



By Kathleen Nalty

Few leaders intend to be unfair in their management of the talented, diverse individuals who they have recruited and hired. But that is still what happens daily in most law firms.

Walk the Talk on Diversity, Equity, and Inclusion

Most law firm leaders can talk the talk on diversity, equity, and inclusion (DEI), and their commitment is usually genuine. But can they actually walk the talk? Have they cultivated competencies around diversity,

equity, and inclusion so that they can effectively lead their firms on these issues?

The answer to this question is critical because research shows that organizations with more advanced DEI efforts are higher performing. J. Bersin, *Why Diversity and Inclusion Will Be a Top Priority for 2016*, Forbes (Dec. 6, 2015). And the most effective leaders are the ones who are more inclusive. J. Zenger & J. Folkman, *Leaders Aren't Great at Judging How Inclusive They Are*, Harv. Bus. Rev. (Oct. 26, 2017). For instance, research by Deloitte shows that teams with inclusive leaders are 17 percent more likely to report that they are high performing, 20 percent more likely to say that they make high-quality decisions, and 29 percent more likely to report behaving collaboratively. J. Bourke & A. Espedido, *Why Inclusive Leaders Are Good for Organizations, and How to Become One*, Harv. Bus. Rev. (Mar. 29, 2019).

Given the reckoning happening in our society on racial injustice and systemic bias, there has never been a greater or more urgent need for inclusive leaders. So, what do inclusive leaders do that non-inclusive leaders don't do? They cultivate a work environment in which everyone reports that they are:

1. equally advantaged (because hidden barriers to success, caused mostly by unconscious bias, have been removed);
2. appreciated (because all differences are recognized and valued);
3. empowered to be fully authentic by the firm and with one another (so they don't have to leave their identities at the door to be successful);
4. fully informed and knowledgeable about what they need to do to attain higher levels of personal and organizational success (a byproduct of more transparency);



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- 5. included in all pertinent processes and decisions, as well as the social fabric of the organization; and
- 6. engaged and motivated to bring their best work to bear on the firm's success.

By defining what an inclusive law firm looks like, leaders can model specific behaviors that cultivate this type of environment. They can also be evaluated on their effectiveness, and firms can begin to measure progress in advancing inclusion overall.

Equally Advantaged

The American Bar Association published studies in 2018 and 2019 documenting, yet again, how diverse attorneys in legal organizations are disproportionately affected by hidden barriers to success. J. Williams et al., *You Can't Change What You Can't See: Interrupting Racial & Gender Bias in the Legal Profession*, ABA & MCCA (2018); R. Liebenberg & S. Scharf, *Walking Out the Door: The Facts, Figures, and Future of Experienced Women Lawyers in Private Practice*, ABA (2019). Straight, white male attorneys do run into these barriers, but attorneys in underrepresented groups (women, racially/ethnically diverse, LGBTQ+, and those with disabilities) are affected at much higher rates, which, in turn, cause higher attrition for attorneys in these groups. For example, the 2018 study found that white male attorneys have access to high-quality assignments at a rate 28 percentage points higher than female attorneys of color. The 2019 study determined that while 3 percent of men lacked access to sponsors, 17 times more women—almost 46 percent—have no sponsor. Further, while nearly 7 percent of men were denied a promotion, eight times more women—nearly 53 percent—were denied a promotion. Inclusive leaders understand that creating an inclusive environment requires removing hidden barriers for everyone, including straight, white men, and focusing more intently on the underlying issues that cause higher rates of exclusion and attrition for attorneys in underrepresented groups.

In particular, inclusive leaders understand that unconscious bias is the primary driver of the inequitable opportunities disproportionately affecting attorneys in underrepresented groups. Most law firms are full of good, well-intentioned people

who unwittingly spend more time with and give more opportunities to people who are more like themselves. This is a specific type of unconscious cognitive bias called “affinity bias.” While conscious biases can certainly affect talent management decisions, it is the unconscious affinity bias that primarily influences decisions of good, well-intentioned people that allow the hidden barriers to thrive. Over 70 percent of partners in U.S. law firms are white men, so it is no wonder that lawyers in underrepresented groups have disproportionately less access to critical career opportunities. Inclusive leaders take personal responsibility for this unfortunate dynamic and work to de-bias themselves, others, and organizational processes. The racial justice movement has done a good job of raising people’s awareness to how racism pervades every aspect of our society, but inclusive law firm leaders must take an equity lens to all internal systems and processes as well to ensure they are equitable and not the product of bias—affinity bias in particular.

