

Summer 2001

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## Printable Version

Featured Articles in this Issue:

Reminder on Conference

Remember that this year's NASJE conference begins August 22 in Williamsburg, VA. Be sure to register and book your hotel room early, and review the significant [bylaws revisions](#)\*\* you have received in the mail. Complete conference information may be found in the list below or by clicking the Annual Conference link on the menu at left.

Annual Conference

- [PowerPoint on 2001 NASJE Conference](#) (Get Agenda here)\*
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\* This will open an additional, separate browser window. You will need to print this separately.

\*\* This article will open as a PDF file. You will need the [Adobe Acrobat Reader plug-in](#), and you will need to print this separately.

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## Hotel Reservations

A block of rooms have been reserved for the NASJE conference at the Williamsburg Hospitality House. For individual reservations, call: 1-757-229-4020 or 1-800-932-9192 and refer to the National Association of State Judicial Educators event.

All reservations should be received by the hotel no later than July 21, 2001. Please note that any attendee not identifying his/her affiliation with the NASJE at the time the reservation is made will not be extended the convention rate. The sleeping room rate is \$110 single/double plus 9.5% tax. These rates will be honored two days prior and two days after the conference (based on availability).

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## Location and Transportation

Three major airports serve Williamsburg:

Newport News/Williamsburg International Airport (PHF)

The closest airport to the Hospitality House is only 20 minutes (17 miles) east of Williamsburg along Interstate 64. Served by United Express, US Airways Express, and Air Tran. Taxi services are available around-the-clock.

Map of Williamsburg area



Norfolk International Airport (ORF)

Located 50 minutes (44 miles) east of Williamsburg along Interstate 64. Served by Air Tran Airways, American, Continental, Delta, Northwest, TWA, United, and US Airways. Shuttle service offered by Norfolk Airport Shuttle, (757) 877-9477. Shuttle cost - \$28 per person/one-way.

Richmond International Airport (RIC)

Located 45 minutes (53 miles) west of Williamsburg along Interstate 64. Served by American, American Eagle, Continental

Express, Delta, Northwest, US Airways, USAir Express, United, and United Express. Shuttle service by Groome Transportation, (804) 222-7222. Shuttle cost - \$28 per person/one-way.

Driving Time From Selected Areas:

- Richmond, VA – 45 minutes
- Norfolk, VA – 50 minutes
- Virginia Beach, VA – 1 hour, 15 minutes
- Washington, DC – 2 hours, 30 minutes
- Baltimore, MD – 3 hours, 15 minutes
- Philadelphia, PA – 6 hours
- Atlanta, GA – 9 hours, 30 minutes
- Wilmington, DE – 3 hours, 30 minutes

Amtrak

Amtrak provides daily service to Williamsburg.

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## Things to See and Do

Prime Outlets – A designer outlet center, where you will find extraordinary savings on quality merchandise by top designers such as Nike, Eddie Bauer, Carter's, Liz Claiborne, Gitano, Mikasa, J. Crew, and many more. Located west of Williamsburg on Route 60 and 15 minutes from the Hospitality House.

Busch Gardens, Williamsburg – Venture into 17<sup>th</sup> Century Europe with the fun of live shows and entertainment, more than 30 break taking rides, shopping for a delectable array of European foods, colorful gardens, a petting zoo and, of course, the pride of Busch Gardens—the Budweiser Clydesdales. The park is open from March through October. For more information see <http://www.buschgardens.com>.

Water Country USA – Part of the Anheuser-Busch family of theme parks and Virginia's largest water theme part, it features water rides, pools, restaurants, and gift shops. The park is open from May through Labor Day weekend. For more information see <http://www.buschgardens.com/waterparks/watercountry/frame.html>.

Carter's Grove – A working colonial plantation featuring the original mansion. A masterpiece of early Virginia architecture—beautifully furnished with early 20<sup>th</sup> century antiques.

The College of William & Mary – The nation's second oldest college. Including the Wren building, in use since 1695—the oldest academic building in English-speaking America.

Colonial Williamsburg – An authentically restored 18<sup>th</sup> century town, complete with period workshops, craft shops, taverns, homes, gardens, costumed guides, and craftsmen. Includes the Abby Rockefeller Folk Art Center and the DeWitt Wallace Decorative Arts Gallery. For more information, see <http://www.colonialwilliamsburg.org>.

