BENCH CONDUCT FOR TEMPORARY JUDGES



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Temporary Judge Program Conditions for Appointment

- Member of the California State Bar in good standing with no disciplinary action pending
- Has not pled guilty or no contest to a felony, and has not been convicted of a felony that has not been reversed
- Have been a member of the State Bar for at least 10 years or completed the waiver process
- Have satisfied the education and training requirements

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TJP Application Process

- Application and Placement Questionnaire
- Two letters of reference
- Oath for the Office of Temporary Judge
- Coursework: Bench Conduct and Demeanor, Judicial Ethics, and Substantive Training
  - Traffic: 3 hours
  - Small claims: 5 hours
  - Civil, probate and family: proof of 3 hours of coursework
- Small claims and Traffic only: Two observations



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TJP Continuing Education

- Coursework: Bench Conduct and Demeanor, Judicial Ethics, and Substantive Training
  - Traffic: 3 hours
  - Small claims: 5 hours
  - Civil, probate and family: proof of 3 hours of coursework

The Judicial Council Temporary Judge website provides mandatory and subject-area online courses developed by the California Center for Judicial Education and Research **free of cost.**



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Course Outline

1. Judicial Demeanor—Unifying Principles of Judicial Ethics
2. ABCs of Communication
3. Fairness as a Judicial Skill
4. Self-monitoring for Bias
5. Conduct at the Courthouse



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Resources

- Participant Materials—Practical Tips
  - Self-represented Litigants
  - Persons with Disabilities
- Annual Report of the CJP
- Rothman's California Judicial Conduct Handbook
- Continuing the Dialogue Series



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Canon 6

- "Anyone who is an officer of the state judicial system and who performs judicial functions including, but not limited to…a temporary judge, is a judge within the meaning of this code.

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Canon 6

- All judges shall comply with this code except as provided below."

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Canon 6

- For temporary judges, the following Canons apply when the temporary judge is actually hearing a matter:

  Canons 1, 2A,
  3B(3), 3B(4), 3B(6),
  3D(1), 3D(2)

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Canon 6

- The following Canons apply to the temporary judge from the time of appointment until the termination of appointment:

  2B(1), 3B(1), 3B(2),
  3B(5), 3B(7), 3B(8), 3B(12),
  3C(1), 3C(3), 3C(5)

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Canon 1

"… A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved…."

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Canon 2A

"A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

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Canon 2B

- "(1) A judge shall not allow…relationships to influence the judge's judicial conduct or judgment…to convey the impression that any individual is in a special position to influence the judge."

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Canon 3B

- "(1) A judge shall hear and decide all matters assigned to the judge except those in which he or she is disqualified."

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Canon 3B

- "(2) A judge shall be faithful to the law regardless of…public clamor or fear of criticism, and shall maintain professional competence in the law."

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Canon 3B cont.

- "(3) A judge shall require order and decorum in proceedings before the judge."

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Canon 3B cont.

- "(4) A judge shall be patient, dignified, courteous…and shall require similar conduct of lawyers and of all staff and court personnel under the judge's direction and control."

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Canon 3B cont.

- "(5) A judge shall perform judicial duties without bias or prejudice."

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Canon 3B cont.

- "(6) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice upon race, sex, gender, religion, national origin, etc…"

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Canon 3B cont.

- "(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the full right to be heard according to the law…Unless otherwise

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Canon 3B cont.

- authorized by law, a judge shall not independently investigate facts in a proceeding and shall consider only the evidence presented or facts that may be properly judicially noticed."

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Canon 3B cont.

- "(8) A judge shall dispose of all judicial matters fairly, promptly and efficiently. A judge shall manage the courtroom in a manner that provides all litigants the opportunity to

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Canon 3B cont.

- have their matters fairly adjudicated in accordance with the law."



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Canon 3B cont.

- "(12) A judge may participate in settlement conferences or in other efforts to resolve matters in dispute…A judge may, with the express consent of the parties or their lawyers, confer

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Canon 3B cont.

