

FOREWORD

*Malia Brink**

The confidence and faith, particularly of persons of color, in American legal institutions is waning because of “perceived” racism. Indeed, a recent survey on public perceptions of State courts demonstrated that a significant number of Americans believe members of minority racial groups receive unequal treatment from the legal system.¹ Particularly troubling is that legal institutions are still confronting this problem mainly as one of perception.

Racism is a largely misunderstood term. Most people think of racism as encompassing only overt racism, prejudice against a racial group motivated by a person’s conscious dislike of that group. I have faith that that is not the sort of racism legal institutions in this country generally wrestle with; rather it is a more subtle form—a distortion of judgment caused by subconscious stereotype, not hate. Regardless of the absence of intent, this form of racism, arguably endemic to the legal institutions of the United States, is racism, and it has no place in a justice system dedicated to judging each person individually.

The erroneous focus on intent in discussions of racism is counterproductive. The notion that all racism is intentional makes institutions accused of racism defensive, rather than open to self-examination. It also oversimplifies the inquiry; the investigation focuses on whether there was intent, often overlooking the possibility that there was serious harm.

In the Articles that follow, leading academics attempt to step beyond perception and to address major topics at the intersection of race, crime, and the Constitution. Some bring to light the impact of racism in legal institutions. Others explore legal responses to that racism or attempt to devise new solutions to problems, where those previously proposed have raised concerns of racial bias. This Issue arises from a Symposium held at the University of Pennsylvania Law School in January, 2000.

I would like to thank the authors for their contributions, as well as Angela Davis, Alfred Blumstein, Jerome J. Shestack, Paul Butler, Abraham Abramovsky, Kim Scheppele, Douglas Colbert, and Judge Nathaniel Jones for participating in the Symposium. I am especially

* Symposium Editor, 1999-2000, *University of Pennsylvania Journal of Constitutional Law*.

¹ See National Center for State Courts, *How the Public Views the State Courts: A 1999 National Survey*, available at <http://www.ncsc.dni.us/PTC/results/nms4.hum> (last visited Jan. 25, 2001).

grateful to David Rudovsky for his guidance during the planning stages of the Symposium, and Sondra Siegal for her help in organizing the events of the Symposium weekend. Finally, I extend my gratitude to the editors of the *University of Pennsylvania Journal of Constitutional Law* for their support and hard work in bringing the Symposium to written fruition.