOUCHE (B), *supra* note 74, at 8. According to Mike Cook, "[w]e believed that if we put in accountability too soon, we would get quotas." *Id.*

148. DELOITTE & TOUCHE (B), *supra* note 74, at 5.

ture, which should be similarly implemented in law firms, required reporting, self-reflection, and transparency:

> Each Deloitte office was required to complete an annual plan for the Women's Initiative, including its status in relation to a set of benchmarks such as number of women, gender gap, female promotions, female partner promotions, and flexible work arrangements. Officers were asked to complete a self-assessment of their achievements in the past year, and set goals for each benchmark for the coming year. In addition, each office described in detail the actions it planned to take to achieve each of its stated goals. Offices were compared to one another, as well as to their progress in relation to their own goals. The results of the office plans were distributed firmwide.[149]

As part of this rigorous accountability, Deloitte compared offices to one another, compared them to benchmarks the firm had established, and provided reports to management that are used in evaluation and are tied to compensation.[150] Equipped with upper management's local knowledge of the organizational culture, the skills and relationships necessary to stay at the firm and advance, and the barriers in achieving retention and advancement, the firm systematically examined organizational processes, programs, and policies.[151] After performing its root cause analysis, Deloitte introduced accountability as a means of sustaining the benefits of WIN by integrating results into the incentive structure of the organization.[152]

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149. *Id.* As a way of better addressing structural discrimination in the law firm context, management-based regulation has been offered as a possibly effective tool. *See* Note, *supra* note 64, and accompanying text. This system requires engaging in an internal review process to locate the sources of a social problem and strategizing as to how these sources can be eliminated. *Id* at 2159. *But see* David B. Wilkins & G. Mitu Gulati, *Reconceiving the Tournament of Lawyers: Tracking, Seeding, and Information Control in the Internal Labor Markets of Elite Law Firms*, 84 VA. L. REV. 1581, 1632 (1998) ("Without shareholders seeking to have their residual claims protected, there is no impetus to create an independent outside regulatory body such as a board of directors, to mediate conflicts among the many parties whose human capital is tied up in the firm.").

150. DELOITTE & TOUCHE (B), *supra* note 74, at 8. According to Mike Cook, "managing our people is right up there with managing our clients' service delivery." *Id.*

151. *See generally id.*

152. *See generally id.*

WIN has produced noteworthy results both in the advancement and retention of women and in the firm's overall retention rate.[153] As a result of WIN's comprehensive approach, a culture change occurred.[154] "By 1995, 23% of senior managers were women; the percentage of women admitted to partner rose from 8% in 1991 to 21%; the turnover rate for female senior managers dropped from 26% in 1992 to 15%."[155] Most recently, in 2007, for the third consecutive year the firm eliminated the gap in gender turnover.[156] Lastly, the promotion of women has also improved. In 1992, three women were selected as partners, principals and directors; in 2006, 134 women were selected as partners, principals and directors.[157] From 1999 to 2007, the percentage of women partners, principals, and directors increased from 12% to 21%.[158]

While the original objective of WIN was the retention and advancement of women to partnership, the firm eventually realized that closing the gap in partnership numbers alone could not be the ultimate goal; rather, Deloitte had to redesign itself in such a way that would allow women (and men) to continue to advance their careers to positions of leadership after partnership within the firm.[159] Deloitte's commitment to its goal of creating a workplace in which all employees can realize their potential has led to an effective problem-solving process through which the problem and goal are appropriately defined, the organizational culture is examined, underlying structures are explored, policies are scrutinized, and change is embraced.[160] In practice, this process has resulted in the creation of a talent management system with unique features designed to address the structural barriers facing women: (1) a higher level of accountability and me-

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153. *See* DELOITTE 2006 ANNUAL REPORT, *supra* note 12, at 1.

154. DELOITTE & TOUCHE (B), *supra* note 74, at 9.

155. *Id.* at 8.

156. DELOITTE & TOUCHE USA LLP, THE INITIATIVE FOR THE RETENTION AND ADVANCEMENT OF WOMEN 2007 ANNUAL REPORT 7 (2007) [hereinafter DELOITTE 2007 ANNUAL REPORT].

157. DELOITTE 2006 ANNUAL REPORT, *supra* note 12, at 12. In 2006, Deloitte was recognized with nine national awards for programs relating to WIN, and the initiative was featured in more than 100 major news stories. Deloitte's women partners, principals, and directors were also honored with awards for their professional and personal contributions. *Id.* at 1.

158. DELOITTE 2007 ANNUAL REPORT, *supra* note 156, at 7.

159. *See* DELOITTE & TOUCHE (B), *supra* note 74, at 12.

160. *See generally id.*

trics, through reporting directly to the CEO and specific tracking of how women are performing in the organizations; (2) specific developmental programs; and (3) the intentional creation of communities to provide organizational support, including networking and mentoring opportunities.[161]   It is this problem-solving process that has led to Deloitte's success in achieving a more inclusive workplace, which has garnered significant attention and awards, giving it a distinct advantage in recruiting.[162]

D.   THE DIVERSITY INITIATIVE

Deloitte quickly realized that women and minorities faced similar advancement issues, and consequently instituted the Diversity Initiative in 1995, only two years after the creation of WIN.[163]   The turnover gap for minorities, however, has not been eliminated as it has with women.[164]   This difference may be attributed, at least in part, to the fact that professionals of color faced two barriers (as opposed to only one for women): recruitment and retention.[165]

The first phase of the Diversity Initiative was focused on recruitment, which was never a focus of WIN because women were always 50% of the talent pool.[166]   Deloitte developed strategic relationships with universities, 25 of which are designated as key diversity recruiting venues, and organizations to help the organization meet the growing competition for talent.[167]   The firm also started the Future Leaders Apprentice Program ("FLAP"), which offers both a scholarship and tailored training opportunities to accounting students.[168]   To help reach experienced hires, Deloitte increased its investment in 11 key constituency organizations and has signed, for example, multi-year contracts to sponsor the national conventions of the National Association of Black Accoun-

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161.   E-mail from Anne Weisberg, *supra* note 86.

162.   *See* DELOITTE 2006 ANNUAL REPORT, *supra* note 12, at 11.

163.   *See* Interview with Anne Weisberg, Director in Talent, Deloitte & Touche (June 23, 2008) (on file with author). *See* Sturm, *supra* note 71, at 423.

164.   Interview with Anne Weisberg, *supra* note 163.

165.   *See* E-mail from Anne Weisberg, *supra* note 86.

166.   *Id.*

167.   DELOITTE & TOUCHE USA LLP, DIVERSITY AND INCLUSION ANNUAL REPORT 8 (2006) [hereinafter DIVERSITY 2006 ANNUAL REPORT].

