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# Early Lessons on Setting Up a DEI Committee

*(MCLE Specialty Credit – Recognition and Elimination of Bias in the Legal Profession)*

Friday, September 24, 2021

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**EARLY LESSONS IN DIVERSITY, EQUITY, AND INCLUSION**

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September 24, 2021

**I. Distinctions between diversity, equity, and inclusion, and the importance of understanding the difference.**

**A. Diversity.**

Everyone is invited.

“Diversity refers to political beliefs, race, culture, sexual orientation, religion, class, and/or gender identity differences. In the workplace, diversity means your staff consists of individuals who bring new perspectives and backgrounds to the table.” (*Diversity and Inclusion in the Workplace: Benefits and Challenges*, Kellie Wong, Achievers Blog, September 14, 2020.)



(Source: IR Magazine, Fall 2017.)

Think about diversity broadly. We typically think of ethnicity and gender, but diversity considerations include age, disability, LGBTQ+, financial, geographic, cultural, etc.

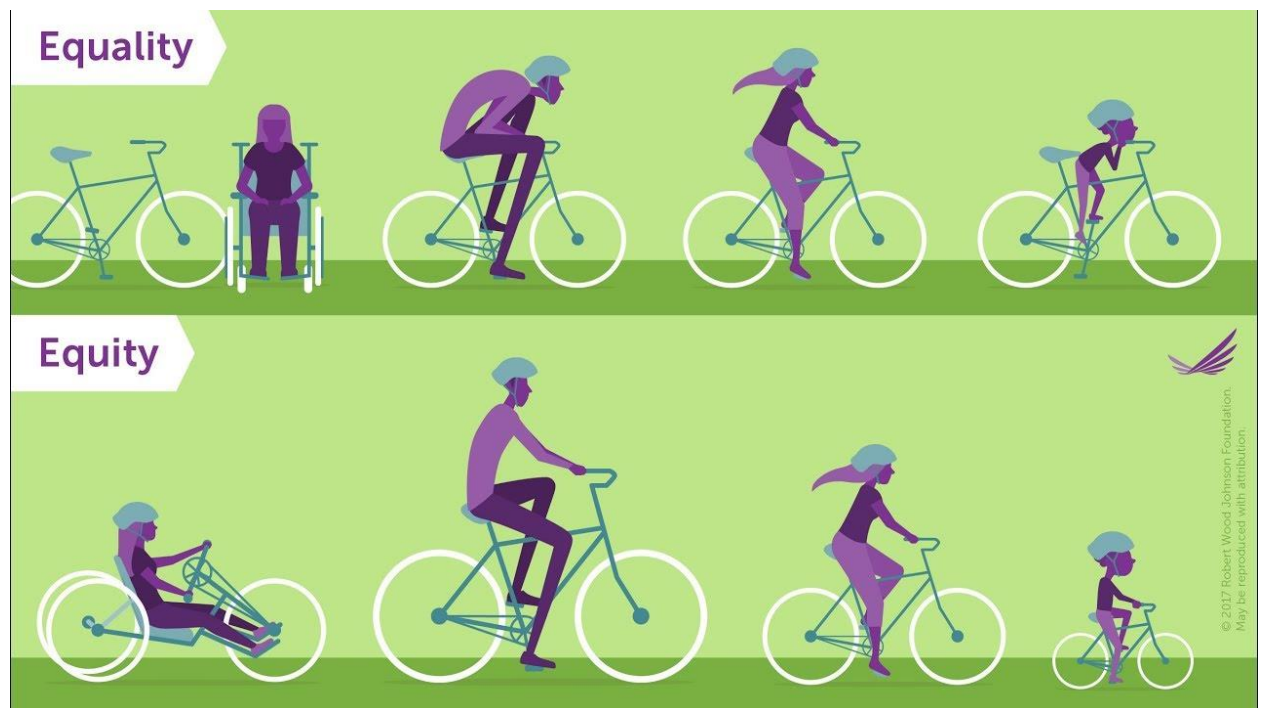
Things to think about: how do we establish and maintain a broad pipeline to attract and recruit the best candidates? Some examples include advertising positions within affinity groups before advertising to the general public, trade school career services, and seeking job applicants from less traditional universities and colleges.

## B. Equity.

Everyone has an opportunity to advance.

Equity and equality are not the same thing, and treating everyone equally ignores the very real differences in access to training, education, and opportunities that non-dominant or underrepresented groups have. There are two issues at play here. The first is that treating everyone equally may actually put some groups at a disadvantage. The second is that unconscious biases may be preventing us from evaluating and promoting people using the same metric.

