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Diversity in the Courts

By Associate Judge Ana M. Otero, City of Houston Municipal Courts

Introduction

Diversity is a topic that has become increasingly important as our state, indeed our country, continues to grow embracing people from diverse cultural, ethnic, and racial backgrounds. It remains a serious concern since prejudice and ignorance, whether blatant or subtle, have not been fully eradicated. Nationwide, bigotry still persists, but the concerns in the courtroom setting transcend the issues of prejudice; the concerns also stem from the acknowledgment that the criminal justice system is ill prepared to deal with the diverse numbers of immigrants and that misunderstanding in these cases abounds. A culturally non-responsive judicial system can result not only in legally flawed decisions but can cause an immeasurable loss of respect and public confidence. "A culturally responsive system is one in which the key players have the education, training, and sensitivity necessary to identify the linguistic needs of a diverse population of immigrants and to have some understanding of the legal and cultural forces that may have contributed to the immigrants' behavior."¹

Diversity issues are particularly important in the municipal courts that occupy a unique position in the Texas judicial system. More citizens come

into personal contact with municipal courts than with all other Texas courts combined. The reason for the vast majority of appearances is a traffic ticket. For most citizens - whether appearing as a defendant, witness, or juror - this may be their only personal contact with the judicial system. Persons in any court for the first time will form a lasting impression of the justice system. Public impression of the judicial system is affected and shaped in large measure by the proceedings of the municipal court.² During the state fiscal year 2001, over 1,200 judges served in the 869 municipal courts operating in Texas cities. In the City of Houston, the fourth largest city in the country, over 1,000,000 tickets are filed annually, and over 8,000 people visit the court every day.³

The Diversity Program

As part of the 12-hour training program for court personnel taught by the Texas Municipal Courts Education Center, I was asked to teach a two-hour session on diversity in the courts to Texas municipal courts' clerks and managers. In preparing for the seminar, I contacted a number of state agencies nationwide and was provided with an array of valuable information ranging from diversity training manuals, videos, to comprehensive articles. This paper was produced as a result of the

feedback and discussion generated at these training sessions, and incorporates many of the salient principles derived from the materials obtained from state sources. I have attached a number of these articles to be read in conjunction with this paper.⁴

The two-hour program focused on four principal areas:⁵

- Appreciating and Valuing Differences;
- Bias;
- Stereotyping; and
- Communication.

The goals of this program were to promote fairness and diversity in the

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AROUND THE STATE

Court Issues Amended Code of Judicial Conduct

Texas Supreme Court justices issued revisions Thursday to the Texas Code of Judicial Conduct, the ethics rules for state judges, striking a provision restricting campaign speech by judges and judicial candidates following a decision by the U.S. Supreme Court.

The U.S. Supreme Court held that ethical restrictions in Minnesota prohibiting judges and candidates from announcing positions on legal and political issues violated the First Amendment's free speech right.

The revised Texas ethics provisions were approved following a study of the Minnesota decision by an ad hoc committee of law professors and constitutional scholars. The Court renumbered select canons and made these substantive changes:

- struck Canon 5(1), which prohibited statements indicating an opinion "on any issue that may be subject to judicial interpretation" by the office a judge holds or a candidate seeks;
- amended Canon 3(B)(10) - prohibiting public comment on pending or impending proceedings that would suggest a probable decision in the case - to apply to judicial candidates as well as judges;
- amended existing Canon 5(2)(i) to prohibit pledges or promises regarding pending or impending cases, specific classes of cases, litigants or propositions of law "that would suggest to a reasonable person that the judge is predisposed to a probable decision in cases within the scope of the pledge." This section becomes Canon 5(1)(i);
- added a new provision, to be Canon 5(1)(iii), prohibiting a statement violating Canon 3(B)(1); and
- added a comment to Canon 5, warning that a campaign statement may raise questions of a judge's impartiality "in the context of a particular case and may result in recusal."

The Court noted that a more extensive study of Texas judicial ethical rules would be undertaken.

Justice Hecht, in a separate statement, expressed doubt that the revisions sufficiently comply with the First Amendment but agreed with the Court that immediate action was needed.

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 02-_____

**STATEMENT OF JUSTICE HECHT
CONCURRING IN THE AMENDMENTS TO
THE TEXAS CODE OF JUDICIAL CONDUCT**

APPROVED AUGUST 21, 2002

Before promulgating any rule, the Supreme Court of Texas must, in my view, determine that the rule does not violate the United States Constitution, the Texas Constitution, or federal or state law. The Court should not adopt rules of doubtful validity. A strict adherence to this standard must yield to present circumstances.

After the United States Supreme Court's decision in *Republican Party of Minnesota v. White*, 122 S. Ct. 2528 (2002), it is clear that Canon 5(1) of the Texas Code of Judicial Conduct violates the First Amendment to the United States Constitution and should be repealed. It is less clear whether other Code provisions relating to judicial speech – Canon 3(B)(10) and the remainder of Canon 5 – are likewise infirm. The eminent members of the advisory committee appointed by the Supreme Court of Texas are not of one mind on the subject, and the issues and arguments they have raised in their deliberations over the past few weeks deserve thoughtful consideration. This can be done, however, only at the expense of delaying guidance to the scores of judicial campaigns well underway across the State. I agree with the Court that some immediate action is necessary while the Code is reviewed further.

Therefore I join in the Code amendments approved today although I remain in doubt whether they are sufficient to comply with the First Amendment.

Nathan L. Hecht
Justice

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 02-_____

**APPROVAL OF AMENDMENTS TO THE
TEXAS CODE OF JUDICIAL CONDUCT**

In *Republican Party of Minnesota v. White*, 122 S.Ct. 2528 (2002), the United States Supreme Court held that Minnesota's canon of judicial conduct, which prohibits judicial candidates from announcing their views on disputed legal and political issues, violates the First Amendment. In light of that decision, this Court determined it was appropriate to review the provisions of the Texas Code of Judicial Conduct to determine the extent to which changes to the Code were necessary. The Court appointed an advisory committee, composed of nationally recognized experts in the area of judicial ethics and free speech, to advise the Court about *White's* impact on the Texas Code of Judicial Conduct. The Committee's performance of its charge was exemplary and provided valuable insights to the Court. We commend the following members of the Committee for their dedication to this task:

Mr. Charles L. Babcock, Chair
Mr. Leon Carter
Professor Douglas Laycock

Dean John B. Attanasio
Mr. R. James George
Professor Roy Schotland

Professor Elaine Carlson
Professor David M. Guinn

The Court, having carefully considered the Committee's comments and recognizing that a general election involving a substantial number of judges and judicial candidates will take place shortly, has determined that it is appropriate to make amendments to the Texas Code of Judicial Conduct. These amendments should be placed in proper context. While there is no doubt that *White* compels amendments to our Code, the immediacy of pending elections requires that these amendments

be undertaken without the full and deliberate study the Court would ordinarily employ. Like many of our sister states, we are called upon to provide immediate guidance to judges, judicial candidates and the electorate before the next election in November 2002. Thus, while we are inclined to engage in an extended debate on the impact of *White* with scholars, judges, the media, the Commission on Judicial Conduct, and other interested parties, we must yield to the reality that hundreds of judicial races will be contested this November and that the judges and candidates involved in those races are entitled to some direction on the permissible limits on judicial speech during this election cycle.

These changes represent our initial attempt to satisfy the requirements placed on our judicial conduct code by *White*. The Court will continue to examine the extent to which these or additional changes to the Texas Code of Judicial Conduct are required. Subsequently, the Court will announce the formation of a committee to examine all of provisions of the Texas Code of Judicial Conduct.