- with the parties and/or their lawyers during such resolution efforts…At all times during such resolution efforts, a judge shall remain impartial and shall not engage in conduct that may

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Canon 3B cont.

- be reasonably perceived as coercive."

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Canon 3C

- (1) Diligent discharge of administrative duties

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Canon 3C cont.

- "(3) A judge shall require staff and court personnel…to observe appropriate standards of conduct and to refrain from manifesting bias or prejudice based upon race, sex, etc…"

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Canon 3C cont.

- "(5) A judge shall not make unnecessary court appointments. A judge shall exercise the power of appointment impartially, on the basis of merit, without bias or

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Canon 3C cont.

- prejudice…and in a manner that promotes public confidence in the integrity of the judiciary…"

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Canon 3D

- "(1) Whenever a judge has reliable information that another judge has violated any provision of the Code of Judicial Ethics, that judge shall take appropriate corrective action…"

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Canon 3D cont.

- "(2) Whenever a judge has personal knowledge…that a lawyer has committed misconduct…the judge shall take appropriate corrective action…"

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Canon 6:

- In addition to compliance with the above Canons, the temporary judge from time of appointment to time of termination of appointment shall:

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Canon 6D(2)

- "(b) Not personally solicit memberships or donations for religious, service, educational, civic, or charitable organizations from the parties and lawyers appearing before the temporary judge…"

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Canon 6D(2) cont.



"(c) Under no circumstances accept a gift, bequest, or favor if the donor is a party, person or entity whose interests are reasonably likely to come before the temporary judge…

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Canon 6D(2) cont.

A temporary judge…shall discourage members of the judge's family residing in the judge's household from accepting benefits from parties,

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Canon 6D(2) cont.

who are reasonably likely to come before the temporary judge…"

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Canon 6D(3)

- A temporary judge shall from time of notice of appointment until time of termination of appointment, disqualify himself or herself in any proceeding as follows:

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Canon 6D(3) cont.

- "(a) A temporary judge—other than a judge solely conducting settlement conferences—is disqualified to serve in a proceeding if any one or more of the following are true:

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Canon 6D(3) cont.

"(i) the temporary judge has personal knowledge of disputed evidentiary facts concerning the proceeding…"

"(ii) the temporary judge has served as a lawyer in the proceeding…"

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Canon 6D(3) cont.

"(iii) the temporary judge, within the last 5 years, has given legal advice to, or served as a lawyer for a party in the present proceedings…"

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Canon 6D(3) cont.

"(iv) the temporary judge has a financial interest in the proceedings…"

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Canon 6D(3) cont.

"(v) the temporary judge, or the spouse or RDP of the temporary judge, or a person within the third degree of relationship…is a party to the proceeding or is an officer, director or trustee of a party…"

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Canon 6D(3) cont.

"(vi) the temporary judge, or the spouse or RDP of the temporary judge, or a person within the third degree of relationship…is associated in the private practice of law with a lawyer in the proceeding…"

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Canon 6D(3) cont.

(vii) A temporary judge shall disqualify him or herself if for any reason:

(A) the temporary judge believes his/her recusal would further the interests of justice

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Canon 6D(3) cont.

(B) the temporary judge believes that there is a substantial doubt as to his or her capacity to be impartial; or

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Canon 6D(3) cont.

(C) a person aware of the facts might reasonably entertain a doubt that the temporary judge would be able to be impartial. Bias or prejudice toward an attorney in the proceeding may be grounds for disqualification; or

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Canon 6D(3) cont.

(viii) the temporary judge has received a campaign contribution of $1,500 or more from a party or lawyer in a matter that is before the court and the contribution was received in anticipation of an upcoming election

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Canon 6D(3) cont.

(b) A temporary judge before whom a proceeding was tried or heard is disqualified from participating in appellate review of that proceeding

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Canon 6D(3)

(c) Discussions or arrangements about prospective employment as a dispute resolution neutral are subject to Canons (review).

