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May 29, 2024

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Welcome & Introductions

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Leading with Inclusion After the Harvard Decision

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Leading with Inclusion After the *Harvard* Decision

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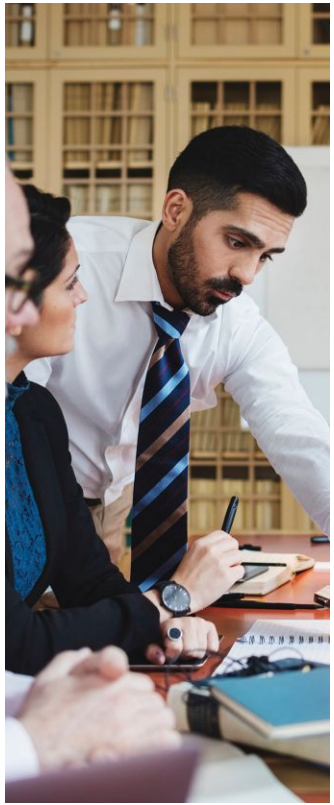
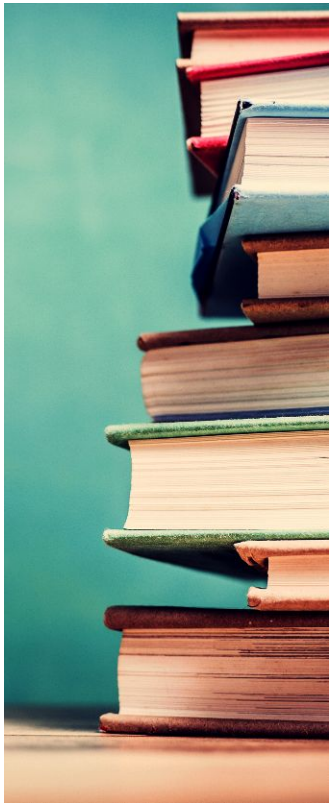
Agenda

- The *potential* impact of *SFFA* on DEI
- Why DEI continues to be important to creating inclusive environments?
- Challenges to inclusion
- Best practices for leading with inclusion

Recent Cases

- *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023)
- *American Alliance for Equal Rights v. Morrison & Foerster, LLP*, U.S. District Court, Southern District of Florida
- *American Alliance for Equal Rights v. Perkins Coie LLP*, U.S. District Court, Northern District of Texas





Students for Fair Admissions ("SFFA") is Students for Fair Admissions is a nonprofit conservative legal organization founded in 2014 by conservative activist Edward Blum for the purpose of challenging affirmative action admissions policies at schools.

SFFA v. Harvard

- Alleged discrimination against Asians under Title VI of the Civil Rights Act of 1964
- Harvard, a private institution, allowed race/ethnicity to be considered as part of a candidate's "personal rating" in their application for admission.
- The school's goal? To prevent a "dramatic drop-off" in minority admissions compared to the prior class

SFFA v. UNC

- Alleged discrimination against White and Asian Americans under Title VI and the Equal Protection Clause
- UNC, a public institution, allowed race/ethnicity to be considered a "plus" factor in an overall holistic admissions process
- The school's goal? Ensure that the minority enrollment percentage was not lower than the minority representation in NC's general population

Legal Landscape

Title VII

- Prohibits discrimination on the basis of race, color, and national origin, but **only applies to organizations that receive federal funding.**
- If organization receives federal funds, can apply to all of the organization's operations or only to a specific program depending on various factors, including the nature of the organization and whether the funding is earmarked.

Title VI

- Protects **employees and job applicants from employment discrimination based on race, color, religion, sex, and national origin.**
- Covers wide range of employment decisions, including recruitment, selection, termination, and other decisions concerning the "terms, conditions, or privileges of employment."
- Voluntary affirmative action programs permitted under Title VII if designed to: (1) eliminate manifested racial imbalances; (2) be temporary; and (3) not "trammel" interests of non-minority employees.

Section 1981

- **Prohibits race discrimination in the formation and enforcement of contracts.**
- Plaintiffs bringing Section 1981 claim must plead and prove race was but-for cause of discrimination.
- Courts have interpreted Section 1981 to apply in various contexts, **including private employment relationships, grants, and fellowships.**

July 13, 2023

Dear Fortune 100 CEOs:

We, the undersigned Attorneys General of 13 States, write to remind you of your obligations as an employer under federal and state law to refrain from discriminating on the basis of race, whether under the label of "diversity, equity, and inclusion" or otherwise. Treating people differently because of the color of their skin, even for benign purposes, is unlawful and wrong. Companies that engage in racial discrimination should and will face serious legal consequences.

