Talent Advisory Board

Implicit Bias in the Recruiting Process
*June 25, 2013*

## Summary
Bias is conscious or unconscious (implicit) bias towards others of a certain group based on race, gender, sexual orientation, socioeconomic background, or generational era/age.  Some academic research rejects claims of "colorblindness" in a post-civil rights era.  Unconscious implicit bias influences the way we perceive people according to personal experiences, media influence, socially constructed ideas, and stereotypes. These perceived ideas and stereotypes can be exacerbated by certain risk factors such as ambiguous, low effort, or high pressured decision-making circumstances.  Implicit bias is a challenge in the legal profession including in the process of recruiting new attorneys.  Law firms are working to train hiring staff and attorneys in developing better strategies that work to prevent implicit bias in the selection of possible candidates who might join firms.  Such strategies include conducting personal bias assessments for interview team members, defining competencies for the job before interviewing, using behavioral interviewing techniques, and a implementing a deliberative hiring decision-making process. Examples of assessment tools, behavioral interviewing techniques, and academic research for possible use in the recruiting training and process development are included at the end of this summary. Additional Talent Advisory Board definitions, research and presentations are available upon request.

## Research Articles

### Take implicit bias out of the hiring process
American Bar Association, June 2013
http://www.americanbar.org/content/newsletter/publications/youraba/201306article04.html

The American Bar Association released a short report from Young Lawyers, a publication of the Young Lawyers Division. This report highlights practices to ensure that optimal recruiting and hiring decisions are made consistently. The Young Lawyer offers the following tips: (1) Have members of the interview team measure their biases (see tools). Once members of the interview team are aware of their personal biases, they can be motivated to change their reactions based on personal values. Interview team members must remain alert to implicit preferences and recognize that these preferences may intrude into their judgments about a candidate; (2) Define the traits and skills required to do the job before the interview process begins and stay focused on them; (3) Use behavioral interviewing techniques. These techniques help to remove bias and subjectivity from the interviewing process, as the interviewers are probing for how the candidate reacted in various situations.  For example, ask candidates to describe a situation in which they received feedback that they did not agree with and how they incorporated that feedback into their behaviors; and (4) Have a deliberative hiring process. Remember that decisions made quickly without time for reflection are more prone to correlate perceived stereotypes about people.

### Strategies to Reduce the Influence of Implicit Bias
The National Center for State Courts (NCSC), March 30, 2012
http://www.ncsc.org/~/media/Files/PDF/Topics/Gender%20and%20Racial%20Fairness/IB_Strategies_033012.ashx

The National Center for State Courts (NCSC) has conducted extensive research on implicit bias in courts and in the legal profession, and the risk factors identified are important to understand in the context of law firm recruiting decision-making. The NCSC states that, "underlying implicit attitudes and stereotypes responsible for implicit bias are those beliefs or simple associations that a person makes between an object and its evaluation." Part one of the report identifies and describes conditions that influence implicit bias in decisions and actions. This report also offers risks factors that might increase the possibility of implicit bias in one's thoughts and actions. Risk factors include certain emotional states such as anger, which can influence judgments for stigmatized group members. Happiness can produce positive judgments and this can be consciously controlled.  Another risk factor is ambiguity because when basis for judgment is vague, people use alternative information including stereotypes to make decisions. Salient social categories are risk factors because race is often a salient attribute, thus, a person might be

more likely to use race and racial stereotypes to make a decision. Low-effort cognitive processing serves as a risk factor because low-effort decision makers rely on stereotype judgments about a person early on in the information-gathering process and use this information to make decisions. Another risk factor is distracted or pressured decision-making circumstances because rushed, stressed, distracted, or pressured decision makers are more likely to apply stereotypes to end the decision process soon and escape uncomfortable situations. The last risk factor is the lack of feedback that places accountability in decision makers who use judgments and stereotypes in their decision-making process. Part two of the report provides a summary of empirical findings that supports seven strategies to reduce implicit bias.

**Seeing Through Colorblindness Implicit Bias and the Law**
Jerry Kang and Kristin Lane, *UCLA Law Review, Volume 58, page 465 (2010)*
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1633071##

In a post-civil rights era, many people believe that we live in a colorblind and post-racial society. Professor Kang discusses the importance of implicit bias in a post-civil rights era and comments on the beliefs that race and ethnic relations are no longer an issue. This report examines empirical evidence to rejects facile claims of perceptual, cognitive, and behavioral colorblindness. Professor Kang challenges the law to take a "behavioral realist" approach and examine implicit bias. The behavioral realist approach involves a three step process: (1) it identifies progress in the mind and behavioral sciences that provide a more accurate model of human cognition and behavior; (2) compares the new model with the latent theories of human behavior and decision-making embedded within the law; and (3) when the new model and the latent theories are discrepant, the behavioral realist approach asks lawyers and legal institutions to account for disparity. Through Implicit Social Cognition (ISC), Professor Kang elaborates on implicit bias and states that ISC focuses on mental processes that affect social judgments but operate without conscious awareness or conscious control. The first part of the report uses ISC to make the scientific case against colorblindness and highlights that we are not perceptually, cognitively, or behaviorally colorblind.  In the second part of the report, Professor Kang builds on behavioral realism and describes how social and legal institutions can respond to discoveries regarding colorblindness and implicit bias.

<u>Tools</u>
**Implicit Association Test (IAT)**
https://implicit.harvard.edu/implicit/education.html

Harvard's IAT measures implicit bias and demonstrates the impact of implicit bias. Specifically, the test "measures attitudes and beliefs that people may be unwilling or unable to report." For example, data from the IAT shows that women's advantage is linked to stereotypes associated to home and family. Additionally, when evaluating identical resumes, hiring staff is more likely to interview candidates with a name given to Caucasian Americans rather than a name identified with African Americans.

**Behavioral Interviews**
http://www.udel.edu/CSC/pdf/behav_interview.pdf

Behavioral interviews are critical in the law firm recruiting model, and it is critical for diverse candidates to be able to demonstrate specific job skills through questions about specific situations.  Examples of behavioral interview questions drawn from the University of Delaware model include the following: (1) Give me a specific example of a time when you used good judgment and logic in solving a problem; (2) Describe a time when you faced a stressful situation that demonstrated your team building skills, (3) Tell me about a time when you delegated a project effectively.

<u>Additional Academic Research Links</u>

Jerry Kang, UCLA School of Law
http://jerrykang.net/research/

Brian Nosek, University of Virginia
http://projectimplicit.net/nosek/papers/