INCLUSION, DIVERSITY, EQUITY AND AWARENESS-IDEA
By José Octavio Guillén

During the last three decades, courts and court leaders have examined the concepts of inclusion, diversity, equity, and awareness and their implications for decision-making and how courts operate. Researchers and practitioners have identified some key barriers, both at the individual and organizational level that can be overcome with introspection, awareness, and commitment to values rooted in equity. The two primary dimensions explored in this chapter deal with cultural competency and unconscious biases. The content for this chapter is informed by this author's articles on *"Becoming a Culturally Competent Court"* and *"Borderland Justice: Working with Culture in Courts Along the US/Mexico Border"* published by the National Association for Court Management's *The Court Manager*-March 2007 and by the extensive research described in the following publications *Addressing Implicit Bias in the Courts* by Pamela M. Casey, Roger K. Warren, Fred Cheesman, & Jennifer K. Elek (Court Review, volume 49-National Center for State Courts, 2012); *Implicit Bias-A Primer for Courts* by Jerry Kang (National Center for State Courts, 2009); and *State of the Science: Implicit Bias Review-2016 Edition* by Cheryl Staats, Kelly Capatosto, Robin A. Wright, and Victoria W. Jackson (The Ohio State University-Kirwan Institute for the Study of Race and Ethnicity-2016).

We will explore strategies for overcoming implicit biases and enhance our cultural competency to create a more inclusive, diverse, and equitable workplace and improve delivery of court services. We will make a case for why this is important for us as leaders, court employees and courts as institutions to appreciate and cultivate.

Let us start with some basic definitions to frame our discussion.

Inclusion: A sense of belonging, which allows people to engage and contribute within an environment. Belonging is rooted in our human condition and we are driven to be part of our environs (among family, friends, school, workplace, profession, community, and life in general). When we are not welcomed or accepted as member of a group or endeavor, we feel excluded and that we do not belong. Inclusion, therefore, requires acceptance and finding commonalities rather than accentuating the differences. Inclusion is the catalyst for reaping the benefits of diversity.

At the organizational level, inclusion is determined by its organizational culture, policies, procedures, processes, and practices. These organizational characteristics guide the interactions between internal and external customers and shape the ethical contours around inclusivity. They determine how the work gets done around the organization and what is valued.

Diversity: differences such as social identities (e.g., race, gender identity, age, religion, sexual, orientation, class, physical ability, nation of origin, etc.) and can also mean other characteristic such as personality, political affiliation, etc.

As noted, inclusion leads to diversity. The more the individual or organization includes different perspectives and people different from oneself and the organizational dominant culture,

they not only become more diverse, they become better for it. Diversity is not just about tolerance or achieving a desired mix, it is about expanding and improving our thinking, decision-making, and thriving during change. Diversity strengthens groups and organizations by relying on different perspectives and experiences. Diversity enriches and improves decision-making, team performance, employees' level of engagement, morale, innovation, resiliency, and quicker adaptation to challenges and opportunities.

Equity: It is deepening diversity and going beyond acceptance and tolerance of differences. It requires introspection to challenge our beliefs and biases to ensure that people have access and opportunity regardless of identity or status (e.g. race, gender identity, age, religion, sexual, orientation, class, physical ability, nation of origin, personality, political affiliation, etc.,). The end goal is to ensure that outcomes become random and not able to be predicted by those individualized characteristics.

Awareness: The ability to examine our beliefs and actions. And for the organization, such as the court, the willingness to honestly assess how it is organized and operating. This requires courageous and transformative leadership to shed light on practices, policies, and procedures that stand in the way of inclusion, diversity, and equity. This is not an easy undertaking. It takes time and requires questioning long-held beliefs and traditions.

Effective courts and court leaders recognize the need to preserve their core values while changing policies, procedures, processes, or practices incongruent with those higher societal values. These leaders do not shy away from confronting the conflict, instead they lean into it and harness the discomfort of such conflicts to create greater understanding and move the organization to the desired state. For example, these leaders know that talking about certain inequities and privileges, such as those dealing with race, gender, disabilities, and age, to just name a few, may make some people uncomfortable, and that even if they were not uncomfortable, they need to understand and acknowledge that others might be. Effective leadership leverages on this discomfort to effect positive change.