Jamestown – Life in America's first permanent English settlement depicted in three outdoor living exhibits. Full-size reproductions of the three ships, the triangular James Fort and an Indian Village, all interpreted by costumed historians. For more information, see <http://www.historyisfun.org>.

Merchant's Square – Located adjacent to the historic area, thirty shops and services offer fine dining, bookstores, clothing, and apparel shops, plus gourmet food.

Williamsburg Outlet Mall – Feature over 60 shops, a fantastic selection of clothing, shoes, gifts, accessories, housewares, linens, sportswear and much more. Located west of Williamsburg between Prime Outlets and the Pottery.

Williamsburg Pottery Factory – The original pottery was founded in 1938, and the 200-acre complex welcomes over four million visitors annually. Pottery, glass, fine china, crystal, plants, carpets, kitchenware, candles, sporting goods, and much more are available. Includes first quality items and discounted closeout items from all over the world. Located west of Williamsburg on Route 60, just 20 minutes from the Hospitality House.

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2001: An Education Odyssey:  
An Overview of the NASJE Annual Conference  
August 22 - 26, 2001  
by Christy Tull

Our professional development journey continues. From August 22<sup>nd</sup> to 26<sup>th</sup> NASJE members are invited to participate in the 26<sup>th</sup> Annual Conference. Seasoned and new colleagues alike will gather in historic Williamsburg, Virginia to network, socialize, and explore the different education opportunities in both plenary and workshop settings. Families are encouraged to accompany NASJE members at this year's new summer date and dynamic location.

After Wednesday's arrival, committee meetings, and the welcome reception, the heart of the education program begins on Thursday morning, August 23<sup>rd</sup>, with an opening plenary session led by Dr. Murlene McKinnon. Many state and national judicial educators familiar

with McKinnon's work attest to her skill at addressing relevant training for courts and judicial educators ranging from organizational communications, leadership to problem solving and team building.

Thursday afternoon's program will appeal to both new and veteran members. New Member Orientation will introduce participants to available resources, the basics of adult education, and other invaluable information for those new to NASJE. Other participants will want to attend the Leadership Convocation designed to bring together leaders of judicial education boards, commissions, and committees to learn and discuss issues surrounding judicial education today. The focus for this year's Convocation will be on public confidence in the courts and ways that judicial branch educators can fulfill our leadership obligations in this regard. Together with several state representatives, Dr. David Rottman, Associate Director of Research at the National Center for State Courts and Tom Langhorne, III will lead this interactive session on the compelling findings and practical programs which improve access to justice, promote timeliness, fairness and judicial independence.

Friday offers six diverse workshops. Topics include teamwork, grant development and implementation, distance learning and model curriculum for ethics and substance abuse. In addition, one workshop submitted by the NASJE Future's Committee will explore reform movements, implications and strategies for judicial branch education. Descriptions of these workshops are available on the [agenda](#) \*.

Rounding out the conference's formal program on Saturday will be the Regional Meetings for exchange of ideas and NASJE's Annual Business Meeting. New this year is a shortened day to allow time to enjoy the setting and continue informal networking. The Annual NASJE Board Meeting which is open to all members is scheduled for the morning of Sunday, August 26th.

Thanks to the Virginia delegation and the National Center for State Courts, social gatherings range from a reception in Colonial Williamsburg, a courtyard social of local wine and beer tasting, and fun cultural tours of the area. A hospitality suite will also be available at the conference facility for after hour enjoyment.

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### NASJE Members Win Awards

Two of our NASJE colleagues have earned prestigious national awards for their service to judicial education.

Congratulations to Dr. Maureen Conner, who has been named this year's recipient of the Ernest C. Friesen Award of Excellence from the Justice Management Institute of Denver, CO. Maureen serves judicial education

in countless ways through her role as the Executive Director of the Judicial Education Reference, Information and Technical Transfer (JERITT) Project and as Assistant Professor, School of Criminal Justice, Michigan State University. The Friesen Award is made annually by JMI to an individual who has demonstrated "vision, leadership, and sustained commitment to the achievement of excellence in the administration of justice." JMI has issued a detailed [press release](#) \* announcing the award.

