Session 504: Exploring Unconscious Bias from a Diverse Attorney’s Perspective: Reflections and Solutions

There is ample literature and research regarding the issue of “unconscious bias” in the legal profession and many diversity initiatives attempt to address this issue. Much of this has focused on women in the legal profession. However, many diverse attorneys in the legal profession actually face hurdles from not only the majority racial group/gender, but also other diverse attorneys. The purpose of this panel is to discuss whether this is a real problem, address some of the root causes, and propose some solutions so that together as diverse attorneys we can help promote each other in the profession.

Program Chair & Moderator:
Rosaleen Chou, Senior Associate, Kilpatrick Townsend & Stockton LLP

Speakers:
Jayanne Hino, Partner, Davis Wright Tremaine LLP
Parkin Lee, Senior Vice President and Chief Legal Officer, The Rockefeller Group
Nimesh Patel, Executive Director for Diversity & Inclusion, U.S. Department of Homeland Security
Bettina Yip, Vice President, Associate General Counsel & Assistant Corporate Secretary, Big Heart Pet Brands
Session 504
Exploring Unconscious Bias From A Diverse Attorney’s Perspective: Reflections and Solutions

Proposed Timeline – 1 hour 15 minutes

I. **Question:** Whether Unconscious Bias Exists Amongst Diverse Attorneys? (25 minutes)
   a. Discussion of unconscious bias
   b. Existing research of unconscious bias
   c. Examining unconscious bias from a diverse perspective
   d. Personal experiences/observations of panelists

II. **Reflections:** Why Does Unconscious Bias Exist Amongst Diverse Attorneys? (20 minutes)
    a. Environmental causes
    b. Cultural causes
    c. Racial causes
    d. Other factors

III. **Solutions:** How can we bring about change to address this problem? (20 minutes)
    a. Potential areas for unconscious bias
    b. Raising self-awareness
    c. Solutions for the workplace
    d. Solutions for in-house counsel

IV. **Questions** (10 minutes)
Exploring Unconscious Bias From A Diverse Attorney’s Perspective: Reflections and Solutions

Rosaleen Chou, Program Chair & Moderator
NAPABA 2014 Convention

Premise

• There is ample literature and research regarding the issue of “unconscious bias” in the legal profession and many diversity initiatives attempt to address this issue.

• Much of this has focused on women in the legal profession. However, many diverse attorneys in the legal profession actually face hurdles from not only the majority racial group/gender, but also other diverse attorneys.
Panel Outline

- **Question**: Whether Unconscious Bias Exists Amongst Diverse Attorneys?
- **Reflections**: Why Does Unconscious Bias Exist Amongst Diverse Attorneys?
- **Solutions**: How can we bring about change to address this problem?

What is Unconscious Bias?

- The process by which an individual attributes certain qualities to, or makes assumptions about, all members of a particular group based on such individual's experiences, beliefs and learned associations.
- Typically exists with respect to gender and race, but they are also present with respect to other physical characteristics, including height, weight and hair color.
What is Unconscious Bias?

- Common theme of all unconscious biases is that the person who holds such biases are unaware that they (i) harbor such beliefs, (ii) are making assumptions about groups of individuals or (iii) are making important decisions (employment or otherwise) based on such assumptions.

Unconscious Bias in the Workplace

- In the workplace, unconscious bias is a subconscious preference to work with and engage others who share similar physical, intellectual and/or socio-economic characteristics.
- As a result of the oblivious nature of unconscious bias, it is a challenge to address.
Unconscious Bias From a Diverse Perspective

- Most Studies Show Majority to Minority Group
  - Example: Subjects given identical resumes from applicants with white or black sounding names significantly more likely to recommend white candidates

- Some Studies Show Women to Women Group
  - Example: Queen Bee Syndrome

- No Studies Have Examined Exact Issue
  - Unconscious Bias From a Diverse Perspective

Evidence of Unconscious Bias Among Women

- Queen Bee Syndrome
  - A woman in a position of authority who views or treats subordinates more critically if they are female
  - Numerous studies have confirmed this phenomenon
  - The term was first coined in the 1970s

Source: Peggy Drexler, The Tyranny of the Queen Bee (WSJ, March 6, 2013)
Queen Bee Syndrome

• In the 1974 study, researchers found that women who achieved success in male-dominated environments were at times likely to oppose the rise of other women. This occurred, they argued, largely because the patriarchal culture of work encouraged the few women who rose to the top to become obsessed with maintaining their authority.

