

Diversity, Inclusion, and the Courts¹

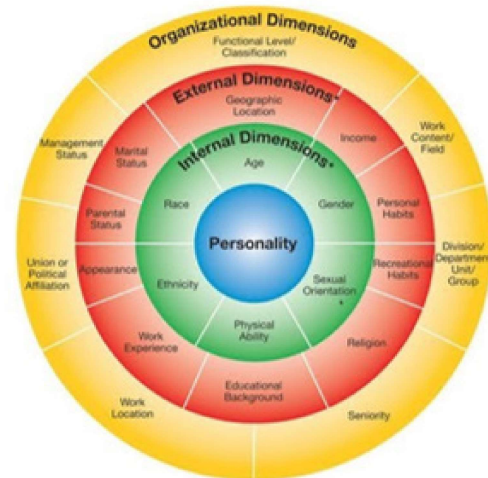
By Norman Meyer



Norman Meyer is a court administration expert after a 38-year career as a trial court administrator in the state and federal United States courts. Mr. Meyer continues to write, teach, and otherwise participate in judicial administration activities world-wide. He has written and spoken widely on judicial administration in the United States and abroad. He continues his role in court administration as an active member of the Court Leader group and is currently writing a court management blog (<https://courtleader.net/vantage-point>) as a member of the nonprofit CourtLeader group. In particular, he is active in the International Association for Court Administration (IACA) as a member of its Advisory Council (he previously was the V.P. for North America), the National Association for Court Management (NACM) as a Past President and Award of Merit recipient. Mr. Meyer has experience working with many foreign judiciaries, especially in the Russian Federation, Serbia, Ukraine, Moldova, and Albania. He received his M.S. in Judicial Administration from the University of Denver Sturm College of Law in 1979, and a B.A. in political science and Russian studies from the University of New Mexico, graduating in 1977. This current article is an adaptation of two Court Leader Vantage Point blog posts in July, 2020. Located in Albuquerque, New Mexico, Mr. Meyer may be reached at normanmeyer@outlook.com.

We live in an era of accelerating change in almost every aspect of our personal and professional lives, with increasing demands on government institutions, including the courts. A key challenge in meeting the needs of the public we serve is to ensure our courts are deeply committed to ensuring they are diverse and inclusive in every aspect. This article explores what this means, and what court administrators can do to make it a reality.

Diversity is “otherness” – those human qualities which are different from our own and different from the groups to which we belong. Diversity has multiple dimensions. The primary dimensions we are most familiar with are those that are usually noticeable by others. These include characteristics like age, gender, physical abilities/qualities, race/ethnicity, and sexual orientation. But these are not all. Other, important dimensions include education, geographic location, socio-economic status, marital status, military experience, parental status, religious beliefs, and work experiences. Generally, diversity is the quality of being made of the many different elements, forms, kinds, or individuals that represent all of these dimensions. In a workplace context, diversity focuses on the representation of a variety of backgrounds, as well as approaches, perspectives, attitudes, and practices.



<https://medium.com/org-hacking/the-4-layers-of-diversity-gardenswartz-rowe-47013e42070f>

Valuing diversity helps us move beyond stereotypes and prejudices to using our differences as assets. When we prize a wide variety of backgrounds, points of view, and skills, we not only create an environment of acceptance, respect, and open-mindedness, but also develop a superior capacity to craft alternative solutions.

Diversity in our courts is critical to achieving success in meeting the challenges of the future. People are our most important resource, and when they are diverse, our collective differences strengthen the organization. The fact that

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court offices can be quite complex, both individually and organizationally, sometimes is regarded as an impediment to progress, yet that very complexity ensures a diversity that often contributes to the best approaches and solutions to challenges.

Diversity helps us recognize more easily the assumptions that can limit opportunities. Diversity increases the number of ideas. Without diversity we would all be alike, crippled in our ability to think of new solutions, even to the point of becoming stagnant. Diversity also reflects the society in which we live, and a diverse office thus strengthens the public's perception of us as representative of the people we serve.

To truly cultivate diversity, we need to work to understand ourselves and what our differences are, then build on that knowledge. In recent years we have come to better understand that everyone has biases that inform our beliefs, attitudes, associations, and actions. Such biases may be explicit (conscious) or implicit (unconscious). Biases are often exhibited by stereotyping that results in discriminatory behavior, both intentional and unintentional. We must overcome our biases and foster an environment of acceptance of differences, where we do not prejudge and do not accept intolerant behavior.