Effective leaders (i.e. judges and secretarios/secretarias) also know the importance of practicing self-care to balance professional and personal demands and stress. One strategy for maintaining equilibrium is practicing mindfulness. Mindfulness has shown to create new circuits in the brain, this is called neuroplasticity, especially the prefrontal area, and temporo-parietal area, improving emotional intelligence, empathy, and communication skills. Also, it helps better manage the activity of the amygdalae which is the center of stress and anxiety. When we perceive a threat or experience conflict, the amygdala releases adrenaline and cortisol through the body, causing a "fight, flight, or freeze" reaction. Dr. Daniel Goleman refers to this phenomenon as an "amygdala hijack." During situations of high stress or conflict, the practice of mindfulness and or techniques such as "the pause button" can ensure that the neocortex, which is the part of the brain that controls logic and reasoning in humans, remains in control, preventing an "amygdala hijack."

Effective mindfulness requires daily practice, a lifestyle change, and not a quick fix. It takes commitment, discipline, and perseverance, but the results are worthwhile. Extensive research

makes it clear that mindfulness is a key strategy to overcome implicit biases and improve decision-making, grounded on egalitarian principles.

Now that we have a general understanding of inclusion, diversity, equity, and awareness, let us examine two key components that shape and determine outcomes in those areas. The first component is culture and second is implicit biases.

Culture

Generally speaking, culture refers to the shared norms, beliefs, values, attitudes, language, and material traits of a racial, ethnic, religious, or social groups. Culture is the mental construct defined by people and shaped by people, and it can be extremely difficult to change or shape, which is why tools like this guidebook have been created, to help provide court employees the necessary tools to lead others and help us as court employees seize a greater measure of control and competency over the culture where we work. These are expressed in everyday existence, such as traditions, language, communication, diversions, or a way of life in general.

Culture at the organizational level refers to the shared attitudes, values, goals, and practices that characterizes them as institutions and organizations. These are formed over time and are deeply embedded in how decisions are made and how work gets done around the organization. Consequently, changing an organizational culture takes time and it is not easy. It involves more than just changing policies, practices, or technology; it requires consistency and intensity in fundamentally changing our collective thinking and behavior.

As clerks and court employees, we must recognize the important role culture plays in shaping our world view, attitudes, beliefs, and social interactions. Culture matters because these notions profoundly affect how people:

- define justice, conflict, and disorder;

- determine when it is appropriate to involve third parties – in resolving problems and conflicts;

- describe events or "what happened" and;

- fashion responses or solutions to problems and conflicts.

We also know that culture matters because it greatly influences:

- the ways people communicate;

- perceptions about the sources of legitimate authority;

- beliefs about individual and group responsibility;

- beliefs about what are fair processes;

- fundamental, underlying beliefs about cause and effect – such as the causes and treatment of illness; and

- beliefs about people and their motivation.

The following are examples of several culturally based assumptions embedded in the American institutions. These are meant to illustrate the organizational culture and its assumptions and not a comparison to Colombian institutions. The basic point is that these culturally based assumptions profoundly impact the way courts interact with court users, stakeholders, the public and how it delivers court services. Generally, institutions assume that:

- illness is largely organically based and thus can be treated medically;

- knowledge can be gained by a combination of structured educational sessions such as parenting or anger management classes by following the directions and counsel of judges, probation, and treatment providers, and by observing the successes of peers;

- individuals are in control of and responsible for their own actions;

- gender roles in child-rearing should be centered on equal parenting responsibilities between partners;

- people can be motivated to alter behavior by punishments and rewards;

- judges and other persons of authority within the court and justice system should be listened to and obeyed because of the positions they hold and the important roles society has assigned to those positions;

- people should show respect for court and justice officials;

- neutral, objective, third parties unrelated to litigants involved in a dispute can be effective in resolving disputes;

- written communication is an effective way to communicate; and

- determining when someone is truly sorry for what they have done and would like to make amends and why this is important.

The following chart has been developed to highlight the sources of cultural variations and the implication for organizations, such as courts. This template can be used to assess the individual's and organization's perspectives and variations within key orientations, such as activity, social relations, self, world, and time. The overarching objective is to use this framework as a means of gaining greater understanding, appreciation, and harmony about cultural assumptions of the organization and those of the individuals seeking court services. This is not meant to be used to label or stereotype individuals or groups, but rather to develop and provide culturally appropriate services. Using this awareness to create mutually supportive responses to meet organizational and individual needs increases cultural competency. The compelling benefits for culturally competent services include: increase levels of trust, respect, and confidence; improve efficiency and efficacy; and become more responsive and innovative to solve new or unforeseen challenges.