168.   *Id.*

tants ("NABA") and the Association of Latino Professionals in Finance and Accounting ("ALPFA").[169] In addition to sponsoring these conventions, the firm has encouraged its employees to participate in the networking and development experiences available at these meetings.[170] Along with other leading-edge development programs, Deloitte recently instituted the Breakthrough Leadership Program ("BLP"), which was designed to meet the needs of the organization's high-performing minority professionals.[171] This comprehensive, eight-month program helps minority managers and senior managers accelerate their professional and personal development and establish relationships that encourage and support their growth.[172] Increasing its investment in external programs for college students, Deloitte has also invested in future talent.[173] There is convincing evidence that Deloitte's recruiting efforts for minorities have been successful: from 2003 to 2007, the percentage of minority new hires increased from 32% to 40%, and the percentage of minority actives increased from 24% to 32%.[174]

The second phase, which started about three years ago, was focused on retention,[175] which involved making "a place where everyone is valued for who they are and what they contribute" so as to produce their "full potential."[176] The most visible way Deloitte has done this is through their Business Resources Groups ("BRGs"), or affinity groups,[177] which are open to all employees, regardless of their backgrounds.[178] Programs sponsored by seven BRGs and more than 80 local chapters encouraged professionals to forge effective networks with colleagues inside and outside the organization.[179] In many instances, the efforts of local BRGs have begun to pay sustainable dividends through the acquisition of

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169. *Id.*
170. *Id.*
171. *Id.* at 13.
172. *Id.*
173. *Id.*
174. DELOITTE & TOUCHE USA LLP, DIVERSITY AND INCLUSION ANNUAL REPORT 10 (2007).
175. E-mail from Anne Weisberg, *supra* note 86.
176. DIVERSITY 2006 ANNUAL REPORT, *supra* note 167, at 18.
177. Unlike law firms, which leave participation in affinity bar groups up to the individual, Deloitte employs a firm-wide strategy around membership as a result of which recruiting and development opportunities are realized. E-mail from Anne Weisberg, *supra* note 77.
178. DIVERSITY 2006 ANNUAL REPORT, *supra* note 167, at 18.
179. *Id.*

new business and new talent.[180] For example, in Houston, the Hispanic/Latino(a) Network ("HNet") is a member of the local Corporate Hispanic Leadership Forum (CHLF), which includes representatives from clients General Electric and Shell Oil.[181] At a spring 2006 conference, employee groups from the member companies shared best practices and discussed cooperative ways to extend their personal and professional networks.[182] As a result of the relationships that grew out of the conference, an endorsement from one of the CHLF members was instrumental in the winning of a $5 million, multi-business engagement.[183]

Earlier in 2008, WIN and the Diversity Initiative were brought under the same umbrella, the Inclusion Office.[184] Although these two initiatives were just recently brought together, the process implemented by WIN as described above and the lessons generalized from WIN as provided below will hopefully enable Deloitte to achieve similarly successful results in the diversity context.[185]

IV. Sustaining and Generalizing the Lessons of WIN

WIN, an example of the integration paradigm at work, serves as a model of professional practice centered around a root cause analysis. In the process of exploring why women were leaving the organization in significantly higher percentages than their male counterparts, Deloitte created an organization receptive to promoting citizenship and encouraging learning, and in so doing created an environment that advanced women and people of color in a sustainable way. The difficulty arises in generalizing lessons from this model and then introducing them into law firms without taking into account their own separate and distinct culture. Despite the challenges facing law firms in embracing such a model, the prospect for change has presented itself.

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180. *Id.* at 19.
181. *Id.*
182. *Id.*
183. *Id.*
184. Interview with Anne Weisberg, *supra* note 163.
185. *See id.*

A. CONCEPTUAL COMPONENTS OF WIN

Extracted from the talent management approach utilized by Deloitte are three conceptual components, organizational citizenship as a normative framework for diversity efforts, a psychological approach to the development of employees and the organization, and the organizational architecture to support interventions over time, which are described further below.

1. *Organizational Citizenship as a Normative Framework for Diversity Efforts*

The challenge to achieve inclusive institutions calls for a new normative framework. Achieving inclusive institutions (and organizations) is not solely about eliminating race or gender discrimination or even increasing the representation of under-represented groups, as the failure of traditional diversity initiatives demonstrates.[186] The project calls for creating an environment in which all individuals can realize their full potential and become citizens of their organization.[187] This notion of citizenship

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186. While this Note is focused on racial and gender equality, a similar analysis can be applied to discrimination based on sexual orientation, religion, or disability, for example.

187. *See* Sturm, *supra* note 13, at 301 (embracing institutional citizenship as a justification and goal for diversity initiatives); Guy-Uriel E. Charles, *Toward a New Civil Rights Framework*, 30 HARV. J.L. & GENDER 353, 358–59 (2007) (recognizing the importance of socio-economic institutions in promoting inclusion norms and sites of citizenship); Olatunde C.E. Johnson, *Disparity Rules*, 107 COLUM. L. REV. 374, 378 (2007) (equating the "failure to address pronounced racial disparities" with "a denial of equal citizenship"); Bonita London, Vanessa Anderson & Geraldine Downey, *Studying Institutional Engagement: Utilizing Social Psychology Research Methodologies to Study Law Student Engagement*, 30 HARV. J.L. & GENDER 389, 391–92 (2007) (defining an inclusive environment as "one in which all institutional members (particularly those who have been historically excluded and/or marginalized from the institution) are supported and expected to thrive both academically and socially, contributing not only to their individual success, but to the success of the institution as a whole"); Richard R.W. Brookers & Valerie Purdie-Vaughns, *The Supermodular Architecture of Inclusion*, 30 HARV. J.L. & GENDER 379, 380 (2007) (recognizing the importance of thinking about institutional citizenship as a group phenomenon); Lani Guinier & Martha Minow, *Dynamism, Not Just Diversity*, 30 HARV. J.L. & GENDER 269, 271 (2007) (stating that "[a]n institutional citizen belongs to, forges, maintains and is accountable to a community of commitments"); Longa Schiebinger, *Getting More Women into Science: Knowledge Issues*, 30 HARV. J.L. & GENDER 365, 374 (2007) (expanding the meaning of institutional citizenship to go beyond participation in the workplace of science to introducing new forms of knowledge). *But see* Susan Carle, *Progressive Lawyering in Politically Depressing Times: Can New Models for Institutional Self-Reform Achieve More Effective Structural Change?*, 30 HARV. J.L. & GENDER 323, 349–351

connotes a strong conception of full participation,[188] mutual responsibility, and shared benefits.[189] It involves creating conditions so that *all* people can realize their capabilities as they understand them and can participate fully in the life of the institution.[190] In order for racial and gender equality to be achieved, the structural barriers preventing individuals from realizing their capabilities must be identified and eliminated.[191] Organizational citizenship also carries a second layer, focusing on the position of organizations within a broader democracy.[192] While eliminating structural barriers requires a significant time commitment and a dedicated vision, the process in and of itself allows for more participation of these organizational citizens.