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July 19, 2023

Dear Fortune 100 CEOs,

We recently reviewed a letter sent to you by 13 state attorneys general, purporting to remind you of your obligations as an employer under federal and state law to refrain from discriminating on the basis of race. While we agree with our colleagues that "companies that engage in racial discrimination should and will face serious legal consequences," we are focused on actual unlawful discrimination, not the baseless assertion that any attempts to address racial disparity are by their very nature unlawful. We condemn the letter's tone of intimidation, which purposefully seeks to undermine efforts to reduce racial inequities in corporate America. As the chief legal officers of our states, we recognize the many benefits of a diverse population, business community, and workforce, and share a commitment to expanding opportunity for all.

POLITICO

GOP attorneys general tee off on large corporations over diversity policies

The warning is a response to the Supreme Court ruling that gutted affirmative action policies in college admissions.

U.S. companies' diversity efforts are legal, Democratic AGs say

NBC NEWS

The Democratic officials said GOP attorneys general were wrong to suggest recently that the Supreme Court decision striking down affirmative action in higher education has any impact on employers' diversity efforts.

Why DEI continues to be important for inclusive workplaces

- The Workplace Should Reflect Today's Emerging Workforce
- Embracing DEI Helps Meet Employees' Evolving Needs
- Diverse Teams Lead To More Creative and Innovative Solutions
- DEI Fosters Respectful Workplace Environments
- DEI Is A Competitive Advantage
- DEI Transcends Bias
- Cultures Where Everyone Has A Voice Retain Talent
- DEI Fosters Understanding Within Organizations
- DEI Ensures Fair Treatment And Opportunities For All

Resource: **10 Reasons Why DEI Is Important For Businesses And How It's Evolving**, ***Forbes*** (May 16, 2024)