Cultural Variation and Organizations

Sources of Cultural Variation[1]	Implications for an Organization
Activity Orientation Is it important to be engaged in activities in order to be a "good" member of one's culture? Can and should people change the circumstances of their lives? Is work very different from play? Which is more important, work or play? Is life a series of problems to be solved or simply a collection of events to be experienced? **1. How do people define activity?** Doing --------------- Becoming -------------- Being Striving ------------------------------------ Fatalistic Compulsive --------------------------- Easy Going **2. How do people evaluate activity?** Techniques ------------------------------ Goals Procedures ------------------------------ Ideals **3. How do people regard and handle work?** End in itself ------------------ Means to other ends Separate from play --------- Integrated with play A Challenge ----------------------------- A Burden Problem solving -------------Coping with situation	• The purpose and value of activities, especially those associated with compliance with system expectations, might differ across cultures. • Views about the desirability and feasibility for change might differ. • Definitions about appropriate outcomes might differ. • Motivations for change might differ. • The meaning and measurement of progress towards a set of goals might differ. • Views about how to structure activity might differ. • Views about appropriate pace of activities might differ.
Social Relations Orientation To what extent are some people in the culture considered better or superior to others? Can social superiority be obtained through birth, age, good deeds, or material achievement and success? Are formal, ritualized interaction sequences expected? In what ways does the culture's language require one to make social distinctions? What responsibilities and obligations do people have to their extended families, their neighbors, their employers or employees, and others?	• Key concepts and definitions, such as caregiver, family, provider, might differ. • Relative importance of officials, individuals, families, and groups in understanding, fashioning, implementing, and monitoring problems and solutions might differ. • Persons of authority and respect might differ.

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[1] Note that the materials in this column throughout this figure are drawn from Lustig and Koester (2006) pp. 96 – 105.

*1. **How do people relate to others?***

As equals ------------------------------- Hierarchical

Informal ------------------------------- Formal

Member of   Member of

many groups ------------------------ few groups

Weak group ID -------------------- Strong group ID

*2. **How are roles defined and allocated?***

Achieved ------------------------------- Ascribed

Gender roles   Gender roles

similar ------------------------------- different

*3. **How do people communicate with others?***

Directly ------------------------------- Indirectly

No intermediaries ------------------- Intermediaries

*4. **What is the basis of social reciprocity?***

Independence ---------------------- Dependence

Autonomy ------------------------------- Obligation

- The need for, definition of appropriate, and the role of, intermediaries might differ.

- Views about appropriate gender roles might differ.

- Notions of guilt and contrition, and personal and collective responsibility might differ.

- Views about appropriate appearance and demeanor in court and in other official settings might differ.

- Meaning of rewards and punishment might differ.

- Effective environments and settings for providing services might differ.

Self-Orientation

Do people believe they have their own unique identities that separate them from others? Does the self-reside in the individual or in the groups to which the individual belongs? What responsibilities does the individual have to others? What motivates people to behave as they do? Is it possible to respect a person who is judged "bad" in one part of life but is successful in another part of life?

*1. **How should people form their identities?***

By oneself ------------------------------- With others

*2. **How changeable is the self?***

- Views about the possibility, desirability, motivation, and techniques for changing oneself might differ.

- Role of individuals and social groups in shaping appropriate behaviors might differ.

- Forces of motivation on the self – such as shame, family pressure, spirituality, and outsider assistance – might differ.

- Definitions of child, juvenile, adult, elder, and parent, along with the duties, rights, and responsibilities of each, might differ.

Changeable ------------------------ Unchangeable

Self-realization   Self-realization

3. *What is the source of motivation for the self?*

Reliance on self ------------------------ On others

Rights ------------------------------------- Duties

4. *What kind of person is valued and respected?*

Youth -- Aged

Vigor -- Wisdom

Innovative ------------------------------- Prominent

Material attributes ------------------------- Spiritual

- Notions of effective role-models, teachers, mentors, and peers might differ.

World-Orientation

Are human beings intrinsically good or evil? Are humans different from other animals and plants? Are people in control of, subjugated by, or living in harmony with the forces of nature? Do spirits of the dead inhabit and affect the human world?

1. *What is the nature of humans in relation to the world?*

Separate from   Integral part of

nature ------------------------------------- nature

Humans modify   Humans adapt to

nature ------------------------------------- nature

Health natural ---------------------- Disease natural

Wealth expected ---------------- Poverty expected

2. *What is the world like?*

- Views about ability of humans generally and individuals to shape, control, and navigate events and circumstances might differ.

- Beliefs about ability and techniques to impact health, illness, wealth, and behavior might differ.

- Views about meaning of facts, ways to know and gain knowledge, and the sources of knowledge might differ.

- Views about importance of economics, religion, and other motivators of behavior might differ.