Because current diversity paradigms cannot fully embrace the notion of organizational citizenship as a justification and goal for diversity initiatives, a talent management approach is offered as an alternative approach through which this framework can be explored.[193] As a result of its effective problem-solving process, Deloitte implemented a series of changes that provided women with the opportunity to raise structural concerns that affected their professional development without a fear of retaliation; participate in the process of defining the problem and adopting a so-

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(2007) (recognizing that a citizenship framework excludes those who are not currently defined as citizens/insiders).

188.   Nancy Fraser describes inequality as stemming from "subordination in the sense of being prevented from participating as a peer." Nancy Fraser, *Recognition as Justice: A Proposal for Avoiding Philosophical Schizophrenia*, *in* LAW, JUSTICE, AND POWER: BETWEEN REASON AND WILL 139, 141 (Sinkwan Cheng ed., 2004). This "misrecognition" of group status "arises when institutions structure interaction according to cultural norms that impede parity of participation . . . as a consequence of institutionalized patterns of cultural value in whose construction [minorities] have not equally participated." *Id.* at 144. Jennifer Gordon and R.A. Lenhardt similarly define equality in terms of participation, suggesting the need for "genuine participation in the larger political, social, economic, and cultural community," but noting that a group's "status complicate[s] the full achievement of citizenship in this sense." Jennifer Gordon & Robin A. Lenhardt, *Citizenship Talk: Bridging the Gap Between Immigration and Race Perspectives*, 75 FORDHAM L. REV. 2493, 2494 (2007).

189.   Sturm, *supra* note 71, at 413.

190.   *Id.*

191.   *See id.*

192.   *See id.* Applying the idea of "institutional citizenship" to universities, Professor Sturm recognizes that "[u]niversities occupy a crucial location where public citizenship is expressed, the benefits of participation are distributed, and public values are elaborated." *Id.*

193.   *See generally id.* (recognizing the norm of "institutional citizenship" as a justification and goal).

lution; advance and develop in an environment that, as a result of this process, embraced fair and inclusive values; and engage with the organization as a full participant.[194]

2. *Psychological Approach to the Development of Employees and the Organization*

In addition to advancing a new normative framework to achieve a more inclusive organization, an understanding of the ways in which individuals actually learn provides the organization with the psychological "know-how." Creating a workplace environment in which all employees can realize their full potential thus requires an organizational embrace of the methods by which individuals and organizations effectively learn.[195]

According to Carol Dweck, the key to an individual achieving his or her potential is the belief that ability is something that can be developed rather than something inherent that needs to be demonstrated.[196] Individuals with performance goals, Dweck reasons, view intelligence as fixed from birth; individuals with learning goals have a growth mindset about intelligence.[197] Dweck has shown that training individuals to adopt a growth mindset about intelligence had a catalytic effect on motivation; praising individuals for intelligence rather than for effort, however, sapped their motivation.[198] The power of the growth mindset extends beyond the individual level to the organizational level as well.[199] Leaders that have the growth mindset and believe in human development are able to more effectively lead their organizations to greatness because they view improvement as a constant.[200]

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194. *See generally* DELOITTE & TOUCHE (B), *supra* note 74.

195. *See* Wilkins, *supra* note 20, at 434 ("If law firms are to require their global ambitions, they must replace this all encompassing definition of professionalism with an understanding that allows an increasingly diverse pool of lawyers to develop the social and *psychological* support they will need in order to work collectively in a boundaryless environment.") (emphasis added).

196. *See* CAROL S. DWECK, MINDSET: THE NEW PSYCHOLOGY OF SUCCESS 6 (2006).

197. *See id.* at 6–7.

198. *See id.* at 72. Although much of Dweck's research on mind-sets has taken place in school settings, her findings seem to be generally applicable.

199. *See id.* at 109 (describing a five-year study performed by Jim Collins and his research team to understand what made some companies move from being good to being great).

200. *See id.* at 110. According to Collins' study, what distinguished the thriving companies from the others were leaders that were not "the larger-than-life, charismatic types

A strategic move towards embracing organizational citizenship additionally consists of being sensitive to the ways in which racial and gender stereotypes can affect performance. Claude M. Steele refers to the threat of being viewed through the lens of a negative stereotype or the fear of acting in a way that would inadvertently confirm that stereotype as "stereotype threat."[201] Surprisingly, Steele's research has consistently shown that "what exposes students to the pressure of stereotype threat is not weaker academic identity and skills but stronger academic identity and skills."[202] After administering a standardized test to African-American students and equally qualified whites, Steele and Joseph Brown discovered that the underperformance of African-American students appeared to be rooted less in self-doubt than in social mistrust.[203] According to the study, once high standards and assurance that these standards could be met were made explicit, the African-American students were more motivated than any other group of students.[204] Thus, a "focus towards fostering racial trust" should be embraced in order to ensure that individuals perform in a manner that reflects their true abilities.[205] Fostering racial trust should begin with the inclusion of minority attorneys in the informal social networks in their firms, thereby providing these lawyers with "the information, opportunities and relationships that invariably flow through these channels."[206]

Racial minorities, however, are not the only group affected by stereotypes in contemporary society. Although women are not currently a numeric minority, "the legacy of marginalization and exclusion of women in competitive institutions, male-dominated fields, and leadership positions, may create expectations of continued marginalization for some women" in a way that undermines their engagement and hinders their advancement.[207] More

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who oozed ego and self-proclaimed talent," but "self-effacing people who constantly asked questions and had the ability to confront the most brutal answers." *Id.*

201.   Claude M. Steele, *Thin Ice: "Stereotype Threat" and Black College Students*, THE ATL. MONTHLY, Aug. 1999, at 46.

202.   *Id.* at 50. While Steele's research is focused on students, his findings seem to suggest that they are not solely applicable to the academic context.

203.   *See id.* at 52.

204.   *See id.* at 53.

205.   *Id.*

206.   Wilkins, *supra* note 20, at 422.

207.   BONITA LONDON, LITERATURE REVIEW ON COGNITIVE BIAS 13 (2005).

specifically, women lawyers often find themselves confronting either an "old boys" culture that perceives them as unfit or a tacit expectation that they should play the "unappreciated role of 'nurturers.'"[208] While changing the stereotypes held by society at large goes beyond the scope of this Note, it is possible to create work environments in which negative stereotypes are not felt to apply.