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Canon 6D(3) cont.

(d) A lawyer is disqualified from serving as a temporary judge in a family law or unlawful detainer proceeding if in the same type of proceeding:

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Canon 6D(3) cont.

(i) The lawyer holds himself or herself out to the public as representing exclusively one side; or

(ii) the lawyer represents one side or more of the cases in which he or she appears.

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Canon 6D(4)

Waiver of 6D(3)(a)-(d)-can be mutually waived by parties but do not induce a waiver. Waiver must be IN WRITING and made part of the court record.

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Canon 6D(5)-(7)

Written disclosure requirements

No gifts, etc. for two years after appointment

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Canon 6(D)(8)

A temporary judge shall not:

(a) Disclose nonpublic information acquired during service

(b) Not commend or criticize jurors…

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Canon 6(D)(8)

(c) Not lend the prestige of the office to advance his/her or another person's pecuniary or personal interests…

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Canon 6(D)(9)

(a) No use of temporary judge title or service in promotional materials or on a ballot designation for judicial or other elected office

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Canon 6(D)(9)



(b) Can use temporary judge service on judicial application or employment in a judicial position.

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Canon 6(D)(10)

Appointment as a temporary judge lasts for 1 year from appointment or last hearing, whichever is later, unless otherwise stated

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Canon 6(D)(11)

Temporary judge cannot represent parties to proceeding in which he/she acted as a temporary judge without consent of all parties.

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Canon 6(D)(12)

Temporary judge cannot accept employment in another matter where confidential information has been received and is material to the new matter.

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STIMULI IN COURTROOM

Triggering Emotions and Feelings

Reflection



No Reflection



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Triggers

We are all subject to having reactions to irritation, annoyance, and anger that are caused by what is going on in the court.

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Exacerbating Circumstances

- Events are sometimes exacerbated by things we may not be aware of that provoke a reaction, or
- Events in our private lives increase our stress or susceptibility to these reactions.

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SMALL GROUP EXERCISE



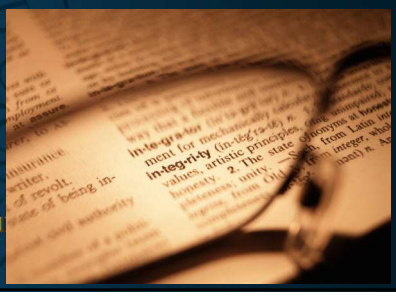
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CENTRAL PRINCIPLE OF JUDICIAL ETHICS

To ensure the integrity and honesty of the process of judicial decisionmaking and of judicial decisions.



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Watson Video



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Watson Exercise Question 1

Was Watson's behavior consistent with what we expect of a person who is sitting in judgment of the lives of others?

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Pillar I-Mindfulness of Being a Judge

Always be mindful that you are a judge—whether on the bench, at a party, or on Facebook.



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Watson Exercise Question 2

Was *Watson* mindful of what was going on around him and was he mindful of how he was behaving and why he was doing so?

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Pillar II-Awareness in the Courtroom

Be conscious of what you do and say in the courtroom. Always be attentive of what others are doing and saying in proceedings, and notice reactions, feelings, and thoughts in regard to what is taking place.



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Watson Exercise Question 3

Did *Watson* exhibit awareness of, or commitment to, following the law? Had he become a law unto himself?

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Pillar III-Rule of Law

Actions and decisions in court must be within the law.



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Watson Exercise Question 4

Did he make assumptions instead of base conclusions on fact finding?

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Pillar IV-Do Not Make Assumptions

Challenge assumptions, and engage in no prejudging.



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Watson Exercise Question 5

a) Did he take things personally?

b) Did he maintain professional distance and avoid being embroiled?

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Pillar V-Professional Distance

Do not take things personally, becoming embroiled or being an advocate.



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Watson Exercise Question 6

Based on what you saw, does it appear likely that the judge was on track to assuring the integrity and honesty of his ultimate decision, or the *appearance* of such a decision?

