

Diversity, Equity and Inclusion (DEI) Guide

A court manager's guide to improving DEI training, practices and planning



National Association for Court Management
Strengthening Court Professionals



State Justice Institute

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A court manager's guide to improving DEI training, practices and planning

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Purpose

Issues related to diversity, equity, and inclusion (DEI) arise in courtrooms, in the justice system at-large, and in courts as organizations and government entities. The purpose of this National Association for Court Management (NACM) guide is to help court leaders and all who work in the justice system identify and better understand DEI; to provide several options for proactively facing these issues and opportunities; and to provide a starter set of resources to learn better and to do better.

Courts are authorized and entrusted to address legal disputes of court users with backgrounds of extraordinary **diversity**. Courts are likewise composed of judicial officers and employees with diverse backgrounds. Courts, for whom precise language is critical and often dispositive, can and should view the term diversity with respect for and appreciation of differences in perspectives, often due to immutable personal characteristics and inclusive of lifestyles and cultures.¹

Courts are also a forum where inequity frequently comes to the forefront, whether in the courtroom or—similar to other employers or organizations in the world today—among leadership, employees, governmental and non-governmental partners, and stakeholders. The concept of **equity** in this context acknowledges that each person starts in a different place due to barriers or advantages, and that there is great value in striving toward equitable outcomes.² By one analogy, courtrooms are the stadiums and judges are the referees for legal disputes. In this context, equity does *not* involve a manipulation of the rules of the game or the score; rather, it involves ensuring there is a level playing field for the disputants.

Beyond appreciating the presence of people with similarities and differences and striving toward equal possible outcomes by leveling the playing field, courts should strive for **inclusion**. In this context, inclusion is the practice of ensuring that everyone feels a sense of belonging and that their views are valued. For litigants, this means that improved access to the justice system may be a start, but *meaningful* access is what matters. Ensuring that a litigant's claims are able to be presented to a court is a start, but better is to ensure that the litigant understands the process and everything the court says, orders, or writes; better still is to ensure that the litigant can meaningfully engage with the court and participate in the process, with or without representation; best is for the litigant to feel heard and understand the court's ultimate decision and how the court applied the law to the facts of the case.

Notably, while diversity and equity are generally focused on status or processes, and as such may be evaluated relatively objectively, inclusion, by contrast, is more subjective. Are court employees and court users actually receiving the fruits of the labors in support of DEI? Who is *invited* into the justice system to seek resolution of their disputes? Who is *empowered* to meaningfully participate in the legal process? In efforts to improve diversity or equity—or any aspect of the justice system—who are part of the discussions, who makes the decisions, and who implements the changes matters.



Audience

Among the primary purposes of courts is administering justice in individual cases. Courts also strive to ensure the *appearance* of administering justice in individual cases. Accordingly, the intended audience for this guide includes, first, judicial officers and other court professionals, and, second, all others who work in the justice system and have a role or responsibility that may impact trust and confidence in the justice system.

This includes judicial officers and court personnel who have a significant role in improving access to court processes and courts. It also includes regional, statewide, and local judiciary-focused or inter-branch working groups that improve access to the justice system or enhance engagement with communities and groups of individuals who might be marginalized.

An Introduction to Diversity, Equity and Inclusion

Principles and Concepts

Ensuring that DEI is valued throughout the justice system, is firmly rooted in the purposes and responsibilities of courts. Two long-standing explicit purposes and responsibilities of courts are to administer justice in individual cases and to ensure that it appears to litigants, the public, and all others that courts are administering justice in individual cases.³ The reality and perception that justice is being done directly impacts whether the public trusts and has confidence in the rule of law and in the justice system.

First, reality. A justice system that acknowledges and reflects the diversity of the community it serves is better suited to understand the context, dynamics, and facts of a given dispute before the court, and thereby better able to apply the law to such facts. A justice system that acknowledges that each person starts in a different place due to barriers or disadvantages is better able to approach each case with a deeper and more precise understanding of the measure of any legal problem and can apply equitable remedies.⁴ An inclusive justice system delivers on the promise of equal justice under the law.

Second, perception, where the concept of

procedural justice is integral. “Procedural justice speaks to the idea of fair processes, and how people’s perception of fairness is strongly impacted by the quality of their experiences and not only the end result of these experiences. . . .”⁵

“Individuals’ perceptions of procedurally just encounters are based on four central features of their interactions with legal authorities:

- i. Whether they were treated with **dignity and respect**;
- ii. Whether they were given **voice**;
- iii. Whether the decision-maker was **neutral and transparent**; and
- iv. Whether the decision-maker conveyed **trustworthy** motives” (emphasis in original).⁶

This guide will help us all to do better—to provide a more just system in both reality and perception. Moreover, the mission of NACM includes advocacy of important court and justice system priorities. In 2022 NACM revised its mission, vision, and values to reflect inclusivity and to ensure that this value reflects the ideals of the profession of court management and, by extension, courts and all court professionals.⁷

Diversity, Equity, and Inclusion Terms, Defined

Diversity, equity, and inclusion (DEI) are three terms that are becoming increasingly prevalent in the business world, in society, and in courts in particular. Their use in regard to the movement of society and the court system toward an ever more just world expands their meanings. Each term should be given equal weight.

DIVERSITY

Diversity is commonly defined as “the state or fact of being diverse” and diverse as “of a different kind, character, etc” (Random House). A court system is diverse when the judges and staff are varied in terms of the things that differentiate humans. While race is an important element because it is so readily apparent when we meet each other, it is only one of a multitude of things that differentiate us. Other important variables include ethnicity; education level; legal representation status; age; sexual orientation; gender identity; socio-economic status; housing status; disabilities; language barriers; mental health status; access to technology; community characteristics (rural/urban, affluent/poor); type of employment (e.g., juries tend to get less self-employed); and mental frameworks.⁸ Any of these variables could affect how someone is perceived and treated. Some litigants may not care that the person sitting in judgment is of a different race; however, litigants may feel disadvantaged because the person in front of them might be of a different sexual orientation, or because they lack financial resources.

Diversity is important in the court system for two main reasons. First, in providing justice to a population, it is important that the judges and staff reflect the makeup of that population.

Otherwise, the perception, fair or unfair, is that people who are standing in judgment of citizens may be biased. Second, research has suggested that a more diverse workforce has the *potential* to be more productive and effective. We say a diverse workforce has the potential to be more productive, because diversity alone is not enough.

EQUITY

Equity is commonly defined as “the quality, state, or ideal of being just, fair, and impartial” (Merriam-Webster Dictionary). Of course, this is a goal that is hard to achieve. “Equity ensures that everyone has equal access to the same opportunities. . . . We must understand that not everyone starts from the same place because of advantages and barriers that have existed over time and that still exist . . . equity is the process to achieve the values of diversity and inclusion.”⁹ So when the starting line is different for each and every individual, part of the challenge is identifying an individual’s personal and shared history and then determining if there is anything that can be done to make up for disadvantages. The realistic answer is that sometimes this can be done and sometimes it can only be attempted. Ignoring disadvantages entirely, though, is not an acceptable answer when we wish to live in a just society.

INCLUSION

Beyond having a seat at the table, it is important that individuals are included. In the context of the DEI movement, the meaning is expanded. “Inclusion is when we welcome, respect, support, affirm, and value the authentic participation of any individual or group.

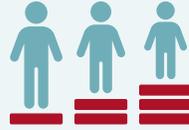
Definitions



DIVERSITY

The state or fact of being diverse, with diverse being defined as “of a different kind, character, etc.”

— *Random House Dictionary*



EQUITY

The quality, state, or ideal of being just, fair, and impartial.

— *Merriam-Webster Dictionary*



INCLUSION

The idea that everyone should be able to use the same facilities, take part in the same activities, and enjoy the same experiences, including people who have a disability or other disadvantage.