But, achieving diversity without *inclusion* is a hollow victory. Inclusion is what makes diversity meaningful. It is not enough to have a diverse workforce -- we must make sure that everyone is comfortable to express their ideas and viewpoints, ensuring we give everyone equal value and consideration. To do this we need always to solicit, involve, and listen to input from as wide a variety of people and functions as possible, and promote diversity as a key element of success in all we do.



Fundamentally, valuing diversity and inclusion requires us to have a deep respect for the differences that surround

us, taking everyone seriously, caring about everyone's needs and desires, and acting upon these principles in our daily work lives. Diversity and inclusion are the result of actively honoring the legitimacy of the basic principles of decency, respect, equality, and justice — where everyone lives free of discrimination to pursue their dreams.

True D&I starts with each of us individually. To be an effective leader we must first personally acknowledge the importance and legitimacy of the subject, followed by doing everything we can to understand and be aware of its history and parameters. We must listen to the voices all around us that can help us become better agents of change. Unfortunately, too few of us take the trouble to truly understand the differences we all have, accept those differences, avoid prejudging others, and clearly reject intolerant behavior.



A court that values diversity and inclusion strengthens its capacity to achieve critical public service values: accessibility, effective communication, quality, teamwork and cooperation, and innovative practices. How can this be done?

Once we have personally committed to the importance of D&I, the next step is to gain the commitment of the court's judges to the cause. This may not be easy, but it is critical to gain the buy-in and backing of the bench to set the stage and achieve success.

Next, integrate D&I into the court's vision, mission, goals, and objectives. These actions establish a fundamental environment that support (and require!) all of the other efforts described below. Communicate the commitment of the court's leadership to D&I to all staff at every opportunity.

It is not enough to say the right things. One must develop and ensure that all policies, rules, and procedures are aligned with the court's D&I vision and mission. Make it clear that you expect everyone, especially those in leadership roles, to live up to D&I. Include D&I language in job descriptions and performance standards.

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The court administrator must also understand the organization – what kind of culture does it have? We think we know, but too many of us only have superficial awareness. There is a good chance a group identity exists that is not welcoming of all people, or that employee and managerial styles are normed around male-socialized leadership behaviors, for example. Make the effort to find out the real situation, and then proactively adapt your D&I actions accordingly to eliminate bias and intolerant behavior wherever they exist.

Similarly, know your community. Who does your court represent? What are the demographic characteristics of the community you serve? Gather data and any other information to fully understand the people and the environment your court works within. This information will inform your actions and help ensure your court reflects its community and is doing its best to fulfill its D&I vision.

An absolute critical action area is *Workforce Management* (HR). This area spans everything from recruitment to development to performance management to supervision of staff. The goal is to build and retain a diverse organization. Since it is so important, let's walk through the various areas of workforce management:

1) Recruitment – It all starts here, where too often there is a “pipeline problem” with the court's recruitment and selection processes that do not do a good job. Here are steps to avoid this:

- a. Develop sources of qualified applicants; reach out to groups and organizations in your community that represent and serve diverse groups. Work with them about career opportunities and job openings and how you might partner to develop qualified applicants via training programs, internships, etc.
- b. Make sure the qualification standards of job postings do not adversely affect the applicant pool. For example, does the job really require a degree or certification that may screen out minority applicants?
- c. Publicize job openings widely, because where you advertise can dramatically affect the applicant pool. You will not get a diverse applicant pool if you only advertise in the old, same, comfortable place.
- d. Allow applicants multiple ways to apply. Requiring applicants to exclusively apply on-line, especially for entry level positions, can be challenging for many

people. Not all people have a laptop and unlimited Internet access, and the public library may not be a good solution. While on-line applications may simplify the process, you need provide alternate paper methods (fax? mail? drop off?), or as some places do, set up a location to allow applicants to fill out their applications at the court.

- e. Use a selection process that is fair and inclusive. Make sure the screening elements are directly related to the job and the job posting. For instance, are skill tests valid? The initial screening process is best done by a trained human resources staff person who works to ensure only valid criteria are used. Designate a diverse interview panel of at least three people and use standard, job-related questions to evaluate the applicant's qualifications and potential. Be particularly attentive to eliminating bias in the interview, where implicit biases can easily rear their head. All interviewers should have received training on how to avoid such bias.
- f. All of the above recruitment steps basically apply even when you are selecting an internal applicant for a promotion. Conduct a wide, inclusive search that uses unbiased selection criteria and processes.

