

Diversity in Practice *presumption of gender...*

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My daughter, a preschooler and an avid basketball fan, asked me recently why there are no "girl basketball players" on the Chicago Bulls. After I explained that the NBA had basketball teams with men and the WNBA had basketball teams with women, she asked why the NBA wasn't called the MNBA because it was only for men.

At an ABA meeting around the same time, I overheard a male law firm partner jokingly ask a female law firm partner who had just spoken on women's initiatives if he needed a men's initiative to advocate for his interests. The woman, not so jokingly, retorted that he did indeed have several "men's initiatives" advocating for his interest — the executive committee and the overall partnership at his law firm. The National Basketball Association enjoys the privilege of being gender-neutral in name even though half the national population is excluded from any opportunity of participation. Similarly, executive committees in law firms, even if they are comprised of only men, are afforded the neutrality of representing the interests of all the men and women in the firm.

In other words, the power of gender privilege is the power to opt out of having a gender. Although women have constituted about 50 percent of law school classes for almost two decades, men currently make up 80 to 95 percent of law firm partnerships. Even in firms with above-average (roughly 18 percent) representations of women in partnerships, men are still the overwhelming majority in equity partnership and leadership positions within law firms.

Gender initiatives in law firms signal two implicit realities: We talk about gender when we are talking about women; and, gender initiatives are necessary because gender-neutral initiatives primarily advantage men. ***If we want to increase gender equity in law firms, should diversity and inclusion efforts work to de-gender women or re-gender men?***

Young boys and girls quickly learn that the NBA is not only just for men, it is also the standard by which basketball is objectively measured. The WNBA, by default, becomes a derivative of the NBA, a deviation from the presumed gender-neutral, objective standard of excellence. Women, who excel in the WNBA, by definition, become female basketball stars, while the men in the NBA are simply basketball stars. Female lawyers in law firms just as quickly learn that they are going to be judged by male standards of competence, excellence, and commitment, even though the standards are presented under the neutral banner of "law firm culture." Women who excel in law firms become superstar female lawyers or great female partners; their male counterparts simply become superstars or great partners.

I am not suggesting that there cannot be objective standards of competence, excellence, and commitment that are truly gender-neutral. Most law firms, however, have not yet differentiated between the ways in which the predominant male voices have interpreted these concepts from the objective possibilities that these concepts hold.

For example, a study by Debra Meyerson and Joyce Fletcher (Harvard Business Review, 2000) found that "discrimination against women lingers in common work practices and cultural norms that appear unbiased. Consider how managers have tried to — assimilate women into the workplace by teaching them to act like men — [or] accommodated women through special policies and benefits — [E]ach of those approaches proffers solutions for the symptoms, not the sources, of gender inequity."

Diversity initiatives that do not challenge the source of inequity — the presumption of gender neutrality in standards created primarily by men — preserve a status quo that cannot lead to inclusion. In this scenario, only women who can most convincingly meet the male standards find that success is attainable, but that success is often attained at the high personal cost of sacrificing personal identity for professional success. Only a few are willing to do this, which is perhaps why, in spite of 15 years of women's initiatives in law firms, gender diversity has increased only marginally, especially at the partnership levels.

Women's initiatives only treat the symptoms of inequity, not the source. They sometimes even exacerbate the inequity by focusing solely on issues such as work-life balance, which only partially impact women's lack of parity in law firms. Treating the source requires that we challenge the gender-neutrality of key success criteria and the models of evaluation by which we determine that

success. We have to either call the current standards "male standards" or we have to reframe the corrective efforts as gender-neutral efforts to change the workplace itself.

Diversity requires us to see women as different than but equal to men — in law, and even in basketball.

Perhaps, the NBA will one day live up to being a truly national association and make the need for the WNBA obsolete. If not, maybe it will consider changing its name to the MNBA so that parents who cannot deliver a world with gender equity to their daughters will at least be able to give better answers to questions about gender inequity.