There are six everyday behaviors that differentiate inclusive from non-inclusive leaders in ensuring that all attorneys are equally advantaged, which is the first component of an inclusive law firm. Inclusive leaders (1) develop expertise in unconscious bias; (2) use tools for uncovering personal unconscious bias; (3) implement research-based techniques for interrupting biases; (4) audit their own behaviors for unconscious affinity bias, which is the tendency among

people to favor those more like themselves; (5) uncover instances of hidden barriers in a firm caused by biases and implement systemic changes to eliminate them; and (6) invest time and effort developing all attorneys equitably. See Table 1.

Recognize and Appreciate Differences

Inclusive leaders know that cognitive diversity or diversity of thought is not enough; social identity diversity does play a critical role in decision-making groups. K. Phillips, *How Diversity Makes Us Smarter*, *Sci. Amer.* (Oct. 1, 2014). Research shows that social identity diversity causes cognitive friction, which disrupts groupthink and prompts higher levels of critical and analytical thinking in groups, leading to better decisions and higher levels of organizational performance. See S. Levine et al., *Ethnic Diversity Deflates Price Bubbles*, *PNAS* (Dec. 30, 2014). Diversity in decision-making groups is critical, not just in business decisions, but in client matters as well. This is why dozens of law departments participating in Diversity Lab’s “Move the Needle” initiative are only engaging outside counsel teams that are 50 percent or more diverse and hundreds of additional GCs are insisting on diversity. See *Businesses Double Down on Mandating Diversity from Outside Counsel*, A.B.A. J. (May 1, 2019). Inclusive leaders know that differences are valuable, and they intentionally leverage differences to gain a competitive advantage.

Table 1
Behaviors that Ensure Equal Advantages for All Versus Those that Don't

INCLUSIVE LEADERS	NON-INCLUSIVE LEADERS
Develop expertise in unconscious bias	Engage in minimal, check-the-box training on unconscious bias
Use tools for uncovering personal unconscious biases	Don't go to the trouble of learning about their own unconscious biases
Implement research-based techniques for interrupting biases	Don't use any methods for interrupting biases
Audit their own behaviors for unconscious affinity bias (the tendency to favor those more like themselves unknowingly)	Exhibit affinity bias, giving more access to critical career opportunities to attorneys who are more like them
Uncover instances of hidden barriers in the firm (caused by biases) and implement systemic changes to eliminate them	Don't know about hidden barriers or the disparities in opportunities in their firm, let alone do something about them
Invest time and effort developing all attorneys equitably	Invest more time and effort into the success of those in their own affinity group

The inclusive leaders who recognize and appreciate differences engage in certain everyday behaviors that differ from the behaviors engaged in non-inclusive leaders. Recognizing and appreciating differences is the second component of an inclusive law firm. See Table 2.

Authenticity

In organizations in which everyone's differences matter and are valued, people can bring their full selves to their work and don't have to spend time hiding or minimizing their differences, which is also called "covering." Research by New York University Law Professor Kenji Yoshino found that covering is far more prevalent among people in underrepresented groups who feel pressure to assimilate in organizations. K. Yoshino & C. Smith, *Fear of Being Different Stifles Talent*, Harv. Bus. Rev. (Mar. 2014). However, this research shows that 45 percent of white men also report covering one or more identities to fit in. This goes to show how stereotypes and biases influence an organization's culture when significant numbers of people have to change who they are fundamentally to succeed.

In an inclusive organization, people feel safe to be themselves, which necessarily increases their engagement, productivity, and performance. Inclusive leaders make everyone feel safe by engaging in behaviors that are affirming of others and their differences.

Certain, everyday behaviors allowing everyone to be their true, authentic selves set inclusive leaders apart from non-inclusive leaders. See Table 3.

Transparency

Making processes more transparent and information more available are critical because attorneys in underrepresented groups have disproportionately less access to the unwritten rules and insider information in law firms. If everyone knows what they need to know to be successful, they feel more connected and empowered to do their best work. Inclusive leaders work to build greater transparency into everything.

Comparing the everyday behaviors of inclusive leaders with non-inclusive leaders regarding transparency takes courage. See Table 4.