2) Staff Development

Invest heavily in helping staff improve and “be the best they can be.” Development goals for the court and each employee are important and should include D&I elements. A colleague of mine once told me that “too often, organizational efforts at fostering a diverse and inclusive environment are limited to one-off ‘training’ and have no strategic plan, metrics for success or accountability for employees, supervisors or senior leaders. This means there is no real change and people become cynical. The result is we just continue to admire the problem.” Staff development is also critical to creating a qualified, diverse internal applicant pool for leadership positions in the court.

3) Performance Management

Hiring and developing staff are critically important, yet there also needs to be an assessment component to measure how the court, its leaders, and staff are performing in achieving D&I goals. Otherwise, you will likely be unable to identify problem areas and not know if you are making progress. The information gained in performance assessment is vital to planning and measuring

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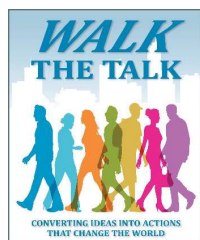
improvement actions at both the court and individual employee levels. Care must be taken, however, to use valid metrics.

4) Supervision and Leadership

Although it is obvious that supervisory actions, such as work assignments and promotions, must be free of bias and support D&I goals, that is not enough. Simply put, you must “walk the talk” with your actions. This is absolutely critical to have true inclusion on the workplace. It is easy to say the right things, but you have to put those nice words into practice every hour of every day. For instance, is everyone given equal opportunity to speak up and contribute in meetings and other work activities? As a wise colleague told me, “if you aren’t invited to the table, you are on the menu.”

Effective D&I efforts include a lot more than the workforce management elements explored above. Here are ones I think are also important:

- Specifically include D&I efforts in the court’s budget to support training and other actions that need fiscal support.
- Develop courtwide measures for the effectiveness of D&I efforts, and use them to refine strategies and actions to keep improving over time.
- Integrate D&I into the court’s *Procedural Justice* efforts.



- “Walk the talk” not only internally with court staff, but also with external users to increase accessibility. For instance, are public restrooms welcoming for diverse users? Are the court’s signs helpful for all users? Are diverse users able to use the court’s electronic services, including web services like e-filing and virtually attending court hearings/trials?
- Partner with other entities and persons in your D&I efforts – be an ally! Certainly, do so with justice system partners to coordinate efforts, but also partner with outside non-profit groups that can help.
- Support opportunities for staff to be involved with the

D&I community, as well as associated employee resource groups.

- Celebrate diversity by observing special days/ weeks/months dedicated to specific groups. Invite representatives to make cultural presentations (music, dance, etc.), hold themed lunches, and so on. Celebrate diversity by publicly sharing when and how the court’s commitment to D&I has helped achieve the court’s mission, including in employee awards programs.
- Have a robust employee suggestion and complaint system that provides staff with avenues to speak out and raise concerns. Care must be taken to maintain confidentiality when appropriate. A complaint system should be fair and have multiple options for resolving issues, including involving outsiders for such things as mediation and having a third party with authority to take any needed action.

Current events around the world have highlighted the need for all of us to reflect, reassess, plan, and take action to make improvements in diversity and inclusion within our justice systems. In this article I have outlined a wide range of things court administrators can and should do to make such improvements. It can seem like a daunting list, but the important thing is to first educate oneself, then commit to prioritizing and implementing positive actions a step at a time. I believe the most important thing, however, is to make sure your organization’s workforce management is done well. Everything else builds upon that foundation.

- For further reading, I highly recommend the article *Framing Diversity and Inclusion for Court Managers: The Path to Justice for All*, Zenell Brown, NACM Court Manager vol.35 no.1, March 2020. I partnered with Zenell on a NACM 2021 conference presentation, *Making Diversity & Inclusion REAL: a How-To Primer for Court Administrators*, and the video of the session is now available at this link: <https://youtu.be/nAqqzkJ2ROU>.

ⁱThis article is a condensation of two of my Court Leader Vantage Point blog posts:

- Fulfilling the Public’s Trust: Valuing Diversity & Inclusion in 2020 (Part 1) – Court Leader*
- Fulfilling the Public’s Trust: Valuing Diversity & Inclusion in 2020 (Part 2) — What actions can court administrators take to make Diversity & Inclusion a reality in the administration of their courts? – Court Leader*