

State of the Profession - 2021

“Justice for All – Courts at the Crossroads: Facing Pandemic and Racial Justice Challenges”

Introduction

Welcome to beautiful San Diego and the NACM 2021 Annual conference! It was two years ago that we last had the chance to all be together like this and, obviously, a lot has happened since then. This year's conference theme is **Justice for All: Courts at the Crossroads**. It is safe to say that all of our lives have been upended and many members of our profession have faced unprecedented challenges. We are now at the point where, in terms of the pandemic, we can see light at the end of this long, dark tunnel. And as a country we have been forced to confront the racial injustices endured by our Black, Brown and Asian communities. We are, quite literally, at a crossroads of converging pathways: do we turn back and return to the way things were in the past, or do we press forward and, if so, in what direction? It is through our hard work and dedication to the principles of justice that we can pick the right path. Today, I will highlight 4 paths we must travel.

First, court professionals must be actively committed to equal justice under the law and ensuring that our practices, policies, procedures, and programs do more than just pay lip service. Are we honestly evaluating ourselves as a system and responding to our shortcomings, or are we continuing to operate in ways that merely reinforce systemic injustices?

Second, pandemic aside, this past year has seen our institutions in the spotlight. From protests to cyberattacks, the toll has been great. Can we assure our court users, staff, and stakeholders that they, their property, and our information is secure?

Third, the focus on racial and social justice has caused us to look at our courts, and even NACM as an organization. Do we look like the communities we serve, in terms of our benches and administrative makeup? Is the diversity of our membership accurately reflected in our board and committees and the programs we offer?

Lastly, as our courts across the country are slowly opening back up, do we continue to face concerns about access to justice? As a profession, we responded admirably to continue the business of administering justice, but have we done enough?

Let's explore these paths a little more...

Racial Justice

We all know that as the judicial branch of the government, our courts are responsible for resolving disputes impartially. After all, that is the purpose and responsibility of the courts. Our court users should be confident in our ability to administer justice and services equitably regardless of race. However, studies have confirmed that our laws and processes often distinguish between the economically advantaged and the poor, and these distinctions are even more noticeable between race and color.

Racial discrimination of any kind contradicts the principles of justice and equal protection under the law. Are we overlooking our fundamental purposes of “protecting individuals against the arbitrary use of governmental power”, “rehabilitating individuals convicted of crimes” and “promoting justice”? Achieving these for some people at the expense of others is not justice and it reveals the presence of systemic racially discriminatory practices.

For example, the California Standards of Judicial Administration calls on courts to prohibit bias through the integrity and impartiality of individual judges and throughout the more extensive court system, including counsel, court personnel, witnesses, parties, jurors, or any other participants.

Accordingly, the San Diego courts announced in August 2020 the formation of a committee to maintain a courtroom environment free of bias or its appearance.

One of the most highly publicized cases of recent times is the death of George Floyd in Minneapolis, Minnesota. The nine-minute and 29-second video has left an indelible footprint in the minds of many throughout the world. Derek Chauvin, a former police officer, was recently convicted of murdering George Floyd during the commission of his job. The case went forward in the Hennepin County District Court. The world was given a birds-eye view of our judicial process in real-time, and justice was meted out. Hopefully, confidence in the court process... the judicial process... was restored at least a bit. For us as court professionals, we know the hard work of the judge and court staff who handled one of the most visible trials in recent memory – complete with masks, plexiglass shields and so much more.

To put it bluntly, racial injustice erodes public confidence in the laws and institutions created to protect and serve the community. To maintain and foster trust in our system, we as court professionals must examine the deficiencies in our processes and procedures and create steps to correct and transform the approach to systemic racism.

Court Security

Our courts have been tasked with responding to multiple challenges and threats simultaneously. Some have been through natural causes, while others are created by bad actors. One of those man-made threats targets our court information infrastructure. These cyber-attacks to courts and local governments come with a steep price tag for recovery. One urban court that suffered such an attack took nearly a year to recover properly and sufficiently access its own data.

To thwart these attacks and meet this challenge head on, we must continue to invest in state-of-the-art cyber security. Criminal cyber-activity is growing exponentially, which means the threat and the risk your court faces each day is also growing. I'm reminded of a television commercial from the 1980's regarding a product promoting preemptive mechanical repair. The punchline to the ad was "You can pay me a little now, or you can PAY me a whole lot, later".

When addressing any emerging threat, be it to our data systems or to brick and mortar court facilities and those who work inside these facilities; state and local officials must collaborate on plans to address each threat. Forums provided by court officials, including local court security committees

and planning committees, must integrate the knowledge of subject matter experts on security, virtual work and more.

