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## Chicken or Egg: Diversity and Innovation in the Corporate Legal Marketplace

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# CHICKEN OR EGG: DIVERSITY AND INNOVATION IN THE CORPORATE LEGAL MARKETPLACE

*Michele DeStefano\**

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#### INTRODUCTION

Although their bank accounts might suggest otherwise,<sup>1</sup> these are not the best of times for lawyers who work in the corporate legal marketplace. And this is not because of the predicted upcoming recession.<sup>2</sup> Instead, the trouble with lawyers in the corporate legal marketplace is that they are failing to answer two calls to action made by corporate clients, both of which are of great magnitude and importance for the future of the profession.

The first call to action is one that Professor Deborah L. Rhode focused a lot of her scholarship on: the call to enhance diversity, equity, and inclusion (DE&I) in the profession.<sup>3</sup> The second call to action is one I have focused a lot of my scholarship on: the call by corporate clients for lawyers to collaborate and innovate. Over the past five years, I have interviewed over 175 general counsels (GC), law firm partners, heads of innovation at law firms, and other corporate clients of lawyers.<sup>4</sup> Also, I have led over 235 multidisciplinary teams that included lawyers on a four-month innovation journey.<sup>5</sup> My research, along with others' research, demonstrates that corporate clients need lawyers who can proactively collaborate on multidisciplinary teams to tackle problems that are increasingly volatile, uncertain, complex, ambiguous, rapid, and high stakes.<sup>6</sup>

1. See Elaine McArdle, *Practicing Law in the Wake of a Pandemic*, HARV. L. BULL., Summer 2022, at 30.

2. See Laura Wronski, *Main Street Says America Has Dodged Recession So Far, But Economic Downturn Is Coming*, CNBC (Dec. 9, 2022, 9:05 AM), <https://www.cnbc.com/2022/12/09/main-street-says-weve-dodged-recession-so-far-but-downturn-is-coming.html> [<https://perma.cc/8K89-YY3Z>].

3. DEBORAH L. RHODE, *THE TROUBLE WITH LAWYERS* 60–86 (2015) (exploring the diversity challenges that the bar faces, the impact of unconscious bias, and how the problems are escalated in the corporate legal marketplace because of the structure, compensation, and work-allocation systems and processes of law firms specifically); Deborah L. Rhode & Scott L. Cummings, *Access to Justice: Looking Back, Thinking Ahead*, 30 GEO. J. LEGAL ETHICS 485 (2017); Deborah L. Rhode & Lucy Buford Ricca, *Diversity in the Legal Profession: Perspectives from Managing Partners and General Counsels*, 83 FORDHAM L. REV. 2483 (2015); Deborah L. Rhode, *Foreword: Diversity in the Legal Profession: A Comparative Perspective*, 83 FORDHAM L. REV. 2241 (2015) [hereinafter Rhode, *Foreword*]; Deborah L. Rhode, *Diversity and Gender Equity in Legal Practice*, 82 U. CIN. L. REV. 871 (2014) [hereinafter Rhode, *Diversity and Gender Equity*]; Deborah L. Rhode, *Keynote Address: The Difference "Difference" Makes*, 55 ME. L. REV. 16, 17 (2002).

4. For a description of the research methodology and interview characteristics, see generally MICHELE DE STEFANO, *LEGAL UPHEAVAL: A GUIDE TO CREATIVITY, COLLABORATION, AND INNOVATION IN LAW* 217–25 (John Palmer et al. eds., 2018).

5. I have led innovation journeys with teams comprised of people from firms and in-house legal departments via my consultancy, [movelaw.com](https://www.movelaw.com), and via LawWithoutWalls, a nonprofit I founded in 2011. See generally *MOVE LAW*, <https://www.movelaw.com/> [<https://perma.cc/N2FG-Q8Q9>] (last visited Feb. 6, 2023). For a description of LawWithoutWalls, see *infra* notes 195–210 and accompanying text.

6. DE STEFANO, *supra* note 4, at 38–44; Paul J.H. Schoemaker, Sohvi Leih & David J. Teece, *Innovation, Dynamic Capabilities, and Leadership*, 61 CAL. MGMT. REV. 15, 15–22 (2018); Carla C.J.M. Millar, Olaf Growth & John F. Mahon, *for Management Innovation in a*

Although we have learned much more in the last decade about the nature of both calls to action and have made some strides, unfortunately, we still seem to be miles from adequately addressing them. In *principle*, lawyers in the corporate legal marketplace are deeply committed to enhancing DE&I and collaborating and innovating. But in *practice*, the legal field lags behind other professions.<sup>7</sup> This is true despite the considerable research that supports the business case for both. Initiatives that enhance DE&I and those that spur collaboration and innovation lead to better, more creative solutions that meet broader organizational interests and increased revenue in the corporate legal marketplace.<sup>8</sup> Putting aside the positives that can accrue if both calls are answered, the question is: what happens if they are not?

Of course, the magnitude of the risk if lawyers do not answer the call for enhanced DE&I is profound and has been written about extensively with much urgency.<sup>9</sup> At stake is the perceived legitimacy of the legal system at large.<sup>10</sup> However, when it comes to the call to collaborate and innovate, the question is: are the stakes that high, i.e., does it *really* matter if lawyers in the corporate legal marketplace fail to collaborate and innovate?

It is this question that this Essay urges should be taken seriously.<sup>11</sup> Admittedly, the risks of lost business and of what Professor Clayton M. Christensen defined as “disruptive innovation”<sup>12</sup> in the legal marketplace—while they may have scary consequences for lawyers—do not compare to

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*VUCA World: Challenges and Recommendations*, 61 CAL. MGMT. REV. 5, 5–14 (2018); RHODE, *supra* note 3, at 9–29; Deborah L. Rhode, *Leadership in Times of Social Upheaval: Lessons for Lawyers*, 73 BAYLOR L. REV. 68, 68–82 (2021); WOLTERS KLUWER, THE WOLTERS KLUWER FUTURE READY LAWYER 3 (2022), <https://www.wolterskluwer.com/en-gb/know/future-ready-lawyer-2022> [<https://perma.cc/6KZ8-WU7A>] (click “Download Report”).

7. See *infra* Part I.A (discussing strides in DE&I and the failure by firm and in-house lawyers to significantly enhance DE&I); *infra* Part I.B (discussing strides in innovation and collaboration by lawyers in the corporate legal marketplace and the failure to achieve significant progress).

8. See *infra* Part II.

9. See *supra* note 3.

10. See *infra* notes 140–42 and accompanying text.

11. This Essay’s focus is limited in nature. Its purpose is not to provide a general discourse on the status of DE&I or of collaboration and innovation in the corporate legal marketplace. Its purpose is also not to theorize on how innovation or enhanced DE&I might disrupt the work of lawyers or other professional service providers. Additionally, although I touch on them peripherally, I do not address in depth the *other* reasons for which DE&I efforts have failed in the legal marketplace, e.g., whiplash, cognitive bias, pipeline issues, etc. All of those topics are left to other experts and scholars who have researched and written extensively on the subjects. The purpose of this Essay is to (1) highlight two calls by corporate clients that lawyers are failing to adequately answer and attempt to explain why they have not been answered, despite the business case for doing so; (2) identify the risks involved in failing to answer both calls; and (3) attempt to demonstrate that the two calls are interlocked in a way that hasn’t been stressed enough before. Yes, other scholars have noted the connection between innovation and DE&I, but to date, no one has argued as this Essay does—that we may never be able to solve the DE&I issue in the corporate legal marketplace if we don’t first solve the lack of collaboration and innovation skills and mindsets among lawyers.

12. Clayton M. Christensen, Michael E. Raynor & Rory McDonald, *What Is Disruptive Innovation?: Twenty Years After the Introduction of the Theory*, HARV. BUS. REV., Dec. 2015, at 44.

putting “the legitimacy of our justice system” at stake. Even the risk that lawyers will unintentionally contribute to their clients’ crises or otherwise create serious negative externalities is not of the same magnitude.<sup>13</sup> However, the risk that this Essay is most concerned about stems from the possibility that the two calls to action are tethered in a negatively consequential way.<sup>14</sup>

That is, lawyers’ failure to learn how to collaborate and innovate with other professionals may *impede* the ability to make progress on enhancing DE&I in the corporate legal marketplace. Specifically, this Essay posits that if lawyers do not learn how to collaborate and innovate, they may help perpetuate the lack of DE&I in the corporate legal marketplace and be unable to contribute to developing innovative, viable solutions for improving DE&I.

Consider the following two anecdotes:

Anecdote #1. A firm identified that a root cause of DE&I initiatives failing to make a difference was the way in which work was allocated by partners. The firm discovered a new work-allocation tool designed to ensure that work was allocated to associates in a blind, nonbiased way that accounted for areas of interest, expertise, substantive benchmarks, and current workloads. However, partners refused to approve investment in the tech. They also refused a more rudimentary solution for adopting new procedures that would track work assignments against benchmarks to suggest alternate work-allocation options. When asked whether partners believed that each partner should be allowed to cherry-pick the associates they like for their work, without regard to equitable distribution, a common response was often something like: “I choose the associate! That’s the way I do it and that’s the way it’s always been done!”

Anecdote #2. A couple of years ago, a multidisciplinary team participating in LawWithoutWalls (LWOW)<sup>15</sup> discovered that a consumer-lending tool at a large commercial bank had been developed using artificial intelligence (AI) that discriminated against single and nonwhite women. The team identified that the root cause was that attorneys were not brought into the product development process for two reasons: First, they weren’t viewed by colleagues as collaborative or innovative or helpful during the ideation stage. Second, the lawyers themselves weren’t proactive in attempting to collaborate with the business. As such, they were not part of the

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13. See *infra* notes 147–72 and accompanying text.

14. Of course, a positive consequential relationship likely also exists. For example, studies show that as inclusion in a diverse workplace increases, so does the potential for collaboration. See, e.g., Sue Duris, *What Diversity and Inclusion Mean for Employee Engagement*, ICMI (Oct. 1 2018), <https://www.icmi.com/resources/2018/what-diversity-and-inclusion-mean-for-employee-engagement> [https://perma.cc/6VVV-JCRQ]; Carrie Ramsay, *Powered by Diversity and Inclusion: How Collaboration Makes Businesses Better*, 3M CAN. (Nov. 6, 2019), <https://sciencecentre.3mcanada.ca/articles/powered-by-diversity-and-inclusion-how-collaboration-makes-businesses-better> [https://perma.cc/K6AN-5GM3]; Marissa Abramson, *Diversity + Inclusion and Its Importance to a Company’s Collaboration Culture*, NEXTPLANE (Apr. 29, 2020), <https://nextplane.net/blog/diversity-inclusion-and-its-importance-to-a-companys-collaboration-culture/> [https://perma.cc/BJ5E-W8Q5].

15. See description *infra* notes 195–210 and accompanying text.

multidisciplinary development team and, therefore, could not add any value during product development, let alone ensure the ethical use of AI. Instead, they were the last stop for approval, which was too late and, as discussed in more depth later, being too late can have dire consequences.<sup>16</sup>

In both situations, in failing to be collaborative and innovative, the lawyers helped perpetuate (or failed to prevent) the lack of DE&I in the corporate legal marketplace. In the first scenario, the attorneys refused to adopt a system of work allocation that decreased implicit and institutional bias. Instead, they held on to a process that relies on difference blindness standards that normalize the dominance of white men and disproportionately disadvantage diverse populations in law firms.<sup>17</sup> In the second scenario, the lawyers' abstinence from collaboration and innovation resulted in the creation of a tool that systematically discriminated against diverse populations. This Essay, therefore, argues that to enhance DE&I, in-house and firm lawyers alike need to be capable and willing to collaborate and innovate in two ways.

First, lawyers need to be able and willing—as individuals—to innovate and adapt the way in which they practice and work with others. This includes adopting new processes and systems that enhance DE&I. If lawyers don't collaborate and innovate in these areas, they may derail efforts that *could* move the needle. In fact, that's been proven the case in many initiatives, including those driven by clients<sup>18</sup> and the recent Mansfield Rule<sup>19</sup> (which mandated that 30 percent of candidate applicant pools consist of women, minorities, LGBTQ+ individuals, and individuals with disabilities).<sup>20</sup>

Second, lawyers need to be able and willing to meaningfully collaborate in multidisciplinary innovation efforts to create novel solutions that truly begin to fill the DE&I gap. Some of the reasons why certain DE&I initiatives have failed (e.g., due to a supply issue)<sup>21</sup> suggest that we likely need altogether different *innovative* solutions—because “systems reinforce and

16. See *infra* notes 147–65 and accompanying text.

17. See Russell G. Pearce, Eli Wald & Swethaa S. Ballakrishnen, *Difference Blindness vs. Bias Awareness: Why Law Firms with the Best of Intentions Have Failed to Create Diverse Partnerships*, 83 FORDHAM L. REV. 2407, 2414–30 (2015).

18. See, e.g., INST. FOR INCLUSION IN THE LEGAL PRO., DIVERSE OUTSIDE COUNSEL: WHO'S GETTING THE BUSINESS? 9–10, 14, 17 (2022), [https://www.theiilp.com/resources/Documents/Diverse%20Outside\\_Counsel\\_2022\\_WEB\\_FINAL.pdf](https://www.theiilp.com/resources/Documents/Diverse%20Outside_Counsel_2022_WEB_FINAL.pdf) [<https://perma.cc/P64P-X9VN>].

19. See generally Paola Cecchi-Dimeglio, *Is the Mansfield Rule Moving the Needle for Women and Minorities?*, 9 J. PROS. & ORG. 246, 246–72 (2022) (demonstrating that the Mansfield Rule is not working).

20. See *An Open Letter from the 2020–2021 Mansfield Law Firms' Chairs & Managing Partners*, DIVERSITYLAB, <https://www.diversitylab.com/mansfield-rule-4-0/> [<https://perma.cc/9EEE-6B4G>] (last visited Feb. 6, 2023); see also *2018 Diversity in Law Hackathon Series*, DIVERSITYLAB, <https://www.diversitylab.com/diversity-in-law-hackathons/> [<https://perma.cc/YC5B-8SVU>] (last visited Feb. 6, 2023).

21. See Paola Cecchi-Dimeglio, *Why the 30 Percent Mansfield Rule Can't Work: A Supply-Demand Empirical Analysis of Leadership in the Legal Profession*, 91 FORDHAM L. REV. 1161, 1188 (2023) (demonstrating that the Mansfield Rule fails because there is insufficiency of supply and recommending the creation of innovative “alternative” solutions).

reproduce themselves,”<sup>22</sup> culture is extremely hard to change, and innovative cultures are extremely hard to create.<sup>23</sup> This means that we need lawyers with innovative mindsets and skill sets that can move beyond fixing what is broken to spanning the horizon by asking: How might we develop new corporate lending tools that do not discriminate against diverse candidates? How might we allocate work in a way that does not discriminate against diverse candidates? Or how might we develop a brand-new pipeline to legal education (and therefore also to law firm hiring) that completely changes the DE&I landscape?

The discussion that follows offers a snapshot of the two calls to action by corporate clients and lawyers’ failure to answer. After exploring the business case for answering both calls, this Essay attempts to demonstrate that the calls are tethered: progress on DE&I in the corporate legal marketplace may be impeded if lawyers do not start answering the call to collaborate and innovate. Therefore, we have a classic “chicken or egg” problem, and the importance of answering the second call rises. This Essay then seeks to identify the root cause of the problem. It submits that—whether due to temperament or training—the trouble with lawyers in the corporate marketplace is that many of them are not equipped to answer the calls. Research demonstrates that lawyers do not know how to collaborate or innovate, nor do they have the mindsets and skill sets of innovators. Plus, the departments and firms in which they work do not promote a culture of inclusion, collaboration, or innovation. Therefore, this Essay’s recommendation is to start at the root: help lawyers hone the mindsets and skill sets of innovators so that they have growth mindsets instead of fixed mindsets, so that they empathize with a wide range of stakeholders, so that they are inclusive and understand the importance of focusing on *how* they practice, and, importantly, so that they can collaborate with diverse professionals as part of the solution to our DE&I crisis instead of being part of the problem. To do that, this Essay recommends training aspiring and practicing lawyers in “design thinking”—a human-centered methodology for learning how to collaborate and innovate and that has the benefit of developing the skill sets and mindsets of adaptive, inclusive innovators. By collaborating with people from diverse backgrounds with design thinking techniques, lawyers can begin to answer both calls to action. It also recommends change management and adaptive leadership training for in-house lawyer leaders and firm partners who must lead a new culture and new breed of lawyers because that is a transformation of the most difficult kind.

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22. Cecchi-Dimeglio, *supra* note 19, at 268–69 (“Networking, training, mentoring, and other common diversity interventions have been criticized for their failure to transform organizational cultures and structures . . . [T]hey do not focus on transforming the system or influencing the dominant group members . . .”).

23. See Gary P. Pisano, *The Hard Truth About Innovative Cultures*, HARV. BUS. REV., Jan.–Feb. 2019, at 62; see also MICHELE DE STEFANO, LEADER UPHEAVAL: A GUIDE TO CLIENT-CENTRICITY, CULTURE-CREATION, AND COLLABORATION (forthcoming 2023).

The Essay proceeds as follows: Part I summarizes corporate clients' two calls to action and lawyers' failure to adequately answer them. Part II outlines the business case for answering both and attempts to demonstrate what's at stake if lawyers do not. Part III posits that the possible root cause of the failure to answer both calls is that many lawyers do not have the mindsets and skill sets to collaborate and innovate. Simply calling out for lawyers to collaborate and innovate isn't going to work. Therefore, Part III recommends that aspiring and practicing lawyers train in innovation so that they hone the mindsets and skill sets of innovators.

