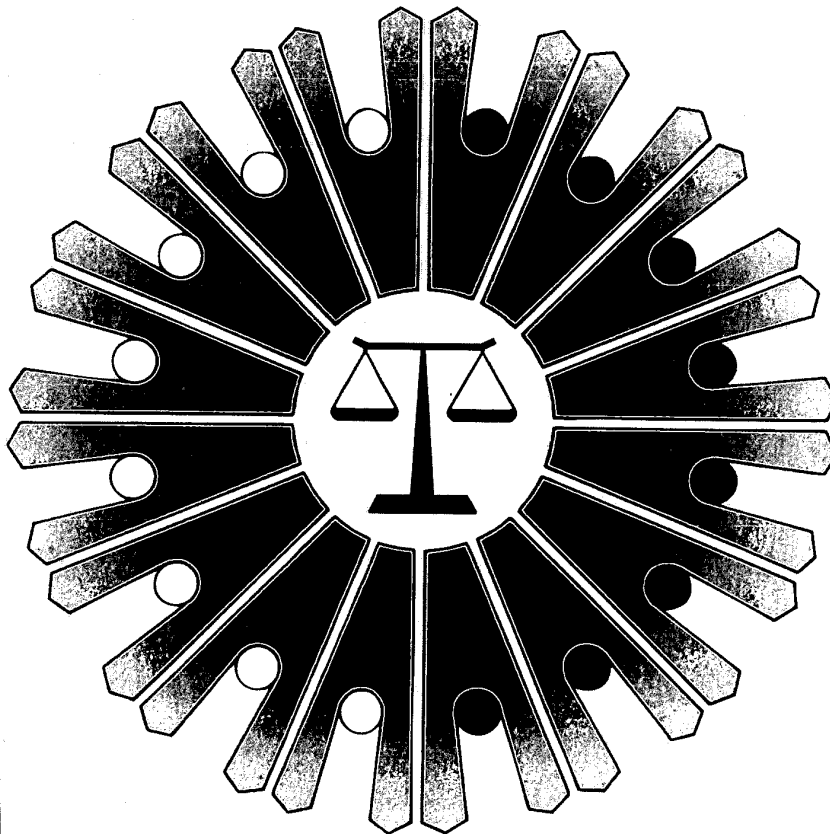


MODEL GUIDE 1



Access to Justice for Persons of Color:
*Selected Guides and Programs for
Improving Court Performance*

A Total Approach to Diversity:
*An Assessment and Curriculum
Guide for State Courts*



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Access to Justice for Persons of Color:
*Selected Guides and Programs for
Improving Court Performance*

A Total Approach to Diversity:
*An Assessment and Curriculum
Guide for State Courts*

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About the Cover

The project logo, "Equal Justice," was designed by Seattle graphic artist Sekio Matsumoto. The design on the cover of this *Model Guide 1* depicts people of all races and ethnic backgrounds encircling "the scales of justice," with their arms raised in celebration. The shading and gradation of the colors represents a fusion of these diverse peoples into an indivisible whole, while still maintaining their individual identity. The balanced scales encircled by the people characterize one of the most fundamental principles of our society—*equal justice under law*.

Not only has Mr. Matsumoto's design become a recognized symbol of efforts to promote equality and fairness in the justice system, it has received worldwide acceptance as an expression of diversity and inclusiveness. The design was originally conceived by Mr. Matsumoto in 1977 when he was asked by the American Baptist Churches, USA, to demonstrate inclusiveness of a diverse racial, ethnic, and linguistic population in the national church membership. The Washington State Minority Justice Commission in 1994 asked Mr. Matsumoto if he could adapt his concept from a celebration of religion to a celebration of justice. The result was the "Equal Justice" version of the logo, which was virtually identical to its depiction on the cover of *Model Guide 1*. This adaptation was originally used for the *1994 Annual Report of the Washington State Minority and Justice Commission* and was later adapted again in 1995 by the *First National Conference on Eliminating Racial and Ethnic Bias in the Courts*. Most recently, the logo was adopted by the *National Consortium Monitor*, the newsletter of the *National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts*.

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*Preface**

Racial and ethnic bias have no place in the courts or anywhere in the justice system. Eliminating such bias and ensuring its absence is the keystone of equal justice. Eliminating bias involves not just dispensing with systems or procedures or letting go of individuals with a bad attitude, but including some affirmative steps and commitment of resources as well.

Eliminating bias from the courts and other aspects of the justice system is critical. This country and the rights and obligations of all who live here are defined by law—the Constitution and laws passed by Congress, states, and localities. If bias exists in the operation of this system for the enforcement and protection of rights, then a corruption exists that goes to the foundation of the nation. Therefore, this elimination of bias is not an exercise in political correctness; it is of fundamental and structural importance to the viability of our system of government.

Courts should undertake the exercise of self-examination to identify actual prejudice, discrimination, and those practices that appear discriminatory. This exercise is also salutary in and of itself. Effective outreach and a willingness to listen and self-examine bring people into the system and create a confidence in the interest, concern, and goodwill of the system. We must be ready to work together to redesign those aspects that have operated in a discriminatory, exclusionary, or otherwise unfair way. Equally important are the affirmative commitments of resources ranging from funds to time and energy, not just to eliminate the outcroppings of bias, but also to make justice equally available, fair, and impartial.

With so much of our effort to achieve a fair and just society, there is no ultimate right answer to the appropriateness of various initiatives under the Constitution or any philosophic or moral code. They are value choices for Americans to make. We, and those we represent in our local, state, and federal justice systems, must be energetic in devising ways to ensure that the individuals who comprise this pluralistic whole can effectively take advantage of the rights to which they are entitled. Those of us who in effect constitute our justice system, simply must have the judicial system, the most critical component of our democracy, respond to, and embrace the diversity of our country.

* This preface consists of excerpts from a luncheon address by Assistant Attorney General Eleanor D. Acheson entitled "The Importance of Eliminating Bias from Institutions of the Justice System in an Era of Challenges to Remedies for Inequality." Her address is published in the proceedings of *The First National Conference on Racial and Ethnic Bias in the Courts*, which are entitled *A New Paradigm for Fairness: The First National Conference on Eliminating Racial and Ethnic Bias in the Courts*. The proceedings were written by H. Clifton Grandy and were published in 1995 by the National Center for State Courts.

Foreword

"Equal access" to justice is, in theory, a fundamental characteristic of the courts; however, in practice, "equal access" remains an aspiration for all court systems. The principle of equal access is much broader than the rights of litigants and defendants. Equal access includes access to employment opportunities as part of the court's staff or as a contract service provider to the court. Our nation's workforce is rapidly becoming more heterogeneous by race, ethnicity, gender, age, physical ability, religion, language, and educational background. State court judges and managers need to understand how this increasing diversity will present both opportunities and challenges to those who utilize the courts and those who are part of the judicial workforce.

While minorities are overrepresented in the justice system as defendants in criminal cases and as inmates in jails and prisons, they are underrepresented as judges, judicial appointees, and employees. This underrepresentation has been well documented by the National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts and individual state commissions tasked with identifying and documenting racial and ethnic bias in the judicial branch. The commissions of Arizona, the District of Columbia, Florida, Massachusetts, Minnesota, New York, New Jersey, Oregon, and Washington State have addressed the underrepresentation of minorities in the work force. For example, the New York commission found that minority underrepresentation in the courts fueled the perceptions of minority communities that the judicial branch is biased.

In March 1994, the American Bar Association in cooperation with the National Bar Association, the Native American Bar Association, the National Asian Pacific American Bar Association, and the Hispanic National Bar Association convened a meeting to explore racial and ethnic bias in the American justice system, the *Summit on Racial and Ethnic Bias in the Justice System*. Thus, the need for the State Justice Institute-funded *First National Conference on Eliminating Racial and Ethnic Bias in the Courts* ("Conference"), which was held in March of 1995 in Albuquerque, New Mexico. For the first time in the history of the state courts, more than 425 justices, judges, court administrators, judicial educators, attorneys, and court users gathered to focus on strategies to eliminate racial and ethnic bias in the courts.

Finally, the *Conference* provided an opportunity for participants to network and exchange invaluable information to assist them in addressing racial and ethnic bias in their state's court system. Several major themes that can be addressed through diversity training emerged from the *Conference*. These themes included staying vigilant against bias through continuous self-examination of court operations, as well as reassessment of mechanisms for addressing the perception of and the existence of biased behaviors on the part of judicial and nonjudicial staff; managing court interpretation problems, which equates to fairness and equal access to justice for non-English speakers; protecting the rights of American Indians as sovereign nations and culturally distinct peoples who are guaranteed unique parental rights under the Indian Child Welfare Act; and mentoring persons of color to judicial service on the bench.

As the series title indicates, “Access to Justice for Persons of Color: *Selected Guides and Programs for Improving Court Performance*,” the *Model Guides* are designed to address the above issues through the various programs contained under the following titles:

MODEL GUIDE 1

A Total Approach to Diversity: *An Assessment and Curriculum Guide for State Courts*

MODEL GUIDE 2

Bias in the Court! *Focusing on the Behavior of Judges, Lawyers, and Court Staff in Court Interactions*

MODEL GUIDE 3

Managing Language Problems: *A Court Interpreting Education Program for Judges, Lawyers, and Court Managers*

MODEL GUIDE 4

The Indian Child Welfare Act: *A Cultural and Legal Education Program*

MODEL GUIDE 5

Judicial Mentoring: *Starting, Organizing, and Sustaining a Program for Mentoring Persons of Color to the Bench*



NANCY E. GIST

Director

Bureau of Justice Assistance

The Need for a Total Approach to Diversity in the State Courts

Many state courts have conducted or are planning to conduct diversity-training and diversity-related programs for their judges and staff. Although the goals and objectives of these efforts will vary according to the circumstances and dynamics of each court, all these programs have two challenges in common—managing a more diverse workforce and serving the judicial needs of a more diverse society.

First, state court workforces consist of men and women of increasingly diverse backgrounds. Emerging diversity among state court personnel requires judges and court managers to do more than meet the provisions of employment law, avoid actual and perceived discrimination, and resolve employee complaint and grievance issues. They must also manage their court's work environment in a way that recognizes and accepts the challenges of a more diverse workforce. In addition, they must capitalize on the opportunities presented by the unique cultures, professional and personal experiences, and skills of all of their staff, as well as ensure that all personnel have the opportunity to contribute to the mission and objectives of the court.

Second, these state court personnel provide our citizens with an important and fundamental social need—the service and administration of justice. Judges and court managers are also responsible for assuring the public that the judiciary performs this task in a way that is worthy of their trust and confidence. Assuring public trust and confidence includes meeting the expectations of the increasing diversity of viewpoints that contribute to it.

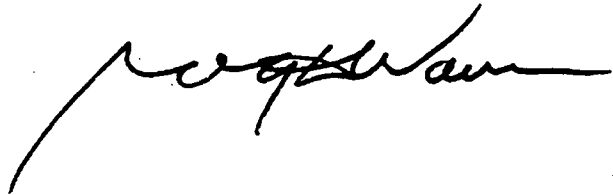
Hence, the need for a total approach to diversity in the state courts is based not only on changing realities in the workforce of state courts, but also on the emerging diversity of opinion that makes up the public's perception of justice. For example, serious underrepresentation of ethnic diversity among court officers and staff in an ethnically diverse jurisdiction can undermine the perception of fairness in that court. By recognizing and managing diversity and diversity-related issues, judges and court managers will enable state courts to address simultaneously diversity in the court's workforce and diversity as it relates to public trust and confidence in the court's decisions.

Judicial leaders must also acknowledge that training alone is not enough to meet the challenges of diversity, nor is it sufficient to capitalize on the opportunities it presents. When judges and court managers decide to undertake diversity training, they must also commit to the "totality" of diversity training. Judges and court managers must critically assess their court's work environment, including its standards, policies, and practices to ensure that diversity training does not conflict with the court's organizational structure and management procedures. A good starting point for all state courts, for example, is adopting clear and explicit policies against discrimination in employment practices, proactively complying with equal employment opportunity mandates, and utilizing formal and informal procedures for addressing problems with bias and harassment in the work environment.

Addressing these preliminary issues and questions will ensure that state courts are fertile ground for sowing the seeds of diversity training. There are other organizational issues judges and court managers may want to review. For example, do the values, lines of communication, and problem-solving approaches of the court positively lend themselves to the possible outcomes and

recommendations of diversity training? Is there an existing department or structure within the court's organizational structure where diversity-training recommendations (e.g., action plans or initiatives) could be fed into for review and implementation? If so, is this the department that can make things happen, or is this the department where ideas or plans are buried until they are dead or forgotten? Does the department have the autonomy, authority, and support mechanisms to implement changes or recommendations?

Many courts have already spent scarce resources on expensive diversity consultants, many of whom do not fully understand the unique training needs of state courts and their personnel. There is no *one-size-fits-all* program that can meet the needs of all state courts. If judges and court managers want successful outcomes from diversity training and diversity programs, they must use a total approach that addresses the needs and environments of their courts. This *Guide* will help them achieve that success. The *Guide* is designed to help you assess your court's work environment; learn more about diversity training and diversity-related issues; begin planning and assessing the diversity-training needs of your court; find and select a diversity consultant; design, implement, and evaluate your program; and execute follow-up.

A handwritten signature in black ink, appearing to read 'Roger K. Warren', with a long, sweeping underline.

ROGER K. WARREN

President

The National Center for State Courts

A Total Approach to Diversity:
An Assessment and Curriculum
Guide for State Courts

A Total Approach to Diversity: An Assessment and Training Guide for State Courts

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Module 1

Introduction and Overview

Module 1. Introduction and Overview

Module at a Glance

- Introduction and Overview
- What Does It Mean to Manage Diversity?
- Valuing Differences: The Concepts
- What Can Training Accomplish? Limits and Benefits of Diversity Training
- About This Guide
 - Purpose of This *Guide*
 - Who Should Use This *Guide*
 - How to Use This *Guide*
- Assessing your Court's Employment Policies and Practices
- Trial Court Performance Standards
- Equal Employment Opportunity Policy
- Affirmative Action Policy
- Americans with Disabilities Act Policy
- Employee Complaint and Grievance Procedures
- Task Forces and Commissions on Racial and Ethnic Bias in the Courts

Introduction and Overview

This Bureau of Justice Assistance-funded project and the five-volume series of the “Access to Justice for Persons of Color: *Selected Guides and Programs for Improving Court Performance*” are one of the many contributions the National Center for State Courts (NCSC) provides to our nation’s state courts.

The Mission of the National Center for State Courts

The mission of the NCSC is to promote justice by providing leadership and service to state courts. Among the leadership contributions the NCSC makes to the state courts are reducing backlogs and delay, increasing public trust and confidence, improving public accessibility, bringing technology into the courts and courtrooms, improving jury systems, making informed decisions about court operations, fostering understanding about the demands of management and leadership in the state judicial system, and improving relations between state courts and federal courts. Today, the NCSC works in partnership with state and local court leaders to improve the delivery of justice for all in America’s state courts.

Helping State Courts Meet the Challenges and Opportunities of an Increasingly Diverse Society Through Diversity Training

The NCSC is committed to helping the state courts meet the challenges of and capitalize on the opportunities that our increasingly diverse society presents to our judiciary. Many state courts have conducted or are planning to conduct diversity education and training programs for their judges, managers, and staff. The objectives of these programs will vary with the circumstances and dynamics of each court. Their common goal, however, is to create a work environment in which the court draws on the unique cultural, professional, and personal experiences and skills of all its workforce, as well as ensuring that all personnel have the opportunity to contribute to the mission and objectives of the court.

The 25th Anniversary of the National Center for State Courts and *The National Conference on the Future of the Judiciary*

Serving the needs of a more diverse society is one of many ways the NCSC is helping state courts adapt to trends and future changes. Another is the *National Conference on the Future of the Judiciary*, which was held in Williamsburg, Virginia, March 23-26, 1996. Nearly 300 participants, including chief justices, state court administrators, trial and appellate judges, state court managers, officers from the American Bar Association and other bar associations, and representatives from the federal judiciary, academia, private industry, law firms, and the executive and legislative branches of the federal, state, and local governments, gathered to celebrate the 25th Anniversary of the founding of the NCSC and to consider the present condition of the state judiciaries and develop an agenda for its future.

Reaffirming the Commitment of Judicial Leaders to Eliminating Bias and Promoting Equal Justice Under Law

One of the most prominent of the questions addressed by the participants of the *National Conference on the Future of the Judiciary* was: What are the major issues facing the state courts over the next 25 years? Of 27 major issues identified and rank-ordered by participants, eliminating racial, ethnic, and gender bias was ranked fourth. Encouraging a rededication of personal commitment to equal justice under the law was ranked sixth. Given the importance judicial leaders ascribe to eliminating racial, ethnic, and gender bias, and to upholding equal justice under law, it is essential that judges and court managers take every precaution to ensure that diversity-training efforts are successful, including gaining a sound understanding of diversity and diversity-related concepts and initiatives.

What Does It Mean to Manage Diversity?

What is diversity? R. Roosevelt Thomas, Jr., an internationally recognized expert leader on diversity initiatives and founder of the Managing Diversity Institute, describes diversity as the “collective *mix* of similarities and differences wherever you might find them.”

People differ on many dimensions, from permanent characteristics such as race and gender, to changeable conditions such as skills, educational level, parental status, and income. The concept of diversity incorporates differences and similarities among people that go well beyond those that are obvious at first glance.

Managing diversity

Managing diversity is defined as managing an organization's culture and systems by drawing on individual differences and ensuring that each employee is given the opportunity to fully contribute his or her talents and skills to the mission and success of the organization.

Programs to manage diversity are more broad than equal employment opportunity (EEO) programs or affirmative action programs. EEO and affirmative action programs were designed to prohibit discrimination against and ensure the fair and active recruitment of "protected classes." "Protected classes" is a legal term that refers to discrete minority groups found to be historic victims of discrimination in all conditions of employment. Although EEO and affirmative action programs can help create a workplace environment that embraces diversity and alleviates employee concerns about discriminatory practices, they are not the same as diversity programs.

Diversity programs are strategically driven. They seek to change the organization's policies and practices to create an environment that seeks to maximize every employee's unique potential. For a comparison of managing diversity, affirmative action, and the concept of valuing differences, refer to Table 1-1 on the next page.

Why is it important for courts to manage diversity?

Managing diversity in the courts protects the public's trust and confidence in the equality and fairness of the justice system. The judiciary should provide a positive example by hiring a workforce that reflects the diverse public and clients served by the court and by fostering an environment that seeks to fully use each person's unique skills and talents.

Table 1-1. Affirmative Action, Valuing Differences, and Managing Diversity Compared¹

Affirmative Action	Valuing Differences	Managing Diversity
Quantitative: Emphasizes achieving equality of opportunity in the work environment through the changing of organizational demographics. Monitored by statistical reports and analysis.	Qualitative: Emphasizes the appreciation of differences and creating an environment in which everyone feels valued and accepted. Monitored by organizational surveys focused on attitudes and perceptions.	Behavioral: Emphasizes the building of specific skills and creating policies which get the best from every employee. Monitored by progress toward achieving goals and objectives.
Legally driven: Written plans and statistical goals for specific groups are utilized. Reports are mandated by EEO laws and consent decrees.	Ethically driven: Moral and ethical imperatives drive this culture change.	Strategically driven: Behaviors and policies are seen as contributing to organizational goals and objectives, such as profit and productivity, and are tied to rewards and results.
Remedial: Specific target groups benefit as past wrongs are remedied.	Idealistic: Everyone benefits. Everyone feels valued and accepted in an inclusive environment.	Pragmatic: The organization benefits; morale, profit, and productivity increase.
Opens doors in the organization: Affects hiring and promotion decisions.	Opens attitudes, minds, and the culture: Affects attitudes of employees.	Opens the system: Affects managerial practices and policies.
Resistance due to perceived limits to autonomy in decision making and perceived fears of reverse discrimination.	Resistance due to fear of change, discomfort with differences, and desire for return to the “good old days.”	Resistance due to denial of demographic realities, the need for alternative approaches, and/or benefits associated with change; and the difficulty in learning new skills, altering existing systems, and/or finding time to work toward synergistic solutions.

¹ Source: Gardenswartz, Lee, and Rowe, Anita. *Managing Diversity: A Complete Desk Reference and Planning Guide*. Homewood, Ill.: Business One Irwin, 1993. Reprinted with permission. This chart is keyed to private-sector organizations but is applicable to public-sector organizations, including courts.

Valuing Differences: The Concepts²

Valuing Differences Valuing differences is a cluster of concepts that shapes an approach to helping people deal with issues created by their differences. This approach focuses people on the value of differences to help them become open to learning from people they regard as different and to help them build empowered relationships in which they work together interdependently and synergistically.

On one level, valuing differences is an approach to the work of affirmative action and EEO, but it is more than that. It is a way of helping people think through their assumptions and beliefs about all kinds of differences—individual, cultural, geographical, and organizational. As such, valuing differences is an approach to both the work of personal growth and development and the work of increasing an organization's productivity.

² "Valuing Differences: The Concepts" is adapted from *Diversity Activities and Training Designs*, by Julie O'Mara of Pfeifer & Company in San Diego, California. The full article is from *Valuing Differences in the Workplace*. Copyright 1991, the American Society for Training and Development. Reprinted with permission. All rights reserved. The author, Barbara Walker, is a diversity consultant with Diversity Enterprises.

Capitalizing on the value of differences

It is often acknowledged that differences among people and cultures are the wellspring of life's richness and excitement. But the reality is that differences create discomfort and conflict. As a result, managers and leaders in the workplace face the critical challenge to find the most effective way to help people deal with their differences. Generally, people are comfortable with their sameness. Some managers insist that the best way to reduce conflict and maintain harmony is to focus on the ways in which people are alike. It is argued that people work together best if they ignore their differences.

When, however, people believe that their differences make up an essential part of who they are, they may find it difficult to see the ways in which they are alike. They may even see their sameness differently.

Having to stay focused on the similarities often means that those who recognize their differences feel left out and devalued. Ignoring differences, therefore, not only supports the fiction of a homogeneous workforce, but it leads to the potentially dangerous conclusion that differences are unacceptable.

Differences in and of themselves fuel creative energy and insight. They are the points of tension that spark alternative viewpoints and ideas and ignite the kindling forces behind creativity and innovation. They are the references points for probing the meaning of beliefs and core values for refining the understanding of who we really are.

Difference is intrinsically valuable to individual growth and development. Diversity, the mix and various combinations of human differences, is essential to growth and synergy in any organization. People and their differences make up the foundation of an organization's ability to develop broad perspectives and to approach business problems in new and creative ways.

The valuing concept outlines and explains the work of helping people and their organizations learn how to capitalize on differences and reach their fullest potential. The work begins by focusing people on their differences.

At the core of the valuing differences approach is the wisdom of an old adage: "Every person is, in many respects, like all other people, like some other people, like no other person" (Kluckhohn and Murray, 1948). Human beings share many of the same hopes and fears. But in important ways, people are different from each other; not only as unique individuals but as members of groups that share a perspective of the world unlike that of any other group. Valuing people requires paying attention to these differences.

If people feel that their differences make up an essential part of their worth, then they feel most valued when they believe they are seen in their fullest dimensions, both as individuals and as members of their own group(s). The central valuing differences task is learning to pay attention to people as unique individuals, while recognizing and taking into account their differences as members of particular groups. This is the real work of individualizing people; that is, learning to see them in their fullest dimensions. This work enables people to see others as equal though not the same.

Valuing Differences: Principles and Process

The valuing differences mode³ is based on the following key principles:

1. People work best when they feel valued.
2. People feel most valued when they believe that their individual and group differences have been taken into account.
3. The ability to learn from people regarded as different is the key to becoming fully empowered.
4. When people feel valued and empowered, they are able to build relationships in which they work together interdependently and synergistically.

These principles have shaped the content and steps in a process that helps people sort through their beliefs and assumptions about others and their individual and group differences. The following are the five steps in this process:

1. Stripping away stereotypes.
2. Learning to listen and probe for the differences in people's assumptions.
3. Building authentic and significant relationships with people one regards as different.
4. Enhancing personal empowerment.

³ Adapted from *Diversity Activities and Training Designs*, by Julie O'Mara. San Diego, California: Pfeifer and Company, 1994.

5. Exploring and identifying differences.

These steps are involved in the work of an ongoing process of personal development and growth. The first four are not necessarily sequential and may be undertaken simultaneously. The fifth step should be undertaken after some of the other steps have been completed.

What Can Training Accomplish?

Limits to Diversity Training

Training programs are only one of several ways to address diversity concerns in the courts. Diversity initiatives should not be limited to education and training efforts. Even the most well-planned diversity-training program cannot result in real change if enlightened managers and employees return to a work environment that does not support their new behaviors. As stated in the introduction, organizational structures, policies, and practices must be in place to support the totality of diversity-training initiatives and outcomes.

Benefits of Diversity Training

What, then, can training accomplish? A well-designed diversity-training program can be an important element in creating a work environment that supports diversity. If organizational systems are not in place to support diversity training, programs can be structured to help managers assess and change policies and practices so that the organizational culture does support diversity efforts. The Introduction of this *Guide* addresses some of the more relevant policies.

The following are some additional benefits that training may provide:

- *Increased employee motivation.* Employees become more motivated if they see the organization making sincere efforts to value their uniqueness and tap into the full range of skills and experiences they bring to the court.
- *Fewer diversity-related conflicts.* When employees believe that they are valued and understood, the organization will experience fewer diversity-related conflicts. This means that people have more time to spend on accomplishing tasks and achieving goals.
- *Improved morale.* Improved morale can result when people respect each other's perspectives and understand their differences and similarities.
- *Increased loyalty.* Employees become more loyal to the organization when they have an opportunity to contribute to the organization and participate in achieving its goals.
- *More accurate success measures.* The criterion for success becomes performance, rather than other factors or characteristics that are not directly related to performance.
- *Decreased absenteeism.* Employees are more motivated to come to work in an environment that supports their development. Absenteeism may decline, which means less time and money are spent on retraining, recruitment, and grievance procedures.⁴

⁴ List adapted from LaMountain, Dianne, and Bob Abramms, *The Trainer's Workshop on Cultural Diversity*.