— *Cambridge Dictionary*

Inclusion is not a natural consequence of diversity.¹⁰ So having a seat at the table is not enough, it is important that each person be given a real opportunity to use their voice. We all can recall times where a meeting was dominated by one or two people. For some who might want to add to the conversation but are not given an opportunity to do so, the value of their potential contribution is lost, and they end up feeling pulled along, rather than helping to add to the progress and direction of the group. Juliet Bourke says that inclusion is treating others “equitably and with respect”; “feeling valued and belonging”; being “safe” and open to speak up; and being “empowered” to grow.¹¹ A lack of inclusion will negate the best efforts to achieve diversity. Thinking of the second purpose of diversity, efficient and effective operations, a study by Deloitte found that “Diversity + inclusion = improved business performance.”¹²

In the terms of leadership, inclusive leadership is about 1) treating people and groups fairly; 2) personalizing individuals; and 3) leveraging the

thinking of diverse groups for smarter ideation and decision making.¹³ This is a skill set that can and should be actively worked on to create a productive and positive working environment. Inclusive leadership “assures that all team members feel they are treated respectfully and fairly, are valued and sense that they belong, and are confident and inspired.”¹⁴ Inclusive leadership can also result in judges and staff providing improved customer service.

All three elements need to be in play to have an organization that is effectively identifying and dealing with such barriers. “Diversity is about representation, equity is about eliminating barriers, and inclusion is about creating a space of belonging.”¹⁵

The “Why” of DEI

The national debate about the importance of recognizing the need for DEI continues, but there can be no debate about its importance in the courts. Every day, courts throughout this country, from lower-level, limited-jurisdiction courts to state supreme courts to federal courts, experience constant interaction with diverse groups of lawyers, defendants, plaintiffs, and more. To provide equal access to justice, courts must recognize diversity and prepare to address situations wherein diversity is a major factor.

One of the most frequent descriptors of America is a “melting pot,” a most appropriate description. One has only to reflect on the famous poem on the Statue of Liberty, “Give me your tired, your poor, your huddled masses yearning to breathe free,” to see the relevance. People continue to arrive in America from all over the world, not only seeking “streets paved with gold,” but also seeking liberty and justice. The idea of liberty and justice for all should undergird court operations throughout the land, but to adopt these concepts, we must be clear about the meaning of melting pot.

The melting pot concept can present a problem because it ignores the fact that though we are all Americans, we have different backgrounds, which must be considered and respected. Melting pot is often used to imply that all Americans fit into one category, American, which presents a serious problem in the justice system because though America is a melting pot, citizens retain their cultural, ethnic, geographic, religious, economic, educational, and sexual identities. Rather than delineate any further, we acknowledge that this list of differences is not all-inclusive. No matter how long or how often the melting pot is stirred, human differences remain, and it is those

differences that the courts must acknowledge and address in operations, employment, and customer service to provide access to justice and to retain the image of providing liberty and justice for all.

Perhaps the most pressing area of concern is the public’s trust and confidence in the court system. This has been a long-standing concern of NACM and its membership. NACM understands the importance of a positive public perception of the court system and believes that DEI policies are a critical piece in our effort to increase public confidence in the court system.

As the NACM CORE® notes:

Maintaining the public’s trust and confidence in the courts is integral to the credibility of the judicial branch. ... The court process must not only be just, it must-have the appearance of being just. ... Court leaders help promote and maintain public trust and confidence by creating organizational cultures that foster integrity, transparency and accountability for court processes and operations.¹⁷

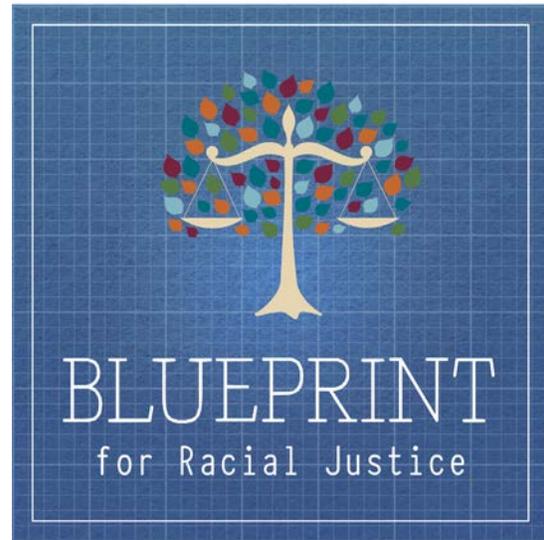
Even if we agree that the United States is a “melting pot,” we must always consider the diversity of the human experience and advocate for liberty and justice for all. Decisive, deliberate steps must be taken by informed court managers throughout the court system to live up to the idea of equal treatment in the workplace, and equal justice under the law.

NCSC’s Blueprint for Racial Justice

In 2020, the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) adopted a joint resolution: “In Support of Racial Equality and Justice for All.” This resolution encompasses a commitment of national state court leadership “to intensify efforts to combat racial prejudice within the justice system, both explicit and implicit . . . so that justice is not only fair to all but also recognized by all to be fair.” Following this resolution, the National Center for State Courts (NCSC), CCJ, and COSCA launched the Blueprint for Racial Justice (*Blueprint*) in 2021.

The *Blueprint* is not a document, but rather a mobilizing force of over 150 thought leaders within the various state judicial branches—justices, judges, court administrators, and others representing dozens of legal and court-related organizations. Virtually anyone involved in the daily administration of justice has a seat at the table, and these leaders agree that a deliberate approach to identifying what barriers to equality may exist in our state court systems is paramount. Each has volunteered their time and expertise, having made the prudent commitment to correct and eliminate barriers that may exist.

These efforts began with examining the systemic changes needed to make equal justice under the law an enduring reality for all. Through four working groups—Fairness and Awareness, Systemic Change, Increasing Diversity of the Bench, Bar, and Workforce,



and Communications and Implementation—this endeavor is generating the tools that justice system leaders need to make well-informed policy decisions.

As such, each *Blueprint* working group was charged with identifying and creating resources that would be directly applicable to courts as follows:

- **Fairness and Awareness**

Develop tools for raising awareness regarding racial justice priorities in courts using court-tested applications such as the Racial Justice Organizational Assessment Tool for Courts (ncsc.org/racialjusticeassessment); promote the use of court data standard best practices to provide empirically grounded guidance; provide training to aid court leaders in identifying and managing unconscious bias.

■ **Systemic Change**

Collect, compile, and disseminate a single directory of practical initiatives undertaken by courts nationwide to reduce the need for courts to start from scratch on similar efforts; share strategies to ensure that systemic changes are rooted in the Guiding Principles of Systemic Change; provide training and other programming highlighting serious policy issues such as no-knock warrants, fines and fees, bail, and juror selection, to name a few.

■ **Increasing Diversity of the Bench, Bar and Workforce**

Promote studies working to expand diversity efforts through the legal pipeline; create a free web portal called CORA, Court Opportunity Recruitment for All (ncsc.org/cora), to connect a diverse applicant pool to court jobs, internships, externships, and clerkships; identify ways to increase diversity on the bench through often overlooked opportunities, including the use of quasi-judicial appointments for magistrates, referees, and commissioners and pro tem appointments under the lawful authority of the judicial branch.

■ **Communication and Implementation**

Create an online resource center at ncsc.org/racialjustice to house free resource materials for courts; establish an emergency PIO hotline for courts in need of quick professional communications strategies pertaining to racial justice matters occurring in their jurisdiction; create the Blueprint quarterly newsletter to regularly inform court leaders of upcoming discussion and practice.

To support the efforts of courts nationally, deliverables created to date include webinars, assessment tools, a directory of tried-and-true efforts previously developed from around the country, and other resources available at no cost to any person who wants to begin the hard work that is necessary to effectively enact positive change. These products are available 24/7 and were designed to assist state court leaders with identifying, creating, and implementing racial justice efforts that best suit the complexities of their respective jurisdictions.



NCSC's online Racial Justice Resource Center can be found at ncsc.org/racialjustice.

Avenues to Action

Executive Support for DEI

Discussions around leadership in the courts focus on the importance of the executive team—the presiding judge and the court administrator and, in some cases, elected or appointed clerks of court. While courts may use a variety of terms for these positions, the basics are the same. Often, the senior judicial officer and the senior court administration official work together as a “productive pair.”¹⁸ When court leaders work in concert together, they can create a shared vision that is supportive of DEI efforts. Further, this court executive team can build trust with one another, thereby being stronger together as they encourage and support DEI efforts.

This productive pair works in a challenging environment. Court culture often does not support systematic change such as DEI. Or at least not quickly. Court leaders must build and extend trust and communicate effectively to bring about any change. Doing so in our complex organizational structure is complicated. Courts share certain attributes as “loosely connected organizations” similar to those that exist in higher education and medical institutions, such as:

- **Federated governance structure** — professional groups retain a high level of autonomy from central authority.