This Essay concludes with a call to action of its own: lawyers in the corporate legal marketplace should be *voluntarily* lining up for the kind of training recommended herein because the two calls to action are mutually reinforcing and can interlock, either to keep lawyers stuck on both fronts or to move forward on both fronts. And there is icing on this cake: in addition to empowering lawyers to answer both calls to action, having the mindsets and skill sets of innovators enables lawyers to provide the type of client-centric experience that *delights* clients and gives lawyers in the corporate marketplace a competitive edge.

#### I. TWO CALLS FOR ACTION BY CORPORATE CLIENTS: DIVERSITY, EQUITY & INCLUSION AND COLLABORATION & INNOVATION

Currently, corporate clients are making two persistent calls for in-house counsel and outside lawyers. The first is a call to enhance DE&I in the corporate law marketplace. The second is a call for lawyers to collaborate and innovate. Although some progress toward answering these calls has been made, the trouble with lawyers serving corporate clients is that they are failing to answer both, and clients (and society) remain unsatisfied. The irony is that the business case for answering these calls is undeniable.<sup>24</sup> Lawyers who do so will reap many benefits, yet the calls are nevertheless left inadequately answered.

##### A. *The Call for Diversity, Equity & Inclusion*

The first call for lawyers in the corporate legal marketplace is one that has been made for decades. This is a call for enhanced DE&I. We have seen this call grow from the vague to the definite. It started back in 1999 when the former BellSouth GC convinced 500 GCs of major corporations to commit to promoting diversity in the legal profession and pressure their law firms to embrace diversity.<sup>25</sup> That original call was vague. It didn't specify exactly what was meant by diversity or exactly how diversity initiatives would work. In 2004, the call for diversity went further when the GC of Sara

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24. See *infra* Part II.

25. See *Diversity In the Workplace: A Statement of Principle*, BUS. L. TODAY, July/Aug. 2000, at 41.

Lee attempted to translate the original call into a real plan<sup>26</sup> by asking GCs to request diversity statistics and make hiring decisions based, in part, on those statistics.<sup>27</sup> This led to GCs setting diversity benchmarks for law firms. For example, they asked that a certain percentage of all law firm partners to be female. Over time, the call for diversity matured. GCs set diversity benchmarks not only for their law firms in general, but also for the smaller teams that worked on their businesses. Today, the requisite proof of a commitment to diversity isn't only in the concrete numbers or the faces around the table. Forward-thinking clients, who have a range of efficiency paradigms and who care about diverse teams for all the benefits they exude, look for proof that their law firms provide meaningful opportunities for the development and promotion of diverse lawyers, and they are looking at multiple indicators. For example, some look at a law firm's flextime policies as a proxy for a firm's commitment to diversity.<sup>28</sup> Now, twenty years later, some clients, like HP,<sup>29</sup> Microsoft,<sup>30</sup> Novartis,<sup>31</sup> and Shell<sup>32</sup> reward or punish law firms based on their diversity efforts or lack thereof,<sup>33</sup> and they are using

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26. Melanie Lasoff Levs, *Call to Action—Sara Lee's General Counsel: Making Diversity a Priority*, MINORITY CORP. COUNS. ASS'N (2005), <https://mcca.com/call-action-sara-lees-general-counsel-making-diversity-priority/> [<https://perma.cc/BW8D-ZVJ3>].

27. *Id.*

28. See Erin Geiger Smith, *Wal-Mart Will Slash Firms That Don't Have Flex-Time Policies*, BUS. INSIDER (Oct. 27, 2009, 2:35 PM), <https://www.businessinsider.com/wal-mart-will-slash-firms-that-dont-have-flex-time-policies-2009-10> [<https://perma.cc/SRC6-A29A>]; Christopher J. Whelan & Neta Ziv, *Privatizing Professionalism: Client Control of Lawyers' Ethics*, 80 FORDHAM L. REV. 2577, 2596–99 (2012).

29. Ruiqi Chen, *HP Legal Chief Rivera: Demand Diversity, Law Firms Will Listen*, BLOOMBERG L. (Oct. 13, 2020, 6:01 AM), <https://news.bloomberglaw.com/business-and-practice/hp-legal-chief-rivera-demand-diversity-law-firms-will-listen> [<https://perma.cc/D354-CETJ>].

30. See Caroline Spiezo, *Microsoft Raises Reward for Outside Law Firms That Promote Black and Latino Lawyers*, REUTERS (Sept. 30, 2020, 2:14 PM), <https://www.reuters.com/article/lawyer-diversity-microsoft/microsoft-raises-reward-for-outside-law-firms-that-promote-black-and-latino-lawyers-idUSL1N2GR1LH> [<https://perma.cc/RF6Z-K66S>].

31. See also *Novartis Launches New Preferred Firm Program for Legal Services*, NOVARTIS (Feb. 12, 2020), <https://www.novartis.com/news/novartis-launches-new-preferred-firm-program-legal-services> [<https://perma.cc/2AEU-9DGG>].

32. *Diversity Plan for Shell Legal Services—United States*, MINORITY CORP. COUNS. ASS'N, <https://mcca.com/resources/pathways-research/a-study-of-law-department-best-practices/diversity-plan-for-shell-legal-services/> [<https://perma.cc/LZH3-AFXK>] (last visited Feb. 6, 2023).

33. See, e.g., Lisa Kirby & Caren Ulrich Stacy, *Client Call for Greater Diversity at Fever Pitch*, AM. LAW. (July 17, 2017, 1:03 PM), <https://www.law.com/sites/almstaff/2017/07/17/client-call-for-greater-diversity-at-fever-pitch/> [<https://perma.cc/P7JA-SSKD>]; Letter from Bradley Gayton, Senior Vice President & Gen. Couns., The Coca-Cola Co., to U.S. Law Firms Supporting The Coca-Cola Co. (Jan. 28, 2021), <https://www.linkedin.com/pulse/open-letter-commitment-diversity-belonging-outside-counsel-gayton/> [<https://perma.cc/294D-LE44>]; see also Ruiqi Chen, *Coke GC Tired of 'Good Intentions,' Wants Firm Diversity Now (I)*, BLOOMBERG L., <https://news.bloomberglaw.com/business-and-practice/coke-gc-tired-of-good-intentions-wants-law-firm-diversity-now> [<https://perma.cc/XU2U-LB74>] (Jan. 28, 2021, 4:15 PM); Debra Casens Weiss, *Afternoon Briefs: Coca-Cola GC Leaves After 8 Months; Wrongly Jailed Man Challenges \$4K Bill for Confinement*, ABA J. (Apr. 22, 2021, 2:50 PM), <https://www.abajournal.com/news/article/>

new tools to allow their departments to drive the agenda. They are also joining forces. For example, DuPont, General Mills, Verizon, and Wal-Mart collaborated to create a Minority Lawyer Inclusion Incentive Program.<sup>34</sup> Corporate legal departments are also collaborating with law firms to enhance DE&I in recruiting and compensation,<sup>35</sup> such as by creating fellowship programs for students from diverse backgrounds.<sup>36</sup>

However, even if some of this is working,<sup>37</sup> the trouble with lawyers in the corporate legal marketplace is that they aren't making big enough strides. Research makes it more than clear that we are not even close to where we need to be on the diversity front in the corporate legal arena.<sup>38</sup>

Despite millions of dollars being spent on DE&I initiatives, the general picture is the same: law firms have made minimal progress in the last decade, and underrepresentation at law firms (especially in positions of power) persists. Although there has been increased representation of minority groups for associates, the same cannot be said for partners. White male attorneys disproportionately make up the leadership at firms<sup>39</sup> and represent 71 percent of the top 10 percent of highest compensated attorneys. However, white women represent 13 percent, and Black men and women represent less than 1 percent.<sup>40</sup> Moreover, there was a slight increase in the percentage of white partners, while the percentage of partners from racial and ethnic groups, women partners, and LGBTQ+ partners decreased within law firms.<sup>41</sup> Unsurprisingly, attrition rates for white attorneys decreased, whereas attrition rates for all of the racial and ethnic groups increased.<sup>42</sup> Additionally, the attrition rates among female attorneys was 5 percent higher (at 16 percent) than those among male attorneys (11 percent).<sup>43</sup> Moreover, attrition rates among white attorneys were almost half that among Black attorneys.<sup>44</sup> Attrition rates for associates of color were almost 10 percent

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afternoon-briefs-coca-cola-gc-leaves-after-8-months-wrongly-jailed-man-challenges-4000-bill-for-confinement [https://perma.cc/ZMP8-UGKV].

34. *DuPont, General Mills, Verizon, and Walmart Launch "Engage Excellence" Minority Lawyer Inclusion Incentive Program: One Answer to the Call to Action*, MINORITY CORP. COUNS. ASS'N (July 29, 2014), <https://mcca.com/mcca-article/engage-excellence/> [https://perma.cc/LZ2C-LJ36].

35. *Seyfarth and MetLife Announce New Fellowship to Advance Diversity*, SEYFARTH (May 25, 2017), <https://www.seyfarth.com/news-insights/seyfarth-and-metlife-announce-new-fellowship-to-advance-diversity.html> [https://perma.cc/2JF7-3HQA].

36. *Id.*

37. *See, e.g., Wal-Mart Requires Diversity in its Law Firms*, WALMART (Dec. 9, 2005), <https://corporate.walmart.com/newsroom/2005/12/08/wal-mart-requires-diversity-in-its-law-firms> [https://perma.cc/4Y5R-5P32]; Whelan & Ziv, *supra* note 28, at 2596–98.

38. Given the breadth of literature that exists on this topic, this section demonstrates that firms and corporate legal departments are failing to make great strides in DE&I.

39. *See* AM. BAR ASS'N, 2021 ABA MODEL DIVERSITY SURVEY 8 (2021), <https://www.americanbar.org/content/dam/aba/administrative/diversity-inclusion-center/2021-md-survey-2nd-edition.pdf> [https://perma.cc/5F6S-UPJ4].

40. *See id.* at 10.

41. *See id.* at 16.

42. *See id.* at 11.

43. *See id.*

44. *See id.*

higher than the average rate of attrition and nearly doubled from 2020 to 2021.<sup>45</sup> The story isn't better for attorneys with disabilities, who are generally underrepresented at every level at law firms.<sup>46</sup> The executive director of the National Association for Law Placement summed it up aptly:

[I]t is equally clear that law firm leaders have failed to do the work necessary to break down the systemic barriers that prevent these individuals from joining them in the hallowed halls of partnership. . . . The data demonstrates that we are nowhere near achieving the progress one would expect from an industry that has been focused on the issue of diversity for over three decades.<sup>47</sup>

Law firms are not alone in their failure as it relates to DE&I. Corporate legal departments might be ahead of firms in DE&I efforts,<sup>48</sup> but they are also struggling. In 2021, there was a sharp increase in women and minority GCs in the *Fortune* 1000.<sup>49</sup> However, women and minorities are still underrepresented at the GC level.<sup>50</sup> Moreover, any gains made for women-and-minority hiring at the GC level has not trickled down into the corporate legal department itself.<sup>51</sup> Many have yet to implement their own diversity initiatives. Further, the initiatives focused on pushing DE&I in law firms lack granularity and impact.<sup>52</sup> Research indicates that in-house lawyers are still giving less than 10 percent of their business to diverse outside counsel.<sup>53</sup> Further, although many corporate clients track law firm diversity efforts, they often do not review the data or discuss it with their firms.<sup>54</sup> Furthermore, a large portion of corporate clients do not even set diversity

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45. See *Update on Associate Attrition*, NALP FOUND. (Apr. 26, 2022), <https://www.nalpfoundation.org/news/nalp-foundation-releases-update-on-associate-attrition-for-calendar-year-2021> [<https://perma.cc/STF3-KELQ>].

46. See AM. BAR ASS'N, *supra* note 39, at 16.

47. See Christine Charnosky, *NALP Report Shows Small Gains of Diversity in Law Firms*, AM. LAW. (Jan. 12, 2023, 4:13 PM), <https://www.law.com/2023/01/12/nalp-report-shows-small-gains-of-diversity-in-law-firms/> [<https://perma.cc/Z7ZR-DPXL>] (quoting executive director Nikia L. Gray).

48. See CORP. COUNS. & ALM, 2022 CORPORATE LEGAL DEPARTMENT DIVERSITY SURVEY (Aug. 2022), <https://www.alm.com/intelligence/solutions-we-provide/analyst-reports/corporate-legal-department-diversity-survey/> [<https://perma.cc/7VYZ-P5PZ>] (click on "Download Report").

49. See Hugo Guzman, *Women, Minority GCs Saw Sharp Increase in Fortune 1000 Representation in 2021*, CORP. COUNS. (Oct. 19, 2022, 9:01 AM), <https://www.law.com/corpocounsel/2022/10/19/women-minority-gcs-saw-sharp-increases-in-fortune-1000-representation-in-2021/> [<https://perma.cc/UMS3-R2BM>].

50. See *Are Legal Departments Really Better than Firms at Diversity?*, YAHOO! (Mar. 9, 2019), <https://finance.yahoo.com/news/legal-departments-really-better-firms-030230565.html> [<https://perma.cc/4S52-TP9H>].

51. See CORP. COUNS. & ALM, *supra* note 48 (reporting that women and nonwhite racial and ethnic groups are generally underrepresented, and that women and Latinx attorneys are underrepresented in *Fortune* 1000 GC positions).

52. *Id.*

53. See INST. FOR INCLUSION IN THE LEGAL PRO., *supra* note 18 (surveying 136 *Fortune* 500 companies).

54. See *id.* at 9, 34 (reporting that almost 75 percent of in-house counsel track the diversity data of outside law firms, but only 60 percent review the data and discuss it with the firm).

goals to track against its collected data.<sup>55</sup> Even if they do, the negative consequences for firms failing to meet the goals are often minor, and the rewards for meeting the goals are often lacking.<sup>56</sup> Thus, although disappointing, it is perhaps unsurprising that a 2022 survey by Wolters Kluwer found that law firms ranked, in their list of top ten areas of importance, “a diverse and inclusive culture” as last.<sup>57</sup> In keeping with that, law firm culture is rated very low on inclusivity and creating a sense of belonging. As such, lawyers feel that they have to adapt to the culture that exists to succeed and that they cannot be themselves at work. Sadly, the factor that has the greatest impact on enhancing belonging for attorneys is whether leaders are perceived as making hiring and promotion decisions fairly and equally, and based on merit as opposed to personal networks. However, as brought to life with the first anecdote, law firms generally hire, allocate work, compensate, and promote in ways that lack organizational fairness, which perpetuates a noninclusive culture and impedes diversity efforts. Essentially, to advance in this system, the diverse candidates must behave (and maybe even think) like the people who are already there, which completely defeats the point of bringing in diverse candidates. And unfortunately, this cycle (and noninclusive culture) is transferred over to corporate legal departments because many in-house lawyers begin their careers working at law firms, and firms are where legal departments recruit talent.

Unfortunately, law trails behind other professions in DE&I.<sup>58</sup> Although exploring all the reasons for this is beyond the scope of this Essay, it is not because lawyers do not have good intentions. As other scholars have demonstrated, even with the best intentions, lawyers in the corporate marketplace fail to make progress because they have intrinsic biases for what makes good business and, importantly, law is tied in many ways to versions of itself that are not collaborative or innovative. This is the topic to which the next section turns.

### B. *The Call to Collaborate and Innovate*

The second call by corporate clients that is often left unanswered is for lawyers to collaborate and innovate.<sup>59</sup> Like with DE&I, the calls have increased in specificity. The calls began with internal business clients asking

55. *See id.* at 15, 34 (reporting that 82.58 percent of in-house counsel do not set diversity goals for outside counsel).

56. *See id.* at 10, 15; *see also* RHODE, *supra* note 3, at 79–80 (“In my recent study of large firms, only one reported losing business over the issue and many were frustrated by clients who asked for detailed information on diversity and then failed to follow up or to reward firms that had performed well.”); *see also* Rhode & Ricca, *supra* note 3.

57. WOLTERS KLUWER, *supra* note 6, at 23.

58. Deborah L. Rhode, *Law Is the Least Diverse Profession in the Nation. And Lawyers Aren't Doing Enough to Change That.*, WASH. POST (May 27, 2015, 8:25 AM), <https://www.washingtonpost.com/posteverything/wp/2015/05/27/law-is-the-least-diverse-profession-in-the-nation-and-lawyers-arent-doing-enough-to-change-that/> [<https://perma.cc/GG2S-N45R>].

59. *See generally* DESTEFANO, *supra* note 6, at 28–55.

their legal departments to be more collaborative and innovative<sup>60</sup> (usually, in order to do more for less),<sup>61</sup> which, of course, led to GCs asking their firms to do the same. However, over time, the call matured to also focus on behavior and ways of working. Internal business clients started asking their in-house lawyers to learn new skills and collaborate with the businesses on agile teams to solve problems, i.e., to innovate.<sup>62</sup> In turn, in-house counsel began asking their firm lawyers to do the same. During the firm selection process, GCs request firms to demonstrate how they have innovated or collaborated and how they will do so in the future.<sup>63</sup> However, complicating the matter is that, even though clients are now asking for more *specific* information to demonstrate progress in this arena, the call for collaboration and innovation, unlike the call for diversity, has not yet moved as far along the trajectory from the vague to the very specific. Although this is likely to change,<sup>64</sup> until it does, it will be difficult for lawyers to answer the call or to measure success.