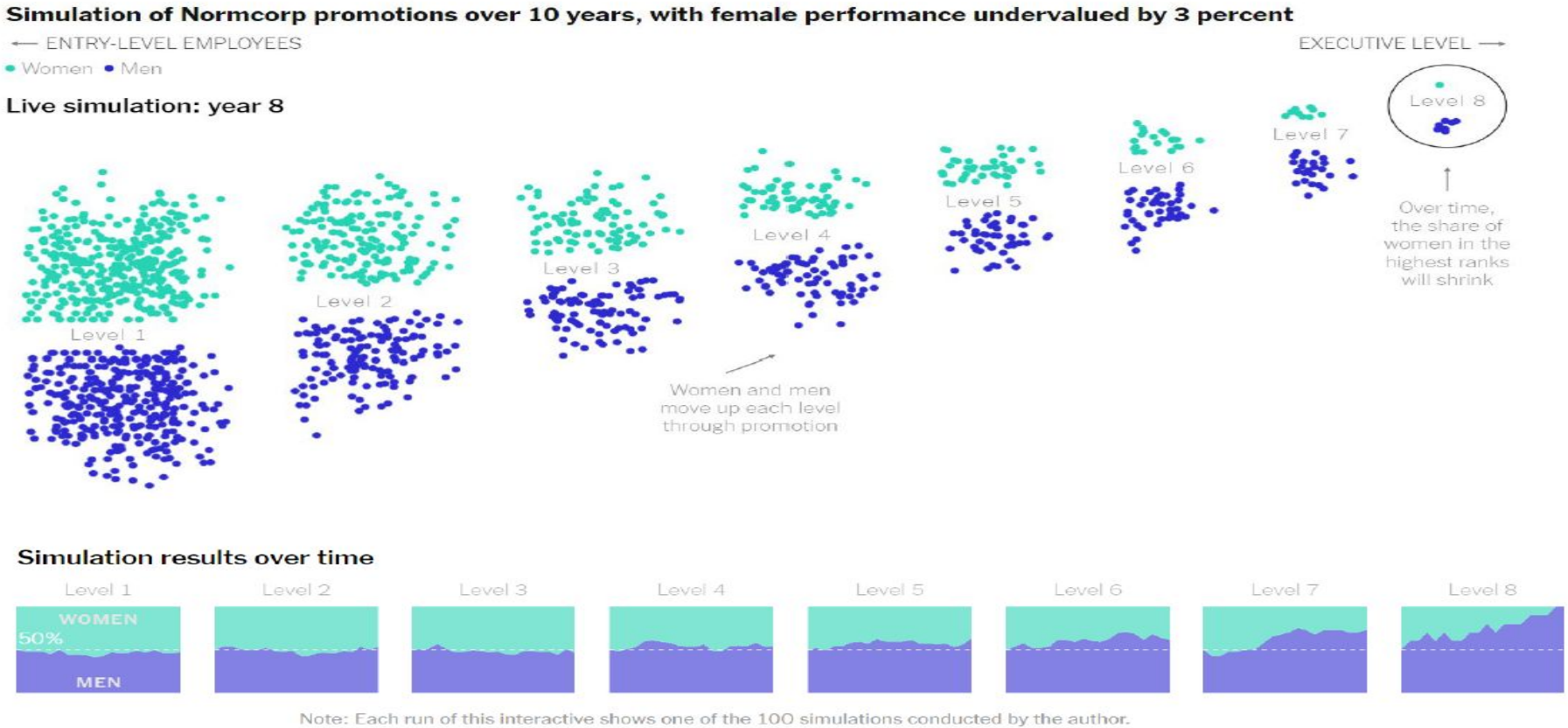
Challenges to Inclusion

- Bias/Microaggressions
- Poor Management
  - Lack of EQ

Bias & Microaggressions

- **Bias exist, we all have it and need to be active to interrupt it**
  - *Bias is a preference in favor of or against a thing, person, group or institution compared with another. It may be held by an individual, a group, or an institution, and it can have negative or positive consequences.*
- **Microaggressions, although sometimes unintentional, have long term negative impact on a person's experience**
  - *Microaggressions are subtle, intentional and sometime unintentional interactions, behavior or statements that communicate bias toward someone.*

Impact on outcomes assuming 3% bias differential



*Jessica Nordell, "This is How Everyday Sexism Prevents You From Getting a Promotion," New York Times (Oct. 14, 2021): nytimes.com/interactive/2021/10/14/opinion/gender-bias.html

The Statistics

- Both the legal industry and corporate America have struggled to diversify their workforces and upper ranks.
- There are only eight Black CEOs among Fortune 500 companies — the highest number since the list started in 1955.
- And while Black people make up about 14 percent of the U.S. population, less than 5 percent of practicing attorneys are Black, a share that has grown less than 1 percent since 2010, according to the American Bar Association.
  - About 10 percent of practicing attorneys fall into other minority groups.

The Statistics

- According to *Law360 Pulse*'s Diversity Snapshot published in July 2023, people of color comprised 12.7% of partners, 27% of non-partners, and approximately 32% of law school students. Associates of color comprised just over 30% of firms' associate classes last year.
- According to the most recent NALP Report released in January 2024, women comprised just over 50% of law firm associates last year – for the first time in 32 years, and:
  - People of color accounted for 9.6% of partners.
  - Black and Latina women accounted for 1% of partners.
- The 23 most racially and ethnically diverse law schools all fall outside of the top 50 schools in the *U.S. News & World Report* rankings.
- Recent surveys confirm law firm leaders are concerned about *SFFA*'s impact on DE&I in law firms.

“Inclusive workplaces focus on management practices that matter, not fluff”

McKinsey & Co., Inclusive workplaces focus on management practices that matter, not fluff (mckinsey.com)

Emphasis on Organizational Systems

- **Self-expression:** Creating a space for all employees to express themselves in ways that are personally meaningful.
- **Protective mechanisms:** Discouraging inappropriate, disrespectful, or biased behaviors at work and providing employees a safe way to report such behaviors.
- **Connection opportunities:** Creating opportunities for employees to get to know one another and develop interpersonal relationships across the organization.
- **Collective identity:** Uniting all employees around an overarching purpose.
- **Meritocracy:** Creating objectives and consistent processes for personnel decisions and merit-based rewards.
- **Resource accessibility:** Providing all employees with equal access to information, opportunities, and relationships they need to be successful.
- **Work-life support:** Showing appreciation for employees' non-work demands, responsibilities, and interests.
- **Participative decision making:** Encouraging and incorporating a broad set of ideas and input from all colleagues.
- **Team building:** Fostering trust, collaboration, and healthy conflict among team members to build bonds.
- **Impartial treatment:** Treating all employees fairly when allocating resources and making decisions

Emotional Intelligence

Emotional intelligence (EI) is the ability to perceive, understand, and manage emotions in oneself and others. EI involves being aware of how emotions influence behaviors and relationships and being able to regulate and express emotions appropriately. EI can be learned and strengthened, or it can be an inborn characteristic.