Deloitte's willingness to reexamine itself is illustrative of a growth mindset.[209] As a result of providing a learning-focused environment, Deloitte was given the opportunity to learn from its mistakes and foster greater levels of engagement from both women and men.[210] On the contrary, law firms are currently premised on a tournament system through which intrinsic intelligence is emphasized.[211] Although intrinsic intelligence (or "raw talent") may be considered key to any organization's success, Deloitte created the systems and processes that supported the development of its employees rather than just letting them navigate through the organization on their own.[212]

3. *Organizational Architecture to Support Interventions Over Time*

Organizational context plays a pivotal role in creating the conditions for underrepresented groups to succeed.[213] In designing an organization to be more inclusive, it is important to note that there is no single effective approach.[214] Rather than focusing on specific policies or programs, such as recruitment initiatives, researchers have instead called attention to the importance of

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208. Wilkins, *supra* note 20, at 422.
209. *See* DELOITTE & TOUCHE (A), *supra* note 74, at 4; DWECK, *supra* note 196, at 109.
210. *See* London, Anderson & Downey, *supra* note 187, at 405; *see generally* DELOITTE & TOUCHE (B), *supra* note 74.
211. *See infra* notes 231–233, 262 and accompanying text; London, Anderson & Downey, *supra* note 187, at 405.
212. E-mail from Anne Weisberg, *supra* note 86.
213. *See* Darden, *supra* note 18, at 44 ("The capability to monitor the progress of a diversity program and hold participants accountable is essential to institutional reform. Whereas management may delegate monitoring to the diversity manager, connecting the monitoring system to an accountability system determines whether structural reforms will produce the intended increase in minority associate retention.").
214. *See* DAVID A. THOMAS & JOHN J. GABARRO, BREAKING THROUGH: THE MAKING OF MINORITY EXECUTIVES IN CORPORATE AMERICA 152 (1999).

processes and enabling conditions.[215] Creating a sustainable, in-
clusive environment requires a strong commitment from upper
management, partnerships between change-oriented employees
and upper management, active participation of people of color,
and alignment between the company's diversity strategy and its
culture.[216] Because of the multi-dimensionality of structural in-
equality, its remediation requires collecting data[217] and operating
both deeply and broadly.[218] In essence, "a sustained institutional
change strategy [must exist] that bridges and sustains the differ-
ent interventions needed to change culture."[219]

The process by which Deloitte implemented its operational
changes is reflective of a commitment to maintaining structures
that are able to sustain changes over time.[220] Deloitte maintained
gender as a distinct evaluative category and at the same time
connected it to core institutional values and goals.[221] Rather than
treating WIN as an add-on program, Deloitte implemented
changes that dealt directly with the assignment process, flexible
work arrangements, and firm policies.[222]

B. CHALLENGES FACING IMPLEMENTATION

Law firms face particular challenges in instituting the three
conceptual components just described. Adopting these compo-
nents, and in the process achieving an inclusive work environ-
ment, requires identification of the dynamics prohibiting under-

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215. *See id.* at 208.
216. *Id.* at 189.
217. Data collection informs institutional change to improve a program's ability to
effectuate reform and also help sustain the program, particularly in its infancy. Darden,
supra note 18, at 46.
218. *See* Sturm, *supra* note 71, at 411.
219. *Id*. An example of a reform on the organizational level is an interactive evalua-
tion process, as proposed by Darden. *See* Darden, *supra* note 18. According to Darden,
"[b]y enacting mediated feedback sessions through the evaluation process, law firms fill a
void on the subjectivity side of law firm evaluation by providing reasons for the lackluster
evaluation and critical feedback to associates, and simultaneously the process educates
partners on formerly unrecognized structural barriers and individual cognitive biases."
Darden, *supra* note 18, at 19.
220. *See generally* DELOITTE & TOUCHE (B), *supra* note 74.
221. *See* Sturm, *supra* note 13, at 302; *see generally* DELOITTE & TOUCHE (B), *supra*
note 74.
222. *See* DELOITTE & TOUCHE (B), *supra* note 74, at 5–7.

represented groups from advancement.[223] Law firms attempting to realize similar results to Deloitte must consequently refrain from implementing the same exact programs and policies, but instead model similar processes and principles. By engaging with their own culture, law firms will be able to connect the process of including attorneys of color with the process of making firms more effective.

The economic survival of elite law firms is dependent upon the delivery of high-quality legal services at acceptable prices.[224] Because a firm's most important asset is the human capital of its lawyers, firms have strong incentives to hire lawyers that will maintain and enhance the firm's reputation and to ensure that lawyers fulfill this promise throughout their tenure with the firm.[225] While firms have an incentive to hire and promote the "best" workers, this standard claim is only relevant insofar as the cost of evaluating and monitoring worker quality does not exceed the returns from selecting marginally better workers.[226] Elite firms have developed institutional practices as a way of reducing the need to invest substantial resources in distinguishing among average workers.[227]

Three structural components characterize elite firms: high wages,[228] a steep pyramidal structure in which all lawyers compete in a series of tournaments,[229] and an informal tracking sys-

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223. *See* Susan Sturm & Lani Guinier, *The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity*, 60 VAND. L. REV. 515, 521 (2007) (recognizing that those seeking to reform legal education must first identify the aspects of the law school environment that sustain its culture of competition and conformity).

224. Wilkins & Gulati, *supra* note 3, at 523.

225. *Id.*

226. *Id.*

227. *Id.* at 523–24.

228. High salaries are a standard fixture of the elite law firm world. Wilkins & Gulati, *supra* note 3, at 530. Despite arguments by law firm hiring partners to the contrary, there is evidence that suggests that the high salaries paid by firms are efficient from the perspective of recruiting and monitoring because high salaries (1) serve as the primary motivating factor in choosing private sector jobs; (2) create a substantial inducement to stay; and (3) allow for the acquisition of a lifestyle that is commensurate with the associate's income. *Id.* at 532. In sum, "the high wages paid by elite firms help to create a culture of fear that motivates associates to work hard even in the absence of extensive monitoring." *Id.* at 534.

229. Even before the arrival of high salaries, law firms employed a promotion-to-partnership tournament to induce both hard work and loyalty. *Id.* "Both client pressures and the firms' economic interests dictate that wherever possible, work should be divided into those aspects that require discretionary judgment and those that do not, with the

tem that separates associates who will receive training from those who will not.[230] While high wages and pyramidal structures are not unique to elite law firms, the separation of associates into a "training track" and a "flatlining track" highlights two important differences between law firms and the organizations described in standard tournament theory models.[231] Contrary to standard tournament theory, firms do not run a tournament in which every associate is given an equal chance to succeed.[232] Second, the process of selecting partners is more straight-forward than the theory suggests.[233] Law firms continuing to generate a

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latter 'flowing to the lowest level within the firm that can perform it satisfactorily.'" *Id.* at 536 (quoting JOHN G. IEZZI, RESULTS-ORIENTED FINANCIAL MANAGEMENT: A GUIDE TO SUCCESSFUL LAW FIRM FINANCIAL PERFORMANCE 7 (1993)).

230.   According to Wilkins and Gulati:

Given their pyramid structure . . . it is grossly inefficient for firms to train *all* of their associates. This structure ensures that most associates will leave the firm before becoming partners. Hence, while the firm needs a few trained senior associates, it has little incentive to invest scarce training resources on lawyers who are not going to stay at the firm long enough for the firm to recoup that investment. Moreover, so long as there is work that can be done profitably by inexperienced lawyers, firms have an incentive to keep some number of untrained associates on their staffs.