Accordingly, it is

ORDERED that:

- 1 The Texas Code of Judicial Conduct is amended as follows:
 - a. Canons 3(B)(10), 6(B), and 6(C)(1) are amended; and
 - b. Canon 5 is amended and a comment is added
2. These amendments take effect immediately;
3. The Clerk is directed to file an original of this Order with the Secretary of State forthwith, and to cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*.

SIGNED AND ENTERED this 22nd day of August 2002.

Thomas R. Phillips, Chief Justice

Nathan L. Hecht, Justice

Craig T. Enoch, Justice

Priscilla R. Owen, Justice

James A. Baker, Justice

Deborah G. Hankinson, Justice

Harriet O'Neill, Justice

Wallace B. Jefferson, Justice

Xavier Rodriguez, Justice

CANON 3(B)(10)

(10) A Judge shall abstain from public comment about a pending or impending proceeding which may come before a judge's court in a manner which suggests to a reasonable person the judge's probable decision on any particular case. *This prohibition applies to any candidate for judicial office, with respect to judicial proceedings pending or impending in the court on which the candidate would serve if elected.* A [The] judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This section does not apply to proceedings in which the judge or *judicial candidate* is a litigant in a personal capacity.

CANON 5

~~(1) [A judge or judicial candidate shall not make statements that indicate an opinion on any issue that may be subject to judicial interpretation by the office which is being sought or held, except that discussion of an individual's judicial philosophy is appropriate if conducted in a manner which does not suggest to a reasonable person a probable decision on~~

any particular case.

~~(2)~~] A judge or judicial candidate shall not:

(i) make pledges or promises of conduct in office regarding pending or impending cases, specific classes of cases, specific classes of litigants, or specific propositions of law that would suggest to a reasonable person that the judge is predisposed to a probable decision in cases within the scope of the pledge ~~judicial duties other than the faithful and impartial performance of the duties of the office, but may state a position regarding the conduct of administrative duties~~];

(ii) knowingly or recklessly misrepresent the identity, qualifications, present position, or other fact concerning the candidate or an opponent; or

(iii) make a statement that would violate Canon 3B(10).

~~(2)~~ ~~(3)~~] A judge or judicial candidate shall not authorize the public use of his or her name endorsing another candidate for any public office, except that either may indicate support for a political party. A judge or judicial candidate may attend political events and express his or her views on political matters in accord with this Canon and Canon 3B (10).

~~(3)~~ ~~(4)~~] A judge shall resign from judicial office upon becoming a candidate in a contested election for a non-judicial office either in a primary or in a general or in a special election. A judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention or while being a candidate for election to any judicial office.

~~(4)~~ ~~(5)~~] A judge or judicial candidate subject to the Judicial Campaign Fairness Act, Tex. Elec. Code § 253.151, *et. seq.* (the "Act"), shall not knowingly commit an act for which he or she knows the Act imposes a penalty. Contributions returned in accordance with Sections 253.155(e), 253.157(b) or 253.160(b) of the Act are not a violation of this paragraph.

COMMENT

A statement made during a campaign for judicial office, whether or not prohibited by this Canon, may cause a judge's impartiality to be reasonably questioned in the context of a particular case and may result in recusal.

CANON 6

B. A County Judge who performs judicial functions shall comply with all provisions of this Code except the judge is not required to comply:

(1) when engaged in duties which relate to the judge's role in the administration of the county;

(2) with Canons 4D (2), 4D (3), or 4H;

(3) with Canon 4G, except practicing law in the court on which he or she serves or in any court subject to the appellate jurisdiction of the county court, or acting as a lawyer in a proceeding in which he or she has served as a judge or in any proceeding related thereto.

(4) with Canon ~~(5)~~~~(3)~~~~(5)~~~~(4)~~.

C. Justices of the Peace and Municipal Court Judges.

(1) A justice of the peace or municipal court judge shall comply with all provisions of this Code, except the judge is not required to comply:

(a) with Canon 3B(8) pertaining to ex parte communications; in lieu thereof a justice of the peace or municipal court judge shall comply with Canon 6C(2) below;

(b) with Canons 4D(2), 4D(3), 4E, or 4H;

(c) with Canon 4F, unless the court on which the judge serves may have jurisdiction of the matter or parties involved in the arbitration or mediation; or

(d) if an attorney, with Canon 4G, except practicing law in the court on which he or she serves, or acting as a lawyer in a proceeding in which he or she has served as a judge or in any proceeding related thereto.

(e) with Canon ~~5~~~~(3)~~~~(5)~~~~(4)~~. ✍

courts, and strengthen public confidence in the courts.⁶ Its objectives were to:⁷

- Understand the importance of facilitating and maintaining an environment that values and promotes fairness;
- Value fairness as a professional skill;
- Identify manifestations of unfairness in the courtroom;
- Identify and use techniques and resources to eliminate actual and perceived bias in courts; and
- Recognize our diverse population.

A personal objective was also to assess the awareness of diversity issues throughout the Texas municipal courts and the training needs of the participants regarding this complex and important topic.

Accordingly, I prepared a questionnaire that was handed out at the beginning of the program covering questions on each of the four principal areas. The questions were designed both to elicit opinions and comments, and to facilitate and enhance the discussion.

Approximately 150 questionnaires were turned in. Throughout this paper, I have selected and incorporated a number of the responses obtained from the participants.

At the beginning of the seminar, I asked the participants what they expected to learn from the program. The majority of responses indicated a desire to fully understand the meaning of diversity:

- How to understand all people better.
- How to communicate more effectively in different situations.

- To learn to deal with all types of people without being unfair or biased.
- To be open-minded in the treatment of all defendants.
- How to recognize traits and various differences in people to better understand our commonality and differences.
- To communicate effectively with all types of people.
- To be fair and impartial in the treatment of all people.
- To understand diversity, different people, and cultures.
- How to make everyone feel equal.
- Learn not to judge by appearances.
- How diversity issues apply to municipal courts.
- What exactly is diversity? How does it relate to the courts?
- How to deal with people without being judgmental.
- How to recognize diversity problems in courts.
- Am I prejudiced? Do I treat people different without realizing it?
- Different ideas on how to make everyone feel equal when they approach my desk.
- How to handle discrimination in the courtroom.

The discussion that followed developed the topic of diversity, addressing the participants' concerns, encouraging input as to specific situations that occur in their courtrooms, and offering suggestions and recommendations that can be easily implemented.

1. APPRECIATING AND VALUING DIFFERENCES

Understanding the importance of diversity improves work and customer relations, while increasing personal sensitivity, awareness, and knowledge of the differences and similarities between people and groups.⁸

A discussion of diversity is challenging for numerous reasons. First, the term diversity is rarely clearly defined. The lack of common definition creates misconceptions and permeates confusion. Second, the topic of diversity is often perceived as politically charged. As a result, people skirt the issue and avoid direct and open discussion for fear of confrontation or recrimination. Third, many of us have distinct perceptions about diversity – many of which are deeply entrenched in personal attitudes, values, and beliefs. Finally, discussions of diversity are general and esoteric – intellectual abstractions rarely effectively tied to the business at hand. That is – How does understanding what diversity means and appreciating and valuing differences help us promote a fair and effective judicial system?⁹

What is diversity?

While diversity has been defined in myriad ways, it is basically variety – a “collective mix of similarities and differences wherever you might find them.”¹⁰ It includes the following:¹¹

- All the way people differ.
- Our humanness.
- The differences that make us unique.
- Recognizing and taking advantage of the unique qualities that each of us possess.
- Inclusion.
- Any mixture of items with differences and similarities.

And, while the term diversity encompasses many definitions, it is also multi-dimensional.