- **Accountability versus independence** — the goals of the organization may not be in concert with those retaining individual decision-making authority and responsibility for the actual work.
- **Unpredictable connections** — alliances between professionals within the organization and outside entities (stakeholders, legislators, funders, etc.) can be both a benefit and impediment to an organization.
- **Complex knowledge-based decision making** — professionals working in an organization require a highly advanced body of knowledge and must apply complex concepts in completing their work. Personal achievement is rewarded and valued.

Success of the court executive team in a loosely coupled organization means that the executive team must approach issues like DEI from a variety of perspectives.

First, given that most judicial officers act independently of one another (a necessity for independent judicial decision making), buy-in from the presiding judge for efforts like DEI is a necessity. Further, the presiding judge must use whatever governance authority is available to promote, encourage, and support DEI activities in the court.

There is a phrase in the IT world that the “network is only as fast as your slowest device.” The same holds true with judicial buy-in on DEI efforts. While the presiding judge may support the DEI efforts, if one or more judges in the network are dismissive or otherwise unsupportive, the overall ability of the DEI effort is reduced accordingly.

Court executives may have more success given that management structures tend to support efforts that come from the senior levels. But in courts as loosely coupled organizations, the least supportive entity—whether a judge, a court manager, or a court clerk—will weaken the court’s DEI efforts. Creating a DEI governance group, such as an employee resource group, is a way for senior leaders to connect with staff.

Second, the ability of courts to implement true DEI efforts may rely on the ability of the leadership team to hold the court and its employees, judges and staff alike, accountable for the success of the court’s DEI plan. Buy-in from the leadership team along with buy-in at all judicial levels and lower managerial levels are critical to ensure DEI success. Court leadership must work to ensure that DEI-related initiatives are not just supported but are reported on and shared widely to hold the entire court accountable for the success of DEI efforts.

Third, the power of courts to work across divisions and service delivery areas is a

strength. Unanticipated connections between justice system partners can make or break DEI success. The court leadership team must take advantage of this by seeking DEI champions at all levels and areas within the court. Whether it be a champion in probation, the clerk’s office, a staff attorney, fiscal office, or judge, court leaders must search for, cultivate, encourage, and acknowledge DEI champions across the court. This may be as simple as mentoring DEI underrepresented employees and ensuring that they have visibility and support within the court. Judges and managers can also support DEI by creating and supporting diverse teams even if just as temporary project-based teams.

Finally, courts operate in a system that requires complex, knowledge-based decision-making. This guide and the myriad of benefits of a DEI culture should be proof enough that good things can happen to an organization that supports DEI efforts. Court leaders must continually learn and assess the benefits of a DEI culture and build upon those strengths and lessons learned. This means that judges and staff alike must participate in DEI-related training and the court leaders must be seen as part of this effort as well. Through this, court leaders can create the ongoing change that is needed to ensure that the buy-in for DEI remains true and fits within the overall court culture.

Court leaders, whether seen through the lens of the court executive team or as productive pairs, will be called upon to support DEI efforts. Buy-in is just part of the process of effective leadership. To fully embrace DEI, court leaders must be communicators, strategists, motivators, diagnosticians, collaborators, statesmen/ advisors, visionaries, and innovators.

DEI Maturity Models

One method to assess an entity's progress toward a more diverse, inclusive work environment is a DEI maturity model analysis. Conducting this kind of assessment internally, or by using an outside facilitator, can help a court determine the best way forward.

A DEI Maturity Model takes a good, hard look at the DEI journey an entity has gone on, defines where the organization is at present, and sets a path on where to go.¹⁹ There is general agreement after years of studying work environments that diversity can be accomplished by hiring many different types of people, but without inclusion, i.e., empowering employees with a sense of belonging and value, the benefits of a good workplace culture are not reachable or sustainable.

Divided into steps along a continuum, the broad goal of a plan fashioned around the model is to move from problem identification to an integrated strategy that continuously enhances the culture of the workplace. Different entities have developed their own versions of a map that identifies target accomplishments to move from one level of maturity to the next. The following is a description of the various phases of progression.

AWARENESS

Conscious or unconscious bias follows a person to the workplace. Structural bias, i.e., policies or practices that impact people in unfair or disproportionate ways, can also create a toxic work environment. Acknowledgment and awareness of biases are the first steps along a journey to improvement. For individual employees, progress can include using tests such as the Implicit Association Test (IAT)²⁰

to identify unconscious biases. Organizations can identify structural bias by using tools like surveys to analyze the impact of policies on groups of employees. Many employers have made strides toward these first steps as studies have identified the negative impacts bias can have on productivity, innovation, and employee well-being, which influence outcomes in the workplace. In some cases, however, regulations are promulgated, and compliance is enforced, with less emphasis placed on awareness.

TRAINING

If the complexities of workplace culture could be resolved by policies and regulations alone it would have been accomplished decades ago. Employers can identify training and resources that lead to better work environments. Employees' access to tools to handle issues that may arise is critical to sustainable progress. This is, however, another step along a continuum, rather than a stand-alone solution. Even the best mandatory training cannot completely resolve every challenge.

With that said, DEI training is a major component of providing equal access to justice throughout the court system and should be a consideration for judicial and court staff training. Diversity training should not only address court users' interactions with court staff, but should also include staffing and internal management initiatives. See page 18 for a more detailed exploration of DEI training.

LEADERSHIP

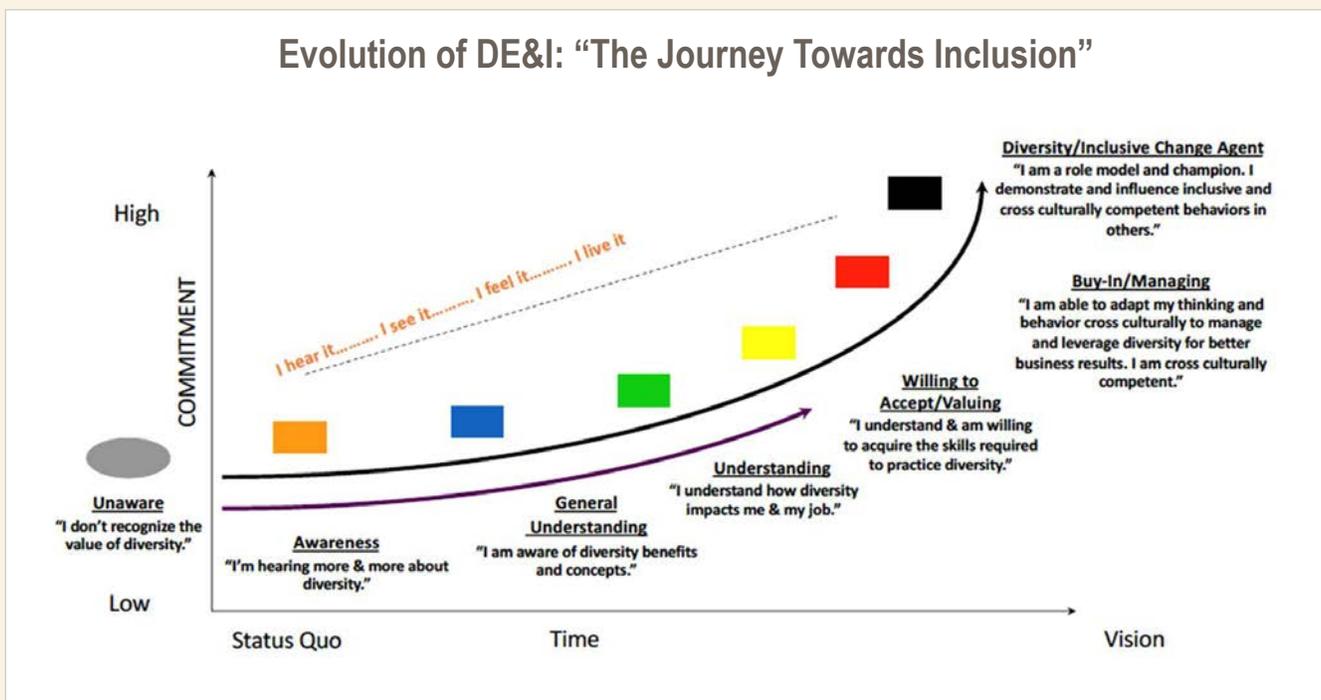
Many attempts to improve workplace culture have shriveled on the vine due to a lack of commitment and leadership from the top. Successful implementation of stated goals to

improve the workplace involves actions like leaders modeling best practices, providing resources, incentivizing, and creating accountability, which means that someone (or ideally, a combination of people and groups) is ultimately responsible for monitoring outcomes, managing roadblocks, and making necessary adjustments along the way.²¹ When there is “buy-in” at the top the message to employees is taken more seriously. The messaging to and empowerment of midlevel managers is also critical. Employees’ experiences with their managers greatly impact whether they view their organization as inclusive or not.²² Management at all levels working toward the common goal of a positive workplace is instrumental in achieving results. Leadership issues are discussed more extensively on page 12.