Spiritual-physical dichotomy -- unity Spiritual-physical Empirically understood ------------- -------------- understood Magically Technically controlled ----------------------------------- controlled Spiritually	
Time Orientation How should time be valued and understood? Is time a scare resource or is it unlimited? Is the desirable pace of life fast or slow? *1. How do people define time?* Future ----------- present --------------------- past Precisely measureable --------------------- Undifferentiated Linear ----------------------------------- Cyclical *2. How do people value time?* Scarce resource -------------------------- Unlimited Fast pace ------------------------------ Slow pace	• Views about appropriate time-frames might differ. • Views about capacity to structure time might differ. • Definitions of timeliness might differ. • Emphasis on relative importance of past, present, and future might differ.

Some courts have used this cultural framework to better assess their practices and provide more culturally competent services to a more diverse population, especially for self-represented litigants. These efforts have required challenging and changing organizational culture-based assumptions to develop culturally sensitive triaging of self-represented litigants.

Traditionally we have all been taught to ignore differences among the people we help and to treat them all equally. We are supposed to overlook that the individuals are rich, poor, tall, short, young, old, black, white, Indigenous people, foreign national (i.e. Venezuelan), etc., or their particularized litigation status, for example are women seeking spousal or child support treated

differently or viewed as inconvenience to the court?. However, courts cannot turn a blind eye to systemic or institutional disparities in treatment and outcomes based on these demographics.

For example, they cannot ignore the disproportionate adverse outcomes based on race or socioeconomic status, such as rates of arrests, incarceration, detention alternatives, prison sentences, police shootings or use of excessive force, or compliance with court orders. The recent "Black Lives Matter" movement in response to incidents of police brutality and disparate treatment and outcomes for blacks and minorities in general in the United States is a poignant example of societal demand for change and an opportunity for justice systems to delve deep into their policies, procedures, processes, and practices to ensure that individuals and their cases are treated culturally appropriate and in an unbiased manner. This is an important lesson for courts in the United States and undoubtedly other countries, in order to live up to ideals of fairness, equality, impartiality, and gain public trust and confidence in the justice system.

Additionally, courts should consider best practices that other justice systems have developed and implemented to address disparities in prison sentencing, bail and sentencing alternatives, court fines and compliance of court orders, specialty courts (i.e. substance abuse treatment, domestic violence, mental health, homeless, restorative models, family courts), and self- represented litigant-centric service models. The programs developed in the United States to assist self-represented litigants navigate through archaic and complex procedures, rules, practices and forms in civil and family matters serve as good examples for courts responding in a culturally appropriate manner and counter to the status quo to make sure that each person has meaningful access to justice. If the playing field is not leveled for those who do not have a lot of understanding about the court culture, they will be denied access before they even begin.

This guiding principle for self-represented litigant services requires an understanding of how to help someone and the interviewer needs to be able to understand the perspective of the self-represented litigant. For example, a young woman may be acting upon one set of assumptions, while an elderly woman may be acting on a completely different set of assumptions, and there may be other variations among the sexes. Thus, unlike what you may have been previously taught, when trying to develop a culturally sensitive approach, do not hesitate to consider all of the information your senses bring you. However, among the cautions you should exercise is to **never make an assumption about how intelligent someone is** based on the following factors alone. For example, you may wish to consider:

- Clothing: uniform, business attire, casual stay at home type clothing, clothing which indicates manual labor
- Appearance: if it is adverse weather, does the person appear to have been out in it for quite a while (e.g., if it is hot, are they uncomfortably hot). If so, perhaps that person walked to your office from a long distance, or at least from a bus stop. Perhaps that person waited a long time for the bus at another location.
- If there was an appointment time, were they on time? If not, it may indicate transportation issues.
- Did they bring their children? If so, it may indicate inability to obtain day care.
- Did they bring a friend?

- Linguistic variations: regional accents or Indigenous dialects
- Manner of speaking: formal or informal. Do they immediately tell you what they need, or do they just start talking, as if in the middle of the story?
- Do they use terms indicating a certain mind set: "prestar" – to borrow, when referring to access to visitation with minor children
- Do they identify themselves by their mother's last name as well as their father's?
- Did they bring any of their relevant papers with them? If not, are you certain they know how to read? Do they know any details of their case, such as case number?
- Do they seem hesitant to write anything? Do they know how to write?
- Do they seem to understand what you tell them?
- Do they insist that you tell them what to do, not just offer them various options?
- Do they seem to have any understanding of the issues that brought them to your office?