About This Guide

Topic selection To select the topics for this *Guide*, the authors, project staff, and researchers surveyed courts that had conducted diversity-training programs. These courts provided recommendations about the kind of materials that would have been most useful when they were planning their programs. The topics included in this *Guide* were selected based on the recommendations of these courts.

Purpose of This Guide

This *Guide* provides an overview of the process for designing, developing, and implementing a diversity-training program. It can assist you in identifying and managing locally available resources. And it can help you maximize the effectiveness of your program by avoiding common problems in planning and implementing diversity-training programs.

Specifically, this *Guide* provides assistance in:

- Assessing readiness for diversity training
- Building support for the program
- Assessing diversity-training needs
- Planning and designing the program
- Evaluating the program
- Identifying and working with diversity experts

Appendix B of this *Guide* includes a list of relevant articles, books, training materials, and videotapes.

Who Should Use This Guide

This *Guide* is useful for any state court that is considering a diversity-training program or that has already made a firm commitment to plan a diversity-training program. Courts that have already conducted an initial training program may find this *Guide* useful for planning follow-up training programs and activities.

How to Use This Guide

Process steps

The modules of this *Guide* are ordered to correspond with the recommended sequence of steps in the process for program development. The recommended steps are:

1. Establish a planning committee. Refer to Module 2.
2. Assessing your court's readiness for diversity training. Refer to the Introduction, Modules 1 and 2.
3. Build support for the program. Refer to Module 2.
4. Assess the diversity-training needs of the court. Refer to Module 3.
5. Identify experts. Refer to Module 4.

Note: You should identify experts at any point in the process where it is appropriate for your court. For example, you may choose to use experts to assist you in assessing your court's readiness for diversity training (Step 2), or determining the unique diversity-training needs of your court (Step 4), or you may not need experts until you reach the evaluation phase (Step 7).

6. Design and develop the program. Refer to Module 5.

7. Evaluate the program. Refer to Module 6.

Note: After each step in the process, it is important to evaluate whether to proceed to the next step.

Guidelines for using this *Guide* As you use this *Guide*, keep in mind the following guidelines:

- This *Guide* can help you determine whether to develop and conduct a diversity-training program. It will answer such questions as:
 - What is workforce diversity?
 - Why is it important to conduct training if our court personnel are not visibly or obviously diverse?
 - How do we determine the educational needs of our staff in this area?
 - How much and what type of planning is involved?
- If you have already made the decision to conduct a training program, use this *Guide* as a primary resource throughout the planning and implementation process. It will assist you in determining the focus, content, format, and evaluation of the training program.
- You may need some outside assistance in determining your court's need for a diversity program and/or in designing, developing, and implementing a program. This *Guide* provides advice on identifying and working with outside experts.

- All books and articles referenced in this *Guide* are listed in the resource list in Appendix B.
- As used in this *Guide*, the term *clients* refers to defendants and offenders, and the term *court users* refers to litigants, attorneys, and those called to the court, such as witnesses and jurors.
- You may use individual modules or other components of this *Guide* on their own, if appropriate. Review an entire section before using a particular exercise, case study, instrument, or portion of a section.

Assessing your Court's Employment Policies and Practices

As the title of this *Guide* suggests, your court should take a total approach to diversity training. Your first step should be to assess your court's employment policies and practices to determine if your court is fertile ground for sowing the seeds of diversity training. This employment policy and practice assessment will help to ensure successful outcomes for your program.

The first step Begin the initial assessment process by reviewing your court's equal employment policies and practices. Policies that prohibit discriminatory employment practices and discriminatory behavior among court employees should already be part of your court's organizational structure. Your court should also encourage opportunities for underrepresented minority groups, especially if these minority groups represent a sizable percentage of your jurisdiction's population.

Diversity is only one part of a comprehensive plan

Diversity training should be viewed as one aspect of a comprehensive plan to promote fairness and equality in the court's workforce. Diversity training can be extremely helpful in addressing or resolving problems with bias or discrimination in the workplace, but it cannot replace compliance with Title VII requirements. Congress enacted Title VII to raise the socioeconomic conditions of women and minorities, to prohibit employment discrimination, and to promote equality in our nation's workforce.

Diversity training cannot replace Title VII mandates

Implementing diversity training does not grant employers the right to ignore or to set aside equal employment laws. Judges and court managers must realize that diversity training alone cannot resolve institutional inequities or discriminatory practices. In fact, unresolved problems with bias, harassment, or discrimination will undermine diversity-training efforts, waste time and resources, and lower employee morale.

Rights and responsibilities

The employment policy and practice assessment process will help to reacquaint judges and court managers with their legal obligations and ethical responsibilities under Title VII, as well as help all personnel understand their rights.

Assessing employment policy versus assessing training needs

It is important to note that your court's employment policies and practices are different from assessing your court's unique diversity-training needs. For example, if your court's workforce now includes members of a previously underrepresented racial or ethnic group, you should consider creating a program that will help foster cross-cultural understanding. This is the focus of Module 3 of this *Guide*.

Title VII compliance indicates readiness for diversity training

If Title VII mandates are fundamental to fairness and equality in our nation's workforce, then the existence of policies that promote compliance within your court can indicate its readiness for diversity training. In other words, courts that do not acknowledge their legal obligation to promote equal employment—through clear and explicit equal employment policies—are probably not prepared to handle a more diverse workforce, or an increasingly diverse society.

Court Employment Policy and Practice Indicators

This section highlights several employment policy indicators that will help you determine your court's readiness for diversity training:

- Trial Court Performance Standards
- Equal Employment Opportunity Policy
- Affirmative Action Policy
- Americans with Disabilities Act Policy
- Formal and Informal Complaint and Grievance Procedures
- Task Force or Commission on Racial and Ethnic Bias in the Courts

Trial Court Performance Standards

Established through the collaborative efforts of the Commission on Trial Court Performance Standards, the NCSC, and the Bureau of Justice Assistance (BJA), the Trial Court Performance Standards (TCPS) set optimal levels of operational achievement for courts to aspire to in administering justice.

The standards are a valuable resource for self-assessment, self-regulation, and self-improvement in judicial administration, through the collaborative efforts of general jurisdiction trial courts and their state administrative offices of the courts.

The following section highlights standards that are particularly relevant to addressing racial and ethnic bias and to fostering a work environment that supports rather than diminishes diversity-related efforts. A condensed version of the TCPS is contained in Appendix A of this *Guide*.

Highlights of Trial Court Performance Standards

Access to Justice	Trial courts should be open and accessible. Because location, physical structure, procedures, and the responsiveness of its personnel affect accessibility, trial courts must eliminate unnecessary barriers to their services. Such barriers can be geographic, economic, and procedural. They can be caused by deficiencies in language and knowledge of individuals participating in court proceedings. Additionally, psychological barriers can be created by mysterious, remote, unduly complicated, and intimidating court procedures.
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Equality, Fairness, and Integrity

Trial courts should provide due process and equal protection of the law to all who have business before them, as guaranteed by the federal and state constitutions. Equality and fairness demand equal justice under law. These fundamental constitutional principles have particular significance for those groups who may have suffered bias or prejudice based on race, religion, ethnicity, gender, sexual orientation, color, age, handicap, or political affiliation.

The all-important legal concept of due process requires that trial courts adhere to relevant law, rules, and policy when acting in their judicial and administrative capacities.

The equality and fairness afforded to litigants and disputes are determined not only by judges and court personnel but also by juries.

Recognizing that perfect equality cannot always be expected of juries, trial courts should do their utmost to encourage equality, fairness, and integrity by ensuring that those called for jury duty are representative of the population from which the jury was drawn.

The decisions and actions of trial courts should be based on legally relevant factors consistently applied in all cases. Furthermore, those decisions and actions should be based on individual attention to each case.

**Independence and
Accountability**

Every trial court should operate free of bias on the basis of race, religion, ethnicity, gender, sexual orientation, color, age, handicap, or political affiliation in its personnel practices and decisions. Trial courts should inform the public of its programs and activities. Also, courts' organizational character and activities must allow for adjustments to emergent events, situations, or social trends.

Public Trust and Confidence

Compliance with law is dependent to some degree upon public respect for the court. Ideally, public trust and confidence in trial courts stem from the many contacts citizens have with the courts. The maxim "Justice should not only be done but should be seen to be done!" is as true today as in the past. Unfortunately, there is no guarantee that public perceptions reflect actual court performance.

Therefore, trial courts should be perceived by the public as accessible. Trial courts should also conduct their business in a timely, fair, and equitable manner. Court procedures and decisions should highlight rather than diminish the integrity of the court, so that the public has trust and confidence in the courts.

Equal Employment Opportunity Policy

State courts are not immune from laws and executive orders that prohibit discrimination. In addition, court contracting agencies and departments that administer state court programs or receive state financial assistance cannot engage in discrimination in hiring, promotion, firing, job assignments, and training based on race, color, religion, sex, national origin, physical handicap, or age. Some courts also prohibit discrimination based on sexual orientation.

Judges and court managers have an obligation to examine their hiring, promotion, and firing practices to ensure that they do not have the effect of discriminating against groups or persons protected by law. Also, they should take positive steps to recruit, hire, train, and promote qualified employees of previously excluded groups, to correct underrepresentation in traditionally segregated job categories, and to ensure an equal representation of all groups in the work force. In addition, judges and court managers are responsible for managing the work environment to ensure that it is free from problems with bias, harassment, or discrimination.

Title VII-related mandates should be an explicit, active, and dynamic part of your court's policies and work environment. Equal employment principles should be communicated to court personnel, entities, agencies, and vendors who do business with the court through an equal employment opportunity policy statement. State court policy statements should:

1. Indicate the chief judge and the court administrator's attitude on the subject;

2. Assign responsibility for ensuring equal opportunity; and
3. Identify the mechanism that will be used to monitor the court's compliance with the equal employment opportunity policy.

Although there is no established format, equal employment opportunity policy statements should include the four following assertions:

1. The court will employ, develop, and promote employees into all occupational categories (managerial, professional, technical, administrative) without regard to race, color, religion, sex, or national origin;
2. The court will make decisions on employment so as to further the principle of equal employment opportunity;
3. The court will establish and use only valid, job-related requirements of promotional opportunities to ensure that promotions are in accord with equal employment opportunity principles; and
4. All personnel actions, such as salary setting, transfer, benefits, layoff, and training, will be administered without regard to race, color, religion, sex, or national origin.

The Judicial Conference of the United States has directed that each court adopt a plan in conformance with the national policy of providing equal employment opportunity to all persons regardless of their race, sex, color, national origin, religion, age (at least 40 years of age at the time of the alleged discrimination), or handicap.

The directive requires each court to promote equal employment opportunity through a program encompassing all facets of personnel management, including recruitment, hiring, promotion, and advancement.

The program, which will be periodically evaluated, is not intended to modify or reduce the qualification standards for employment in the federal courts as such standards have been approved by the Judicial Conference of the United States. A copy of the *Model Equal Opportunity Policy* is located in Appendix A of this *Guide*.

Affirmative Action Policy

An Affirmative Action policy generally refers to an approach to personnel management by which an organization takes positive steps to recruit, hire, train, and promote qualified individuals who are members of groups that have been subjected to arbitrary discrimination. In a state government context, this refers to an executive branch policy requiring state executive branch contracting agencies and departments that administer programs that receive state financial assistance to take positive steps to recruit, hire, train, and promote qualified employees of previously excluded groups. This *Guide* highlights the Massachusetts Affirmative Action policy, which is contained in Appendix A.

Americans with Disabilities Act Policy

Enacted on July 26, 1990, the Americans with Disabilities Act (ADA) (42 U.S.C 12101 et seq.) protects otherwise qualified individuals with disabilities from discrimination solely on the basis of their disability. The ADA broadens the powers of the Rehabilitation Act of 1973 (Section 504), which prohibits similar discriminatory policies and practices by agencies and activities that receive federal funding.

ADA Highlights

Title I Title I of the ADA and the additional prohibitions of the Rehabilitation Act are most relevant to employment policies and practices in the state courts. This section not only makes it illegal for courts to discriminate against otherwise qualified disabled persons, it also requires courts to make reasonable accommodations—by eliminating or mitigating obstacles, or by enhancing the work environment—so that disabled persons may perform their jobs.

The ADA does not preempt the Eleventh Amendment or any existing state or federal discrimination laws. Therefore, a single violation of the ADA may be pursued not only under the ADA, but also under the Rehabilitation Act of 1973, state and local discrimination laws, and various tort causes of action.

- The ADA will apply to any employer with 15 or more employees.
- Employers exempted from the ADA's provisions are the U.S. government, Indian tribes, tax-exempt private clubs, and religious organizations.

- Although the ADA does not prohibit a limited preemployment inquiry into an applicant's ability to perform specific job-related functions, it does prohibit preemployment inquiries into an individual's disability status.
- Employers are required to post notices for job applicants and employees regarding applicable ADA provisions.
- The Equal Employment Opportunity Commission (EEOC) is responsible for enforcing Title I of the ADA, which requires employers to provide "reasonable accommodations" that will allow the disabled to work and advance in careers.
- Remedies under the ADA include injunctive relief, back pay, and (at the court's discretion) attorneys' fees and costs.

Title II Title II, which became effective in January 1992, prohibits state and local government from policies and practices that have the effect of barring disabled persons from participation in or access to public services, programs, and activities.

To understand Title II, court personnel should review:

- 28 CFR, part 35
- the ADA Handbook, Title II, U.S. Department of Justice
- the Title II ADA Technical Assistance Manual, U.S. Department of Justice

- Title II guidelines by the Architectural and Transportation Barriers Compliance Board

The court's responsibility to provide access for disabled employees falls under the guidelines of the Equal Employment Opportunity Commission ADA Technical Assistance Manual. An excellent resource on the ADA and its application to the state courts is *Access: Final Report of the Wisconsin Supreme Court Interdisciplinary Committee on the Court-Related Needs of the Elderly and People with Disabilities* (1994).

Also, judges and court managers can contact the Civil Rights Division of the Department of Justice for information and assistance on ADA-related issues by phone at (800) 514-0301.

Suggestions for Compliance with the ADA

- Investigate potential physical barriers to the handicapped—especially those relating to access.
- Explicitly define the essential tasks of a particular job.
- Under the ADA, a disabled person is deemed qualified if he or she can perform the “essential elements” of a job.
- Although the ADA does not define “essential elements,” it seems that “essential” job duties are not synonymous with “all” job duties. Therefore, a disabled employee's inability to perform a nonessential job function will not serve as a reason for job disqualification.

- Consider modifying preemployment physicals. Under the ADA, physicals must follow (not precede) the making of an offer of employment.
- Such postemployment physicals must also meet these requirements—they must be given to and passed by all employees, the results must be confidential, and the results must be utilized in conformance with ADA provisions.
- Educate managers and employees about how to work with disabled employees.

Employee Complaint and Grievance Procedures

Effective employee complaint and grievance procedures are tantamount to documenting, addressing, and resolving racial and ethnic bias issues.

Formal Grievance Procedures⁵

According to the EEOC, formal grievance procedures can be divided into three phases:

- 1. Investigation** When someone brings a complaint of employment discrimination, the EEOC investigates the complaint to determine if a violation of Title VII occurred. The EEOC may conduct the investigation itself, or, in states with their own EEOC laws that meet EEOC standards, it may begin by referring the complaint to the state or local enforcement agency.

⁵ See Schlei, Barbara L. and Paul Grossman, *Employment Discrimination Law*, 2nd ed., Washington, D.C.: Bureau of National Affairs, 1983, Chapter 26. Three phases of formal grievances excerpted from *Federal Regulation of Personnel and Human Resource Management*, 2nd ed., written by James Ledvinka and Vida G. Scarpello and published by Wadsworth, Inc., 1992, pg. 36.

- 2. Conciliation** If the EEOC does find probable cause to believe that the employer has violated Title VII, the agency attempts to settle the matter through a process called conciliation. Conciliation is a negotiation between the complainant, the employer, and the EEOC. The objective of the EEOC during conciliation is to obtain an agreement that is tolerable to the interests of all parties, including its own interest in upholding Title VII's requirement that the employer compensate the victims of its discriminatory acts.
- 3. Litigation** Litigation is generally reserved for important cases with favorable prospects for the agency. Regardless of the EEOC's action, the complainant has the right to sue in federal court, even when the EEOC has found no probable cause to believe that the employer has violated Title VII.

Informal Grievance Procedures

Informal grievance procedures can take the following form:

Complainants are encouraged to inform their supervisor that they feel that their EEOC rights have been violated. If the supervisor is the source of the allegation, takes no action, or does not respond to the employee, then that employee should discuss the appropriate course of action with the local EEO or Affirmative Action officer, human resource manager, or designee.

Upon the receipt of an oral or written informal complaint, the local EEO or Affirmative Action officer, human resource manager, or designee shall inform the senior manager or assignment judge as appropriate and act upon the complaint, usually within fifteen (15) calendar days by:

- providing information concerning the complainant's rights,
- investigating and attempting to resolve the complaint informally, and
- providing information concerning the complainant's rights to file a formal complaint.

Suggestions to Help Avoid Complaints and Grievances⁶

- Communicate Effectively:** Communication is good when everybody has the same understanding of matters under consideration.
- Be a Good Listener:** Too often, the listener concentrates on the answer they plan to give, instead of concentrating on the comments of the speaker. Just listening is not sufficient; how well one listens and comprehends is most important.
- Treat Employees Fairly and Equitably:** Supervisors should evaluate their actions to make sure that they are not using preferential or discriminatory treatment toward employees.
- Be Visible and Accessible:** Employees must be assured that there is a "real" open and informal access for discussing problems with their supervisor.

⁶ These suggestions are excerpted from *Employee Discipline and Grievances* (1996), by Gerald B. Kuban, Senior Staff Associate, National Center for State Courts, Williamsburg, Virginia.

**Solicit Employees' Opinions
and Suggestions:**

Supervisors must provide employees with an opportunity to contribute their ideas to the decision-making process. If their ideas are being considered or discussed, give them some feedback on their input. Employees can contribute valuable assistance and perceptions of how the court operates.

Treat Employees with Respect:

Supervisors should always treat employees with respect in a grievance situation as well as on the job. Failure to do so may turn a tentative grievance into a time-consuming dispute, the results of which may cause unnecessary long-term bitterness.

Know Your Labor Agreement:

Supervisors must clearly understand the language and intent of their labor contracts, court rules, and regulations covering their employees.

For additional guidance on handling complaints concerning bias, harassment, or discrimination in the court, see *Discrimination and Sexual Harassment Policies and Procedures* from the Superior Court of Alameda County, California. The document is located in Appendix A of this *Guide*.

**Task Forces and Commissions
on Racial and Ethnic Bias in the Courts**

State court personnel are not only a workforce who provide and administer justice, they also represent the initial point of contact for most minority citizens who come to our courthouses seeking justice or relief. Task forces and commissions established to investigate racial and ethnic bias in the courts are crucial to ensuring that minorities are afforded equal employment opportunities in the courts, as well as fair and dignified treatment by court personnel.

Recognition of the direct effect the courts have on the legal needs and liberties of minorities prompted the chief justices of several states to create task forces or commissions in their respective courts. Several task forces or commissions have found that before their members can adequately investigate racial and ethnic bias, it is necessary for the members to explore the issues within their own group fully.

In the course of their duties, many task force members—including judges, court managers, and court staff—have strayed from their missions because of racial and ethnic tensions within the task force. Racial and ethnic conflict is likely to occur in any diverse group. Personal beliefs, political opinions, and cultural conditioning do not disappear at the task force or commission door.

As a result, it is recommended that the commission sponsor its own diversity training to raise the awareness of task force members to racial and ethnic issues and set the stage for a free and meaningful dialogue about the problem of bias in the judiciary.

It is recommended that task forces and commissions conduct a rigorous screening of prospective diversity-training consultants. Any consultants that contribute to the mission of the task force should be selected on the basis of their skill, experience, and ability to foster trust and team-oriented relationships among task force members. Module 4 of this *Guide* addresses selecting and working with diversity-training consultants.

According to the handbook on task forces and commissions entitled, *Establishing and Operating a Task Force or Commission on Racial and Ethnic Bias in the Courts*, state task forces or commissions in California, Massachusetts, Minnesota, Oregon, and Washington have used this process for their commissions. Appendix A of this *Guide* contains more useful guidance from the handbook.

Conference of Chief Justices and Task Forces and Commissions on Racial and Ethnic Bias in the Courts

The state courts have been instrumental in enforcing federal, state, and local laws and policies prohibiting discrimination and in upholding affirmative steps to overcome the effects of discrimination as they apply to cases brought before the courts.

The Conference of Chief Justices (CCJ) has been a leading force in this effort. The mission of the CCJ is to improve the administration of justice through the effective mobilization of the collective resources of the highest judicial officers of our states, commonwealths, and territories.

The principle of equal treatment of all persons before the law is central to the mission of the CCJ and its Access and Fairness Committee. (In February 1997, the CCJ, on recommendation from the Committee on Discrimination and the Courts, changed the name of the Committee on Discrimination in the Courts to the Access and Fairness Committee.) The CCJ have also been crucial to the establishment of task forces and commissions on racial and ethnic bias in the courts.

CCJ Resolution XVIII:

Task Forces on Gender Bias and Minority Concerns

In 1988, the Conference of Chief Justices (CCJ) through the recommendation of its Committee on Discrimination in the Courts passed CCJ *Resolution XVIII—Task Forces on Gender Bias and Minority Concerns*, urging:

[P]ositive action by every chief justice to address bias and minority concerns in the state courts.

[E]ach chief justice in every state to establish separate task forces devoted to the study of gender bias in the court system and minority concerns as they relate to the judicial system.

Appendix A of this *Guide* contains the full text of CCJ *Resolution XVIII*, which was adopted at the Conference of Chief Justices 40th Annual Meeting in Rockport, Maine, on August 4, 1988.

The National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts

CCJ Resolution XVIII stemmed from the representatives of the four founding state task forces on racial and ethnic bias in the courts—Michigan, New Jersey, New York, and Washington—who met with the chair of the CCJ Committee on Discrimination in the Courts to request that the chief justices of the states without commissions consider creating them. A brief history and current status of the National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts is contained in Appendix A of this *Guide*.

Chief Justices and Task Forces and Commissions on Racial and Ethnic Bias in the Courts

One of the closing events of the *First National Conference on Eliminating Racial and Ethnic Bias in the Courts* was a panel discussion by chief justices on bias in the judicial system entitled, “Documenting Bias in the Judicial System: Are There Any Implications?”

Among the thought-provoking insights shared during the discussion was how crucial the support of chief justices is to the effectiveness of state task forces and commissions on racial and ethnic bias in the courts. The fact is, “no commission to document or address racial and ethnic bias had been effective without the support of the chief justice.”

During the same panel discussion another chief justice delivered powerful and timely remarks about the unique role that commissions on racial and ethnic bias play in our courts and in our society:

[T]he debate over continuing or dismantling affirmative action programs has absolutely nothing to do with the court’s obligation to be fair and impartial and to generate an atmosphere that meets the public’s expectation of fairness. For example, [w]hen the legislature uses the lack of funding as the rationale for not funding judicial initiatives (such as a commission to address racial and ethnic bias in the courts), chief justices and judges should realize that what the legislature is saying is that the issue does not have enough priority. Legislators must understand that eliminating racial and ethnic bias is, by definition, part of the court’s work to improve the public’s confidence in the judicial system.

In addition to supporting task forces and commissions on racial and ethnic bias as an effective tool for promoting fairness in the justice system, the chief justices recommended courts implement some of the diversity-training methods with which they were familiar:

- Mandating judicial education on the subject, incorporating fairness and inclusion across the judicial education curriculum;
- Including diversity training on the agenda of the mandatory all-courts conferences;
- Holding great American literature seminars that include discussions about bias or perceptions of bias in the stories;
- Role-playing and skits that use humor and parody to react to the court and to the behavior and personalities of actual judges;
- Provocative town hall meetings and forums;
- Holding national conferences, similar to the *First National Conference on Eliminating Racial and Ethnic Bias in the Courts*.

Appendix A of this *Guide* contains the full text of the panel discussion.⁷

⁷ This section is excerpted from the proceedings of *The First National Conference on Racial and Ethnic Bias in the Courts*, which are entitled *A New Paradigm for Fairness: The First National Conference on Eliminating Racial and Ethnic Bias in the Courts*. The proceedings were written by H. Clifton Grandy and were published in 1995 by the National Center for State Courts, Williamsburg, Virginia.

Conclusion

The perceptions of your court's employees are probably the best indicator of how judges and court managers are managing your court's work environment. Surveys and interview techniques should include a broad range of court personnel because perceptions of fairness or bias and discrimination in hiring, promotions, and work assignments are likely to differ among racial, ethnic, or gender groups. Also, there may be other differences in perception among executives, senior managers, managers, and mid-level and administrative staff.

Even if the perceptions your court's personnel are generally positive, they should know where they can direct a problem or complaint involving bias or discrimination.

They should know what office or department to contact regarding problems with bias, harassment, or discrimination.

They should also be aware of mechanisms and court officials to help them resolve these type of complaints informally or formally.

Your court should use its personnel and financial resources to establish and maintain a task force or commission on racial and ethnic bias in the courts. It should also encourage participation and input from judges and court managers, members of state and local bar associations, community groups, and professional and layleaders.

Finally, your court should have programs and initiatives to help foster open and effective communication among all levels of the court's workforce, so that simple misunderstandings or miscommunications do not escalate into formal complaints or grievances.

Module 2

Getting Started

Module 2. Getting Started

Module at a Glance

- Introduction
- Establish Planning Committee
- Build Support for the Program

Introduction

Purpose of the module This module outlines the initial steps in planning a diversity-training program. These include:

1. Establishing a diversity-training planning committee.
2. Assessing your court's readiness for diversity training.
3. Building support for a diversity initiative.

The planning committee makes decisions about the direction and implementation of the project. The first tasks of the committee are to assess the court's readiness for diversity training and then to build support for the project.