Queen Bee Syndrome

• A 2007 survey of 1,000 American workers released by the San Francisco-based Employment Law Alliance found that 45% of respondents had been bullied at the office—verbal abuse, job sabotage, misuse of authority, deliberate destruction of relationships—and that 40% of the reported bullies were women.

Source: Employment Law Alliance (2007)
Queen Bee Syndrome

• In 2010, the Workplace Bullying Institute, a national education and advocacy group, reported that female bullies directed their hostilities toward other women 80% of the time—up 9% since 2007. Male bullies, by contrast, were generally equal-opportunity tormentors.


Queen Bee Syndrome

• A 2011 survey of 1,000 working women by the American Management Association found that 95% of them believed they were undermined by another woman at some point in their careers.

Source: American Management Association (2011)
Queen Bee Syndrome

- According to a 2008 University of Toronto study of nearly 1,800 U.S. employees, women working under female supervisors reported more symptoms of physical and psychological stress than did those working under male supervisors.

Source: Chris Irvine, Women Find Working For Female Bosses More Stressful (The Telegraph, Sept. 23, 2008)

Queen Bee Syndrome

- Irony
  - Minority group treating their same minority group more harshly
  - If anyone understands the difficulty of succeeding as a minority, it would be another minority
“The very women who have complained for decades about unequal treatment now perpetuate many of the same problems by turning on their own.”

-Peggy Drexler, *The Tyranny of the Queen Bee*

---

**Is It A Real Problem?**

- Statistics show women of color on average reported higher racial and ethnic bias than men of color, white women, and white men

Source: ABA Commission on Women in the Profession, Women of Color in Fortune 500 Legal Departments - Visible Invisibility Study (2012)
Is it a Real Problem Among Diverse Attorneys?

- Personal Observation/Experiences of Panelists

Causes

- 362 executives polled from various industries
  - Women
    - average of the diversity scale, performance rating of 3.98
    - scoring in the bottom 15% on the diversity scale, performance rating to 4.15 (a 10% increase)
  - Non-White Executives
    - top 15% on a scale of dedication to diversity, performance rating of 3.76
    - Lower diversity score correlated to an increase in performance review rating
  - White Men
    - Increase in performance review scores from valuing diversity

Source: Laura Shin, Women and Minorities Penalized for Promoting Diversity Study Says (Forbes, July 29, 2014)
Causes (environmental)

• Work environments
  – More competitive environments likely have the most explicit and unconscious bias

• Diversity
  – Lack of diversity in workplace likely see increase in unconscious bias
  – Focus on diversity in workplace – increase/decrease in unconscious bias?

Causes (cultural)

• Cultural attitudes/stereotypes
  – Toward other types of Asians
  – Toward other minority races (African American, Latino, LGBT, etc.)

• Upbringing
  – Likely under a Tiger Mom
  – Negative reinforcement
  – Constant comparison to others
  – Focusing on individual success
  – Striving for perfection
  – Fear of Failure
Causes (racial)

• Token Asian
  – Once achieve token status, don’t want to lose it
  – Others perceived as not worthy
  – Only way to “make it” is their way

• Self-identification
  – With majority group (for inclusion)
    • Distancing self from the stereotype
  – With minority group (for diversity purposes)
    • Embracing stereotype or cultural background/differences/interests

What May Seem Like Unconscious Bias May Be ....

• Personality
• Behavior
• Poor quality of work
• Attitude
• Bad decision
• Sensitivity
• Generational
What May Seem like Unconscious Bias May Be ...

- What else?

## Solutions

- Potential Areas for Bias
  - Evaluation
  - Assignments
  - Exposure to clients
  - Pay
  - Work-life balance
  - Leaves of absence
  - Social engagements
Solutions (self)

- Raising Awareness
- Tests
  - https://implicit.harvard.edu/implicit/research
- Personal Reflection
- Don’t Contribute To The Problem

Solutions (workplace)

- Employee attitude surveys, newsletters, or staff meetings
  - Law firms v. in-house
- Creating affinity groups, which provide outlets to discuss perceived inequities in the workplace
- Creating mentoring programs and support systems
Solutions
(in-house counsel)

- Tell law firms diversity is important. Ask if there are minority lawyers who can assist. Just asking is meaningful.
- When approaching a firm about a new matter, make contact with diverse lawyers.
- If you believe a minority lawyer has done a good job, promote that lawyer to your colleagues.
- Send an email to the supervisor of a minority lawyer who has impressed you.
- When contacted by law-ranking publications, mention minority lawyers who have done good work for you.
- If law firms are not responsive to your requests for diverse legal teams, consider assigning work elsewhere.