What is clear, however, is that the original call for collaboration<sup>65</sup> has grown into a call for more *proactive co*-collaboration and for innovation. Based on the 175 interviews I conducted with GCs, heads of innovation at law firms, and other corporate clients of lawyers, it appears that this is really a call for service transformation in disguise. It is a call for a new level and type of service that is client-centric, entails proactive co-collaboration on diverse teams, and requires the mindset and skill set of an innovator that mirror those of an inclusive<sup>66</sup> and adaptive leader.<sup>67</sup> To make clearer to

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60. *See id.* at 44.

61. *See generally* Michele DeStefano, Bjarne P. Tellman & Daniel Wu, *Don't Let the Digital Tail Wag the Transformation Dog: A Digital Transformation Roadmap for Corporate Counsel*, 17 J. BUS. & TECH. L. 183 (2022).

62. *See* DESTEFANO, *supra* note 4, at 31.

63. *See* Michele DeStefano, *The Law Firm Chief Innovation Officer: Goals, Roles, and Holes* (Univ. of Miami Legal Stud. Rsch. Paper, Paper No. 18-39, 2019), [https://static1.squarespace.com/static/554b9c72e4b0b97e40998182/t/5be8a0a788251b96c32adc97/1541972137936/DeStefano%2C+The+Law+Firm+Chief+Innovation+Officer\\_+Goals%2C+Roles%2C+and+Holes+Final.pdf](https://static1.squarespace.com/static/554b9c72e4b0b97e40998182/t/5be8a0a788251b96c32adc97/1541972137936/DeStefano%2C+The+Law+Firm+Chief+Innovation+Officer_+Goals%2C+Roles%2C+and+Holes+Final.pdf) [<https://perma.cc/44LU-SF6M>].

64. *See* DESTEFANO, *supra* note 4, at 45–48.

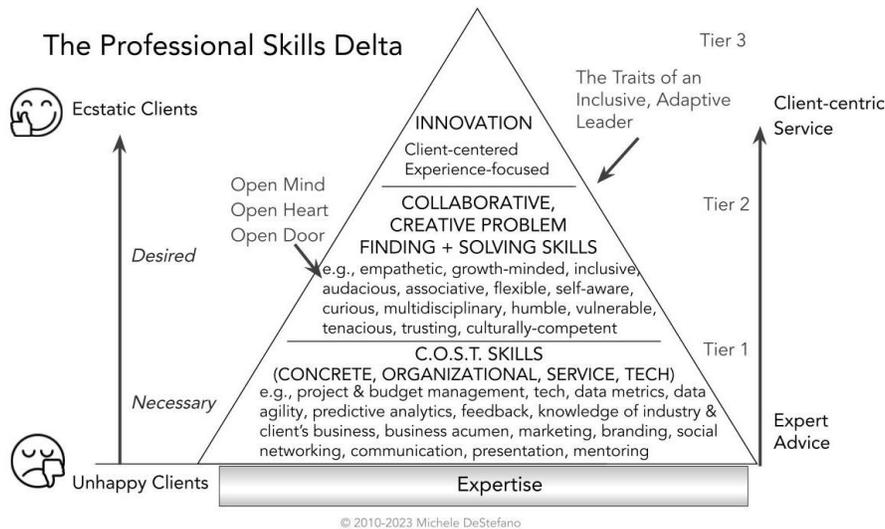
65. *See* Heidi K. Gardner, *When Senior Managers Won't Collaborate*, HARV. BUS. REV. (Mar. 2015), <https://hbr.org/2015/03/when-senior-managers-wont-collaborate> [<https://perma.cc/6PKS-RCUC>].

66. *See generally* BERNADETTE DILLON & JULIET BOURKE, *THE SIX SIGNATURE TRAITS OF INCLUSIVE LEADERSHIP: THRIVING IN A DIVERSE NEW WORLD* (2016), <https://www2.deloitte.com/content/dam/Deloitte/au/Documents/human-capital/deloitte-au-hc-six-signature-traits-inclusive-leadership-020516.pdf> [<https://perma.cc/V7EF-WT2E>]; Katherine Graham-Leviss, *The 5 Skills That Innovative Leaders Have in Common*, HARV. BUS. REV. (Dec. 20, 2016), <https://hbr.org/2016/12/the-5-skills-that-innovative-leaders-have-in-common> [<https://perma.cc/E8LW-ZQM8>].

67. The adaptive leadership model was first developed by Harvard professor Ronald A. Heifetz. *See generally* RONALD A. HEIFETZ, *LEADERSHIP WITHOUT EASY ANSWERS* (1994). It was further developed in a second book coauthored by Professors Heifetz and Marty Linsky. *See generally* RONALD A. HEIFETZ & MARTY LINKSY, *LEADERSHIP ON THE LINE: STAYING ALIVE THROUGH THE DANGERS OF LEADING* (2002); *see also* Ben Ramalingam, David Nabarro, Arkebe Oqubay, Dame Ruth Carnall & Leni Wild, *5 Principles to Guide Adaptive Leadership*,

attorneys what clients are asking for when they ask for more collaboration and innovation, in 2016, I developed the Professional Skills Delta (the “Delta”).<sup>68</sup> See Figure 1 below.

Figure 1: Professional Skills Delta



Because I have written about the Delta extensively in other works,<sup>69</sup> I only provide a short overview here. The Delta is divided into three tiers. Of note is that substantive legal expertise is not even on the Delta—it is a given. Also of note is that as professionals move up the Delta, they move from an inward-focused “I’m the expert” attitude to that of an inclusive, adaptive, and client-centric professional who, like an innovator, seeks to provide delightful experiences that apply all three tiers of the Delta. This means keeping up with the trend in having a more business-oriented approach to providing legal services by providing project and budget management, estimates on returns on investment, and fast, proactive communication in easy-to-understand business language throughout the project (“tier one”). This also means proactively collaborating with others and approaching problem-solving with the mindset of an innovator who (1) understands the importance of problem-finding (and refining) and asking “why” vs. “what” questions, and (2) is growth-minded and empathetic, flexible, and audacious, while at the same time self-aware, curious, vulnerable, and trusting (“tier two”). And it also means doing all this not just to provide advice, save costs, or prevent risks, but to create new products and services and new revenue streams (“tier

HARV. BUS. REV. (Sept. 11, 2020), <https://hbr.org/2020/09/5-principles-to-guide-adaptive-leadership> [<https://perma.cc/T9S3-WSXT>].

68. See DESTEFANO, *supra* note 4 (originally named the “Lawyers’ Skills Delta”).

69. See, e.g., *id.*

three”).<sup>70</sup> This is especially true of legal departments in multinational companies (MNCs) for which joining the digital transformation has become an enterprise-wide imperative.<sup>71</sup> Clients need in-house and firm lawyers that are proactive co-collaborators who find opportunities and help lead and manage teams to innovate and offer integrated solutions, in the way that the Big Four do in the legal marketplace today. For example, if in the future, a rental car company could make more money by selling the data it collects about its customers’ driving habits than it does from renting cars, it needs its lawyers to help it see that (*now*) and help it select and implement the right tech tools to collect the right data and create the data lakes with the right privacy permissions (*now*) so that, legally, they can be leveraged *later*.<sup>72</sup> Therefore, the lawyer’s job is to collaborate with the other service providers (the data scientists, engineers, technologists, financial analysts, and compliance professionals) to help see the future and lead clients to it so that they can protect their clients’ future revenue. So, to truly answer the call to collaborate and innovate, lawyers need all the skills on the Delta.

With respect to in-house lawyers, they have made strides in honing the skills on the Delta and in answering the call for collaboration and innovation. This is made evident by research<sup>73</sup> and a wealth of literature demonstrating how in-house counsel is enhancing legal operations,<sup>74</sup> making strides in digital transformation,<sup>75</sup> and investing in new (and potentially disruptive) technologies.<sup>76</sup> A review of the winners of *The Financial Times*’s most

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70. See DeStefano et al., *supra* note 61, at 233, 238, 252–54.

71. See EY & HARV. L. SCH. CTR. ON THE LEGAL PRO., HOW DO YOU TURN BARRIERS INTO BUILDING BLOCKS? 1, 8 (2021), [https://www.ey.com/en\\_us/law/general-counsel-imperative-barriers-building-blocks](https://www.ey.com/en_us/law/general-counsel-imperative-barriers-building-blocks) [<https://perma.cc/5QFQ-J2MF>] (click “Download full report” at bottom of page); see also John de Yonge, *The CEO Imperative: How Has Adversity Become a Springboard to Growth?*, EY (Mar. 8, 2021), [https://www.ey.com/en\\_us/ceo/the-ceo-imperative-how-has-adversity-become-a-springboard-to-growth](https://www.ey.com/en_us/ceo/the-ceo-imperative-how-has-adversity-become-a-springboard-to-growth) [<https://perma.cc/2DHJ-UDHL>]; see also U.S. CEO Outlook 2017, KPMG (2017), <https://home.kpmg/us/en/home/insights/2017/06/us-ceo-outlook-2017.html> [<https://perma.cc/S728-269F>].

72. See WOLTERS KLUWER, *supra* note 6, at 10 (detailing that 74 percent of in-house legal departments say it’s important that the firm they choose is able to help them with legal technology selection and implementation).

73. See EY & HARV. L. SCH. CTR. ON THE LEGAL PRO., *supra* note 71, at 4, 8 (describing innovative legal departments’ approaches); Mark A. Cohen, *‘Legal Innovation’ Is Not an Oxymoron—It’s Farther Along than You Think*, FORBES (Mar. 14, 2017, 8:59 AM), <https://www.forbes.com/sites/markcohen1/2017/03/14/legal-innovation-is-not-an-oxymoron-its-farther-along-than-you-think/> [<https://perma.cc/N4B5-AEM5>].

74. See, e.g., CHRISTIAN VEITH, NORA TOPHOF, TESSIA TOBER, MEINHARD WEIZMAN, MARKUS HARTUNG & DIRK HARTUNG, LEGAL OPERATIONS: GETTING MORE FROM IN-HOUSE LEGAL DEPARTMENTS AND THEIR OUTSIDE COUNSEL 4 (2018), <https://legaltechcenter.de/pdf/Bucerus-Legal-Ops-2018.pdf> [<https://perma.cc/ZQW3-WTSW>]; WOLTERS KLUWER, THE 2020 WOLTERS KLUWER FUTURE READY LAWYER (2020), [https://img.en25.com/Web/WoltersKluwerLRSUS/%7Bde3a3f01-91ed-4f24-8243-29545a31f2e8%7D\\_FRL2020\\_WP.pdf](https://img.en25.com/Web/WoltersKluwerLRSUS/%7Bde3a3f01-91ed-4f24-8243-29545a31f2e8%7D_FRL2020_WP.pdf) [<https://perma.cc/7WD2-6F7H>]; see also BJARNE P. TELLMANN, BUILDING AN OUTSTANDING LEGAL TEAM: BATTLE-TESTED STRATEGIES FROM A GENERAL COUNSEL 42–43 (2017).

75. See DeStefano et al., *supra* note 61 (describing a typical in-house legal departments’ three-phased approach to digital transformation and recommending a best practice model).

76. See RICHARD SUSSKIND, TOMORROW’S LAWYERS: AN INTRODUCTION TO YOUR FUTURE 39–49 (2013); see also TELLMANN, *supra* note 74, at 42–43.

innovative in-house legal departments awards brings their advancements to life.<sup>77</sup> There are other examples of corporate counsel collaborating in different ways in various associations<sup>78</sup> within and with other disciplines.<sup>79</sup>

Despite all this progress, and given that the justification for in-house legal departments' existence is at stake, research indicates that many in-house legal departments are still failing to meet expectations and demands when it comes to collaboration and innovation. Research points to “gaps in process management and underuse of technology.”<sup>80</sup> Also, in a 2020 Legal Operations Maturity Benchmarking Report by the Association of Corporate Counsel, two of the four lowest-ranked areas in terms of maturity were change and innovation management.<sup>81</sup> Lastly, research indicates that GCs are aware of these gaps and recognize the need to be more collaborative and innovative and to invest more in bridging those gaps.<sup>82</sup> Although corporate legal departments tend to score better on culture than firms do, many report a need to create a culture of collaboration.<sup>83</sup>

The results for firms, unfortunately, aren't any better. Over the past decade, many large firms have made incremental improvements to their business models.<sup>84</sup> They have improved their internal systems to enhance their efficiency, use of technology, and processes.<sup>85</sup> Some have created captive subsidiaries<sup>86</sup> and are using data to enhance profitability.<sup>87</sup> Many have created new positions for “innovation counsel” or “chief innovation

77. *Outstanding Examples of In-House Lawyers' Work*, FIN. TIMES (Oct. 13, 2022), <https://www.ft.com/content/60678f7b-7754-44c7-b1c0-8c59f06ff37d> [<https://perma.cc/HB6Y-82KV>].

78. *See, e.g.*, ADVANCE LAW, <https://www.advancelaw.com/> [<https://perma.cc/8XB8-E9CB>] (last visited Feb. 6, 2023); WORLD 50, <https://www.world50.com/> [<https://perma.cc/3PPM-ZLR3>] (last visited Feb. 6, 2023).

79. For example, I cofounded the Digital Legal Exchange with Mark Cohen, Bill Deckelman, and Dan Reed in 2019 and remain on the board of directors. *See* DIGITAL LEGAL EXCH., <https://www.dlex.org/> [<https://perma.cc/4BQR-77DB>] (last visited Feb. 6, 2023).

80. EY & HARV. L. SCH. CTR. ON THE LEGAL PRO., *supra* note 71, at 3.

81. *See* ASS'N OF CORP. COUNS. & WOLTERS KLUWER, ACC LEGAL OPERATIONS MATURITY BENCHMARKING REPORT 10 (2020), [https://www.acc.com/sites/default/files/2020-05/ACCLegalOps\\_Report20\\_FINAL.pdf](https://www.acc.com/sites/default/files/2020-05/ACCLegalOps_Report20_FINAL.pdf) [<https://perma.cc/NZK6-RXVM>].

82. *See, e.g.*, KPMG, GLOBAL LEGAL DEPARTMENT BENCHMARKING SURVEY 35 (2021), <https://assets.kpmg/content/dam/kpmg/xx/pdf/2021/03/global-legal-department-benchmarking-survey.pdf> [<https://perma.cc/3K79-7SQL>]; *see also* WOLTERS KLUWER, *supra* note 74, at 9, 12 (reporting that 60 percent or more of legal departments recognize that they need to increase their technology investment and that 75 percent expect that the top areas of change in legal departments during the next three years will be greater use of technology to improve productivity and increased emphasis on innovation).

83. WOLTERS KLUWER, *supra* note 6, at 5.

84. *See, e.g.*, *Why Big Law Will Keep Getting Bigger in the 2020s*, ECONOMIST (Jan. 1, 2022), <https://www.economist.com/business/why-big-law-will-keep-getting-bigger-in-the-2020s/21806919> [<https://perma.cc/64M4-294Y>]; THOMSON REUTERS & GEO. L. CTR. ON ETHICS & LEGAL PRO., 2020 REPORT ON THE STATE OF THE LEGAL MARKET 2–5 (2020); *see also* WOLTERS KLUWER, *supra* note 74, at 2; William D. Henderson, *Innovation Diffusion in the Legal Industry*, 122 DICK. L. REV. 395 (2018).

85. WOLTERS KLUWER, *supra* note 74, at 17–19.

86. *Id.*

87. *Id.* at 17.

officer.”<sup>88</sup> Some have created legal tech incubators.<sup>89</sup> Others have begun to change their compensation structures so that collaboration and innovation can count toward attorneys’ billable hours and progress to promotion.<sup>90</sup>

However, law firms are still failing to meet the demands and needs of corporate clients when it comes to collaboration and innovation (i.e., providing a more client-centric, integrated approach to services) and to culture.<sup>91</sup> Corporate clients continue to complain that firm lawyers are not collaborative and not innovative, i.e., that they have fixed mindsets,<sup>92</sup> that they refuse to change, adopt new technologies,<sup>93</sup> and take risks,<sup>94</sup> that they jump to solutions that solve symptoms instead of root causes,<sup>95</sup> that they fail to listen and effectively communicate,<sup>96</sup> and that they leave opportunities on the table.<sup>97</sup> GCs are dismayed by firm culture and how disconnected lawyers are at firms. After a recent outside-counsel review process, one GC remarked, “we started playing a kind of Bingo for the number of firms that said they were ‘collaborative,’” because the irony was that “so many firms didn’t know why they were there and it didn’t seem like they had even met before, or studied our business, and it was really generic as if the firm didn’t

88. DEStEFANO, *supra* note 4; Sam Skolnik, *New Breed of Law Firm Execs Drive Innovation to Next Level*, BLOOMBERG L. (Jan. 16, 2019, 2:31 PM), <https://biglawbusiness.com/new-breed-of-law-firm-execs-drive-innovation-to-next-level> [https://perma.cc/PXQ8-EAK8].

89. *See Tech Innovation*, ALLEN & OVERY, [https://www.allenovery.com/en-gb/global/expertise/advanced\\_delivery/tech\\_innovation](https://www.allenovery.com/en-gb/global/expertise/advanced_delivery/tech_innovation) [https://perma.cc/JT86-TKWU] (last visited Feb. 6, 2023).