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Pillar VI-Honesty and Integrity

Ensure honesty and integrity in the process of making decisions and in the decision.



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Pillar VII-Righteousness & Courage

Do what is right according to law and work to have the courage to do so.



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Pillar VIII-Accountability

Accept and ensure judicial accountability.



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Fundamental Purpose of Code

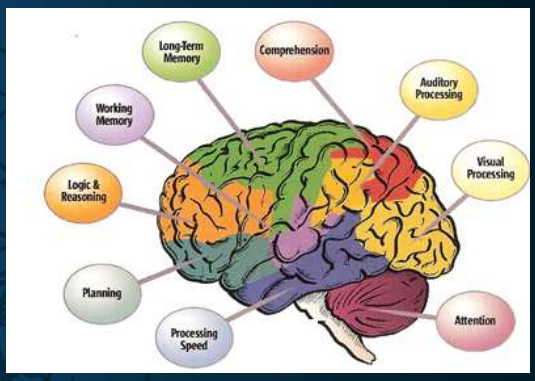
"The fundamental purpose of the Code of Judicial Ethics is to ensure the integrity and honesty of the process of judicial decision-making and judicial decisions. All the rest, as Hillel said when talking of the Golden Rule, is commentary."

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Self-Monitor Scale



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Body Language Video

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Communication

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Active Listening

1. Actually listen—acknowledge and focus on both speaker and message.
2. Draw out the message.
3. Communicate your understanding.
4. Encourage confirmation or clarification.

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Body Language

- Non-verbal cues
- Open vs. closed communication
- EQ & social intelligence

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Constructive Feedback

- Begins with positive statement
- Be specific
- Be honest & factual
- Personalize your comments
- Positive consequences
- Problem-solving approach for the negative
- End with positive statement

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Break



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The Skill of Judicial Fairness

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Fairness course goals

1. Review what Code of Judicial Ethics says about fairness and bias.
2. Identify common stereotypes and biases.
3. Discuss ways to self-monitor for fairness.

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Reasons to resist a fairness course

- "I am fair or I wouldn't be here."
- "The faculty thinks they know more about fairness than I do" or "They're going to tell me how to be 'politically correct.' "
- "People who think the courts aren't fair are probably the ones who lose their cases."

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Ground rules

1. We ask for:
   - openness
   - introspection
   - disagreement
   - privacy
2. There are no "right" or "wrong" answers.
3. No "put-downs" for ideas or choice of words.
4. In discussing gender bias, we will not blame one gender.

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What court users care most about

- Having their day in court
- Telling their story
- Being listened to
- Being treated with respect

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Canons referring to fairness

- First sentence of preamble
- Canon 2A
- Canon 2C
- Canon 3B(5), (6), (8)
- Canon 3C(1) and (3)
- Canon 3E

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Definition of Bias

Bias refers to beliefs, feelings, attitudes, and behaviors (speech or action) that reflect:

- Stereotypes about the "true nature" and role of a person;

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Definition of Bias (cont'd)

- Cultural assumptions; or
- Preconceptions about or preferences toward people or groups of people.

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Recollections

Take a minute to recall a situation in your life (any time, on or off the bench) in which you were treated unfairly because of bias, prejudice, or an assumption about you that was not true.

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Rothman's Pillars

- Mindfulness of role
- Awareness of courtroom
- Rule of law
- No assumptions
- Professional Distance
- Honesty & Integrity
- Courage
- Accountability

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Social Cognition & the Law

- Interdisciplinary field that blends psychology, sociology, neurobiology, and physiology
- Principles relate to unintended bias
- Categorization and preferences based on group identity
- Practical ways to minimize bias in role as judges

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Social cognition research conclusions

- Categorization of and preference for people based on group identity is a normal, fundamental process of the human brain.
- Our ability to categorize our experience is an "indispensable cognitive device for understanding, negotiating, and constructing our social world."