These dimensional differences can be divided into primary and secondary.¹²

Primary Differences:

- Sex
- Age
- Height/Weight
- Able Bodied/Disabled
- Racial/National Background
- Cultural/Religious Background

Secondary Differences:

- Educational Level
- Sexual Orientation
- Socioeconomic Status
- Income
- Parental Status
- Geographic Origin
- Work Experience
- Life Style
- Goals and Ambitions
- Personality

Understanding diversity goes beyond recognizing physical differences in people. It encompasses appreciating the way people think and how they do things.¹³ It also requires a constant vigilance on the part of all court personnel to ensure that we are not reacting to first impressions or learned behavior.

Poor diversity management will result in unfair judicial decision making, unequal treatment of defendants, partial and biased driven judgments, anger and resentment by defendants, and perceptions that our judicial system is inherently unfair. An effective diversity management program requires tolerance, awareness, communication, and leadership.¹⁴

At the end of this section, I asked the participants: What steps can be taken

to make sure that diversity is treated with respect in the courts? Their responses had a common theme; the following were repeated numerous times by different participants:

- Do not judge by appearances. Treat everyone the same way.
- Tolerance and an open mind.
- Make a more conscious effort to treat everyone equally.
- Education, courtesy, and respect.
- Knowledge, understanding, and compassion. The desire to make a difference.
- Have more training.
- Equal enforcement of courtroom rules by court staff.
- Make everyone aware of diversity policies.
- Do not assume how someone feels or what their needs are. Be ready to listen with an open mind.
- Be fair and impartial.
- Have diversity training on a quarterly basis.
- Become aware of your own biases.
- Be open minded as to different cultures. Do not make snap judgments.

Many participants recommended diversity training for court personnel as a step to ensure that diversity is treated with respect in the courts. This is insightful and telling. Of the 150 questionnaires collected, only a handful of participants indicated that their courts offered any type of diversity training.

2. BIAS

What is bias? It's an inclination, a bent, a preconceived opinion or predisposition to decide a cause or an issue influenced by any consideration other than its merits. It's the way we behave towards other people.¹⁵ In the

courtroom setting, bias can be detected in "court interactions" — communication among individuals throughout the courthouse, particularly:¹⁶

- The words, actions, and behaviors that court officers and employees display towards the public;
- The attitudes and beliefs these words, actions, and behaviors convey to the public; and
- The effect of these words, actions, and behaviors on public trust and confidence in our legal system.

Words, actions, and behaviors that indicate bias diminish public trust and violate two fundamental principles of our justice system that:¹⁷

- Our courts are free of perceived and actual bias; and
- Equal access to fair and dignified treatment in our courts await all who enter therein.

Biases are exhibited in at least three ways in court interactions:¹⁸

1. Conduct that overtly communicates hostile biases or stereotyping.

- Making a joke that plays on gender or ethnic stereotypes.
- Speaking more slowly to a person whose primary language is other than English but who was actually born and reared in this country.
- Assuming that a person of Hispanic, Asian, or African descent, or a woman is not a judge, attorney, or officer of the court.

2. Mistaken conclusions drawn by judges, court employers, or users, because of ignorance of variation in behavioral norms among cultural groups.

- Assuming that a nod or a "yes" indicates thorough understanding.
- Assuming that someone is lying if

he or she does not make eye contact. In many cultures, making eye contact with someone in a position of authority is considered disrespectful.

3. Habits of court employees that reflect conscious or unconscious bias.

- Addressing majority lawyers by formal title such as counsel, but minority lawyers by informal reference such as their first name.
- Referring to women by terms such as “honey,” “sweetie,” or “dear.”

WHAT DOES BIAS IN THE COURTROOM DO?¹⁹

Judges

Raises doubts about their objectivity
Threatens principle of equal justice under the law

Attorneys

Weakens their position vis-a-vis other attorneys
Damages their professionalism
Encourages attorneys to disregard facts, operate on biases

Witnesses

Lessens the value of their testimony
Misguides jury’s consideration of evidence
Weakens attorney’s case

Defendants/Claimants

Lead to unfair judgments
Undermines confidence in the legal process

Jury Members

Prejudices their judgments
Clouds their insights

Avoiding perceived or actual bias in the courtroom is essential to all exercise of judicial power.²⁰ Public trust and confidence in our legal system is grounded in the practice and

perception of fairness and equality in our courts and in the offices that lend support to our courthouses. More important, the presence of fairness and equality in our courts is primarily a product of the people who work there and how they conduct themselves when interacting with the public.²¹

I asked participants: What is your role in reducing biased behavior in the courtroom?

The responses were as follows:

- Treat all with courtesy and a smile.
- Share this training with others. Change some of my attitudes.
- Practice what you preach.
- Practice patience and understanding. Exhibit active listening and feedback.
- Become more conscious of my actions.
- Be consistent in the treatment of all defendants.
- Avoid favoritism.
- Notice when you are treating someone different and correct yourself.
- Let the staff know how they should be handling all defendants.
- Acknowledge that biases exist and try to check yourself often.
- Lead by example. Make sure that you are being fair and courteous to everyone.
- Do not misjudge appearances.
- Discuss with court personnel the importance of treating people with courtesy and respect.
- Do not assume. Be aware. Exercise decorum.
- Act neither in an overly friendly nor unfriendly manner to individuals in the courtroom or at the counter.

- Practice telephone courtesy.
- Attend training.

3. STEREOTYPES

We are products of our culture and experiences. As such, we hold or are aware of many assumptions about our own and other racial groups. The sources of racial/ethnic stereotypes are many and the effects can be positive or negative.

At this juncture of the seminar, the participants were given a handout which contained multiple boxes each labeled with a different racial or ethnic group and divided by gender. For example, one box was labeled Latino/Hispanic, and the next box was labeled Latina/Hispanic, and so on with other races such as African American, Asian, etc. The participants were asked to spend a few minutes mentally filling in the boxes with stereotypes that exist out in the world - both positive and negative.²² Many participants were surprised that they could fill the boxes in such a short period of time. The responses were enlightening.

Most participants were hesitant to share the stereotypes they had mentally selected but, being a Hispanic woman, I volunteered some of the stereotypes that abound among my ethnic group regarding Latino men. For example, passionate lovers, lazy, machistas, domineering, controlling, good dancers, etc. Then, I elicited comments from other Latina women in the audience or anyone who would volunteer their own stereotypes. What we discovered through our discussion is that stereotypes and the assumptions we make about any group of people can be deceptively false.

One recent research finding in the area of social cognition holds that the brain, through such processes as categorization and stereotype-matching advantage, processes information through various shortcuts that tend to reinforce our expectations, especially

under stressful circumstances.²³

If we are having a bad day in the courtroom, and a defendant from one of these groups appear at the bench, the negative stereotype that we may have assigned to this group might surface and affect our decisions.

“The subversive nature of unconscious thought is revealed by this riddle:²⁴

A father and a son are enroute to a baseball game when their car stalls on the railroad tracks. The father can't restart the car. An oncoming train hits the car. The father dies. An ambulance rushes the boy to the hospital. In the emergency room, the surgeon takes one look and says: “I can't operate on this child, he's my son.”

As cognition researcher, Douglas Hofstadter, pointed out, even intelligent, broad-minded people go out of their way to invent bizarre scenarios – sometimes involving extraterrestrials – to solve the riddle. What prevents most people from seeing that the surgeon is the boy's mother is the reliance of the brain on the “default assumption” that a surgeon is a man.²⁵

These “default assumptions” if not checked by awareness and understanding can be lethal in the courtroom setting. One last example described by K.C. Cole will illustrate my point.

“What scientists refer to as ‘behavioral confirmation biases’ were dramatically illustrated by a series of experiments in which similar black and white job applicants were questioned by a white interviewer while researchers watched behind a one-way mirror. When the job applicants were black, interviewers sat farther back in their chairs, avoided eye contact, stumbled over their speech, and posed fewer questions.