Id. at 537–38. In addition, because associates typically work for more than one partner, individual partners have strong incentives to ration time spent on training and to invest only in those associates that will benefit them and their practices directly. *Id.* at 538.

231.   *Id.* at 540. The "flatlining track" exists because law firms produce a substantial amount of "paperwork," which ranges from writing, answering, and supervising discovery requests, to proofreading and making minor modifications to pre-existing corporate documents, to writing legal memoranda to the file or for review by senior associates. *See* Wilkins & Gulati, *supra* note 149, at 1609. Wilkins and Gulati argue that theorists such as Galanter and Palay fail to account for six differences between the economic tournament model and the actual practices of elite law firms: (1) many associates are not competing in the tournament; (2) firms do not give every associate an equal chance of winning; (3) the interests of individual partners diverge from those of the firm; (4) the tournament is not divided into two (and only two) distinct stages; (5) partnership is not awarded as a reward for past performance; and (6) firms do not seek to make the tournament's rules and outcomes transparent to associates. *Id.* at 1587.

232.   Wilkins & Gulati, *supra* note 3, at 540. Analogizing to the social structure of bees, Wilkins and Gulati describe training as the "Royal Jelly" (i.e., the rich nutrient fed to a bee larvae by the queen necessary in developing into a queen) of elite law firms. "Those who receive it have a realistic chance of becoming 'queens' capable of supporting their own cadre of worker bees. Those who do not are destined to remain worker bees whose usefulness to the hive will eventually draw to an end." *Id.*; *see generally* James B. Rebitzer & Lowell J. Taylor, *Efficiency Wages and Employment Rents: The Employer-Size Wage Effect in the Job Market for Lawyers*, 13 J. LAB. ECON. 678, 681–84 (1995) (describing the standard assumptions in tournament theory).

233.   Wilkins & Gulati, *supra* note 3, at 542 (arguing that a firm will have had sufficient time by the time partners are selected to collect information about which associates

small number of experienced partners and a constant source of associates through its multiple incentive system[234] have little economic motivation to alter the way the organization is structured.[235] In order to break this cycle, a justification must be made for altering law firm incentive structures and abandoning their current employment practices.[236]

David B. Wilkins and G. Mitu Gulati have divided proposals to alter the current incentives into five categories: litigation under Title VII or other similar anti-discrimination statutes;[237] race-neutral institutional reforms, such as formal training or mentoring programs;[238] education initiatives such as diversity training;[239] demand-side initiatives designed to generate corporate business

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have received the Royal Jelly and to determine whether those associates have developed sufficiently).

234. Wilkins & Gulati, *supra* note 149, at 1588 (stating that lawyers compete in a "multiround" tournament, which includes practices such as "tracking," "seeding," and "information control" usually found in sporting event). Law firms rely on three motivational tools (other than the chance for partnership): high (above market) associate wages, associate reputational bonds, and the promise of general (as opposed to firm-specific) training. *Id.* at 1636.

235. Wilkins & Gulati, *supra* note 3, at 585.

236. *Id.* According to Wilkins, "the question is not, therefore, whether or not diversity is 'good for business' but rather whether global law firms can successfully adapt to a competitive environment that will by any measure be more multicultural, multidisciplinary, and multidimensional than anything that these firms have ever faced before." Wilkins, *supra* note 20, at 416.

237. Applying Title VII and other similar anti-discrimination statutes to high-level jobs in which quality judgments are inherently subjective has been difficult. Wilkins & Gulati, *supra* note 3, at 585. Nevertheless, it is important that firms do not feel immune from such laws. *Id.* at 587. While the threat of litigation may reduce a minority associate's chances of being fired, it will have mixed effects on her opportunities at the firm. *See id.* at 589.

238. If the key difference between succeeding and flatlining at a firm is training (as described *supra*, note 232 and accompanying text), then formal training and mentoring programs should serve as the ideal solution to the institutional dynamics. *Id.* at 590. Even though these programs are available to every associate and therefore avoid many of the problems associated with race-conscious remedies, there are limitations to what these programs can accomplish. *Id.* Formal training programs cannot substitute for real experience, they cannot teach judgment, they cannot build mentoring relationships that are critical to an associate's success, and they do not provide client contact. *Id.* at 590–91.

239. Diversity training programs are designed to highlight conscious and unconscious attitudes and their effects in a way that should help firms understand the obstacles that impede minority progress. *See id.* at 593. The success of these programs, however, is a function of their content and the process by which they are conducted. *Id.* Moreover, firms need more than "communication" to convince them to change practices that have proved profitable for those at the top of the pyramid. *Id.* at 594.

for minority lawyers;[240] and supply-side initiatives, including traditional affirmative action remedies such as goals and timetables for hiring and promoting minority lawyers.[241] While each of these avenues advances the goal of creating more inclusive organizations, standing alone, they are unlikely to change the way partners assign work or decide whom to mentor.[242] If firms are truly serious about improving the prospects of minority lawyers, they must implement policies that change the incentives of partners.[243]

High wages, pyramiding, and tracking are all rational responses to the problem of monitoring lawyer quality.[244] These practices, and the manner in which these structures operate to disadvantage minority attorneys, are "the product of the historical evolution of law firms and this country's long and tragic history with 'the problem of the color line.'"[245] Traditional institutional practices such as the ones observed by elite firms, however, are not necessarily more efficient than others.[246] While accounting firms such as Deloitte confront many of the same difficulties as law firms, these organizations have developed differently from the practices of elite firms.[247] Large accounting firms typically have more categories of employees, a longer "partnership" track,

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240. In 1988, the American Bar Association ("ABA") initiated the Minority Counsel Demonstration Program, which encouraged participating corporations to retain minority firms and to ensure that minority partners in majority firms did some of their legal work. *Id.* at 595. While the ABA's program was a success, one should be skeptical about the ability of this program or any other similar one to affect substantially the opportunities of the majority of minority attorneys. *See id.* at 596.

241. Since the 1970s, many elite law firms have hired minority attorneys whose signals were lower than the average credentials of their white counterparts. *See id.* at 598. Despite the stigma that may attach to the presence of minority associates as a result of affirmative action programs, Wilkins and Gulati argue that the solution is to extend voluntary affirmative action to decisions regarding the choice of associates for projects, for example. *See id.* at 605.

242. *See id.*

243. *See id.*

244. *Id.* at 607.

245. *Id.* at 607 (quoting W.E.B. DuBois, The Souls of Black Folk 13 (Donald Gibson ed., 1989)).