Another important cultural component to consider is language. Generally speaking, language matters because it allows us to communicate, understand, and participate (in relationships or activities). Language (oral and written) is the single most visible and one of the most important manifestations of culture. Given Colombia's diverse population, the court and its employees require a deep understanding of the various indigenous languages and unique regional differences.

Differences between the culture of the courts and culture of litigants can greatly complicate communications and understanding of court processes, case outcomes, expectations for performance, and compliance with court orders. Courts need to ensure that litigants are provided culturally and linguistically competent interpreters on a timely basis for court proceedings, provide user-friendly and culturally appropriate instructions, court orders, procedures, self-help and online information.

As we will explain in the next chapter, peoples' perceptions about fairness is profoundly affected by their experience as to whether they were heard and communicated with respect, dignity, and integrity. how they are treated in court are as important as the outcomes of cases when it comes to their satisfaction with their court experience and willingness to comply with case outcomes.

Implicit bias

As we have learned, culture plays a major role in how we see and interact in the world around us. Culture shapes and reinforces certain stereotypes and attitudes about things, places, and people. In this section, we will delve deeper into these social cognitions and inherent implicit or unconscious bias and their real-life implications.

In describing implicit bias, we ought to make a distinction between explicit and implicit biases. Explicit biases are those attitudes and stereotypes we acknowledge and recognize (these could be good or bad, for example liking chocolate or disliking crowded places); and implicit biases are those we may not be conscious about, but nonetheless influence our interactions, decision-making, and social cognitions in general. Cognition refers to the mental action or process of acquiring knowledge and understanding through thought, experience, and the senses. These include behavior, processes, objects, social (stereotypes and attitudes) cognitions.

General examples of these cognitions for adults include:

- **Behavior**-when crossing a busy street, we have learned to proceed with caution, watching for incoming vehicles and avoiding harm or danger.
- **Process**-when a restaurant server brings us the menu, we know that is the process for ordering our meal or another example is when we follow wayfinding signs at international airports to retrieve our luggage or find immigration and exits.
- **Objects**- we know what a chair looks like and how to use it without much thinking about it.
- **Social**-these are our attitudes and stereotypes shaped by our culture, family, friends, experiences, stories, television, social media, etc. The challenge in self-disclosing explicit biases is always present, guarding against the perception or judgment from others about our biases or simply, not being willing to disclose. For example, we are more comfortable with admitting socially accepted biases, such as our attitude of the elderly as frail and without too much thought we may hold a door open for them or offer our seat on a crowded bus. The implicit or unconscious biases are more difficult to recognize because sometimes we may not be aware when they influence our reactions or decision-making. For example, if a litigant that comes into the courthouse is well-groomed and wearing a suit and tie and another litigant comes in an unkept condition and casual attire, we may unconsciously form a different opinion of the individuals and consequently may act differently toward each. Or other mental associations (attitudes and stereotypes-positive or negative) we form automatically based on perceived characteristics.

Neuroscientists have been studying implicit or unconscious bias for the past two decades and determined that the average human brain can process nearly 11 million pieces of data in a second; however, most individuals are only consciously aware of about 40 pieces of information at any given moment.

To manage all these pieces of data, our brains use "shortcuts" or mental schemas to simplify and understand our social surroundings more quickly. This decoding system allows the brain to associate relevant pieces of social cognitions quickly and with the least amount of energy and effort. These automatic shortcuts "unconscious" responses enable faster decisions and may also prompt us to jump to unwarranted conclusions, especially when under stressful situations. These unconscious associations may influence our feelings and attitudes and result in involuntary discriminatory practices, especially under demanding circumstances.

So, why is this relevant to courts and judicial branch employees? Because the extensive research shows that implicit biases are part of our human experience and when left unchecked, they can and do influence our decisions in ways that can have real effects on real lives. These could have a profound impact on how we treat court users, co-workers, and live up to the enduring court values. New York University's review of several studies conducted by researchers using implicit association tests makes the case for real world consequences. Some of these include:

- ➢ implicit bias predicts the rate of callback interviews based on implicit stereotype in Sweden that Arabs are lazy (Rooth 2007);

- implicit bias predicts awkward body language which could influence whether folks feel that they are being treated fairly or courteously (McConnell & Leibold 2001);
- implicit bias predicts how we read the friendliness of facial expressions (Hugenberg & Bodenhausen 2003);
- implicit bias predicts more negative evaluations of ambiguous actions by an African American which could influence decision making in hard cases (Rudman & Lee 2002)
- implicit bias predicts more negative evaluations of agentic (i.e. confident, aggressive, ambitious) women in certain hiring conditions (Rudman & Glick 2001);
- implicit bias predicts the amount of shooter bias--how much easier it is to shoot African Americans compared to Whites in a videogame simulation (Glaser & Knowles 2008);
- implicit bias predicts voting behavior in Italy (Arcari 2008);
- implicit bias predicts binge-drinking (Ostafin & Palfai 2006), suicide ideation (Nock & Banaji 2007), and sexual attraction to children (Gray 2005); and
- some studies conducted in the United States have demonstrated that criminal defendants with more Afro-centric facial features receive in certain contexts more severe criminal punishment (Banks et al. 2006; Blair 2004).