These beginning steps establish the foundation for a successful program. It is important that at each step, the committee determine whether to proceed based on data and feedback from the court.

Establish the Planning Committee

This section contains answers to common questions about the structure and function of the planning committee.

Why have a planning committee?

Diversity training, perhaps more than any other education program, should be planned by a group of diverse court employees. First, the input of diverse staff with different experiences, expertise, and positions in the court helps ensure that the diversity program addresses a broad range of concerns and issues. Second, by participating in the process and learning about the topic, court employees will learn about diversity issues and commit to dealing with them. Third, the use of the committee structure spreads the work among more people, decreasing the amount of time any one person must devote to the effort.

When should the planning process begin?

You should organize the planning committee at least six months before you want to implement training. Committee members will need this time to educate themselves about the topic (including diversity training to increase their awareness of the diversity and diversity-related issues, assess the diversity-training needs of the court, and design and implement training that will meet the court's needs).

How many people should be on the committee?

The number of people on the committee depends, in part, on the size of the staff and whether the court has a full-time training specialist. The committee should be large enough to include staff members from different job categories, but small enough to be flexible and productive. Usually, four to eight committee members are ideal.

Who should be on the committee?

The committee should include a diverse group of employees. Consider the following points as you decide how to make the committee diverse:

- It is important to have representation from several major job categories (professional and administrative support staff).
- It is critical that the committee include a senior-level manager and a mid-level manager.
- Consider including a staff person who is skeptical about the program, but open-minded. He or she can represent the perspectives of the staff who may be skeptical.
- The committee should represent the diversity of the entire staff. Include people of color, women, staff who are married, staff who are single, staff who have children, and staff who do not have children. Do not limit the committee to people of color or women, or staff may perceive the diversity initiative as a program only for select groups.

Should there be a chair or facilitator of the committee?

The committee needs one or two people to oversee and coordinate the process, to make sure the committee's tasks are clear and completed on schedule, and to communicate the committee's progress and direction to senior management.

What are the committee's tasks?

The committee may undertake whatever tasks they identify under the direction of the facilitator or co-facilitator. It is important to clarify the committee's tasks from the beginning. Possible committee tasks include:

- Discussing the planning process with senior management.
- Deciding the needs assessment methods to use. Refer to Module 3 for an in-depth explanation of how to conduct the diversity-training needs assessment.
- Deciding whether to use outside experts, and if so, how to select them. Refer to Module 4 for more information about identifying outside experts.
- Building judicial, management, and staff support for the program.
- Preparing staff for the training.
- Consulting with the outside expert on program design, implementation, and evaluation.
- Planning follow-up actions.

**Should committee members
be involved in the
training program?**

Committee members, as appropriate, may serve as small-group facilitators for parts of the diversity-training program.

**Should the committee
disband after the
training program?**

The committee's work may end with the training program, but the members should be involved in any discussions about next steps. For example, any committees formed for follow-up activities and initiatives should include one or two members of the diversity education planning committee for continuity.

**How should the committee
get started?**

Planning committee members should begin by learning as much about diversity as possible. Recommended videotapes, articles, and books are annotated in Appendix B of this *Guide*.

Building Support for Diversity Training

Once the committee is assembled, its first activity should be to assess the court's readiness for a diversity-training program. Module 1 of this *Guide* focuses on assessing your court's readiness for diversity training. The committee will also need to assess and, if necessary, build support for diversity programs and initiatives among court personnel, particularly among judges and senior managers. This section will give you some ideas for building support at all levels of the court.

Does the court have adequate management support?

Support from the highest levels of the court, such as the chief justice and the state court administrator, is essential for a successful program. Management support includes time, energy, money, and other resources. It includes verbal and behavioral commitments from managers. For example, judges and senior managers should:

- Kick off training programs,
- Participate in the planning process,
- Provide financial support, and
- Show a willingness to review and change court policies, practices, and procedures that do not support diversity programs.

The support of a few mid-level managers and work leaders who champion diversity initiatives within their teams or work groups is not a substitute for the firm commitment from the highest levels of the court.

Does court staff have realistic expectations for training?

Be candid with staff and with managers about what results they can expect from the diversity-training program. Ensure that you communicate the objectives of the program clearly.

Are you willing to develop an open training environment?

Diversity training is rarely “feel good” training. It requires employees to confront some of their basic values and assumptions. Education programs do not create conflicts, but they may bring conflicts or hostility to the surface. If conflicts cannot surface in the training program, they will probably surface in unhealthy and less constructive ways.

**Are you willing to make
diversity a long-term change?**

Education and training programs are just one strategy for achieving institutional change. Remember people, not institutions, are resistant to change. Alone, education and training programs cannot achieve permanent change in the court's culture or environment. Be prepared to plan creative follow-up activities to promote diversity goals and support training objectives.

Building Support Among Judges and Managers

As stated earlier, it is essential that you have the support of the highest levels of the court before undertaking a diversity-training program. Here are some ideas for building that support.

Present a diversity-training proposal to key judges and managers. The proposal can be formal or informal, depending on that person's style. The proposal should address the following issues:

1. Why it is important for all staff to receive diversity training.
2. How the organization can determine what, if any, diversity-related problems exist and which ones can be addressed through training.
3. What diversity is and why it is important for the court. Share this *Guide* and other relevant articles or videotapes with the judge and ask him or her to review relevant sections. (In turn, you should follow-up on their requests for additional information as soon as possible. Appendix B of this *Guide* contains an annotated list of articles and videos.)

4. The needs assessment process.
5. The training process, how long it will take, and how diversity training will differ from other kinds of training.
6. The importance of staff involvement and support.
7. What will be needed from key judges and managers in terms of commitment, support, and resources, including time, people, and money.
8. Whether the training program will use an outside expert, and if so, how the expert will be chosen and how the expert will work closely with the diversity education planning committee.
9. The potential benefits of the training. Be realistic about the outcome of the training program. Skill building should be a goal, but a one-time training program will not produce long-term behavioral changes without reinforcement and follow-up.
10. How diversity training will improve their court's efficiency, including how diversity training contributes to other management efforts to increase productivity, such as team building, conflict resolution, quality improvements, coaching, and mentoring.
11. Why diversity training is an ongoing process, just as team building, quality initiatives, and other types of training are.
12. Possible follow-up activities and programs that could be used to reinforce and continue diversity efforts.

13. The insight of a respected judge or a manager from another court who has benefited from diversity training's effectiveness.
14. The need for at least one judge or senior manager to serve on the diversity education planning committee.

Building Staff Support

It is important to obtain buy-in from all levels of the court. Efforts to build the support of court staff should be creative, varied, and steady. Some ideas are listed below:

- Design and distribute informational fliers on what diversity is and how it can improve the office environment.
- Keep the staff informed of the planning committee's progress.
- Solicit input, both formally and informally, as much as possible. Ask staff to anonymously submit questions about workplace diversity.
- Circulate newspaper or journal articles about diversity-related issues.
- Arrange brown bag lunches to show diversity videotapes as previews for the program.

Module 3

Assessing the Diversity-training Needs of Your Court



Module 3. Assessing the Diversity-training Needs of Your Court

Module at a Glance

- Introduction
 - Definition of a needs assessment
 - Reasons for conducting a needs assessment
- The Needs Assessment Process
- Methods of Data Collection
 - Existing Records
 - Questionnaires
 - Interviews
 - Focus Groups
- Choosing Data Collection Methods

Introduction

What is a needs assessment? A needs assessment is a process for determining the specific objectives of a diversity-training program for your court. It will help you identify the issues on which you should focus your training resources. To conduct a needs assessment, you will collect data from court employees to determine:

- Whether specific diversity-related problems exist,
- Whether court employees perceive that problems exist, and
- How court employees experience or observe these problems in their interactions with peers, supervisors, and the public.

Why conduct a needs assessment?

The primary reason for conducting a needs assessment is to gain a more accurate and detailed understanding of your court's specific diversity-related issues. Without a needs assessment, your diversity education program may be based on unexamined assumptions or a general sense of the situation. A needs assessment will enable you to focus your resources on the diversity issues that most affect your court's performance.

For example, court management may believe that minority deputy clerks feel that their low salary is their most serious problem. However, a needs assessment might reveal that the clerks believe the biggest hindrance to their effectiveness is a lack of training opportunities or lack of a forum for participating in decisions that affect their work environment. This information radically changes management's solution to the perceived issue.

The following are other important reasons for conducting a needs assessment before designing a diversity-training program.

To collect hard data

It may be difficult to persuade some court personnel of the need for a diversity education program without hard data. In the absence of data, it is difficult to respond to the comment, "We have no diversity-related issues or problems in our court, so there is no need for training." The description of an isolated incident or two is usually not sufficient to convince staff and judges that training is needed. Often these incidents are viewed as aberrations, which they may in fact be. A needs assessment will reveal the reality of the need for training.

To achieve buy-in from court staff

The needs assessment process sends a clear message to all employees that diversity concerns are important. Also, the process actively engages court employees in the diversity-training program and thereby gains their commitment to the success of the training.

To collect court-specific data

Each court has its own culture, which is determined by location, court size, management style of the senior staff, and differing characteristics and combinations of characteristics among the staff. Given this range of differences, diversity-related issues vary substantially among courts. Court managers cannot assume that diversity-related problems in another court exist in their court.

To investigate the type of program needed

Needs for diversity-training programs can be of different types. For example, an analysis of hiring and promotion data may reveal that persons with certain characteristics are in fact being hired less, promoted less, or fired more than others. On the other hand, an analysis of employees' perceptions may reveal that some employees do not believe that others are being hired, fired, or promoted at different rates. Both types of information—what is occurring and perceptions of what is occurring—are important in assessing the needs for diversity training and in structuring a response to those needs.

The Needs Assessment Process

This section will assist you in understanding the basics of the needs assessment process. You may wish to consider using an expert to actually conduct the assessment. However, you should still understand the process so that you can help coordinate logistics, identify appropriate topics, and choose specific data collection methods. It is essential that needs assessments be open, fair, and honest, and that those planning the training be willing to accept the results.

Why use an expert?

A needs assessment specialist can provide you with expertise in the following areas:

- Defining the scope of the assessment,
- Constructing valid and reliable assessment instruments,
- Interpreting results,
- Reporting results,
- Ensuring objectivity and confidentiality.

By using an expert, you can also ensure that at least one person can devote adequate time and attention to the process. Refer to Module 4 for more information about identifying and working with experts.

Steps in the process

A needs assessment process includes the following steps:

1. Identify research questions. A needs assessment is essentially a research project. Remember, through the assessment process, you are trying to discover the specific diversity-related issues in your court. To begin, narrow your focus by deciding exactly what it is that you want to know and from whom you want information. Take your general sense that something is wrong and identify specific questions that the assessment will answer. The important point is to have a clear purpose before you begin your data collection effort. Here are some examples:

- Does our staff perceive diversity-related issues? Does it affect their work?
- What specific diversity-related issues does the staff perceive? Should the assessment focus on issues related to race, ethnicity, and gender only, or should it cover broader issues?
- Should we assess issues among court employees only or should we also assess issues between court employees and clients or court users?

2. **Collect data.** Once you have identified the questions, you will collect data to answer them. The next section of this module describes various data collection methods and how to use them.
3. **Analyze data.** Analyzing the results of the data collection can be more complicated than it first appears. An expert will ensure that the analysis is objective and accurate. If you choose not to use an expert, it is especially important to be alert for inferences that may appear plausible at first glance, but that are called into question by more exacting analysis. For detailed guidance on how to avoid mistakes in the analysis, refer to *Studying the Role of Gender in the State Courts: A Research Guide*, Chapters 4 and 11.
4. **Report findings.** Provide a report of your findings to senior managers and, depending on the circumstances, to the chief judge or all judges for their approval. You should then also provide the report to all court employees.

Methods of Data Collection

This section describes various methods of data collection and offers a comparison of three of the methods. An assessment expert will be proficient in using each of these methods, but you should know the basics of each so you can assist in the data collection effort.

Existing Records

Learn what you can from existing records. Examine them for trends or other evidence that confirm your hypothesis. Records to examine include:

- Exit interview reports
- Complaints or grievance reports
- Hiring, firing, and promotion data

Questionnaires

Questionnaires are also referred to as surveys. Questionnaires are a written effort to acquire information from people. They are prepared to collect specific data, distributed to survey respondents (usually anonymously), returned to sender, and then analyzed.

Characteristics The following are characteristics of questionnaires:

- Respondents are asked the same questions in the same way, usually in the same general time frame.
- Respondents are usually given a standard set of responses from which to choose.
- Questionnaires can include large numbers of people.
- Questionnaires are relatively inexpensive.

Issues The following are issues to consider if you choose to use a questionnaire:

- *Response rate.* The number of questionnaires you send out and receive back is important. To ensure that the data are reliable enough to generalize beyond the group of people who completed the questionnaire, you must receive an acceptable number of returns from a representative sample of the population. In general, a 50% return rate is considered adequate if the individuals who did respond are representative of the entire staff and not different (e.g., by job title, gender, race, age, marital status) from those who did not respond.
- *Confidentiality.* To receive honest answers and a sufficient number of returns, the court must ensure the confidentiality of responses. If employees fear that a manager or someone else will find out how they answered the questionnaire, they may choose not to respond or their answers may not be candid.
- *Wording of questions.* The proper wording of the questions on a questionnaire is crucial. Obtaining the proper wording is more complicated and technical than it may appear. Good questions are simple, clear, logically ordered, and interesting. Poor questions are “double-barreled,” leading, loaded, or predictably patterned.

- *Analysis of responses.* Many courts are small enough to allow manual tabulation or tabulation by available software packages. The analysis of large numbers of questionnaires may require special skills and computer programming.

Further information

If you choose to use a questionnaire, refer to Appendix C of this *Guide*. Appendix C will provide you with:

- Techniques for Ensuring Confidentiality
- Techniques for Increasing the Response Rate
- Sample Cover Letter
- Sample Needs Assessment Survey of Diversity-related Problems
- Optional Personal Data Form
- Optional Add-on Survey for Managers

Interviews

One-on-one interviews are one of the most common information-gathering techniques. Interviews provide an opportunity to explore issues in greater depth than questionnaires because the interviewer can follow up a participant response with additional questions.

Characteristics

The following are characteristics of one-on-one interviews:

- Interviews may be conducted face-to-face or by telephone.

- Interviews may be structured or unstructured. Structured interviews are more formal. They are similar to questionnaires because the questions are prepared in advance and are closed-ended. Unstructured interviews are less formal. Usually, the questions are open-ended and allow the interviewer to ask further questions to gain understanding and depth.

Issues The following are issues to consider if you choose to conduct one-on-one interviews:

- *Time.* Interviews are very time intensive and therefore usually can only be conducted with a small percentage of the staff.
- *Validity precautions.* Because interviews can only be conducted with a small percentage of the staff, it is critical that a survey expert determine a representative sample of the population. Findings cannot be generalized to the entire staff without special safeguards designed by a survey expert.
- *Interviewer skill.* It is important to use skilled and experienced interviewers to ensure that the results are consistent and objective.

Further information For a more thorough discussion of interviews, refer to Chapter 9 of *Studying the Role of Gender in the State Courts: A Research Guide*. Another resource is Appendix D of this *Guide*. Appendix D contains:

- Interviewing guidelines
- A sample protocol for structured interviews

Focus Groups

Focus groups are meetings held strictly for the purpose of gathering information about a topic with which all participants are familiar. A facilitator uses a guide or a protocol to lead the discussion. The goal of focus groups is to encourage participants to tell their “stories” in their own words.

Characteristics The following are characteristics of focus groups:

- Usually include six to ten participants.
- Individuals may build on each others’ ideas.
- Typically last one to two hours.
- Used to gather information about feelings and attitudes, current performance, causes, and potential solutions. Information is qualitative and anecdotal.

Issues The following are issues to consider if you choose to use focus groups:

- *Type of information.* The information from focus groups is qualitative and anecdotal. It should not be used to draw overall conclusions about the incidence of diversity-related issues in the court.
- *Facilitator skill.* As with interviews, it is important to use skilled and experienced facilitators to ensure that the meeting stays focused, in control, and productive.

Further information

For more information about focus groups, refer to *Studying the Role of Gender in the State Courts: A Research Guide*. Another resource is Appendix D of this *Guide*. Appendix D contains:

- Focus Group Guidelines
- A Sample Focus Group Protocol

Choosing Data Collection Methods

Depending on the specifics of your needs assessment effort, you may use one or several of the data collection methods described in this module. This section provides guidelines for choosing methods and offers a side-by-side comparison of the advantages and disadvantages of each.

**Factors to consider
in choosing data
collection methods**

Keep the following factors in mind as you determine which data collection methods to use:

- The scope of the needs assessment effort. What is the breadth, depth, and nature of the issues that you plan to research? Who are you involving in the data collection?
- The size of the staff.
- Availability of experts.
- Time and financial constraints.
- Staff preferences for individual or group input.

Comparison of methods

Table 3-1 on the next page displays the advantages and disadvantages of each data collection method.

Table 3-1. Comparison of Needs Assessment Methods¹

Method	Advantages	Disadvantages
Questionnaires	<p>Data can be obtained on a number of issues from a large number of people at a lower cost than the cost of other methods.</p> <p>Data can be collected anonymously, so responses may be more candid.</p> <p>Respondents have time to provide thoughtful responses to questions.</p> <p>Require minimal staff and facilities to administer.</p>	<p>Questionnaires do not allow for probing or full exploration of the complexities of an issue.</p> <p>There is no opportunity to follow up on individual responses to clarify them or to probe more deeply.</p> <p>Questions must be written with expertise.</p> <p>Some employees, especially those from cultures other than the American culture, may not respond to a written form that requires no human contact.</p>
Interviews	<p>Provide an opportunity for two-way communication; the interviewer can ask follow-up questions.</p> <p>Allow for the collection of specific anecdotal information to illustrate problems.</p> <p>It is easier to ensure the confidentiality of responses than it is with focus groups.</p>	<p>The interviewer must be skilled and objective, and be perceived as completely trustworthy. Court personnel may not be appropriate interviewers; the race, gender, job title, or court position of the interviewer may also affect the trust of employees.</p> <p>Data collected from interviews can be generalized only if a representative random sample of employees are interviewed.</p> <p>It is the least time-efficient and most costly method of needs assessment for large numbers of people.</p>
Focus Groups	<p>Produce richer data through in-depth discussions.</p> <p>Provide an opportunity for interaction and communication among participants; an idea presented by one person may encourage another person to share experiences.</p>	<p>Provide only a sample of views and perspectives that cannot be generalized to the entire staff; therefore, this method should be used in combination with other methods.</p> <p>There is greater risk that confidentiality may be jeopardized in a group setting; fear of repercussions in the workplace may be greater with this method.</p>

¹ Adapted from Gardenswartz, Lee, and Rowe, Anita. *Managing Diversity: A Complete Desk Reference and Planning Guide*. Homewood, Ill.: Business One Irwin, 1993, p. 265.

Method	Advantages	Disadvantages
Focus Groups, continued	<p>Can be used to identify topics for inclusion in questionnaires.</p> <p>Participants do not need to be adept at written communication.</p> <p>Participants are not restricted to choosing from a standardized set of responses, such as those found in an interview or questionnaire.</p> <p>They require a less complex interview format than face-to-face interviews do: fewer topics are covered, and questions can be more open-ended.</p>	<p>Requires an objective, skilled facilitator to solicit responses to broad topics and to keep the discussion focused.</p> <p>Participants are less likely to be candid if they do not trust the moderator or other participants (gender, race, job title, or court position of moderator may be factors to consider in the selection of the moderator).</p> <p>Analysis of data is complex.</p> <p>It takes time to coordinate the sessions with the schedules of employees who will participate.</p>

Module 4

Working with Diversity Consultants



Module 4. Working with Diversity Consultants

Module at a Glance

- Finding and Selecting Diversity Consultants
 - Competencies for Diversity Consultants
 - Conducting Preliminary Interviews and Reference Checks
 - Conducting Final Interviews
- Designing the Program with the Help of a Diversity Consultant

Finding and Selecting Diversity Consultants

Role of consultants Diversity consultants can supplement your judicial educator's or training specialist's understanding and knowledge about diversity. To develop the most effective program, combine the diversity experience and expertise of your diversity consultant with the assessment and design expertise of your court's training specialists.

Seek a diverse and complementary team If possible, put together a team of two trainers with complementary styles. It is important to have a well-balanced and diverse team. Consider the implications of a diversity workshop for a diverse group led by two white men.

Where to find a diversity consultant with court expertise

In order of preference, your court should locate a diversity consultant through the following resources:

- ***The National Center for State Courts (NCSC).*** State court judges and managers should always ask for insight and recommendations from the NCSC. NCSC professionals have considerable knowledge, expertise, and experience on issues affecting state courts. The NCSC also has extensive formal and informal court- and law-related contacts, affiliations, associations, and professional networks to help judges and court managers find answers. Diversity and diversity-training initiatives are no exception.
- ***Judicial educators and training specialists.*** Ask your court's judicial educators and training specialists about consultants who are familiar with your community, jurisdiction, or state. Ask judicial educators and training specialists from other courts that have conducted diversity-training programs for recommendations. Ask them to comment on the strengths and weaknesses of prospective consultants.
- ***Private industry.*** Look for groups or individuals that specialize in management consulting. If possible, to find a consultant that has some experience with courts or government agencies.
- ***Local academic institutions.*** Look particularly to the faculty in departments of organizational, educational, and social psychology; sociology; organizational development, communication studies, ethnic studies, or gender studies; and anthropology:

Note: Be wary of consultants who have attempted to capitalize on the recent interest in diversity training by relabeling generic training courses as “diversity training.” Avoid *one-size-fits-all* or “*cookie-cutter*” diversity-training programs.

Competencies for Diversity Consultants

This list of competencies is intended to help your planning committee to determine if prospective consultants are competent to design and deliver diversity training and to facilitate other interventions related to diversity. Additional competencies are needed for those individuals engaged in major organizational change efforts as a result of managing diversity efforts.

Self-knowledge The competent facilitator understands how one’s personal beliefs and values may affect others. He or she also:

- Perceives and recognizes personal values, biases, assumptions, and stereotypes in relationship to the workplace and in conducting diversity training.
- Exhibits comfort with self when communicating about diversity.
- Is open and encourages other perspectives, questions, and norms—moving forward with personal commitment to change.

Leadership The competent facilitator takes responsibility for championing diversity. This responsibility includes the following:

- Articulating the goals of valuing and managing diversity.
- “Walking the talk” by demonstrating commitment and support for diversity initiatives and integrating diversity goals into his or her work.
- Knowing how major initiatives and programs—such as team-building or Total Quality Management—link with diversity, and articulating those in everyday ongoing activities such as meetings and reports.
- Knowing employees, customers, and suppliers and using that knowledge to strengthen the diversity efforts.

Subject matter expertise

The competent facilitator understands the issues and goals of valuing and managing diversity and the implication to the success of the organization. This competency includes the following:

- Understanding valuing differences and being able to incorporate the meaning into the workplace from an organizational perspective.
- Understanding the economic, competitive, and business imperatives for managing diversity.
- Understanding the impact of policies, systems, and practices on employees in the organization, given ethnic, gender, culture, sexual orientation, age, and other differences.

- Understanding institutionalized “isms” (racism, sexism, classism), which exclude individuals, deny them access to resources, or perpetuate subordination.
- Distinguishing among Affirmative Action, Equal Employment Opportunity, and valuing and managing diversity.
- Knowing the growing body of literature and striving to continue to learn about valuing and managing diversity.

Facilitation skills The competent facilitator knows how to communicate the exchange of ideas and learning in an organized, effective manner. This competency includes preparation, delivery, questioning, listening, maintaining control of classroom situations, and managing conflict and willingness to challenge, as indicated by the following:

Preparation

- Knows the audience and understands how to facilitate based on audience needs.
- Plans for and provides materials, facility, supplies, equipment, and other aids.

Delivery

- Speaks clearly and concisely, with a variety of inflections.
- Demonstrates a positive attitude toward the subject matter.

- Uses appropriate verbal and nonverbal communication techniques: eye contact, natural and nondistracting gestures and movements, and reinforcing language.
- Conveys clear and concise concepts, purpose, agenda, objectives, procedures, instruction, summaries, and transitions.

Questioning

- Uses questions to generate participation and to test for knowledge, attitude, and awareness level of participants.
- Gives correct and concise answers in a nondefensive manner.
- Uses class participants as resources by referring questions back to them.

Listening

- Listens carefully to participants' statements, questions, and comments.

Maintaining a Learning Environment

- Handles difficult (i.e., domineering, withdrawn, or hostile) participants in an appropriate manner.
- Focuses group discussion by stating, restating, clarifying, and summarizing.
- Facilitates by staying on topic, getting closure on topic, and maintaining time allotted to topic area.

Managing Conflict and Willingness to Challenge

- Manages conflict between participants and between self and participants in a constructive and positive manner.
- Uses a nonthreatening approach to question and probes in order to challenge participants and traditional organizational norms and practices.
- Assists participants in examining their “frozen” behaviors, attitudes, beliefs, and values and guides participants in “refreezing” their new, more accepting attitudes and beliefs.

Conducting Preliminary Interviews and Reference Checks

General qualifications In addition to the above competencies, a consultant should have the following qualifications:

- Experienced facilitator with strong conflict resolution skills
- Content expert in diversity-related issues

Check conflict resolution skills To investigate the consultant’s conflict resolution skills, ask specific questions about his or her experience in managing or facilitating conflict resolution sessions, or confrontational or emotional participants in diversity or general training situations.

Most trainers in this area will be reluctant to let you observe one of their programs, because participants may be less willing to share sensitive information in the presence of a stranger. Here are a few questions to ask about the consultant's conflict management approaches.

- How would you handle or have you handled a situation in which a participant refused to participate in an exercise designed to help him or her confront and deal with personal prejudices or biases?
- Describe a specific situation in which two participants or a group of participants clearly became hostile to one another in a diversity-training session. How did you handle it? What was the outcome? (Ask the consultant to provide references who can attest to the way in which he or she handled this situation.)
- How do you respond to participants who see no need or use for diversity training?
- Have you ever conducted training sessions on conflict resolution? Ask for references.