The next part of the test was designed

to look at the behavior of the job applicants. This time, the researchers became the interviewers. For consistency, all the applicants were white. With half of the applicants, the researchers intentionally mimicked the behaviors of the interviewers in the first part of the experiment used on blacks (sitting back, stumbling over words, and so on); with the other half, they behaved as the interviewers had with whites – that is, they sat forward in their chairs, maintained eye contact, spoke clearly, and asked more questions.

Other researchers watching from behind the one-way mirror evaluated how the applicants seemed to perform during the interview. The result was that the white applicants, when treated as the black applicants had been, were rated less confident, less articulate, and less qualified for the job.

What makes these behaviors hard to correct is that they are completely unconscious; the brain jumps to conclusions in under a second, ‘the time it takes to recognize your mother,’ Hofstadter noted.²⁶

A second interesting finding in the area of social cognition is as that the elimination of stereotypes requires more than good will. It requires being aware of stereotypes, being motivated to avoid relying on them, and using an intentional thought process.²⁷

Eliminating or Reducing Stereotyping Involves:

- Additional information
- Increased attention to that information
- An intentional and deliberate thought process to eliminate stereotyping

4. COMMUNICATION

This section of the program primarily identified nonverbal behavior that may

influence court users and the role and responsibility of the court concerning this influence.

According to studies, the verbal component of a spoken message accounts for only seven percent of its total content. Verbal content refers to the words we actually speak. So, people derive only seven percent of the meaning of a message from the actual words we speak. Of the remaining 93 percent of the meaning, 38 percent comes from the vocal portion of the message. The vocal portion of the message includes the intonation, tone, stress, and length and frequency of the pauses. An estimated 55 percent of the meaning comes from facial/nonverbal expression.²⁸

In an effort to put this in perspective, participants were asked: What are some examples of nonverbal communication? The responses were as follows:

- Inattention while someone is speaking to you.
- Diverting attention to someone else.
- Smiling.
- Rolling eyes.
- Deep breaths.
- No eye contact.
- Folded arms.
- Hands on hips.
- Talking on the phone while a citizen is waiting for assistance.
- Throwing things.
- Tone of voice.
- Body movement.
- Speech patterns.
- Facial expressions.
- Gestures.

Participants clearly understood nonverbal communication. The

challenge was to examine the impact of these behaviors in the court setting and the effect it may have on the public.

Nonverbal behaviors and how they are interpreted can vary according to race and ethnicity, and social and economic status. If a correlation can be established between certain nonverbal signals and a person's lower social status, such persons will have a diminished or enhanced credibility. Accordingly, what can we do, if anything, in our courts and personally about nonverbal behavior?²⁹

One thing we can do is to become aware of the positive and negative perception of nonverbal behavior. You can ask yourself: How aware am I of the nonverbal signals I send? What about facial expressions? Are we aware what our facial expressions may be telling people?³⁰

The public's favorable or unfavorable opinion of the courts may be shaped more by court employees than by judges and court administrators with whom the public has little or no contact on a daily basis. Therefore, the ability of court employees to communicate effectively with court users and with each other plays a critical role in shaping public perception.³¹

Effective communication involves eye contact, active listening, and sensitivity to the speaker on the part of the listener. Active listening involves the following strategies:³²

- **Encouraging**

To convey your interest by encouraging people to keep talking.

- **Clarifying and Restating**

To help make clear what is being said by showing interest.

- **Validating**

To verify people's experience or feelings.

- **Summarizing**

To clarify by putting together important ideas, facts, and issues.

The preceding strategies are useful communicating tools. However, care must be taken not to assume these strategies can be used effectively with all groups without regard to cultural background. Physical proximity to another person, eye contact, voice inflection, and body language are culturally determined. Knowing techniques is not enough: Being sensitive to cultural differences in the application of techniques is crucial.³³

CONCLUSION

Interestingly enough, teaching this seminar taught me as much as I may have imparted to its participants. Listening to the many views, concerns, and candid opinions offered by individuals who are in the trenches gave me a clear and distinct perspective of the complexities of diversity. All of us as members of a judicial system that touches the lives of thousands of ordinary people must make a concerted effort to exercise constant vigilance to ensure that all court users are treated with fairness and equity. We must be aware that our attitudes, behaviors, and demeanor affect the public's perception of the justice system. We must encourage not only awareness, tolerance, sensitivity, and understanding, but continued education and training so that as our society evolves and grows we do the same.

¹ See, *Immigrants in Courts*, edited by Joanne I. Moore 158 (University of Washington Press)(1999). This ambitious and well-written book is a must for any judge. As noted in its preface, the book has a threefold approach. First, legal experts were asked to write chapters summarizing important criminal, procedural, and civil features of the legal system of six different countries including China, Mexico, Vietnam, Middle Eastern Countries, and Russia. Second, a focus group of eight to 10 recent immigrants was convened for the purpose of

discussing each of the five profiled legal systems. Their discussions concentrated on criminal law enforcement, civil issues, and their common beliefs about their native legal systems and about the beliefs of many immigrants regarding the U.S. legal system. Third, surveys and interviews of 40 judges, attorneys, and court interpreters were conducted in order to obtain information about how immigrants fare in U.S. courts when confronted with procedures and concepts unlike those of their native legal system. See Preface IX.

² "The Courts: An Overview." *TMCEC Certification Study Guide: Level I*, Austin: Texas Municipal Courts Education Center (2002) Web page 9-10: <http://www.tmcec.com>.

³ "The Courts: An Overview." *TMCEC Certification Study Guide: Level I*, Austin: Texas Municipal Courts Education Center (2002) Web page 9-10: <http://www.tmcec.com>. Additional notable statistics for 2001 as published by the Office of Courts Administration are as follows: Revenue collected by the responding courts totaled \$451,599,258; there were 7,443,443 filings and 7,280,452 dispositions-- a 1.9 percent increased from the previous year. Of the total cases filed, traffic cases accounted for 84.4 percent, and non-traffic cases accounted for the other 16 percent of all cases filed. Municipal court judges issued over 2,000,053 arrest warrants and 5,247 search warrants, gave 189,628 magistrate warnings, and entered 5,392 emergency protective orders -- all of these figures up from the previous year.

⁴ *20 Tips on Cross-Cultural Communication; Bias Language; What About Accents? Crossing the Culture Gulf; and Brain's Use of Shortcuts Can Be a Route to Bias*. These articles have been published with permission. They were included in a training manual entitled *Beyond Bias: Assuring Fairness in the Courts - Faculty Guide*, published by Administrative Office of the Courts - Education Division California Center for Judicial Education.

⁵ *Id.* Materials presented in these four principal areas were borrowed from the *Beyond Bias* faculty guide and published with permission from Office of the Courts - Education Division California center for Judicial Education.

⁶ *Id.* at 2.

⁷ *Id.* at 2-3.

⁸ See, *Beyond Bias*, footnote 4 at 2.

⁹ Borrowed in part from a program entitled *Challenge of Diversity: Deriving Advantage from Difference*. (National Workshop for Federal District Court Judges I) (1995).

¹⁰ Glover, Denise. *Diversity in the Courts. A Guide for Assessment and Training*. 1. Federal Judicial Center (March 1995).

¹¹ See, *Beyond Bias*, footnote 4 at 2.

¹² *Managing a Diverse Workforce, Trainer's Workshop*. A publication of American Management Association at 9-10.

¹³ *Beyond Bias*, footnote 4 at 13.

¹⁴ See, footnote 12 at 16.

¹⁵ *Bias In The Courtroom*. A four-part program for judges and other judicial personnel. IV. Resources 6. The American Bar Association & The Virginia Commission on Women and Minorities in the Legal System. (February 1989).

¹⁶ *Id.* at p. 25.

¹⁷ *Id.* at p. 25.

¹⁸ *Id.* at p. 25

¹⁹ See footnote 14 at IV. Resources 7.

²⁰ *Id.* at IV. Resources 5.

