

Diversity in the Tax Bar — Reflections on Lessons Learned and The Path Forward

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In this article, the authors, drawing from a series of panel discussions, examine issues that have made it difficult to attract and retain diverse attorneys in the tax bar, and they share panelists' recommendations for addressing those issues.

In recent years, the tax bar has been facing a reckoning over diversity in the industry. Since its inception, the tax bar has had a reputation for being dominated by an overwhelmingly white, heterosexual, male workforce. Indeed, in a 2022 American Bar Association report surveying the gender, sexual orientation, ethnic, and racial composition of its various practice groups,¹ the ABA Section of Taxation ranked near the bottom regarding sexual orientation, gender, ethnic, and racial diversity.

Specifically, 1.6 percent of respondents identified as Asian, 1.6 percent identified as Black, 1.6 percent identified as Hispanic, 0.2 percent identified as Native American, and 0.1 percent

identified as multiracial.² Similarly, 0.4 percent of respondents in the tax section identified as gay, and 0.2 percent identified as lesbian.³ Further, men outnumbered women in the section 2 to 1.⁴ These figures pale in comparison with other ABA practice groups, including the Section of Civil Rights and Social Justice, the Forum on Communications Law, and the Section of Family Law, which all report much higher levels of racial and gender diversity among their ranks.⁵

¹ ABA, "Goal III Report" (2022).

² *Id.* at 19 (30.5 percent of respondents identified as white, and over 60 percent did not provide their racial background).

³ *Id.* at 21.

⁴ *Id.* at 18 (29.3 percent of respondents identified as women, 62.9 percent identified as men, 0.1 identified as gender nonconforming/nonbinary, and 6.7 percent were undisclosed).

⁵ *Id.* at 18 and 19.

The practice of tax law is often categorized unfairly. The prevailing view by many young attorneys and professionals is that the tax bar is singularly focused on assisting wealthy individuals and businesses avoid or minimize their tax burdens, thereby straining scarce government resources. This perception adds fuel to the notion that the tax bar is not focused on the needs of all communities but instead is centered on helping a largely white and primarily wealthy subset of the population accumulate more wealth.

Regardless of whether this reputation is fair, it is one that the tax bar must grapple with if it is to succeed in attracting and retaining a diverse workforce. Because of this reputation, diverse attorneys find fewer incentives in choosing a career in tax law versus another area of law, particularly when the stakeholders and people in power do not look like them or share their experiences and when the perceived goals of the profession do not align with their core values and ethos.

As the United States continues to become more racially and ethnically diverse,⁶ it is important that the tax bar consider how best to attract and retain a diverse talent pool, lest it find itself increasingly out of sync with the general population. While the United States has long been considered a melting pot of cultures, the professional class (including the tax bar) has not always stepped up to meet the needs of society at large. Having a more diverse workforce would instill greater trust in underserved and underrepresented communities and would bring important but now-missing perspectives to the table.

Background

In the fall of 2021, the Tax System Working Group⁷ of the Law Firm Antiracism Alliance⁸

⁶Sandra L. Colby and Jennifer M. Ortman, "Projections of the Size and Composition of the U.S. Population: 2014 to 2060," U.S. Census Bureau (Mar. 2015) (projecting that by 2044, the United States will become a "majority-minority" country).

⁷The co-chairs of the Tax System Working Group are Sabrina N. Conyers of McGuire Woods LLP; Fred T. Goldberg Jr., Armando Gomez, and Kat Gregor of Skadden, Arps, Slate, Meagher & Flom LLP; and Scott Levine of Jones Day.

⁸The alliance was established in 2020 to create and facilitate opportunities for action in pursuit of racial justice in the law and racial equity in the United States.

commenced a multipart discussion series on diversity in the tax bar intended to focus attorneys on important questions confronting the tax profession, including why the tax bar is so heavily concentrated with nondiverse attorneys; what can be done to broaden the appeal of tax law to young, diverse attorneys; and how the tax bar can attract and retain a diverse workforce. The virtual program was made available free of charge to attorneys and law students across the United States and was cosponsored by the Section of Taxation, the American College of Tax Counsel, and the American Tax Policy Institute.