How to determine whether the person is a content expert

To determine whether the person is a content expert, ask the questions below.

- *What are your credentials in this field?*
Experts in the diversity training generally have academic backgrounds in social, educational, or organizational psychology; organizational development; social work; sociology or anthropology; or cross-cultural or gender communication. They should possess at least a master's degree in a content area and have an extensive training background.

- *Have you published any articles or books on this topic or on related topics?* Authors do not necessarily make good presenters or facilitators, but they can provide advice on the content of a program. If someone has published books or articles on this topic, those publications can provide some idea of the person's knowledge and point of view.
- *What is your approach to diversity training? How do you define diversity? What dimensions of diversity do you cover?*
Dimensions should be broad and not focus solely on race, gender, and ethnicity. Find out if the person has designed or facilitated separate diversity programs or sessions, or incorporated modules on diversity into managerial or skill-building courses. Ask the person how he or she sees the relationship between managing diversity and organizational performance or productivity, and the relationship between diversity initiatives and organizational mission, goals, and values. Ask for sample course outlines.
- *Do you provide training for both supervisors and nonsupervisors at all levels of knowledge and awareness?* Are objectives and content different for each group? Ask for sample objectives, course outlines, and exercises for each level.
- *How interactive are your training sessions?*
Training sessions should be interactive or experiential and include a range of learning strategies, such as exercises, case studies, videotapes, and small-group discussions.

- *How long are your training sessions?* Be skeptical of anyone who claims to be able to conduct an effective diversity-training session in less than four hours unless it is an introductory session.
- *What is your ideal number of participants for a training program?* In diversity training, it is desirable to keep the group under thirty, if at all possible.
- *How will you determine the specific needs for diversity training in our court?* It is difficult to get into the details of a consultant's needs assessment process in a preliminary phone conversation, but you can get an idea of the person's general approach and commitment, then explore it in more detail in the final interview.

Checking references

You should always check the references of a potential consultant. Failure to check references can have devastating results for diversity-training programs.

- Make sure that the references are from organizations in which the person has conducted diversity training.
- A reference from at least one government or nonprofit agency will be valuable. Such a reference may be more relevant than references from private industry because the court culture and environment may be more like that of other government agencies.

Conducting Final Interviews

Once your preliminary interviews have helped you narrow the list of candidates, consider having the final candidates visit the court. During the visit, the candidates can acquaint themselves with the dynamics of the court's environment and culture. A visit will give you and the diversity education planning committee an opportunity to talk about your ideas for the program and to investigate each consultant's approach. Ask each consultant to bring course objectives, outlines, and exercises from other diversity programs he or she has designed and delivered.

Investigate expertise with needs assessment

If you are looking for a diversity consultant who can also assist in the needs assessment process, you will need to investigate each consultant's expertise in conducting needs assessments.

As explained in Module 3 of this *Guide*, one cannot design a diversity-training program that addresses the needs of staff, the organizational culture, and the court environment without learning firsthand what needs or problems exist. Learn how the candidates determine the type of training that is needed and the most effective format of the training. Generic diversity-training programs are usually unsuccessful if not modified to meet the needs of each court. Remember, avoid consultants who attempt to persuade you to use *one-size-fits-all* programs!

How to investigate experience with needs assessment

The following are questions to ask about needs assessment experience:

- What kind of information do you collect to determine the appropriate level and type of training needed? How do you collect this information?
- What specific experience or expertise do you have in designing, conducting, and analyzing needs assessment data for diversity-training programs? Those with experience in this area should be able to provide references of organizations for which they have conducted assessments.
- Would you be able or willing to use the sample needs assessment survey provided in the *Guide* to design training sessions or adapt it to include in your own needs assessment process? Refer to Appendix C for the sample needs assessment survey.
- Are you open to involving a training committee or a group of the participants in helping to determine the diversity-training needs of our court?
- How would you actually conduct the needs assessment? If you were conducting interviews or focus groups, how would you gain the trust of employees being interviewed? Would you facilitate all the focus groups if this method is used? If not, who would assist you?
- What measures do you take to ensure the confidentiality of participants' responses?

- If you don't use a formal needs assessment method, what informal methods have you used to determine diversity-training needs?

Designing the Program with the Help of Consultants

Once you have selected a consultant (or a team of consultants), hold a kick-off meeting to brief him or her on the court environment and discuss your initial ideas for the training program. If you have already conducted the needs assessment, share the results with the consultant.

This section describes some issues to consider when you begin to design the training program with the consultants. Refer to Module 5 for more detailed guidance on designing training programs.

Learning objectives

Learning objectives are the specific behaviors or skills that participants will gain from the program. Work with the consultant to determine the objectives from the needs assessment results. Objectives should focus on specific, measurable behaviors rather than attitudes, which are difficult to change in any training program.

Purpose of the training

Make sure that the consultant plans to incorporate into the program an explanation of how diversity training can improve the effectiveness and productivity of the courts. The consultant should discuss how the diversity program will help the court achieve its mission, goals, and values. He or she should plan to explain how diversity management can improve work teams, total quality initiatives, motivation, decision-making and problem-solving processes, managing change, and so on.

Learning strategies

The planning committee should work with the consultant to decide the most effective learning strategies for the program. For diversity programs, sessions that rely heavily on lecture are generally less effective than interactive sessions. To achieve behavioral change, participants must be actively engaged in interactive activities, especially court-specific exercises.

Judicial educators and court training specialists confirmed that interactive formats are the most effective for diversity training. In their responses to a survey, trainers indicated that by far the most successful programs were those in which consultants used a variety of activities, such as small-group discussions, videotapes, and court-specific role-plays, exercises, and case studies.

Ask the consultant to share with the planning committee specific exercises and learning activities he or she has used for other diversity-training programs. Show the consultant the sample program outlines, exercises, and case studies contained in Appendices E, F, and G of this *Guide*.

Length of training session

Judicial educators and training specialists and who have worked with consultants to conduct programs for court employees suggest that introductory programs of at least six hours to eight hours are more effective than programs of shorter duration. Introductory programs can be followed up by longer workshops that address some of the issues revealed in the needs assessment in more depth. Don't try to cover too much material in a short period of time. It is better to either plan follow-up sessions or reduce the number of objectives to cover in the time you do have.

- Training format** Discuss with the consultant the advantages and disadvantages of providing a single-focus program on diversity as opposed to incorporating a diversity module into a program on an appropriate topic, such as managing change, enhancing communication, or dealing with organizational or individual conflict.
- Training participants** Discuss the target audience for the training and how best to include all members of the target audience. Does the consultant recommend training senior court managers first? Will supervisors and nonsupervisors participate in the same training session for the entire time, or will they be separated for specific activities? The consultant should be able to explain the advantages and disadvantages of each approach.
- Review of materials** Ask the consultant for copies of the program agenda, exercises, and other relevant materials at least three weeks before the program. The diversity education planning committee should review the materials to make sure that they are consistent with the agreed upon design and that their quality (i.e., content and presentation) is acceptable.

Module 5

Designing the Program

Module 5. Designing the Program

Module at a Glance

- Introduction
- Establish Training Goals
- Determine the Training Format
- Draft the Program Outline
- Training Pointers and Pitfalls

Introduction

This module contains guidelines for designing a diversity-training program. Your court is ready to begin designing a training program if:

- Management has made a firm commitment to the diversity program;
- You have determined that your court is ready for diversity training; and
- You have conducted a diversity-training needs assessment and determined where training resources will best be used.

Steps in the design process

The sections of this module are organized according to the recommended steps for designing a training program. These steps are:

1. Establish training goals.
2. Determine the training format.
3. Draft the program outline.

Establish Training Goals

What are the training goals?

Training goals are the objectives that you plan to accomplish by training. The goals describe what you want the participants to be able to do at the end of the program. Training goals determine other aspects of the training design such as the training format, the media, and the method of instruction.

There are several general goals for training programs. You will find that there are specific components of these goals that should be incorporated into an introductory diversity-training program.

Training programs that incorporate components of all of these general goals are more effective than those that focus on only one or two goals. It requires flexibility and a mastery of both content and group dynamics to be able to successfully incorporate all of these goals into a training program. Also, you must allocate sufficient time if you plan to incorporate all of the goals into a training program. Depending on the needs of the court, a one-day program and then a two-day follow-up seminar might be necessary.

General training goals are described below. If you are working with an outside consultant, discuss these general goals with that person and together determine the specific goals for your program.

To build factual awareness This type of program provides basic information about diversity. The program may include background information about the projected demographics of the workforce in the area, an explanation of diversity, a description of the importance of managing diversity, and discussions about how assumptions and stereotypes about different groups are formed.

To identify and change behavior This type of program uses specific strategies to identify and practice productive behaviors. For example, participants may focus on learning and practicing skills that improve:

- Communication among people from different cultures,
- Conflict resolution skills, and
- Interviewing skills.

To explore personal attitudes and prejudices Programs of this type are designed to explore deeper issues of personal prejudice and stereotyping. An outside expert is especially valuable in accomplishing this goal. Seek an experienced and well-qualified diversity consultant who can manage this training with sensitivity and objectivity.

To analyze the organizational culture A program that seeks to analyze the culture examines the following organizational structures:

- Reward, recognition, and motivational systems;
- Communication, problem-solving, and decision-making processes; and

- Recruitment, selection, and interviewing processes;
- Coaching and mentoring processes;
- Performance management systems and how they support or undermine success in a diverse work environment.

Further information

For further information about possible training goals, refer to *Diversity Training*, by Tamara Payne and Michael Mobley.

Determine the Training Format

What is the training format?

The training format is the plan for the particular logistical details of the program. The format you choose depends on the goals you have established for the program. Elements of the training format include the following:

- *How the program will be implemented.* In other words, will you present the program as a single-focus program devoted entirely to the topic of diversity or as a module or topic incorporated into another program.
- *The length of the program.* How long do you need the program to be to accomplish your training goals? Will the program be a half-day, one full day, or more?
- *The target skill level.* This refers to the level at which you plan to focus the program: beginning, intermediate, or advanced.
- *Target audience.* Who will be included in the program: supervisors, nonsupervisors, or both?
- *Class size.*

How do you determine the training format?

The best training format for a particular court depends on the needs assessment results, the goals for the program, and the resources available. The following comments about the details of a training format are based on the experiences of diversity-training consultants, judicial educators, and court training specialists who have already planned diversity-training programs.

How the program will be implemented

Single-focus programs are often necessary, especially when diversity training is first introduced, but such programs are usually not sufficient to produce long-term change. Including diversity issues in other training programs demonstrates that diversity is part of the organization's overall values and goals. Several courts are incorporating diversity initiatives into programs on interviewing skills, recruitment and selection of new employees, orientation of new employees, communication, problem solving, team building, conflict resolution, performance management and review, coaching and development of employees, and motivation of employees.

- Length of the program** Diversity-training programs that are less than four hours long usually cannot adequately cover the issues and provide time for feedback and discussion. Two-hour or three-hour sessions incorporated into a larger program may be effective if more extensive diversity training (i.e., four to eight hours) has already been conducted, or if a more substantive and longer follow-up program is already on the training calendar. Consultants, judicial educators, court training specialists, and training committees can plan specific follow-up programs, activities, and other initiatives so that the diversity training does not begin and end with one program.
- Target skill level** If this is the first diversity-training program your court has conducted, you should begin at the introductory level. Follow-up programs should take participants to another level, teach new skills, address specific problems or concerns uncovered in the diversity-training needs assessment, and provide opportunities for organizational action planning.
- Target audience** Whether supervisors and staff should attend the same training sessions depends on the level of training (i.e., whether it is an initial or follow-up training session), the level of trust among the supervisors and nonsupervisors, and the duration of the program. Unless there is a high level of trust between managers and staff, courts should plan separate sessions to allow both groups to identify specific issues in an environment that assures confidentiality. Senior managers need to learn about the concerns of all employees in an environment that is conducive to their listening. The aggregate data from the needs assessment will be enlightening to managers and will help the diversity education planning committee decide on ways to structure the training according to audience type.

Class size Programs that include more than thirty participants are not as effective as those that include less than thirty participants. Participants need sufficient time to discuss issues in small groups, with partners, and with the entire group, and to process exercises and activities.

Draft the Program Outline

The program outline is a detailed plan, or blueprint, for the training. It should provide a detailed description of what will occur in the training program.

Use the decisions you made about the training objectives and the training format to develop the details of the outline.

Outlines generally include the following information:

- A list of the objectives for the program.
- Statements of broad, general topics that address the objectives. In outline format, these are the capital Roman numeral level sections.
- More specific statements of what the participants and instructor will do to accomplish the objectives.
- Specific learning activities such as exercises, videos, or discussions.
- Timing for each section.

Review of outline If you are working with an outside consultant, you may wish to ask that person to draft the outline. Then, the planning committee and senior management should review the outline and provide feedback. If the planning committee drafts the outline, judges and senior management should still review it and provide feedback.

Further information Refer to Appendix E of this *Guide* for two sample outlines:

1. Sample Content Outline for a One-Day Introductory Program.
2. Sample Content Outline for a Half-Day Program for Managers.

Training Pointers and Pitfalls

This section closes this module by providing some general guidelines for designing a diversity-training program.¹

Pointers The following are pointers that will assist you in designing an effective diversity-training program.

- If the committee chooses to use outside consultants, select committed, experienced experts. Refer to Module 4 for information about finding and working with outside experts.
- Use structured learning activities that are planned with input from participants, committee members, or both.

¹ Diversity training pointers and pitfalls adapted from Karp, H. B., and Sutton, Nancy. "Where Diversity Training Goes Wrong." *Training* 7 (July 1993): 30–34; and Zimmerman, Gordon. "One More Time: How Do We Teach Gender Fairness?" *National Association of State Judicial Educators News* 7 (Fall 1992): 1, 10.

- Focus on the 95% of participants who are willing to learn and are open to the new experiences and ideas that are introduced by the training, rather than the 5% of participants who are fearful, suspicious, or cynical.
- Create an environment in which participants are assured confidentiality.
- Acknowledge the present situation and aim for the future. There is no need to dwell on past injustices or prejudices, although some historical orientation to the development of diversity as a management issue may be necessary.
- Incorporate diversity issues and concerns into other appropriate training programs.
- Use every opportunity to incorporate diversity initiatives into all court operations.

Pitfalls The following are pitfalls to avoid as you design your program:

- Avoid programs that are dominated by lecture. Rather, present interactive and experiential programs.
- Avoid preachy presentations; focus on self-assessment, reflection, and awareness.
- Do not have sessions that are exclusively conducted by women and people of color or by white men. Using two experts from different backgrounds and with different characteristics (obvious and not so obvious) illustrates diversity, but always be sensitive to the diversity of the participants.

- Avoid programs that seek to change attitudes and opinions rather than seek to change behaviors.
- Do not rely on training that focuses only on building awareness and does not emphasize building skills in such areas as communication, conflict resolution, and team building.
- Do not hire content experts who design exercises and case studies without input from committee members or other court employees.
- Do not design a curriculum without conducting a needs assessment.

Module 6

Evaluating the Program



Module 6. Evaluating the Program

Module at a Glance

- Introduction
- Formulate Evaluation Questions
- Design Evaluation Forms
- Conduct Follow-up Evaluation
- Determine Next Steps
- Plan Organizational Strategies

Introduction

Purpose of evaluation

An evaluation of your diversity-training program will help you determine whether the program accomplished its goals. An evaluation will help you assess:

- The value of the program content,
- The effectiveness of the trainer, and
- The type of follow-up activities that are required.

How this module will help in evaluating diversity training

This module will describe various methods for evaluating diversity training. It will identify the major components of evaluations and discuss two types of evaluation forms.

Formulate Evaluation Questions

Determine why the unit conducted diversity training

The first step in evaluating a diversity program is to determine why the unit conducted the training. You have to know the reason for the training to accurately assess its effectiveness. For example, did the unit conduct diversity training to:

- Demonstrate management's commitment to diversity initiatives?
- Respond to a specific problem or set of problems?
- Satisfy the objectives of the chief judge, who wants a proactive program?

The evaluation should address these specific purposes for training.

The rest of this section provides sample questions that address specific aspects of a training program.

To assess program content

The following questions address the program content.

- How well were the program objectives met?
- How well were participants' training expectations met?
- Was ample time allotted for the training program?
- Were the exercises, videotapes, and other learning strategies effective? (If more than one was used, consider asking about each one separately so that participants know which ones they should evaluate.)

**To assess effectiveness of
faculty**

The following questions address the effectiveness of the faculty who presented the program.

- Was the faculty knowledgeable about the content?
- How effective were the facilitation and processing skills of the faculty?
- How well was the presentation structured? (Evaluate clarity, organization, and use of handouts and audiovisual aids.)
- How well were the learning strategies discussed by the faculty?
- Was the session sufficiently interactive to allow for small-group discussions?

**To evaluate both content and
effectiveness of faculty**

To evaluate both the program content and the effectiveness of the faculty, ask the following questions:

- What were the program's strengths?
- What were the program's weaknesses?

**To evaluate the
planning process**

You may also decide to evaluate the planning process for the program. The following questions address the strengths and weaknesses of the planning process:

- Were you provided adequate opportunity to participate in the planning process?
- What role, if any, would you like to see management play in subsequent diversity efforts?

- Were training needs adequately identified?
- Was enough information provided about the content and purpose of the program?
- What information about diversity, if any, would have been helpful for you to have prior to the training?
- Did the outside expert seem to know enough about the operation of the court to provide an appropriate context for the program?
- Were you apprehensive about the training program before it began? If so, do you have any suggestions about how the diversity education planning committee or the outside expert could have minimized your apprehension?
- Do you have any suggestions for improving the planning process for the program?

Design Evaluation Forms

Once you have identified the areas you want to evaluate, you can design the evaluation forms. This section provides guidelines for designing both individual evaluation forms and group evaluation forms.

Individual evaluation forms

Individual evaluation forms usually consist of survey questions that participants answer immediately following the program. When designing an individual form, keep in mind the following guidelines:

- Use a scale of responses. Participants can then respond thoughtfully, but quickly. The scale choices should be clear. You may wish to use a range from “excellent” to “poor,” for example.
- Include a few open-ended questions
- Solicit suggestions for follow-up activities. One way to do this is to provide several choices for participants to rank and then provide space for participants to “write-in” one or two additional choices.
- Keep the form as short as possible. You will receive a higher response rate with fewer, well-designed questions. A shorter survey will make it easier for you to analyze responses.

Group evaluation forms

Because of the sensitive nature of diversity training and the need to plan follow-up activities, it is important to consider conducting group evaluations in addition to the standard individual evaluations.

The purpose of a group evaluation is to collect more in-depth information on the effectiveness of the program by providing an opportunity for a small group of participants to discuss the program with one another. Unlike the individual evaluation form, the group form should include primarily open-ended questions that provide groups with an opportunity to openly discuss different perspectives and summarize them in a group response. The synergy of the group is much like that of focus groups. Since the opinions of this small group of individuals do not reflect those of all the participants, group evaluations should always be conducted in addition to individual evaluations.

The procedure for conducting the group evaluation process includes the following steps:

1. Develop five or six open-ended questions. Refer to the sample form in Appendix H.
2. At a break in the program, ask for five to ten volunteers (depending on the total number of participants) to stay thirty to forty-five minutes after the program ends to participate in the group evaluation. You may run more than one group evaluation, but each group should include no more than ten participants.
3. Emphasize that this process is an opportunity for participants to play an active role in evaluating the effectiveness of the training and in enhancing the quality of subsequent diversity training.
4. Assure volunteers that none of the planning committee members or others who played a part in planning, designing, or facilitating the program will be involved in the group evaluation discussions. Tell them that there is no need to sign their names to the form. (If possible, provide a separate room for them to do the evaluation.)
5. Write out the instructions to the group and ask the group members to read them. Answer any questions they have.
6. Ask the group to select a facilitator to keep the discussion moving. Someone else should record the responses and return the completed form to the consultant, educator, or trainer.

Conduct Follow-up Evaluation

Diversity programs, like most training programs, cannot promise immediate results. It may take awhile for changes in behavior to take effect. Any immediate results that you do achieve may not last over the long-term. For these reasons, consider conducting a follow-up evaluation three to six months after the program to assess the longer-term effectiveness of the training.

There are several ways to conduct a follow-up evaluation. Here are just a few of the options:

1. You may administer the original needs assessment form to a selected sample of employees. This will show you whether employees' perceptions of problems have changed.
2. You may administer a brief survey to supervisors to determine whether they have observed any changes in their employees' behavior since the training program.
3. You may administer a survey to employees to determine whether they have observed any changes in interactions among coworkers or in interactions between court personnel and court users.

Note: A caveat about follow-up evaluations is to remember not to expect too much from them. An evaluation form may not be able to measure specific behavioral changes attributed to a training program. This does not mean that the program had no impact. On the other hand, changes that may have occurred over a six-month period cannot automatically be assumed to have been caused by the training program.

Determine Next Steps

After an introductory diversity-training program, the diversity education planning committee should plan follow-up activities for all staff. To identify these activities, it is critical to use the needs assessment results and the evaluation forms from the training program and to talk to senior court managers. Suggested follow-up topics are as follows:

- Court policies such as the court's EEO plan and grievance procedures, Americans with Disabilities Act;
- Gender communication;
- Sexual harassment and/or gender fairness;
- Cross-cultural communication;
- Bias in hiring, the interview process, promotions, work assignments, and training opportunities; and
- Employee coaching and mentoring.

Include diversity in other training initiatives

In addition to presenting other topics in follow-up training programs, incorporate diversity issues into court or district-wide meetings or retreats. You may also include diversity issues and perspectives into specific skills-training workshops on such topics as:

- Communication styles and skills,
- Decision making,
- Problem solving,
- Managing employee relations,

- Negotiation skills,
- Recruitment, selection, and interviewing processes,
- Performance reviews,
- Team-based management,
- Total quality service,
- Process improvement,
- Effective supervision,
- Managing change,
- Conflict resolution, and
- Ethics in the workplace.

Consider informal follow-up activities

Remember that follow-up activities can be informal gatherings that provide employees with opportunities to understand other cultures. The following are some examples:

- Ethnic food fairs or picnics with information on various foods and recipes;
- Brown bag discussions of current events (court related and more general);
- Presentations about trips to foreign countries;
- Presentations or discussions about different cultures by court employees from those cultures;
- Celebrations of the culture and history of various racial and ethnic groups (one day could be set aside every three to four months);

- Book discussion or film discussion groups on various subjects related to diversity issues; and
- In-house cultural exhibits or film festivals, or after-work tours of cultural exhibits.

Plan Organizational Strategies

To maximize the effectiveness of diversity training as a long-term initiative, the organizational structure and culture of the court may need to change. Review the policies covered in Module 1 of this *Guide*. Any organizational changes should be based on a systematic study or assessment of any problems in the court's operations or processes that may impede diversity efforts.

Regardless of where a court begins its review of its structure and culture, all employees from all levels of the court (e.g., professional and administrative support) should have an opportunity for active input into the process. Whether courts choose to form task forces, advisory or planning committees, or work groups, each group should be diverse in composition and draw on the unique contributions and backgrounds of all members of the court staff. These groups should report directly to the manager. Also, senior managers will want to include strategies for assessing managers' accountability and commitment to, and support for, diversity efforts.

Examples of organizational strategies

Organizations use a variety of methods to incorporate diversity management into the structure of the organization. Some examples of these include:

- Developing strategic plans that include diversity initiatives.
- Reviewing the organization's mission, values, vision, and goals to ensure that they include diversity components.
- Reviewing organizational policies such as the EEO plan and grievance procedures, sexual harassment policy, and diversity policy.
- Reviewing procedures (written and verbal).
- Reviewing processes such as recruitment, selection, and interviewing; communication; and problem solving.

Appendix A

Introduction Materials

Appendix A. Introduction Materials

Contents

This appendix contains materials for the
Introduction:

Trial Court Performance Standards

*Judicial Conference of the United States,
Judicial Equal Opportunity Program: Model
Equal Employment Opportunity Policy*

*Affirmative Action Plan of the Massachusetts
Trial Court*

*Superior Court of Alameda County, California:
Discrimination and Sexual Harassment Policies
and Procedures*

*Establishing and Operating a Task Force or
Commission on Racial and Ethnic Bias in the
Courts*

*Conference of Chief Justices: Resolution XVIII:
Task Forces on Gender Bias and Minority
Concerns*

*Panel Discussion by State Supreme Court Chief
Justices: Documenting Bias in the Judicial
System: Are There Any Implications?*

*A Brief History and Current Status of the
National Consortium of Task Forces and
Commissions on Racial and Ethnic Bias in the
Courts*

Trial Court Performance Standards*

1. ACCESS TO JUSTICE

Trial courts should be open and accessible. Because location, physical structure, procedures, and the responsiveness of its personnel affect accessibility, the five standards grouped under ACCESS TO JUSTICE require a trial court to eliminate unnecessary barriers to its services. Such barriers can be geographic, economic, and procedural. They can be caused by deficiencies in language and knowledge of individuals participating in court proceedings. Additionally, psychological barriers can be created by mysterious, remote, unduly complicated, and intimidating court procedures.

The intent of the first two standards is to bring the administration of justice into the open and make it accessible. Standard 1.1 requires the trial court to conduct its business openly. To ensure that all persons with legitimate business before the court have access to its proceedings, Standard 1.2 requires the trial court to make its facilities safe, accessible, and convenient to use. Accessibility is required not only for those who are guided by an attorney but also for all litigants, jurors, victims, witnesses, and relatives of litigants. Access to trial courts is also required for many others—for example, beneficiaries of decedents in probate matters, parents and guardians in juvenile cases, persons seeking information from public records held by the court, employees of agencies that regularly do business with the courts (investigators, mental health professionals, sheriff's deputies, marshals, etc.), and the public.

Because a trial court may be accessible to most and still hinder access to some, Standard 1.3 requires the court to provide opportunities for the effective participation of all who appear before the court, including those with linguistic difficulties and handicaps. To promote access to justice and to enhance citizens' confidence and trust in the court, Standard 1.4 urges that all court personnel accord respect, courtesy, and dignity to all with whom they come into contact.