²¹ *Beyond Bias*, footnote 3 at p. 24.

²² This exercise was provided by *Beyond Bias*, footnote 4 at 34.

²³ *Id.*

²⁴ *Brain's Use of Shortcuts Can Be a Route to Bias*. K.C. Cole. This article appeared as an attachment to *Beyond Bias*, footnote 4.

²⁵ "A default assumption," Hoftstadter explained, "is what holds true in a way you might say is the 'simplest' or 'most likely' case. But the critical thing is that they are made automatically, not as a result of consideration and elimination... . Other peculiarities of social perception have been uncovered in a wide variety of controlled experiments, mostly with college students. For example, the subjects judge attractive colleagues as smarter, kinder, and happier than their unattractive counterparts. They judge people perceived to be powerful as

taller than less powerful people, even when they are actually the same height. They judge people living in poverty as less intelligent than people in affluent neighborhoods.

²⁶ *Id.*

²⁷ *Beyond Bias*, footnote 4 at 35.

²⁸ *Id.* Module IV on Communication at 44.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.* In conjunction with this section of the paper, I invite the reader to read the attached articles: *20 Tips on Cross-Cultural Communication*, and *What About Accents?*, both of which provide useful and valuable recommendations.

20 Tips on Cross-Cultural Communication

Skill in cross-cultural communication is a big plus in today's world. The following suggestions are simple things you can do to bridge cultural differences. They are simple, but not necessarily easy, and they take practice.

We use the word "culture" here to mean group customs, beliefs, social patterns, and characteristics. Nationalities and ethnicities have cultures. So do businesses, occupations, generations, genders, and groups of people who have in common some distinguishing characteristic or experience.

Cultures are not always apparent from a person's appearance. For example, you may not be able to distinguish on sight between an immigrant and a third-generation American, a city-dweller and a small town-dweller, or a deaf person and a hearing person.

Nationalities and ethnicities differ in ways including language, nonverbal communication, views on hierarchies (responsibilities, duties, and privileges of family or group members), interpersonal relationships, time, privacy, touching, and speech patterns. Groups other than nationalities and ethnicities may also have distinctive verbal and nonverbal perceptions and expressions, and shared values, standards, beliefs, and understandings. Think, for instance, of how language and values usually differ depending on age and occupation.

The following tips are based on observations of successful cross-cultural communicators. Some of what they do is deliberate; some is instinctive. We have selected those behaviors that do not take a particular personality or talent. You can communicate well with a person of a different culture without giving up anything or pretending to be what you are not.

What to Do All of the Time

1

Remember that diversity has many levels and complexities, including cultures within cultures, and overlapping cultures. For example: a 70-year-old female small business owner from Brazil is likely to have many cultural differences from a 26-year-old male fourth generation Los Angeles government employee of Mexican descent. Yet, only age and gender differences may be apparent to the casual observer.

2

Expect others to be thoughtful, intelligent people of goodwill, deserving of respect. Don't be misled by cues such as accent, wordiness or quietness, posture, mannerisms, grammar, or dress. Unless you guard against it, your first reactions will be culturally biased. The more conscious you are of your own biases, the more open you can be to understanding.

For instance, does a person dress down because it is more comfortable? Or to fit in with less wealthy relatives? Or to indicate a willingness to pitch in and do some of the dirty work? Depending on the culture and the person, it could be any of these, or perhaps another reason. Assume that there are good reasons why people do things the way they do.

3 Be willing to admit what you don't know. People from other nations know a lot about American mainstream culture, at least as it is portrayed on TV and in movies. We know far less about them. Homosexuals know all about heterosexuals; few heterosexuals know much about homosexuals.

4 Listen actively and carefully. Careful listening usually means undivided attention. No picking lint off your jacket, no looking around to see who else has arrived at the meeting, no avoidable interruptions.

Listen not only for factual information, but also for glimpses of the other person's sensibilities and reality. Closely watch reactions. You may find, for instance, that your new acquaintance is surprised and puzzled when people such as officials, managers, or professors joke with subordinates or strangers.

Notice what the other person asks about. It usually indicates not only interest in the subject, but that the subject is not too personal or sensitive to discuss openly. For example, if a colleague asks if you refinanced your home when interest rates dropped, he or she probably is willing to talk about his or her home mortgage.

Stop talking the instant it looks as if the other person has something to say. If you don't, you may never hear it. This, of course, does not apply if the other culture is an assertive one.

5 Accept responsibility for any misunderstanding that may occur, rather than expecting the other person to bridge cultural differences. This is easy to do by saying something like: "I'm sorry that I didn't make it clear..." or, "When you weren't eating lunch, I thought you were dieting. Now I realize that you're observing Ramadan."

6 Notice and remember what people call themselves, e.g. African American or Black, Hispanic or Chicano, Iranian or Persian, Korean or Asian, and use those terms. If, however, a group of immigrants uses the term "American" to mean White native-born Americans, you could introduce them to a more inclusive definition of "American."

7 Give non-judgmental feedback to be sure you heard what you thought you heard. Use paraphrasing or questions for clarification.

8 Remember that you are an insider to your culture, and an outsider to other cultures. Be careful not to impose. Showing off your knowledge of someone else's culture, for example, might be considered intrusive.

9 Look for aspects of the other culture that are admirable. When you identify such a characteristic, you may want to somehow indicate your appreciation of it. For example, you might say, "I think it's great when young people value old things..."

What to Do Much of the Time

10 Expect to enjoy meeting people with experiences different from yours. We put this tip in the "much of the time" section and not in the "all of the time" section, because, although getting to know

other cultures is stimulating and gratifying, it can take energy. There are times when each of us seeks out familiar things and people.

11 Be a bit on the formal side at first in language and in behavior. After you get acquainted, you might choose to be more casual. Even then, remember to use what have been called the "magic words," "please," "thank you," and "excuse me" are universally appreciated.

Use formal terms of address unless and until the other person indicates a preference for the informal. This is especially important with people who have a history of being denied respect, including African Americans. Most of the world's cultures are more mindful of titles than we are. On the other hand, many people from other countries welcome informality as a sign of friendliness and equality.

12 Be careful about how literally you take things, and how literally your statements might be taken. "Let's have lunch soon" or "Make yourself at home" are two examples of easily misunderstood courtesy phrases. It is usually a good idea to hesitate a bit before accepting offers of refreshments, for instance. An immediate response may seem too eager.

13 Accept silence as a part of conversation.

This is particularly difficult for enthusiastic extroverts. Silence can mean that the person you're talking to is not interested, or defers to you on the subject, or thinks that the subject is none of his or her business. Or silence can mean that she or he is thinking over what you said before answering.

14 If it appears to be appreciated, act as a cultural guide/coach. Explain what the local custom/practice is, *e.g.*, “Some people dress up for the holiday luncheon, but most people wear ordinary work clothes.”

15 Look for guides/coaches to other cultures; someone who can help you put things in perspective. “I’ve been invited to a bar mitzvah. I know that there will be a religious service followed by a big party, but I’ve never been to one. What should I do during the service? Should I sit at the back and just observe? Or should I do what I see the other people doing? What sort of gift is appropriate? Is it likely to go on into the evening?”

16 Ask questions. Most people appreciate the interest in their cultures. Each person can speak of his/her experience, and some will speak in broader terms. Ask yourself if there is a reason to think that this person would be knowledgeable about this subject. For example, is it reasonable to ask this woman what feminist activists think of some new item? Maybe. Maybe not. It all comes down to respecting people

as individuals and not making assumptions.

Be careful about asking “why.” It frequently has a judgmental tone to it, implying that the thing you ask about is not acceptable. When you are asked questions, take care that your answers aren’t too short. Make your answers smoother and gentler than a plain “yes” or “no,” or other short answers. Most cultures are less matter-of-fact than that.