Congratulations also go to Dr. Pat Murrell, Director of the Leadership Institute in Judicial Education, for being selected to receive the Harrison Tweed Award for Special Merit in Continuing Legal Education from the American Law Institute-American Bar Association. Pat will receive this award in recognition of her contributions to the education of judges, judicial educators and other court personnel at the ABA meeting in Chicago on August 5 during the ALI-ABA reception. All of us who have attended and been so influenced by the twelve Leadership Institutes that Pat has conducted know how well deserved this award is as well.

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#### Transitions

NASJE is pleased to welcome several new members to our growing organization. New Full Members from the Oregon Judicial Department include Education Division Director Clayton N. Kubota and Management Assistant Cheryl Fowler. Robyn Boche Tjernlund, Education Manager for the Minnesota Supreme Court Continuing Education Program, has also joined as a full member, as has Anne Jordan, Program Attorney for the Indiana Judicial Center. Congratulations and welcome to all of you, and we hope to meet you at the August conference in Williamsburg.

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#### The Pakistan Judicial Reform Project by Livingstone Armytage

Pakistan is a splendid country rich in hospitality, culture and mountain scenery of extraordinary beauty. It is also a country in pressing need of judicial reform and the restoration of judicial institutions and governance that deliver effective services to its citizens.

There is a cat in the records room of the Karachi District Court, maintained on the payroll of the court, to ward off the rats from the piles of dusty hessian bags which store the closed cases dating back to partition in 1948. Miraculously, not only does the cat do a masterful job protecting these records, but a file can generally be retrieved in less than ten minutes from the over-burdened shelves that climb to the fourteen foot ceilings.

In early January 2001, the Asian Development Bank launched the Strengthening of Institutional Capacity for Judicial and Legal Reform

project in Pakistan. This USD3m project is managed by The Asia Foundation and DPK Consulting, and is led by Justice (R) Shafi-ur Rahman, formerly of the apex Supreme Court of Pakistan, and this writer.

#### a. Needs

There is a consensus among the judiciary, government and legal profession on the pressing needs for reform. These needs are manifold and substantial.

Empirical research confirms that court delays in Pakistan are very serious and disruptive. i It is estimated that the backlog is five times what it should be in many courts. ii Causes for delay include inadequate and incompetent judges, frivolous litigation and dilatory tactics by the bar, and non-observance of the civil procedure code. iii Apart from delay, the high costs of litigation and lack of faith in the system are major barriers to accessing justice through the courts, especially in the subordinate courts.

Other major problems include weak governance and judicial administration, lack of professional management in the courts, lack of client focus, lack of budget resources, resulting in inadequate infrastructure, shortage of competent judges, poor pay and conditions, inadequate administrative grievance procedures, and significant barriers to access to justice, particularly for the poor and women. iv Over recent years, no fewer than eight law commissions have identified these problems and blamed governments for their lack of concern and their failure to provide resources to improve the administration of justice, without marked success.

#### b. Objectives

It is within this context that the project is designed to improve judicial service delivery and raise public confidence in the court system with a series of pilot programs over the next eighteen months. These initiatives aim to strengthen the capacity of the judiciary to commence the process of reforming the administration of justice, and build on extensive research lead by Erik Jensen of Stanford Law School. Once successful, it is expected that more substantial international assistance may be forthcoming to build new court-houses, modernise court infrastructure, and introduce judicial management information systems.

The objectives of this project are twofold: first, to initiate selected priority reforms, and second to develop the capacity in the judiciary to sustain this reform process. The principle areas for these reforms include:

1. Judicial policy and administration - to establish new institutions such as a national judicial policy body and a judicial development fund;

and introduce pilot projects on management information systems and annual reporting;

2. Delay reduction projects in District Courts - to conduct eight pilot court projects in the major cities, Lahore and Karachi, introduce case processing standards, train judges in delay reduction techniques, and introduce ADR centres attached to these courts
3. Improving access to justice - to translate laws into the local language, Urdu, improve the entry of women to the judiciary, strengthen administrative grievance procedures, and support the administration's Local Government Devolution Plan
4. Judicial training - to assist the Federal Judicial Academy to develop and provide pre-service and in-service training to judges, including publishing two bench books
5. Legal education - to promote excellence in legal education, and promote reform of the profession
6. Improving capacity to resolve commercial disputes - to establish commercial divisions in the High Courts, and review the Commercial Arbitration Act, and
7. New legislation - to amend selected legislation, particularly the civil procedure code and High Court Rules, and draft new ADR and FOI laws.