Standard 1.5 recognizes that there are financial and procedural barriers to access to justice. It requires that the fees imposed and procedures established by the court be fair and reasonable. Recognizing the importance of the relationship between public records and access to justice, the standard also requires that public records be preserved and made available at reasonable cost.

* *Trial Court Performance Standards and Measurement System*, Trial Court Performance Standards Commission, National Center for State Courts, and the Bureau of Justice Assistance, 1997. For more information on the Trial Court Performance Standards, contact Dr. Pamela Casey, Associate Director of the Research Division, National Center for State Courts, Williamsburg, Virginia.

STANDARD 1.1 PUBLIC PROCEEDINGS

The court conducts its proceedings and other public business openly.

Commentary

This standard requires the trial court to conduct openly all proceedings, contested or uncontested, that are public by law or custom. The court must specify proceedings to which the public is denied access and assure that the restriction is in accordance with the law and reasonable public expectations. Further, the court must ensure that its proceedings are accessible and audible to all participants, including litigants, attorneys, court personnel, and other persons in the courtroom.

STANDARD 1.2 SAFETY, ACCESSIBILITY, AND CONVENIENCE

Court facilities are safe, accessible, and convenient to use.

Commentary

Standard 1.2 considers three distinct aspects of court performance: the security of persons and property within the courthouse and its facilities, access to the courthouse and its facilities, and the reasonable convenience and accommodation of those unfamiliar with the court's facilities and proceedings. It urges a trial court to be concerned about such things as the centrality of its location in the community that it serves, adequate parking, the availability of public transportation, the degree to which the design of the court provides a secure setting, and the internal layout of court buildings (e.g., the signs that guide visitors to important locations). Because the attitudes and behavior of trial court personnel can make (or fail to make) the courthouse safer, more accessible, and more convenient to use, Standard 1.2 pertains to the conduct of trial court personnel as well.

Unusual or unexpected conditions, such as bomb threats, records destruction, employee strikes, sting operations, mass arrests, and natural disasters, challenge the routine operations of the court. Mechanisms (both internal and operated in coordination with other justice system agencies) may be required to handle emergent situations that could clog the courts and disrupt daily routines.

STANDARD 1.3 EFFECTIVE PARTICIPATION

All who appear before the court are given the opportunity to participate effectively without undue hardship or inconvenience.

Commentary

Standard 1.3 focuses on how a trial court accommodates all participants in its proceedings—especially those who have language difficulties, mental impairments, or physical handicaps. Accommodations made by the court for impaired or handicapped individuals include the provision of interpreters for the deaf and special courtroom arrangements or equipment for blind and speech-impaired litigants.

STANDARD 1.4 COURTESY, RESPONSIVENESS, AND RESPECT

Judges and other trial court personnel are courteous and responsive to the public and accord respect to all with whom they come into contact.

Commentary

The intent of Standard 1.4 is to make the justice system more accommodating and less intimidating. A responsive court ensures that judicial officers and other court employees are available to meet both the routine and exceptional needs of those it serves. Requirements of the standard are particularly important in the understanding shown and assistance offered by court personnel to members of minority or disadvantaged groups and to those unfamiliar with the trial court and its procedures. In keeping with the public trust embodied in their position, judges and other court employees should reflect by their conduct the law's respect for the dignity and value of all individuals who come before or make inquiries of the court. No court employee should by words or conduct demonstrate bias or prejudice based on race, religion, ethnicity, gender, sexual orientation, color, age, handicap, or political affiliation. These requirements extend to the manner in which the employees of the court treat each other.

STANDARD 1.5 AFFORDABLE COSTS

The costs of access to the trial court's proceedings and records—whether measured in terms of money, time, or the procedures that must be followed—are reasonable, fair, and affordable.

Commentary

Litigants and others who use the services of the trial court (e.g., nonlitigants who require records kept by the courts) face three main financial barriers to effective access to the trial court: court fees, third-party expenses (e.g., deposition costs, expert witness fees), and lawyers' fees. Standard 1.5 requires that the trial court minimize its own fees for access and participation in its proceedings and, where possible, scale its procedures and those of others under its influence or control to the reasonable requirements of a matter before the court. Means to achieve this include the simplification of procedures and reduction of paperwork in uncontested matters, the use of volunteer lawyers to do pro bono work, simplified pretrial procedures, fair control of pretrial discovery, and establishment of appropriate alternative methods for resolving disputes (e.g., referral services for cases that might be resolved by mediation, court-annexed arbitration, early neutral evaluation, tentative ruling procedures, or special settlement conferences).

Although a trial court may control more readily its own fees, it can reduce the overall cost of litigation by, for example, conducting telephone conferences and by making it easier for citizens to handle uncontested matters (e.g., name changes, stepparent adoptions, uncontested divorces) without legal representation. As a general rule, simple disputes should be resolved at low cost and by uncomplicated procedures. Procedural accessibility should be enhanced by clear, concise, and understandable language in instructing the parties, witnesses, and jurors about rights, responsibilities, necessary forms, hearings, and court facilities and resources.

Trial courts have in their possession the record of their own public proceedings as well as important documents generated by others (e.g., police records, laboratory analyses of evidence). These records must be available to those who are authorized to receive them. Standard 1.5 requires that the court maintain a reasonable balance between its actual cost in providing documents or information and what it charges users.

2. EXPEDITION AND TIMELINESS

Courts are entrusted with many duties and responsibilities that affect those involved with the judicial system, including litigants, jurors, attorneys, witnesses, criminal justice agencies, social service agencies, and members of the public. The repercussions from untimely court actions in any of these involvements can have serious consequences for the persons directly concerned, the court, allied agencies, and the community at large.

A trial court should meet its responsibilities to everyone affected by its actions and activities in a timely and expeditious manner (i.e., one that does not cause delay). Unnecessary delay causes injustice and hardship. It is a primary cause of diminished public trust and confidence in the court.

Defining delay requires distinguishing between the amount of time that is and is not acceptable for case processing. National and statewide authorities have articulated time standards for case disposition. To meet these standards, case processing time must be measured beginning with arrest or issuance of a summons in a criminal case and from the date of filing in a civil case.

The three performance standards under EXPEDITION AND TIMELINESS draw attention not only to the prompt resolution of cases, a requirement expressed by Standard 2.1, but also to the expectation that all trial court functions will be expeditiously performed, a requirement of Standard 2.2. Standard 2.3 emphasizes the importance of expedition and timeliness in anticipating, adapting to, and implementing changes in law and procedure.

STANDARD 2.1 CASE PROCESSING

The trial court establishes and complies with recognized guidelines for timely case processing while, at the same time, keeping current with its incoming caseload.

Commentary

The American Bar Association, the Conference of Chief Justices, and the Conference of State Court Administrators have urged the adoption of time standards for expeditious caseload management. Timely disposition is defined in terms of the elapsed time a case requires for consideration by a court, including the time reasonably required for pleadings, discovery, and other court events. Any time beyond that necessary to prepare and to conclude a case constitutes delay.

The requirement of timely case processing applies to trial as well as to pretrial and posttrial events. The court must control the time from civil case filing or criminal arrest to trial or other final disposition. Early and continuous control establishes judicial responsibility for timely disposition, identifies cases that can be settled, eliminates delay, and assures that matters will be heard when scheduled. Court control of the trial itself will reduce delay and inconvenience to the parties, witnesses, and jurors. During and following a trial, the court must make decisions in a timely manner. Finally, ancillary and postjudgment or postdecree matters need to be handled expeditiously to minimize uncertainty and inconvenience.

In addition to requiring courts to comply with nationally recognized guidelines for timely case processing, Standard 2.1 urges courts to manage their caseloads to avoid backlog. This may be accomplished, for example, by terminating inactive cases and resolving as many cases as are filed.

STANDARD 2.2 COMPLIANCE WITH SCHEDULES

The trial court disburses funds promptly, provides reports and information according to required schedules, and responds to requests for information and other services on an established schedule that assures their effective use.

Commentary

As public institutions, trial courts have a responsibility to provide information and services to those they serve. Standard 2.2 requires that this be done in a timely and expeditious manner. The source of the information requests may be internal or external to the court. Services provided for those within the court's jurisdiction may include legal representation or mental health evaluation for criminal defendants, protective or social services for abused children, and translation services for some litigants, witnesses, or jurors.

In addition to adhering to case-processing time guidelines, an effective trial court establishes and abides by schedules and guidelines for activities not directly related to case management. Moreover, it meets reasonable time schedules set by those outside the court for filing reports or providing other information stemming from court activities. When disbursements of funds are necessary, payment is made promptly. Standard 2.2 requires that regardless of who determines the schedules, once established, those schedules are met.

Timely disbursement of funds held by the court is particularly important. Fines, fees, restitution, child support payments, and bonds are categories of monies that pass through the court to their lawful recipients. Depending on the category involved and the laws of a given jurisdiction, the recipients may include funding agencies (e.g., state, county, city), public agencies (e.g., police academy, corrections boards), and individuals (e.g., litigants, victims). In addition, courts oversee disbursement of funds from their budgets. These funds go to other branches and units of government, vendors, jurors, litigants, or witnesses. For some recipients, delayed receipt of funds may be an accounting inconvenience; for others, it may create personal hardships. Regardless of who the recipient is, when a trial court is responsible for the disbursement of funds, expeditious and timely performance is crucial.

STANDARD 2.3 PROMPT IMPLEMENTATION OF LAW AND PROCEDURE

The trial court promptly implements changes in law and procedure.

Commentary

Tradition and formality can obscure the reality that both the law and procedures affecting court operations are subject to change. Changes in statutes, case law, and court rules affect what is done in the courts, how it is done, and those who conduct business in the courts. Trial courts must make certain that mandated changes are implemented promptly and correctly. Whether a change can be anticipated and planned or must be reacted to quickly, Standard 2.3 requires that the court not only makes its own personnel aware of the changes but also notifies court users of such changes to the extent practicable. It is imperative that changes mandated by statute, case law, or court rules be integrated into court operations as they become effective. Failure to do so leaves the court open to criticism for failure to comply with the law or required procedures.

3. EQUALITY, FAIRNESS, AND INTEGRITY

Trial courts should provide due process and equal protection of the law to all who have business before them, as guaranteed by the federal and state constitutions. Equality and fairness demand equal justice under law. These fundamental constitutional principles have particular significance for those groups who may have suffered bias or prejudice based on race, religion, ethnicity, gender, sexual orientation, color, age, handicap, or political affiliation.

Integrity should characterize the nature and substance of the trial court's procedures, decisions, and the consequences of those decisions. The decisions and actions of a trial court should adhere to duties and obligations imposed on it by relevant law as well as administrative rules, policies, and ethical and professional standards. What the trial court does and how it does it should be governed by its legal and administrative obligations; and what occurs as a result of the court's decisions should be consistent with those decisions.

Integrity refers not only to the lawfulness of court actions (e.g., compliance with constitutional rights to bail, legal representation, a jury trial, a record of legal proceeding) but also to the results or consequences of its orders. A trial court's performance is diminished when, for example, its mechanisms and procedures for enforcing its child support orders are ineffective or altogether nonexistent. It also is diminished when summonses and orders for payment of fines or restitution are routinely ignored. The court's authority and its orders should guide the actions of those under its jurisdiction both before and after a case is resolved.

The demand for equality, fairness, and integrity is articulated by six performance standards. The first standard encompasses the all-important legal concept of due process and requires that trial courts adhere to relevant law, rules, and policy when acting in their judicial and administrative capacities. The equality and fairness afforded to litigants and disputes are determined not only by judges and court personnel but also by juries. Recognizing that perfect equality cannot always be expected of juries, Standard 3.2 requires that trial courts do their utmost to encourage equality, fairness, and integrity by ensuring that those called for jury duty are representative of the population from which the jury was drawn. Standard 3.3 focuses upon what many consider the essence of justice. It requires that the decisions and actions of trial courts be based on legally relevant factors consistently applied in all cases. Furthermore, those decisions and actions should be based on individual attention to each case. In accord with the call for integrity in a court's performance, Standard 3.4 urges trial courts to render decisions that clearly state the issues addressed and specify how compliance with their decisions can be achieved. Clarity is a prerequisite for both compliance and enforcement.

Standard 3.5 encourages trial courts to assume responsibility for the enforcement of their orders. Finally, Standard 3.6 requires the prompt and accurate preservation of trial court records. Records of court decisions and the process followed to arrive at the decisions constitute, in an important sense, the law. The accuracy of the records and reliable access to them are fundamental to the achievement of the purposes of trial courts.

STANDARD 3.1 FAIR AND RELIABLE PROCEDURES

Trial court procedures faithfully adhere to relevant laws, procedural rules, and established policies.

Commentary

The first standard in the area of EQUALITY, FAIRNESS, AND INTEGRITY draws from the concept of due process, including notice and a fair opportunity to be informed and heard at all stages of the judicial process. Fairness should characterize the court's compulsory process and discovery. Trial courts should respect the right to legal counsel and the rights of confrontation, cross-examination, impartial hearings, and jury trials. Standard 3.1 requires fair judicial processes through adherence to constitutional and statutory law, case precedent, court rules, and other authoritative guidelines, including policies and administrative regulations. Adherence to established law and procedures contributes to the court's ability to achieve predictability, reliability, and integrity and to satisfy the parties. Because of its centrality to the court's purpose, Standard 3.1 overlaps with standards in the areas of ACCESS TO JUSTICE and PUBLIC TRUST AND CONFIDENCE, which emphasize that justice also should be "perceived to have been done" by those who directly experience the quality of the trial court's adjudicatory process and procedures.

STANDARD 3.2 JURIES

Jury lists are representative of the jurisdiction from which they are drawn.

Commentary

Courts cannot guarantee that juries reach decisions that are always fair and equitable. Nor can they guarantee that the group of individuals chosen through voir dire are representative of the community from which they were chosen. Courts can, however, provide a significant measure of fairness and equality by assuring that the methods employed to compile source lists and to draw the venire provide jurors who are representative of the total adult population of the jurisdiction. Thus, all those individuals qualified to serve on a jury should have equal opportunities to participate, and all parties and the public should be confident that jurors are drawn from a representative pool.

Standard 3.2 parallels the American Bar Association's *Standards Relating to Juror Use and Management* (1983). These standards emphasize that jury duty should not be denied or limited on the basis of any factor discriminating against a "cognizable group" in the jurisdiction served by the court. Such a group can be "an economical, occupational, social, religious, racial, political, or geographical group in the community such as physicians, blacks, Protestants, or welfare recipients." Procedures designed to achieve representativeness include combining regularly maintained lists of registered voters and licensed drivers and using random selection procedures at each step of the jury selection process.

STANDARD 3.3 COURT DECISIONS AND ACTIONS

Trial courts give individual attention to cases, deciding them without undue disparity among like cases and upon legally relevant factors.

Commentary

Standard 3.3 requires that litigants receive individual attention without variation due to judge assignment or legally irrelevant characteristics of the parties such as race, religion, ethnicity, gender, sexual orientation, color, age, handicap, or political affiliation. Persons similarly situated (e.g., criminal defendants faced with or found guilty of similar offenses and having similar criminal histories) should receive similar treatment. It further requires that the court's decisions and actions be in proper proportion to the nature and magnitude of the case and the characteristics of the parties. Variations should not be predictable from legally irrelevant factors nor should the outcome of a case depend on which judge within a court presides over a hearing or a trial. The standard refers to all decisions, including sentences in criminal cases, the conditions of bail, the amount of child support ordered, the appointment of legal counsel, and court-supervised alternatives to formal litigation.

STANDARD 3.4 CLARITY

Decisions of the trial court unambiguously address the issues presented to it and make clear how compliance can be achieved.

Commentary

An order or decision that sets forth consequences or articulates rights, but fails to tie the actual consequences resulting from the decision to the antecedent issues, breaks the connection required for reliable review and enforcement. A decision that is not clearly communicated poses problems both for the parties and for judges who may be called upon to interpret or apply it.

Standard 3.4 requires that it be clear how compliance with court orders and judgments is to be achieved. Dispositions for each charge or count in a criminal complaint, for example, should be easy to discern, and terms of punishment and sentence should be associated clearly with each count upon which a conviction is returned. Noncompliance with court pronouncements and subsequent difficulties of enforcement sometimes occur because orders are not stated in terms that are readily understood and capable of being monitored. An order that requires a minimum payment per month on a restitution obligation, for example, is more clear and enforceable than one that establishes an obligation but sets no time frame for completion. Decisions in civil cases, especially those unraveling tangled webs of multiple claims and parties, also should connect clearly each issue and its consequences.

STANDARD 3.5 RESPONSIBILITY FOR ENFORCEMENT

The trial court takes appropriate responsibility for the enforcement of its orders.

Commentary

Courts ought not direct that certain things be done or certain actions taken and then allow those bound by their orders to honor them more in the breach than in the observance. Standard 3.5 encourages a trial court to ensure that its orders are enforced. The integrity of the dispute resolution process is reflected in the degree to which parties adhere to awards and settlements arising out of them. Noncompliance may indicate miscommunication, misunderstanding, misrepresentation, or lack of respect toward or confidence in the courts.

Obviously, a trial court cannot assume responsibility for the enforcement of all of its decisions and orders. Court responsibility for enforcement and compliance varies from jurisdiction to jurisdiction, program to program, case to case, and event to event. It is common and proper in some civil matters for a trial court to remain passive with respect to judgment satisfaction until called on to enforce the judgment. Nevertheless, no court should be unaware of or unresponsive to realities that cause its orders to be ignored. For example, patterns of systematic failures to pay child support and to fulfill interim criminal sentences are contrary to the purpose of the courts, undermine the rule of law, and diminish the public's trust and confidence in the courts. Monitoring and enforcement of proper procedures and interim orders while cases are pending are within the scope of this standard.

Standard 3.5 applies also to those circumstances when a court relies upon administrative and quasi-judicial processes to screen and to divert cases by using differentiated case management

strategies and alternative dispute resolution. Noncompliance remains an issue when the trial court sponsors such programs or is involved in ratifying the decisions that arise out of them.

STANDARD 3.6 PRODUCTION AND PRESERVATION OF RECORDS

Records of all relevant court decisions and actions are accurate and properly preserved.

Commentary

FAIRNESS, EQUALITY, AND INTEGRITY depend in substantial measure upon the accuracy, availability, and accessibility of records. Standard 3.6 requires that trial courts preserve an accurate record of their proceedings, decisions, orders, and judgments. Relevant court records include indexes, dockets, and various registers of court actions maintained for the purposes of inquiry into the existence, nature, and history of actions at law. Also included are the documents associated with particular cases that make up official case files as well as the verbatim records of proceedings.

Preservation of the case record entails the full range of responsible records management practices. Because records may affect the rights and duties of individuals for generations, their protection and preservation over time are vital. Record systems must ensure that the location of case records is always known, whether the case is active and in frequent circulation, inactive, or in archive status. Inaccuracy, obscurity, loss of court records, or untimely availability of such records seriously compromises the court's integrity and subverts the judicial process.

4. INDEPENDENCE AND ACCOUNTABILITY

The judiciary must assert and maintain its distinctiveness as a separate branch of government. Within the organizational structure of the judicial branch of government, trial courts must establish their legal and organizational boundaries, monitor and control their operations, and account publicly for their performance. Independence and accountability permit government by law, access to justice, timely resolution of disputes with equality, fairness, and integrity. They engender public trust and confidence. Courts must both control their proper functions and demonstrate respect for their coequal partners in government.

Because judicial independence protects individuals from the arbitrary use of government power and ensures the rule of law, it defines court management and legitimates its claim for respect. A trial court possessing institutional independence and accountability protects judges from unwarranted pressures. It operates in accordance with its assigned responsibilities and jurisdiction within the state judicial system. Independence is not likely to be achieved if the trial court is unwilling or unable to manage itself. Accordingly, the trial court must establish and support effective leadership, operate effectively within the state court system, develop plans of action, obtain resources necessary to implement those plans, measure its performance accurately, and account publicly for its performance.

The five standards in the performance area of INDEPENDENCE AND ACCOUNTABILITY combine principles of separation of powers and judicial independence with the need for comity and public accountability. Standard 4.1 requires the trial court to exercise authority, to manage its overall caseload and other affairs, and to realize the principles of separation of powers, the interdependence

of the three branches of government, and comity in its governmental relations. Standard 4.2 requires a trial court to seek adequate resources and to account for their use. Standard 4.3 extends the concept of equal treatment of litigants to the court's own employees by requiring every trial court to operate free of bias on the basis of race, religion, ethnicity, gender, sexual orientation, color, age, handicap, or political affiliation in its personnel practices and decisions. Standard 4.4 requires the trial court to inform the public of its programs and activities. Finally, Standard 4.5 acknowledges that the court's organizational character and activities must allow for adjustments to emergent events, situations, or social trends.

STANDARD 4.1 INDEPENDENCE AND COMITY

A trial court maintains its institutional integrity and observes the principle of comity in its governmental relations.

Commentary

In order for a trial court to persist both in its role as preserver of legal norms and as part of a separate branch of government, it must develop and maintain its distinctive and independent status. It must be conscious of its legal and administrative boundaries and vigilant in protecting them.

Effective trial courts resist being absorbed or managed by the other branches of government. A trial court compromises its independence, for example, when it merely ratifies plea bargains, serves solely as a revenue-producing arm of government, or perfunctorily places its imprimatur on decisions made by others. Effective court management enhances independent decision making by trial judges.

The court's independent status, however, must be achieved without avoidable damage to the reciprocal relationships that must be maintained with others. Trial courts are necessarily dependent upon the cooperation of other components of the justice system over which they have little or no direct authority. For example, elected clerks of court are components of the justice system, yet as to some matters, many function independent of trial courts. Sheriffs and process servers perform both a court-related function and a law-enforcement function. If a trial court is to attain institutional independence, it must clarify, promote, and institutionalize effective working relationships with all the other components of the justice system. The boundaries and the effective relationships between the trial court and other segments of the justice system must, therefore, be apparent both in form and practice.

STANDARD 4.2 ACCOUNTABILITY FOR PUBLIC RESOURCES

The trial court responsibly seeks, uses, and accounts for its public resources.

Commentary

Effective court management requires sufficient resources to do justice and to keep costs affordable. Standard 4.2 requires that a trial court responsibly seek the resources needed to meet its judicial responsibilities, use those resources prudently (even if they are inadequate), and account for their use.

Trial courts must use available resources wisely to address multiple and conflicting demands. Resource allocation to cases, categories of cases, and case processing is at the heart of trial court management. Assignment of judges and allocation of other resources must be responsive to established case processing goals and priorities, implemented effectively, and evaluated continuously.

STANDARD 4.3 PERSONNEL PRACTICES AND DECISIONS

The trial court uses fair employment practices.

Commentary

The trial court stands as an important and visible symbol of government. Equal treatment of all persons before the law is essential to the concept of justice. Extended to its own employees, this concept requires every trial court to operate free of bias—on the basis of race, religion, ethnicity, gender, sexual orientation, color, age, handicap, or political affiliation—in its personnel practices and decisions.

Fairness in the recruitment, compensation, supervision, and development of court personnel helps ensure judicial independence, accountability, and organizational competence. The court's personnel practices and decisions should establish the highest standards of personal integrity and competence among its employees.

STANDARD 4.4 PUBLIC EDUCATION

The trial court informs the community of its programs.

Commentary

Most members of the public do not have direct contact with the courts. Information about the courts is filtered through, among others, the media, lawyers, litigants, jurors, political officeholders, and employees of other components of the justice system. Public opinion polls indicate that the public knows very little about the courts, and what is known is often at odds with reality. Standard 4.4 requires trial courts to inform and educate the public. Effective informational brochures and annual reports help the public understand and appreciate the administration of justice. Participation by court personnel on public affairs commissions is also effective. Moreover, courts can effectively educate and inform the public by including able public representatives on advisory committees, study groups, and boards.

STANDARD 4.5 RESPONSE TO CHANGE

The trial court anticipates new conditions or emergent events and adjusts its operations as necessary.

Commentary

Effective trial courts are responsive to emergent public issues such as drug abuse, AIDS, child and spousal abuse, drunken driving, child support enforcement, crime and public safety, consumer rights, gender bias, and the need to do more with fewer resources. Standard 4.5 requires trial courts

to recognize and to respond appropriately to such public issues. A trial court that moves deliberately in response to emergent issues is a stabilizing force in society and acts consistent with its role of maintaining the rule of law.

Courts can support, tolerate, or resist societal pressures for change. In matters for which the trial court may have no direct responsibility, but nonetheless may help identify problems and shape solutions, responsiveness means that the trial court takes appropriate actions to inform responsible individuals, groups, or entities about the effects of these matters on the judiciary and about possible solutions.

5. PUBLIC TRUST AND CONFIDENCE

Compliance with law is dependent to some degree upon public respect for the court. Ideally, public trust and confidence in trial courts stem from the many contacts citizens have with the courts. The maxim “Justice should not only be done but should be seen to be done!” is as true today as in the past. Unfortunately, there is no guarantee that public perceptions reflect actual court performance.

Several constituencies are served by trial courts, and all should have trust and confidence in the courts. These constituencies vary by the type and extent of their contact with the courts. At the most general level is the local community, or the “general public”—the vast majority of citizens and taxpayers who seldom experience the courts directly. A second constituency served by trial courts is a community’s opinion leaders (e.g., the local newspaper editor, the reporter assigned to the court, the police chief, local and state executives and legislators, representatives of government organizations with power or influence over the courts, researchers, and members of court watch committees). A third constituency includes those citizens who have appeared before the court as attorneys, litigants, jurors, or witnesses, or who have attended proceedings as a representative, a family friend, or a victim of someone before the court. This group has direct knowledge of the routine activities of a court. The last constituency consists of judicial officers and other employees of the court system and lawyers—within and outside of the jurisdiction of the trial court—who may have an “inside” perspective on how well the court is performing. The trust and confidence of all these constituencies are essential to trial courts.