These findings of real-world consequence are disturbing for all of us who sincerely believe that we do not let biases prevalent in our culture infect our individual decision-making. Even a little bit. Fortunately, there is evidence that implicit biases are malleable and can be changed.

The implication for courts is that implicit biases could be influencing their decisions, policies, procedures, processes, practices in ways contrary to ascribed values of unbiased conduct, impartiality, fairness, and equity. Some of these implicit biases may inadvertently result in exclusion, lack of diversity, inequity, and implicit discrimination, which could be just as damaging as direct, structural, or systemic discrimination.

Let us consider other research by social and cognitive psychologists with neuroscientists in the development of instruments that measure stereotypes and attitudes, without having to rely on potentially untrustworthy self-reports. Some instruments have been linguistic, asking individuals to write out sentences to describe a certain scene from a newspaper article. It turns out that if someone engages in stereotypical behavior, we just describe what happened. If it is counter-typical, we feel a need to explain what happened. This could have implications for police investigations and testimony by witnesses.

Others are physiological, measuring how much we sweat, how our blood pressure changes, or even which regions of our brain light up on an fMRI (functional magnetic resonance imaging) scan. For example, some measure individual's reaction to their environment, such as the color of a room and impact on their mood; holding a warm beverage and then switching to a cold one and determining the associated emotions ascribed to shown images on a computer monitor; and introducing the smell of a disinfectant (i.e. Lysol) and associating that with a more clean and orderly eating environment. Another important study conducted by Princeton University scientists Susan Fiske and Lasana Harris, in 2006, tested the theory of dehumanization called the Stereotype Content Model, where participants placed into a fMRI machine were shown either

objects or photos of people who appear to fit certain social stereotypes, such as middle class, rich, elderly, disabled, and homeless. Most of the photos activated the parts of the brain we use for social cognition. This is what happens when we think about another person. But two groups-homeless people and drug addicts-triggered no activation. They were not being perceived as human. The implication for courts is obvious, doubling their efforts to not allow implicit biases result in devaluing or dehumanizing homeless or drug addicted defendants before the court. The good news is that Fiske found a simple method of reversing dehumanization, she conducted a study in which she simply asked subjects in the imaging machine whether the dehumanized person likes to eat a particular vegetable. This strange question had a profound effect: The social cognition areas of the brains lit up again. It turns out you can't imagine what someone likes without seeing them as a person. So by simply thinking about what is going on inside someone's head, they become a human being again.

Still other techniques borrow from marketers. For instance, creating "bundles" that include demographic attributes. For instance, how would you rank a job with the title Assistant Manager that paid $160,000 in Miami working for Ms. Smith, as compared to another job with the title Vice President that paid $150,000 in Chicago for Mr. Jones?

The most thoroughly tested measurement is the Implicit Association Test (IAT), developed by researchers at Harvard University. It measures attitudes and beliefs that people may be unwilling or unable to report. The IAT may be especially interesting if it shows that you have an implicit attitude that you did not know about. The Implicit Association Tests are customized to measure a variety of attitudes and beliefs. One well-known IAT is a sort of video game you play, typically on a computer, where you are asked to sort categories of pictures and words. For example, in the Black White race attitude test, you sort pictures of European American faces and African American faces, Good words and Bad words in front of a computer. It turns out that most Americans respond more quickly when the European American face and Good words are assigned to the same key (and African American face and Bad words are assigned to the other key), as compared to when the European American face and Bad words are assigned to the same key (and African American face and Good words are assigned to the other key). This average time differential is the measure of implicit bias. The link to take an IAT or learn more about it is: https://implicit.harvard.edu/implicit/takeatest.html

Decades of research using the IAT reveals pervasive reaction time differences in every country tested, in the direction consistent with the general social hierarchies: German over Turk (in Germany), Japanese over Korean (for Japanese), White over Black, men over women (on the stereotype of "career" versus "family"), light skinned over dark skin, youth over elderly, straight over gay, etc. These time differentials, which are taken to be a measure of implicit bias, are systematic and pervasive. They are statistically significant and not due to random chance variations in measurements. A recent meta-analysis of 122 research reports, involving a total of 14,900 subjects, revealed that in the sensitive domains of stereotyping and prejudice, implicit bias IAT scores better predict behavior than explicit self-reports. (Greenwald et al. 2009). Let us consider a hypothetical IAT in Colombia testing social hierarchies. What do you think the result would be if the comparison was with Venezuela?