For example, Pennsylvania developed the nation's first compulsory statewide incident reporting system of all general and limited jurisdiction courts. The system provides the ability to electronically report security incidents which occur at or involve courts, court users, or staff; e.g. judicial threats, disorderly court users, and medical emergencies.

This pandemic provided us an opportunity to review and test our COOP and emergency planning procedures. And, in turn to find ways to ensure that we continue to operate and serve the public. We must continue to be agile and responsive whether through adopting new technologies, allowing remote working and more.

Diversity, Equity & Inclusion

Many courts have addressed or begun to address Diversity, Equity, and Inclusion in their courts. Training is pivotal to recognizing biases and systemic and inequitable processes. Courts across the country are offering implicit bias training to court staff and judges and brokering conversations on the intersection of race and justice. In addition, many courts formed minority concerns committees and provided designated personnel in their

facility to assist court users with navigating forms, obtaining records, and understanding court procedures. As professionals, we must embrace the acknowledgement of our biases and work personally and collaboratively to address them.

NACM has always strived to be diverse, equitable and inclusive. In 2020, we adopted a resolution to pursue and support DEI in our membership and executive board service; to actively promote diversity and inclusion in our educational offerings, trainings, webinars and social media platforms; to continue to lead national access to justice efforts; and to undertake an internal review of our practices to ensure they reflect the values of DEI.

In the last year, we have created a special committee to ensure we follow the path we set forth, and that we maintain the course to provide DEI for all who work and interact with our court system. I am proud to say that as of this past weekend's Board meeting, we have made that special committee a standing committee and will task it to aid us in our continuing efforts. Additionally, we are reviewing our CORE to ensure the integration of DEI principles into the learning objectives it sets forth. We are also currently working on our "#WeToo in the Courts" project with several other justice partners and the support of the State Justice Institute to develop

curricula for court and judge leaders focusing on awareness and responses to sexual and gender-based harassment including issues around LGBTQ+.

Like much of the work we all do, we have to stay the course and implement DEI into our lives and our profession. I encourage you to lend your voice to our organization and our courts to put forth initiatives embracing these principles.

Court Access

In a very dramatic and comprehensive fashion, the pandemic changed access to court services perhaps permanently and often for the better. A myriad of case events may be handled virtually – traffic, small claims, probate and domestic and more. Of course, remote hearings may not be appropriate for all court events, but nonetheless, they have allowed the courts to continue to operate this past year.

Another benefit is that some courts, especially those of limited jurisdictions, saw an increase in appearance rates to virtual events. As conscientious court managers, one of the things we always want to achieve is to make our courts more convenient to our users. Efforts by you all in and in response to the pandemic have been inspiring.

With that said, as with any change there are always two sides to the coin. Largely shuttered courthouses and a move to remote proceedings have highlighted the digital divide. Courts did try to meet this need. Rooms were set up in courthouses where litigants could participate in remote events, jurors were loaned devices to use at home, many moved from walk-ins to scheduled appointments, and undoubtedly the list of adaptations goes on. However, the digital divide still exists.

There are also concerns that some victims have been underserved during the crisis, most notably domestic violence and child abuse victims. This past year has been difficult for such victims to be heard, to make it to the court, and to obtain other necessary services.

An additional area of concern that predated the pandemic is citizens with mental health concerns engaging with law enforcement. There have been several tragic situations in this area that have received national attention. Thankfully the criminal justice system is awakening to this issue and we in the courts have been leaders in developing responses but much needs to be done. To provide access to justice for these individuals we must continue to work with law enforcement, treatment providers, and other partners to integrate mental health assessments and access to services.

Truly, the current status of access to courts is a bit of a mixed bag. While we have some tools available now that we have never really utilized, we also have much to work on. I and NACM call on you, the members of this fine association, to pledge to fully utilize all tools we and others have developed. We must devise viable solutions for those with technology needs and other limitations. Until everyone has convenient and secure access to court services we are not finished in our mission.

Conclusion

I hope that each of you and all of us in this great profession can take a moment to reflect on this past year. As a profession, we have the opportunity to address systemic injustices, confront attacks on our infrastructure, find ways be more diverse, equitable and inclusive and provide more access to justice. In short, I urge you to take heed of the words of Rahm Emanuel in that, “You never want a serious crisis to go to waste. And what I mean by that is an opportunity to do things that you think you could not do before.” Our profession is a profession of people like you and me. Take action. Lend your voice to the discussion. Be heard via our Voice of the Profession survey. Thank you.