The central question posed by the three standards in this final performance area is whether a trial court’s performance—in accordance with standards in the areas of ACCESS TO JUSTICE, EXPEDITION AND TIMELINESS, EQUALITY, FAIRNESS, AND INTEGRITY, and INDEPENDENCE AND ACCOUNTABILITY—actually instills public trust and confidence. Standard 5.1 requires that the trial court be perceived by the public as accessible. Standard 5.2 requires that the public believes that the trial court conducts its business in a timely, fair, and equitable manner and that its procedures and decisions have integrity. Finally, Standard 5.3 requires that the trial court be seen as independent and distinct from other branches of government at the state and local level and that the court be seen as accountable for its public resources.

Ideally, a court that meets or exceeds these performance standards is recognized as doing so by the public. Of course, in service of its fundamental goal to resolve disputes justly, expeditiously, and economically, the court will not always be on the side of public opinion. Nevertheless, where performance is good and public communications are effective, trust and confidence is likely to be present. Where public perception is distorted and understanding unclear, good performance may need to be buttressed with educational programs and more effective public information. A court may even be viewed as better than it actually is. Because of this, it is important for courts to rely on objective data as well as public perceptions in assessing court performance.

STANDARD 5.1 ACCESSIBILITY

The trial court and the justice it delivers are perceived by the public as accessible.

Commentary

The five standards grouped in the area of ACCESS TO JUSTICE require the removal of barriers that interfere with access to a trial court's services. Standard 5.1 focuses on the perceptions of the court's accessibility held by different constituencies. A trial court not only should be accessible to those who need its services, but it also should be so perceived by those who may need its services in the future.

STANDARD 5.2 EXPEDITIOUS, FAIR, AND RELIABLE COURT FUNCTIONS

The public has trust and confidence that the basic trial court functions are conducted expeditiously and fairly and that its decisions have integrity.

Commentary

As part of effective court performance, Standard 5.2 requires a trial court to instill in the public trust and confidence that its basic functions are conducted in accordance with the standards in the areas of EXPEDITION AND TIMELINESS and EQUALITY, FAIRNESS, AND INTEGRITY.

STANDARD 5.3 JUDICIAL INDEPENDENCE AND INTEGRITY

The trial court is perceived to be independent, not unduly influenced by other components of government, and accountable.

Commentary

The policies and procedures and the nature and consequences of interactions of the trial court with other branches of government affect the perception of the court as an independent and distinct branch of government. A trial court that establishes and respects its own role as part of an independent branch of government and diligently works to define its relationships with the other branches presents a favorable public image. Obviously, the opinions of community leaders and representatives of other branches of government are important when considering perceptions of the court's institutional independence and integrity. Other constituencies' perceptions (e.g., those of court employees) of the court's relationships with other government agencies, its accountability, and its role within the community should not be overlooked as important contributions to the view of the court as both an independent and accountable institution.

Judicial Equal Opportunity Program: Model Equal Employment Opportunity Policy*

I. Preamble

The Judicial Conference of the United States has directed that each court adopt a plan in conformance with the national policy of providing equal employment opportunity to all persons regardless of their race, sex, color, national origin, religion, age (at least 40 years of age at the time of the alleged discrimination), or handicap. Each court will promote equal employment opportunity through a program encompassing all facets of personnel management including recruitment, hiring, promotion, and advancement. This program, which will be periodically evaluated, is not intended to modify or reduce the qualification standards for employment in the Federal courts as such standards have been approved by the Judicial Conference of the United States.

II. Scope of Coverage

This Equal Employment Opportunity Program applies to all court personnel including judges' staffs and court officers and their staffs.

III. Organization

A. Implementation

The court shall implement the Equal Employment Opportunity Program. On behalf of the court, the Chief Judge will submit modifications in the plan for judicial council approval.

B. Heads of Court Support Units

The heads of each court support unit must ensure that all vacancies are publicly announced to attract candidates who represent the make-up of persons available in the qualified labor market and all hiring decisions are based solely on job-related factors. They should make reasonable efforts to see that the skills, abilities, and potential of each employee are identified and developed, and that all employees are given equal opportunities for promotions by being offered, when the work of the court permits and within the limits of available resources, cross-training, reassignments, job restructuring, special assignments, and outside job-related training.

* Adapted from Section III, C, Model Equal Employment Opportunity Plan, Judicial Conference of the United States, March 1980, Revised 1986, "Judicial Equal Employment Opportunity Program."

C. Judges, Court Managers, and Supervisors

Judges and designated court managers and supervisors must apply equal employment opportunity practices and policies in their work units. This includes giving each employee a fair and equal opportunity to demonstrate his or her skills and, where those abilities exceed general performance standards, to be recommended for personnel actions and awards recognizing such achievements. As resources permit, it also requires providing training programs which enable employees to develop their job skills fully.

D. Equal Employment Opportunity Coordinator

The court will designate one person to be the Equal Employment Opportunity Coordinator. This person will be responsible for collecting, analyzing, and consolidating the statistical data and statements prepared by each court unit. The Coordinator will then prepare an annual report for the Chief Judge and the Administrative Office describing the court's achievements in providing equal employment opportunities, identifying those areas in which improvements are needed, and explaining those factors inhibiting achievement of equal employment opportunity objectives. Based upon this evaluation and report, the Coordinator will recommend modifications in the plan to the court. The Coordinator will also seek to resolve discrimination complaints informally and will provide EEO information to the public.

IV. Personnel Practices

A. Recruitment

Each court unit will seek qualified applicants who reflect the make-up of all such persons in the relevant labor market. Each unit will publicize all vacancies.

B. Hiring

Each court unit will make its hiring decisions strictly upon an evaluation of a person's qualifications and ability to perform the duties of the position satisfactorily.

C. Promotion

Each court unit will promote employees according to their experience, training, and demonstrated ability to perform duties of a higher level.

D. Advancement

Each court unit will seek insofar as reasonably practicable to improve the skills and abilities of its employees through cross-training, job restructuring, assignments, details, and outside training.

E. Discrimination Complaints

The court adopts procedures for resolving discrimination complaints.

V. EVALUATIONS

Each court unit will prepare a brief report for the EEO Coordinator describing its efforts to provide equal employment opportunities in:

A. Recruitment

Each court unit will describe briefly efforts made to bring a fair cross-section of the pool available for the position into its applicant pool, including listing all employment sources used (e.g., state employment offices, schools, organizations, etc.). Each unit will also explain the methods it uses to publicize vacancies.

B. Hiring

Each court unit will identify where its recruitment efforts resulted in the hiring of a cross-section of the pool available and will, if known, explain those instances where members of the cross-section did not accept employment with the court when it was offered.

C. Promotions

Each court unit will briefly describe promotional opportunities which occurred and will provide an analysis of the distribution of promotions, including a description of those persons who were promoted to supervisory positions.

D. Advancement

Each court unit will describe what efforts were made to improve the skills and abilities of employees through cross-training, job restructuring, assignments, details, and outside training. In addition, this evaluation should include information on factors inhibiting achievement of EEO objectives such as no vacancies, minimal numbers of qualified applicants in the relevant labor market, and on all persons in the unit who have received all relevant training. This report will also include a breakdown according to the race, sex, national origin, and handicap of the court's personnel involved on forms to be provided by the Administrative Office of the United States Courts. The report will cover personnel actions occurring in the year ending September 30 and will be submitted to the EEO Coordinator by November 1 of each year.

VII. OBJECTIVES

Each court unit will develop annually its own objectives which reflect those improvements needed in recruitment, hiring, promotions, and advancement, and will prepare a specific plan for the EEO Coordinator explaining how those objectives will be achieved.

VIII. ANNUAL REPORT

The EEO Coordinator will prepare for the court's approval an annual report for the year ending September 30, consolidating the data and statements received from each court unit. The report will include tables to be provided by the Administrative Office of the United States Courts consolidating the information provided by each court unit. It will also describe instances where significant achievements were made in providing equal employment opportunities, will identify areas where improvements are needed, and will explain factors inhibiting achievement of equal employment opportunity objectives. Upon approval of the court, this report will be submitted by the Chief Judge to the Administrative Office of the United States Courts by November 30 of each year.

Affirmative Action Plan of the Massachusetts Trial Court*

I. Statement of Policy

The Trial Court is committed to a practice of affirmative action to:

1. Promote cultural diversity;
2. Ensure equal opportunity for all those currently employed or seeking employment with the Trial Court; and
3. Remedy any past employment practices which have resulted, whether intentionally or not, in discriminatory treatment based on minority classification (race, color, or national origin), sex, age (over forty), sexual orientation, marital status, religion, disability, or Vietnam era veteran status.

The Trial Court will ensure that no person shall, on these grounds, be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in any employment practices, including but not limited to, recruitment, hiring, transfer, promotions, training, compensation, benefits, discipline, and terminations. In addition, it is the policy of the Trial Court that goods and services shall be purchased from agencies or companies which have exhibited an established policy and practice of nondiscrimination in employment or in the provision of services.

To this end, the Trial Court has prepared this Affirmative Action Plan (Plan). The purpose of the Plan is to:

1. Identify how the Trial Court would appear without underutilization of minorities and women;
2. If different from the current profile, establish goals and timetables for achieving the ideal;
3. Identify any discriminatory employment practices;
4. Replace them with programs and practices which are not discriminatory, which remedy the effects of past discrimination, and which promote cultural diversity; and
5. Monitor the overall operation of these programs and practices, and their success in moving the Trial Court towards its goal of equal opportunity.

* Excerpted from the Affirmative Action Plan of the Massachusetts Trial Court, 1992.

This plan should not preempt any existing Trial Court policy providing the policy is at least equal to and consistent with the Plan.

II. Implementation

The Trial Court is committed to implementing this Plan in a fair and effective manner, with the full resources available to the Trial Court. In 1980, the Trial Court established an Affirmative Action Office to develop policy and establish affirmative action and equal employment opportunity activities. The Affirmative Action Officer is responsible for these activities, which are outlined below. The Affirmative Action Officer will be assisted by the staff of the Administrative Justice of the Trial Court.

A. Office of Affirmative Action

The Affirmative Action Officer for the Trial Court reports directly to the chief Administrative Justice, and, at the discretion of the Chief Administrative Justice, the Administrator of Courts for the Trial Court. This Officer prepares quarterly audits and submits semi-annual reports on affirmative action activities in the Trial Court to the Chief Administrative Justice for review and publication.

The administration gives its full support to the Affirmative Action Officer in the following activities, though the Officer's efforts are not limited to these activities:

1. Developing policy statements, affirmative action programs, and internal and external communication techniques;
2. Identifying problem areas;
3. Providing technical assistance to appointing authorities of the Trial Court and/or other personnel in meeting the requirements of the Plan;
4. Monitoring all transfers and promotions and conducting inquiries into these transactions to ensure that minorities and women are given full opportunities for transfers and promotions;
5. Investigating complaints of a discriminatory nature;
6. Collecting, analyzing and publishing all statistical data as required in this Plan in order to measure the Plan's effectiveness in moving the Trial Court towards its goals and objectives, and identifying any need for remedial action;
7. Acting as liaison between the Chief Administrative Justice and governmental agencies concerned with the regulation of equal employment opportunities;
8. Serving as liaison between the Chief Administrative Justice and minority organizations, women's organizations and community action groups concerned with the equal employment opportunities of minorities and women, and

maintaining a list of organizations effective in producing qualified minority and women applicants for employment in the Trial Court;

9. Conducting equal employment opportunity and affirmative action information sessions to:
 - a. Keep management informed of the latest developments in the entire equal employment opportunity area; and
 - b. Clarify the responsibilities of appointing authorities and department heads in equal employment opportunity and affirmative action policy, practices, and procedures;
10. Initiating and participating in projects aimed at equal employment in the Trial Court. Such activities may include participating in "Job Fairs"; recruiting at secondary schools, junior colleges, and colleges with predominant minority or women enrollments; and encouraging employees to refer minority and women applicants.

B. Hiring Authorities and Local Managers

Recipients of the Plan must carefully read and familiarize themselves with the Plan. They should circulate it to all personnel in their department who are involved in employment matters or in the purchasing of goods or services so that they, too, are familiar with the Plan. These persons will be responsible for, though their activities are not limited to, the following:

1. Assisting in identifying problem areas;
2. Maintaining relationships with local minority organizations, women's organizations, community action groups and community service programs;
3. Periodically auditing hiring and promotion patterns and training programs to remove impediments to reaching goals and objectives; and
4. Working with the Affirmative Action officer to ensure that Trial Court policies are being followed.

All employees are hired with the skills required for their Positions. Employees should not feel burdened because their hiring, promotion, or other conditions of employment are consistent with Trial Court Affirmative Action efforts. Supervisors should work with their employees to ensure that they understand this, and act accordingly. The Trial Court will offer training to assist supervisors in this effort.

C. Dissemination

1. Internal

For the Plan to be effective, it is crucial that all employees know it exists and understand its content. The Affirmative Action officer will disseminate the Plan internally as follows:

a. Employees

- Distribute the Plan to all department heads within the Trial Court, and conduct special meetings with executive, management and supervisory personnel to explain the intent of the policy and individual responsibility for implementation.
- Distribute the Statement of Policy to all employees and schedule special meetings with them to discuss the policy.
- Distribute to each individual court its utilization analysis chart.
- Discuss the Plan thoroughly in both employee orientation and management training programs.

b. Publications

- Include the Plan in the Personnel Policies and Procedures Manual.
- Publicize key features of the Plan in Trial Court publications such as the Annual Report and internal newsletters.
- Feature both minority and nonminority employees (male, female, and disabled) in Trial Court publications.
- Post the Statement of Policy on courthouse bulletin boards, along with Federal Equal Employment opportunity posters.

c. Unions

- Work with the Director of Employee Relations to meet with union officials to inform them of the Plan, to enlist their commitment to the goals of the Plan, and to negotiate language for collective bargaining agreements which reflects this commitment.

D. External

- To publicly affirm the Trial Court's commitment to the Plan, the Affirmative Action Officer or a designee will:

- Inform all recruiting sources verbally and in writing of the Plan, stipulating that they actively recruit and refer minorities and women for all positions listed.
- Notify minority and women's organizations, community agencies, community leaders, secondary schools and colleges of the Trial Court policy.
- Incorporate a nondiscrimination clause in all purchase orders, leases, and contracts for the procurement of goods and services.
- Inform prospective employees of the affirmative action program so that they can avail themselves of its benefits.
- Send written notification of Trial Court policy to all subcontractors, vendors, and suppliers requesting appropriate action on their part.

E. Internal Audit and Reporting Requirements

The Affirmative Action Officer is responsible for conducting quarterly audits of equal employment opportunity and affirmative action efforts. In the audit, the Officer monitors referrals, placements, transfers, promotions and terminations. The Officer also reviews local program results, and reports on these to the Chief Administrative Justice. Each February 1 and August 1, the Affirmative Action Officer prepares and submits Affirmative Action Status Reports to the Chief Administrative Justice. All appointing authorities are responsible for periodic internal audits to measure the effectiveness of their affirmative action efforts. Each division is required to submit a semi-annual report on this audit to the Affirmative Action Officer using a format disseminated by the Officer. The Officer advises appointing authorities of program effectiveness and recommends improvements at least once annually.

III. Utilization Analysis

Affirmative Action is called for when it has been determined that minorities and women are being underutilized in certain job categories of a workplace, given the availability of qualified minorities and women in the population from which that workplace can reasonably recruit. In sum, this is a finding that a workplace has fewer minorities or women than would reasonably be expected by their availability in particular labor market areas.

The Trial Court has completed several analyses to determine whether and in what areas and job categories underutilization exists. Goals and timetables have been established where it has been found. On a periodic basis, the appointing authorities of each court will be sent the analyses for their respective courts. The entire set is available in the Affirmative Action Office.

The Trial Court emphasizes its commitment to equal employment opportunity for candidates and employees who are disabled or Vietnam era veterans. The Future Actions section of this Plan outlines the intention of the Trial Court to devise methods for identifying these individuals so that the Plan can be applied to them as well.

A. Workforce Analysis

The first step in identifying underutilization is to prepare a workforce analysis; that is, a look at the composition of the workplace. The first part of the workforce analysis examines the entire system, listing all of the job titles in the system and indicating the number of employees in those titles. In particular, the analysis indicates for each title its level, the total number of incumbents, the total men and the total women, and the numbers of men and women who are Native American, Asian/Pacific Islander, Black, Cape Verdean, Hispanic, and White. Finally, it lists the percentages of incumbents for each title who are minorities and who are women.

The second part of the workforce analysis examines each court, listing the federally-defined Equal Employment opportunity job categories represented in the court system and indicating, by court, the composition of employees in those categories. The information presented for each of the categories is essentially the same as that presented for each title. The reason for categorizing is that the federal government has found that minorities and women are underrepresented in specific categories, and that it is most informative to investigate the categories in a workplace. The categories used in this Plan are: official and manager; Professional; Technician; Supervisor; Administrative support (Supervisory Workers levels 13 - 18); Administrative support; Service Workers; Supervisory Protective Service Workers; and Protective Service Workers.

B. Labor Market Analysis

The Affirmative Action Officer conducts ongoing labor market analyses to determine the availability of minorities and women having requisite skills in areas in which hiring authorities can reasonably recruit.

Every two years, in preparation for updating the Affirmative Action Plan, the Officer will examine statistics from the Division of Employment and Training, the Department of Labor, the Census Bureau, and local agencies to ensure that the goals of the Trial Court are accurate and current.

C. Utilization Analysis and Goals and Timetables

By comparing the composition of minorities and women in each court (the workforce analysis) to the availability of workers with requisite skills in applicable labor market areas (the labor market analysis), the Trial Court has completed a utilization analysis of its workforce.

Where the utilization analysis shows underutilization of minorities and women, the Trial Court has set goals for hiring and promotion so that in the future its workforce will resemble the labor market. The Trial Court is very careful to distinguish between goals and quotas. Quotas imply that numbers must be met. Goals imply that all good faith efforts will be made to reach utilization.

The Trial Court intends to improve its method for setting goals by gathering statistics regarding turnover, promotions, terminations, etc. The "Future Actions" section of the Plan elaborates on this intent.

The Trial Court is setting goals in a good faith effort to ensure equal employment opportunity. It recognizes that the Plan will face challenges and readjustments due to the fluctuations in the fiscal situation and the slow and unpredictable turnover in the court system.

IV. Uniform Hiring Procedures

Affirmative Action requires more than vigilance in the elimination of discriminatory barriers to employment on the grounds of race, color, religion, sex, age, disability, marital status, religion, sexual orientation or Vietnam era veteran status. It must also entail positive and aggressive measures to ensure equal opportunity and nondiscrimination in the areas of hiring, promotion, demotion or transfer, recruitment, layoff and termination, rate of compensation, job assignments, in-service or apprenticeship training programs, and all conditions of employment, and to effect the full utilization of minorities, women, Vietnam era veterans, and disabled persons at all levels of the Trial Court. The following is the plan of the Trial Court for putting this into place. (See "Future Actions" Section A.)

A. The Application Process

1. Applications and Standard Forms

The Trial Court uses a standard application form in an effort to eliminate subtle discrimination which can occur when only resumes are used. Such a form guarantees that the same information will be available on all applicants. In addition, use of the standard form ensures that applications do not include questions which are not job related and which have been shown to disproportionately result in rejection of minorities and women.

Pursuant to Section 4.00 of the Personnel Policies and Procedures Manual, all applicants for all positions must file an application to which they may attach a resume. Applications can be found in the Personnel Policies and Procedures Manual, at the Employee Relations/Personnel Department of the Trial Court, or at any court location throughout the Commonwealth.

2. Applicant Flow Data

Monitoring applicant flow allows the Affirmative Action officer to discover discrimination in such areas as recruitment and the choice of applicants to interview. The Affirmative Action Office intends to computerize information pertinent to affirmative action efforts to better monitor these efforts.

3. Recruitment

a. Resource List

The Affirmative Action Resource List, found in Appendix B of the Personnel Policies and Procedures Manual, contains the names and addresses of agencies and organizations across the Commonwealth which can refer minority and women candidates for Trial Court positions. This list has been distributed to all appointing authorities.

Pursuant to Section 4.301 of the Personnel Policies and Procedures Manual, appointing authorities are to post notices of vacancies in at least ten (10) of the agencies on this Affirmative Action Resources List.

b. Postings

The notice of vacancy must be posted and/or advertised for a period of ten (10) working days prior to the closing date. The posting, at a minimum, must be:

1. In reasonable, visible public places in the building in which the court where the vacancy has occurred is located;
2. In courthouses, pursuant to the Personnel Policies and Procedures Manual;
3. In at least ten of the agencies on the Affirmative Action Resources List;
4. In the local office of the Department of Employment and Training;
5. In the office of the Administrative Justice for the respective Trial Court Department;
6. In the case of an opening for a Probation officer position, including Chief Probation officer, with the Office of the Commissioner of Probation;
7. In the Employee Relations/Personnel Department of the Administrative Office of the Trial Court; and
8. In local or regional newspapers, depending upon the availability of funds.

4. Nepotism

Pursuant to Section 4.04 of the Personnel Policies and Procedures Manual, appointments made within the Trial Court are to be made on the basis of merit. The Trial Court prohibits the practice and appearance of nepotism or favoritism in the hiring and promotion of employees.

5. Reference Checks

Pursuant to Section 4.403 of the Personnel Policies and Procedures Manual, all applicants receive notice that reference checks will be conducted with previous employers. It is incumbent upon all appointing authorities to ensure that questions asked are job-related and relevant to a determination of the candidate's skills and abilities for the job under consideration. Only matters that are within specific, job-related parameters are proper areas for questioning.

6. Interviews

Pursuant to Section 4.402 of the Personnel Policies and Procedures Manual, interviews must follow carefully prescribed guidelines to avoid discrimination and invasion of privacy. These include the following steps:

- a. All appointing authorities must attend information sessions offered by the Affirmative Action Officer to learn about their role in affirmative action and equal employment opportunity, and to learn how to conduct interviews in a nondiscriminatory fashion.

b. Appointing authorities are to carefully analyze the knowledge, skills, and other requirements needed for the position that is available in a particular court location, consistent with the duties contained in the job description.

c. Based on that analysis, the appointing authority is to develop a set of questions to be asked in all interviews for each job. Candidates are rated based on their answers to these questions.

d. The Trial Court recommends that appointing authorities convene screening panels to review applications and to interview candidates. The panels should include several members of the staff with whom the candidate will be working, and should include minorities and women.

7. Approval Process

Pursuant to Section 4.500 of the Personnel Policies and Procedures Manual, once the appointing authority has identified the candidate for the position, that authority forwards all necessary forms to the following to ensure that appropriate and nondiscriminatory action was taken in selecting the candidate.

a. In the case of a probation officer, to the office of the Commissioner of Probation. All steps required for compliance with hiring directives are processed through the Commissioner of Probation for approval by the Chief Administrative Justice.

b. In the case of all other appointments, to the Administrative Office of the Trial Court, with notification of the appointment and a copy of the application or resume of the person appointed to the Administrative Justice of the respective Trial Court Department.

B. Other Factors Affecting Equal Employment Opportunity

1. Job Descriptions

The Trial Court has expended a great deal of time and effort to produce job descriptions which accurately reflect position functions. The Trial Court recognizes that overstating requirements, such as requiring an academic degree when one is not necessary to perform the job, may discriminate against minorities and women. Therefore, special attention will be paid to academic experience and skill requirements to ensure that the requirements in themselves do not constitute inadvertent discrimination.

If department heads identify some responsibilities in a job as more important than others, they must investigate whether this may have a disparate effect on minorities or women.

The job descriptions are included in Appendix A of the Personnel Policies and Procedures Manual, which is sent to all managers involved in recruitment, screening, selection, and promotions. Pursuant to Section 4.301 of the Manual, all postings of position vacancies must contain an adequate description of the requirements of the job to be filled.

2. Training and Technical Assistance

The Judicial Institute was formed to provide education and training for the Trial Court. The Office of Affirmative Action will work with the Judicial Institute to ensure that minority and female employees are aware of opportunities for training and career development, and that selection for all training and educational programs does not discriminate on the basis of minority classification (race, color, national origin), sex, age, sexual orientation, disability, marital status, religion or Vietnam era veteran status. The Affirmative Action officer will assist the Judicial Institute in developing education programs on managing diversity.

3. Promotions and Transfers

The Trial Court is committed to providing minority and women employees with an equal opportunity for promotion and transfer. When the name of a candidate for a position is submitted to the Administrative office of the Trial Court for approval, the Affirmative Action Officer reviews the process used in filling the position, including ensuring that adequate posting took place. The Officer also monitors transfers to ensure that decisions are not based on discriminatory practices. In addition, the Officer will work with the Judicial Institute so that education and training will prepare minority and women employees for promotion within the system.

4. Reduction in Workforce

When minorities or women are laid off, the action may be reviewed by the Affirmative Action Officer before it becomes final to determine if such action represents a breakdown in the affirmative action program and therefore calls for remedial action. The Trial Court shall consider the policy of this Plan when selecting employees for layoff. The Affirmative Action Officer shall be actively involved in this process at all stages.

Upon termination of employment, an exit interview may be conducted to determine if there has been discrimination and if guidelines of the Trial Court Affirmative Action Plan have been adhered to.

V. Resolution Process

A. General Policy

The Trial Court will provide any employee the opportunity to file a complaint with the Affirmative Action office alleging a failure of the Trial Court to abide by the policies of this Plan. The Trial Court will investigate and attempt to resolve the complaint informally through the following Resolution Process. Complaints may include such issues as adverse impact, maltreatment or harassment.

The Resolution Process does not preempt statutory or contractual rights. A person who chooses to use the Resolution Process is not precluded from filing a complaint or grievance with other appropriate parties such as the Massachusetts Commission Against Discrimination, the Equal Employment Opportunity Commission, or the Union, and shall be informed of the right to do so.

Further, though the following procedure involves filing a written complaint, the Affirmative Action Office encourages personnel to turn to the Office for information or counseling as soon as the need arises. The Office is committed in this way to preventing infractions of policies and to support employees facing difficulties due to any infractions.