#### c. Governance

International experience in judicial reform indicates that two ingredients are essential for success. First, it must be judge-lead. Second, it must be locally owned by the courts of Pakistan.

Governance of the project is provided through the establishment of a two-tiered decision-making process. At the national level, the Judicial Policy Body (JPB) operates to determine issues of policy and to coordinate implementation at the provincial level. This body comprises the Chief Justice of Pakistan as chair, the chief justices of the four provincial high courts, and other senior judicial officers. At the provincial level, the Provincial Steering Committees (PSC's) oversee the operational implementation of the project, mainly in the subordinate courts.

A team of Pakistan's leading jurists, researchers and other experts, including eminent economist and policy analyst Shahid Kardar, former Minister of Finance for Punjab, together with a cadre of international consultants experienced in similar projects, will collaborate with the courts to provide technical assistance in implementing the project under the direction of these bodies.

#### d. Establishment

Initial work has focused on meeting with the key stakeholders to introduce



the implementation phase of the project and to strengthen the foundations of the crucial relationships on which the success of the technical assistance will depend. These meetings have involved the Honorable Justice Irshad Hasan Khan, Chief Justice of Pakistan, and the chief justices of the High Courts of the Punjab, Sindh, North West Frontier Province and Baluchistan. Consultations have also been held with members of the Provincial Steering Committees comprising senior judges from each province who will oversee the implementation of the project. In addition, meetings have been held with Barrister Shahida Jamil, Minister for Law Justice & Human Rights and other senior representatives of the Government of Pakistan.

A close working relationship is also being built with the Federal Judicial Academy, which will play an important role in the implementation of this project, both at an operational level through the delivery of training, and at an institutional level as a meeting place for the judiciary and a fulcrum for judicial development.

#### e. Project launch

The Honorable Justice Irshad Hasan Khan, Chief Justice of Pakistan, launched the project at the Federal Judicial Academy on 10 February 2001 at a ceremony attended by the provincial chief justices and more than one hundred and fifty guests. These guests included the Federal Minister for Law Justice & Human Rights, members of the Provincial Steering Committees, a large number of judges, and representatives of the Government of Pakistan.

Following the opening ceremony, inception meetings were conducted with members of the Provincial Steering Committees, and with key consultants to commence detailed planning. These working sessions clarified governance arrangements and developed the project work plan.

#### f. Delay reduction

The work plan provides the agenda for implementation of the project by specifying 'who' does 'what' 'when and 'how'.

Because of the size and complexity of the project, implementation will initially focus on Output (2), the pilot projects in delay reduction, because of its central importance to the project overall. In order to maximize the effective delivery of project resources to focusing on the major problem of delay, it is proposed to focus on those courts where delay is most substantial and chronic, that is Lahore and Karachi.

Each pilot will comprise four trial courts at the district level, including civil and criminal jurisdictions. Preliminary planning has been undertaken with

the Provincial Steering Committees in Punjab and Sindh by Mr Bill Davis, formerly Administrator of the Californian courts, and Professor Carl Baar from York University, Canada, both of whom have extensive experience in conducting development projects of this kind.

The delay reduction pilots have commenced with initial identification of pilot courts and selection of judges. We are now completing a 'closed case survey' to measure the scope of delay at each site in order to update the actual management situation and review the case and records management situation. Next, we will develop an integrated proposal for pilot courts in a planning/training workshop in early June, and selected participating judges and registrars will then undergo a study tour in delay reduction. Once these preparations are completed, it is anticipated that the pilot courts will commence hearings in early July.

Each pilot will require extensive resourcing, and will be monitored by a senior judicial mentor experienced in the work of subordinate as well as superior courts, to provide accessible guidance to the pilot judges. A research coordinator and local researchers have also been appointed with experience in judicial administration to gather the data required for the 'closed case survey' and to administer the project on a day-to-day basis. These personnel will collaborate closely with the registrars of the respective High Courts who will administer resources from the High and District Courts.