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CACI Jury instruction 113

- "Each one of us has biases about or certain perceptions or stereotypes of other people. We may be aware of some of our biases, though we may not share them with others. We may not be fully aware of some of our other biases.
- Our biases often affect how we act, favorably or unfavorably, toward someone. Bias can affect our thoughts, how we remember, what we see and hear, whom we believe or disbelieve and how we make important decisions."

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CACI 113 (continued)

- "As jurors you are being asked to make very important decisions in this case. You must not let bias, prejudice, or public opinion influence your decision. You must not be biased in favor of or against any witness because of his or her disability, gender, race, religion, ethnicity, sexual orientation, age, national origin, socioeconomic status or preconceived notions, ideas, generalization and stereotypes."

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The brain identifies,
within a *fraction* of a second,



- Race
- Age
- Sex

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Mental schemas

- During the process of categorization, our brains encode information about groups of people (*i.e.*, traits) into our memories, along with favorable or unfavorable impressions or values.
- These mental constructs are sometimes called schemas.



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In Group / Out Group Dynamic

This research shows that we are, by nature, prone to prefer most strongly persons in the social categories to which we belong ("in groups" as opposed to "out groups").



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Particularity vs. Sameness

- We also tend to perceive persons in our own groups with particularity (as unique individuals).
- But we view out-group members as homogeneous, or all the same.

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Consequences

And the likelihood that we will behave, communicate, or judge others in ways that reflect implicit bias *increases* under some circumstances and *decreases* under others.

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Factors that increase likelihood of reliance on unconscious bias

- Distraction
- Stress
- Boredom
- Time pressure
- Strong emotion
- Absence of accountability
- Lack of motivation to be accurate and fair

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How to minimize the effects of implicit bias

- Stay motivated to be fair and accurate.
- Maximize accountability.
  - Ask a colleague to observe?
  - Look for patterns in your decisions?

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Take ample time.

- Are hearings with some groups or cases longer or shorter? Why?

Minimize distractions and pay attention.

- Minimize stress.
- Deal with anxiety and/or depression.

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Acknowledge the category of the person—make it explicit.

- Be conscious of difference.
- Don't try to ignore difference.

Consciously confront cultural stereotypes.

www.implicit.harvard.edu/implicit

Consider counter-stereotypical choices.

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Make a conscious effort–engage in an intentional thought process (think about your thinking).

Make a conscious effort to wait until all facts are present before judging.

Engage in constant vigilance. People with low-impact implicit biases are assisted by reminding themselves or being reminded by others that it is an ongoing challenge to minimize the effects of bias.

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Honesty and Integrity of Decisions

- Rests on the independence of the judiciary and public confidence in the judiciary.
- Public confidence in the judiciary requires the courage to do the right thing and accountability.

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Interpreters

when, who and how

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When is an interpreter needed?

- Limited English Proficient (LEP) person:
- requests; attorney requests; when person not able to communicate because of language barrier; staff determines need

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Who can get an interpreter?

- LEP: party, witness, person with legal decision authority, or person with significant interest or involvement in case (e.g. victims, guardians, custodians of minors)



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Who can serve as interpreter?

- Certified or registered
- May appoint provisionally qualified interpreter
- If above unavailable and waived, may appoint other qualified person

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Qualifications of non-credentialed interpreter

- Voir dire
- Training
- How English/other language was learned
- Prior experience
- Neutrality in interpretation
- Facilitate communication only
- Do not give advice or provide opinion



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Who cannot serve as interpreter?

- Minors, no exception
- Persons with conflict of interest
- Bilingual staff

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Tips for effective use of interpreters

- Allow interpreter and LEP person to converse for accents, dialect or other differences
- Speak directly to LEP person, not to interpreter
- Instruct participants to speak loudly, slowly, and one at a time

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Tips for effective use of interpreters

- Pause so interpreter can keep pace
- Account for interpreter fatigue – breaks every 30 minutes
- Do not ask interpreter to explain anything said to LEP person

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Rule 2.816. Stipulation to court-appointed temporary judge

(a) Application. This rule governs a stipulation for a matter to be heard by a temporary judge when the court has appointed and assigned an attorney to serve as a temporary judge in that court.