There were 10 panels in this discussion series:

- Diversity in the Tax Bar: Where Are We and How Did We Get There?⁹
- Addressing Equity in the Tax System;¹⁰
- Policy Opportunities for Diverse Tax Lawyers;¹¹
- Recruiting and Retaining Diverse Tax Lawyers: The Academic Perspective;¹²
- Recruiting and Retaining Diverse Tax Lawyers: The In-House Perspective;¹³
- Recruiting and Retaining Diverse Tax Lawyers: The Accounting Firm Perspective;¹⁴
- Recruiting and Retaining Diverse Tax Lawyers: The Government Perspective;¹⁵

⁹The panelists were Tax Court Judge Juan Vasquez; Glenn Carrington, dean of the Norfolk State University School of Business; and Alice Thomas, a professor at the Howard University School of Law. Armando Gomez was the moderator.

¹⁰The panelists were Jeremy Bearer-Friend, a professor at George Washington University Law School; Jennifer Bird-Pollen, a professor at the University of Kentucky School of Law; Gaga Gondwe, a professor at NYU School of Law; and Sara Greene, a professor at Duke University School of Law. Fred Goldberg was the moderator.

¹¹The panelists were Nadiya Beckwith-Stanley of the National Economic Council; Chye-Ching Huang of the Tax Law Center at NYU School of Law; and Tiffany Smith, chief tax counsel for the Senate Finance Committee. The moderator was Loren Ponds of Miller & Chevalier Chtd.

¹²The panelists were Alice Abreu, a professor at Temple University Law School; Steven Dean, a professor at Brooklyn Law School; and Sam Thompson, a professor at Penn State Law. Sabrina Conyers was the moderator.

¹³The panelists were Wayne Hamilton of Walmart Inc., Janara Jones of Albemarle Corp., Myrtle Jones of Halliburton Co., and Emily Whittenburg of Nike Inc. Kat Gregor was the moderator.

¹⁴The panelists were Manal Corwin of KPMG LLP; David Farhat of Skadden; and Angela Spencer-James, formerly of EY LLP. Scott Levine was the moderator.

¹⁵The panelists were David Hubbert of the Justice Department Tax Division, Drita Tonuzi of the IRS Office of Chief Counsel, and Krishna Vallabhaneni of Treasury's Office of Tax Policy. The moderator was Michael Desmond of Gibson Dunn & Crutcher LLP.

- Recruiting and Retaining Diverse Tax Lawyers: The Transactional and Planning Perspective;¹⁶
- Recruiting and Retaining Diverse Tax Lawyers: The Controversy and Litigation Perspective;¹⁷ and
- Diversity in the Tax Bar: What Have We Learned and Where Do We Go From Here?¹⁸

Findings and Suggestions

During the discussion series, the panelists coalesced around several critical issues that have made the attraction and retention of diverse attorneys increasingly difficult. The panelists also offered compelling but accessible recommendations for addressing those issues. This article summarizes some of those issues and discusses each issue and recommendation in turn.

1. The public has a limited view of what tax is.

As noted, the public has a limited perception of what tax law is and what it means to practice tax law. Both attorneys and non-attorneys alike commonly misconceive tax law as focused exclusively on helping wealthy individuals or big corporations avoid paying taxes or, for those with a more generous viewpoint, helping the government raise revenue.¹⁹ Unfortunately, tax law also has an (unfounded) reputation in the industry for being boring, difficult, and convoluted. Many attorneys shy away from tax practice, claiming they “aren’t good with numbers.” This misperception of tax law can be exacerbated by the interactions people typically have with the tax system — for example, personal dealings with onerous annual tax filings and media portrayals of big corporations paying little to no taxes and wealthy individuals hiding money offshore. Tax practitioners, of course, appreciate that tax law is rich, complex, and inextricably tied

to social and economic policy. The practice of tax law is, at its core, a creative exercise with the potential to affect policy changes. Data suggest that diverse students are disproportionately drawn to practices in which they can engage in socially responsible work that improves society.²⁰ It is therefore imperative that the tax bar rebrand what it means to practice tax law by actively demonstrating to students that the tax law can be an engine for social change.