WORKPLACE CULTURE

Creating changes in a workplace culture that are lasting is the goal. Culture is an amalgam of beliefs, rules, values, and habits.²³ If the culture of a workplace is to be impacted, these elements must be addressed and the necessary changes integrated into the everyday functioning of that culture. This does not happen overnight; the challenge is to continue working on matters as the workforce changes.

Creating a DEI Maturity map is a way of identifying where gaps may exist in efforts to improve the culture of a workplace. It is not a map to a destination to be reached, but rather a description of an ongoing journey toward a work environment that benefits the participants and members of the public.



Courtesy: Henry Ford Health Systems

Bias Testing

Courts have an obligation to inspire confidence that our system of justice is fair, impartial, and free of bias. The science of bias makes clear that none of us are immune to the impact of our personal life experiences—not lawyers, not court staff, and not judges. Whether it be our actual lived experience, or the experience of being bombarded by images from the media telling you about people with whom you have limited personal contact, the science tells us, among other things, that we learn, consciously and unconsciously, from this past experience. When dealing with people, we are prone to operate based on stereotypes, for better or for worse.

The use of stereotypes can and often does result in adverse impacts on other people. In many cases, that result can be devastating. To the extent we accept this result, it raises real questions in the minds of many about whether our court system is a place where all people can be treated fairly and judged impartially, without bias.

In Multnomah County Circuit Court (Oregon), in recent years court leadership has taken on the task of ensuring that their court system is acting impartially and working to reduce bias. Among other things, court staff and judges were asked to take the Harvard Implicit Association Test.²⁴

The value of the Harvard Bias test is that it reminds those who work with the public—both judges and court staff—that initial perceptions and stereotypes can unconsciously impact how we deal with people and handle their issues. Fairness being our goal and understanding

the potential impact of implicit bias, we can constantly work to minimize its impact. We can all sharpen our listening skills, approach everyone with a more open mind, improve customer service, and make more informed decisions. Only in this way will we inspire confidence in our justice system.

NCSC's Racial Justice Organizational Assessment Tool for Courts

The Racial Justice Organizational Assessment Tool for Courts was designed specifically for court leaders seeking to ensure a diverse, equitable, and inclusive workplace that delivers on the promise of equal justice for all. It was developed to provide court leaders with a comprehensive framework for (a) assessing the current state of court policies and practices and (b) developing a data-driven plan for learning and improvement in pursuit of these ideals, which are central to the mission of courts and critical to their legitimacy. It is designed to be broadly informative to court leaders at any level and in any type of court, no matter where the court is in its efforts to actively “examine what systemic change is needed to make equality under the law an enduring reality for all, so that justice is not only fair to all but also is recognized by all to be fair.”²⁵ The tool can be revisited at routine intervals to help court leaders identify and plan next steps in ongoing work and track progress over time.

Continued on page 22

Glossary of Common DEI Terminology ¹⁶



BELONGING

“The human emotional need to be an accepted member of a group.”



CULTURAL COMPETENCE

“Refers to an ability to interact effectively with people of different cultures. Cultural competence comprises four components: (a) awareness of one’s own cultural worldview, (b) attitude toward cultural differences, (c) knowledge of different cultural practices and worldviews, and (d) cross-cultural skills.”



ETHNICITY

“A grouping of people who identify with each other on the basis of perceived shared attributes that distinguish them from other groups. Those attributes can include common sets of traditions, ancestry, language, history, society, nation, religion, or social treatment within their residing area.”



GENDER

“The social, psychological, cultural and behavioral aspects of being a man, woman, or other gender identity.” Transgender refers to an individual whose gender identity does not align with the sex assigned to them at birth.



INDIVIDUAL BIAS

“Learned beliefs, opinions, or attitudes that people are unaware of and often reinforce stereotypes. These personal biases are unintentional, automatic, and inbuilt, leading to incorrect judgments.”



INSTITUTIONAL BIAS

“A tendency for the procedures and practices of particular institutions to operate in ways which result in certain social groups being advantaged or favored.”



INTERSECTIONALITY

“An analytical framework for understanding how a person’s various social and political identities combine to create different modes of discrimination and privilege.”



MICROAGGRESSION

“A term used for commonplace daily verbal, behavioral or environmental slights, whether intentional or unintentional, that communicate hostile, derogatory, or negative attitudes toward stigmatized or culturally marginalized groups.”



PLAIN LANGUAGE

“Writing designed to ensure the reader understands as quickly, easily, and completely as possible. Plain language strives to be easy to read, understand, and use. It avoids verbose, convoluted language and jargon.”



RACE

“A categorization of humans based on shared physical or social qualities into groups generally viewed as distinct within a given society.”



RACIAL EQUITY IMPACT ASSESSMENT

“A Racial Equity Impact Assessment (REIA) is a systematic examination of how different racial and ethnic groups will likely be affected by a proposed action or decision.”



SEXUAL ORIENTATION

“An enduring pattern of romantic or sexual attraction (or a combination of these) to persons of the opposite sex or gender, the same sex or gender, or to both sexes or more than one gender.” Asexual individuals experience little to no sexual attraction towards others, which is recognized and respected as a valid sexual orientation, as well.



SYSTEMIC RACISM

“Policies and practices that exist throughout a whole society or organization, and that result in and support a continued unfair advantage to some people and unfair or harmful treatment of others based on race.”

Continued from page 19

The tool includes a self-assessment, current best-practice guidance informed by available research, and key resources that may be useful in assisting court leaders or policy teams in their work to define local priorities and action steps. An interactive web version of the self-assessment walks users through a series of questions about current practices and generates a summary report that connects users with relevant best-practice guidance and resources tailored to their responses. The web version of the self-assessment is free to use and can be accessed at ncsc.org/racialjusticeassessment.

The tool is designed to support learning, self-assessment and reflection, and local action planning. As such, the tool is completed

anonymously and does not collect information identifying individual respondents or responding jurisdictions. NCSC has no way of identifying who has completed the tool and cannot retrieve individual assessment or summary results information on any jurisdiction using the tool.

Finally, it is important to recognize that people, communities, cultures, and society are all constantly evolving. Language is a good example of this: Certain terms can mean different things to different people, across different groups, or within different cultures at different points in time. The language used in this tool today, for instance, may not be the language that resonates best with a specific local court community today. Certain terms may resonate with a community today but fall out of favor five years from now.

Court leaders are encouraged to consider the Racial Justice Organizational Assessment Tool for Courts as a resource to inform decision-making about appropriate strategies and next steps that will help the court better serve their communities. It should not be viewed as prescribing a specific change or sequence of changes. The most appropriate strategies and immediate next steps will differ across courts depending on a wide variety of factors and complex dynamics, including structural, cultural, financial, staffing, and legal issues.

Organizational Responses

A committee focused on DEI can help courts to create an inclusive and equitable workplace and courthouse culture. Because DEI committees can have a wide range of responsibilities and duties that can include recommending training for court staff and judges and identifying practices and policies that create barriers and inequities in our courts, it is important to have leadership sponsorship of these committees. Sponsorship can be in the form of the trial court administrator, presiding judge, or both supporting the creation of the committee, including the work time for staff to participate on the committee, or having participation from leaders in your organization. Leadership sponsorship demonstrates the organizational commitment to creating an inclusive culture and that the work and recommendations of the committee will be considered and implemented. Further, in advancing these efforts, it is helpful to have buy-in from the state court administrator, state chief justice, or both with support that includes the creation of rules and policies for establishing DEI committees or initiatives and the hiring of DEI professionals to lead a consistent and well-planned statewide program.