90. *See* Caroline Hill, “*Innovation Doesn’t Magically Happen*”: *Why Reed Smith’s Innovation Hours Programme Should Be Applauded*, LEGAL IT INSIDER (May 16, 2018), <https://legaltechnology.com/innovation-doesnt-magically-happen-why-reed-smiths-innovation-hours-programme-should-be-applauded/> [https://perma.cc/Q9C3-SCSA]. For more examples of innovation and collaboration by law firms, see Donald J. Polden, *Lawyers Leadership and Innovation*, 58 SANTA CLARA L. REV. 427 (2018).

91. *See* David B. Wilkins & María José Esteban Ferrer, *Taking the “Alternative” Out of Alternative Legal Service Providers*, in NEW SUITS: APPETITE FOR DISRUPTION IN THE LEGAL WORLD 29 (Michele DeStefano & Guenther Dobrauz eds., 2019).

92. *Fixed Mindset or Growth Mindset?: How Learning Mindsets May Be Stifling Law Firm Change*, LAWVISION (Sept. 1, 2014), <https://lawvision.com/fixed-mindset-or-growth-mindset-how-learning-mindsets-may-be-stifling-law-firm-change> [https://perma.cc/8S6U-5JS8].

93. Bob Ambrogi, *Survey: Legal Departments’ Failure to Adopt Technology Forcing In-House Lawyers to Return to Office, Despite Clear Preference for Hybrid*, LAW SITES (Mar. 30, 2022), <https://www.lawnext.com/2022/03/survey-legal-departments-failure-to-adopt-technology-forcing-in-house-lawyers-to-return-to-office-despite-clear-preference-for-hybrid.html> [https://perma.cc/E6BB-7EFQ]; Joel A. Webber, *Sluggish Tech Adoption Continues in Legal: Only 37% of Lawyers Are Satisfied with Their Firms’ Technology*, MANAGING LEGAL (June 22, 2022), <https://www.managinglegal.com/sluggish-tech-adoption-continues-in-legal-only-37-of-lawyers-are-satisfied-with-their-firms-technology/> [https://perma.cc/6C2D-8MRA].

94. DEStEFANO, *supra* note 4, at 59, 63–65.

95. *Id.* at 39–41, 50–52.

96. *See* Brenda Sapino Jeffreys, *Law Firms Losing Out on Business to Slow Response Times*, AM. LAW. (Oct. 19, 2022, 12:24 PM), <https://www.law.com/americanlawyer/2022/10/19/law-firms-losing-out-on-business-to-slow-response-times/> [https://perma.cc/Y5JS-CMDE].

97. DEStEFANO, *supra* note 4, at 48–55; *see* Jeffreys, *supra* note 96.

have any purpose or culture, let alone a collaborative one.”<sup>98</sup> This was a typical comment by GC interviewees, and it makes sense given that a key indicator of a collaborative culture is an organization’s progress on DE&I (which, as explained above, is limited at firms). Secondary research supports my interview research—the culture within firms is often anything but one of inclusion and collaboration and innovation, and instead is competitive with intense workloads.<sup>99</sup>

Law firms are aware that they are falling short. In a 2020 survey conducted by Wolters Kluwer, approximately 70 percent of law firms reported that they were unprepared to keep pace with changes in the legal marketplace and to meet changing client expectations, and that the biggest barriers include the difficulty of change management and resistance to change by lawyers,<sup>100</sup> especially those who are in leadership roles.<sup>101</sup> In keeping with that, studies show that although a great percentage of law firms have invested in innovation initiatives, a very low percentage adopt them.<sup>102</sup> Worse, some research indicates that law firms’ efforts toward pleasing clients through innovation are *decreasing*.<sup>103</sup>

Additionally, like with DE&I, although the call has been loud, and GCs have said that they will not be inclined to give firms business if they aren’t a collaborative and innovative partner,<sup>104</sup> it appears that GCs often don’t check to see whether firms’ claims during the selection process were accurate, nor do they push firms to live up to their promises.

## II. WHY LAWYERS SHOULD ANSWER BOTH CALLS TO ACTION

Answering both the call for DE&I and the call for collaboration and innovation represents great potential upside for corporate legal departments, firms, and lawyers. The same is true for clients.

98. This quote was taken from an interview that my colleagues and I conducted with a general counsel of a *Fortune* 500 global pharmaceutical company in the context of a larger article on digital transformation in the corporate space. See DeStefano et al., *supra* note 61, at 230 n.150.

99. WOLTERS KLUWER, *supra* note 6, at 6.

100. Thomas S. Clay & Eric A. Seeger, LAW FIRMS IN TRANSITION ii (2018), <https://altmanweil.com/wp-content/uploads/2022/06/Law-Firms-in-Transition-2018-An-Altman-Weil-Flash-Survey-.pdf> [<https://perma.cc/GPH6-4SUB>]; Carol Schiro Greenwald, *Law Firm Success Tied to Leaders’ Communication Practices*, AM. BAR ASS’N (Feb. 14, 2022), <https://businesslawtoday.org/2022/02/law-firm-success-tied-to-leaders-communication-practices/> [<https://perma.cc/P3BK-E892>].

101. WOLTERS KLUWER, *supra* note 74, at 4.

102. Sara Merken, *Law Firms Add New Innovations, but Lawyer Use Limited*, REUTERS (Sept. 21, 2021, 2:39 PM), <https://www.reuters.com/legal/legalindustry/law-firms-add-new-innovations-lawyer-use-limited-survey-2021-09-21/> [<https://perma.cc/2C5G-ZLPD>].

103. *Fewer Firms Improving the Client Experience*, BTI CONSULTING GRP. (May 22, 2019), <https://bticonsulting.com/themadclientist/fewer-firms-improving-the-client-experience-lcxks> [<https://perma.cc/69L7-PLEV>] (stating that fewer law firms are engaging in innovation to improve the client experience); *cf.* WOLTERS KLUWER, *supra* note 6, at 21 (reporting top areas where firms expect to improve with more collaboration, use of tech, and innovation).

104. See DESTEFANO, *supra* note 4, at 44; *cf.* WOLTERS KLUWER, *supra* note 6, at 10 (reporting that in-house counsel rank innovation and collaboration as top in priorities).

A. *The Business Case for DE&I, Collaboration, and Innovation*

The business case for DE&I is well researched and papered.<sup>105</sup> Studies show that companies that are more diverse are 25–36 percent more profitable.<sup>106</sup> Evidently, this is also true when the executive leadership is more diverse.<sup>107</sup> Studies show that companies in the top quartile in gender diversity outperform those in the bottom.<sup>108</sup> Additionally, the companies that were the most ethnically and culturally diverse outperformed those that were least diverse by 36 percent.<sup>109</sup> In keeping with that, companies that are leaders in their industry for DE&I perform better than the market average in decision-making because they are almost 30 percent better at spotting and reducing risks.<sup>110</sup>

DE&I may also help firms and legal departments recruit and retain diverse talent,<sup>111</sup> including millennials<sup>112</sup> and members of Gen Z<sup>113</sup> (i.e., “digital

105. Cf. David M. Mayer, Madeline Ong, Scott Sonenshein & Susan (Sue) Ashford, *To Get Companies to Take Action on Social Issues, Emphasize Morals, Not the Business Case*, HARV. BUS. REV. (Feb. 14, 2019), <https://hbr.org/2019/02/to-get-companies-to-take-action-on-social-issues-emphasize-morals-not-the-business-case> [https://perma.cc/D397-WRLB] (suggesting that managers are more likely to act on social issues when they are presented in “moral terms” rather than in “economic language.”).

106. WORLD ECON. F., DIVERSITY, EQUITY AND INCLUSION 4.0, at 6 (2020), [https://www3.weforum.org/docs/WEF\\_NES\\_DEI4.0\\_Toolkit\\_2020.pdf](https://www3.weforum.org/docs/WEF_NES_DEI4.0_Toolkit_2020.pdf) [https://perma.cc/YH8S-E5E7].

107. Sundiatu Dixon-Fyle, Kevin Dolan, Dame Vivian Hunt & Sara Prince, *Diversity Wins: How Inclusion Matters*, MCKINSEY & CO. (May 19, 2020), <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/diversity-wins-how-inclusion-matters> [https://perma.cc/X3NJ-XAJM]; CATALYST, THE BOTTOM LINE: CORPORATE PERFORMANCE AND WOMEN’S REPRESENTATION ON BOARDS (2007), [https://www.catalyst.org/wp-content/uploads/2019/01/The\\_Bottom\\_Line\\_Corporate\\_Performance\\_and\\_Womens\\_Representation\\_on\\_Boards.pdf](https://www.catalyst.org/wp-content/uploads/2019/01/The_Bottom_Line_Corporate_Performance_and_Womens_Representation_on_Boards.pdf) [https://perma.cc/C3DV-D8UE].

108. RICHARD KERSLEY, EUGENE KLERK, ANAIS BOUSSIE, BAHAR SEZER LONGWORTH, JOELLE ANAMOOTOO NATZKOFF & DARSHANA RAMJI, THE CS GENDER 3000 IN 2019: THE CHANGING FACE OF COMPANIES 22–23 (2019), <https://www.credit-suisse.com/about-us-news/en/articles/news-and-expertise/cs-gender-3000-report-2019-201910.html> [https://perma.cc/L64A-VFWD] (click on “Download PDF” under “CS Gender 3000 report 2019”) (finding that companies at which women held 20 percent or more of the management roles created EBITDA margins that were 2 percent higher than companies at which women held 15 percent or less of the management roles); Marcus Noland, Tyler Moran & Barbara Kotschwar, *Is Gender Diversity Profitable?: Evidence from a Global Survey* (Peterson Inst. for Int’l Econ., Working Paper No. 16-3, 2016), <https://www.piie.com/sites/default/files/documents/wp16-3.pdf> [https://perma.cc/9VL8-U3YK] (finding a positive correlation between profitability and women in senior leadership positions).

109. Noland et al., *supra* note 108.

110. WORLD ECON. F., *supra* note 106, at 6.

111. See, e.g., Juan M. Madera, Linnea Ng, Jane M. Sundermann & Mikki Hbl, *Top Management Gender Diversity and Organizational Attraction: When and Why It Matters*, 7 ARCHIVES SCI. PSYCH. 90 (2019); Cara C. Maurer and Israr Qureshi, *Not Just Good for Her: A Temporal Analysis of the Dynamic Relationship Between Representation of Women and Collective Employee Turnover*, 42 ORG. STUD. 85 (2021).

112. See, e.g., DELOITTE, UNLEASHING THE POWER OF INCLUSION: ATTRACTING AND ENGAGING THE EVOLVING WORKFORCE 4 (2017), <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/about-deloitte/us-about-deloitte-unleashing-power-of-inclusion.pdf> [https://perma.cc/25MH-U42X].

113. Michael Dimock, *Defining Generations: Where Millennials End and Generation Z Begins*, PEW RSCH. CTR. (Jan. 17, 2019), <https://www.pewresearch.org/fact->

natives”<sup>114</sup>) because DE&I at the workplace is extremely important to both.<sup>115</sup> Gen Z even wants their employers to mirror their diversity,<sup>116</sup> which is a large task given that Gen Z is the most diverse generation of Americans yet.<sup>117</sup> Also, studies show that when their companies embrace diversity, and their leaders lead with inclusion, millennials and members of Gen Z are more actively engaged at work, more productive,<sup>118</sup> and less likely to be absent.<sup>119</sup> And of course, the costs associated with turnover in the corporate legal marketplace are high. Replacing a firm associate is estimated to cost between \$200,000 to \$500,000.<sup>120</sup> In addition to retention, there are many benefits tied specifically to diversity in age and generation, such as increased engagement, productivity, and breadth of skills, as well as more mentorship opportunities. In sum, many studies demonstrate that enhanced diversity is linked to profitability and financial health.<sup>121</sup>

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tank/2019/01/17/where-millennials-end-and-generation-z-begins/ [https://perma.cc/ZP89-33DX].

114. Kim Parker & Ruth Igielnik, *On the Cusp of Adulthood and Facing an Uncertain Future: What We Know About Gen Z So Far*, PEW RSCH. CTR. (May 14, 2020), <https://www.pewresearch.org/social-trends/2020/05/14/on-the-cusp-of-adulthood-and-facing-an-uncertain-future-what-we-know-about-gen-z-so-far-2/> [https://perma.cc/NBM2-UPCB].

115. Lydia Dishman, *Millennials Have a Different Definition of Diversity and Inclusion*, FAST CO. (May 18, 2015), <https://www.fastcompany.com/3046358/millennials-have-a-different-definition-of-diversity-and-inclusion> [https://perma.cc/9EDW-BKP4] (studying more than 3,500 millennials); Jennifer Miller, *For Younger Job Seekers, Diversity and Inclusion in the Workplace Aren't a Preference. They're a Requirement.*, WASH. POST (Feb. 18, 2021, 7:00 AM), <https://www.washingtonpost.com/business/2021/02/18/millennial-gen-workplace-diversity-equity-inclusion/> [https://perma.cc/WBK5-7AQQ].

116. Sara Martinez, *How Gen Z Employees Evaluate Companies Based on Their Morals and Values*, UNTAPPED (June 27, 2022), <https://www.untapped.io/blog/how-gen-z-employees-evaluate-companies> [https://perma.cc/WP94-W2FR].

117. Richard Fry & Kim Parker, *Early Benchmarks Show 'Post-Millennials' on Track to Be Most Diverse, Best-Educated Generation Yet*, PEW RSCH. CTR. (Nov. 15, 2018), <https://www.pewresearch.org/social-trends/2018/11/15/early-benchmarks-show-post-millennials-on-track-to-be-most-diverse-best-educated-generation-yet/> [https://perma.cc/GWR7-KVC7].

118. CHRISTIE SMITH, STEPHANIE TURNER, *THE RADICAL TRANSFORMATION OF DIVERSITY AND INCLUSION: THE MILLENNIAL INFLUENCE* (2015), <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/about-deloitte/us-inclus-millennial-influence-120215.pdf> [https://perma.cc/QV3Q-ZFKV]; WORLD ECON. F., *supra* note 106.

119. Juliet Bourke & Andrea Titus, *Why Inclusive Leaders Are Good for Organizations, and How to Become One*, HARV. BUS. REV. (Mar. 29, 2019), <https://hbr.org/2019/03/why-inclusive-leaders-are-good-for-organizations-and-how-to-become-one> [https://perma.cc/SZ2M-9KZE].

120. Steven Rushing, *The Cost of Law Firm Associate Turnover*, ABOVE THE L. (May 13, 2022, 12:42 PM), <https://abovethelaw.com/2022/05/the-cost-of-law-firm-associate-turnover/> [https://perma.cc/2NUJ-DJ52].

121. See Vijay Eswaran, *The Business Case for Diversity Is Now Overwhelming*, WORLD ECON. F. (Apr. 29, 2019), <https://www.weforum.org/agenda/2019/04/business-case-for-diversity-in-the-workplace/> [https://perma.cc/R4WD-YYD9]; Dieter Holger, *The Business Case for More Diversity*, WALL ST. J. (Oct. 26, 2019, 8:00 AM), <https://www.wsj.com/articles/the-business-case-for-more-diversity-11572091200> [https://perma.cc/YRB2-C25V]; Paul Gompers & Silpa Kovvali, *The Other Diversity Dividend*, HARV. BUS. REV., Jul.–Aug. 2018, at 72, 72–77; Matthew Corritore, Amir Goldberg & Sameer B. Srivastava, *The New*

In keeping with the main argument of this Essay—that the call for innovation and collaboration is inextricably intertwined with the call for DE&I—research demonstrates that when diverse teams collaborate, they are more creative, better at problem-solving, and better at innovation. In fact, studies report that companies that outperform in DE&I have higher rates of innovation and almost 20 percent higher revenues as a result innovation.<sup>122</sup> Although conflict can develop with diversity,<sup>123</sup> when managed appropriately,<sup>124</sup> diverse teams are more productive and provide a competitive advantage.<sup>125</sup> In fact, the opposite also holds true. Although homogeneous teams are better at being “homogeneous” than diverse teams, they do not perform better, even when they experience less conflict.<sup>126</sup> Further, diversity of all kinds—inherent and acquired,<sup>127</sup> and including age, religion, race, expertise, discipline, gender, value systems, and even ambition—has been proven to enhance teams’ success.<sup>128</sup> This is because diverse experiences change the nature of the process when multiple perspectives are heard and considered. This is called the Medici Effect: creativity and innovation abound when talented people from different fields

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*Analytics of Culture*, HARV. BUS. REV. (Feb. 2020), <https://hbr.org/2020/01/the-new-analytics-of-culture> [<https://perma.cc/E6U3-BBQL>].

122. WORLD ECON. F., *supra* note 106, at 6 (reporting a 20 percent increase in both); Rocío Lorenzo, Nicole Voigt, Miki Tsusaka, Matt Krentz & Katie Abouzahr, *How Leadership Teams Boost Innovation*, BOS. CONSULTING GRP. (Jan. 23, 2018), <https://www.bcg.com/publications/2018/how-diverse-leadership-teams-boost-innovation> [<https://perma.cc/5UC2-YD55>]; Rocío Lorenzo, Nicole Voigt, Karin Schetelig, Annika Zawadzki, Isabelle Welpé & Prisca Brosi, *The Mix That Matters: Innovation Through Diversity*, BOS. CONSULTING GRP. (Apr. 26, 2017), <https://www.bcg.com/publications/2017/people-organization-leadership-talent-innovation-through-diversity-mix-that-matters> [<https://perma.cc/W74V-TZUB>]; *see also* Mohammed Hossain, Muhammad Atif, Ammad Ahmed & Lokman Mia, *Do LGBT Workplace Diversity Policies Create Value for Firms?*, 167 J. BUS. ETHICS 775 (2019).