Success in these pilot projects will depend on the provision of substantial training. The pilot projects will comprise at least three distinct training phases: first, preliminary induction of all personnel in the broad approach and the methodology of conducting a 'closed cases survey' in late March; secondly, a strategic planning workshop to assess the findings of these surveys and to plan and implement the approach in each court in early June; and thirdly, a mid-term review workshop to evaluate progress to date and exchange experience nationally in November. These training activities will be conducted at, and in collaboration with, the Federal Judicial Academy as a related means of building institutional capacity.

#### g. Other initiatives

In the first three months of operation, we have provided assistance for the publication of 'Supreme Court of Pakistan - 2000'. This publication takes a significant step in making available to the public important information on the administration of justice including: the establishment, jurisdiction, organisation and role of the Supreme Court; the judicial hierarchy of Pakistan; statistical data on judicial performance for the Supreme and the High Courts for the year; strategies for the clearance of backlog; the composition of judges; code of judicial conduct; related information on the

administration of justice; and a profile of media articles on the court. This publication restores the tradition of publishing annual court reports by the courts, and has already attracted considerable attention in the media for re-asserting the imperative for judicial independence and the restoration of democracy at the earliest opportunity.

The first of three study tours is underway, and has been designed to strengthen judicial policy-making capacity. Participants include the Chief Justice of Pakistan, the Secretary of the federal Ministry of Law Justice & Human Rights, and the Secretary of the Pakistan Law Commission. The itinerary comprises consultations with Justice O'Connor of the US Supreme Court in Washington DC and Lord Chief Justice Woolf and Lord Chancellor in London, and addressing the 1701 Act of Settlement Conference in Vancouver.

Work has also commenced writing two bench books on civil and criminal practice. These bench books will serve as practice manuals, or 'how to do it' guides, for judges of the subordinate courts focusing on the most common business of the courts, and highlighting selected statutes, court decisions and procedures. These bench books will be practical, rather than theoretical, and will include checklists, guidelines and relevant references.

In addition, we are planning the inaugural national judicial conference for the Supreme Court and four provincial High Courts. This will be a major initiative for the judiciary of Pakistan to embrace and address its reform agenda. The judiciary is confronting many challenges to its independence and integrity, and it is hoped that this conference will become a significant incubator for judicial leadership and change. The Chief Justice of Pakistan has already agreed to present the keynote address, and arrangements are now being made to include leading jurists from around the common law world, such as the United States, Britain, Australia and Canada.

If you are wondering whether you might contribute to working on this challenging project - even explore the mysteries of the Records Room of the Karachi District Courts - contact the writer with a one-page resume outlining your relevant experience to: [armytag@pk.asiafound.org](mailto:armytag@pk.asiafound.org)

Livingston Armytage\*  
The Asia Foundation  
Islamabad,  
19 April 2001.

\* Author's Note -

Livingston Armytage LLM (Hons) is team leader of the project. He has moved to Islamabad where he is living until July 2002 with his wife. He is author of 'Educating Judges' (Kluwer Law: Boston

London & The Hague, 1996). Formerly education director of the Judicial Commission of New South Wales, he practiced law and has worked on judicial and legal reform projects around the world for the Asian Development Bank, United Nations and World Bank.

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i Asian Development Bank, Proposed Technical Assistance to the Islamic Republic of Pakistan for the Strengthening of Institutional Capacity for Judicial & Legal Reform, September 1999; and ADB, Pakistan Legal & Judicial Reform Project, Final Report, September 1999.

ii The problem of delay in civil cases is severe, particularly in commercial cases which tend on average to take 4.5 years to complete. In the Sindh High Court, however, this period extends to almost ten years, and property litigation to almost 7 years. Isolated cases considerably in excess of these delays are not altogether apocryphal.

iii Many cases being filed are frivolous - estimates are up to 50% of caseload. The tactics of delay are extreme: in Punjab, for example, nearly ten per cent of property cases suffer more than 100 adjournments.

iv For example: the ratio of judges to population is among the worst in the world, being twelve times less than that in the United States. Many subordinate court judges earn less than the equivalent of US\$150 per month. Women judges represent 7% of the judiciary as a whole and 3% of the superior courts. Less than 0.1% of the total Federal Government budget for current non-development expenditure is allocated to the judiciary; at the provincial level, up to eighteen times more is spent on general administration than judicial administration, and eleven times more for police at the provincial level. Legal literacy is a massive barrier to accessing the justice system, where nearly two-thirds of the population is illiterate.