One example of a well-planned DEI initiative comes from the Oregon Judicial Department (OJD). In 2020 then-Oregon Supreme Court Chief Justice Martha Walters and State Court Administrator Nancy Cozine launched a strategic campaign that included four overarching commitments embedded with the principles of equity, diversity, and inclusion to ensure access to justice for all Oregonians. In addition, one commitment, Commitment 4, focused primarily on DEI: “We will create

a workplace and courthouse culture that is supportive, inclusive, welcoming and affirming; that embraces diversity; and where all people can thrive and are treated with respect and dignity.” Chief Justice Walters established a leadership team that included judges, trial court administrators, and staff from the office of the state court administrator to develop a plan to promote and support the commitment. One of OJD’s initiatives under Commitment 4 was to provide DEI training and education to judges and staff that resulted in the creation of an intranet site for DEI resources, monthly webinars, and other outreach and community engagement efforts.

Further, in 2022, the Oregon courts created the Office of Engagement, Equity, and Inclusion (OEEI), which leads the development and implementation of a comprehensive, strategic, and programmatic vision that advances and promotes equity, diversity, inclusion, racial justice, and access to justice for all. It provides executive-level support to divisions and courts and serves as a liaison on committees to ensure that OJD’s EDI efforts are embedded in their work and are consistent with OJD’s strategic campaign initiatives. Oregon courts allocated two full time attorney positions to lead the office.

The mission of the Oregon Supreme Court Council on Inclusion and Fairness’ (OSCCIF), established in 2016 under Chief Justice Thomas Balmer, is to advise the Chief Justice on ways to integrate inclusion and fairness into OJD’s practices and procedures and to coordinate efforts to ensure access, fairness, equality, and integrity at all levels. OSCCIF also monitors and assists with the implementation of OJD’s strategic plan relating to access, equity,

inclusion, and fairness. As part of its efforts to advance equity, inclusion, and fairness, OSCCIF developed and recommended for OJD to adopt an equity framework in 2022. In August 2022, Chief Justice Walters issued Chief Justice Order 22-014 adopting an Equity Framework for the Oregon Judicial Department. The Equity Framework describes a method of examining, analyzing, and investigating both the process and the impact of decision-making and policies to ensure access, inclusion, and equitable outcomes.

To further ensure that each trial court engaged in its own work to implement the equity framework and advance the strategic campaign commitment to inclusion and fairness, the Oregon courts developed resources for courts and other OJD groups interested in creating a DEI committee. The Oregon courts created an internal DEI committee resource site for OJD staff and judges as well as the “Guide to Starting an EDI Committee.”

Training

DEI training encompasses presentations, certifications, workshops, and other educational programs. Courts offer DEI training to improve workplace culture, performance measures and management, and the court user’s experience. Diversity and inclusion training is inward and outward facing, addressing internal operational needs, the delivery of judicial services, and the public perception of justice.

DEI training falls into two broad categories: awareness building and skill building. Awareness building helps judges and court employees understand a wide range of topics that address representation, access to opportunities, and welcoming and valuing differences.

Training on implicit bias is an excellent point of departure. Additional training could focus on evolving DEI terminology, understanding microaggressions, expanding cultural awareness, and addressing systemic racism or disparate impacts. Court personnel need awareness and understanding of these topics to work effectively with colleagues from various backgrounds and to effectively serve the diverse communities of court users and the public.

Implicit bias is the first building block of awareness training. Implicit bias is “The Equalizer”: we are all biased in some way. As bias is a universal human trait, implicit bias training is inclusive. There is no need for participants to feel guilt or shame about the way their brains are naturally wired, and once they are aware of what may have been unconsciously driving their decisions and behaviors, they then are aware of the opportunity to ensure they adopt behaviors to align with their intended and stated values. Uncovering and knowing their blind spots, judges and court personnel can create structures that promote inclusion and objectivity.

Understanding is the goal of awareness training. However, awareness without action is futile. Understanding that implicit bias can obscure objectivity, that microaggressions can unintentionally cause harm, and that a lack of cultural awareness can breed misunderstanding and disrespect should, hopefully, stir up empathy and the urge to effect change.

The capability to make change must accompany the willingness to make change if there is to be success. Skill building training focuses on equipping attendees with the skills and affording them the opportunity to practice in a learning environment. Communication skills are crucial. The courage to speak up on topics of race and gender, to challenge systems of discrimination and disparate treatment, and to deftly address others on unintentional microaggressions is not a universal innate skill. Conversations on race, religion, and the LBGTO+ community have historically been taboo and avoided in the workplace, but now they are necessary as courts seek to be inclusive, create belonging, and address the wrongs that have marginalized diverse communities. Skills training helps individuals learn to face and overcome the unfamiliarity and discomfort of these conversations, it helps define rules of engagement, and it gives opportunities for practice such as role plays. Most importantly, it emphasizes that perfection is not expected or a requisite and suggests ways to acknowledge and move beyond mistakes. Mistakes are inevitable.

An ideal training regime has awareness- and skill-building training, providing the concepts, tools, and supportive environment with opportunities to practice. The work

environment should be structured to reinforce the desired messages and behaviors learned during the training. Some courts use bench cards. They have been a valuable investment as judges have cues, prompts, or scripts to ensure they follow objective processes when handling certain matters to help ensure that similarly situated people are treated similarly.

Planning for Training

Training cannot be a once-a-year event that checks off the box for compliance. Training should not be performative. To be effective, DEI must be embedded into the culture. When DEI is a priority, DEI training can be aligned with a court's long-term goals and vision for workplace culture and the delivery of judicial services. This approach helps sustain DEI in courts and the judicial system. Court leaders can then think strategically and access their readiness (ability and willingness) to plan and effectuate meaningful change as it relates to DEI. Data and trends can help a court determine what areas of DEI need attention and inform its course of action to create an inclusive work culture and ensure public trust and confidence.

Not every court contends with the same issues; therefore, court leaders should select relevant training topics that address their specific DEI needs.

Court leaders may realize that they have a lack of data in some areas and need to devise methods in which to collect and analyze that data.

There are several challenging issues regarding DEI training in courts. The first is the debate of whether DEI concepts should be integrated with traditional topics such as access to justice, ethics, and procedural due process or be stand-alone topics to ensure the messages are not lost or sugar-coated. “The Neuroscience of Judging,” “Disrupting Implicit Bias,” and “Inclusion as a Leadership Competency” are sample fictitious titles that may resonate and attract different audiences to learn about biases.

Finding trainers who are knowledgeable of the governance and operations of courts can be challenging. Courts should consider existing staff members who have the necessary knowledge, skills, and abilities and who can focus on making DEI a “whole of team” priority. Racial, generational, and LBGTQ+ representation of trainers is also desirable.

Courts may also want to ensure that it is not burdening diverse staff with the tasks of being educators and trainers, or sending an unintentional message that DEI training is only targeted at non-diverse staff as opposed to all staff. Furthermore, the debates continue on whether training should be mandatory or voluntary. If the ultimate goal is to get everyone to the table and to get the work done, court leaders will have to weigh options and possibly try multiple and hybrid approaches to achieve the success they desire.

As for the desired success, courts must identify specific and measurable goals. Again, the court can measure if there is an increase in understanding of concepts and if there is an improvement in change of behaviors. The training must be evaluated with relevant quantitative and qualitative measures.



In summary, effective training requires thoughtful planning, implementation, and measuring. It is not a one-size-fits-all design as individual courts may need to address different areas of DEI.

Once training sessions are over, court leadership must reinforce the learned concepts and desired behaviors in the actual work environment. Meaningful training improves workplace culture, performance measures and management, and the court user's experience.

Examples of Trainings and Programs

There are several programs that court leaders should add to their watch list.