Table 2

Behaviors that Recognize and Appreciate Differences Versus Those that Don't

INCLUSIVE LEADERS	NON-INCLUSIVE LEADERS
Know that social differences contribute to better decisions	Believe and act as if social identities are irrelevant
Seek and form relationships with people from a wide variety of social identity groups and backgrounds	Have a circle of friends and colleagues that is very homogenous
Spend time learning about cultural and social differences and incorporate that information into their thinking (inclusive intelligence)	Are not curious about people from different social identity groups or cultures
Seek divergent information and ideas to inform their own decisions better	Are uncomfortable with people who may have different views and ideas

Table 3

Behaviors that Support Authenticity Versus Those that Don't

INCLUSIVE LEADERS	NON-INCLUSIVE LEADERS
Fight the stereotype of the "ideal lawyer" and focus on a wide variety of attributes defining what it means to be a successful lawyer	Measure people against the "ideal lawyer" prototype—either explicitly or implicitly
Commit micro-affirmations that make people feel valued for who they truly are and for the differences that they bring to the team	Commit micro-inequities and aggressions that make certain people feel like outsiders if they diverge from the "norm" in any way
Hold others accountable for valuing others and differences; call out micro-inequities and non-inclusive behaviors of others	Don't even notice when others are subtly made to feel "othered"

Table 4

Behaviors that Establish Transparency Versus Those that Don't

INCLUSIVE LEADERS	NON-INCLUSIVE LEADERS
Have the courage to be as transparent as possible	Are more comfortable engaging in black box processes so that they don't have to explain or justify different outcomes for different people
Build a discussion about diversity, equity, and inclusion into every major communication	Never think about adding DEI to meetings or communications
Make sure that everyone has equal access to essential information, especially that which affects their jobs, without compromising confidentiality	Foster situations in which only insiders and their proteges know important information
Ensure that the rules of success are available to all	Contribute to a dynamic that reinforces "unwritten rules" to success to which only insiders have access

Include Others

Unconscious bias causes attorneys in underrepresented groups to be disproportionately excluded from a variety of opportunities: invitations to networking

events, internal networking and relationships, stretch work assignments, mentor and sponsor relationships, training and development, client contact, assignment to influential committees and lead-



ership positions, as well opportunities to attend meetings and participate in decisions. This hinders them from having the experiences, visibility, or influence needed for promotions.

Additionally, if a diverse attorney is the only one belonging to a social identity group in the firm, the attorney can experience a form of social isolation called “only-ness” that sets the attorney apart as different, and often not in a positive way, given the prevalence of stereotypes and implicit biases.

Inclusive leaders include people, not only because it is the right thing to do, but also because it fosters better decisions

and outcomes as well as engagement and retention. Inclusive leaders also know how important it is to foster a sense of belonging for everyone in the firm by ensuring that people are included in the social fabric of the firm. Further, inclusive leaders build a culture that is psychologically safe, making people feel welcome to contribute different perspectives and ideas, even if they go against the grain. See Table 5.

Engagement and Motivation

Motivating and engaging teams of attorneys that are diverse, in terms of social identities, learning styles, thinking styles, and personality preferences, to name a few,

require leaders to learn about and then incorporate all of those differences into their thinking and actions. Leaders who rely only on their own personal worldview and experiences have blind spots and fail to engage diverse teams or groups at their highest level.

Inclusive leaders engage in everyday behaviors and actions that non-inclusive leaders fail to undertake to motivate attorneys from all backgrounds and groups to do their best work and achieve at their highest level. See Table 6.

Communicating About and Formalizing Leader Inclusiveness Competencies

It is important to be specific regarding competencies in inclusion so that leader behaviors and actions can be observed and measured, not only to enable leaders to set goals and benchmark the development of their skills, but to burst the “illusion of inclusion.” One study revealed a paradox: the least inclusive leaders, as reported by their colleagues, were overconfident, believing they were the most inclusive, while the leaders who got the highest marks for inclusion by their colleagues were the least confident that they were inclusive. Zenger & Folkman, *supra*.

No one can say that they are inclusive; it is up to the people you seek to include to evaluate whether you are actually inclusive of them. Thus, leaders should seek feedback on whether they are perceived as inclusive, especially from people from different social identity groups. This will help leaders to see their blind spots, strengths, and opportunities for development. It will also signal that diversity, equity, and inclusion are important. Many large companies, such as Procter & Gamble, have upward appraisal evaluations that measure the inclusiveness competencies of leaders, supervisors, and managers, and reports generated from the results target areas for growth.