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#### Web Site Gets Attention from British Commonwealth Judges

The New Mexico Judicial Education Center's Web site (<http://jec.unm.edu>) was the subject of a one-hour two-way video conference with judges from the British Commonwealth in June. A group of judges from a number of British Commonwealth countries meeting in Halifax, Nova Scotia on June 4 conducted a two-way videoconference with JEC director Paul Biderman to view the resources and educational programs JEC offers to New Mexico judges over the Web. The Canadian judge who organized the program had seen Biderman demonstrate the JEC Web site to a group of Canadian judges in Ottawa last February, and asked him to repeat his presentation for this group visiting from around the world.

The one-hour meeting, telecast from the University of New Mexico Media Technology Services studio, gave the Commonwealth judges a chance to explore the online JEC Benchbooks, the Interactive Training programs, and many of the other resources on the JEC Web site. The judges came from such countries as Nigeria, Singapore, Fiji, South Africa, Bermuda, Barbados, and the (non-Commonwealth) Philippines. They were particularly enthusiastic to learn of the domestic violence web course that JEC is currently developing, and asked to reconvene - this time in a multi-point videoconference to a number of their countries - after it goes online.

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## AJS: An Ethics Guide for Judges & Their Families

by William Brunson

With the support of the State Justice Institute, Cynthia Gray of the American Judicature Society has created a wonderful resource for judicial branch educators entitled: "An Ethics Guide for Judges and Their Families" (the "Ethics Guide"). The 130-page Ethics Guide also has a companion piece: a 48-page "Discussion Guide." This review will address separately each part of the set.

The Ethics Guide has fifteen major sections: (1) Introduction; (2) Misuse of Office; (3) Hiring or Appointing Relatives; (4) Disqualification - Introduction; (5) Disqualification - Economic Interest in a Case; (6) Disqualification - Other Careers; (7) Acting as an Attorney for Family Members; (8) Gifts; (9) Financial Activities; (10) When a Judge May Serve as a Fiduciary; (11) Civic and Charitable Activities; (12) Communications; (13) Political Activity by Members of a Judge's Family; (14) Judicial Family Life; (15) Additional Resources. The Ethics Guide relies primarily on the 1990 ABA model code and cautions the reader that the "Guide should be read with the applicable [state] code at hand to enable an accurate comparison." Ethics Guide at 3 (*italics in original*). Its spiral binding makes the publication versatile as a teaching tool. Each section includes a summary of the ethics code, examples of ethics opinions and case law from various states, and a "Q&A" that asks and answers common questions. A useful feature of the publication is the "Code Variations" segment contained in many sections which discusses state codes that differ from the ABA code.

Three areas in the Ethics Guide could be improved. First, it would benefit tremendously from an index, so users could easily find key provisions. Nevertheless, it does have a good table of contents. Second, it would benefit from a table of cases and advisory opinions perhaps separated by state, so individual users could find references to their own state codes. Finally, the publication contains some fairly obvious typographical errors

which can be distracting.

The Discussion Guide contains six sections: (1) Introduction; (2) Talk Instructions; (3) Talk Outline; (4) Talk Handouts; (5) Exercises; and (6) Additional Resources. Each section of the Discussion Guide provides discussion ideas, areas of emphasis, and suggestions for instruction. The introduction wisely states that "[t]he materials in the discussion guide present a variety of different techniques and give the planner the flexibility to design a session that reflects the interests, needs, size, and composition of the specific audience and the time limits for the presentation." Discussion Guide at 1.

The Discussion Guide could be improved in two primary areas. First, like the Ethics Guide, this publication has some noticeable typographical errors. Second, the use of the term "talk" in reference to a "lecture" or "presentation" is unfortunate. Many judicial branch educators have struggled to educate their faculty on the importance of not giving "talks." Rather, those educators should give "presentations" that are well-rounded with mini-lectures, discussion, quizzes, role-plays, etc. Despite this criticism, the publication prudently advocates, and provides good materials, for a well-rounded presentation.

In sum, Cynthia Gray has deservedly garnered the reputation of being the "ethics guru" for the judicial branch. These publications will add to that positive reputation. They will certainly be invaluable tools for anyone making a presentation in this important, but often overlooked, ethical arena.