Dr. Eddie Moore's 21-Day Racial Equity Habit Building Challenge © (*The 21-Day Challenge*) has been used by organizations such as the American Bar Association and the National Association of State Judicial Educators because it focuses on participants gaining a personal and deep awareness of race issues. It's not a one-and-done training; the structure allows time for multimedia learning, self-reflection, and

discussion. *The 21-Day Challenge* participants get to build a habit of awareness with exposure to various issues related to race and to attend scheduled meetings over the 21 days to discuss and unpack the issues in a safe environment with fellow participants. *The 21-Day Challenge* helps participants gain awareness and practice talking about the difficult topic of race.²⁶

In 2022 the National Judicial College (NJC) held its inaugural "The Anti-Racist Courtroom: Theory and Practice" class in Memphis, Tennessee. The course was a combination of racial history, experiential learning, and a field trip to the Civil Rights Museum, the Lorraine Hotel. NJC created the four-day course for participants, judges, and court administrators, to examine their beliefs, to have an emotional and intellectual experience, and to determine how to institute anti-racism in their courtrooms and courthouses. The 2023 course is being planned in partnership with Bryan Stevenson, the author of *Just Mercy*, and the Equal Justice Initiative in Montgomery, Alabama.²⁷

Finally, NCSC continues to deliver a wealth of training and webinars. NCSC staff are working with judges and court leaders to help address local racial justice, equity, and inclusion issues.²⁸ Local colleges, universities, law schools, and affinity bar associations and community groups may also have a list of programs that are well-suited to courts.

NACM's CORE® Competencies

The CORE®, a tool for the development of court professionals and effective court management, includes DEI as fundamental components. Courts by design include and impact all elements of society. As such, the professionals who work in and guide the operations of the courts must reflect, recognize, and understand the community it represents. The CORE® is designed to help court professionals accomplish this obligation.

What is the CORE®?

NACM developed the CORE® to serve as curricula for the career-long development of court professionals. Focused upon the evolving profession of court administration, the CORE® consists of three modules: Principle, Practice, and Vision. These modules contain a total of 13 curricula, often referred to as competencies.

By working through a module component or the entire CORE®, a court professional, stakeholder, or interested member of the public can develop or enhance skills associated with court management. A detailed analysis exceeds the scope of this publication; however, the following summary of three of the curricula and their intersection with DEI offers a glimpse into this relationship.

- **Strategic Planning** — This competency prepares court leaders to “develop and promote a strategic vision for the organization by establishing a strategic course for an organization, communicating that direction to internal and external stakeholders and engaging them to work collaboratively toward achieving the organization’s mission.” Critical elements of this competency include how to create a strategic orientation; use a system wide outlook; serve as a consensus builder and collaborator; be an innovator and risk taker; create a culture in the court that values critical thinking and planning; institutionalize a strategic plan; communicate and educate on the plan; and maintain a local justice-planning network. Incorporating the elements outlined above requires the court professional to develop and implement an effective short- and long-term strategic plan that addresses the community served and the needs and resources of the community and the court, taking into account any demographic, socioeconomic, and legal trends.

■ **Public Trust and Confidence** — This competency helps “promote and maintain public trust and confidence by creating organizational cultures that foster integrity, transparency and accountability for court processes and operations.” Procedural fairness is an integral piece of this curriculum. Courts implement procedural fairness by treating every party, regardless of their background or beliefs, with dignity and respect and explaining court processes and rulings in a timely manner. This competency also reviews the importance of ensuring self-represented litigants, Limited English Proficient individuals, and those with disabilities have the resources they need to access the court. Through procedural fairness, equal access, timely resolution of disputes, and effective communication about the court, its mission, and operations, this curriculum demonstrates how to build public trust and confidence.

■ **Operations Management** — This competency builds on the complexities of the court and how the court interacts with daily life. It touches upon all areas of court operations, such as the importance of diversity and inclusion in jury services; indigent defense programs; interpretations services for Limited English proficient and deaf, deaf-blind, or hard-of-hearing individuals; specialty court programs designed to address not only the instant court interaction, but also the underlying reason for it; alternative dispute resolution programming; resources to facilitate Americans with Disabilities Act accommodations; and self-help services. Effective operations management ensures that all court users, internal and external stakeholders, and employees receive stable services whose operations and delivery instill trust and confidence in due process and ensure equity among all court users.

NACM’s CORE® committee reviews each of the 13 competencies regularly. Over the last few years, the curricula review has included a focus on ensuring that DEI examples and content were integrated throughout each reviewed competency. The committee recognizes that this is a work in progress and will continue to integrate new content into the CORE® as the profession evolves and in an attempt to keep content relevant to current challenges in the courts. In 2022 the CORE® Champion Program was launched, and in 2023 the CORE® website was updated to provide easier access to CORE® Educational resources. The CORE® Champion Program is designed to recognize NACM members for attendance at CORE® sessions and webinars.

Data Collection and Analysis

The following section offers some tips and ideas for the effective collection and analysis of data that tracks DEI efforts and effects. This is a complex and evolving area of analysis. The first thing to tackle is what data to collect. This guide has mentioned several tools for assessing individuals and organizations. When your court decides on a particular set of tools, they should attempt to use those same tools every year. Only repeated measures of the same tool allow for the longitudinal study of the progress (or lack thereof) of an individual or organization.

Beyond assessment tool scores, basic demographic data can be useful, but if it is to be used to compare jurisdictions it must be standardized and again consistently acquired and maintained. Demographics can help in the analysis of assessment tool data, but they should not be overly relied upon as they do not directly measure concepts as amorphous as DEI.

As there is a good deal of experimentation possible in the potential actions and programs that might be attempted, there will be a need to measure the effect of interventions (pre- and post-). The measures that will be used need to be carefully thought out. When doing an evaluation of the outcome of a program, the level of effect that everyone would agree shows significant movement on the issue needs to be determined before starting the new program. Intervening variables that could affect the evaluation of your efforts also need to be controlled and accounted for.

Finally, as we are in an era of potential experimentation on how to create a more

just and equitable court system and country, process evaluation is going to be very useful. Process evaluation is essential in ensuring that the actions and processing that are proposed are actually carried out as planned or at least derivations are noted and documented. Creating a great recipe by mistake only leads to one great meal if you cannot repeat the process accurately.

Facilities and Staffing

When well-informed court managers take court location into consideration, they not only create positive environments but can also enhance the court's public image. Location is a significant consideration. Whenever possible, court offices should be strategically located in areas accessible to all members of a community. While relocation of an existing county court system to a new site may be unrealistic, consideration should be given to strategically place satellite offices of the court (e.g., remote information offices, remote filing offices, probation reporting offices, and so on) in areas of greater need and access.

When users enter the courts, staffing should clearly reflect the community that the court serves. Specifically, if the service population is primarily African American, Chinese, Arab, or Latino, etc., the staff of the court offices, under ideal circumstances and in consideration of DEI, should reflect the service population. Sometimes this requires targeted recruiting, but in the interest of DEI, it is a huge step in a positive direction. The tendency to employ a "token" representative is unacceptable and presents a different set of problems in office operations. Managers must be trained to

identify and address employee biases that may interfere with efficient operation.

Court operations are likely to improve when DEI training is included in new employee orientation. Obviously, such training is intended to create a comfortable work environment. This is particularly important, and when staff understand the policy, it helps to prevent conflicts between staff members from significantly different backgrounds. One has only to imagine the feelings a Muslim employee experiences during the Christmas holidays when there is no acknowledgment or paid time off for Ramadan. This recommendation takes the training beyond a one-time orientation to regular meetings and discussions of DEI with staff.

Implementing a structured DEI training plan can assist staff members who may feel bullied, as well as staff members guilty of bullying.

Further, training can remove stigmas and common stereotypes about races, religions, nationalities, etc. Education is the key to understanding and respecting differences. Staff who respect and understand each other function well and operations are smooth. A diverse staff is less likely to make disparaging remarks about coworkers or court users, and of course, it should be understood that court managers do not tolerate such behavior.

Court staff must provide polite, unbiased service to all who come into the court. This is particularly important in probation offices and the clerk of court offices, as the staff are frequently engaged in private, one-on-one, unsupervised interactions with court users. Bigotry, bias, and disrespect often rear their ugly heads in these environments if court staff have not been trained or instructed that failure to treat court users with respect can have consequences.



Some Final Considerations

Equity is at the heart of the mission and purpose of courts. The administration of justice and the work of equity in and through the courts requires active engagement in the interruption, reduction, and elimination of bias. These efforts include DEI and cultural competency training, as well as professional development in the interruption, reduction, and elimination of bias.