Law firms that reach the level of organizational maturity where upward reviews are taking place probably also have leaders who exhibit key traits that research shows are more important to the people they lead: acknowledgement of bias, humility in addressing bias, empathy in interacting with others, and an ability to take others’ perspectives. Research shows that when

Table 5
Behaviors that Foster “Including” Everyone Versus Those that Don’t

INCLUSIVE LEADERS	NON-INCLUSIVE LEADERS
Regularly ask, “Who’s missing?” when forming decision-making groups or teams as a reminder to add diversity intentionally to bring in diverse perspectives and the cognitive friction that lead to better decisions	Form decision-making groups without regard to diversity and therefore have many homogenous groups and teams that experience groupthink
Build a critical mass of attorneys from different social identity groups to combat “only-ness” and social isolation	Don’t even notice “onlys”
Spend equitable time investing in the success of every attorney and making sure that they are included in meetings, social events, client pitches, etc.	Don’t track the opportunities that people receive and exhibit affinity bias by spending more time with and including people more like themselves
Seek contrary ideas and perspectives and create an environment in which everyone feels safe contributing, which maximizes diversity of thought	May talk about the value of diversity of thought, but many people in the firm do not view the talk as authentic and are afraid to speak up

Table 6
Behaviors that Motivate and Engage Attorneys from All Backgrounds Versus Those that Don’t

INCLUSIVE LEADERS	NON-INCLUSIVE LEADERS
Learn about colleagues to find out what is important to them, what their ideas and perspectives are, how they view the world, and what motivates them	Assume that everyone has the same world view (or should have the same view)
Deliberately flex across social differences to incorporate others’ preferences, ideas, etc. to engage and motivate them at the highest level	Treat everyone the same as they would want to be treated (golden rule), instead of the way others prefer to be treated (platinum rule), which is far more motivating
Consistently communicate the value of diversity and inclusion	Don’t really understand the difference between diversity and inclusion

leaders exhibit these characteristics, feelings of inclusion in the workplace increase by 33 percent. Bourke & Espedido, *supra*.

In addition to upward evaluation, experts recommend that leaders create a *diverse* advisory board consisting of people from a wide variety of positions, identities, and backgrounds to give candid and constructive feedback on behaviors and competencies regarding inclusion. *Id.* Some of the examples of feedback on everyday behaviors suggested by the researchers include the following:

- Does the leader give equal time to all meeting participants, or favor those who are co-located over those participating remotely?
- Does the leader always use one gender when giving examples (e.g., “he” instead of “she,” or “she or he”)?
- Does the leader use a broad spectrum of imagery accessible to diverse audiences or just one social identity group (e.g., sports metaphors)? *Id.*

Additionally, an advisory board can give leaders ongoing feedback as they test more inclusive behaviors to determine whether changed behaviors are hitting the mark.

Leaders can help everyone build fluency and capability by including a “DEI moment” on meeting agendas, which allows people to discuss experiences and aha moments that they have experienced. The competencies gained in DEI at work can carry over into people’s personal lives, as well. In one law department, a white, male paralegal pointed to the DEI moments as having had a profound effect on his own thinking and behaviors. One of his relatives had just come out as transgender, and the paralegal acknowledged that if that had happened before his participation in the meetings with DEI moments, he might have excommunicated the relative. But since engaging in these transformative discussions, he found that he had more empathy and understanding and was planning on being more inclusive of the relative.

Some Final Thoughts

Are hidden barriers thriving on your watch as a law firm leader? Few, if any, leaders wake up each morning with the intent to be profoundly unfair in their management of the expensive talent assets that they have recruited and hired into the firm,

no matter how diverse. But that is effectively what is happening on a daily basis in most law firms, and attorneys in underrepresented groups are bearing the brunt of this dynamic, due to implicit biases. While most law firm leaders view themselves as having the best intentions toward advancing diversity, equity, and inclusion, those good intentions are not enough and never will be as long as unconscious biases go unaddressed. If you’re not intentionally including, you’re unintentionally excluding—some groups of attorneys more often than others. Inclusive leaders walk the talk by making transformational change to eliminate the hidden barriers. They also walk the talk in order to live up to this larger moment in history where we are all called to uncover racism and eliminate it.

The bottom line is that inclusive leadership is a critical twenty-first century skill that can be learned, practiced, and modeled for others. Law firms lag behind many of their clients in incorporating the principles of inclusion and building personal and organizational inclusiveness competencies in leaders. But it is worth the investment since inclusion has been shown not only to make diversity work, but to make *everything* work better in organizations, including racial equity. See Bersin, *supra*. Some might argue that inclusion is *the* most essential leadership capability. 