B. Procedure

1. The Complaint

Trial Court employees are to direct complaints relating to such issues as recruitment, hiring, transfers, promotions, training, compensation, benefits, discipline, or terminations to the Affirmative Action Officer, or, in the Officer's absence, to a designee. The employee shall file a written complaint with the Officer, who will log the complaint and notify the Legal Department that a complaint has been received.

The Officer will arrange an appointment with the complainant within ten working days of receipt of the initial complaint. The purpose of the meeting is to have the Officer understand the complainant's allegations and desired relief, and to give the Officer the opportunity to describe the complaint investigation procedure more fully.

If the Officer determines that the complaint is one of sexual harassment, the Officer shall advise the complainant of options available under the Trial Court's Sexual Harassment Policy and Procedure. The Officer will give the complainant a copy of that Policy and Procedure.

2. The Investigation

The officer shall attempt to resolve the issue which generated the complaint within four weeks of the interview. In this process, the Officer shall privately interview relevant parties, examine appropriate documents, and gather other essential information relevant to the complaint. The individual being interviewed may have a representative of his or her choice at the interview. During this process, the Officer shall maintain confidentiality to the extent possible.

If the complaint has been made against a specific individual, the Officer will meet privately with the individual to discuss the complaint. That individual may respond to the complaint in writing.

All employees are expected to cooperate in any investigation conducted by the Affirmative Action officer. witnesses and relevant parties may be asked to sign written statements of their accounts. Should complainants express a desire that witnesses or other relevant parties not be interviewed, they shall sign a statement explaining the desire to waive that part of the investigation.

3. Conclusion

At the conclusion of the investigation, the Officer shall provide a written summary of findings and any recommendations pursuant to the findings to the complainant, to the person charged with implementing any such recommendations, and to the Legal Department.

Should the complainant, the Affirmative Action officer, and relevant parties be unable to agree upon the conclusions and recommendations, the complainant may request that the internal process be reviewed by the Administrator of Courts. The Affirmative Action Officer will attempt to provide information on alternatives for relief.

VI. Future Actions

A. Disabled Workers and Vietnam Era Veterans

The Trial Court intends to develop programs to implement equal employment opportunity for disabled workers and Vietnam era veterans. Initial efforts will focus on devising methods for identifying such workers, while respecting the right to self-identification and the retention of confidentiality.

As regards disabled workers, special attention will be given to developing policies on reasonable accommodation. Reasonable accommodation involves removing barriers which prevent or limit employment opportunities for eligible disabled persons, while not imposing undue hardship upon the court.

Policies regarding employment of Vietnam era veterans will provide for such concerns as compensation without regard to other benefits received and the availability of any special counseling these employees may require.

Policies for both groups will involve training of Trial Court employees. Such training should address stereotypes members of these groups may face which could limit their access to all jobs for which they are qualified.

B. Applicant Flow Data

In the future, the Trial Court will attempt to respond to the Massachusetts Supreme Judicial Court Gender Bias Study (1989) recommendation that it "should implement a computerized database management program to enable it to measure the effectiveness of its equal employment opportunity and affirmative action programs. Such a system would compile and maintain applicant flow data for new hires and promotions and information about the qualifications and characteristics of both successful and unsuccessful applicants for promotion" (p. 186).

As explained previously, monitoring applicant flow allows the Trial Court to discover discrimination where it may not have otherwise. For instance, if the applicant pool does not reflect the labor market, the Trial Court will be alerted that it should review its recruitment practices. In the case where the applicant pool does reflect the available population, but the applicants interviewed do not, then the Trial Court will know to investigate the procedure for choosing applicants to interview.

C. Goals

The Trial Court is committed to improving its method for setting affirmative action goals. The best process for setting goals is one which tracks the opening of positions, both projected and known, and identifies trends in how openings are filled (i.e., whether by new hire or promotion). When such information is collected, computerized, and analyzed, the EEO/AA office will be able to determine:

1. Realistic goals specific to the workplace of the Trial Court;
2. Whether it should focus efforts on hiring minorities and women or on promoting them;
3. Whether members of these groups are leaving the system at higher rates than other personnel; and
4. What affirmative action efforts are necessary to address any problems identified.

To accomplish this, the Affirmative Action Officer will work with the Employee Relations/Personnel Department and the Information Systems Department to gather and computerize the necessary statistics. The Officer will work with the Personnel Department to ensure the correct identification of labor markets from which employees for various job classifications are recruited, and the correct categorization of job titles.

Currently, the EEO/Affirmative Action Officer position is filled on an acting basis. When the position is filled on a permanent basis, the position will be posted and filled in accordance with Section 4.00 of the Trial Court's Personnel Policies and Procedures Manual.

VII. Relevant Federal Laws and Regulations

This section of the Plan provides a brief synopsis of the primary equal employment opportunity statutes, regulations, and executive orders. For more information on these laws, please contact the Affirmative Action Office.

Title VII of the Civil Rights Act of 1964 (Title VII)

Title VII is the most far-reaching federal law on employment discrimination. Title VII prohibits all discrimination in employment because of race, color, sex, national origin, or religion. Title VII provides for an administrative and judicial enforcement scheme. The Equal Employment Opportunity Commission is the federal agency responsible for investigating an employee's claim of discrimination under Title VII. The federal courts have final responsibility for enforcing Title VII.

Age Discrimination in Employment Act of 1967 (ADEA)

The ADEA prohibits discrimination against applicants or employees who are 40 years and older. A limited exemption applies to bona fide executives and high policy-making employees as they are defined in the ADEA. The ADEA provides for a similar enforcement scheme as Title VII.

Equal Pay Act of 1963

The Equal Pay Act prohibits wage discrimination based on sex where the employees in question are performing work requiring equal skill, effort, and responsibility, and which are performed under similar working conditions. The Equal Pay Act also contains four exceptions to the equal pay for equal work requirement. The Equal Employment Opportunity Commission is responsible for administering this law. Unlike Title VII and the ADEA, however, the filing of a charge with the Commission is not a prerequisite to filing suit under the Equal Pay Act.

Civil Rights Act of 1866 (Section 1981)

Based on the 13th of the U.S. Constitution, the Civil Rights Act of 1866 (Section 1981) prohibits discrimination on the basis of race or color in the making and enforcement of employment contracts. Unlike other anti-discrimination statutes, Section 1981 does not cover sex, age, religion, handicap, or other claims of discrimination. Enforcement of Section 1981 is limited to lawsuits.

Rehabilitation Act of 1973

This law prohibits discrimination against physically or mentally handicapped persons by federal contractors and requires that such contractors establish a separate affirmative action program to employ qualified handicapped individuals. Another section of this law prohibits employers receiving federal grants or funding from discriminating against employees because of their handicap. The Department of Labor's Office of Federal Contract Compliance Programs is the designated enforcement agency.

The Vietnam Era Veterans Readjustment Assistance Act

This law prohibits discrimination against disabled veterans and veterans of the Vietnam era. This law requires federal contractors to undertake affirmative action measures on behalf of qualified veterans of the Vietnam era during the first four years after discharge, and qualified disabled veterans throughout their working life. The Department of Labor's office of Federal Contract Compliance Programs is also responsible for administering this law.

Immigration Reform and Control Act of 1986 (IRCA)

The IRCA requires all employers to verify that all employees hired after November 6, 1986 are legally authorized to work in the United States. The IRCA also prohibits employers of four or more employees from discriminating on the basis of national origin or citizenship. The Department of Justice is responsible for enforcing the IRCA.

Americans with Disabilities Act of 1990 (ADA)

The ADA prohibits handicap discrimination in employment in a broader sense than the Rehabilitation Act of 1973. The ADA becomes effective in July 1992 for employers with 25 or more employees, and in July 1994 for employers with 15 or more employees. The ADA will be enforced by the Equal Employment Opportunity Commission.

Executive Order 11246

Executive Order 11246 prohibits certain federal contractors from discriminating on the basis of race, color, religion, sex or national origin. This order also requires that covered contractors develop a written affirmative action program to employ and encourage the advancement of women and racial minorities. This order is enforced by the Department of Labor's Office of Federal Contract Compliance Programs. This office has issued regulations which, among other things, specify the contents of affirmative action programs, and what federal contractors can expect in a compliance review.

VIII. Relevant Massachusetts Laws and Regulations**Massachusetts Fair Employment Practices Law, G.L. c.151B, SS4**

This law prohibits employment practices that discriminate on the basis of race, color, religious creed, national origin, age, sex, sexual orientation, ancestry, or disability. Under this statute, the prohibition against sex discrimination includes sexual harassment. This statute covers employers with six or more employees. The Massachusetts Commission Against Discrimination is the state agency responsible for enforcing this law.

Massachusetts Age Discrimination Law, G.L. c.149, 524A

Massachusetts also has a separate age discrimination law that covers all private sector employers and prohibits employment practices that discriminate against individuals over the age of 40. This law is enforced by the Department of Labor and Industries.

Massachusetts Equal Pay Law, G.L. c.149, SS105A

This law prohibits employers from paying female employees less than male employees for work of like or comparable character or from discriminating in any other way in the payment of wages on the basis of sex, unless such differences are based on seniority. The Department of Labor and Industries is the state agency responsible for administering this law.

Massachusetts Equal Rights Law, G.L. c.93, SS102

This law provides that [a]ll persons within the Commonwealth, regardless of sex, race, color, creed or national origin, shall have, except as otherwise provided or permitted by law, the same rights enjoyed by white male citizens, to make and enforce contracts. An individual who believes his/her rights under this statute have been violated may sue for “injunctive and other appropriate equitable relief.”

Governor’s Code of Fair Practices Executive Order 227

This order reaffirms that non-discrimination and equal employment opportunity are the policies of the state. The order further directs each Executive Officer serving the Governor and all other state employers to take affirmative steps to ensure equality of opportunity in all programs and activities of the Commonwealth.

Superior Court of Alameda County, California: Discrimination and Sexual Harassment Policies and Procedures*

Discrimination and Sexual Harassment Policies and Procedures

5.1 Policy Statement

It is the policy of the Alameda County Superior Court that invidious discrimination and sexual harassment are unacceptable behaviors and will not be condoned or tolerated. Further, it is the policy of the Court to provide training and information to all employees in an effort to eliminate such incidents and to respond to all complaints of invidious discrimination and/or sexual harassment expeditiously and in accordance with the procedures set forth in these Rules.

Sexual harassment and invidious discrimination are unlawful employment practices prohibited by both State and Federal law. They debilitate morale and interfere in the work productivity of the victims and their co-workers. It is the policy of the Superior Court to provide a work environment free from invidious discriminatory acts and unsolicited, unwelcome sexual overtures.

Any Superior Court employee who violates this policy may be subject to firm disciplinary action up to and including removal from employment.

5.2 Notice of Policy

The Superior Court's policy statement regarding sexual harassment and discrimination and its directives for handling allegations of harassment or discrimination shall be distributed to all employees and shall be posted in each facility and office in which the Superior Court is located.

5.3 Definitions

Sexual harassment is defined as unsolicited verbal comments, gestures, or physical contact of a sexual nature which are unwelcome.

Within the Superior Court, a supervisory employee who uses implicit or explicit coercive sexual behavior to control, influence, or affect the career, salary, or job of an employee is engaging in sexual harassment. Similarly, an employee of the State, County, or Court who behaves in this manner in the process of conducting County business is engaging in sexual harassment. Any employee who participates in unsolicited verbal comments, gestures, or physical contact of a sexual nature which are unwelcome is also engaging in sexual harassment.

* Excerpted from the *Employee Discipline and Grievances* (1996), by Gerald B. Kuban, Senior Staff Associate, National Center for State Courts, Williamsburg, Virginia.

5.3.2 Discrimination

Invidious discriminatory behavior includes verbal or written comments or actions which disparage or deride an individual's race, color, sex, religion, national origin, ancestry, age, disability, physical condition, or marital status. Any implicit or explicit action or behavior based on race, color, sex, religion, national origin, ancestry, age, disability, physical or medical condition or marital status, which adversely affects an employee's work assignment, work environment, salary, career, or promotional opportunity is an act of invidious discrimination.

5.4 Reporting Procedures

5.4.1 It is the policy of the Executive Officer to maintain an open door policy and to invite any inquiries or complaints of harassment or invidious discrimination at any time from any employee.

5.4.2 An employee who believes that he/she has been discriminated against or harassed shall give verbal or written notice to his/her supervisor. If the complainant is in any way uncomfortable or reluctant to notify the direct supervisor, the complainant may report the incident/problem to the next highest supervisor, the Assistant Executive Officer or the Executive Officer, the Chair of the Superior Court Personnel Committee of the Presiding Judge.

5.4.3 The Supervisor to whom the allegation is reported shall report the alleged incident to the Executive Officer or Assistant Executive Officer, one of whom after consultation with the complainant, shall appoint an employee to conduct an investigation to (1) ascertain the facts of the allegation; (2) determine whether there are witnesses to the alleged incident or behavior; (3) notify the alleged perpetrator of the complaint and solicit a response to the allegation; and (4) submit a report to the Executive Officer, including recommendations for appropriate action.

5.4.4 The investigation shall be completed within ten (10) court days of the date the Executive Officer is notified of the complaint.

5.4.5 If the Executive Officer determines that wrongful conduct was committed, he/she shall take appropriate disciplinary action including, but not limited to counseling, reprimand, demotion, suspension or termination of employment.

5.4.6 If the allegation of harassment or invidious discrimination is made against a Judge, Referee, Commissioner or the Executive Officer of the Superior Court, the Executive Officer (or Assistant Executive Officer if a complaint is filed against the Executive Officer) shall report the allegation to the Presiding Judge or the Chair of the Personnel Committee, who, after consultation with the complainant, shall appoint a member of the Personnel Committee to conduct an investigation to (1) ascertain the facts of the allegation; (2) determine whether there are witnesses to the alleged incident or behavior; (3) notify the alleged perpetrator of the complaint and solicit a response to the allegation; and (4) submit a report to the Personnel Committee, including recommendations for appropriate action. The investigation shall be completed within ten (10) court days of the date the Presiding Judge or the Chair of the Personnel Committee is notified of the complaint. The Personnel Committee shall submit a final report to the Presiding Judge. If the Presiding Judge is the subject of the complaint, the report of the Personnel Committee shall be submitted to the Superior Court Executive Committee.

Establishing and Operating a Task Force or Commission on Racial and Ethnic Bias in the Courts *

Chapter II

Creating the Momentum for the Task Force or Commission on Racial and Ethnic Bias in the Courts

A. Prerequisites to the Creation of a Task Force or Commission on Racial and Ethnic Bias in the Courts

Each state should consider several preliminary matters before establishing a task force or commission. Careful planning and a realistic assessment of the forces for and against a task force or commission proposal are critical first steps. The task force process is a long-term strategy for initiating needed reforms in the justice system. Many of the decisions made during the formative phases of the project will have a significant effect upon the research, reporting, and implementation phases. A well-planned initial strategy will provide the groundwork for success and will result in an effective and focused long-term project.

The following is a list of five questions designed to assess the requisite strength of a task force or commission plan:

- Are there individuals in positions of power and influence in the justice system who are supportive of the concept of a task force or commission and committed to the idea of reform?
- Is there community interest, support, and leadership for the task force or commission?
- Are there individuals willing to devote the time and energy necessary to accomplish the work of the task force or commission?
- What are the issues and concerns of the minority public that argue for or support the establishment of this inquiry?
- Are there sufficient resources and time to accomplish the mandate of the task force or commission in a credible and professional manner?

If the answer to any of these questions is clearly no, then it is advisable to focus on developing a stronger foundation for the project. If these questions can be answered yes, then it is likely that a state judiciary is ready to endorse and support the investigation into racial and ethnic bias issues.

* These chapters were excerpted from *Establishing and Operating a Task Force on Racial and Ethnic Bias in the Courts*, which was written by Edna Wells Handy, J.D., Yolande P. Marlow, Ph.D., Desiree B. Leigh, M.A., and Lorraine Weber, J.D. The manuscript was developed through a State Justice Institute-funded project and was published by the National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts and the National Center for State Courts.

1. Are there individuals in positions of power and influence in the justice system who are supportive of the concept of a task force or commission and committed to the idea of reform?

When answering this question, note that these individuals are not necessarily the people who will be directly involved in the work of the commission. Rather, this group will provide the leadership for creating the commission and for ensuring that its recommendations are implemented and that progress is evaluated and monitored. Highly placed and well-respected judges, lawyers, and administrators will be necessary advocates for the creation of the commission. Ideally, justices from the state's highest courts, state bar leaders, state court administrators, and other influential judicial, legislative, corporate, community, civic, and labor leaders should be recruited as voices in support of the commission.

It is also important that this group consist of men and women from a mixture of racial, ethnic, religious, and cultural backgrounds. From the outset, the task force effort should draw broad-based support from all segments of the justice system and lay community. Racial and ethnic groups and nonminority supporters will enhance the credibility of the proposed task force or commission and the likelihood of its success.

It is a matter of serious concern when individuals possessing power and influence in the justice system and lay community are actively opposed to the commission effort. Knowing, initially, where these obstacles exist will be invaluable in creating an initial strategy. For example, opposition to the goals of the commission may create obstacles to the resources or cooperation needed to conduct the research.

Accurate knowledge of where the support and opposition to the task force proposal reside will allow for both short-term and long-term success of the plan. If an individual is important to the task force, assumptions should not be made about his or her support or opposition. Simply because a judge is African-American or Hispanic does not necessarily mean he or she will support the creation of a task force. In like manner, judges who might be presumed hostile to the proposal may become powerful voices in support of the task force as a result of effective communication during the initial phase.

2. Is there community interest, support, and leadership for the task force or commission?

Much of the research conducted by the commission will depend upon the support and input of racial and ethnic groups throughout the state. It is critical therefore that the project gain the trust and involvement of these groups from the outset. In many minority communities, there is an active distrust and avoidance of programs imposed upon them from outside forces. Often the cooperation of minority individuals depends upon the involvement and endorsement of known community leaders who will encourage their participation and vouchsafe the process. These key minority persons or groups will be able to assure their constituency that 1) the commission will conduct a legitimate investigation into the truth, 2) minorities have been intimately involved in all deliberations and decisions, 3) the commission is likely to make a difference and to solve problems that affect them, and 4) they will be protected from retaliation.

Trusted community leadership is the only means of assuring individuals that they will be protected and that their participation is critical to exposing and redressing incidents of racial and ethnic bias in the courts. The following is a list of suggested sources for identifying effective minority community leaders.

- Civic and political groups specifically representing a minority constituency
- Established civil rights organizations
- Neighborhood and block associations in predominantly minority areas
- Educational groups
- Fraternities and sororities
- Churches, temples, synagogues, and other religious organizations
- Professional special interest groups
- Volunteer special interest groups, i.e., court and corrections volunteers
- Organized labor and unions
- Sports and entertainment figures
- Governmental commissions, boards, and task forces charged with representing minority interests

3. Are there individuals who will be willing to devote the time and energy necessary to accomplish the work of the task force or commission?

An initial determination should be made that the task force will be supported by a sufficient number of dedicated participants who will be able to accomplish the mandate and goals of the project. The time and energy required from the task force or commission participants should not be underestimated. A strong core of individuals will be asked to volunteer several days a month to the project. They will be required to read, research, and evaluate volumes of materials. Some will write and edit sections of the interim and final reports. Any proposed task force should rely on the dedication and availability of these individuals. Without a sufficient number of dedicated members, the work of the task force will become an impossible burden on the remaining members. At least two-thirds of the task force or commission should qualify as active and committed participants. (The membership criteria of the task force will be discussed in detail in Chapter IV.)

4. What are the issues and concerns of the minority public that argue for or support the establishment of this inquiry?

The history of minorities in this country has clearly demonstrated the need for some mechanism to address racial and ethnic issues in the courts. However, for most state judicial systems, there is a high premium placed on time and resources. There are many worthwhile ideas and projects that might be undertaken to improve the administration of justice in a state. Why, then, should a commission on racial and ethnic bias be established at this particular time? Unless a state has a chief justice, governor, or legislature firmly committed to the concept of the commission, more effort will have to be invested in the documentation of the need. It is likely that even the most committed policymaker will require some documentation as support. This documentation can take many forms and does not necessarily involve extensive research or high cost. Described below are several ways in which the judiciary and other state officials, and community and civic leaders, have established the existence of racial and ethnic bias in their court systems and have promoted the need for a systematic investigation of these problems.

Reports from Other State Task Forces or Commissions on Racial and Ethnic Bias in the Courts. Several states have completed their inquiries and issued reports on racial and ethnic issues in the courts. These reports and the experience of these state task forces are invaluable resources for states considering similar initiatives. The National Center for State Courts is a clearinghouse for all materials generated by these investigations as well as the liaison to the National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the State Courts. Both of these organizations are available to provide materials and advice to individuals seeking to create task forces or commissions in their states. A chief justice from a state that has had a task force may be a powerful advocate for another chief justice who may be considering a task force. Inviting the chair, an executive director, or a member of an existing task force to address a group or organization may create momentum within a state and focus attention on the issue of racial and ethnic discrimination in the courts. Relying on the experience of others is an excellent way to respond to concerns and questions about the task force process.

Reports from Commissions or Task Forces Within the State. It is likely that each state has a significant number of civil rights organizations dedicated to the investigation of racial bias. Groups such as the NAACP-Legal Defense and Education Fund, the American Civil Liberties Union, and the Urban League are valuable sources of information and documentation about racial bias and the courts.

Many states have created and completed the work of commissions on gender issues in the courts before the establishment of a racial and ethnic bias task force. A recommendation from such a body that the chief justice mandate a racial and ethnic study may be significant in encouraging the court to establish a task force or commission. In some states, citizen's commissions for the courts or twenty-first-century commissions have been created. These groups are usually charged with a broader view of the future concerns of the courts and the level of service provided to its citizens. Such commissions are ideal vehicles for documenting the perception of discrimination and the possible existence of racial and ethnic bias. Both legislative and executive initiatives may provide additional opportunities for highlighting the deeper effect of racial and ethnic discrimination in the courts.

Special Interest Groups Within the Justice System. Associations or organizations of minority lawyers and judges can be important forces in establishing the need for a task force investigation. They can conduct independent research into specific aspects of racial and ethnic bias in the courts and publish their findings with a request for further investigation. These organizations can invite expert speakers to address their members about racial and ethnic bias in the courts or sponsor a broader educational program for all judges and lawyers in their jurisdictions. Minority judges and lawyers in panel discussions can speak about their own experiences of discrimination and about the experiences of their minority clients. Town hall-type meetings can draw attention to the issues and encourage lawyers and judges to speak out about racial bias and the need for a task force. In each of these situations it may be appropriate to publicize the event, videotape the proceedings, and make the tape available to those individuals who will be instrumental in approving the creation of the task force.

In the absence of a broad-based public effort, a letter-writing campaign conducted by interested organizations and their members may also be useful. This correspondence should document the experience of the letter writer and request that the chief justice, governor, or legislature

make every effort to address the concerns of minority lawyers, judges, and citizens. The tangible presence of public concern and support within the justice system for the project is important.

State Bar Initiatives. State and local bar associations are valuable resources in creating momentum for the commission. The list below enumerates some of the ways the state and local bars may become involved.

- The state bar can provide data about minority membership and the leadership role minorities have in the bar. In most states this information clearly demonstrates the limited access that minority attorneys and judges have to positions of power in their profession.
- Regional lawyer meetings can be held for the specific purpose of discussing and reporting on the nature and extent of racial and ethnic bias in local court systems.
- Individual sections or committees of the bar can report about specific areas of law that are adversely affected by racial and ethnic bias issues. For example, the criminal law section might report on sentencing differentials or the committee on law and economics might sponsor a survey to gather employment and salary statistics for minority attorneys.
- The state bar may also be an effective voice in calling for an investigation of membership claims of racial discrimination and in offering partnership with the courts in the task force or commission.

Court Administrators and Judicial Educators. Court administrators and judicial educators may be overlooked in the formation and ongoing work of a task force. Yet, these individuals are important allies. Court administrators have access to data and information that will be useful in advocating for the task force. Administrators can also lend their managerial/administrative skills and advice. Their expertise will be particularly helpful in implementing the research agenda, operationalizing the recommendations, and overcoming resistance to the reforms.

Judicial educators possess a unique perspective on the attitudes and behaviors of the judiciary. They will likely already be a part of the national momentum to include bias issues in their educational offerings. Creation of a course component on racial and ethnic bias issues clearly publicizes the concerns about bias and the possible effect it has on the court system. Such a component creates an opportunity for judges to be introduced to the findings and recommendations of other task forces in a nonthreatening, nonjudgmental manner. Many states and national organizations have developed course curricula on racial and ethnic bias in the courts. The National Judicial College, the National Council of Juvenile and Family Court Judges, the National Organization for Women Legal Defense Fund's National Judicial Education Program, the American Bar Association, Washington State Court Administrators Office, the Michigan Judicial Institute, and many other judicial education sources have produced teaching videos, guides, curricula, and course manuals.

These courses should be developed using the following guidelines:

- Select faculty who are knowledgeable about the material and are themselves comfortable in discussing racial and ethnic bias issues. Have a diverse faculty, which includes judges, nonjudges, and minority and nonminority presenters.

- Keep in mind the difficult nature of the topic. It will not always be possible to avoid controversy. The important goal is to keep the channels of communication open on this extremely important and sensitive issue. Allow participants to discover the issues through their own involvement in the process. Adult-learning techniques are critical teaching aides. Make the course relevant to the work of the participants.
- Remember that substantive legal issues are as important as behavioral issues.
- Allow sufficient time for discussion and resolution of sensitive and difficult issues. When a topic is given too little time and attention, the message is that it is not important. Such treatment diminishes the credibility of the course or seminar and prevents complete discussion of the complex issues that are raised.

Civic Momentum and Media Coverage. Do not underestimate the power of community interest and media coverage in creating the momentum for a commission. The courts are influenced by the needs and expectations of their constituencies. As a public institution, the courts (and the judges) are mindful of their public responsibility. Impartial and unbiased justice is a fundamental guarantee of the judicial system. When civic leaders, community groups, and the lay public communicate their concern through the media about the existence of racial and ethnic bias in the courts, judges will likely be persuaded to generate equal attention and enthusiasm for reform efforts.