17 To open a subject for discussion without putting the other person on the spot, think aloud about your experiences and your culture. “My mother was proud to say that she never ate meat with her fingers, but I always thought that was snobby. I enjoy eating some foods like fried chicken and barbecued ribs with my fingers.” Thinking aloud is one way of interpreting your culture without talking down or assuming that the other person is ignorant. It also makes it safe for him or her to ask questions because you have been the first to reveal yourself.

What Successful Communicators Never Do

18 Never make assumptions based on a person’s appearance, name, or group. Never expect people of a population group to all think alike or act alike.

19 Never show amusement or shock at something that is strange to you.

20 Never imply that the established way of doing something is the only way or the best way. We’re not talking here about rules and regulations, but about lifestyles.

The tips given here are not unusual, certainly not original. But they work. They can be used with any cultural difference and with anyone, including friends and acquaintances, bosses, clients, customers, employees, coworkers, and neighbors.

If you already practice some of the tips, congratulations, you have a good start. When you practice all of the tips you’ll understand all sorts of people better, and they will better understand you.

Source: Modified from *23 Tips on Cross-Cultural Communication*. Los Angeles County Commission on Human Relations.

Bias Language

Racial Bias

All persons share a common humanity. Racial divisions are often cited by one group of people to justify enslavement, separation, or oppressive treatment of other human beings. It is pointless to avoid references to the differences among persons in colors of skin, eyes or hair, but these references should be made in the proper context and should not carry emotional or moral freight. In many cases, it is as appropriate to refer to light or tan or dark or black skin as to note blue, brown, or green eyes, or blonde, brunette, or red hair. But it is wrong to attach personal or moral quality to physical traits. Here are some suggestions:

- Racial stereotyping must be avoided. Sensitive people will avoid the now clearly outmoded racial “types” which were once common. They are derogatory and false. But more subtle “types” are often present in modern usage: *e.g.*, the suggestion that all people on welfare are



African-American or Hispanic, that crime occurs only in certain communities, that suburbs are populated only by white people.

- Pejorative or joking references of a racial nature should be removed from all writing or speaking. Terms such as “Jap,” “Chinaman,” or “Asiatic” are offensive. Racial jokes or stories based upon presumed traits of nationalities are in poor taste.
- Avoid tokenism, particularly in pictures or illustrations. Characters should be drawn as individuals. They can be shown with the physical characteristics of their race, not simply as Caucasians with colored skin.
- Depict a variety of lifestyles. Avoid putting people only in settings that contrast with white, North American culture. Many Africans live in cities, and American suburbs are not solely populated with Anglo-Saxons. In writing, speaking, and illustrating, care should be taken to avoid showing persons from other parts of the world as culturally underdeveloped.
- Avoid picturing non-white persons functioning in essentially subservient roles.
- Be careful with the point of view presented. Do not imply that minority persons are considered “the problem” in certain circumstances. Do not suggest that solutions to social problems depend upon the benevolence of those who are white or rich. Also avoid “civilized” and “uncivilized” or “primitive” in international references, since the terms pass judgment on cultures which may be thousands of years older than the writer’s own.
- Be conscious of norms which can

limit a person’s aspirations and self-concepts. Think what it would do to a black or brown child to be bombarded with images of white as beautiful or clean or pure or virtuous and black or brown as dirty and menacing. It is equally unproductive to create guilt in the mind of the socially-concerned white middle-class youth by insisting that he or she is “one of the oppressors” or “the focus of evil.”

- Be conscious of sources used in research, writing, or speaking. Many publications considered authoritative in such fields as history or social studies have been written from a white, European or American male perspective and have not taken into consideration the interests or contributions that other racial groups or women have made to history. The United States is a multi-cultural society and this should be reflected.
- Mention of the race or nationality of an individual should be made only when it is necessary or important to the sense of the material. When race or nationality must be cited, it should be done in a non-pejorative way. No one should be presented as “typical” of his or her ethnic group.

Ethnic Bias

In the United States there is a great deal of conscious and unconscious prejudice against what are perceived to be the characteristics of other nationalities. The principle that all people are created equal is accepted, but society cannot fully disguise its nationalistic bias. Language frequently fosters this bias.

Here are some suggestions on how to avoid national bias in writing or speaking:

- Apply the same test to nationality that one would apply to race. Avoid assuming things about any nationality. It is neither true nor memorable to say that “all Irish love a fight,” or that the Mediterranean region produces only hot-blooded men and women. Avoid suggesting that all Arabs are rich, that all Jews are clannish, that Poles or Finns are dull-wined, that Japanese are sneaky. Every nationality should be shown with fully human attributes.
- Such expressions as “backward nations,” or even “emerging nations” suggest a hierarchy of values that is inappropriate. The use of “third world” is widespread and accepted, but whenever possible to be specific in referring to such places, using the actual name of the nation involved or a more precise reference to the region, *e.g.*, East African nations, Central America, Brazil, Southeast Asia. When possible, say “Liberian” or “Tanzanian” rather than “African,” since Africa includes the territory from South Africa’s Cape of Good Hope to the Mediterranean.
- When seeking illustrations, remember that there are heroes and heroines from all national backgrounds. To limit references only to northern Europeans or white Americans is inaccurate and offensive.
- Bias also exists in geographical stereotypes, such as the Southern racist, country bumpkin, or Washington politician. Such code words and their implications should be avoided.

-
- The United States now has a sizable Spanish-speaking population, which reflects cultural diversity within itself. There are also significant numbers of people of Hispanic ancestry who are primarily English-speaking. It is wrong to portray anyone with a Hispanic surname as a Spanish-speaking person though, they may also be Cuban, Puerto Rican, or from the countries of Central and South America. Avoid the assumption that Hispanic people wear sombreros, love siestas or are second-class citizens because their language is accented.
 - While persons from other nations

may speak imperfect or accented English, avoid using such a device to subtly imply that they are uneducated or inferior.

- Be alert to changes in place names, political boundaries, and regions where the political destiny is as yet unclear. The West Bank of the Jordan River is presently under Israel's control, though disputed. South Africa still controls South-West Africa, though common usage now assigns the name Namibia to that region.
- "American Indian" is an acceptable term for referring to peoples resident on this continent when the

Europeans arrived. "Native American" is also used, though that term is in disfavor with many Indian groups because the federal government now includes Samoans and Hawaiians in that category. Wherever possible writers and speakers should refer to specific tribes *e.g.*, Navajo, Hopi, Sioux, Seminole. "Alaskan Natives" is an acceptable term for the tribes of that region. The term "squaw" is highly insulting to Indian women. They have babies, not "papooses." Do not cast Native Americans in the mold of the Indian as he or she appears in old western movies. ✍

What About Accents?

Each of us has an accent, even *if* we were born and raised here. Even if we sound just like a television news anchor. In simplest terms, an accent is a way of pronouncing words. Do you know someone who says "umbrella" with the stress on the first syllable? That's a regional accent. Do you say "measure" to rhyme with "say sure" or with "says your"? Again, it's an accent.

These, of course, are minor and occasional variations. We have no trouble understanding the speaker. We may even find the differences attractive or charming.

With rapid population changes and new ethnic and cultural diversity, we encounter accents more frequently, and they often are heavier. Heavier accents are more difficult to understand.

What an Accent Indicates

When a person speaks English with a foreign accent she/he is probably an immigrant. Not only that, but she/he probably learned English as an adult or young adult, or learned it from someone who speaks with an accent.

An accent does not indicate a person's intelligence, educational level, or social or economic status. In fact, some people who speak with accents have extensive vocabularies that they can use with precision to convey complex concepts.

If an immigrant has an accent, it also does not mean that she/he is a recent arrival. Once an adult learns one pronunciation for a word, it takes tremendous effort to learn a different way of saying it. There are people with accents who have spoken English for a half a century or more.