(b) Contents of notice. Before the swearing in of the first witness at a small claims hearing, before the entry of a plea by the defendant at a traffic arraignment, or before the commencement of any other proceeding, the court must give notice to each party that:

(1) A temporary judge will be hearing the matters for that calendar;

(2) The temporary judge is a qualified member of the State Bar and the name of the temporary judge is provided; and

(3) The party has a right to have the matter heard before a judge, commissioner, or referee of the court.

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Rule 2.816. Stipulation to court-appointed temporary judge (continued)

(c) Form of notice. The court may give the notice in (b) by either of the following methods:

(1) A conspicuous sign posted inside or just outside the courtroom, accompanied by oral notification or notification by videotape or audiotape by a court officer on the day of the hearing; or (2) A written notice provided to each party.

(d) Methods of stipulation. After notice has been given under (a) and (b), a party stipulates to a court-appointed temporary judge by either of the following:

(1) The party is deemed to have stipulated to the attorney serving as a temporary judge if the party fails to object to the matter being heard by the temporary judge before the temporary judge begins the proceeding; or (2) The party signs a written stipulation agreeing that the matter may be heard by the temporary judge.

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Rule 2.816. Stipulation to court-appointed temporary judge (continued)

(e) Application or motion to withdraw stipulation. An application or motion to withdraw a stipulation for the appointment of a temporary judge must be supported by a declaration of facts establishing good cause for permitting the party to withdraw the stipulation. In addition:

(1) The application or motion must be heard by the presiding judge or a judge designated by the presiding judge.

(2) A declaration that a ruling by a temporary judge is based on an error of fact or law does not establish good cause for withdrawing a stipulation.

(3) The application or motion must be served and filed, and the moving party must provide a copy to the presiding judge.

(4) If the application or motion for withdrawing the stipulation is based on grounds for the disqualification of, or limitation of the appearance by, the temporary judge first learned or arising after the temporary judge has made one or more rulings, but before the temporary judge has completed judicial action in the proceeding, the temporary judge, unless the disqualification or termination is waived, must disqualify himself or herself. But in the absence of good cause, the rulings the temporary judge has made up to that time must not be set aside by the judicial officer or temporary judge who replaces the temporary judge.

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Department 14 Notice

(California Rules of Court, Rule 2.816)

PLEASE TAKE NOTICE:

A temporary judge may be hearing the matters on today's calendar. The temporary judge is a qualified member of the State Bar and the name of the temporary judge will be provided in the courtroom announcements.

However, you have a right to have your matter heard by a commissioner of the court. If your matter is a misdemeanor, you have a right to have your matter heard by a judge of the court.

If you object to your matter being heard by the temporary judge, please see the courtroom clerk or bailiff (Sheriff's deputy) before the temporary judge starts the calendar so that your matter may be rescheduled to a commissioner or, if you are charged with a misdemeanor, a judge.

NOTICE IS FURTHER GIVEN that you are deemed to have agreed to the attorney serving as a temporary judge if you do not notify the court that you object to the matter being heard by the temporary judge before the temporary judge begins the proceeding.

Cal. Rule of Court 2.816

TJP-F1006 Revised 1/17/20

"My name is (NAME), and I am a certified temporary judge and a qualified member of the State Bar who will be hearing the matters on today's calendar. You have a right to have your matter heard by a commissioner of the court. If your matter is a misdemeanor, you have a right to have your matter heard by a judge of the court. If you object to your matter being heard by me, please see the courtroom clerk or bailiff before the calendar begins so that your matter may be rescheduled to a commissioner or, if you are charged with a misdemeanor, a judge. You are deemed to have agreed to me serving as a temporary judge if you do not notify the court that you object to the matter being heard by me before I begin the proceedings."

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Hypotheticals



Group Activity

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Thank you!

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