123. *See* Gunter K. Stahl & Martha L. Maznevski, *Unraveling the Effects of Cultural Diversity in Teams: A Retrospective of Research on Multicultural Work Groups and an Agenda for Future Research*, 52 J. INT’L BUS. STUD. 4, 4–22 (2021).

124. María del Carmen Triana, Kwanghyun Kim, Seo-Young Byun, Dora María Delgado & Winfred Arthur Jr., *The Relationship Between Team Deep-Level Diversity and Team Performance: A Meta-Analysis of the Main Effect, Moderators, and Mediating Mechanisms*, 58 J. MGMT. STUD. 2137–79 (2021); Daan van Knippenberg, Lisa H. Nishii & David J.G. Dwertmann, *Synergy From Diversity: Managing Team Diversity to Enhance Performance*, 6 BEHAV. SCI. & POL’Y 75, 75–92 (2020).

125. *See* Susan E. Jackson, Karen E. May & Kristina Whitney, *Understanding the Dynamics of Diversity in Decision-Making Teams*, in *TEAM EFFECTIVENESS AND DECISION MAKING IN ORGANIZATIONS* 204, 223–24 (Richard A. Guzzo, Eduardo Salas & Assocs. eds., 1995).

126. *See* Clint A. Bowers, James A. Pharmer & Eduardo Salas, *When Member Homogeneity Is Needed in Work Teams: A Meta-Analysis*, 31 SMALL GRP. RSCH. 305, 305–27 (2000).

127. Sylvia Ann Hewlett, Melinda Marshall & Laura Sherbin, *How Diversity Can Drive Innovation*, HARV. BUS. REV. (Dec. 2013), <https://hbr.org/2013/12/how-diversity-can-drive-innovation> [<https://perma.cc/7NLY-LS5E>].

128. SCOTT E. PAGE, *THE DIFFERENCE: HOW THE POWER OF DIVERSITY CREATES BETTER GROUPS, FIRMS, SCHOOLS, AND SOCIETIES* xxvi, xxix (2007); Lu Hong & Scott E. Page, *Groups of Diverse Problem Solvers Can Outperform Groups of High-Ability Problem Solvers*, 101 PNAS 16385, 16385–89 (2004).

collaborate.<sup>129</sup> In keeping with that, research shows that teams are more innovative when their leader has some multidisciplinary expertise<sup>130</sup> because they are better at stimulating information-sharing across disciplines and at drawing attention to others' knowledge and varying approaches.<sup>131</sup>

Arguably, diverse collaboration toward innovation has the potential for even *more* benefits in legal departments and firms because of how little diversity exists in lawyers' training regimes and the licensing structure. Many of the professionals at firms and legal departments are lawyers. The benefits of hiring and retaining diverse talent, therefore, increase. Studies about the legal market support this—when more than one practice group at a law firm collaborate, revenue triples.<sup>132</sup> And it goes on from there. Similarly, individual lawyers who collaborate more make more money for themselves and others.<sup>133</sup> My interview research and qualitative experience in leading 235 multidisciplinary teams on a four-month innovation journey support this data. When lawyers collaborate with their clients on an innovation initiative, the relationship gets stickier and yields additional business returns.<sup>134</sup> And there is other concrete data to prove that collaboration and innovation in the legal marketplace lead to financial rewards. Consider the amount of investment in legal tech and the estimated market cap for LegalZoom. Also, a 2022 Wolters Kluwer study identified an ongoing trend in which firms that are leaders in tech investment and adoption are more profitable.<sup>135</sup> The opposite is also true for those firms that are lagging.<sup>136</sup>

In addition to making financial sense, answering the call to collaborate and innovate yields other benefits for firms and legal departments. Research shows that that in-house departments and firms that are technology leaders are more resilient, agile, and better performing.<sup>137</sup> Other added benefits include enhanced brand reputation and a competitive advantage, which serve as “techno capital.”<sup>138</sup> This has a broad impact on attracting clients, building relationships, and expanding business with current clients.

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129. FRANS JOHANSSON, *THE MEDICI EFFECT: WHAT ELEPHANTS AND EPIDEMICS CAN TEACH US ABOUT INNOVATION* (2017); *The Medici Effect: A Simple Introduction*, WORLD OF WORK PROJECT, <https://worldofwork.io/2019/07/the-medici-effect> [<https://perma.cc/HG8E-GVVB>] (last visited Feb. 6, 2023).

130. Maritza Salazar & Theresa Lant, *Facilitating Innovation in Interdisciplinary Teams: The Role of Leaders and Integrative Communication*, 21 *INFORMING SCI.* 157, 166–70 (2018).

131. *Id.*

132. Gardner, *supra* note 65.

133. *Id.*

134. See, e.g., *Transforming Client Relationships Through Innovation*, HARV. L. SCH., <https://hls.harvard.edu/executive-education/programs/master-classes/transforming-client-relationships-through-innovation/> [<https://perma.cc/NP2S-TNTA>] (last visited Feb. 6, 2023).

135. WOLTERS KLUWER, *supra* note 6, at 32.

136. *Id.*

137. *Id.* at 31.

138. Bruce A. Green & Carole Silver, *TECHNOCAPITAL@BIGLAW.COM*, 18 *Nw. J. TECH. & INTELL. PROP.* 265, 286 (2021).

*B. The Risks of Failing to Answer Both Calls to Action*

Of course, if there is increased financial revenue for *answering* both calls, there is also a risk of decreased revenue downstream if these calls are *not answered*.<sup>139</sup> This section analyzes the risks at stake beyond financial ones.

The risk of failing to enhance DE&I is profound and has been written about extensively. No one needs convincing. Therefore, this section will be brief. At stake is the perceived legitimacy of the legal system at large. The lack of diversity in the corporate legal marketplace decreases the public's confidence in our legal system, which is already low.<sup>140</sup> And as the American Bar Association points out, "racial and ethnic diversity in the legal profession is necessary to demonstrate that our laws are being made and administered for the benefit of all persons."<sup>141</sup> Further, the only way to ensure fair representation of citizens in our legal system is to ensure that it contains a diverse population of attorneys. Moreover, because the nation's leaders are typically also lawyers, Justice Sandra Day O'Connor reminds us that "[i]n order to cultivate a set of leaders with legitimacy," the "path to leadership" should "be visibly open to talented and qualified individuals of every race and ethnicity."<sup>142</sup>

However, the risks related to not answering corporate clients' call for enhanced collaboration and innovation may not seem as concerning. If lawyers do not learn how to collaborate or innovate, they may disappoint their clients and, as a result, lose business, fail to see an opportunity to reduce costs, or fail to create revenue-generating ideas. They may even open the door to what Christensen defined as "disruptive innovation"<sup>143</sup> in the corporate legal marketplace, a real threat. Over the past century—and particularly in the last twenty to twenty-five years—there has been an upscaling of every sector of the labor market, and lawyers are not immune to these changes. Plus, legal profession functions have evolved significantly over the past twenty-five years. Indeed, it is because of these changes that clients' call for collaboration and innovation has continued to escalate. Lawyers and firms who fail to learn how to collaborate and innovate in an

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139. WORLD ECON. F, *supra* note 106, at 6.

140. See, e.g., Raymond J. Lohier Jr., Jeffrey S. Sutton, Diane P. Wood & David F. Levi, *Losing Faith: Why Public Trust in the Judiciary Matters—and What Judges Can Do About It*, 106 JUDICATURE, no. 2, 2022, at 71; LOGAN CORNETT & NATALIE ANNE KNOWLTON, PUBLIC PERSPECTIVES ON TRUST & CONFIDENCE IN THE COURTS (2020), [https://iaals.du.edu/sites/default/files/documents/public\\_perspectives\\_on\\_trust\\_and\\_confidence\\_in\\_the\\_courts.pdf](https://iaals.du.edu/sites/default/files/documents/public_perspectives_on_trust_and_confidence_in_the_courts.pdf) [<https://perma.cc/U33J-P42V>]; Rebecca Love Kourlis, *Public Trust and Confidence in the Legal System: The Way Forward*, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS. (Sept. 13, 2019), <https://iaals.du.edu/blog/public-trust-and-confidence-legal-system-way-forward> [<https://perma.cc/L6QF-GF84>]; AM. BAR ASS'N, TASK FORCE ON BUILDING PUBLIC TRUST IN THE AMERICAN JUSTICE SYSTEM (2017), [https://www.americanbar.org/content/dam/aba/administrative/office\\_president/2\\_8\\_task\\_force\\_on\\_building\\_trust\\_in\\_american\\_justice\\_system.pdf](https://www.americanbar.org/content/dam/aba/administrative/office_president/2_8_task_force_on_building_trust_in_american_justice_system.pdf) [<https://perma.cc/NBB2-25PM>].

141. *Diversity in Law: Who Cares?*, AM. BAR ASS'N (Apr. 30, 2016), <https://www.americanbar.org/groups/litigation/committees/diversity-inclusion/articles/2016/spring2016-0416-diversity-in-law-who-cares/> [<https://perma.cc/WXU2-GGPC>].

142. *Id.*

143. See Christensen et al., *supra* note 12.

environment where the world continues to change risk irrelevance. Law is not an obvious problem for huge global corporations with broad operations, but it could be helpful in terms of strategy and approach. In failing to collaborate and innovate, lawyers are missing a chance to increase relevance at all levels. In addition to collaborating, lawyers need to prove that it's worth it to loop them in on more than just the obvious legal issues. As Rhode pointed out, the nature of the contemporary corporate legal landscape is increasing in "complexity, scale, pace, and diversity."<sup>144</sup> This means that decisions "play out on a wider stage," with less time for informed analysis and discussion.<sup>145</sup> Plus, regulations have become even more complicated, especially with the passing of the European Union's General Data Protection Regulation.<sup>146</sup>

Therefore, the risks attached to lawyers failing to collaborate and innovate could have serious consequences. For example, in failing to collaborate, lawyers may contribute to their clients' failure to comply with the law and repeat past mistakes. The story of Enron and the question of "where were the lawyers?" is pertinent here.<sup>147</sup> Although some may claim that Enron happened because lawyers were *too* collaborative, arguably, had they been more empathetic with more stakeholders and more open-mindedly inquisitive like innovators are, they might have been more aware and had a more "contemporaneous appreciation" of the risks.

In addition to failing to reduce risk, lawyers may contribute to their clients' creations of externalities that have serious negative consequences.<sup>148</sup> Consider the anecdote from the introduction demonstrating the risks related to algorithmic bias baked into big data<sup>149</sup> and the machine-learning systems used by business professionals.<sup>150</sup> Having lawyers collaborate and innovate

144. Deborah L. Rhode, *Leadership in Times of Social Upheaval: Lessons for Lawyers*, 73 BAYLOR L. REV. 67, 111 (1993).

145. DEBORAH L. RHODE & AMANDA K. PACKEL, LEADERSHIP FOR LAWYERS 610 (2018).

146. EY & HARV. L. SCH. CTR. ON THE LEGAL PRO., *supra* note 71, at 5–6 (reporting that GCs "are not very confident in their departments' ability to manage complex legal risks" and noting the gaps that are "limiting organizations' visibility into risk").

147. Donald C. Langevoort, *Where Were the Lawyers?: A Behavioral Inquiry Into Lawyers' Responsibility for Clients' Fraud*, 46 VAND. L. REV. 75, 76–77 (1993).

148. Andrew Johnston, Kenneth Amaeshi, Emmanuel Adebite & Onyeka Osuji, *Corporate Social Responsibility as Obligated Internalisation of Social Costs*, 170 J. BUS. ETHICS 39 (2019).

149. Kate Crawford, *The Hidden Biases in Big Data*, HARV. BUS. REV. (Apr. 1, 2013), <https://hbr.org/2013/04/the-hidden-biases-in-big-data> [<https://perma.cc/FN9U-AZY6>].

150. *Id.*

150. See, e.g., Don Fancher, Beena Ammanath, Jonathan Holdowsky & Natasha Buckley, *AI Model Bias Can Damage Trust More than You Know. But It Doesn't Have To.*, DELOITTE (Dec. 08, 2021), <https://www2.deloitte.com/us/en/insights/focus/cognitive-technologies/ai-model-bias.html> [<https://perma.cc/86S9-CK8C>]; Kristin Johnson, Frank Pasquale & Jennifer Chapman, *Artificial Intelligence, Machine Learning, and Bias in Finance: Toward Responsible Innovation*, 88 FORDHAM. L. REV. 499, 505, 512 (2019); James Manyika, Jake Silberg & Brittany Presten, *What Do We Do About the Biases in AI?*, HARV. BUS. REV. (Oct. 25, 2019), <https://hbr.org/2019/10/what-do-we-do-about-the-biases-in-ai> [<https://perma.cc/6FGR-WSQ7>]; cf. Drew Simshaw, *Access to A.I. Justice: Avoiding an Inequitable Two-Tiered System of Legal Services*, 24 YALE. J.L. & TECH. 150, 199–202 (2022) (exploring the harmful effects that can result from bias in AI-driven legal processes but

with the development teams in an agile way can help prevent groupthink and the creation of a product that will hurt diverse populations, thereby saving the company a lot of wasted money. That is, as long as lawyers approach multidisciplinary collaboration like innovators do.

Another risk is that lawyers may contribute to their clients' failures to ask the right questions and solve the right problems to avoid a calamity. Consider that General Motors (GM) knew for almost a decade that there was a problem with its cars' ignition switches—they had been designed with less torque than originally called for in the product specification<sup>151</sup> and could easily be switched off by users.<sup>152</sup> GM (with the help of its lawyers) convinced the regulators that the ignition switch issue was not a *real* safety problem because it only caused “a moving stall,”<sup>153</sup> i.e., the car could still be safely moved to the roadside.<sup>154</sup> However, during this same time, airbags were not deploying in the same cars, but because of the way that the ignition problem was defined, it was not connected to the airbag problem.<sup>155</sup> As Professor Robert Eli Rosen aptly pointed out, the GM team framed the ignition switch issue as one in which a driver can bump the key ring, resulting in engine-off coasting.<sup>156</sup> However, “[n]one realised (‘Inexplicably’)” that this was “also ‘electricity off coasting.’”<sup>157</sup> Thus, they didn't realize that when the ignition switch turned off, the “loss of motive power” caused a loss of electricity, which then caused the airbag to not deploy.<sup>158</sup> This is a classic example of failing to find and solve the right “problem,” i.e., solving the symptoms instead of the root cause. Importantly, and as noted in the second tier of the Delta, this is what innovators know *not* to do. The lawyers were blamed by regulators for “a sin of omission” in failing to detect the problem as quickly as they could have and not pushing hard enough.<sup>159</sup> However, the *real* sin of

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contending that “[e]ffectively-calibrated AI, on the other hand, can actually help combat bias”). *But see* Frida Polli & Will Uppington, *Resetting the Conventional Wisdom: Using AI to Reduce Bias*, INFORMS (Aug. 24, 2022), <https://pubsonline.informs.org/doi/10.1287/LYTX.2022.05.02/full/> [<https://perma.cc/ENM2-J8GH>].

151. ANTON R. VALUKAS, REPORT TO BOARD OF DIRECTORS OF GENERAL MOTORS COMPANY REGARDING IGNITION SWITCH RECALLS 40 (2014), <https://www.aieg.com/wp-content/uploads/2014/08/Valukas-report-on-gm-redacted2.pdf> [<https://perma.cc/V44T-LYMP>].

152. Some claim that GM had purposefully created the switch to turn easily so that it would feel more European. *See, e.g., GM Redesigned Ignition Switch to Give Small Cars European Feel*, BLADE (July 8, 2014, 12:00 AM), <https://www.toledoblade.com/business/automotive/2014/07/08/GM-redesigned-ignition-switch-to-give-small-cars-European-feel/stories/20140707248> [<https://perma.cc/P96V-G5RD>].

153. VALUKAS, *supra* note 151, at 33, 64, 252.

154. Hilary Stout & Aaron M. Kessler, *Senators Take Auto Agency to Task over GM Recall*, N.Y. TIMES (Sept. 16, 2014), <https://www.nytimes.com/2014/09/17/business/senate-hearing-on-nhtsa-and-recalls.html> [<https://perma.cc/L5FM-MLVV>].

155. *Id.*

156. Robert Eli Rosen, *The Sociological Imagination and Legal Ethics*, 19 LEGAL ETHICS 97, 102 (2016).

157. *Id.* at 102–03 (emphasis added).

158. *Id.* at 102.

159. Alison Frankel, *GM Legal Department Failed Company and Customers: Frankel*, REUTERS (June 5, 2014, 7:33 PM), <https://www.reuters.com/article/otc-gmo/column-gm->

omission here was the lawyers' failure to proactively collaborate and innovate. As Rosen explained, the delayed recall was in part due to the fact that GM was "composed of silos,"<sup>160</sup> and "GM lawyers created a divide between themselves and engineering."<sup>161</sup> The GM lawyers saw themselves as defense lawyers.<sup>162</sup> They kept busy responding to products liability claims and determining what constituted a "safety defect."<sup>163</sup> They "raised every possible defense against liability," including blaming the drivers for knocking the ignition switches with their knees.<sup>164</sup> True, it could be that the lawyers didn't understand that turning off ignitions turned off other parts of the cars. But Rosen contended: "Part of the lawyers' task is to understand the problem. By seeing themselves as 'just law lawyers,' GM lawyers failed their company."<sup>165</sup> Perhaps if the GM lawyers had proactively collaborated (instead of working in silos) and viewed the accidents as problems requiring creative, innovative solutions—as opposed to just "cases to be defended"<sup>166</sup>—they could have helped the company see the real problem and saved a lot of loss and lives.