The 4 quadrants of emotional intelligence

Self-awareness

Self-management

Social awareness

Relationship management

Increasing EQ to Improve Poor Management and Foster Inclusive Workplaces

1. **Self-awareness**:
    1. **Recognizing Emotions**: Being aware of your own emotions is essential. Understand what triggers certain feelings and how they impact your behavior. For instance, if you notice frustration during a team meeting, take a moment to reflect on why you feel that way.
    2. **Managing Stress**: Self-awareness helps you recognize stressors and manage them effectively. When you're feeling overwhelmed, consider taking short breaks or practicing relaxation techniques.
2. **Empathy**:
    1. **Active Listening**: Show empathy by actively listening to your colleagues. When someone shares their experiences or concerns, give them your full attention without interrupting. Acknowledge their feelings and validate their perspectives.
    2. **Understanding Perspectives**: Inclusive leaders consider diverse viewpoints. Put yourself in others' shoes and try to understand their feelings and needs. For example, if a team member expresses frustration about a process, empathize with their challenges.
3. **Social Awareness**:
    1. **Observing Nonverbal Cues**: Pay attention to nonverbal cues, such as body language and tone of voice. If a coworker seems withdrawn or upset, reach out and ask how they're doing.
    2. **Cultural Sensitivity**: Be aware of cultural differences. In an inclusive workplace, understanding cultural norms and respecting diversity is crucial. For instance, celebrate various holidays and traditions to foster a sense of belonging.
4. **Relationship Management**:
    1. **Conflict Resolution**: Use EI to manage conflicts constructively. Instead of reacting impulsively, seek common ground and find win-win solutions. Encourage open dialogue and compromise.
    2. **Building Trust**: Trust is essential for an inclusive environment. Be reliable, keep your promises, and demonstrate integrity. When trust exists, collaboration and innovation thrive.

Best Practices Post *SFFA*

- Identifying the starting point as justification
- Expand recruitment activities to attract a broader applicant pool
- Train on topics like avoiding implicit bias, especially in hiring process
- Track effects of employment decisions on different groups of employees
- Establish professional development and support groups, such as ERGs
- Foster an environment where employees can provide feedback
- Focus on removing barriers to advancement and improving EEO
- Embed I&D accountability across entire organization and operations
- Consider voluntary affirmative action programs

Leading with Inclusion After the Harvard Decision

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Closing Remarks

Emily Wicker

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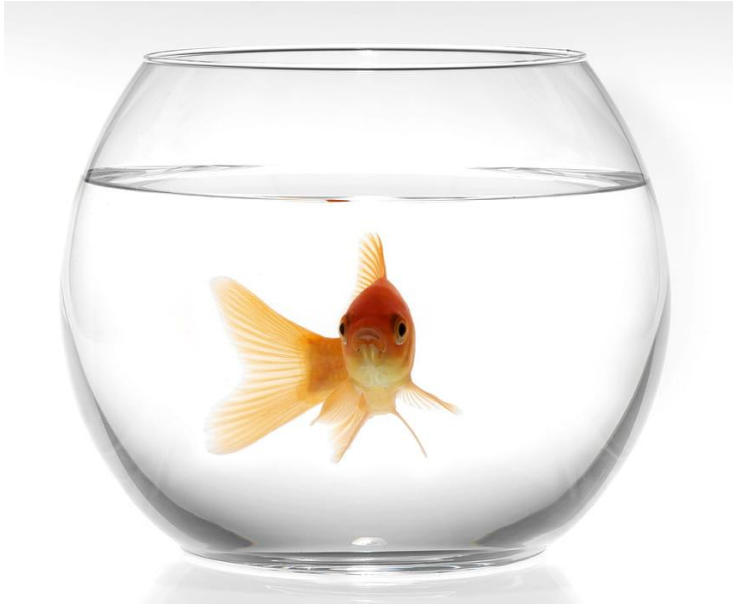
- Save the Children



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