Recommendations offered.

As discussed above, the composition of the tax bar is not reflective of the population at large and lags behind other legal practice areas in attracting a diverse workforce. This raises the question: What can be done to better diversify the tax bar?

Shifting the public image of tax law requires a concerted effort from all stakeholders in the tax profession. Law schools are ideally positioned to educate the younger generation about what tax law is. Professors can support diverse students in their tax classes by reminding students that (1) anyone can practice tax law — it is not rocket science (nor, contrary to public perception, is it heavily math-based) — it just requires work and perseverance; (2) their grades in one tax course do not determine their fate in tax practice; (3) the tax law is a vast field, and students should consider taking more advanced tax classes; and (4) tax law can affect racial justice.²¹ Law schools should also provide more resources and opportunities for students to experience how tax law intersects with social justice. For example, schools can launch or expand low-income taxpayer clinics. These clinics typically allow students with no tax background to participate, thereby exposing students to tax practice. Other stakeholders in the tax bar (for example, the government, the judiciary, and nonprofit organizations) should consider opportunities to expose students to tax practice through externships and internships.

The panelists coalesced around a need to build streamlined pipelines connecting the tax profession with diverse students. Suggestions included dedicated internship and externship

¹⁶The panelists were Julie Divola of Pillsbury Winthrop LLP, Matt Donnelly of Gibson Dunn, and Nicola Lemay of Foley Hoag LLP. The moderator was Eric Solomon of Steptoe & Johnson LLP.

¹⁷The panelists were Antoinette Ellison of Jones Day, Jenny Johnson of McDermott Will & Emery, and Kelley Miller of Reed Smith LLP. The moderator was Caroline Ciralo of Kostelanetz LLP.

¹⁸The session started with a panel discussion with the four authors of this article, moderated by Armando Gomez, followed by a keynote presentation by Tax Court Judge Maurice B. Foley.

¹⁹See Amanda Athanasiou, “The Whiteness of Tax and How to Narrow the Race Gap,” *Tax Notes Federal*, Dec. 13, 2021, p. 1473 (explaining common misconceptions regarding tax).

²⁰Abreu and Richard K. Greenstein, “Rebranding Tax/Increasing Diversity,” 96 *Denver L. Rev.* 7 (2018).

²¹See Dorothy A. Brown, *The Whiteness of Wealth* (2021).

programs established by law firms, accounting firms, businesses, and government agencies with schools that cater to diverse students. These include historically Black colleges and universities, local public universities, and other institutions that are often overlooked from a recruiting standpoint by elite employers.

Moreover, to attract a diverse pool of career aspirants, the tax bar needs to dispel the notion that it is solely focused on helping wealthy (and overwhelmingly white) individuals and businesses minimize their tax burdens. Many young attorneys are concerned with how their work will affect the nation and communities at large and what social net-positive their work will have on combatting racial disparities, fighting climate change, and making the United States generally a more equitable nation. To combat the perception that the tax bar is concerned only about those who can pay the bills, there needs to be a greater emphasis on educating young attorneys about the full spectrum of work options available within the tax space. Tax law is not simply the implementation of tax minimization strategies for the wealthy. Rather, it includes policy work,²² helping low-income individuals solve their tax problems, litigating issues of constitutional importance,²³ and representing individuals facing criminal investigation and prosecution.

Tax professors should also consider the role of race in the disposition of tax cases. One of the panelists noted that tax textbooks often ignore the race of the litigants in explaining a tax outcome. Unlike other practice areas, tax traditionally has been thought to be race neutral, so race typically would not factor into the narrative. In practice, however, the enforcement of tax provisions has a disparate impact on historically oppressed communities.²⁴ This overlay of race should be mentioned early and often in the classroom because it may prompt discussions about the

policy goals of the tax system or serve as an avenue for challenging enforcement efforts. Further, prospective students will be exposed to the intersection of race and tax at a stage when they are making decisions on the area of law in which to specialize. The tax bar needs to proactively reach out to students to explain the array of career options available to them.