Some might argue that it is not the lawyers' job, but corporate clients will argue the opposite. Because there are no solely legal problems, attorneys need to collaborate with corporate clients to solve problems with both a legal and business mindset. Perhaps failure could have been avoided (and lawyers could have fulfilled their duty of ethical safeguarding) if the lawyers had done so in the GM case. Unfortunately, if lawyers do not learn to do so in the future, safeguards that companies claim are in place will not prevent similar mistakes.

These examples demonstrate serious repercussions from lawyers' failure to collaborate and innovate in the corporate legal marketplace. Yet, the risk that this Essay is most concerned about stems from the possibility that the two calls to action are tethered in a negatively consequential way: lawyers' failure to learn how to collaborate and innovate may *impede (or make impossible)* their ability to enhance DE&I in the corporate legal marketplace.

First, if lawyers continue to work in silos, allocate work, promote, recruit, and compensate as they always have, DE&I initiatives in the corporate marketplace will have a hard time moving the needle. In fact, that's been proven with many initiatives including those driven by clients<sup>167</sup> and the recent Mansfield Rule.<sup>168</sup> Some of the reasons identified for this failure include lawyers' individual failures to change, to innovate how they work,

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legal-department-failed-company-and-customers-frankel-idINL1N0OM2ZG20140605  
[<https://perma.cc/YYA4-Z2YK>].

160. Rosen, *supra* note 156, at 104.

161. *Id.* at 109.

162. *Id.*

163. *Id.* at 104–05.

164. *Id.* at 110.

165. *Id.*

166. *Id.*

167. *See, e.g.*, CORP. COUNS. & ALM, *supra* note 48, at 17–18.

168. Cecchi-Dimeglio, *supra* note 19, at 246–72; Cecchi-Dimeglio, *supra* note 21.

and to adopt new processes<sup>169</sup> like the work-allocation tool described in the introduction. Therefore, if lawyers aren't open to collaborating and innovating with diverse colleagues, they will derail efforts that *could* move the needle and, therefore, help perpetuate the lack of diversity in the corporate legal marketplace.

Second, some of the identified reasons that certain DE&I initiatives have failed—for example, due to a supply issue<sup>170</sup>—suggest we likely need different *innovative* solutions that attack the DE&I problem. As other scholars have pointed out, there is no “quick fix.”<sup>171</sup> Thus, if lawyers fail to meet corporate clients' call to collaborate and innovate within diverse teams, they will not be able to meaningfully contribute to finding innovative, *viable* solutions that create measurable, sustainable, and impactful improvements to DE&I. This suggests that we might be facing a “chicken or egg” problem that will only be overcome if we get to the root cause.

### III. A POSSIBLE ROOT CAUSE AND A RECOMMENDED SOLUTION

If the business case is so great for answering clients' calls to action, and the stakes are so high for failing to do so, then why aren't lawyers collaborating, innovating, and embracing DE&I? Sure, many lawyers are resistant to change, and from a behavioral economics perspective, there's likely a benefit to remaining in the situation they are in because change creates a lot of loss, and loss aversion is usually high. Although all of this contributes to the problem, this part posits a different, possible root cause. After that, it provides a recommendation that hopefully can help put the chicken or egg question to rest.

#### A. A Possible Root Cause

Although lawyers excel at complex problem-solving and analytic and strategic thinking, they test low on innovator attributes, i.e., what some call interpersonal and soft skills, when compared to other professionals' empathy

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169. See William D. Henderson, *Solving the Legal Profession's Diversity Problem*, NALP PD Q. 23, 23 (2016) (explaining it as a systems failure); *id.* at 24–33 (arguing that DE&I can be enhanced if law firms change current hiring, work allocation, training, feedback, coaching, and mentoring processes); Paola Cecchi-Dimeglio, *Designing Equality in the Legal Profession: A Nudging Approach*, 24 HARV. NEGOT. L. REV. 1 (2018) (arguing for the adoption of a “systems thinking” and “nudge approach” to redesign organizational procedures and systems that remove biases and foster a level playing field for men and women); Anusia Gillespie, *Q: How Does Innovation Intersect with Diversity, Equity, and Inclusion (DEI) Initiatives in Law?* (298), LEGAL EVOLUTION (May 4, 2022), <https://www.legalevolution.org/2022/05/q-how-does-innovation-intersect-with-diversity-equity-and-inclusion-dei-initiatives-in-law/> [https://perma.cc/8BS4-9PBT]; RHODE, *supra* note 3, at 60 (“Many of the obstacles to diversity and equity in legal practice are symptomatic of deeper structural problems.”); *id.* at 80 (“Better mentoring programs, more equitable compensation and work assignments, and greater accountability of supervising attorneys are all likely to have long-term payoffs, however difficult to quantify with precision.”).

170. Cecchi-Dimeglio, *supra* note 21.

171. Pisano, *supra* note 23; see also DEStEFANO, *supra* note 23.

and resilience.<sup>172</sup> And, in fact, they test high on mindsets and attributes that are inapposite to those of an innovator like skepticism, cynicism, judgment, competitiveness, and autonomy.<sup>173</sup> This is unsurprising given that the traditional competitive law school curriculum focuses on solo, autonomous work that requires analytical and strategic analysis, avoids risk, and seeks consistency with precedent. This stands in stark contrast to collaborative problem-solving that requires empathetic and experimental analysis that seeks novel (perhaps even risky) solutions and focuses on problem-finding versus problem-solving.<sup>174</sup>

As I have written about in detail in my prior works, lawyers do not appear to have what Christensen and his coauthors identified as the five essential qualities of an innovator,<sup>175</sup> which are questioning, observing, networking, associating, and experimenting.<sup>176</sup>

*Questioning & Observing.* True, lawyers are trained to question everything (and in a critical manner to ensure that they are accounting for all risks). But they question and observe differently than innovators do. Innovators question with an open and growth mindset, letting go of preconceptions and avoiding words that stop the scene, like “no” and “but.” They question with an open heart, with empathy, and they ask the “Five Whys”<sup>177</sup> to really understand the target audience and identify the root cause of the problem<sup>178</sup> before jumping to solve. On the other hand, lawyers test low on empathy and are considered less empathetic than other

172. See, e.g., Douglas B. Richardson & Douglas P. Coopersmith, *MANAGEMENT: Learning to Lead*, AM. LAW. (July 1, 2001, 12:00 AM), <https://www.law.com/americanlawyer/almID/1202422402691/> [<https://perma.cc/9K3A-LSJV>]; Larry Richard, *Herding Cats: The Lawyer Personality Revealed*, REP. TO LEGAL MGMT., Aug. 2002, at 1, 4, 9; Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337, 1349, 1390–94 (1997).

173. Mark Milner, *Defining the Gift of a Far-Sighted Few*, GUARDIAN (June 9, 2000, 7:00 PM), <https://www.theguardian.com/money/2000/jun/10/workandcareers.madeleinebunting3> [<https://perma.cc/3EYP-GJUB>]; Larry Richard & Lisa Rohrer, *A Breed Apart?*, AM. LAW. (July 1, 2011, 12:00 AM), <https://www.law.com/americanlawyer/almID/1202497964562/> [<https://perma.cc/8BBV-C2JX>]; Larry Richard, *The Lawyer Personality: Why Lawyers Are Skeptical*, LAWYERBRAIN (Feb. 11, 2013), <https://www.lawyerbrainblog.com/2013/02/the-lawyer-personality-why-lawyers-are-skeptical> [<https://perma.cc/H45F-TGLL>]; *Can Risk-Averse Lawyers Learn to Embrace Change?: An Interview with Dr. Larry Richard*, OGLETREE DEAKINS (Jan. 12, 2016), <https://ogletree.com/insights/can-risk-averse-lawyers-learn-to-embrace-change-an-interview-with-dr-larry-richard/> [<https://perma.cc/2RF3-HXTL>]; Robert Eli Rosen, Christine E. Parker & Vibeke Lehmann Nielsen, *The Framing Effects of Professionalism: Is There a Lawyer Cast of Mind?: Lessons from Compliance Programs*, 40 FORDHAM. URB. L.J. 297 (2012).

174. See *infra* note 190 and accompanying text.

175. DEStEFANO, *supra* note 4.

176. Jeffrey H. Dyer, Hal Gregersen & Clayton M. Christensen, *The Innovator's DNA*, HARV. BUS. REV. (Dec. 2009), <https://hbr.org/2009/12/the-innovators-dna> [<https://perma.cc/RVB8-YAK9>].

177. See 5 Whys, MINDTOOLS, <https://www.mindtools.com/a3mi00v/5-whys> [<https://perma.cc/HR8C-2UEF>] (“Sakichi Toyoda[,]... founder of Toyota Industries, developed the 5 Whys technique in the 1930s.”).

178. Gardner, *supra* note 65; Dyer et al., *supra* note 176.

professionals.<sup>179</sup> When lawyers question and observe, they *investigate* to seek *material* evidence. They put their analytical caps on. This is critical because when people engage the network of neurons used for analysis, their brains suppress their ability to empathize.<sup>180</sup> Since it is difficult to be empathetic and analytical at once, it is no wonder that lawyers, who rely on analytics to do their jobs, prefer to engage the analytic network over the empathetic one when taking on critical tasks.<sup>181</sup>

*Networking & Associating.* Innovators build networks that are both tight and loose, as well as multidisciplinary and diverse.<sup>182</sup> However, research shows that lawyers are often introverted, competitive, and prefer autonomy and independent work.<sup>183</sup> Also, lawyers are taught to have tight and long-lasting relationships as opposed to weak alliances.<sup>184</sup> Therefore, they don't create networks the same way that innovators do. As a result, lawyers fail to gain the advantages of what Professor Mark S. Granovetter calls "the strength of weak ties," which enables the association of things that might not otherwise be associated,<sup>185</sup> such as accepting what already exists to create new, innovative combinations.<sup>186</sup> Connecting dots like innovators do is only possible if lawyers have an open door to those who are different from them. As discussed at great length in my prior book, *Legal Upheaval: A Guide to Creativity, Collaboration, and Innovation in Law*, innovative solutions come from building on each other's ideas and saying "yes and" as opposed to "no but."<sup>187</sup> Although saying "no" and "but" helps lawyers prevent risks for their clients, it also prevents lawyers from connecting ideas with others so that they can migrate and eventually reach the exponential potential that Stephen Johnson calls "the adjacent possible."<sup>188</sup>

*Experimenting.* Innovators experiment in multidisciplinary teams in real time, with an open door to possibilities. Lawyers, however, are more skeptical, less trusting than other professionals, and low on psychological resilience, making them risk averse and fearful of failure, which is

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179. Richard, *supra* note 173.

180. *Empathy Represses Analytic Thought, and Vice Versa: Brain Physiology Limits Simultaneous Use of Both Networks*, SCI. DAILY (Oct. 30, 2012), <https://www.sciencedaily.com/releases/2012/10/121030161416.htm> [<https://perma.cc/5CVH-DZA6>].

181. Daicoff, *supra* note 172, at 1392–93.

182. Martin Ruef, *Strong Ties, Weak Ties and Islands: Structural and Cultural Predictors of Organizational Innovation*, INDUS. & CORP. CHANGE 427, 429–30, 432, 443 (2002); ROB CROSS & ANDREW PARKER, *THE HIDDEN POWER OF SOCIAL NETWORKS: UNDERSTANDING HOW WORK REALLY GETS DONE IN ORGANIZATIONS* 81–83 (2004).

183. See generally Michele DeStefano, *NonLawyers Influencing Lawyers: Too Many Cooks in the Kitchen or Stone Soup?*, 80 FORDHAM L. REV. 2791 (2012).

184. DEStEFANO, *supra* note 4, at 126–27.

185. See generally Mark S. Granovetter, *The Strength of Weak Ties*, 78 AM. J. SOC. 1360, 1361–66 (1973).

186. WILLIAM DUGGAN, *CREATIVE STRATEGY: A GUIDE FOR INNOVATION* 32–46 (2013) (explaining the power of creative combinations).

187. DEStEFANO, *supra* note 4, at 85–120 (describing the three rules of engagement all lawyers should follow to enhance the mindsets and skill sets of lawyers).

188. STEVEN JOHNSON, *WHERE GOOD IDEAS COME FROM: THE NATURAL HISTORY OF INNOVATION* 159–61, 174 (2010).

counterproductive to experimenting.<sup>189</sup> Therefore, lawyers enter meetings with a solution in hand, focused on defending their point of view and building their case. The result is that lawyers do not spend enough time problem-finding, the importance of which has been written about extensively by experts.<sup>190</sup> A famous quote by Albert Einstein says it best: “If I had an hour to solve a problem, I’d spend fifty-five minutes thinking about the problem and five minutes thinking about solutions.”<sup>191</sup> If lawyers don’t spend the time experimenting and instead jump to solve, they can miss the mark. Sometimes, in their rush to “serve” clients, they solve for a symptom instead of the problem, as illustrated by the GM example above.

Lastly, research shows that, unlike innovators, lawyers generally have a fixed as opposed to growth mindset. This means that they believe their characteristics are not malleable, i.e., that they are born good at some things and bad at others and so, they are either analytical or not, collaborative or not, innovative or not. People with fixed mindsets view past success as proof of their brilliance and therefore, are resistant to change and advice on how to improve. Plus, they are fixated on doing the things that they are good at and avoiding things that are new. This becomes a self-perpetuating cycle. If a lawyer with a fixed mindset doesn’t think they are “good” at collaborating or innovating, they believe they can never learn it and therefore it is a risk to try it. Therefore, efforts toward collaborating with diverse groups often fail among lawyers. This is also part of why DE&I efforts have failed, too. Fixed-mindset lawyers who want “qualified” applicants who have the “skills and intellect” to do the job equates to “people who think and act like I do.” When you start from a baseline where most people are white and male, those fixed-mindset people are looking to find more identical people, which destroys DE&I—and without DE&I, innovation is stymied.

Thus, it is logical that lawyers have not answered corporate clients’ calls to collaborate or innovate. Whether it is due to temperament or training, the trouble with lawyers in the corporate marketplace is that they often lack the mindsets and skill sets to answer the call, and may believe that they are not, and cannot be, good at collaborating and innovating. Similarly, they may not truly believe that the benefits of collaborating in diverse teams accrue as suggested. Plus, the departments and firms in which they work do not promote a culture of DE&I, collaboration, or innovation. As such, without the skills, mindsets, cultural reinforcement, and firsthand experience, lawyers might not be fully convinced of or open-minded to the power of diverse collaboration for innovation, let alone its other important benefits. So, in

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189. See Richard & Rohrer, *supra* note 173; Rosen et al., *supra* note 173, at 297–367.

190. DANIEL H. PINK, *TO SELL IS HUMAN: THE SURPRISING TRUTH ABOUT MOVING OTHERS* 5 (2012); TINA SEELIG, *WHAT I WISH I KNEW WHEN I WAS 20: A CRASH COURSE ON MAKING YOUR PLACE IN THE WORLD* 20 (2009) (referring to problem-finding as “need finding”); TINA SEELIG, *INGENIUS: A CRASH COURSE ON CREATIVITY* 19–30, 95–102 (2012).

191. See, e.g., Nell Derick Debevoise, *The Third Critical Step In Problem Solving That Einstein Missed*, FORBES (Jan. 26, 2021, 4:50 PM), <https://www.forbes.com/sites/nelldebevoise/2021/01/26/the-third-critical-step-in-problem-solving-that-einstein-missed/> [https://perma.cc/633W-VL67].

essence, we have a classic chicken or egg problem. Why have DE&I efforts failed? Because lawyers have a fixed mindset and do not like nor know how to collaborate on innovative solutions. Why do lawyers (especially in-house and firm lawyers) have a fixed mindset and refuse to change or innovate? Because they lack experience (and success) in truly collaborating with diverse professionals (and reaping its rewards). It is perhaps obvious to say that the fixed mindset and inability to collaborate hurt innovation efforts, but the less obvious point is that the fixed mindset and inability to collaborate destroy DE&I efforts as well. The problems are mutually reinforcing and can interlock in positive ways to move forward on both or to interlock and keep us stuck where we are on both fronts. In other words, the explanation for these two failures is actually an explanation for *one* big, interconnected failure.

As long as the dichotomy exists between what lawyers are being called on to do by clients and, on the other hand, their current skill sets and mindsets, lawyers won't answer corporate clients' call for collaboration and innovation. It is for this reason that this Essay does not recommend that lawyers fix the problems that Rhode and other scholars have suggested as preventing the enhancement of DE&I.<sup>192</sup> It is also for this reason that this Essay does not recommend that corporate clients add more carrots or sticks or increase their tracking and following up with firms on their DE&I initiatives. Doing so would be putting the cart before the horse. To answer the call for enhanced DE&I, lawyers need to be able to collaborate with people from diverse backgrounds and follow the right rules of engagement. Lawyers in the corporate legal marketplace need to be able to approach collaborative problem-solving the way that innovators do. This is because the way in which lawyers currently approach problem-solving ensures that they excel at their "law jobs" in providing substantive legal advice, preventing risks, and defending their client, but leaves them failing miserably at collaborating inclusively in diverse teams to innovate. So, what's the solution? Although I agree with Professor Renee Knake Jefferson that we should revise the Model Rules of Professional Responsibility to make it clear that lawyers have a duty to innovate,<sup>193</sup> arguably, that alone will not solve the root cause of the problem. A duty to innovate (without more) would also be putting the cart before the horse.