This work takes place within a society that started with and continues to have serious racial inequities and societal injustices that affect people's expectations of the legal system and their trust in courts. These challenges are not limited to external stakeholders and general community members but also are relevant to those who work within our courts and experience the pressures and effects of these social dynamics on their individual lives. For these reasons, it is essential that discussions and programming about DEI and the elimination of bias in courts include consideration of trauma, well-being, and individual and communal wellness.

This guide offers a set of starting points, or baseline guiding principles, to support courts engaging in DEI programming. These principles should serve as points of departure and over time be modified and adjusted in alignment with the relevant science and scholarship, expanding diversity of the communities served by courts, and greater inclusion of people of diverse identities and lived experiences on the bench and among court staff.

1

Diversity, equity, and inclusion programming must be both trauma informed and trauma aware.

Racial trauma refers to the individual and collective trauma experienced as a result of racism in society and its institutions. While the reality of race-related trauma has existed a long time and is understood to be intergenerational, there has been more specific focus on it since the series of racialized deaths in recent years such as the murder of George Floyd in 2020. Discussions of diversity, including race, racism, and race equity, almost certainly include some exposure to trauma, both individual and collective, whether direct, personal, or vicarious. Diversity, inclusion, and elimination-of-bias programming that is not trauma informed and trauma aware can actually do more harm than good.

2

Diversity, inclusion, and elimination-of-bias programming must be systematic.

Diversity and inclusion programming expands awareness and knowledge and seeks to fill diversity deficits. Many organizations find it easy to begin with cultural awareness programs relating to cultural heritage programs like Black History Month, Women’s History Month, and LGBTQ+ Pride Month. These efforts often help expand awareness, promote understanding, and support inclusion and belonging. In courts, however, diversity and inclusion programming does not end with those goals and should be linked to advancing elimination-of-systemic-bias initiatives. In other words, cultural competency training is valuable and necessary. In addition to diversity-deficit-filling efforts, there also should be opportunities or resources that can help participants apply the information to the work of the courts, including organizational efforts to reduce and eliminate the effects of explicit and implicit personal bias and institutional/organizational, structural, and systemic bias.

3

Messaging must take into consideration the diversity (visible and invisible) of the audience and not be framed exclusively for the primary audience.

Messaging includes program titles, course descriptions, articulation of learning goals and objectives, the selection of audio/visual resources, and the delivery of the actual programming. One common mistake in diversity and inclusion programming is framing the messaging only or primarily in terms of the visible primary audience, e.g., programs on anti-Black racism in the United States presented to primarily White audiences. The failure to take into consideration the unseen diversity of an anticipated audience, or the presence of a few people of color in the audience for a program on race, misses the step in terms of trauma-informed praxis and can contribute to unnecessary harm to those in attendance and missed opportunities for meaningful engagement.

Consideration must be given to the full array of people whose identities and lived experiences might be referenced or presented and how that messaging might unintentionally exacerbate experiences of exclusion rather than advance inclusion and belonging.

4

First-person narratives need to be contextualized and connected to the bigger picture.

Many people would agree that some of the most impactful and memorable professional development experiences they have had, particularly in terms of identities and lived experiences different from their own, have come through individual people sharing their personal stories. The first-person narrative is a powerful means of expanding one's lens beyond one's own identity and experience. When inviting a person to share their story, whether in a formal presentation or in an open discussion, it is important to be mindful of the personal cost to the person even when they elect to share for a greater good. Within that context, it is important that programs that feature personal stories also have a framing so there is context to the sharing and some initial connections offered to the professional lives of the people listening. There should be a purpose for people to share their personal stories.

5

Consistency in recognizing the intersectionality of identity is key to reducing trauma and supporting wellness.

A central element in DEI and elimination-of-bias work today is intersectionality. An area of legal jurisprudence developed largely by Black women in the law such as Kimberlé Crenshaw, intersectionality, plainly stated, not only means that “we are the sum total of all of who are,” but that “we are all of who we are all of the time.”

Practically speaking, intersectionality in DEI and elimination-of-bias programming means ensuring that people's identities and lived experiences are represented, understood, and contextualized in multidimensional ways and not only through a single lens. Discussions of race as a social construct and lived experiences of race, racial bias, and racial inequities, for example, need to show how lived experiences within a shared racial or ethnic identity are experienced differently across genders, sexual orientations, gender identities, and other primary and secondary aspects of identity. In employing an intersectional approach more broadly, it is important also not to dilute the core tenets of intersectionality as developed by Crenshaw and others.

6

Courts have access to plentiful DEI resources.

Courts are fortunate when it comes to DEI resources. There are a vast array of speakers in these areas accessible through academia and the business world, along with a growing cadre of subject-matter resources directly applicable to the administration of justice, practice of law, and delivery of court services. Courts also have access to rich resources such as those available through NCSC's Blueprint for Racial Justice, the National Consortium on Racial and Ethnic Fairness in the Courts, NACM, and the emerging national network of diversity, equity, and inclusion professionals. Courts can make optimal use of subject-matter experts and related resources through advanced vetting and collaboration with presenters in the development of the programming.

7

Establishing common language should be a standard component of such presentations, taking into consideration the potential differences between individual uses and organizational/institutional uses of terms.

A key means to reduce the effects of trauma in programs relating to DEI is including time toward the start for defining core concepts and key terms—in other words, establishing common language for the shared conversation. This principle has great value in terms of fostering greater mutual understanding, expanding awareness and updating knowledge, and minimizing unintended hurts that can be experienced as microaggressions. In discussing shared language, it is also valuable to note the differences, where applicable, between individual and private uses of terms and organizational and public use of language.²⁹

8

Never promise a “safe space.”

Spaces where people are allowed to openly and freely express themselves are often labeled “safe spaces.” While very well-intended, it simply is a misnomer. Spaces that are open to discussions around identity and experience with diverse people cannot be safe by their very nature for everyone present. In a work setting in particular, people are most unlikely to experience actual psychological safety (i.e., the freedom to express their views without any concern for their professional standing) when they share their personal experiences of racism and other forms of marginalization and bias in mixed groups or as one of the few voices reflecting a particular identity or set of experiences. The personal costs are simply too high for too many. In addition, a space designed and intended to foster increased awareness and mutual understanding will generate some discomfort, so the safety of the space, particularly as related to one’s psyche, spirit, and emotions, is tenuous at best for any occupant. In contrast, propose a “brave space” by establishing a set of shared principles such as listening to hear (rather than hearing only to respond), offering tools to pause and revisit, and holding space for silence to allow people to ponder and reflect.

“Brave spaces” for difficult but meaningful dialogues can significantly advance the work of courts in DEI —especially within organizations—and foster beneficial organizational cultural growth and capacity building.

9

Be clear in the shared goals and expectations, constantly evaluate, and when necessary slow down.

Articulating shared goals and expectations, both in the planning stage and in the delivery of programming, gives those present clear understanding as to the purpose and focus of the program and sets the lanes for what the program will and will not do. This also gives appropriate notice of potential trauma points. In the context of diversity and inclusion, especially as related to cultural competency programming, identifying shared goals and expectations makes clear that even the most informative and eye-opening programs are not teaching everything one needs to know. Diversity work and related professional development programs and training are not “one-and-done” undertakings. The work of interrupting, reducing, and eliminating bias includes continuing to build and renew one’s cultural competencies.

10

Acknowledge, acknowledge, and acknowledge.

Most often acknowledgments refer to expressions of thanks and appreciation. In this context, however, acknowledgments mean consciously recognizing and holding space for the relevant historical realities (e.g., acknowledging the genocide of indigenous people at the start of a program on systemic racism); the diverse identities and experiences of people in the room and within the communities and groups that are a focus of the program; the diverse lenses through which the presenters and attendees come to discussions of these topics/issues; and the realities of the traumas that are present and might be tapped. In offering such acknowledgments, it is essential to be authentic about them and best to intersperse them, along with any necessary and appropriate disclaimers (such as relating to the scope and limits of the program), organically throughout the program, even restating and underscoring them as necessary (e.g., simply restating an acknowledgment about the diverse lenses through which individuals see and experience images before sharing a video clip).

11

Develop a core team of internal facilitators, consultants, and presenters along with external subject-matter resources.