246. Wilkins & Gulati, *supra* note 3, at 609. In Europe, for example, most of the law firms remain small, pay relatively low wages, and are characterized by intense training and supervision. *Id.* Moreover, although there are a growing number of European "megafirms," even these institutions are likely to develop institutional structures and practices that differ materially from their American counterparts. *Id.*

247. *See id.*

and no (or very relaxed) "up-or-out" policies.[248] The fact that accounting firms have developed different but nonetheless successful solutions to the monitoring problems inherent in delivering professional services casts doubt on the argument that institutional practices of elite law firms constitute the sole efficient response to these issues.[249] According to some commentators, it is precisely because law firms have locked themselves into these institutional practices that these firms will eventually lose out to international accounting firms in the competition to be the premier providers of legal and business services to corporate clients.[250]

1. *Challenge Number 1: Tracking Instead of Development*

Given these structural barriers to advancement, law firms interested in embracing the framework of organizational citizenship must reexamine the current practices by which they develop attorneys. Currently, law firms do not need to provide (nor do they want to provide) all of their associates with significant training, especially considering that firms realize that most associates will leave before they can reap the benefits of their investment in associate development.[251] Although law firms generally provide formal training for all of their associates, these organizations have proven themselves largely unable to provide minority associates with the informal training they need to advance.[252] Unfor-

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248. *Id.*; *see* Marc Galanter & Thomas Palay, *The Many Futures of the Big Law Firm*, 45 S.C. L. REV. 905, 913 (1994). Galanter and Palay argue that to mimic the "Big Six" accounting firms, "a law firm will have to further modify its traditional promotion-to-partnership core. The Big Six are generally characterized by taller hierarchies and considerably higher associate-to-partner ratios than the traditional big law firms." *Id.*

249. Wilkins & Gulati, *supra* note 3, at 609; *see* Mark J. Roe, *Chaos and Evolution in Law and Economics*, 109 HARV. L. REV. 641, 647 (1996) (making a similar argument with respect to the differing strategies for corporate control in the United States, Japan, and Germany, and stating that such is an example of weak-form path dependence).

250. Wilkins & Gulati, *supra* note 3, at 609–10; *see* Wilkins, *supra* note 20, at 419 (recognizing that law firms are increasingly facing competition from accounting firms, investment banks, and consulting firms); Karen Dillon, *Accounting for Success: How Arthur Anderson Quietly Became the Most Successful Law Firm in the World*, AM. LAWYER, Mar. 1994, at 30 (describing "the global one-stop shopping concept").

251. Wilkins & Gulati, *supra* note 149, at 1611.

252. Informal training encompasses a wide variety of tasks, including "writing a draft motion or brief and then going over the draft with the partner, watching a partner negotiate a contract or conduct a strategy session with a client, and writing a comprehensive report of a new regulatory development that will be distributed to clients." *Id.* at 1609. This work increases an associate's firm-specific and general human capital, but also

tunately, research continues to confirm the notion of homophily: people naturally prefer to work with others who are like themselves, an inclination that seriously disadvantages minority associates.[253]

Instead of separating associates into different tracks based on subjective decision making or signals that are not as closely related to actual lawyering skills as firms usually maintain,[254] law firms should adopt a new training strategy through which *all* associates are given the requisite training and development, even if there is an assumption that associates will leave.[255] Embedding capacity-building into the fiber of the law firm will provide attorneys with the opportunity to adequately develop and, in the process, engage with the organization as a stakeholder, thus increasing the likelihood that they will remain with the firm.

2. *Challenge Number 2: Rigidity Instead of Flexibility*

There are additional barriers to simply adopting the talent management approach in law firms. The performance managements systems of law firms, for example, differ from those em-

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enables an associate to develop the type of relationships with partners which is crucial to an associate's advancement. *Id.* Associates rely on their partner-mentors to give them good assignments and to distance them from bad ones, to pass on important client relationships, and in the end to push for their advancement. *Id.* Success in large law firms is less a function of innate ability and hard work, considering most of the attorneys hired by firms possess these qualities, and more a function of gaining access to these limited opportunities via formal and informal relationships. Wilkins, *supra* note 20, at 424.

   253.   *See* David B. Wilkins, *A Systematic Response to Systemic Disadvantage: A Response to Sander*, 57 STAN. L. REV. 1915, 1924 (2005); *see, e.g.*, David A. Thomas, *Racial Dynamics in Cross-Race Developmental Relationships*, 38 ADMIN. SCI. Q. 169 (1993). For these reasons, white male attorneys were less likely to form mentoring relationships with minorities and women. Wilkins, *supra* note 20, at 428.

   254.   Ultimately, partners choose which associates they would like to train based on first impressions, secondhand information, and generalized reputation. Wilkins, *supra* note 253, at 1924–25. In addition to this subjective decision making, law firms in general tend to look for signals such as high grades, clerkships, and an education from an elite law school. Wilkins & Gulati, *supra* note 149, at 1679.

   255.   *See generally* Wilkins & Gulati, *supra* note 3, at 540; Wilkins, *supra* note 20, at 428 (recognizing that retention is not just a problem for minorities and women, but all associates). Wilkins and Gulati understand that no associate does only paperwork, but recognize that the random distribution of training and paperwork throughout the associate pool is inefficient. Wilkins & Gulati, *supra* note 149, at 1612–13. If law firms were to adopt this normative equity goal, namely that all associates receive equal resources and access to the development required to ascend the ranks, Darden suggests that an interactive evaluation process would provide a valuable method for discovering whether associates are actually receiving equal treatment. *See* Darden, *supra* note 18, at 22.

ployed by organizations such as Deloitte.[256] The "lock step" class-based system utilized by most law firms measures performance in the associate evaluation process by class and billable hours without having clearly determined what an x-year associate should be able to do.[257] According to law firm management, the associate evaluations serve three functions: "to provide positive feedback and encouragement to associates; to assess the training and development needs of associates; and to improve associate performance."[258] This system fails to effectively manage performance for two reasons: (1) performance management requires a future-looking piece; and (2) goals should not be just metric-driven.[259] Associates are not being adequately given the opportunity to determine *their* own professional goals, whether in terms of areas of development, areas of interest, or types of assignments.[260] Furthermore, even though Deloitte itself has performance metrics, which include chargeable hours, managed revenue, and revenue sold, the organization provides its employees with a voice as to how they would like their work to look.[261] The limitations of the law firm performance management just described, coupled with the tournament model described previously, suggest that these organizations are not ready for a lattice system of governance, which by its very nature requires fluidity and transparency.

3. *Challenge Number 3: Performance Instead of Growth*

The contemporary model of legal education and lawyering, referred to as the "gladiator" model celebrates analytical rigor, toughness, and quick thinking, and defines successful performance as fighting to win.[262] In order to make the transition from this performance-ranking environment to a learning-focused environment, law firms should focus more on the process of learning

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256. *See* Interview with Anne Weisberg, *supra* note 163; E-mail from Anne Weisberg, *supra* note 86.

257. *See* Interview with Anne Weisberg, *supra* note 163; E-mail from Anne Weisberg, *supra* note 86.