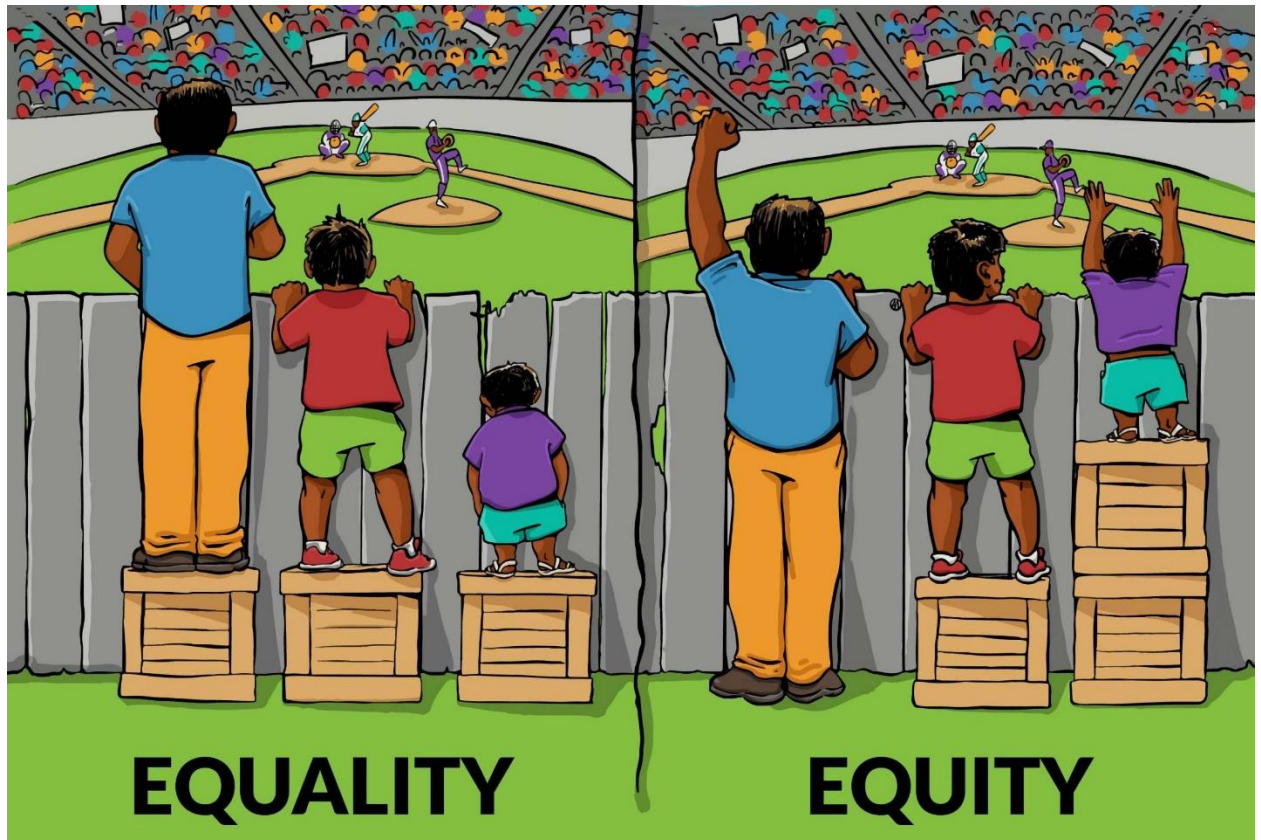
The illustration below is helpful to understand how treating everyone equally only benefits those who are a fit for the particular treatment.



(Source: Robert Wood Johnson Foundation.)

So we need to ask ourselves what barriers are created or perpetuated by treating everyone (ostensibly) the same? For example, requiring everyone to work at the office means treating everyone equally — but disallowing workers to work from home can have a disproportionate adverse effect on women and minorities: there is evidence that allowing workers to work from home at least some of the time can help retain women and minorities, “who are often shouldered with a disproportionate share of family duties.” (*Diversity wins*, McKinsey & Company, May 2020; *Hybrid Work Models Are Key to Gender Parity in Law Firms*, Roberta Liebenberg and Stephanie Scharf, Law360, July 16, 2021.)

The meritocracy (“mirrortocracy”?) only works when all candidates for a job or a promotion have the ability to start from an even playing field. If people of color, women, disabled individuals, LGBTQ+ individuals, etc. are hired less frequently, evaluated more harshly, and promoted only on the basis of achievement and less frequently on the basis of potential, they will have less impressive-looking resumes despite equal skills, and will simply never be able to catch up. Also, the workplace will not benefit from their diverse perspectives, especially at management levels.



(Source: Cato Institute.)

What do we mean when we say that some groups are judged more harshly than others, or not promoted on the basis of potential? For example, studies have shown that men are promoted on the basis of potential over women with a proven track record. What this tells us is not only that we have an unconscious bias towards men as managers, but that mistakes by women are viewed more harshly, especially in professions that are typically male-dominated. (More about unconscious bias below.)

Brescoll’s team concluded that people find it easier to accept a poor decision when it’s made by a leader in gender-appropriate role. His areas of expertise are not interchangeable with hers, and leaders are more severely judged when they make mistakes in the other gender’s territory.

And how big is men's territory? Huge. This isn't just a problem for Marissa Mayer in the tech sector, or Hillary Clinton in politics. Finance, law, sports, the military and the stock market – they're all occupations where men dominate, and all professions in which, naturally, mistakes get made. When women's mistakes are judged so much more harshly than men's, is it any wonder that female managers may be labeled "micromanagers" or "perfectionists" or "risk-averse"? Seeking to reduce mistakes at all costs is a logical reaction to others' biased perceptions.

*(Research: We Are Way Harder on Female Leaders Who Make Bad Calls, Therese Huston, Harvard Business Review, April 21, 2016.)*

Another example: candidates with Black or Latinx sounding names are less likely to receive a job interview than equally qualified candidates with white sounding names. As recently as 2017, "white applicants receive[d] 36% more callbacks than equally qualified African Americans while white applicants receive[d] on average 24% more callbacks than Latinos." *(Study: Anti-black hiring discrimination is as prevalent today as it was in 1989, German Lopez, September 18, 2017, VOX.)*



Focusing on equity seeks to undo these entrenched practices.

### **C. Inclusion**

Everyone gets to participate. "Diversity is being invited to the party. Inclusion is being asked to dance."—Verna Meyers.

In an inclusive environment, everyone's uniqueness is seen and appreciated, and people feel safe being their authentic selves at work. Inclusion happens when people feel they are an insider, when they experience a feeling of belonging within their organization.

Once we hire people from diverse backgrounds, do they feel they belong? Are they doing meaningful work? Do they have the psychological safety and the psychological availability to contribute authentically? Are there identity threats that we are overlooking, either internally or externally, that can be addressed to provide a safer environment for all employees, which would likely lead to greater engagement and commitment to the enterprise's success?

Think of inclusion more broadly than the categories of identities and individuals protected by equal employment laws, i.e., groups for which there is unambiguous evidence of historical discrimination. (Nishii, Cornell, 2018.) For example, there may be individuals in your organization who are taking care of elderly parents – this is not a protected category of people, but they are often overlooked and left behind because they cannot meet strict office attendance requirements. (*“Sandwich Generation” Caregivers and Workplace Impact*, Matthew J. Gallardo, BASW, CCP, Linked In Pulse; *The ‘sandwich generation’ quandary was hard on baby boomers. It’s going to be harder on their kids.* Caitlin Gibson, March 11, 2020, Washington Post.)

It is also important to distinguish inclusion from other concepts that may be misinterpreted as inclusion, such as differentiation and assimilation.