These pervasive results do not mean that everyone has the exact same bias scores. Instead, there is wide variability among individuals. Further, the social category you belong to can influence what sorts of biases you are likely to have.

The body of research in the field of implicit/unconscious bias makes it clear that we all have unconscious biases that reside in our "hidden" brains. That is obviously the challenge, but the good news is the brain is extremely malleable and can be trained to counter these biases. This guidebook has been created to explore these important concepts and provide practical strategies to overcome implicit bias and improve personal and institutional performance in key areas.

Sondra Thiederman, researcher in the field of unconscious bias, recommends three practices to overcome them: **Introspection, mindfulness, and awareness**. Introspection refers to the examination of one's own conscious thoughts and feelings. It relies exclusively on observation of one's mental state. Mindfulness refers to a mental state achieved by focusing one's awareness on the present moment, while calmly acknowledging and accepting one's feelings, thoughts, and bodily sensations. There are several techniques to achieve this state, like controlled breathing, walking, meditating, just to name a few. Mindfulness allows us to quiet the surge of thoughts and mental chatter, reduce stress, anxiety and tap into reason, empathy, and compassion. Awareness on the other hand, refers to the mental state that enables us to gather the facts and assesses our surroundings and reactions. Think of it as the process for linking stimuli from body and mind. For example, being aware that your brain and body perceive the cause and effect of fear or anger. These should be viewed as a continuum of mental activities and not clearly demarcated and separate processes. In her training for public sector employees, she incorporates these practices into five strategies to manage and overcome unconscious bias.

1. Mindfulness to avoid mental hijack
2. Be aware of your first thoughts or feelings about something, someone, or place, as they may help discover your biases
3. Pause to awaken your rational brain (hitting the pause button to override your amygdala highjack. Simply taking couple of deep breaths or mentally counting for a few seconds may be enough to engage your reasoning part of the brain)
4. Use the power of logic
5. Behave in ways to counter bias and seek commonalities instead of differences

To help employees with step 4 *Use of the power of logic,* a basic logic model has been included. These are questions you would ask yourself to respond to circumstances at hand. The sample questions include:
   ✓ What do I think I know?
   ✓ How do I know it is true?
   ✓ Is there another way of looking at this?
   ✓ Do I have any evidence to support this?
   ✓ What evidence do I have that would counter this?
   ✓ What might be another explanation?
   ✓ What could happen if I am wrong?
   ✓ Who can I call upon to provide me with a completely different viewpoint?
   ✓ Is there any other information I can gather before I make a final determination?

This important step requires introspection and awareness to orient us to our moral compass and ethics.

Another model used by Rotary International, a global humanitarian organization with over one million members in more than 150 countries is "The Four-Way Test." This is a set of four questions, aspirational in nature, to help guide ethical decisions by individuals or organizations (courts).

The Four-Way Test

Of the things we think, say, or do:

1. Is it the TRUTH?
2. Is it FAIR to all concerned?
3. Will it build GOODWILL and BETTER FRIENDSHIPS?
4. Will it be BENEFICIAL to all concerned?

The following terms describing categories of implicit bias are provided to broaden knowledge on this topic and consider potential implications for the court and judicial branch employees.

Nebulous notion of "fit"

The notion of "fit" implies preferences for individuals like one's self, or "in-group preferences" (i.e., preferences for members of the group one identifies with most closely). Fit is therefore an embodiment of both implicit and explicit bias. By assessing whether an individual will fit into the climate of the institution, institutional gatekeepers can unconsciously create advantages for some individuals and disadvantages for others. This can lead to inequitable recruitment and selection processes and may result in a lack of institutional diversity among judges, court leaders, and court staff.

Confirmation bias

This refers to the tendency for people to unconsciously seek out evidence that supports their assumptions about an individual, thereby implicitly confirming their biases. For example, confirmation bias can contribute to individuals reflexively seeking out candidates from particular universities and elevating those successful applicants while failing to objectively assess candidates from other universities. When an individual automatically focuses on data that align with his or her biases, candidates who do not fit this alignment can be disadvantaged.