Lawyers need to be required to hone the mindset and skill set of an innovator *first* before they can live up to such a duty and answer the calls to collaborate and innovate and to enhance DE&I. To effectively address the DE&I gap, lawyers need to employ new practice techniques and, most importantly, they need to know how to work collaboratively and proactively in multidisciplinary, diverse teams to innovate. So essentially, the two calls

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192. RHODE, *supra* note 3, at 68–83; *see also Are Legal Departments Really Better than Firms at Diversity?*, *supra* note 50.

193. *See, e.g.,* Renee Knake Jefferson, *Lawyer Ethics for Innovation*, 35 NOTRE DAME J.L. ETHICS & PUB. POL'Y 1, 3 (2021); Gillespie, *supra* note 169.

to action require the same answer: lawyers need to hone the mindsets and skill sets of an innovator. However, how do we ensure that?

*B. Solution: Design Thinking, Change Management, and Adaptive Leadership Training*

My recommendation is two-fold and works in tandem with Jefferson's recommended duty to innovate.<sup>194</sup> First, aspiring and practicing attorneys should be required to be trained in design thinking, a method of human-centered design that has the benefit of enhancing collaboration and innovation among multidisciplinary diverse teams, as well as developing the mindsets and skill sets of innovators. Second, senior in-house lawyers and firm leaders should be trained in change management and adaptive leadership so that they can drive cultural change within their organizations.

1. Design Thinking Training for Practicing and Aspiring Lawyers

The first recommendation is that aspiring and practicing lawyers be required to train in the theory *and* practice of design thinking. Design thinking is a method of human-centered design focusing on the user interface and experience<sup>195</sup> that was originally utilized by designers to create new products.<sup>196</sup> It was introduced later to the business world as a multidisciplinary and collaborative problem-solving process involving discovery, ideation, and experimentation.<sup>197</sup> At its heart is developing deep empathy with the pain points of the target audiences and holistic understanding of the influence of other key stakeholders so that solutions address needs without creating externalities that prevent usage and adoption.<sup>198</sup> Design thinking, as applied in the corporate world, has been the

194. See Jefferson, *supra* note 193, at 1, 3.

195. See generally DON NORMAN, *THE DESIGN OF EVERYDAY THINGS* (2013); DON NORMAN, *EMOTIONAL DESIGN: WHY WE LOVE (OR HATE) EVERYDAY THINGS* (2004); WILLIAM LIDWELL, KRITINA HOLDEN & JILL BUTLER, *UNIVERSAL PRINCIPLES OF DESIGN* (2003).

196. See THOMAS LOCKWOOD, *DESIGN THINKING: INTEGRATING INNOVATION, CUSTOMER EXPERIENCE AND BRAND VALUE* xi (2009) ("Design thinking is essentially a human-centered innovation process that emphasizes observation, collaboration, fast learning, visualization of ideas, rapid concept prototyping, and concurrent business analysis, which ultimately influences innovation and business strategy."); Jeanne Liedtka, *Perspective: Linking Design Thinking with Innovation Outcomes Through Cognitive Bias Reduction*, 32 J. PROD. INNOVATION MGMT. 925, 926–27 (2014).

197. David M. Kelley, the founder of IDEO U (a consulting and design firm) and a professor at Stanford University, is generally credited with popularizing this method in the corporate world. See Tim Brown, *The Making of a Design Thinker*, METROPOLIS (Oct. 1, 2009), <https://metropolismag.com/viewpoints/the-making-of-a-design-thinker/> [<https://perma.cc/XJU2-VGAM>] ("David Kelley . . . said that every time someone came to ask him about design, he found himself inserting the word thinking to explain what it is that designers do. The term design thinking stuck.").

198. Franki Lake, *Human Centered Design vs Design Thinking vs Service Design vs UX . . . What Do They All Mean?*, LINKEDIN (Jun. 8, 2016), <https://www.linkedin.com/pulse/human-centred-design-vs-thinking-service-ux-what-do-all-simonds/> [<https://perma.cc/SBJ9-JE7A>].

subject of several well-known books and courses<sup>199</sup> and has begun to have influence in the corporate legal marketplace.<sup>200</sup> Design thinking methods are used to create client-centric services that are *experiences*.<sup>201</sup> It is telling that many of the biggest global law firms and legal departments of MNCs are beginning to use design thinking to do just that. For example, the Centers for Medicare & Medicaid Services, the Hudson's Bay Company, LEGO, Microsoft, Spotify, iManage, LegalZoom, Dentons, DLA Piper, Linklaters, Paul Hastings, Pinsent Masons, Simmons & Simmons, and White & Case, to name a few, have all participated in LawWithoutWalls, an experiential learning program grounded in design thinking wherein lawyers, business professionals, and law and business students from universities around the world are placed on an intergenerational and international team to collaboratively create a viable, innovative solution to a real business, legal, or social justice problem.<sup>202</sup> Each team is sponsored by a corporate legal department, a firm, or a law-related company. The sponsoring entities pick the challenge for the team and select a couple of their legal and/or business professionals, along with a couple of their clients, to participate as team leaders to learn about design thinking methods and to change how they collaborate with others. The reason these entities participate in LawWithoutWalls is exactly why this Essay recommends lawyers and aspiring lawyers be trained in design thinking.

In addition to learning how to empathize with multiple kinds of stakeholders,<sup>203</sup> participants also learn how to proactively collaborate on

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199. See, e.g., TOM KELLEY WITH JONATHAN LITTMAN, *THE ART OF INNOVATION: LESSONS IN CREATIVITY FROM IDEO, AMERICA'S LEADING DESIGN FIRM* (2001); DANIEL H. PINK, *A WHOLE NEW MIND: WHY RIGHT-BRAINERS WILL RULE THE FUTURE* (2006); TIM BROWN, *CHANGE BY DESIGN* (2009); DEStEFANO, *supra* note 4, at 133–202 (describing the 3-4-5 Method of innovation and collaboration for lawyers); DEStEFANO, *supra* note 23 (describing the 3-4-5 Method for professional service providers).

200. LOCKWOOD, *supra* note 196, at 35–45, 197–204.

201. BROWN, *supra* note 199, at 184.

202. See generally *LWOW 2023 Program Overview*, LAWWITHOUTWALLS, <http://lawwithoutwalls.org/overview-2023-copy> [https://perma.cc/J4EW-GHYU] (last visited Feb. 6, 2023). LWOW has been offered in different formats over the years. From 2011–2019, “LWOW Original” was a part virtual, part in-person program over the course of four months. From 2013–2019, we also offered an all-virtual version, called “LWOW-X.” DeStefano et al., *supra* note 61, at 214–15 (describing LWOW-O and LWOW-X); see also *LWOW-X: Social Entrepreneurship*, LAWWITHOUTWALLS, <https://lawwithoutwalls.org/lwow-x> [https://perma.cc/S3LU-8LT4] (last visited Feb. 6, 2023). Starting in 2020, we stopped offering LWOW Original and in 2021, offered a three-day, in-person program called “LWOW Sprint,” which was converted to a four-week, all-virtual program called “LWOW Sprint-X” due to the COVID-19 pandemic. See *LWOW Sprint-X 2021: 20 January–10 February*, LAWWITHOUTWALLS, <https://lawwithoutwalls.org/lwow-sprintx> [https://perma.cc/VCF7-BR7E] (last visited Feb. 6, 2023). In 2022, we reintroduced LWOW Sprint, which offered virtual training prior to a three-day, intensive, and in-person Sprint. See *Sprint 2022 In-Person 25–27 March 2022, in Segovia, Spain*, LAWWITHOUTWALLS, <https://lawwithoutwalls.org/lwow-sprint-2022> [https://perma.cc/WPF3-NRRX] (last visited Feb. 6, 2023).

203. Helen Riess, *Empathy Can Be Taught and Learned With Evidence-Based Education*, 39 *EMERGENCY MED. J.* 418, 418–19 (2022); F. Diane Barth, *Can Empathy Be Taught?*, *PSYCH. TODAY* (Oct. 18, 2018), <https://www.psychologytoday.com/us/blog/the-couch/201810/can-empathy-be-taught> [https://perma.cc/5XBJ-AQ9Y]; Tony Vlismas, *Being*

multidisciplinary teams—to question, observe, experiment, network, and associate—the way that innovators do,<sup>204</sup> with an inclusive, growth mindset.<sup>205</sup> And if the training utilizes proven design thinking techniques, like, for example, the 3-4-5 Method,<sup>206</sup> they will also learn the other skills on the Delta, like those related to having a business mindset (e.g., business planning, project and budget management, communication, presentation, and data analytics, to name a few). This is, in part, why this Essay recommends requiring design thinking training for *all* aspiring and practicing attorneys, and not just the great majority who will or already work in the corporate legal marketplace. Design thinking training provides benefits for all types of lawyers,<sup>207</sup> and it fills some of the gaps in legal education that scholars like Rhode and others have identified.<sup>208</sup> Furthermore, the challenges assigned to teams to solve can vary greatly—from the business of law to access to justice—and arm lawyers with the ability to answer the two calls to action in this Essay. Aspiring and practicing lawyers will experience firsthand the benefits that come from collaborating on diverse teams and will get the proof that it leads to more innovative, creative solutions. In fact, the 3-4-5 Method has been tested and proven successful in making these gains among over 200 multidisciplinary teams that included practicing and aspiring legal professionals, along with professionals from other disciplines.

While some may be skeptical of the ability of design thinking training, corroborating the success of LawWithoutWalls is the number of schools that teach design thinking to reach the same goals as expounded above, including

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*Empathetic Is Important. Can You Learn Empathy?*, ACUITY INSIGHTS (July 7, 2020), <https://takealtus.com/2020/07/empathy-2/> [<https://perma.cc/UAA9-STEJ>].

204. Victor D. Quintanilla, Joan K. Middenforf, Francesca L. Hoffman, Emily Kile-Maxwell, Danielle M. Sweet & Kaelyne Yumul Wietelman, *Experiential Education and Access-to-Justice Within U.S. Law Schools: Designing and Evaluating an Access-to-Justice Service Learning Program Within the First-Year Curriculum*, 7 IND. J.L. & SOC. EQUAL. 88, 92 (2019) (describing the success of its human-centered, design thinking program in addressing the “cognitive, emotional, and experiential bottlenecks” that law school students experience in the first-year curriculum).

205. *The Importance of Adopting a Growth Mindset in Your Teaching*, UNIV. OF MA. GLOB., <https://www.umassglobal.edu/news-and-events/blog/the-importance-of-adopting-a-growth-mindset-in-your-classroom> [<https://perma.cc/JEJ5-52NT>] (last visited Feb. 6, 2023); Carol S. Dweck, *Can Personality be Changed?: The Role of Beliefs in Personality and Change*, 17 CURRENT DIRECTIONS PSYCH. SCI. L. REV. 391, 391–94 (2008).

206. Over the course of the past decade, I have developed the 3-4-5 Method, which has been tested on over 235 multidisciplinary teams on four-month innovation journeys. DEStEFANO, *supra* note 4, at 133–202; DEStEFANO, *supra* note 23. I also recently used this method to teach a new design thinking course at the University of Miami College of Engineering. However, there are other proven methods and a lot of books describing them.

207. For this reason, I recommend requiring this training for *all* aspiring and practicing attorneys, not just those in the corporate legal marketplace.

208. Rhode and other scholars have argued that compounding the DE&I problem is cognitive bias. RHODE, *supra* note 3, at 68, 187, 193. Interestingly, although design thinking is not immune to cognitive bias, design thinking training has been claimed to help overcome cognitive bias. See, e.g., Liedtka, *supra* note 196, at 931–36; Catherine Burton, *Design Thinking vs. Cognitive Biases: 10 Biases for Innovation to Overcome*, UNIV. VA. DARDEN (June 10, 2021), <https://ideas.darden.virginia.edu/innovators-journey> [<https://perma.cc/8CCC-7X9K>].

some of the most elite, like Harvard University, the Massachusetts Institute of Technology, Stanford University, and Oxford University.<sup>209</sup> While in 2011, LawWithoutWalls may have been the first to teach design thinking to lawyers and law school students, the good news is that other law schools now offer classes and full-blown programs in design thinking to students and/or practitioners.<sup>210</sup> Also, over thirty law schools from around the world have participated in LawWithoutWalls. Further, other legal scholars now also tout the benefits of design thinking training for lawyers.<sup>211</sup>

As for the practicality of fulfilling the recommendation, I leave the details to the individual bar and regulatory associations in each country and/or state to determine. However, the idea is that students could take part in LawWithoutWalls,<sup>212</sup> a simplified version of it, or any of the other programs offered by schools that bring together real-world, agile teams that are interdisciplinary, intergenerational, and multicultural. With respect to practicing attorneys, lawyer regulating entities could require continuing legal

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209. See, e.g., *Mastering Design Thinking*, MIT MGMT. EXEC. EDUC., <https://executive-ed.mit.edu/mastering-design-thinking> [<https://perma.cc/T4XU-E55Q>] (last visited Feb. 6, 2023); *Design Thinking Course*, HARV. BUS. SCH. ONLINE, <https://online.hbs.edu/courses/design-thinking-innovation/> [<https://perma.cc/8NQ4-K732>] (last visited Feb. 6, 2023); *Design Thinking*, OXFORD BUS. & MGMT. INST., <https://www.obmi.institute/courses/designove-mysleni/> [<https://perma.cc/8RPE-JNRT>] (last visited Feb. 6, 2023).

210. Many law schools have created law school design labs or programs, including Brigham Young University J. Reuben Clark Law School, Campbell Law School, Chicago-Kent College of Law, Cornell Law School, Duke University School of Law, Georgetown University Law Center, Harvard Law School, Indiana University Maurer School of Law, Northeastern University School of Law, Stanford Law School, Suffolk University Law School, University of Arizona James E. Rogers College of Law, University of Michigan Law School, and Vanderbilt University Law School. See Margaret Hagan, *Justice Innovation with Law School Design Labs*, AM. BAR ASS'N (June 15, 2018), [https://www.americanbar.org/groups/legal\\_services/publications/dialogue/volume/21/spring-2018/iolta-design-labs/](https://www.americanbar.org/groups/legal_services/publications/dialogue/volume/21/spring-2018/iolta-design-labs/) [<https://perma.cc/THM3-7H5B>].

211. Other scholars have recommended using design thinking approaches to create new products, services, and innovations in law to enhance communication, empathy, and service delivery by lawyers. See, e.g., Alice Armitage, Andrew K. Cordova & Rebecca Siegel, *Design-Thinking: The Answer to the Impasse Between Innovation and Regulation*, 2 GEO. TECH. L. REV. 3 (2017) (recommending the principles of design thinking to create a new process to regulate innovative companies); Lois R. Lupica, Tobias A. Franklin & Sage M. Friedman, *The Apps for Justice Project: Employing Design Thinking to Narrow the Access to Justice Gap*, 44 FORDHAM URB. L. J. 1363 (2017); Victor D. Quintanilla, *Human-Centered Civil Justice Design*, 121 PENN. ST. L. REV. 745 (2017); Seb Murray, *Law Schools Begin to Embrace Design Thinking*, LLM GUIDE (Apr. 23, 2021), <https://llm-guide.com/articles/law-schools-begin-to-embrace-design-thinking> [<https://perma.cc/Q3VA-KURF>]; Jeff Cox, *Human-Centered Design in Legal Education: Why It's Needed Now and What's at Stake*, L. TECH. TODAY (Feb. 11, 2020), <https://www.lawtechnologytoday.org/2020/02/human-centric-design-in-legal-education-why-its-needed-now-and-whats-at-stake/> [<https://perma.cc/W5NH-CHM6>].

212. See LAWWITHOUTWALLS, <http://lawwithoutwalls.org/> [<https://perma.cc/C9CD-4L4J>] (last visited Feb. 6, 2023). The original version of LawWithoutWalls, introduced in 2011, was partly virtual. Teams met in London for a two-day virtual kickoff for training and culture-creation, then worked virtually over a semester, concluding with an in-person “ConPosium” in Miami, at which participants presented their “Projects of Worth” to the 200+ community members and a panel of judges made up of academics, lawyers, business professionals, and venture capitalists. In 2013, we introduced an all-virtual version of the program that ended with the winning team being flown in to the in-person ConPosium.

education (CLE) training in design thinking. True, CLE has been criticized by Rhode (and others) as ineffective and poor in quality,<sup>213</sup> especially because of its lecture format that has been proven to be an inadequate tool.<sup>214</sup> However, even Rhode believed that some strategies could be implemented to make CLE effective,<sup>215</sup> like those this Essay is recommending—which is anything but lectures. This is because the only way to really learn how to employ design thinking techniques, and the only way to garner the benefit of changed mindsets and skill sets, is hands-on doing. As Aristotle said, “[f]or it is by doing what we ought to do when we have learnt the arts that we learn the arts themselves.”<sup>216</sup>

As for the quality issue, lawyers could meet their required CLE by volunteering in existing programs already developed, approved, and proven successful.<sup>217</sup> There is also a plethora of design thinking executive education opportunities for legal professionals both inside and outside the legal market. Also, they often offer shorter, less intensive, high-quality opportunities for design thinking training. For example, Stanford offers a five-day boot camp in design thinking. And LawWithoutWalls offers a three day in-person sprint.<sup>218</sup> Additionally, there are many legal hackathons that could count as part of the CLE requirement.<sup>219</sup> A combination of these smaller learning opportunities might be able to satisfy a CLE requirement. Also, they serve as a great complement to a longer training program that provides recharging and upskilling, and that mirrors the demanding legal marketplace of today, which often requires multidisciplinary teams to be pulled together quickly to work collaboratively on urgent matters.