### Inclusion Framework

	Low Belongingness	High Belongingness
Low Value in Uniqueness	<b>Exclusion</b> Individual is not treated as an organizational insider with unique value in the work group but there are other employees or groups who are insiders.	<b>Assimilation</b> Individual is treated as an insider in the work group when they conform to organizational/dominant culture norms and downplay uniqueness.
High Value in Uniqueness	<b>Differentiation</b> Individual is not treated as an organizational insider in the work group but their unique characteristics are seen as valuable and required for group/ organization success.	<b>Inclusion</b> Individual is treated as an insider and also allowed/encouraged to retain uniqueness within the work group.

(Source: *Inclusion and Diversity in Workgroups: A Review and Model for Future Research*, Lynne M. Shore, Amy E. Randel, Beth G. Chung, Michelle A. Dean, Karen Holcombe Ehrhart, Gangaram Singh, San Diego State University Journal of Management, Vol. 37 No. 4, July 2011, 1262-1289.)

Ultimately assimilation is for the benefit and comfort of the dominant culture/group, and is stifling and silencing for individuals who are forced to conform or pay the price. Assimilation is a double whammy because regardless of how well an individual assimilates, they will always be “other” and will not have access to the full privileges of the dominant group unless they can “pass” as a member of the group (e.g., a person of color who passes as white, an LGBTQ+ individual who passes as straight, etc.) — such an individual however, is likely suffering from the burden of hiding who they are, and stressed by the fear of being found out.

## **II. Recognizing and removing barriers to diversity at the leadership level so as to be more reflective of modern demographics: Diversity, Inclusion, Implicit Bias, and Assimilation.**

One of the challenges facing many entities, including law firms, is increasing representation in their leadership ranks, which has not improved greatly over the last few decades despite much focus on diversity. To illustrate the point, the American Bar Association earlier this year released its first *Model Diversity Survey*, and made the following findings based on data from 2017 through 2019 from over 370 firms:

- Firm leadership overwhelmingly consisted of white men relative to white women and racial, LGBTQ+ and disability minorities of any gender identity.
- Hires and promotions/attrition suggest that representation of minority groups is growing at the bottom levels of associates but is declining at the higher levels of non-equity and equity partners.
- Attrition rates were substantially larger for nonwhite attorneys (e.g., nearly three times larger for African American/Black and Hispanic/Latino attorneys) relative to white attorneys.
- The percentage of white associates promoted to equity partner was slightly higher than the percentage of white associates promoted to non-equity partner. This pattern was reversed for female associates, and the associates of all other racial minority groups which displayed larger percentages promoted to non-equity partner than to equity partner.
- Minority males and females consistently ranged between 0% to 2% of the top 10% highest-paid attorneys in law firms.
- LGBTQ+, disability, and the racial categories of Pacific Islander and Native American/Indigenous are largely missing from law firms or underreported in firm demographics, hiring, promotions, attrition and compensation. Most frequently, the average percentages were at or near zero for most of the analyses.
- Firm size matters. Even within the same year, there were considerable fluctuations between firm sizes. Some of these fluctuations made sense as in larger average percentages were often reported among firms with 1 to 20 attorneys. Because of the relatively fewer numbers in these firms, any demographic group is likely to make up a higher proportion, often resulting in extreme percentages for a given firm. There were also some fluctuations between firm sizes within a given year that was not readily explainable.

So what's happening here?



This inability to move beyond diversity at the associate level to diversity in the leadership ranks may be due to a lack of focus on inclusion and how implicit bias affects our ability to view and evaluate people, and to create an inclusive work environment. The research on diversity initiatives suggests that one of the primary explanations for the continuing lack of full integration of employees representing diverse backgrounds has to do with the persistence of unconscious bias, which as its name suggests, happens below the level of our awareness.

Everyone has implicit biases, having them does not make you a bad person. Elizabeth Eberhardt defines unconscious bias as “the beliefs and the feelings we have about social groups that can influence our decision making and our actions, even when we’re not aware of it.” Implicit bias affects how people perceive, evaluate, and react to others; it refers to the attributes that we quickly assign to people based on their social categories. Unconscious biases stem from the way our brains work: our bodies send our brains 11 million bits of information per second, but our brain can only process about 40 to 50 bits per second. So the way our brain deals with so much information is by setting up shortcuts, with sometimes serious consequences. These shortcuts influence who we think is likeable, valuable, right, or competent.

Related concepts include microaggressions and micro-affirmations – how we treat others in small ways is often a result of our unconscious decision-making about their traits based on their belonging to a particular group.

“A microaggression, defined succinctly, is an everyday exchange that cues a sense of subordination based on any one of a number of social identifiers, including: race, gender, sexual orientation, socioeconomic background, nationality, religion, and disability.” (*Microaggressions and Micro-Affirmations*, The Harriet W. Sheridan Center for Teaching and Learning at Brown University.)

These examples include common snippets of conversations you have overheard or may have engaged in yourself, which seem innocuous enough. “Where are you from?” “Where were you born?” Implicit in these questions is the idea that the person you are talking to is not from around here. Their heritage may include immigrants from other countries, but as a second, or third, (or more) generation immigrant, they are Americans, just like you. It is more important to consider the way a person may experience a microaggression than it is to consider the intent behind the sentiment. (*Microaggressions and Microaffirmations Series – Part 1: Defining Microaggressions and Microaffirmations*, University of California, Davis Center for Educational Effectiveness.)

Other examples based on LGBTQ+ status: When talking to a married man or woman, you assume their spouse is the opposite sex: “What’s your husband’s name?” (married woman); “What’s your wife’s name?” (married man). Clearly it is possible that the woman may be married to another woman, and the married man married to another man. This causes damage because it places the onus on the other person to correct your mistake, which was based on an implicit bias, or an assumption that “married” means “heterosexual marriage.” Challenge and investigate assumptions you (likely) are making every day.