Unconscious bias as a two-way dynamic

Because all individuals are susceptible to bias, two-way interactions between individuals—regardless of power dynamics—can bring unconscious biases from one or both parties to the surface. For example, negative biases that some patients have toward female physicians and physicians of color. Health care quality can be affected not just by physicians' unconscious biases but also by those of patients. Another example would be lack of trust for the justice sector by some minorities or type of litigation (e.g. litigants seeking spousal or child support may

perceive that their cases are not handled timely nor fairly and the courts may see them as time consuming and less deserving of priority).

Lack of diversity

An institution may unintentionally communicate messages about who or what is valued through a persistent lack of diversity among top leadership positions; institutional grant and funding awardees; success stories featured in publications; names of centers, departments, and buildings; and even the portraits or objects (e.g. religious) adorning the walls.

Unconscious "othering" of minorities

This can be observed in the articulation of diversity issues and initiatives as being only for minorities rather than in seeing all individuals as interconnected to advancing diversity. It minimizes the experiences of minorities and women when the injustices and difficulties they face at an institution are viewed as "minority issues" as opposed to institution-wide issues in need of widespread resolution. This "us versus them" dichotomy may cause some individuals to feel undervalued and unsupported within an institution, especially when they believe that resolving the institutional issues contributing to their disenfranchisement would strengthen the culture of the organization and lead to a more inclusive environment for all members of the community.

Unconscious undervaluing of diversity

While many institutions may put diversity-related policies and programs in place, the underfunding (and even defunding in times of financial stress) of these initiatives can undermine an institution's ability to truly embrace diversity. Unconscious bias may compromise the degree to which institutions fully embrace diversity if diversity is not valued as a key component of institutional excellence.

Judicial Reform Initiatives

In the early 2000's, several state and federal courts in the United States started examining their practices, processes, and policies to determine how they were performing against institutional values of fairness, integrity, diversity, impartiality, and equity. Through their governing bodies, these courts established commissions, task forces, and committees to develop systemwide improvement recommendations. Some of the recommendations focused on ongoing judicial education on issues related to gender and racial bias, diversity, and on systemwide policies, procedures, processes, and practices to improve access to courts, to its services, responsiveness to community needs, and enhance public trust and confidence. Lessons learned from these initiatives made it clear that fundamental organizational cultural changes were required to successfully institutionalize new practices and solutions. Undertaking these initiatives also required courageous leadership, systemwide perspective, and long-term commitment. Without the necessary cultural change with its interconnectedness to values, norms, practices, processes, policies, procedures, and people, true transformation would not be attainable.

With this in mind, the following strategies were suggested for overcoming implicit bias and enhancing cultural competency.

Strategies for courts to mitigate implicit bias and enhance cultural competency:

1. A commitment from institutional leadership is essential to identify and mitigate unconscious bias. Leaders can engage judicial officers, court leaders and court staff at all levels to create an inclusive climate that acknowledges bias and the effect it can have on the institutional climate, policies, and decision making. An individual's motivation to be fair does matter. But we must first believe that there is a potential problem before we try to fix it.

2. Bias can be mitigated through educating and training individuals and teams. Examining implicit biases through the Implicit Association Test, role-playing, and blinded studies can help individuals recognize their own biases.

3. Teams and committees involved in high-stakes decision making, such as recruitment, appointment, promotion, and assignments, should be diverse in composition and identify clear requirements and interview questions before beginning the selection process.

4. The environment seems to matter. Meaningful social contact across social groups seems to have a positive effect not only on explicit attitudes but also implicit ones. Environmental exposure to counter-typical exemplars who function as "debiasing agents" seems to decrease our bias. But the interactions/exposure need to be meaningful and not superficial or token gestures. This approach also enhances cultural competency. The following studies highlight positive exposure effect.

   - In one study, a mental imagery exercise of imagining a professional business woman (versus a Caribbean vacation) decreased implicit stereotypes of women. (Blair et al. 2001).
   - Exposure to "positive" exemplars, such as Tiger Woods and Martin Luther King in a history questionnaire, decreased implicit bias against Blacks. (Dasgupta & Greenwald 2001).
   - Contact with female professors and deans decreased implicit bias against women for college-aged women. (Dasgupta & Asgari 2004).

5. Various procedural changes can disrupt the link between implicit bias and discriminatory behavior.

   - In a simple example, orchestras started using a blind screen in auditioning new musicians; afterwards, women had much greater success. (Goldin & Rouse 2000).
   - In another example, by committing beforehand to merit criteria (is book smarts or street smarts more important?), there was less gender discrimination in hiring a police chief. (Uhlmann & Cohen 2005).