258. THE NALP FOUNDATION, HOW ASSOCIATE EVALUATIONS MEASURE UP: A NATIONAL STUDY OF ASSOCIATE PERFORMANCE ASSESSMENTS 23 (2006).

259. Interview with Anne Weisberg, *supra* note 163.

260. *See id.*

261. *See id.*

262. *See, e.g.*, Sturm, *supra* note 10, at 121.

and less on proving competence.[263] Along with the adoption of a learning-focused environment, law firms should reconsider the ways in which critical feedback is conveyed.[264] Ultimately, adopting these changes provides a distinct competitive advantage: an organization capable of redefining itself, and a workforce with high morale and the requisite trust in the organization necessary for optimal performance and retention.

4. *Challenge Number 4: Add-ons Instead of Integration*

Creating a law firm capable of fully realizing the benefits of diversity requires reforms sufficiently broad to alter its cultural and institutional baseline.[265] Rather than implementing narrowly tailored initiatives, which solely "add-on" to the existing structure and reinforce the status quo, law firms must maintain both gender and race as distinct categories and simultaneously connect them to core institutional values, as required by the integration paradigm.[266] Making this connection between race and gender and institutional values requires that structural barriers be identified and eliminated.[267] Once a law firm's diversity strategy becomes aligned with the culture, race and gender will become weaved into the fabric of the institution, creating an inclusive environment.[268]

C. PROSPECTS WITHIN LAW FIRMS

The inability of law firms to achieve results similar to Deloitte lies in their unrelenting embrace of the tournament system.[269] The traditional practices observed by elite law firms, however,

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263. *See* London, Anderson & Downey, *supra* note 187, at 406.

264. *See id.*; Steele, *supra* note 201, at 52; LONDON, *supra* note 207; Darden, *supra* note 18, at 5–6.

265. *See* Sturm, *supra* note 10, at 122.

266. *See id.* at 122–23; Sturm, *supra* note 13, at 302; *See generally* Thomas & Ely, *supra* note 22, at 9–14.

267. *See* Sturm, *supra* note 71, at 413.

268. *See* THOMAS & GABARRO, *supra* note 214, at 189.

269. *See supra* notes 231–233, 262 and accompanying text. Although Wilkins and Gulati reject the basic tournament *model*, they contend that the tournament *metaphor* remains a valuable aid. *See* Wilkins & Gulati, *supra* note 149, at 1587.

are not necessarily more efficient than others.[270] As illustrated below, some firms have instituted policies that deviate from traditional practices. Given the turbulent nature of the market for legal services and the current debate over the significance of race, the opportunity has presented itself for law firms to reassess and reshape their traditional understandings.[271] Numerous reports document that lawyers are increasingly dissatisfied with their professional lives.[272] Much of this dissatisfaction can be traced to the very structural mechanisms that firms have embraced.[273] Because many white lawyers are also adversely affected by the current structure of elite law firms, a redesign of law firms must ensure that the needs of *all* attorneys are addressed.[274]

Combating the internal mechanisms of law firms are external pressures to move in a direction compatible with talent management. In addition to the attrition problem, there are pressures from clients to better manage and increase accountability as a result of spiraling legal costs, from baby boomers nearing retirement and mindful of flexible schedules, from Generation Y workers in search of a good work-life balance, from law school students seeking to become part of a better legal profession, and from other professions to more effectively compete for talent.[275] Some firms have responded to these pressures by reorganizing in ways

270.   Wilkins & Gulati, *supra* note 3, at 609. The traditional path that gave rise to the promotion-to-partner tournament is fading. Wilkins & Gulati, *supra* note 149, at 1681. According to Wilkins and Gulati, "[b]ureaucratized management, multitiered partnerships, lateral hiring, contract (even "temp" lawyers), diminished partnership income, massive workloads, demanding and powerful clients, ancillary businesses, and global competition from lawyers and non-lawyers alike have all strained to the breaking point the traditional notions of professionalism and collegial solidarity upon which the modern law firm was founded." *Id.*; *see also* Lisa Belkin, *Who's Cuddly Now? Law Firms*, N.Y. TIMES, Jan. 24, 2008, at 1, *available at* http://www.nytimes.com/2008/01/24/fashion/ 24WORK.html (recognizing that the "unbending, tradition-bound profession" of law has been forced to rethink long-standing ways of doing business).

271.   Wilkins & Gulati, *supra* note 3, at 610.

272.   *Id.*; *see, e.g.*, Deborah K. Holmes, *Learning from Corporate America: Addressing Dysfunction in the Large Law Firm*, 31 GONZ. L. REV. 373, 376–377 (1995/96) (citing statistics as to the percentages of lawyers dissatisfied with their professional lives).

273.   *See* Holmes, *supra* note 272, at 379–87 (describing the changes taking place in law firms as the possible causes of dysfunction).

274.   *See* Wilkins & Gulati, *supra* note 3, at 611; *see also* Bill Proudman, *White Men and Diversity: An Oxymoron?*, DIVERSITY & THE BAR 14 (Jan.–Feb. 2005) "Long term sustained change in workplace behavior and inclusion practices will not take place without white men fully engaged alongside women and people of color. All must be equitable players in this endeavor." *Id.*

275.   *See* Belkin, *supra* note 270, at 1.

that are consistent with and encouraging of, the talent management approach. These developments open the door for integrating diversity, in the form of the integration paradigm, into this move toward more effectively-managed law firms with more sophisticated and productive performance systems and metrics.[276]

To address the broad-based structural problems faced by law firms, commentators and firm leaders have started to advocate a fundamental restructuring in law firm practice.[277] Proposed reforms have included replacing hourly billing with fixed or incentive-based compensation systems, instituting "Total Quality Management" (TQM) programs designed to foster better client services through communication and teamwork, and replacing partnership with a more rationalized management structure under the control of professional administrators.[278] The explosion in information technology also opens up additional alternatives.[279] The combination of clients being characterized by new management structures and firms having access to an unprecedented array of technology to assist in the performance of their work creates the potential for new "efficient" firm structures.[280] An ex-

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276.   *See infra* notes 277–287. Deloitte uses a variety of metrics to measure progress including retention (and retention of high performers in particular); utilization (to make sure that employees who have dialed up or down are doing so consistent with their profile); satisfaction through internal surveys; and internal referrals. Interview with Anne Weisberg, *supra* note 163.

277.   Wilkins & Gulati, *supra* note 3, at 611.

278.   *Id.* According to Wilkins and Gulati, these structural reforms, if adopted, would alter the institutional dynamic currently in place in law firms. *Id.* First, if fixed fees were adopted, flatlining of associates would become a cost to the firm as opposed to a potential source of profit. *Id.* Second, TQM's emphasis on teamwork would make it more difficult to leave minority associates out of developmental relationships while simultaneously giving law firms an incentive to recruit lawyers with a broader range of interpersonal skills than those reflected in traditional signals. *See id.* Lastly, replacing partners with administrators who have the authority and experience to implement long-term management policies would aid in ensuring that formal work assignment and mentoring policies are applied fairly and equally throughout the firm. *Id. But see* Galanter & Palay, *supra* note 248, at 925 (arguing that reforms that focus only on the structure of firms without addressing the ways to safeguard the underlying exchanges will do little to alleviate the problems of commercialization that trouble big-firm lawyers).