Here we will deal with problems related to how words are spoken, not with the words used. The two are not easily separated, since immigrants with accents may still be thinking in their native tongue and then translating to English.

Accents and Emotions

Emotion is connected to accents in two ways. A native English speaker may react emotionally to the sound of an accent. This could be a good feeling, remembering a fabulous tour of the Caribbean Islands or the dear Scottish woman who lived across the street when you were a kid.

More often, unfortunately, the emotion is annoyance at having to go around the accent to get to the message. If, for instance, you work in customer relations, you have to figure out what's being said before you can even begin answering questions and solving problems.

The emotions of immigrants are also connected to their accents. The more emotional the situation, the stronger the accent. This is true whether the emotion is positive or negative, whether the occasion is happy, exciting, sad, hostile, frightening, or anxious.

All of us know what it's like to try to speak effectively under pressure. If you have ever taken a public speaking class (or, if you've avoided taking one) you know what panic can do. More common experiences are the job interviews, or talking to the loan specialist asking personal questions about finances. When we're flustered, the words don't seem to come out right. Later, when the pressure is off, we think of things we should have said and how we could have said things better.

Accent Prejudice

When you hear someone complain about an "impossible to understand" accent, watch to see for yourself how impossible it is. For example, a driver may say she can't understand a word that the parking lot attendant says, and yet she follows his directions to get from the visitors' parking structure to the elevator.

Or, the driver may want to believe that communication is impossible. If so, it surely is. Accents can present problems to well-meaning people. Prejudice presents a total block.

Accent Reduction

Easier said than done. Most immigrants would love to reduce or lose their accents. Some spend

hundreds of hours and hundreds of dollars trying. Employers have been known to offer accent reduction classes for employees, sometimes after working hours. Private instruction is also available, for as much as \$200 an hour or more.

You may have heard people apologizing for their accents. It is not easy to change the way we say things. What if you just learned that the woman you've been calling Alma is really Elma? Even that change takes effort. Particularly if you don't get much practice because you don't see her often.

Tips for Dealing with Accents

Be Patient

Working around an accent takes time. If you feel pressured, it will work against understanding. The accented speaker feels as much or more pressure than you do, and maybe embarrassment, too. People who deal well with accents typically are patient people. If you see that you're going to have a problem, take a breath and switch gears.

Be patient with yourself, too. Sometimes you will hear a statement from an accented speaker and think that you don't understand. Then, maybe 10 seconds later, it will have traveled through your brain in some way that lets you understand. Relax and allow for such delayed reactions.

Use Feedback

Even among native English speakers there are communication problems. They may need to use feedback to be sure that they understand one another. How often have you heard someone say, "If I understood you correctly...?"

Feedback works well with accents, too. The greater the potential for misunderstanding, the more important it is to clarify and confirm

what was said. It can be done naturally in the flow of conversation.

Do Not Make an End Run

When there is a bystander available to interpret an accent, resist the temptation to turn to that person. If she or he offers help, by repeating a word, for instance, that's fine. But it is demeaning to treat people with accents as if they are incapable of speaking for themselves.

Using an interpreter after the fact is another matter. If you have a chance after a conversation to get clarification from an interpreter, do, by all means.

Understanding Accents

Learning to understand accented English may be like the "pre-production" or "pre-speech" stage of language acquisition. Before children speak, they understand what is said. We have all gone through that phase, and without apparent effort. We can use the same *ability* to learn to decipher accents.

Put the Person at Ease

Most of us do our best in warm, safe atmospheres. By contrast, when we are criticized or treated like an interloper, we are not as articulate as we could be. In fact, we may remain silent, rather than risk embarrassment. To a supervisor or employer, the silence can mean that you don't get the advantage of the employee's observations, questions, and ideas.

Listen for the Thought, Not the Words

A major problem with accents is that we tend to be distracted by how a person speaks, rather than what he or she is saying. Here is an example of bad typing:

Even if I strike wron keys, I'll bet that you can figure out what i'm trying to say. even if I strike extra lkeys or the

wrong keys. Going back to motivation, you could figure it out even more quickly if you know that this paragraph had the clue to finding a treasure.

Taken separately, you might not guess what “wrong” or “could” were. But because you were reading whole sentences it was no problem.

You’ve probably also read photocopies where the print was off center and the last one or two letters at the end of each line were missing. Still, because you were reading in context, you got the meaning. You can use the same skill when listening to immigrants who tend to omit final consonants.

The most important words are most likely to be conveyed. They may be the only words essential to basic understanding, if you take non-verbal clues in as well. When the doctor takes off the blood pressure cuff and says, “Your blood pressure is normal,” you may not care that he also said, “You must be doing aerobics.”

Show and Tell

Encourage nonverbal signals that will enforce the meaning of words. If someone were to say “I signed the loan application,” pronouncing “application” with a heavy accent, you might be puzzled. But, if she is pointing to a document you’ve been discussing, you quickly guess the meaning.

Show and tell has its limits, though. Beware that body language differs among cultures.

To Lip-Read or Not to Lip-Read

Lip-reading is another activity that has cultural implications, since eye-contact means different things in different cultures. Some people find it helpful to watch a speaker’s lips. Others find it distracting. Try it and judge for yourself.

Talk around Problem Words

We’ve mentioned feedback for clarification and confirmation. If you are missing the key words, use feedback in a different way. Repeat the information that you did catch and ask for help with the missing information. For example: “When you go to your sister’s home, she’ll give you something to fix your car?”

Sometimes you will venture a guess, but they can be educated guesses, based on context. Just be sure that you are not hearing what you expect to hear, rather than what was said. Use the logic of the sentence and situation.

Be the Second One to Laugh

Laughter about communication problems may be fun, or it may be hurtful. If the newcomer finds your efforts and his/hers rather amusing, he/she may laugh. That’s most likely to happen if you have become friends. By all means, laugh along with him/her. But if you find it amusing, and he/she finds it trying, laughter would not be appreciated.

Start with Easy Stuff

It is also helpful to listen to people with a slight version of the accent that you want to decode. Listen not just for what they have to say, but for the sound of the accent. It will take you closer to understanding more strongly accented speech.

But be sure that it is the same language. Do not listen to a Korean and expect to get better at understanding a Cantonese Chinese accent. For that matter, do not listen to a Mandarin Chinese accent and expect to gain better understanding of a Cantonese Chinese accent.

Ideas for the Highly Motivated

If you are highly motivated to understand accents, listen to the music of English spoken with an accent. Notice the rhythm, where the stress goes in a word, what sounds are substituted for other sounds, the pace, the cadence.

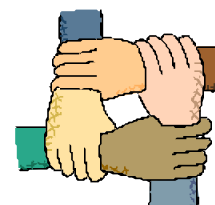
Drill yourself on an accented word that gave you trouble. Say it over and over as a key to other words using the same sounds. It will train your ear. A simplified example would be to take Mr. Yonson’s (Johnson’s) switch of “y” for “j” and see how other words might be pronounced: jet, jacket, jury, juice.

Comics can impersonate celebrities by mimicking their speech patterns. Sometimes it is cutting humor, sometimes loving. A few comedians can make you think they are quoting Shakespeare, when they have just thrown together tones and cadences. You can do something similar, for positive reasons, and with only yourself for an audience.

Some people believe that because music lovers are practiced listeners, they have an advantage when it comes to learning languages or understanding accents. They catch small differences. After you learn to understand one accent, other accents come easier.

The Magic Key to Accents

In real estate, they say, the three most important things are: location, location, location. In dealing with accents, it is motivation, motivation, motivation. Nothing is more important.



