**Beyond the Bench**

**Law, Justice, and Communities Summit**

Framework

**Equal Justice**

* A recent survey conducted for the National Center for State Courts found that only 32 percent of African Americans polled believe that state courts provide equal justice to all.[[1]](#footnote-1)
* State courts have worked diligently over the last 25 years to address issues of racial and ethnic fairness.[[2]](#footnote-2)
* Despite these substantial efforts, public skepticism that racial and ethnic minorities receive consistently fair and equal treatment in American courts remains widespread.
* What explains the disconnect between the extensive work undertaken by state courts to ensure racial and ethnic fairness and lingering public perceptions of racial unfairness?
* At least one explanation may be found in an emerging body of research on implicit cognition.[[3]](#footnote-3)

**What is Implicit Bias (or Unconscious Bias)?**

* Research shows that individuals develop implicit attitudes and stereotypes as a routine process of sorting and categorizing the vast amounts of sensory information they encounter on an ongoing basis.[[4]](#footnote-4)
* Implicit, as opposed to explicit, attitudes and stereotypes operate automatically, without awareness, intent, or conscious control.
* Intuition can be accurate, but can also be a source of erroneous judgment.[[5]](#footnote-5)
* People harbor a variety of invidious associations, including:
  + Male/Career and Female/Family; and
  + 80% of white adults more closely associate white with good and black with bad.[[6]](#footnote-6)

* These associations influence individual judgments.
* Judges are committed to egalitarian norms in ways that can blunt the effect of these intuitive associations on judgment.
* Contemporary psychological research demonstrates that people possess two cognitive systems: an intuitive system and a deliberative system. In ordinary life, people must use both systems. The intuitive system is faster, and a bit less conscious. Knowing when to suppress intuition is essential to sound judgment.
* A new model called “intuitive-override” provides a more accurate account of judging and points to several reforms which the civil and criminal justice systems could implement to produce more just and accurate outcomes.[[7]](#footnote-7)

1. ## Lorri Montgomery, *Judges Team up with PBS’s Tavis Smiley for "Listening Tour,”* NCSC News Release (June 16, 2016) *available at* <http://www.ncsc.org/Newsroom/News-Releases/2016/Listening-Tour.aspx>.

   [↑](#footnote-ref-1)
2. Nat’l Center for State Courts, Helping Courts Address Implicit Bias (2012) *available at* <http://www.ncsc.org/~/media/Files/PDF/Topics/Gender%20and%20Racial%20Fairness/IB_Summary_033012.ashx>. [↑](#footnote-ref-2)
3. *Id.*  [↑](#footnote-ref-3)
4. 4 *Id.* [↑](#footnote-ref-4)
5. Jeffrey J. Rachlinski*, Does Unconscious Racial Bias Affect Trial Judges?*, Cornell Law Faculty Publications (March 2009) *available at* <http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1691&context=facpub>. [↑](#footnote-ref-5)
6. # Project Implicit offers the Implicit Association Test at <https://implicit.harvard.edu/implicit/takeatest.html>. Other research has found that about 40% of black adults favor white associations. Terry Carter*, Implicit Bias is a Challenge Even for Judges,* American Bar Association Journal (Aug. 2016) *available at* <http://www.abajournal.com/news/article/implicit_bias_is_a_challenge_even_for_judges>.

   [↑](#footnote-ref-6)
7. Jeffrey J. Rachlinski, PowerPoint. For more information on Professor Rachlinski’s research, visit <http://works.bepress.com/jeffrey_rachlinski/>. [↑](#footnote-ref-7)