## 2. Change Management and Adaptive Leadership Training for Leaders of Law Firms and Corporate Legal Departments

The second recommendation is that firm and in-house legal leaders train in change management and adaptive (inclusive) leadership. This is because

213. RHODE, *supra* note 3, at 5–6.

214. *Id.* 103–04.

215. *Id.* at 103–07.

216. ARISTOTLE, THE NICOMACHEAN ETHICS bk. II, at 35 (J.E.C. Weldon trans., Macmillan & Co. ed., 1892) (c. 384 B.C.E.).

217. The Iron Tech Law Competition at the Georgetown University Law Center has students utilize technology from Neota Logic to develop apps designed to increase access to justice. *Iron Tech Lawyer Invitational*, GEO. LAW, <https://www.law.georgetown.edu/tech-institute/initiatives/georgetown-justice-lab/iron-tech-lawyer-invitational/> [<https://perma.cc/7XKJ-NMCU>] (last visited Feb. 6, 2023). The Legal Design Lab at Stanford University Law School (led by one of my first students LawWithoutWalls, Margaret Hagan) is similarly designed to train law students and professionals in human-centered legal design. *The Legal Design Lab*, STAN. L. SCH., <https://law.stanford.edu/organizations/pages/legal-design-lab/#slsnav-our-mission> [<https://perma.cc/47KB-DGCB>] (last visited Feb. 6, 2023).

218. See *LWOW 2023 Program Overview*, *supra* note 202.

219. See, e.g., GLOB. LEGAL HACKATHON, <https://globallegalthackathon.com/> [<https://perma.cc/4BVK-KX3Z>] (last visited Feb. 6, 2023); *Law for Good Conference*, LEGAL GEEK, <https://www.legalgeek.co/law-for-good-2022> [<https://perma.cc/Z5HH-XU8Z>] (last visited Feb. 6, 2023) (Legal Geek’s Law For Good Event uses tech to improve access to justice).

the current processes, structures, and systems do not promote a culture of inclusivity, collaboration, and innovation, which contributes to the failure of current DE&I initiatives. Further, in-house and firm lawyers have acknowledged that they are not adept at change management, innovation management capabilities,<sup>220</sup> or meeting changing leadership expectations.<sup>221</sup> Even if, with the recommended design thinking training, we are able to change individual mindsets and skill sets, we will only be able to create effective DE&I initiatives if lawyer leaders can lead and manage innovation, change, and culture creation, which are transformation efforts of the most difficult kind.<sup>222</sup> Plus, given that experts argue that innovation thinking is different from traditional business thinking, the challenges posed with leading innovation are different from those posed when leading strategic planning.<sup>223</sup> As I discuss in great depth in my forthcoming book *Leader Upheaval: A Guide to Client-Centricity, Culture-Creation, and Collaboration*, there is nothing soft about culture creation, and the art of culture creation starts with the leader.<sup>224</sup> Given that most senior lawyers were not trained in adaptive leadership or change management<sup>225</sup> and that 75 percent of change efforts fail,<sup>226</sup> in the complex, ever-changing, and volatile corporate legal environment, lawyers need training on how to handle today's adaptive challenges (for which there is no predetermined solution or trained experts that know how to solve the problem).<sup>227</sup> The good news: there is a plethora of high-quality executive education courses on change

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220. ASS'N OF CORP. COUNS. & WOLTERS KLUWER, *supra* note 81, at 6–10; WOLTERS KLUWER, *supra* note 74, at 4.

221. WOLTERS KLUWER, *supra* note 6, at 7–8 (reporting that 79 percent of respondents say this is one of the top trends with impact); Polden, *supra* note 90, at 429 (“[M]any firms lack engaged and capable leadership to plan and implement the changes they need to survive and succeed.”).

222. Nathan Furr & Jeffrey H. Dyer, *Leading Your Team into the Unknown*, HARV. BUS. REV. (Dec. 2014), <https://hbr.org/2014/12/leading-your-team-into-the-unknown> [<https://perma.cc/D67K-E33A>]; Polden, *supra* note 79, at 443–46 (explaining the necessary environment, change management, and monitoring required by leaders and describing the large barriers).

223. DAVID HORTH & DAN BUCHNER, *INNOVATIVE LEADERSHIP: HOW TO USE INNOVATION TO LEAD EFFECTIVELY, WORK COLLABORATIVELY, AND DRIVE RESULTS* 6–10 (2014), [https://www.muyhideencoed.com/library/ebooks/resources/Innovation\\_Leadership\\_by\\_david\\_horth.pdf](https://www.muyhideencoed.com/library/ebooks/resources/Innovation_Leadership_by_david_horth.pdf) [<https://perma.cc/8GRH-5RFU>].

224. *See generally* DE STEFANO, *supra* note 23 (making this point and providing advice on how to lead and manage collaboration, innovation, and culture change); *see also* HORTH & BUCHNER, *supra* note 223, at 14–15.

225. So-Ang Park & Lisa Birkenbach, *Quick Overview: The General Counsel's Role in Shaping and Advancing Corporate Culture in the Legal Department*, ASS'N CORP. COUNS. (May 3, 2021), <https://www.acc.com/resource-library/quick-overview-general-counsels-role-shaping-and-advancing-corporate-culture-legal> [<https://perma.cc/J784-989L>].

226. *See* Victor Lipman, *New Study Explores Why Change Management Fails—And How to (Perhaps) Succeed*, FORBES (Sept. 4, 2013, 1:54 AM), <https://www.forbes.com/sites/victorlipman/2013/09/04/new-study-explores-why-change-management-fails-and-how-to-perhaps-succeed/> [<https://perma.cc/6YLC-86HH>]; N. Anand & Jean-Louis Barsoux, *What Everyone Gets Wrong About Change Management*, HARV. BUS. REV. (Dec. 2017), <https://hbr.org/2017/11/what-everyone-gets-wrong-about-change-management> [<https://perma.cc/4Z6P-X7L6>].

227. *See supra* note 58 and accompanying text.

management and adaptive leadership that teach leaders how to create an inclusive culture and lead transformation. Although research has shown mixed results for DE&I training specifically,<sup>228</sup> Rhode herself was a proponent of the kind of training proposed herein because of its focus on helping develop “interpersonal styles, as well as capabilities”<sup>229</sup>—both of which pertain to innovating, collaborating, and leading culture change. And research also shows that training works, and that adaptive leaders who know how to manage change are effective at creating inclusive cultures in which diverse lawyers feel a sense of belonging.

### 3. Potential Objections and Responses

The concept of training in design thinking, change management, and adaptive leadership is likely to generate a few objections.

Requiring a design thinking course in law school poses some problems related to the already very tight curriculum. However, importantly, as Rhode and others have pointed out, law schools need a makeover when it comes to practical and interactive training,<sup>230</sup> and law faculty members themselves do not disagree. A recent study found that almost 50 percent of law faculty believed that “soft skills” like those of an innovator and adaptive leader should be taught in law school.<sup>231</sup> Further, there is support from the hiring

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228. Rhode, *Diversity and Gender Equity*, *supra* note 3, at 897–98; Tiffani N. Darden, *The Law Firm Caste System: Constructing a Bridge Between Workplace Equity Theory & the Institutional Analyses of Bias in Corporate Law Firms*, 30 BERKELEY J. EMP. & LAB. L. 85, 100 (2009); Deborah L. Rhode, *Social Research and Social Change: Meeting the Challenge of Gender Inequality and Sexual Abuse*, 30 HARV. J.L. & GENDER 11, 13–14 (2007); Elizabeth Levy Paluck, *Diversity Training and Intergroup Contact: A Call to Action Research*, 62 J. SOC. ISSUES 577, 583, 591 (2006).

229. RHODE, *supra* note 3, at 81–82. *See generally* Louis D. Billionis, *Law School Leadership and Leadership Development for Developing Lawyers*, 58 SANTA CLARA L. REV. 601 (2019); Deborah L. Rhode, *Legal Education: Rethinking the Problem, Reimagining the Reforms*, 40 PEPP. L. REV. 437 (2013); Scott A. Westfahl & David B. Wilkins, *The Leadership Imperative: A Collaborative Approach to Professional Development in the Global Age of More for Less*, 69 STAN. L. REV. 1667 (2017).

230. RHODE, *supra* note 3, at 7 (“Curricula suffer from a number of weaknesses: insufficient practical skills training and lack of opportunities for interactive learning, teamwork, feedback, and interdisciplinary instruction. Ninety percent of lawyers report that law school does not teach the practical skills necessary to succeed in today’s economy, a deficiency that has become more acute as legal employers have cut back on training for recent graduates.”); *see also id.* at 128–31, 141–42.

231. BLOOMBERG L., 2021 LAW SCHOOL PREPAREDNESS 9 (2021), <https://aboutblaw.com/1L1> [<https://perma.cc/3LWL-XDSF>]. Many scholars agree that schools do not adequately teach business acumen, emotional intelligence, and empathy. *See, e.g.*, Jeffrey Cohn, *How Law Schools Are Becoming the New Business Schools for Future Leaders*, INC. (May 13, 2022), <https://www.inc.com/jeffrey-cohn/how-law-schools-are-becoming-new-business-school-for-future-leaders.html> [<https://perma.cc/2RLJ-XSTU>]; Gregory G. Brandes, *When Law Schools Teach Law Practice, Everyone Wins*, ST. FRANCIS SCH. L. (Feb. 15, 2019), <https://stfrancislaw.com/blog/when-law-schools-teach-law-practice-everyone-wins/> [<https://perma.cc/5WFX-FNMC>]. *See generally* Kristin B. Gerdy, *Clients, Empathy, and Compassion: Introducing First-Year Students to the “Heart” of Lawyering*, 87 NEB. L. REV. 1 (2008); Ian Gallacher, *Thinking Like Non-Lawyers: Why Empathy Is a Core Lawyering Skill and Why Legal Education Should Change to Reflect Its Importance*, 8 LEGAL COMM. & RHETORIC 109 (2011).

market. Big firms and big in-house corporate legal departments have openly encouraged law schools to incorporate design thinking methods into the curriculum.<sup>232</sup> There is also overwhelming support for DE&I at all levels in the legal marketplace. Tying the design thinking training requirement to the DE&I agenda should have some persuasive power. Also, because requiring additional credits would require revamping the entire curriculum, a good test would be for schools to include design thinking among the current experiential learning requirements.

As for finding people who can teach design thinking, these types of courses are not new in other disciplines, and they can be taught virtually.<sup>233</sup> So, finding adjuncts to teach these courses should not prove a huge hurdle or expense. Given that the subject is not legally substantive, there will be a lower likelihood of pushback from tenured faculty about adjuncts teaching these courses. Also, if funding is an issue, there may be resources available. Although of course the level of commitment to DE&I varies as do the challenges, many countries, like Australia, Canada, England, and Wales have been overtly investing in innovation for over a decade.<sup>234</sup> Even those jurisdictions that have not overtly endorsed regulatory reform still devote substantial resources to promoting innovation in legal services.<sup>235</sup> These entities might relish the opportunity to promote their agendas at the law school level.

Another concern might be related to requiring practicing attorneys to pay for executive education courses because not everyone will be able to take advantage of volunteer opportunities. However, firms and in-house legal departments from all around the world invest in executive education training

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232. Murray, *supra* note 211.

233. See *Innovation, Technology and Design (ITD)*, UNIV. MIAMI COLL. OF ENG'G, <https://www.coe.miami.edu/academics/programs/undergraduate-programs/itd/index.html> [<https://perma.cc/4WMZ-HUZX>] (last visited Feb. 6, 2023) (listing design thinking courses and a new undergraduate major called “Innovation, Technology and Design”); Divya Sharma, *Top 10 Design thinking Programs in the USA in 2023 [Updated]*, ASK HENRY (Jan. 2, 2023), <https://www.henryharvin.com/blog/top-10-design-thinking-programs-in-the-usa/> [<https://perma.cc/HEL4-Z2QW>]; *Transforming Client Relationships Through Innovation*, *supra* note 134.

234. See Jefferson, *supra* note 193, at 29.

235. See, e.g., *id.*; Vicki Waye, Martie-Louise Verreyne & Jane Knowler, *Innovation in the Australian Legal Profession*, 25 INT'L J. LEGAL PRO. 213, 213–42 (2018); AM. BAR ASS'N, REPORT ON THE FUTURE OF LEGAL SERVICES IN THE UNITED STATES (2016), [https://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport\\_FNL\\_WEB.pdf](https://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport_FNL_WEB.pdf) [<https://perma.cc/X6VE-N9QC>]; L. SOC'Y ENG. & WALES, CAPTURING TECHNOLOGICAL INNOVATION IN LEGAL SERVICES (2017), <https://lawprofessors.typepad.com/files/capturing-technological-innovation-report.pdf> [<https://perma.cc/KL5H-UXP8>]; Zoë Andrae, *The Digital Transformation of the German Legal Industry*, LEGAL TECH BLOG (Nov. 17, 2017), <https://legal-tech-blog.de/the-digital-transformation-of-the-german-legal-industry> [<https://perma.cc/6QEC-3BYT>].

of their lawyers,<sup>236</sup> and there is support for the return on investment.<sup>237</sup> This recommendation will hopefully help support this trend and create learning cultures that have been proven to enhance responses in the less predictable and complex environments such as the corporate legal marketplace.

#### CONCLUSION

Rhode deftly pointed out that “part of the [DE&I] problem lies in the lack of consensus about what exactly the problem is and what can be done to address it.”<sup>238</sup> The good news is that this is just the type of problem that innovators—who are trained in design thinking—are equipped to solve. Therefore, if we train lawyers in design thinking to hone their mindsets and skill sets to be like those of an innovator, they may be better able to identify and build consensus around the root causes of DE&I problems. Moreover, they will have the prior experience (and proof) of the values that multidisciplinary collaboration toward innovation brings. Lastly, they will be equipped to begin to meaningfully contribute in creating viable, novel solutions to enhance DE&I in the corporate legal marketplace. As a result, they will be able to answer corporate clients’ calls for DE&I and collaboration and innovation at the same time, solving the chicken or egg problem in one fell swoop. Further, with change management and adaptive leadership training, lawyer leaders will be able to inspire, lead, and manage the type of culture transformation needed to support DE&I efforts from their inception to their adoption, while ensuring that diverse candidates that enter the system stay in the system. Thus, instead of contributing to the problem, or being the problem, lawyers will be part of the solutions.

The trouble with lawyers in the corporate legal marketplace, however, is that even with all the pressure from clients and all the research proving the business case and showing what is at stake, they still need convincing. So,

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236. Law firms like Allen & Overy, Clifford Chance, Linklaters, Milbank, and White & Case invest in training, and some even partner with schools to develop tailored courses for their lawyers at elite institutions like Harvard University, Oxford University, and Jindal Global Law School—in some instances, they develop courses for law school students as well. See Caroline Binham, *Executive Education: Partners in Law*, FIN. TIMES (Nov. 25, 2011), <https://www.ft.com/content/90ecfb2e-1641-11e1-a691-00144feabdc0> [https://perma.cc/V6PM-W8WR]; see also Adella Chua, *How Much Does A New Recruit Cost to Onboard*, HUM. RES. DIR. (Sep. 22, 2017), <https://www.hcamag.com/ca/news/general/how-much-does-a-new-recruit-cost-to-onboard/119997> [https://perma.cc/222R-WA5Z] (“Canadian law firms are spending eye-watering sums to recruit and train new staff.”).

237. Research indicates that in-house legal departments invest in training, and a recent study by Gartner found that the most efficient legal departments spend almost twice as much of their budget on training than their peers. Press Release, Gartner, Inc., *Gartner Says Cost-Effective Legal Departments Invest Almost Twice As Much in Training Compared with Higher-Cost Peers* (Sept. 5, 2019), <https://www.gartner.com/en/newsroom/press-releases/2019-09-05-gartner-says-cost-effective-legal-departments-invest> [https://perma.cc/9CQ5-JEZG]. Research indicates that even small and solo firms invest in training, albeit the numbers are low—fifty percent for small firms and 30 percent for solo firms. See, e.g., *Law Firms Competing for Talent in 2022*, THOMSON REUTERS, <https://www.thomsonreuters.com/en/reports/law-firms-competing-for-talent-in-2022.html> [https://perma.cc/C9V6-NWRQ] (last visited Feb. 6, 2023).

238. RHODE, *supra* note 3, at 4.

this Essay concludes by highlighting the icing on the cake and making a call of its own. The icing is that, in addition to empowering lawyers in the corporate marketplace to answer both calls to action, the type of training recommended herein gives lawyers an additional competitive edge—it enables lawyers to provide the type of client-centric experience and proactive co-collaboration that exceeds expectations and *delights* their clients. So, the call to action this Essay makes is: don't wait. Don't wait for any of these recommendations to be adopted. Instead, *voluntarily* line up for the kind of training recommended and bring your clients with you, because proactively co-collaborating in a learning endeavor that enhances lawyers' skill sets is the kind of experience that transforms client relationships.