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Our Spring issue's editorial indicated that we would provide subsequent articles addressing ways judicial branch educators can improve public confidence in the courts. The following article addresses how public confidence can be improved by providing effective gender and racial bias training.

New Models in Fairness Education: Social Cognition  
by Kathleen Sikora

#### Background

In April of this year, CJER (California Judicial Education and Research: <http://www.courtinfo.ca.gov/>) presented a new, one-day course entitled "Social Cognition and the Law" for judges, commissioners, and court training officers. The first half-day was devoted to an exploration of social cognition theory, the second to its implications for judicial branch education. I felt that it was nothing short of newsworthy that in this class, the implications of social cognition theory for furthering the goals of fairness education were readily apparent and discussed (embraced might

be a better word) with enthusiasm.

## Introduction

Despite current research that suggests that overt prejudice is declining in our society, sociologists continue to identify forms of prejudice ("modern" and aversive racism, for example) that occur less overtly and more subtly, despite widespread, self-reported adherence to egalitarian principles. As author Rupert Brown says in *Prejudice: Its Social Psychology*, "...[L]ess reactive, unobtrusive behavioral measures indicate that some of this decline may be attributable to changing social desirability norms rather than to internalized non-prejudiced beliefs." Thus, while education programs that explore personal attitudes and commonly held stereotypes in an effort make students "aware" of the potential for behaving, communicating, or judging in ways that reflect subtle or overt bias are worthwhile, they may not go far enough. This is not because we do not believe in the ethical standards that govern our conduct and decisions. Rather, it is because we genuinely believe in the principle of equal justice. Moreover, we continue to learn through research in the social and cognitive sciences that it takes more than belief to conform our behavior to a principle.

## Social Cognition: The Theory

A growing body of scientific research in the area of social cognition (psychology, sociology, neurobiology, and physiology) indicates that categorization of and preference for people based upon group identity (ethnicity, gender, disability, sexual orientation, for example-each of which is "deeply imbued with cultural values and meanings") is a normal, fundamental process of the human brain. Our ability to categorize our experience is, in fact, an "indispensable cognitive device for understanding, negotiating, and constructing our social world." We know, for example, that within a fraction of a second of meeting another person, our brain identifies his/her race, sex, and age. These mental processes might be likened to computer hardware. What goes into that hardware will differ from person to person, but we all process, encode, store, and retrieve the data we receive similarly.

Research also shows that we are, by nature, prone to most strongly prefer persons in the social categories to which we ourselves belong ("in-groups" as opposed to "out-groups"). We also tend to perceive persons in our own groups with particularity-as unique individuals-while we view "out-group" members as homogeneous, or all the same. Children at an early age show an awareness of and preference for members of their "in-groups," and these preferences become automatic, or habitual lenses through which we view the world.

Not only does this automatic process tend to filter out information that

refutes our early assumptions about groups of people, our brains more readily process information that confirms stereotyped expectancies or beliefs. In fact, when we are faced with information inconsistent with our belief, we may revise our belief under certain circumstances, but we are more likely to create a subgroup category or an "exception" to our belief, leaving that belief intact. This is especially true when the "out-group" is large and the stereotype negative.

Cognitive scientists believe that these early stereotypes or beliefs about groups of people (called "implicit biases") continue to exist at an unconscious level, despite our brain's increasing ability to reason, understand, and exercise judgment as we mature. Even our nonverbal behaviors, as judged by interactive distance, length of interview, shoulder orientation and forward lean, things we do more or less unconsciously, are affected by implicit biases. These nonverbal behaviors are themselves decoded and reciprocated unconsciously by others, in a self-fulfilling prophesy. The likelihood that we will behave, communicate, or judge others in ways that reflect our implicit biases increases under certain circumstances and decreases under others. The following factors, for example, have been shown to increase our reliance on implicit bias: distraction, stress, boredom, time pressure, absence of accountability, and lack of motivation to be accurate and fair.