At any level, the value of an identified core team of internal facilitators, consultants, and prepared presenters cannot be underestimated. While in some instances, there can be value in leveraging the insights and expertise of external subject-matter experts and resources, there is significant organizational value when courts create, nurture, and build their own core teams. By building a core internal team, the shape and structure of which can vary from system to system, courts can more easily apply the guiding principles and core best practices, ensuring diversity, inclusion, and elimination-of-bias programming that is trauma-informed and supports and promotes wellness.

12

Maintain the professional development and wellness care of those who have responsibility for this work within your organization.

Last but not least on the list of guiding principles and core best practices is intentional support for the professional development and wellness care of those who have responsibility for this work within court systems. The work of racial justice, when done meaningfully, is both art and science and leverages the personal commitment doing the work.

Ensuring ample system-funded opportunities to sustain one’s professional development and growth in these areas, including time to convene with colleagues both within and outside courts, is an essential systemic commitment.

Often people routinely engaged in diversity, inclusion, and elimination-of-bias work have a personal stake in it; in other words, this work is not theoretical or abstract to DEI professionals. By supporting the professional development of people engaged in these areas, a court system also shows commitment to wellness care and to ensuring that people are refueled in the work they do.

Conclusion

This guide was not constructed to suggest there is one, single linear direction to achieve DEI success in courts. As the saying goes, your mileage may vary. Nor is this guide the end of the conversation on best practices in DEI initiatives in courts. It is, however, offered with the intent of providing a rich set of resources, ideas, and principles to allow the reader to identify a path that matches the needs of their court.

By engaging in this work: courts foster public trust and confidence in the legal system generally and courts specifically; advance procedural fairness and quality service in the administration of justice, the practice of law, and the delivery of court services; and make better-informed decisions that advance justice for all individuals, regardless of their background. The business of courts is not exclusively DEI, but courts must recognize and foster good DEI practices in order to do their business effectively, properly, and justly.

More Resources at: nacmnet.org/deiguideresources

ENDNOTES

- ¹ See U.S. Department of Housing and Urban Development, “DEIA Definitions,” https://www.hud.gov/program_offices/administration/admabout/diversity_inclusion/definitions (last visited on Feb. 20, 2023).
- ² See Kate Heinz, “What Does Diversity, Equity and Inclusion (DEI) Mean in the Workplace?” Built In, Feb. 3, 2023, <https://builtin.com/diversity-inclusion/what-does-dei-mean-in-the-workplace> (last visited Feb. 20, 2023).
- ³ See “What Is Court Management?” at <https://nacmnet.org/nacm-information-for-students-and-educators/what-is-court-management/>; see also *The Purposes of Courts* (video), School of Public Affairs, American University, at <https://www.youtube.com/watch?v=saHb06PNadQ>.
- ⁴ See *Holland v. Fla.*, 560 U.S. 631, 649-50 (2010):
We have said that courts of equity “must be governed by rules and precedents no less than the courts of law.” *Lonchar v. Thomas*, 517 U.S. 314, 323, (1996) (internal quotation marks omitted). But we have also made clear that often the “exercise of a court’s equity powers . . . must be made on a case-by-case basis.” *Baggett v. Bullitt*, 377 U.S. 360, 375 (1964). In emphasizing the need for “flexibility,” for avoiding “mechanical rules,” *Holmberg v. Armbrecht*, 327 U.S. 392, 396 (1946), we have followed a tradition in which courts of equity have sought to “relieve hardships which, from time to time, arise from a hard and fast adherence” to more absolute legal rules, which, if strictly applied, threaten the “evils of archaic rigidity,” *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 248 (1944). The “flexibility” inherent in “equitable procedure” enables courts “to meet new situations [that] demand equitable intervention, and to accord all the relief necessary to correct . . . particular injustices.” *Ibid.* (permitting postdeadline filing of bill of review). Taken together, these cases recognize that courts of equity can and do draw upon decisions made in other similar cases for guidance. Such courts exercise judgment in light of prior precedent, but with awareness of the fact that specific circumstances, often hard to predict in advance, could warrant special treatment in an appropriate case.
- ⁵ Justice Collaboratory, “Procedural Justice,” Yale Law School, <https://law.yale.edu/justice-collaboratory/procedural-justice>.
- ⁶ *Id.*
- ⁷ National Association for Court Management, “2020-2022 Strategic Plan and Annual Priorities” (rev. 2022), https://nacmnet.org/wp-content/uploads/Final_NACM-2020-2022-Strategic-Plan_updated-1-31-2022.pdf.
- ⁸ Juliet Bourke, “The Diversity and Inclusion Revolution: Eight Powerful Truths,” Deloitte Review Issue 22 (2018).
- ⁹ Judicial Department, State of Oregon, Office of Equity, Engagement, and Inclusion, “A Guide to Starting an Equity, Diversity, and Inclusion (EDI) Committee,” Jan. 2023, p. 15.
- ¹⁰ *Id.*
- ¹¹ Bourke 2018.
- ¹² Glam Swiegers and Karen Toohey, “‘Waiter, Is that Inclusion in My Soup?’ A New Recipe to Improve Business Performance,” research report, Deloitte, May 2013, p. 2.
- ¹³ Bourke 2018.
- ¹⁴ Juliet Bourke and Andrea Espedido, “Why Inclusive Leaders Are Good for Organizations, and How to Become One,” Harvard Business Review, Mar. 29, 2019, p. 2.
- ¹⁵ Judicial Department, State of Oregon, Office of Equity, Engagement, and Inclusion, “A Guide to Starting an Equity, Diversity, and Inclusion (EDI) Committee,” Jan. 2023, p. 6.
- ¹⁶ These definitions were taken from the following sources:
- Wikipedia—belonging, cultural competence, ethnicity, gender, intersectionality, microaggression, plain language, race, sexual orientation, systemic racism
 - News Literacy Project, Get.checkology.org—individual bias
 - Dictionary of Media and Communication (Oxfordconference.com, 2020)—institutional bias
 - National Education Association (neadjustice.org)—cultural competence
- ¹⁷ See <https://nacmcore.org/competency/public-trust-and-confidence/>.
- ¹⁸ Mary Campbell McQueen, “Governance: The Final Frontier,” paper prepared for the Harvard Executive Session for State Court Leaders in the 21st Century, June 2013, available at ncsc.org/hes.
- ¹⁹ Catherine Toney, “How to Use a DEI Maturity Model,” ALTA Consulting—Adaptive Leadership Talent Alliance, Apr. 11, 2022, <https://www.altaconsultllc.com/post/how-to-use-a-dei-maturity-model#>.
- ²⁰ Project Implicit, <https://implicit.harvard.edu/implicit/iatdetails.html>.
- ²¹ Julie Coffman, Elyse Rosenblum, Andrea D’Arcy, and Laura Thompson Love, “Racial Equity Begins with C-Suite Accountability,” report, Bain and Company, Aug. 11, 2021 <https://www.bain.com/insights/racial-equity-begins-with-c-suite-accountability/>.
- ²² Andreea Gorbatai, Smaranda Boros, and Katherine Ullman, “Why Middle Managers Struggle to Implement DEI Strategies,” *Harvard Business Review*, Oct. 13, 2022, <https://hbr.org/2022/10/why-middle-managers-struggle-to-implement-dei-strategies>.
- ²³ Selene Shenoy “Understanding Individualistic and Collectivist Cultures and How It Impacts Us,” The Dream Catcher, blog, May 2021, <https://thedreamcatcher.com/understanding-individualistic-and-collectivist-cultures-and-how-it-impacts-us/#>.
- ²⁴ See Project Implicit, *supra n. 20*.
- ²⁵ *The Racial Justice Organizational Assessment Tool for Courts* (Williamsburg, VA: National Center for State Courts, 2023), ncsc.org/racialjusticeassessment.
- ²⁶ America & Moore LLC, “21 Day Racial Equity Habit Building Challenge,” 2014, <https://www.eddiemoorejr.com/21daychallenge>.
- ²⁷ See <https://www.judges.org/courses/the-anti-racist-courtroom-theory-and-practice/>.
- ²⁸ See ncsc.org/racialjustice.
- ²⁹ One example of this is an individual’s self-identification as African American contrasted to a court system’s use of Black to ensure inclusion of people from the U.S. as well as people who have immigrated from Africa or the Caribbean who do not view themselves as represented by the term African American.



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