One suggestion for bringing these career options into greater focus is for law and accounting firms to partner with nonprofit organizations that provide services beyond traditional tax planning work. This could include partnering with LITCs, advocacy groups, or even government offices. Firms could establish programs with these entities whereby law students or junior attorneys work for a set number of months (or on certain projects) to allow them to dip their toes into an area of tax law they would not otherwise be exposed to at the firm. Because access and experience are key, exposing young attorneys to what is out there in the tax world could provide a net-positive in attracting into the tax fold candidates who would not otherwise be open to tax law.

2. Implicit bias and stereotype threat is present in the workplace.

Nearly every panel noted that some of the failings in diversity occur because of the natural proclivity for people to help those who are like them — that is, the tax bar may be struggling in its efforts to diversify due to implicit bias. Implicit bias is an automatic and unintentional bias that detrimentally affects judgments, decisions, and behavior. This bias may show up as a preconceived notion about a particular group of people that may lead to individuals distancing themselves from a group or may lead to individuals gravitating to another group that looks like them. It often poses a barrier to recruiting and retaining a diverse workforce as people gravitate to those like them. Given the statistics, that means the largely white and mostly male organizational leaders may be more likely to meaningfully mentor men or white women in the tax profession. It may also cause diverse attorneys to feel like they are treated as an “other” in their working environments given that they lack the same support that many of their other colleagues enjoy.

²² Much of the Inflation Reduction Act of 2022 involves the creation of tax benefits for clean energy projects.

²³ *United States v. Windsor*, 570 U.S. 744 (2013), which struck down the Defense of Marriage Act, originated as a tax refund suit.

²⁴ See Hadi Elzayn et al., “Measuring and Mitigating Racial Disparities in Tax Audits,” Stanford University working paper 23-02 (Jan. 2023) (concluding that Black taxpayers are audited at 2.9 to 4.7 times the rate of non-Black taxpayers).

Recommendations offered.

Everyone suffers from implicit biases.²⁵ The only way to combat them is to be aware of and consciously work against one's natural inclinations. Each of the panels remarked on the need to embrace uncomfortable conversations that identify biased behaviors. From the top down, colleagues need to be able to have frank discussions with each other about behaviors that can be isolating or "othering." One panelist noted that he felt a personal responsibility to talk with other partners about troublesome behavior. Other panelists affirmed this course of action.

Organizations should take time to analyze attorney reviews to determine if there is inconsistency in the way that non-white attorneys are evaluated compared with their white counterparts and to look for evidence of implicit bias in any criticisms raised in formal evaluations. Whether professional development personnel; diversity, equity, and inclusion directors; or practice group managers are responsible for this analysis, care should be taken to ensure that similar gaps are documented in an equal manner and that praises are appropriately recognized across the board.

Further, as explained under paragraph 4, structures must be put in place to prevent the best work opportunities from going to a select homogeneous group of individuals. Leadership should partake in structured mentorship to break down perceived barriers and create opportunities for relationship building.

3. Diverse attorneys often lack mentorship and sponsorship.

Many of the panelists mentioned a renewed focus on recruiting diverse tax attorneys within the legal field — with efforts ranging from starting the recruiting process at the college level, to recruiting at historically Black law schools, to expanding the range of criteria by which they evaluate candidates, to incorporating various forms of mentorship and diversity mentorship programs to attract diverse attorneys. Although a lot of effort exerted by the legal industry thus far

has been placed on recruiting diverse attorneys, far less effort has been placed on retaining them.

Mentorship and sponsorship play a key role in retaining diverse attorneys. Diverse attorneys often report feeling less of a sense of belonging in the legal field and, as one panelist observed, they are often unable to bring their "authentic selves to work." The legal profession is also a tough profession emotionally, with high incidences of depression, anxiety, and substance abuse. A good mentor serves as a support system, especially for a diverse attorney who may face unique difficulties. Sponsorship goes a step further and opens doors unknown to the employee or promotes the employee when they are not in the room, so that the employee can continue to develop and be recognized for their successes.

