



THEY TRIED TO BURY US

By Karen Hester
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“They tried to bury us. They didn’t know we were seeds.”¹

I first read this quote on a protestor’s sign and thought it fit in well with the theme of Process Improvement. When I think about those underrepresented in the legal profession, particularly women in leadership positions at law firms, I consider those individuals, policies and structures which have “buried” them, prevented or hindered their progress. But continuing in the same vein as the quote, just like a seed can’t grow without water, sunshine and nutrients, neither can underrepresented attorneys advance in the profession without outside assistance, regardless of how hardy and resilient the seed is.

According to NAWL’s 2017 Annual Survey Report, white women comprise only 17 percent of equity partners (with women of color topping out at 2 percent).² According to a NLJ 2016 survey of the top 250 law firms, only five have women “accounting for more than 25 percent of their equity partners.”³ Between graduating from law school (women are 50% of graduates), entering the profession (women are 46% of associates) and rising in leadership roles (women are 12% of managing partners of top 100 firms⁴), women are being buried. For women (and other underrepresented attorneys) to bloom, behavioral, cultural, and structural barriers need to be addressed.

Law firms are implementing programs and policies to address these barriers, with one outcome being an increase in the retention and advancement of women.

BEHAVIORAL – those actions from individuals which may devalue or exclude others. Those actions may be intentional or unconscious, and may include biases, “micro-level incursions, distancing and avoidance, delegitimization, silencing and other subtle forms of exclusion”⁵ To address these barriers, many organizations provide implicit bias training and hold leaders accountable for D/I outcomes.

Put it into Practice: Some accountability methods include having compensation committees determine if a “partner has included women lawyers on key matters and pitches, or has participated in formal and informal

¹ <http://jhfearless.com/2014/11/they-tried-to-bury-us-they-didnt-know-we-were-seeds/>

² <http://www.nawl.org/page/2017>

³ <https://law.stanford.edu/wp-content/uploads/2016/05/Women-in-Law-White-Paper-FINAL-May-31-2016.pdf>

⁴ <http://www.lawpracticetoday.org/article/law-firm-womens-initiatives-ineffective-firms-can-fix/>

⁵ https://libres.uncg.edu/ir/uncg/f/E_Chun_Coping_2007.pdf

mentoring of women lawyers. Alternatively, firms could consider publishing these metrics internally in order to provide further transparency and accountability.”⁶

CULTURAL – “an organization’s collective attitudes, values, beliefs and behaviors.”⁷ It may include “lack of support, differing expectations, stereotyping, lack of mentoring and access to formal and informal networks, isolation and soloing, and tokenism.”⁸ Addressing cultural barriers can be difficult and includes those unwritten rules that can trip up the unwary, particularly women and diverse attorneys. If these unwritten rules are not widely shared, underrepresented attorneys may be left out if they don’t have someone to take them under their wing. Beyond mentoring/advising attorneys, those in the “know” should work with leadership to directly address those cultural barriers once they are aware of them.

Put it into practice: Many law firms offer a reduced-hours program. But if the organizational culture views it negatively, it won’t be used. Perhaps there are those who feel that anyone who uses it is not committed to the organization and assigns work accordingly, or maybe the person using it is paid the reduced rate but is still working full-time hours. Read “[Effective Policies and Programs for Retention and Advancement of Women in the Law](#)” to learn of ways to create a viable reduced-hours programs

STRUCTURAL – those policies and procedures in place that impede an organization’s progress. Breaking the glass ceiling requires more than just trainings – organizations need to gather data, analyze information and retrofit the structure to create an inclusive workplace.

One such structural barrier affects an organization’s leadership. In its manual, “Beyond Diversity,” the Center for Legal Inclusiveness provides a roadmap to help with analyzing an organization’s leadership⁹:

- Create an organization chart and list all managing entities, identify the goals of each entity, detail the composition of those managing the entities and outline the process of selection into those positions of the entities.
- Review the composition of those leaders. Who is not at the table? Is there a history, a pattern, of underrepresented leaders missing or leaving?
- Do a deeper dive – why are they not at the table? This gets to the heart of structural barriers. Even if behavioral and cultural changes occur, those changes won’t make an impact on the organization if structural barriers remain.
- Analyze the entities’ goals and tasks, and determine if diversity and inclusiveness is embedded in those goals. By incorporating D/I on a daily basis, and embedding them in an organization’s job duties, goal-setting, competencies, and evaluations, an organization will positively impact their workplace.

Put it into practice: Many firms have put into place the Mansfield Rule, inspired by the Rooney Rule¹⁰. The Mansfield Rule was introduced at the 2016 Women in Law Hackathon, a Diversity Lab creation. Firms which take part in this initiative will “actively considering diverse candidates for at least 30% of open leadership and

⁶ <https://law.stanford.edu/wp-content/uploads/2016/05/Women-in-Law-White-Paper-FINAL-May-31-2016.pdf> (pg 42)

⁷ Beyond Diversity: Inclusiveness in the Legal Workplace, pg 110

⁸ https://libres.uncg.edu/ir/uncg/f/E_Chun_Coping_2007.pdf

⁹ Beyond Diversity: Inclusiveness in the Legal Workplace, pg 140

¹⁰ In 2003, the Rooney Rule required NFL teams to interview at least one diverse candidate for head coaching positions.

governance roles.”¹¹ Beyond the possibility of increasing diversity in leadership positions, firms which become “Mansfield Certified” gain other advantages.

Implement policies and procedures to create an environment which allows everyone to bloom.

For more information and further reading on Leadership and Diversity, visit our [online library](#).



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Karen Hester, JD, LL.M. in Taxation, has more than 10 years of experience working in diversity and inclusiveness. In 2015, she was named a Diversity Champion by NALP's Diversity & Inclusion Section, which recognized 11 individuals nationally. She is an accomplished trainer, presenter, facilitator, and industry leader on the topic of diversity and inclusion in the legal profession. Karen is a former practicing attorney and the former Director of Diversity and Inclusion at the University of Kansas School of Law. She has multiple degrees: a law degree from the University of Cincinnati College of Law, an LL.M. in Taxation from the University of Missouri Kansas City School of Law, an M.S. in student personnel and counseling, and a B.S. in mathematics from Kansas State University. Karen is currently the Chief Executive Officer of [The Center for Legal Inclusiveness](#), based in Denver, CO.

¹¹ <http://fortune.com/2017/08/30/the-mansfield-rule-lawyers-diversity/>