The City of Cambridge, Massachusetts has a useful chart illustrating common microaggressions, associated themes, related context with implicit bias, and what impact or message the microaggression sends to the recipient:

Microaggression	Theme	Implicit Bias/Context	Impact/Message
"Where are you from?" "Where were you born?" "You speak good English."	<i>Alien in own land</i>	When Asian Americans and Latino Americans are assumed to be foreign- born	You are not American. You are a foreigner
"You are a credit to your race." "You are so articulate." Asking an Asian person to help with a math or science problem.	<i>Ascription of Intelligence -</i> Assigning intelligence to a person of color on the basis of their race.	People of color are generally not as intelligent as Whites. All Asians are intelligent and good in Math / Sciences.	It is unusual for someone of your race to be intelligent.
"When I look at you, I don't see color." "America is a melting pot." "There is only one race, the human race." "All lives matter"	<i>Color Blindness -</i> Statements that indicate that a white person does not want to acknowledge race.	Since race doesn't have an effect on me (white person) I can't see why we can't all get along.	Denying a person of color's racial/ ethnic experiences. You must Assimilate / acculturate to the dominant culture. Denying the individual as a racial/ cultural being.
A white man or woman clutching their purse or checking their wallet as a Black or Latinx person approaches or passes. A store owner following a customer of color around the store. Crossing the street when a person of color approaches.	<i>Criminality –</i> Assumption of criminal status on the basis of race	A person of color is presumed to be dangerous, criminal, or deviant on the basis of their race.	You are a criminal. You are going to steal. You are poor. You do not belong. You are dangerous.

<p>“Don’t you want a family?”                  “Have you ever had real sex?”                  “So who is the man in the relationship?”</p>	<p><i>Heteronormativity</i></p>	<p>That people who aren’t in heterosexual relationships are unable to have a family. Assumptions that they all relationships must fall along heteronormative lines.</p>	<p>Your relationship isn’t real. You can’t be fulfilled. You must pick a side.</p>
<p>“You’re going to stay home with the kids right?”                  “What she’s trying to say is...”                  “You should smile more”</p>	<p><i>Sexism</i></p>	<p>That women must fall into gendered roles from the 1950’s. That male affect, presence, behavior is the standard and everything else is contrary to.</p>	<p>You shouldn’t be working. You’re a failure as a woman. You’re not good enough. You’re not being listening to and valued.</p>
<p>“You have a mental illness, but you seem so normal”                  “Why don’t you just get out of bed and get some fresh air”</p>	<p><i>Invalidation of Severity of Mental Illness</i></p>	<p>That mental illness looks/behaves a certain way. General misunderstanding of the effects that mental illness can have.</p>	<p>You must not be hurting that much. It must not be that bad. Why can’t you get over this?</p>
<p>“Oh! I wouldn’t think <i>you</i> live here”                  “Oh you haven’t been to Europe, you really should go”</p>	<p><i>Classism</i></p>	<p>Assuming someone doesn’t live in a certain neighborhood because of how they look, talk, act.                  Assuming that everyone has means to travel</p>	<p>You don’t belong. You’re not going to lead a fulfilling life.</p>
<p>Washington Redskins                  Robert E. Lee High School                  College rooms and hallways with pictures of predominantly white heterosexual upper class males</p>	<p><i>Environmental</i></p>	<p>Assumes that harm cannot take place by names or visuals. Assumes that the normal or ideal students are white men of some means.</p>	<p>You don’t belong. You’re not welcome here.</p>
<p>“You’re just being too sensitive”                  Eye rolling                  “You’re always so difficult”                  “You’re making too big of a deal of things”</p>	<p>Dismissive reactions that occur when bringing up that a microaggression has taken place.</p>		

(Source: <https://www.cambridgema.gov/-/media/Files/officeofthemayor/2019/deepmicroaggressionsworksheetfilledin012619.pdf>)

Then, compare these to micro-affirmations, effectively the inverse of microaggressions. “A series of related practices . . . includ[ing]: small acts which are often ephemeral and hard-to-see, events that are public and private, often unconscious but very effective, which occur whenever people wish to help others to succeed.” Put another way: “Micro-affirmations are tiny acts of opening doors to opportunity, gestures of inclusion and caring, and graceful acts of listening. [They] lie in the practice of generosity, in consistently giving credit to others—in providing comfort and support when others are in distress, when there has been a failure at the bench, or an idea that did not work out, or a public attack.” (Source: The Harriet W. Sheridan Center for Teaching and Learning at Brown University.)

This one-minute video from the Harvard Graduate School of Education succinctly demonstrates micro-affirmations and their positive impact (specifically on students’ performance): *Usable Minute: Microaffirmations* (found here <https://www.youtube.com/watch?v=W0Z0LJHHBqo>.)

In considering microaggressions, especially when contrasted with micro-affirmations, the connection to implicit bias and exclusion becomes more clear. As previously mentioned, when asking someone who is not white, “Where are you from?”—implicit is the idea that they are *not from around here*. They are “other” or “outside” or foreign from the white person asking the question. Unconsciously, the person asking the question has made assumptions, because of a physical characteristic or a combination thereof. In turn, the message conveyed—regardless of intent—is “you are a foreigner; you are not like me; you are not American.” That message serves to exclude the listener.

A common question is, why is this a big deal, I ask people where they are from all the time, why is it a microaggression if directed at someone who is not white? We invite you to think about this not from the perspective of your individual intent, but on the cumulative effect on the person who is asked this several times a day, every day, their entire life. By way of illustration, Elena Gerli, one of the authors of this paper, is a white woman — she is rarely asked where she is from, and when people find out she is originally from Italy and a naturalized citizen, the response is usually surprise and delight. But despite her Italian name, there is almost never any query regarding her origins unless she herself brings it up in conversation. Upon first meeting her, no one ever compliments her on her English, or asks her where she is *\*really\** from. The point here is that the constant repetition of “where are you from?” that people of color are often subjected to implies and reinforces otherness, not belonging.

This riddle might sound familiar from bias training or MCLEs: a father and son are traveling in a car when a terrible accident occurs; the father is taken to one hospital; the child is severely injured and rushed to a pediatric trauma hospital; upon arrival at the pediatric hospital, the attending ER doctor looks at the child and exclaims: “I cannot operate on this child; that’s my son.” How is this possible?