Researchers at Yale University have developed an online test, or inventory, that measures implicit bias: the Implicit Attitude Test, or IAT ([www.yale.edu/implicit](http://www.yale.edu/implicit)). IAT findings indicate that 80-85% of White, European Americans over age 18 show a strong preference for Whites over African Americans, and 73%, or nearly 2/3 of all persons who take the IAT show a preference for Whites. Eighty-three percent of all persons who take the IAT show a preference for young people over old, and 69% reveal an automatic association between males and scientific (as opposed to liberal arts) professions. These statistics are particularly sobering when coupled with research regarding:

1. the influence of stereotypes (described in Prejudice as 'hypotheses in search of confirmatory information') on attributional judgments about the causes of "in-group" and "out-group" actions, and
2. one specific cognitive bias that appears to result in an "illusory correlation between minority groups and infrequently occurring attributes."

However, social cognition theory holds some good news. There is abundant evidence indicating that there are many ways to minimize the effects of implicit bias. While research shows that the use of each factor listed below has a measurable minimizing effect on implicit bias, it appears that the greater the number of factors present in combination, the greater



the minimizing effect:

- Be motivated (have or renew the drive to be fair and accurate)
- Maximize accountability (explain/justify your decisions)
- Take ample time to interview, interact, or judge
- Minimize distraction/pay attention
- Make a conscious effort/engage in an intentional thought process
- Make the category of the person explicit/salient
- Consciously confront cultural stereotypes
- Make a conscious effort to wait until all facts are present before judging
- Engage in constant vigilance-people with low-prejudiced beliefs are assisted by reminding themselves or being reminded by others of those beliefs

### Implications for Judicial Branch Education

1. Although I omitted reference to specific research findings and methodology in the discussion above, findings do exist to support each premise, many of which can be demonstrated or replicated in the classroom. Our April discussion of current research was lively, but I do not think that anyone left the course skeptical about the science. And that, perhaps, is the most exciting thing about the social cognition model. In the words of one student, "It wasn't 'touchy-feely'." That does not mean, however, that the course was not about attitudes, values and beliefs, that the course lacked opportunities for experiential learning, or that it failed to address affective learner objectives.
2. Categorization is a normal brain function even for well-intentioned people with low-prejudiced beliefs. For all of us, "implicit" or unconscious bias is a result of the dynamic interaction between our developing cognitive capabilities as children and our social environments. Thus, in my view, no one in the justice system is exempt from the need to explore the principles of actual and perceived fairness. By the same token, none of us is "to blame" for the unconscious workings of the human brain. Recall that this discussion is not about overt or conscious attitudes, preferences, biases or discrimination. This model "depersonalizes" the fairness inquiry (again, the words of one participant) and "no one felt defensive." That does not mean, however, that the discussion was not serious and deeply personal.
3. Perhaps most importantly, there are things we can do to minimize the effects of implicit bias. Concrete, practical things that, most likely without specific knowledge of social cognition theory, we have been talking about in judicial branch education programs for years.

4. Social cognition theory touches every interaction we have with other people, whether at the courthouse counter, in the interview room, or in the courtroom. Thus, its potential relevance to education programs is limited only by the type of programs offered. "Stand-alone" courses that explore the nature and extent of bias and stereotyping and their potential impact on conduct and decision-making would put the theory to good use, as would courses on courtroom management or communication, jury selection, customer service, or employment practice. Faculty development programs might explore the theory for use by faculty when fairness issues are integrated into substantive courses, or when fairness issues arise spontaneously in class. Of special interest to those who teach decision-making might be the relationship, between social cognition research and current research on the decision-making process itself-the cognitive processes, for example, that are brought to bear in cases of uncertainty (e.g., judgments influenced by what is typical, judgments influenced by what comes easily to mind, and judgments that rely on what comes first).

#### Conclusion: What's Next?

Just as making the social category of a person explicit, or salient, is thought to minimize the potential effects of implicit bias (see Psychology, Public Policy, and Law, 2001, Vol. 7, No.1, 201-229), making explicit, or salient, the processes by which our brains categorize, stereotype, and judge others might well serve to maximize the likelihood that we will engage in other "minimizing" strategies. Social cognition theory not only reinforces what we've learned about fairness education over the past 10-15 years, it validates much of what we're doing. It also explains why some of our educational efforts have met with such resistance. It also offers an approach that at once lets everyone and no one "off the hook." (And it includes a check-list.)

CJER's Fairness Education Committee plans to develop a curriculum design on social cognition theory, and, when it does, we will share it with you. As always, fairness education is a work in progress.

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