Mentorship is also important because succeeding in the legal field is not simply a matter of accumulating subject matter knowledge. Becoming a good attorney requires a mastery of certain soft skills, such as oral advocacy, problem solving, networking, and communicating with clients. The legal field is one of apprenticeship, and a good mentor can be essential to mastering skills that are difficult to develop alone.

Although many law firms and accounting firms already offer a wide range of mentorship programs, many of these programs assign mentors and mentees without any follow up to determine whether the mentorship pairing was successful.

Recommendations offered.

To be effective, a good mentorship program should:

- Include in its pool of mentors only persons willing to commit the necessary time and effort into training and mentoring.
- Provide instruction on how to mentor across differences (that is, how to connect with someone from a dissimilar background).
- Include mentors at different stages of their career (for example, a junior mentor and a senior mentor).
- Encourage informal mentoring relationships to account for formal mentor pairings that may be unsuccessful. By encouraging other attorneys that have not been formally assigned as mentors,

²⁵ See Karen Steinhauser, "Everyone Is a Little Bit Biased," ABA Business Law Section, *Business Law Today* (Mar. 16, 2020).

organizations can build systems of support that can outlive even formal mentorships.

- Check in at regular intervals and provide support for mentors throughout the process (for example, hosting events to foster a relationship between the mentor and mentee and providing guidance on how to tackle difficult topics).
- Provide concrete examples of what is expected from mentors (for example, training, advocacy, and assistance with networking).

The tax profession can be difficult because tax legislation is constantly changing. It is also a collaborative profession, with tax attorneys connecting frequently (both inside and outside the same organization) to discuss new tax reforms, regulations, cases, and other developments. Entering a room containing few persons that look like you can be extremely challenging. Because of this, mentors often play a key role in ensuring the success of diverse tax attorneys in making these initial connections.

4. Diverse attorneys often do not receive the same quality of assignments.

In high school, many people flock to the cafeteria table of others who look like them and share their background. These similarities might include class, sports affiliation, race, culture, music preference, or band participation. The same is true in the legal profession. We often hire and want to work with people who look like us and share similar backgrounds. Implicit bias may also play a detrimental role if we instinctively judge people who look like us as being more capable than those who do not. Because of this, many diverse attorneys struggle to obtain quality work assignments. A quality work assignment in the legal context is one that forces you to grow. It's an assignment in which the answer may not be readily apparent but that allows an attorney to further develop a skill set or lean on the skills of a mentor to grow.

If an attorney never receives quality work assignments or is relegated to assisting with administrative tasks, there is reduced opportunity to grow professionally. Attorneys who fail to receive these growth assignments are at high risk of falling behind their peer group in terms of legal

skills and acumen. This can lead to a spiraling effect in which other supervising attorneys are hesitant to provide opportunities to attorneys who are perceived as being behind their peers. This can, in turn, lead to negative performance reviews, fueling an attorney's negative sense of self-worth and putting the attorney at risk of future poor performance.

Recommendations offered.

The key to breaking this cycle is to ensure that it never starts. Employers must acknowledge the tendency of people to gravitate toward those who share similar backgrounds and carefully and vigilantly monitor not just the number of hours an employee is working or the quality of output they are producing but also the quality of work assignments given to them in the first instance.

If the cycle has already begun, it is important for the employer to recognize and address their mistakes rather than simply attribute the lack of growth to the attorney. Rather than criticizing the attorney for their lack of growth, employers may instead focus on providing growth opportunities and developing a plan to address any deficiencies. In conjunction, employers should work with supervising attorneys to ensure that those attorneys will not be penalized by working with an attorney who has fallen behind because of a lack of quality work assignments, and they should give supervising attorneys an incentive to work with a diverse group of attorneys.

5. Diverse attorneys often do not receive adequate educational opportunities and professional development.

Studies show that attorneys perceived to be people of color often face harsher criticism for the same work than their peers.²⁶ Those critiques may be shared with other attorneys, branding a scarlet letter on their professional reputation and crushing their self-confidence. At the same time, these attorneys often do not get sufficient feedback to address perceived and real shortcomings. Thus, they are often doubly disadvantaged: They are perceived as not being

²⁶ See David M. Quinn, "Experimental Evidence on Teachers' Racial Bias in Student Evaluation," 42 *Ed. Eval. & Pol'y Anal.* 375 (2020); see also Athanasiou, *supra* note 19 (citing 2014 Nextions study demonstrating bias in the review of work by white and Black associates).

good attorneys, and they are not told how to improve and even what specific mistakes they are making. Although the failure to provide critical feedback is not always ill-intentioned, the result is still the same. If you are never told that something you are doing is wrong or inefficient, you will continue to do it and will not improve.