If you hesitated to figure out how the child's parent could be both injured in the car accident, and unable to perform life-saving surgery on the child because they are a pediatric ER trauma specialist, you can thank implicit bias. Likely you assumed that the pediatric ER doctor was a man—because “men are doctors.” (*Boston University Research: A Riddle Reveals Depth of Gender Bias*, January 16, 2014.) Of course, this assumption excludes the possibility that women are doctors—or more specifically in this riddle, a pediatric ER trauma specialist—which, intentionally or not, comes across as demeaning; women can be, and are, pediatric ER trauma specialists. Of course the trauma surgeon could be a man, and be married to the injured man. So there are two different sets of assumptions: one, that only men are surgeons, and two, that men are only married to women.

When we think of implicit bias, it's useful to think of privilege as well. Peggy McIntosh has defined privilege as “an invisible package of unearned assets which one can count on cashing in each and every day, but about which one is largely oblivious,” and specifically white privilege as “like an invisible weightless knapsack of special provisions, maps, passports, codebooks, visas, clothes, tools and blank checks.”

What does it mean to have privilege, and how can you determine if and how much you have it? Some questions you can ask yourself include:

- I can count on looking at the top level of management in my organization and seeing people (i.e., more than just a “token” individual) who belong to my identity category: my gender, race/ethnicity, age, sexual orientation, religion, disability status.
- I can display photographs of my family or my personal life without worrying that it will invite negative perceptions.
- I can speak up within my work group and not worry that others will attribute something about what I said to my identity category (gender, race/ethnicity, sexual orientation, religion, disability status); instead, they will focus on the idea itself.
- I can trust that my behavior will be viewed as only my own and not representative of a wider group.
- When I am asked to serve on committees or task forces, I assume it's because people value what I have to offer, not because they need a representative from my identity group.
- I am never asked to speak for all the people of my identity group (e.g., “What do XX-type of people think about this issue?”).

(Nishii, Cornell University, 2018.)

Most of us have more than one identity: race, national origin, sexual orientation, gender, age, etc. So it's important that we become aware not just of the identities that are typically

associated with lower status, but also the identities that are associated with higher status. And the lower or higher status of those identities may shift depending on the context.

Identifying these concepts is only the beginning. Focusing on diversity and inclusion separately misses a broader connection. “Both aspects of [diversity and inclusion] are important —diversity without inclusion can result in a toxic culture, and inclusion without diversity can make a company stagnant and uncreative. Companies are starting to focus more on diversity, but many disregard the inclusion piece of the puzzle. Without a concerted effort towards both inclusion and diversity, your workforce will feel out of place and unsupported.” (Wong, 2020.) Diversity and inclusion must go together as twin, reinforcing, goals. News stories abound of “diverse” organizations with toxic cultures where usually white, usually male, management either turns a blind eye to, or worse, actively encourages the toxicity —see Charlie Rose, Bill O’Reilly, Matt Lauer, Les Moonves, Activision/Blizzard lawsuit, etc.

For those who are interested in distinguishing your implicit biases, you can assess yourself by taking one or more of Harvard’s Implicit Bias tests. The tests cover race, gender, age, disability, etc.

Less understood is the second circumstance of stagnation due to inclusion without diversity. That is another way of describing assimilation. “Assimilation is the legacy of standardization.” (*Leadership in the Age of Personalization*, Glenn Lopic, Forbes.com, November 11, 2005.) Per Merriam-Webster.com, to assimilate means to absorb into the cultural tradition of a population or group; to make similar. Thus, assimilation stands in opposition to diversity and inclusion as intertwined concepts and goals.

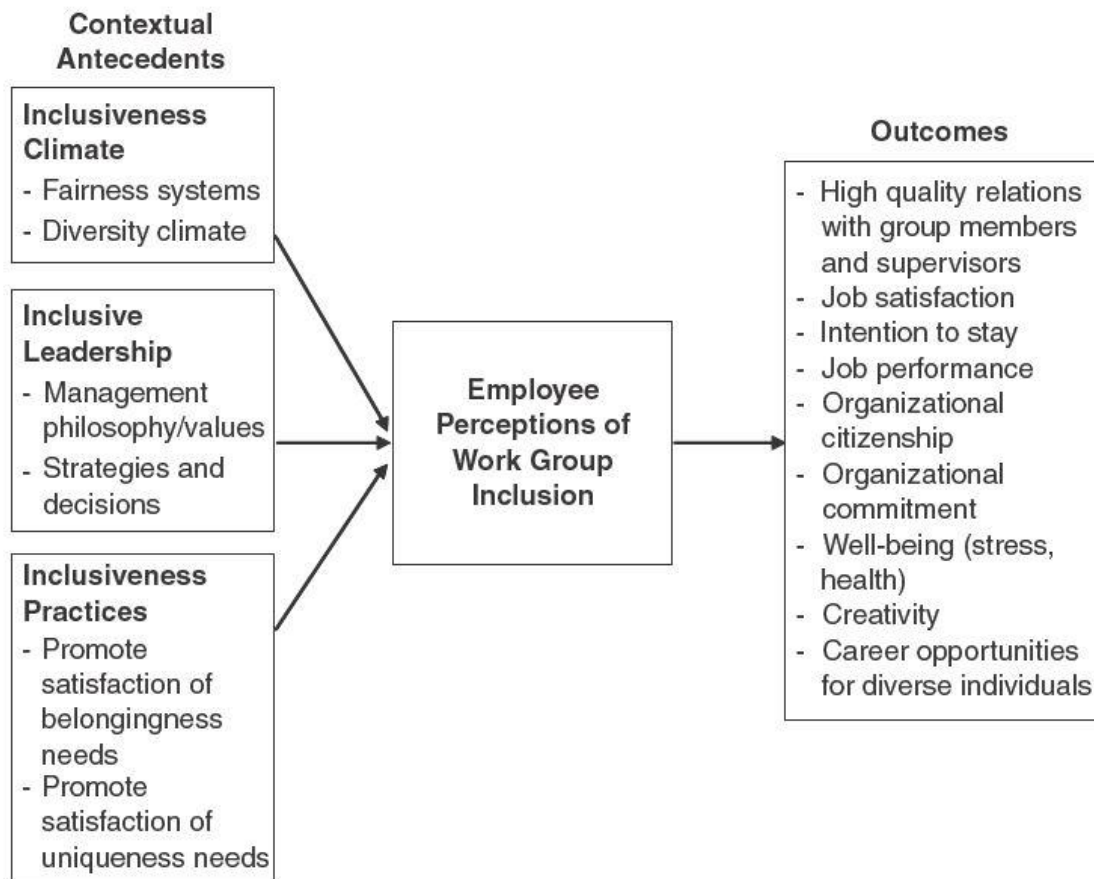
Women’s Hospital CEO Emeritus Teri Fontenot has remarked: “There’s not anyone who can make the best decision alone. They need input, they need advice. When there’s not diversity and inclusion in the room, decisions get made by homogeneous groups and they’re overconfident in their decision-making, because they haven’t had the push back and questioning. It’s hard to have inclusion if you don’t have diversity of thought and opinions.” (*Id.*)