Crossing The Culture Gulf

Cultural differences create hotbeds of miscommunication between CEOs and their employees, between managers and their staff, between salespeople and their customers, between coworkers and teams. Even though “diversity” has been a frequent topic of corporate training seminars and speeches, graduate schools curricula, and management symposiums, there’s still a big gulf between *awareness* of differences and *appreciation* of differences. These tips will further awareness. Appreciating the differences, a result of attitude and motivation, comes more slowly and with greater reward than mere acknowledgement.

Come to an Agreement about the Meaning of Time

What passes as punctuality and good manners in one culture may mean rigidity and disregard for human nature in another. Swedes demand a two o’clock meeting to begin at two o’clock. Mexicans and Greeks see no such urgency if “something comes up.”

Determine the Appropriate Ceremony for Exchanging Business Cards

The business card ritual merits careful attention. Westerners tend to exchange business cards at the end of a meeting, and they make notes on each other’s cards for reminders. If the card simply provides a reminder of title, telephone number, or address the receiver may simply slip it into a briefcase without

looking at it in the other person’s presence. In Japan, business people present their business card to each other upon



first meeting. Ceremonially, the person of the highest rank in a group gathering presents his or her card first; then others follow. The Japanese extend their cards with both hands so that the printing is readable to the receiver and expect the receiver to read the card carefully and nod approvingly of the title and/or company before tucking it away. Both a failure to read the card and the act of writing on the other person’s card shows rudeness.

Recognize that Respect May Be Shown in Numerous Ways

Anglos stand up to show respect, Fiji Islanders sit down to show respect, and Japanese bow to show respect. Some people raise their faces and eyes for the same reason. Some people shake hands to show respect; others refrain from doing so to show deference and humility. In addition to the Western handshake, traditional greetings and a show of goodwill may be expressed by hugs, nose rubs, kisses, hands together in praying position, or a nod. Americans show respect and cordiality by using their first names; Germans seldom use first names in business dealings. All in the name of respect.

Avoid Acronyms and Initials

Letters that have a meaning in one culture may confuse and may even spell something offensive in another culture.

Use Technical Terms when Appropriate

Technicians understand the technical terms associated with the equipment and processes they use. Don’t, however, confuse technically accurate terms with jargon inappropriately used to laypersons, unfamiliar because they are nontechnical, not because they are

from another culture.

Avoid Idioms, Cliches, and Colloquialisms

In the United States, we refer to “springs” of water; in Mexico, people refer to the “eye” of the water. You’ll have great difficulty explaining these tidbits to those from other cultures: “Put the shoe on the other foot.” “He’s robbing Peter to pay Paul.” “It’s raining cats and dogs.” “Why don’t you put your own house in order?” “Don’t give me so much lip.” “You’d better make hay while the sun shines.”

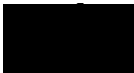
Be a Student of Expressiveness

People in some cultures show expressiveness over the slightest pain or joy, wild gesturing and body movement, varying intonation, dramatic facial expressions. Those living in other cultures may experience the deepest pain or joy with no outward expressions at all, no gesturing, stoic faces, monotone voices, stillness.

Touch or Refrain from Touching, as Appropriate

People stand close in some cultures and feel offended when those of other cultures pull away; other talkers keep a comfortable distance and feel invaded when colleagues come too close. Touching is taboo in some cultures (British, German, Japanese, Asian, Indonesian, Indian, Pakistani) and welcomed in others (Spanish, Latin American, Italian, Jewish, Arabian). The touchers hug, embrace, and pat each other to show goodwill, affection, concern, or trust. The nontouchers refrain for the same reasons.

Crossing continued on page 20



**TEXAS MUNICIPAL COURTS EDUCATION CENTER
2002-2003 Registration Form**

Seminar Date: _____ Seminar Site: _____

Type of Program: Judge Clerk Court Administrator Prosecutor Warrant Officer/Bailiff*
 I intend to attend the *Mock Plea and Mock Trial Workshop* or the *Survey of the Rules of Evidence Pre-Conference*

TMCEC computer data is updated from the information you provide. Please print legibly and fill out form completely.

Last Name: _____ First Name: _____ MI: _____
Names also known by: _____ Male/Female: _____
Position Held: _____
Date Appointed/Elected/Hired: _____ Years Experience: _____

HOUSING INFORMATION

TMCEC will make all hotel reservations from the information you provide on this form. TMCEC will pay for a single occupancy room at all seminars: four nights at the 32-hour seminars and two nights at the 12-hour seminars. To share with another seminar participant, you must indicate that person's name on this form.

- I need a private, single-occupancy room.
- I need a room shared with a seminar participant. Please indicate roommate by entering seminar participant's name:
(Room will have 2 double beds.)
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I will require: 1 king bed 2 double beds
- I do not need a room at the seminar.

Date arriving: _____ Arriving by: Car Airplane Smoker Non-Smoker

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It is TMCEC policy to mail all correspondence directly to the court address.

Municipal Court of: _____ Mailing Address: _____ Zip: _____

Office Phone: _____ Court Phone: _____ FAX: _____

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Attorney Non-Attorney Full-Time Part-Time

Status: Presiding Judge Associate/Alternate Judge Justice of the Peace Mayor
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 Assessment Clinic (A program fee of \$100 must accompany registration form.)
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**Warrant Officers/Bailiffs: Municipal judge's signature required to attend Warrant Officers/Bailiffs program:*
Judge's Signature _____ Date: _____
Municipal Court of _____

I certify that I am currently serving as municipal judge, city prosecutor, or court support personnel in the State of Texas. I agree that I will be responsible for any costs incurred if I do not cancel five (5) working days prior to the seminar. If I have requested a room, I certify that I live at least 30 miles from the seminar site and have read the cancellation and no show policies in the General Seminar Information section located on Pages 17-18. Payment is required ONLY for the assessment clinics and legislative updates; payment is due with registration form. Participants in the assessment clinics and legislative updates must cancel in writing two weeks prior to seminar to receive refund.

Participant Signature _____ Date _____

Gesture and Move with Care

The United States "OK" sign conveys zero or worthlessness in France, money in Japan, and an obscenity in Russia and some South American cultures. A pointed finger, perfectly normal to Anglos, shows rudeness to Asians, Africans, and Belgians. Waving is an insult in Greece or Nigeria, and a welcome in most western cultures. Snapping your fingers is considered vulgar in Belgium and France; it's a pastime in the United States. Pointing the soles of your feet in the direction of a Thai will offend, but propping your feet up on the desk of a Canadian may show camaraderie and relaxation.

Be alert to watching gestures of others and aware when those of other cultures seem offended at your own gestures. Better, if you plan to visit a particular country, study a travel guide for appropriate or inappropriate gestures.

Translate "Yes" and "No" with Care

In various cultures, all the following gestures can mean yes: a raised head and chin, a nod forward, rocking the head from shoulder to shoulder four times, wagging the head from side to side, a backward nod with raised eyebrows, or a smile.

No may be communicated by a finger wagging from side to side, a palm-down hand shaking side to side, a backward tilt of the head, a hand waved in front of the face, or a clicking tongue. When traveling, these yes and no gestures are the first to master, otherwise, you may be buying more than you can pay for or selling more than you own. ✍

Edited from *Communicate with Confidence*, by Dianna Booher

Immigrants in the Courts

Immigrants in the Courts (edited by Joanne I. Moore and Margaret Fisher) is an excellent resource for learning about the legal and cultural systems of China, Mexico, Russia, Vietnam, and the Muslim world. Texas municipal courts see immigrants from many of these countries in their courts.

The book outlines the legal systems of these countries, as well as how the general population of a country perceives its legal system compared to that of the United States.

The book was developed under a grant from the State Justice Institute. It may be ordered from online bookstores such as www.amazon.com or from local retail book suppliers. (1999: University of Washington Press, 264 pages, \$19.95)

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To provide high quality judicial education, technical assistance, and the necessary resource material to assist municipal court judges, court support personnel, and prosecutors in obtaining and maintaining professional competence.

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