

# "What would you say?": Giving Teeth to Diversity Programming

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*At the best of times, candid and honest communication about diversity issues with people with whom we work isn't easy. And in a law firm or corporate law department or government agency or any other group of lawyers, it can be fraught with political, professional and personal landmines. Here, Lee discusses the types of diversity programming most likely to effectively elicit positive and meaningful diversity conversations and communications for lawyers.*

Imagine you learn that your affinity group is the only one at your firm that did not receive the same funding this year. Or, that a "minority" event has been planned for all attorneys of color except your racial/ethnic group. Or, you feel that your assignments have been leaner or less well received than that of your majority peers in the department. Or, you have witnessed differential treatment on your team, and you would like to do something about it. What would you do? More importantly, what would you say?

If you were like most people, you would do nothing. Trying to address diversity issues in the workplace, particularly in legal settings, is not something most people relish. There are many reasons not to raise the issue: you may feel your good intentions will be misinterpreted; you fear negative repercussions; or perhaps quite simply, you are not sure how to begin such a conversation.

If you decide to raise the issue, you may default into attack mode, either actively or passively. After all, you are sure you know why the other person acted the way they did—you are still smarting from the impact of their (in)actions or words. Needless to say, this approach is typically not well received, and, as a result, things tend to remain the same on an institutional level.

For change to truly take root at an institutional level, it needs to happen one conversation at a time. Diversity programming with this goal in mind may help nurture long-term results—but how?

In my experiences as a consultant and facilitator for conflict management, diversity, and communications courses in a variety of sectors, interactive programs that engage participants in the issues have a real impact on mindset, and, therefore, the most promise of impacting behavior. Specifically, three attributes of interactive, case-based learning can be an effective means for exploring diversity in the legal setting: (1) an emphasis on role plays relevant to the group; (2) a focus on genuine "inquiry" or curiosity to learn and understand; and (3) use of the facilitation method of teaching.

## I. RELEVANT ROLE-PLAYS

Using customized role-plays to engage each attorney participant in thinking about and responding to situations involving diversity issues is one way to help attorneys with their fear of finding the right words to broach and conduct these types of conversations. Some diversity programs use "vignettes" or hypotheticals that present challenging situations involving diversity and ask how people might approach them. I take this approach two steps further. First, the scenario used in the



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program should be based on collective information or themes that emerge from several (confidential) pre-program diagnostic calls with participants. This enables the scenario to be truly relevant to the group. Second, the scenario should be presented as a role-play where each participant acts out a given a role. For example, a scenario could be written as a one-on-one conversation between a senior, white, male associate and a junior, minority, female associate. Half of the group would be assigned the role of the junior associate, the other half, the role of the senior associate. Everyone would receive background information for their role and the group would be divided into pairs to conduct the next conversation with the goal of having a productive conversation.

This approach has particular benefits. First, it literally forces participants to be engaged in the program. While it is easy for someone to check email in a room full of participants listening to a lecture-style course, most find it more uncomfortable to do so when another attorney is awaiting their participation in a group activity. Second, participants find that their time is being well spent, because the scenario resonates with them. When participants feel a case is based on something they know—something they've experienced or heard about—the exercise seems like a better use of their time.

Finally, and most importantly, a role-play approach provides people with an opportunity to verbalize, experiment, and receive feedback on what they might say in such a situation. While group discussions on a scenario stimulate important and helpful thinking about potential options, finding the right words for the conversation is more challenging and provides a better learning opportunity. Instead of, "well, I would do this," participants are forced to speak in the first person and actually try it out. Moreover, receiving in-the-moment and subsequent feedback from one's role-play counterpart is also tremendously helpful. Realizing, "oh, I thought I was being helpful by starting the conversation off from my perspective, but it sounds like you felt I wasn't interested in how the situation impacted you," is better to do in a course than when the stakes are higher. In real life, when do we get the opportunity to experiment with our words in a safe environment and to learn about the impact on the other person? Diversity programs that engage participant attorneys in role-plays written from pre-program diagnostic calls will have the most impact on an attorney's ability to engage in these types of conversations.

## II. A FOCUS ON "INQUIRY"

Law school and on-the-job training for attorneys ingrain in us the need to advocate zealously for our clients. "Never ask a question to which you don't know the answer" is often a maxim law students are introduced to in law school trial advocacy courses and one echoed in law practice.

While this advice may help us in the courtroom or conference room, it is precisely the mindset that

hinders our ability to engage constructively in conversations involving diversity topics. When emotions run high, negative intentions are ascribed and avoidance becomes the norm. Under these conditions, effective communication skills are a must. Yet, ironically, it is these “soft” skills that are often overlooked entirely in our current legal education and in many attorney development programs.

When misunderstandings or conflicts arise concerning diversity issues, one important skill that can have tremendous impact is the skill of inquiry. Inquiry is defined as the ability to be genuinely curious to learn more about the situation at hand. Why does the other person see the situation that way? What relevant information might you be missing? What questions could you ask the other person to obtain this information? How could you frame your questions so that your good intentions are heard? The skill of inquiry, while seemingly basic, is often elusive when time is short, as is often the case in the legal world. Diversity programs that incorporate active use of this skill will help attorneys begin to develop the “muscle memory” to invoke inquiry in the moment when it is needed.

### III. FACILITATION OF GROUP DISCUSSIONS

Facilitated programs on diversity enable participants to learn from one another and exchange perspectives more freely. Role-play based diversity programming lends itself to the facilitation method of teaching. Facilitation is a teaching method that allows participants to explore diverse perspectives through inquiry to help them probe more deeply into their thinking and resulting actions. Why was a certain strategy taken? Was it successful in helping you reach your goal? What could be done differently next time? In facilitation, the instructor encourages learning by drawing out the experiences, observations, and questions of the group. In a role-play based program, facilitation would be used primarily for the group discussion and review following the role-play. Facilitation may hold particular promise if one goal of a diversity program is to allow all participants to learn more about diverse attorneys’ experiences as well as the challenges that people encounter in trying to address diversity issues constructively. A facilitated discussion, which relies upon the group’s shared experience in the prior role-play, is a safe environment where all participants are able to share their personal experiences. One way in which ideas and feedback on conversation strategies may be shared is through the following: “In the role-play, I appreciated when Dan asked me to talk about how the committee’s decision impacted us, because it gave me the chance to discuss how we felt singled out for negative treatment.” Because attorneys are wary of talking about workplace diversity issues, facilitated group discussions that promote a robust exchange of perspectives should be valued.

The role of the facilitator is also to help sharpen, and at times clarify, what is being said. We all have our own way of seeing the world, we make certain conscious and unconscious generalizations, and how we choose to express our thinking can be heard many different ways. In addition to fostering a productive group discussion, the facilitator is also tasked with the responsibility of helping participants understand both the intent behind what is being said and the impact of those words or actions. Having someone with this specific role helps ensure a productive dialogue.

While law practice diversity programs may have the best of intentions, at times, the impact is weak. At their worst, they are detrimental to the shared goal of promoting diversity in the profession. A combined use of customized role-plays, coaching on effective inquiry, and facilitation of group learning and experiences is one approach that holds the most potential for improving conversations on diversity in the law.