So, diversity and inclusion working together generate dynamic benefits.

### **III. What are the benefits of establishing a DEI committee and furthering DEI at your organization?**

A focus on DEI can address some of the reasons why, for example, women lawyers tend to leave the profession about 15 years in. In a 2021 report by the ABA looking at the reasons why women leave the profession, pay and promotion disparity (women are paid less than their male counterparts and have to work a lot harder to get the same level of recognition), sexist and racist behavior, isolation that particularly affects women of color, lack of diversity in leadership, and long hours and unpredictable schedules (making it more difficult to take care of children and aging parents), were key reasons for leaving the practice. (*In Their Own Words – Experienced Women Lawyers Explain Why They Are Leaving Their Law Firms and the Profession*, Joyce Sterling and Linda Chanow, ABA Commission on Women in the Profession report, 2021.)

## Antecedents and Outcomes of Inclusion



(Source: *Inclusion and Diversity in Workgroups, supra.*)

How do we get from inclusion to profitability and a competitive advantage? Inclusion is required for psychological safety, which is one of the three key drivers of engagement: psychological meaningfulness (having a reason to engage), psychological safety (experiencing the freedom and safety to engage), and psychological availability (having the capacity to engage). This theory of engagement was developed by Dr. William A. Kahn in his 1990 groundbreaking study published in the *Academy of Management Journal*, *Psychological Conditions of Personal Engagement and Disengagement at Work*. Studies have shown that engagement is the single biggest driver of productivity, (Nishii, Cornell University, 2018), and as inclusion is a critical component of engagement, it is also a critical component for productivity.

Psychological safety means being able to show and employ one's self without fear of negative consequences of self-image, status, or career. (Kahn 1990.) It can be defined as a shared belief that the team is safe for interpersonal risk taking. In psychologically safe teams, team members feel accepted and respected.

“In psychologically safe environments, people believe that if they make a mistake, others will not penalize or think less of them for it. They also believe that others will not resent or penalize them for asking for help, information or feedback. This belief fosters the confidence to take the risks described above and thereby to gain from the associated benefits of learning.”  
(*Managing the risk of learning: Psychological safety in work teams*, Amy C. Edmondson, Harvard Business School, March 15, 2002.)



There are many benefits of establishing a DEI committee and furthering DEI at your city or firm. A diverse, equitable and inclusive environment establishes a sense of connectedness among employees. When employees feel more connected at work, productivity and the quality of work tend to increase. As a result, organizations that adopt DEI practices reap benefits in the form of business results, innovation, and decision-making. Listed below are some of the major benefits:

- A. **Attract Candidates (and get them to stay): People are drawn to organizations that show they value diversity, equity and inclusion. Less diverse environments can also be hostile for those who feel they don't fit in. When people feel cared about, and see that their peers are cared about, they stay (and they refer others).**

Diverse organizations are more attractive when hiring and recruiting prospective employees. 76% of job seekers report that diversity is an important factor when looking for a new position. “Nearly a third of employees and job seekers (32%) would not apply to a job at a company where there is a lack of diversity among its workforce. This figure is significantly higher for Black job seekers and employees (41%) when compared to white job seekers and employees(30%), and is also higher among LGBTQ job seekers and employees (41%) when



compared to non-LGBTQ job seekers and employees (32%).” (*What Job Seekers Really Think About Your Diversity and Inclusion Stats*, Glassdoor Team, July 12, 2021)

When employees don’t feel that their ideas, presence or contributions are truly valued or taken seriously by their organization, they will eventually leave. Research on company culture shows that when employees trust that they, and their colleagues, will be treated fairly regardless of race, gender, sexual orientation or age, they are 9.8 times more likely to look forward to going to work, 6.3 times more likely to have pride in their work, and 5.4 times more likely to want to stay a long time at their company. Having an inclusive workplace culture will not only help you attract a diverse set of talent but also help you retain the diverse talent you attracted in the first place. (*Why Is Diversity and Inclusion in the Workplace Important*, Matt Bush, Great Place to Work, April 13, 2021)

**B. Improved Employee Engagement, Performance, and Trust: According to a study by Deloitte, ethnically diverse organizations are 35% more likely to outperform their peers. This may be attributed to the fact that employees are more likely to feel engaged, happy, and confident in themselves in an inclusive environment.**

A major benefit of implementing and encouraging DEI practices is increased employee engagement and trust, and in turn performance. Employee engagement measures the emotional commitment an employee has to his or her organization and its goals and objectives. Highly engaged employees push themselves harder to achieve their goals and to better the organization. This higher engagement has a ripple effect on productivity, profitability, team morale, and retention.

Diversity is a competitive differentiator. McKinsey’s research shows that gender-diverse companies are 15% more likely to outperform their peers and ethnically-diverse companies are 35% more likely to do the same. People working in inclusive workplaces also tend to have better physical and mental health and take less leave for health issues. (*The Importance of Equity and Inclusion On Employee Management*, Achiever Blog, Jeff Waldman, September 6, 2016.)

Additionally, by establishing DEI practices, greater trust can be established between employees and leadership. Trust is a problem in today’s workforce, which leads to challenges with employee engagement. Creating a more inclusive workplace will help alleviate this issue.