Recommendations offered.

Traditionally, the practice of law has operated on an apprenticeship model. No one is omniscient. For most successful attorneys, a part of their success involved someone taking an interest in them and providing targeted points for improvement, which helped to develop them into the orator, writer, and advocate they are today. This type of thoughtful feedback is essential to not only advancement within the current workplace but also for the individual's professional development.

To bring about change, supervisors must give constructive feedback early and often to all employees but especially to attorneys with different backgrounds. If an attorney's work product could be improved, the supervisor should explain what is expected and where the gaps are. Being a good supervisor is not a skill that many are born with. Supervisors should regularly seek guidance on how to communicate feedback effectively, and they should keep in mind that providing effective feedback may mean making adjustments based on what works best for the recipient. A practice group manager; diversity, equity, and inclusion representative; or member of human resources can provide the tools to communicate feedback effectively.

Providing no feedback often perpetuates an individual's deficiencies and hinders their chances of growth. Because diverse attorneys are less likely to receive feedback, this often perpetuates the cycle of a lack of diverse attorneys within the legal industry. Providing feedback early on can also be beneficial to managers. It often leads to better work product, which results in fewer revisions for the manager and better service for clients.

If an individual requires further education, whether substantively or for a soft skill, employers can improve outcomes by giving that individual resources and opportunities to improve. Many of the panelists discussed that

their organization offered continuing legal education programs, writing coaches, communication coaches, career counselors, and tuition reimbursement for LLMs to junior attorneys.²⁷ Those resources can help develop and retain diverse candidates. An investment in the talent pool is a net benefit for the organization and practice.

6. Some diverse attorneys may feel pressure as the 'token' member of their community.

The lack of diversity in the tax bar can often result in significant pressure on diverse attorneys in the tax bar. All of us in the tax bar should ensure that we treat each attorney as an individual, and not as a representative for all other attorneys who share similar attributes, to avoid falling into the trap of viewing them as the token diverse person. Employers should be conscious of not overtaxing diverse tax attorneys with additional responsibilities solely because of their diversity (for example, asking an attorney to attend a disproportionate percentage of recruiting events or serve on numerous panels). Moreover, employers must be careful not to draw conclusions about a particular group based on the performance or actions of one individual. Diverse attorneys often feel immense pressure to perform well lest their failings be viewed as a reflection on their group members. One panelist expressed their fear that a failure on their part could close the door for another person who looks like them.

Recommendation offered.

Employers can relieve the pressure that tokenism may place on diverse attorneys by aiming, not just to improve diversity generally, but to attain a critical mass of diverse attorneys. Critical mass is more than recruitment; it's retention. Critical mass provides integration of all cultures into the workplace, creating a sense of belonging that allows for longevity. While creating a critical mass is a long-term process,

²⁷ Diverse attorneys may also face other pressures that make further education (like obtaining an LLM in taxation) cost prohibitive. For example, familial responsibilities, high undergraduate and graduate school loans, and living expenses may have hindered that individual's ability to seek an LLM immediately after law school. Offering employees the opportunity to seek an LLM while working will provide them with substantive knowledge that will only help their practice and the organization's client outcomes.

tracking this progress over time is important to creating accountability.

Conclusion

The path to improving diversity within the tax bar is a long one that requires consistent diligent efforts from all attorneys. The Law Firm Antiracism Alliance's diversity series has highlighted some of the common problems that have contributed to the tax bar's lack of diversity. The panels also provided an assortment of solutions to increase diversity in the ABA tax section to the betterment of the bar, legal practice, and society. Now that you've been given tools to address a lack of diversity within the tax bar, what will you do to improve it? ■

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