The State of Diversity and Inclusion in eDiscovery

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Underrepresentation plagues most industries and professions, and eDiscovery is not immune. Overlooking women and diverse individuals from consideration for meaningful work assignments, valuable networking opportunities, mentoring and sponsorship, training and development, and client contact, among other things, result in exclusion of diverse talent from hiring, promotion, or client interaction opportunities and steer diverse talent out the door. While there is a dearth of comprehensive studies or surveys of diversity and inclusion in eDiscovery, this industry lies at the intersection of law and technology—both of which have struggled to achieve diverse and inclusive workforces.

The legal industry faces high attrition rates of women and diverse individuals, and the number of diverse attorneys have largely remained stagnant. White men and women are still overrepresented in the legal profession compared with their presence in the overall U.S. population. In 2019, 76.6% of all U.S. residents were white, but 85% of all lawyers are white. According to the results of the ABA National Lawyer Population Survey, from 2008 to 2018, while the number of female attorneys has increased by 4.5%:

- Native American attorney representation has remained stagnant at 1% of all lawyers;
- The number of African-American attorneys has experienced a small gain of .4% to 5%;
- There has been a 1.1% increase in Asian-American attorneys to 3% of all attorneys;
- Latinx attorneys have experienced a 1.8% growth to 5%; and
- The number of Hawaiian/Pacific Islander attorneys has decreased by .4% and comprise less than 1% of all lawyers.

See The American Bar Association National Lawyer Population Survey (2018), *available* *at*

https://www.americanbar.org/content/dam/aba/administrative/market_research/National_Lawyer_Population_Demographics_2008-2018.pdf.

The number of lawyers who report having disabilities remains small, at roughly one-half of 1% of all lawyers. *See* The American Bar Association Profile of the Legal Profession (2019), *available at* https://www.americanbar.org/content/dam/aba/images/news/2019/08/ProfileOfProfession-total-hi.pdf. And while the percentage of LGBTQ+ lawyers has generally been trending upward, LGBTQ+ lawyers make up fewer than 3% of all lawyers. *See* National Association for Law Placement, 2018 Report on Diversity in U.S. Law Firms (Jan. 2019) https://www.nalp.org/uploads/2018NALPReportonDiversityinUSLawFirms_FINAL.pdf.

Although the number of women in law school continue to equal or outnumber the number of men, women comprise 38% of the legal profession, including approximately 23% of law firm partners and almost 46% of law firm associates. *See* The American Bar Association Commission on Women in the Profession, A Current Glance at Women in the Law (Apr. 2019), *available at* https://www.americanbar.org/content/dam/aba/administrative/women/current_glance_2019.pdf. When the judiciary is considered, women make up about 35% of all federal judgeships and less than one-third of all state court judges. *See id.* In comparison, racial minorities make up 20% of all federal and state court judges; and there are only 11 judges who self-identify as LGBTQ+. Federal Judicial Center, Demography of Article III Judges, 1789-2017, *available at* https://www.fjc.gov/history/exhibits/graphs-and-maps/race-and-ethnicity; Tracey E. George and Albert H. Yoon, "The Gavel Gap: Who Sits in Judgment on State Courts?", American Constitution Society for Law and Policy, *available at* https://www.gavelgap.org/pdf/gavel-gap-report.pdf; Minority Corporate Counsel Association, "Tracking the Integration of the Federal Judiciary"*, available at* https://www.mcca.com/resources/reports/federal-judiciary/. The numbers show that nearly all diverse groups are underrepresented in the legal profession, particularly when compared with their percentage in the U.S. population.

The legal industry has recognized that efforts to improve diversity are necessary in order for organizations to retain a competitive edge, improve employee productivity, recruit and retain top talent, increase innovation, and create a more just and ethical outcomes for clients. Organizations such as NALP and the ABA have been urging the legal profession, and particularly law firms, to advance diversity and inclusion. The ABA has codified its commitment to diversity and inclusion with the adoption of Goal III (Eliminate Bias and Enhance Diversity) and creation of its Diversity Plan. *See* The American Bar Association Diversity Plan (May 2011), *available at*

https://www.americanbar.org/content/dam/aba/events/racial_ethnic_diversity/aba_diversity_plan_may_2011.pdf.

Similar to the legal industry, the technology industry has also struggled with underrepresentation of individuals of diverse backgrounds. Computer workers make up 25% of all Science, Technology, Engineering and Mathematics ("STEM") jobs. The STEM field, when compared to the legal industry, has experienced more progress with workforce diversity. Looking at STEM jobs at a high level: women make up 50% of all U.S. workers in STEM, Blacks make up 9% of STEM workers, Hispanics make up 7% of STEM workers, and Asians make up 17% of STEM workers. Of course, digging deeper into the numbers reveals a more complex picture. Women who majored in computer science are less likely than similarly trained men to ultimately work in computer jobs. The share of women in computer jobs has declined from 32% in 1990 to 25% in 2016, despite the fact that women continue to make up over 47% of the total U.S. labor force. There is clearly much more work to be done here. *See* Pew Research Center (Jan. 2018), "Women and Men in STEM often at Odds Over Workplace Equity", *available at* https://www.pewsocialtrends.org/wp-content/uploads/sites/3/2018/01/PS_2018.01.09_STEM_FINAL.pdf (Note that all terms referencing racial/ethnic categories are based on the terms used in the Pew report, and further information on category definitions can be found there).

Within the eDiscovery industry, corporate legal departments, law firms, and service providers should actively seek opportunities to promote diversity within their teams as well as the teams they work with. The eDiscovery Institute ("EDI") has expressed its commitment to fostering diversity in eDiscovery through its Diversity Pledge and its implementation of the EDI Diversity Mentorship Program Charter. *Available at* https://www.ediscoveryinstitute.org/diversity. EDI's signatories pledged to increase the diversity in their hiring, retention, promotion, and elevation of professionals to leadership positions within their respective organizations. Moreover, service providers' workforce diversity is a factor in determining with whom to do business, and service providers that fail to evidence a meaningful commitment to diversity may find themselves excluded from consideration for certain business opportunities.

The eDiscovery industry continues to work towards expanding and promoting diversity and inclusion as both an organizational value, and as a means of providing innovative, balanced, and ethical solutions to legal issues. However, underrepresentation in eDiscovery, like the law and STEM, proves to be a persistent issue. Increased (and meaningful) diversity requires that organizations take action by implementing and measuring the effectiveness of programs that promote diversity, fostering a work environment where diverse employees are encouraged and afforded opportunities to achieve professional goals, ensuring more diversity among leadership, and actively addressing impediments to diversity.