**C. Innovation and New Perspectives: Organizations with diverse backgrounds and experiences collectively come up with more creative ideas and ways to solve problems.**

Another benefit of furthering DEI practices at your organization is new perspectives and innovation. The Harvard Business Review found a statistically significant relationship between diversity and innovation outcomes. (*How and Where Diversity Drives Financial Performance*, Rocio Lorenzo and Martin Reeves, Harvard Business Review, January 20, 2018.) Organizations with above-average total diversity, measured as the average of six dimensions of diversity – migration, industry, career path, gender, education, age – were also the most innovative, as

measured by their revenue mix. Each of the six dimensions of diversity were correlated with innovation, but industry, nation of origin, and gender had even larger effects on companies' revenue.

Innovation is about people. It's about the cutting edge ideas they are able to create by coming together in diverse and inclusive teams. The more diverse these teams are along these various dimensions, the more new perspectives and inspiration is added from seemingly unrelated places. These idea combinations lead to more unique and more innovative ideas.

**D. Higher Revenue Growth and Profitability: Organizations that are more diverse have a greater likelihood of being more profitable.**

Diversity and inclusion has many downstream impacts that are good for business. In fact, Harvard Business Review found that more diverse companies report 19 percent higher revenue. A McKinsey report echoed this sentiment, stating that every 10 percent increase in the racial and ethnic diversity of a business' senior-executive team leads to a 0.8 percent increase in earnings.

Additionally, organizations that are in the top quartile for racial, ethnic, and gender diversity have a 25% greater likelihood of being more profitable than the national median for their respective industry. This is especially true during times of crisis. Great Place to Work assessed hundreds of publicly traded companies before, during, and after a recession. Highly diverse, inclusive companies experienced a 14.4% gain while the stock market index S&P 500 saw a 35.5% decline in stock performance. (McKinsey, *Diversity Wins* interactive; *Racially Diverse Workplaces Have Largest Revenue Growth*, Claire Hastwell, Great Place to Work, January 5, 2020.)

According to Deloitte, diverse organizations enjoy 2.3 times higher cash flow per employee. Gartner found that inclusive teams improve team performance by up to 30% in high-diversity environments. In a BCG study, organizations with diverse management teams had a 19 percent increase in revenue compared to their less diverse counterparts. (Wong, 2020.)

**E. Promoting DEI for City Residents: In the realm of local government, diversity, equity and inclusions extends past just the workplace and to the citizens of the City in the sense that such practices promote diversity and inclusion for residents as well.**

DEI practices extend past our workplaces and to the citizens of the cities we work with and for: these practices promote diversity and inclusion for residents as well. With greater representation in a city's workforce and leadership, residents will naturally feel more included, comfortable, and confident with their local government and, in turn, this will likely increase resident participation in government and community activities, as well as the overall scope and impact of the city programs. This leads to an overall more attractive place to live and work.

#### **IV. Some practical tips and challenges for setting up a DEI committee and implementing change.**

Some of the challenges we are facing, as are all organizations, include some obvious ones and some less obvious. Obvious roadblocks include: fear of change; lack of awareness or understanding of what DEI is and its importance; lack of commitment by leadership; concerns for liability if acknowledge problems without practical solutions; reaching a consensus on definitions of the issues and possible solutions; and reluctance to participate/change behavior. Less obvious roadblocks include: unconscious bias; time constraints/pressures; need to have DEI be a fundamental strategic imperative at the organizational level and not simply another discrete program; not seeing DEI as a path to real success for the organization or for individuals; failure of one or more strategies can breed distrust and cynicism for future efforts; and unacknowledged and undistinguished need for structural changes – what this means is that either the organization is unable or unwilling to acknowledge its need for structural changes, or perhaps understands that the organization is structurally not aligned with its asserted values but cannot pinpoint or distinguish what specifically needs addressing.

How do you get participation by the people who most need to participate?

According to a recent report by the Center for Talent Innovation, the number one reason white men say they do not participate in DEI work is “I’m too busy.” (*What Majority Men Really Think About D&I and How to Engage Them In It*, Center for Talent Innovation, 2020.) Participation will likely not increase significantly unless and until it is clear from leadership that it is a necessary part of advancement. The Center for Talent Innovation report provides a useful roadmap, which begins with baking DEI into the business model of the organization, followed by showing that DEI boosts careers, and building Persuadables’ confidence and competence, accepting what you cannot change with Detractors, and focus on belonging for all. “Persuadables” make up nearly half of the majority male workforce, they are reticent to engage, and hold contradictory views. “Detractors” don’t feel DEI is important, and often feel like outsiders themselves; they say things like, “DEI efforts benefit some groups at the expense of others,” “Focusing on difference is divisive,” and “Everyone who works hard has an equal chance of success.” The main take-away here is that leadership has to be committed to the work, and to implementing policies that reflect this commitment.

Data gathering is another challenge, especially for smaller entities that may not have the data capability – our firm is exploring a voluntary and anonymous survey function with our payroll provider so that we can track our progress in diversifying our leadership.

Structural inequity and rise of cost of education is another challenge to recruiting talent into the ranks of public services. The wealth gap makes it harder for women and BIPOC individuals to undertake careers in government where the pay is lower – they are more likely to have school debt, and less able to afford the lower pay. To wit:

The average wealth of white families in 2016 was seven times the wealth of Black families and five times the wealth of Latinx families (at the median, white families have 10 times the wealth of Black families and eight times the wealth of Latinx families). This disparity

has grown over time. In 1963, white families had \$121,000 more in wealth than Black families, on average; by 2016, they had over \$700,000 more. The disparity also grows with age. On average, white people in their 30s have \$147,000 more in wealth than their Black counterparts. But by the time they are in their 60s, white people have \$1.1 million more in wealth than Black people, on average.”

*(Examining the Racial and Gender Wealth Gap In America, Statement of Kilolo Kijakazi, MSW, PhD\* Institute Fellow, Urban Institute, before the Subcommittee on Diversity and Inclusion, Financial Services Committee, United States House of Representatives, September 24, 2019.)*

Additional challenges might include if a city’s DEI efforts become embroiled in local politics. Here one suggestion is to hire an outside consultant to provide solutions and a plan of action.