279.   Wilkins & Gulati, *supra* note 3, at 611. While most clients are themselves centralized, hierarchical, and vertically integrated, as a result of the information revolution, they are more likely to be characterized by a flat, decentralized management structure that features telecommuting employees, a global distribution system, and multiple interlocking networks and alliances. *Id.* In addition, firms now have access to an array of technology to assist them in the performance of their work. *Id.*

280.   *Id.* A number of new structures have been proposed. *See id.* at 612. Some commentators have argued that lawyers can form "virtual law firms" as a result of which

ample of such a structure is that exhibited by Axiom Legal, which has eliminated 60% of a traditional firm's operating budget by having neither partners nor extensive offices.[281]

Law firms have been forced to rethink their traditional ways of doing business.[282] The changes thus far, which include reexamining the billable hour,[283] schedules and partnerships tracks,

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lawyers can use state-of-the-art technology to form loose relationships with other lawyers to perform particular client projects or to open up new areas of business. *Id.* at 612. Others have asserted that twenty-first century firms are more likely to resemble "diamonds" rather than pyramids, with a greater number of middle-level attorneys doing the bulk of the work. *Id.* Another strategy is for firms to move towards an "hourglass" structure in which technology would provide senior lawyers direct access to information. *Id.*

281. Sarah Ruby, *New Business Model: Antidote for Law Firm Burnout*, STANFORD BUS., Nov. 2007. Axiom Legal is a C-corporation that contracts directly with corporate clients on a retainer basis, for a fixed fee or, infrequently, by the hour. Leigh Jones, *The Rise of the New Model Firm*, THE NAT'L L. J., May 21, 2007. The attorneys it hires usually have several years of experience either in-house or at law firms. *Id.* Part of Axiom's strategy is to complement the operations with legal departments. *Id.* Although it was initially difficult to convince clients to take a chance on a legal startup, Axiom landed Reuters, its first blue-chip client, in 2001, and has since then extended its client base to include Cisco Systems, Google, Yahoo, eBay, Goldman Sachs, and Genentech. Ruby, *supra*. Axiom has doubled its revenues every year since 2003, when it first turned a profit. *Id.* Last year, Axiom took in $31 million. *Id.*

282. Belkin, *supra* note 270, at 1.

283. To address work/life challenges, Deborah Epstein Harry has suggested that law firms face the "FACTS," which stands for Fixed, Annualized, Core, Targeted, and Shared Hours. Henry, *supra* note 8, at 16. The work/life balance dissatisfaction in the legal profession is the result of three converging factors which FACTS addresses: ever-increasing work hours; expectations of around-the-clock availability due to technology; and generational shifts in demographics. *Id.* Because "full time" and "part time" result in stigmatization and inequity, Henry suggests that every lawyer annually evaluate his or her billable and non-billable Target Hours for the upcoming billing cycle. *Id.* at 17. To promote transparency, Henry recommends that firms internally publish their average billable and non-billable hours by category, including attorneys grouped by practice, years in practice, and designation. *See id.* For those attorneys willing to make sacrifices in their quality of work in exchange for more control over their schedules (even temporarily), Henry suggests Fixed Hours by which firms can offer their attorneys more predictable work albeit less high profile work. *See id.* at 18. Some attorneys, however, would like to work fewer hours without sacrificing the quality of their work. Annualized Hours provide a viable option for these attorneys; attorneys can work on high-profile matters and then take breaks before being staffed again. *See id.* Lawyers seeking quality work while working less conventional hours can opt for Core Hours, which refers to the key hours when a firm would expect the lawyer to be working and/or available. *See id.* Lastly, Shared Hours can be a viable option for those lawyers seeking to work fewer hours and gain more control, but not at the expense of losing high-quality work. *See id.* at 20. Under Shared Hours, two attorneys can share the same position and functions, with each replacing the other on a preset rotating basis to share the workload of one lawyer. *See id.* As Henry importantly points out, a successful implementation of FACTS requires the following: a written policy whose tone stresses business need instead of accommodation; a level of transparency concerning the options for attorneys; demonstrated leadership and support through openness; and ongoing flexibility and communication by the attorney and his or her employer. *See id.*

have been adopted predominantly by smaller firms.[284]   Larger firms, however, are taking notice as well as a result of the external factors listed earlier.[285]   While some firms have gone so far as eliminating the billable hour,[286] others are making smaller (but noteworthy) changes, including reducing the number of billable hours to provide associates with more time to be trained and basing compensation on merit instead of seniority.[287]

V. CONCLUSION

Given the importance of the legal profession in contemporary society, the lessons from WIN warrant careful consideration. This Note has shown that the problem-solving process implemented through WIN can be extended beyond the accounting firm context within which it is currently operating. The initiative provides a methodology for remedying structural inequality by promoting organizational citizenship, embracing the approaches by which employees and organizations develop, and creating an architecture that can sustain changes over time. This methodology has the potential to advance workplace equity in other contexts, including elite corporate law firms. The fact that law firms are hemorrhaging minority attorneys from both the lower and upper ranks serves as a miner's canary for the profession as a whole.[288] The move towards "talent management" offers one way to ad-

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284.   Belkin, *supra* note 270, at 2.

285.   *Id.* at 2.

286.   The Rosen law firm in Raleigh, North Carolina eliminated the billable hour this year, instead charging clients a flat fee. *Id.* at 2. Similarly, Dreier, a firm with New York and Los Angeles offices, now pays its lawyers based on revenue generated, not hours billed. *Id.* At Quarles & Brady, a firm headquartered in Chicago, in addition to eliminating the billable hour requirement, parental leave has been expanded. *Id.*

287.   Strasburger & Price, based in Dallas, has reduced the hours new associates were expected to log from 1,920 to 1,600 annually, thus providing these associates with more time to attend training sessions and shadow senior lawyers. Belkin, *supra* note 270, at 2. Howrey, a global firm in Washington, is matching the industry starting pay average, but further increases will depend on merit, not seniority. *Id.* Chapman & Cutler, a midsize firm in Chicago, recently adopted a two-tier pay scale, thus allowing associates to work 1,850 billable hours instead of 2,000. *Id.* Given the choice, more than half opted for the reduced schedule. *Id.* No law firm, to the author's knowledge, has attempted to adopt the tying of manager compensation to retaining minority professionals. *See* Wilkins, *supra* note 20, at 420.

288.   *See* Sturm, *supra* note 10, at 126; Wilkins & Gulati, *supra* note 3, at 613.

vance the interests of *all* lawyers, including those from underre-
presented groups, and of the legal profession as a whole.