## **V. Our firm’s ongoing development of a DEI committee**

Wanting and willing are not enough. Concerns of diversity, equity, and inclusion must be met with action. Taking into account all of the above, a few members of our firm began the journey to develop our firm’s first DEI committee. A committee proposal was created identifying some short- and long-term focuses of the committee and presented to the Equity Partners. The proposal provided that the overarching benefits of focusing on diversity, equity, and inclusion is increased morale, productivity, creativity, innovation, retention, and profitability.

### **A. What the Committee Has Accomplished Thus Far**

After a season of recruitment efforts, the DEI committee held its first meeting virtually on February 26, 2021. Multiple levels of attorneys were present, from Associates newly admitted to the practice of law to Equity Partners. One of the first goals for this meeting was for members to become better acquainted and to describe their interests in the committee. Those initial conversations have proved foundational for the committee. With equity and inclusion being the goal of the committee, it would only be appropriate for the committee to lead by example in its own meetings by encouraging conversation and providing the space for all voices to be heard.

During the committee’s first meeting, the committee sought to define its goals and purpose. However, before jumping into its goals, our committee maintained an open discussion regarding the difference among diversity, equity, and inclusion. Since these words often get lumped together, it was important that our committee took time in its initial meeting to understand the details. Doing so allowed our committee to better define its specific goals. Some of the goals identified during this meeting were the provision of education to the firm on DEI topics, the collection of data to better assess the firm’s DEI needs, and the planning of events and adoption of policies that could improve engagement and retention.

Throughout its development, our committee has noticed the importance of setting clear objectives. Although an open discussion of problems and issues is critical, the committee has made it a point to define the committee’s goals, as well as coordinate tasks that directly work to achieve these goals. However, it is not always easy to agree on what exactly best serves the firm.

Any committee should prepare for disagreement. Some may even encourage it. Allowing for the open sharing of ideas has helped our committee make better decisions on what best suits our workplace. It should go without saying that workplaces may greatly differ on what DEI issues need to be addressed. For example, what good is diversity if there is no inclusion?

Alongside identifying some goals, our committee began working on its mission statement. After a draft of the committee's mission statement was prepared by several members of the committee, the draft was presented at a committee meeting. After having an open discussion at the meeting and making some revisions, the following is A&W's DEI committee's proudly adopted mission statement:

A&W continues to retain and seek out diverse and talented individuals who reflect the people living and working in the communities we serve. We are committed to celebrating, welcoming, and respecting our employees and clients for their uniqueness, and to creating a work environment where they can bring their full authentic selves. We are dedicated to identifying and dismantling barriers to advancement, and to creating opportunities for our attorneys and staff to reach their full potential.

Taking our mission statement into consideration, one of the first events the committee planned was a Game Night. This event was open to all attorneys and was planned in order to create a greater sense of inclusion by allowing attorneys to connect with each other without the pressure of having to get work done. One of the issues our committee noted, likely and partly due to the COVID-19 pandemic, was that some attorneys felt isolated and disconnected, especially the younger associates who had not had the opportunity to develop the relationships with their colleagues yet, a problem greatly worsened by the pandemic. This event was designed to allow attorneys to socialize and build greater relationships, something that was undoubtedly missing within the past year, and something we believe many workplaces may be currently struggling with. The event proved to be quite successful due to the amount of seemingly engaging conversations held between attorneys and the rave reviews of the attendees after the event.

Following the Game Night, several members of the committee planned a summer bonfire event. All employees and their families were invited to the beach to enjoy tacos, s'mores, cornhole, and most importantly, stress-free time with the A&W team. There was a great turnout at the event with a variety of attorneys, staff, and family members present. For many in Southern California, not much beats an ocean breeze on a summer night. After speaking to a few attorneys and staff who attended the event, it was clear that attendees were appreciative of the event and walked away with a better sense of the people behind the names on their everyday work screens.

These two events have shown the DEI committee how helpful social events can be to the morale and inclusivity of a workplace. Our DEI committee is thankful to the particular committee members that have undertaken the planning of these events, as it takes time and effort, which are often stretched thin. We encourage DEI committees to undergo the planning of social events if one of their goals is to create a greater sense of belonging.

## **B. What the Committee Is Working On**

With the DEI committee having not even reached its first birthday, there is undoubtedly much work to be done. One of the key goals that our committee is working toward is education. We believe education should be a top priority for DEI committees. Changes within an organization may be pursued and implemented, but these changes will be much less effective if there is no education to supplement the change. Since the beginning, our DEI committee has maintained discussions of educational opportunities for our workplace. Our committee is currently working on obtaining training for the firm on unconscious bias. Our hope is that through thoughtful education our firm can be a step closer to better understanding how necessary a commitment to DEI efforts is.

To address DEI challenges and opportunities that are specific to our firm, the committee has also started working on data gathering. DEI issues vary across organizations. Our firm's goal is to accurately identify the issues present within our organization. We believe this is best done through data gathering. Our committee expects that data gathering will take quite a bit of planning and effort. We initially faced concerns regarding which method(s) of data gathering would produce the most accurate and helpful results—producing informational graphs and charts accounting for diversity and retention statistics? offering or requiring anonymous employee surveys? having employee representatives report issues faced by subgroups of employees? These are all ideas our committee is currently working through. Through this data gathering, the committee hopes and expects to obtain meaningful data to better address any issues.

With the success of the committee's early events, the committee intends to continue to plan future social events to strengthen the relationships within the firm. The committee has also considered planning informal chats and meetings between different levels of attorneys. We expect that providing the opportunities and space for employees to get to know each other will reduce feelings of exclusion. A&W's DEI Committee looks forward to all of the progress it will make and will continue to put forth the worthwhile work meaningful changes require.

Longer term goals include greater engagement and participation in DEI work at every level, and developing policies and procedures that embed DEI work into the firm's culture.

The work is just beginning, and at this stage we have more questions than we have answers – this may be the case for a very long time. We anticipate that some programs and ideas will not work, maybe will even set us back, and some will work and will propel us further along the journey. We look forward to sharing our experience and the lessons we learn well into the future.

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