Newspapers and magazines should be encouraged to cover stories relating to racial and ethnic bias issues in the courts. Broadcast media and the press may be invited to attend meetings, speeches, or presentations on the topic. Articles may also be submitted to legal interest publications, such as bar journals.

Benefits of Preliminary Research. There are several benefits to preplanning task force research. First, much of the information gained in this preliminary phase will become the basis for future findings and recommendations as well as the focus for more intensive research efforts. Second, people and organizations who are contacted during this preliminary phase are potential members, contributors, or public-hearing witnesses. To this extent, this phase may be seen as an initial effort to educate the public about the work of the task force. Finally, a well-documented needs assessment will help eliminate false starts and organizational mistakes and will provide a solid response to detractors who may characterize the task force as a waste of time, energy, and resources. It will also increase the credibility and influence of those who support the task force effort by providing a firm foundation for its creation.

5. Are there sufficient resources and time to accomplish the mandate of the task force or commission in a credible and professional manner?

Commission supporters should also recognize that there is a perception in some instances, and a reality in others, that efforts addressing minority issues tend to be understaffed, underfunded, and inadequately supported—that they are programmed to fail. If, therefore, there is a question at the outset regarding the availability of resources, the task force will be seriously hampered in its work. First, members will feel unduly limited in their research options. Important areas of investigation will be shortchanged or bypassed. Research projects will be restricted in scope and methodology. Second, members will spend a disproportionate amount of time in the fund-raising effort. Substantial momentum will be lost as resource allocation becomes the dominant task force goal. As a result,

many members will lose enthusiasm for the project. Finally, as the time frame narrows and funds are depleted, dedicated members and staff will be required to work long hours and on weekends and holidays to complete the project. Overburdened and overwhelmed by the task before them, they will make every attempt to salvage the project. The result will be burnout for all involved and a product that is less than satisfactory.

Consequently, if adequate resources are not likely to be readily available without an extraordinary commitment of time and energy, it may be advisable to postpone starting the commission and to pursue alternate strategies for generating financial support.

B. The Task Force or Commission Plan

If the five questions in the preceding section can be answered satisfactorily, the groundwork is laid for the successful design and proposal for a task force or commission plan. In designing the plan, four key issues should be addressed.

1. What Is Contained in the Task Force or Commission Plan?

Any proposal for the creation of a task force or commission should include the following components:

- a. The need for the task force or commission (including sample findings and recommendations from other jurisdictions)
- b. The level of support and interest of key members in the legal community who will be willing to devote time, money, and energy to the effort
- c. The level of support and interest of citizens and community leaders representing a broad spectrum of the state's minority constituency
- d. A proposed structure for the task force or commission, including:
 - Proposed mandate (see Chapter III)
 - Recommendations for membership and staffing
 - Time requirements and a time frame for completing the investigation
 - Research methods and project goals
- e. A breakdown of anticipated resource requirements for the task force or commission, including:
 - Tentative budget
 - Sources of direct funding
 - Sources of grant funding
 - Availability of in-kind services and professional volunteer staff
 - Availability of volunteer staff
 - Availability of clerical assistance or administrative support
- f. Discussion of the need for a commitment beyond the final report phase and into the implementation, monitoring, and evaluation phases.

g. Outline of the role of the chief justice and administrative director of the courts highlighting the need for an open dialogue between commission leaders and the court and for active, visible, and ongoing leadership from the mandating authority.

In creating the commission plan it is essential to anticipate the needs of the commission. Once the chief justice (or mandating authority) has agreed that the project is essential, major changes in focus or requirements at a later date will be difficult to justify and may cause a loss of confidence and credibility. Consultation with other task force or commission chairs and executive directors will help to avoid some of the most common pitfalls. Everything the commission will reasonably need to do a thorough and professional investigation and report should be included in the proposal. Any lack of clarity regarding a specific goal, plan of action, or the availability of resources for the project should be noted, and a procedure should be established to help the new commission make a decision on these issues.

2. How Should the Task Force or Commission Be Designated?

There are a few successful operating models from which to choose when determining the appropriate structure for examining racial and ethnic bias in a state court system. First and foremost, the designation of the activity or group as a *committee*, *task force*, or *commission* should be given some consideration. The formal title of the group should be consistent with its mandate, authority, and expected duration. For instance, *committee* might suggest a temporary advisory group and may not confer the same stature to the initiative as *task force* or *commission*. Nor does the word *committee* imply any sense of the group's duration, which is important because activities designed to examine racial and ethnic bias in the court system are not "quick fixes" for correcting the manifestations and consequences of biased treatment.

In fact, the general duration of most state court racial and ethnic bias task forces or commissions is two to four years. This time is spent identifying the real and perceived problems and preparing a substantive final report with findings and recommendations. In a few instances, a task force or commission has been succeeded by another entity, which is responsible for the implementation of recommended reforms. In other instances, task forces and commissions have conducted their investigations and research, while simultaneously overseeing the implementation of programmatic and procedural reforms. Either of these approaches lengthens the life expectancy of the task force beyond the two-year minimum.

There is another important point to keep in mind when selecting the title *commission* or *task force*. A *commission* or *task force* may raise public expectations about the group's role in implementing reforms. This is especially true with commissions, which are frequently perceived by the public as quasi-judicial bodies capable of issuing rules, regulations, or guidelines. For the public, this type of authority is seen as being able to provide some form of redress. Some of these public expectations and perceptions, therefore, may need to be considered when designing the framework of such a commission. If redress is not a primary function of the state court's commission, clarification of its role as a fact-finding or investigative body should be stated at its inception and reiterated during public events (e.g., the commission's public hearings, media events associated with the release of the commission's reports, and relevant court ceremonies).

To date, there appears to have been little functional difference among groups or investigative bodies designated as a task force, commission, or committee. Notwithstanding this fact, the designation is important. Specifically, the title of *task force* or *commission* adds more credibility to the group's role and purpose. One of these two titles is preferred as the more appropriate terminology for a group mandated to conduct a racial and ethnic bias study. These two terms are used interchangeably throughout this report.

3. How Is the Task Force or Commission Plan Presented?

The single most important factor in the success of the task force or commission may be the extent to which the chief justice and the highest court endorse the project. The leadership of the chief justice will mobilize the cooperation of the judiciary as a whole. Even if the highest court is not the funding agent for the commission, all research, reforms, and recommendations will depend upon the court's willingness to cooperate with the commission. All proposals, therefore, should be designed for initial approval and adoption by the chief justice and the state's highest court.

As alternate funding sources are identified, other key individuals and organizations may be targeted as critical actors in the task force or commission plan. Included in this list may be the following:

- Governor
- Legislature
- Minority bar associations
- State bar president and board of commissioners
- State court administrator
- Judicial councils
- State and local judges' associations

Once the necessary mandating and funding sources have been identified, it is essential that appropriate protocol for the proposal process be followed to avoid detrimental breaches of etiquette. It will be important to have the counsel of individuals who are familiar with the personalities and relationships of the key parties. It also will be important to know the positions taken by these key individuals on racial and ethnic bias issues. Before meeting with potential mandating and funding sources, send them a proposed agenda, along with a list of attendees and a *brief* synopsis of the commission plan with supporting documentation.

The meeting should be attended by a limited, and carefully selected, number of people and chaired by the most persuasive and influential spokesperson for the group. Media coverage is not appropriate before this event because a chief justice or legislator who might feel forced into creating the task force is likely to resist cooperation. Even if the task force is created, disinterest or enmity can be a significant source of difficulty, even harm, later on.

4. *What Options Exist in the Event the Task Force or Commission Plan Is Rejected?*

In their manual *Operating a Task Force on Gender Bias in the Courts*, Lynn Hecht Schafran and Norma Juliet Wikler present an excellent discussion of the steps to take “when the chief justice says no” (pages 15-16). Their recommendations are applicable to obtaining support for a racial and ethnic bias task force in the face of opposition from any policymaker.

- Try to keep the door open for future discussions and forestall a final negative decision.
- Get as much information as possible about the reasons for the chief justice’s refusal. Remember, the real reason may not be apparent. Summarize the objections and ask whether the summary accurately describes the position taken by the chief justice.
- Do not respond immediately to the refusal. Take time to discuss the chief justice’s objections with the broader group and request a return appointment.
- Use the time before the scheduled appointment to 1) reevaluate the strengths and weaknesses of the proposal; 2) determine whether there are other forces at work in opposition to the effort; and 3) formulate a response and garner additional support.
- If the final answer is no, do not necessarily abandon the effort. Maintain communication and cooperation with the chief justice and indicate that you will be updating him or her on the progress of the proposal.
- Maintain small scale efforts at addressing racial and ethnic bias and continue to recruit supporters.

C. **Establishing an Independent Task Force**

It is possible that all efforts to establish a formal racial and ethnic bias investigation by court mandate will fail. In that event, an independent commission may be created.

- Recruit from those persons whom you have already contacted and from the comprehensive list of persons who would have been asked to serve on the official court-appointed commission.
- Establish the written mandate, objectives, and goals and compose a lists of priorities to reflect the commission’s independent status.
- Set the timetable and schedule commission meetings.
- Seek financial support from the state bar, minority bar associations, local colleges and universities, community groups, and corporate and private donors. Do not overlook voluntary, in-kind services and public support.
- Determine the research agenda and the data collection methods. Plan for obtaining the needed court data.
- Devise a marketing strategy to promote the commission’s visibility. Invite the press to attend public hearings and other significant meetings.
- Develop a press package to keep the pubic informed.
- Keep the chief justice and other key players informed about the commission’s progress.
- Disseminate your report in a timely fashion and invite feedback from all segments of the community.

- Follow-up on the report's dissemination and analyze the content of the comments.
- Request another meeting with the chief justice and members of the highest court to present your findings, recommendations, and the feedback that the commission has received from all segments of the community. Renew the commission's request to establish a court commission on race and ethnic bias in the courts.

Chapter III

Fashioning the Mandate

One of the first efforts to be undertaken, preferably before commission activities, is drafting the mandate. The mandate is an authorizing document, which creates the task force and defines the scope of its authority. At a minimum, the mandate should describe the parameters of the study to be pursued and the desired end products. Included should be statements regarding 1) the perception and existence of racial and ethnic bias in the courts, 2) the nature and extent of the authorized investigation, 3) the anticipated focus of recommendations for reform, and 4) the commitment on the part of the mandating authority to address the recommended reforms.

This chapter discusses the mechanics and possible challenges of drafting a mandate.

A. What Is the Mandate?

The mandate details the commission's "mission" or scope of work. It also details the nature of the authority with which the appointing official clothes the commission. For example, if the appointing authority is the chief justice, he or she may limit the scope of the investigation to those areas he or she controls or influences, and the mandate should reflect those limitations. If the commission receives broad-based authority to examine a wide range of issues, the mandate should likewise reflect the expanse of the task force's scope. Thus, although a seemingly simple document, the mandate should be born of careful, detailed analysis and thought.

As well as defining the task force's authority, the mandate may also define the funding needed, the access necessary to gain information, the expertise required of task force or staff members, and the amount of time needed to complete the project. It is, therefore, necessary to fashion the mandate with full consideration of the desired end product(s).

The end product of most commissions is a report with recommendations. Accordingly, before fashioning a mandate, it would be wise to review the reports and recommendations of other commissions and task forces and to compare their final reports with their respective mandates. This review will provide a sense of the scope of work undertaken by other task forces and reveal a marked uniformity in their mandates and end products. The mandates of most existing and former task forces have yielded largely policy documents that call for change not only by the authority that created the task force, but by other branches of government and nongovernmental agencies that are integral components of the justice system as well. The documents also are partly blueprints for change within specific arenas, e.g., the courts.

Two possible exceptions to this general pattern are the commissions of New York and New Jersey. The New York Commission sought to narrow its scope to the authority of its appointing authority, the chief judge. Thus, the mandate, report, and attendant recommendations speak to the direct authority of the chief judge, e.g., hiring of nonjudicial personnel, to the chief judge's "spheres of influence," and to the curriculum of the state's law schools. Likewise, the New Jersey Task Force directed recommendations to the chief justice and supreme court, and, where appropriate, suggested that the supreme court present recommendations for reform to the governor and state legislature.

Reviewing the mandates of other task forces may cause a new task force to take a different approach to defining its mission and making projections about its desired end product(s). Such creativity would be a welcome addition to a growing number of models for change represented by state task force mandates.

B. Scope of the Mandate

A number of issues should be addressed in fashioning the mandate. These issues concern the breadth of the work to be undertaken by the commission. One of the first issues is defining the term *minority* and determining what groups will be embraced by that definition.

1. Defining Minority

Before embarking on any investigation or research, most existing task forces and commissions have been faced with a key question. That is, whether to limit the investigation to the racial and ethnic classifications used historically by civil rights groups, or to expand the investigation to include other ethnic or disadvantaged groups. For example, soon after its inauguration, the New York Commission began to receive requests from various groups for inclusion in its investigation. Those groups included Irish-American court officers, Jewish court employees, and gay and lesbian court users. Because New York had not defined the term *minority* in its mandate or founding documents, these groups were understandably seeking inclusion.

Most state commissions and task forces have confined their investigations to the historically disadvantaged racial and ethnic minority groups—African-Americans, Asian/Pacific Islanders, Hispanics, and Native Americans. Michigan has the largest population of Arab-Americans in the United States and chose to include this group as well. This approach does not assume that these major racial and ethnic groups can be lumped together into one minority category. On the contrary, it is essential that the experiences and perceptions of each minority group be viewed separately. This allows for earlier identification of unique or similar patterns of treatment.

There are a number of options available to determine the groups to be included within the definition. Task forces and commissions have considered the range, from those persons who have traditionally been considered “minority”; to those who fall within a legally recognized “protected class”; to groups included in federal or local definitions of the term; and to those persons who share a common characteristic and who assert “adverse impact” because of certain governmental policies and practices. The more groups included, however, the more complex the logistics of determining the extent of their representation on the task force and the nature of their input. Census data may be useful in determining proportional representation; however, the dominant minority group within the jurisdiction, or the group that may have spearheaded the effort to have a task force or commission established, may raise legitimate claims of dilution of their efforts and interests.

To appreciate the complexity of the problem, one should consider the efforts of the New York Commission on Minorities. For its public hearings, it contacted a diverse Asian community of Chinese-Americans, Korean-Americans, Japanese-Americans, and Southeast Asian-Americans. Similarly, in Washington the task force outreach included contact with a diverse Asian-American community and a significant effort to reach the state’s thirty Native-American tribal groups.

2. Combining Gender and Race

There have been a few attempts at combining gender and racial bias task forces. To a very limited extent, it has worked; for example, in the conduct of demographic or court employment studies. The examination of gender and racial bias, however, usually has resulted in separate studies or research efforts. This is because race and ethnic bias and sexism are different sociological problems that require different solutions. Moreover, the investigative tools or methodology used to identify the subtle biases directed at racial and ethnic minorities are not automatically transferable to identification of gender bias. Finally, racial and ethnic bias studies examine diverse groups of people, all of whom need to be represented on or involved in the task force process. Balancing divergent goals is often more complicated than consensus building among individuals who represent a specific target group or audience. Therefore, to combine gender bias and racial bias studies into one activity diminishes both efforts. While joint efforts are feasible, each area of bias is unique and requires a separate investigative body, task force, or commission.

3. Perception Versus Experience

The commission should determine the extent to which it will focus on perceptions as opposed to actual experiences of racial bias. Given the importance of the public's perception of the ability and willingness of the court to mete out justice, perceptions of bias and the reality of bias are equally detrimental to the system. If the commission relies more on perception than it does experience, it opens itself up to charges of witch hunt. This charge alleges that perceptions can be erroneous or based upon insufficient evidence. It may suggest that the commission is attempting to justify its existence by relying upon flawed data that do not establish irrefutable patterns of biased treatment.

Documenting experiential racial discrimination, however, is quite a challenge. Such data are the most compelling evidence of bias. To the extent patterns can be established from experience, there exist fewer grounds for challenging of findings. Collecting evidence of actual bias is difficult, however, because the instruments used can be costly to design and implement. Further, as many task forces have discovered, persons involved in the court system are often reluctant to share experiences for fear of retaliation. Thus, an over-reliance upon proof of actual experience can lead to claims of whitewash. Those making this charge will assert that actual proof of intentional bias sets up an impossible mission for the task force, one predestined to fail.

4. Treatment and Representation Issues

The perception/experience dichotomy crystallizes when the commission focuses upon treatment and representation questions. These inquiries concern both the breadth and the depth of the task force's work. The breadth covers the spectrum of points of interaction between the user and the system (treatment); the depth looks down the "pipeline" to determine the adequacy of representation of minorities working in the justice system. A complete mandate will address both levels of inquiry.

When focusing on treatment issues, the commission should look at all possible minority users of the courts, including lawyers, litigants, witnesses, jurors, observers, or reporters. Such users also may include court employees, both judicial (judges and attorneys) and nonjudicial (court reporters, clerks, other professional staff, and secretaries), as well as ancillary workers, such as probation officers and social service workers. Another area of investigation may include the status of minority lawyers within the larger legal community, i.e., law firms, law schools, mediation and administrative tribunals. Again, the extent to which the commission's investigation encompasses most, if not all, of these users will dictate the comprehensiveness of the report and the soundness of the recommendations. An exhaustive review, however, takes both time and money, and no task force to date has had an abundance of funds.

Once the decision is made as to what racial minorities are "adversely impacted" or make up the "protected classes," the next step is to determine "from whom" these court users are receiving unfair treatment. Implicit in this inquiry is the scope of the commission's definition of the *justice system*. The public rarely makes definitive and pristine distinctions among the different actors within the justice system. The conduct of the police, for example, is used to condemn the actions of the judiciary. It is important, therefore, to look at the treatment received by all court users from all the actors in the system—police, administrative law personnel, prosecutors, defense attorneys, judges, and probation and corrections officials.

When looking at employment profiles to examine issues of adequate representation, it is necessary to identify the sources of potential applicants and to determine the corresponding participation of minorities in the applicant pool. Consequently, to assess under-representation on the bench, a review of minority membership in the bar and enrollment in law schools also is necessary. Task forces and commissions have taken different approaches to these issues. While the New York Commission chose to focus on the treatment of all users of the court system, it, like the New Jersey Task Force, chose to make recommendations *only* about those actors in the system over whom the chief judge had actual authority or considerable influence. This made it possible to determine the extent to which the court system has been responsive to and accountable for the recommendations of the commission. The New York Commission also conducted an in-depth review of the representation of minorities in the court system to discern what role, if any, those actors over whom the chief judge had authority contributed to any under-representation of minorities and to assess the relative degrees of under-representation within various departments, units, offices, and districts.

The Florida, Michigan, and Washington task forces chose to look at the breadth of the problem. They focused on all the actors within the justice system to provide as comprehensive a picture as possible and to make policy statements where appropriate.

5. Review of Substantive Law

A final determination to be made by the commission is whether it will end its inquiry at treatment and representation of minorities or will review areas of substantive law for bias. This is an important issue since this kind of review goes to the heart of judicial decision making. To conduct a comprehensive review, however, calls for a commitment of resources beyond those available to most task forces.

The District of Columbia and Florida task forces reviewed substantive law areas. The New York Commission, during its hearings, was asked to look at one such substantive area, i.e., the limitations in law governing recovery in personal injury cases. Although its final report does address civil case outcomes, it does not review disparate outcomes due to the substantive law.

6. *The “Elastic Clause”*

The mandate of the New York Commission provides, in relevant part, that “the Commission also may study other areas within the power and authority of the Chief Judge to effect change in order to complete its study on the treatment of minorities in the courts and to make recommendations which will ensure the operation of a totally bias-free system.”

The reason for this provision, which became known as its elastic clause, was the belief that the commission would have to review the criminal justice system as it relates to over-representation of minorities as users of that system. However, as the commission had neither the funding nor the longevity needed to review the entire criminal justice system, it limited its investigation to aspects of that system relevant to its mandate, e.g., general treatment issues.

Had the commission stated in its mandate that it would review the criminal justice system, the commission felt that it would have raised expectations beyond those it could meet. The elastic clause allowed the commission to choose those areas that it deemed most relevant, without raising expectations that it would engage in a total review of a problematic area.

C. **Writing the Mandate**

The mandate of the commission or task force can raise or lower expectations of the targeted groups, the legal community, the public, and other observers. The more realistic and realizable the mandated mission, the greater the chances of meeting those expectations. Accordingly, in fashioning such a mandate and thereby determining the mission, the mandating authority and the commission will ultimately guide the commission’s work and strongly influence the likelihood of success.

A commission’s mandate can be multifaceted. Each aspect could involve a specific segment of the courts’ operations (e.g., family court), specified parties who operate within the courts (e.g., court officers), or selected topics (e.g., the question of disparate sentencing). The New York Commission’s mandate was fivefold. First, it was to ascertain how both the public and court participants perceive treatment of minorities, as well as the extent to which minorities voluntarily use the courts. Second, the commission was to review the representation of minorities in nonjudicial positions, e.g., court clerks, court reporters, and court officers. If under-representation was found, the commission was to recommend ways to increase the number of minorities in nonjudicial positions. Third, the commission was to review the two selection processes for judges—elective and appointive—to determine which results in greater minority representation. Fourth, the commission was to examine the representation and treatment of minorities within the legal profession. Finally, the commission was to review other areas (its elastic clause) it deemed appropriate to its investigation.

The Information Service of the National Center for State Courts can supply copies of mandates from other task forces and commissions.

Chapter IV

The Roles and Responsibilities of Key Actors in the Task Force or Commission Process

There are five key actors or sets of actors who are ultimately responsible for the success or failure of the commission: the chief justice/judge, the chair, the vice-chair(s), the members, and the executive director. Each individual has a unique role to play. From the outset, it is imperative that everybody understand their responsibilities and the responsibilities of their colleagues. This not only assists in the selection of the best possible candidates to fill these task force positions but also decreases the likelihood of conflict between the parties.

A. The Role and Responsibility of the Chief Justice (Mandate Source)

In almost all jurisdictions, the responsibility for creating the task force rests with the chief justice of the highest court. Following are ways in which a chief justice can provide effective, on-going leadership for the task force:

- Announce publicly the formation of the task force or commission and personally endorse the investigation.
- Appoint the task force or commission chair, members, and executive director. (It is recommended that the selection of these individuals be accomplished under the guidelines discussed in this chapter.)
- Notify each judge in the state of the task force or commission, state its mandate, and request full cooperation and support from the judiciary.
- Fund the task force or commission at a level sufficient to provide a credible and professional report and subsequent implementation of its recommendations.
- Establish a direct line of communication with the chair.
- Review regular reports on the status of the task force or commission and periodically attend meetings.
- Implement interim measures to address immediate concerns where appropriate. (One chief justice adopted a hiring policy for minority judicial clerks after the state task force notified him of disproportionate hiring figures.)
- Focus ongoing public attention to the work of the task force or commission through press releases, speeches, interviews, articles, public presentations, and conferences.
- Require mandatory attendance where appropriate or encourage all judges to attend the presentation of the task force or commission reports.
- Endorse appropriate findings and recommendations and direct or encourage state judges to examine and follow such recommendations.
- Order where appropriate, or urge, state judicial education programs to develop course components and curricula that focus on cultural diversity issues.

- Examine practices and policies of the supreme court and the state court administrator's office to ensure that they represent a bias-free model for the entire judicial system.
- Commit to address the task force or commission quickly and to provide adequate resources and support for the implementation, monitoring, and evaluation phases.

B. The Role and Responsibility of the Task Force or Commission Chair

The task force or commission chair is the primary source of leadership, motivation and direction for the work of the task force or commission. The chair should have a unique combination of managerial skills, political savvy, and substantive expertise. In many ways the chair is the keeper of the vision of the task force or commission. As a result, he or she is required to provide leadership and direction to the task force or commission, by resolving conflicts, encouraging communication and the exchange of ideas, demonstrating commitment, and generating ideas and sharing insights into the issues before the task force or commission. The responsibilities of the chair cover all phases of the task force or commission process. Following is a basic job description for this complex and challenging position:

- Serve as liaison between the task force or commission and the chief justice. Additionally, the chair serves as a liaison with the state court administrator, the executive and legislative branches, and all other organizations responsible for the mandate and funding of the task force or commission.
- Serve as spokesperson for all public relations and media coverage. In the event that this responsibility is delegated to another individual, the chair should exercise final approval for all press releases and public items.
- Appoint all committee chairs, approve meeting agendas, and conduct meetings.
- Select and supervise the executive director. (Note: In many states the executive director is hired by the supreme court, administrative office of the courts, or a combination of individuals.)
- Approve the budget and authorize all expenditures and fund-raising efforts.
- Provide broad administrative direction for the commission work by working with the executive director. The chair should not directly supervise line staff.

All problems and questions that arise in a project of this magnitude cannot be solved at the committee level. As a result, the chair should be prepared to respond to these issues quickly, decisively, and effectively. Given the crucial role to be played by the chair, great care should be given to his or her selection.

1. Selecting the Chair

There are two options for selecting the chair. The appointing authority can make the selection ("appointing-authority option"), or the commission members can select a chair from among themselves ("commission-selected option"). There are benefits and drawbacks to both options. By empowering the commission to make the selection, the appointing authority can clothe the group with a level of independence that will increase the credibility of both the appointing authority and the

commission. A critical factor, however, in the commission-selected option is that the members likely will not all know each other, thereby complicating the selection process.

Moreover, given the need for commission members to be as responsive to the needs of the appointing authority as they are to the needs of their other constituencies, the insularity of the commission-selected process may limit the ability of the commission to further the aims of either its constituencies or the appointing authority.

The appointing-authority option, on the other hand, maximizes the extent to which the authority's views and needs are made known to the commission and the extent to which those views are shared by the chair-to-be. This process also allows the appointing authority to maintain a certain level of access to the commission. It is important for the chair and the appointing authority to maintain as close a working relationship as possible, particularly given the sensitivity of the topics to be covered. This relationship may be enhanced when the selection process itself establishes the initial connection between the authority and the chair.

A further benefit of the appointing-authority option is that valuable time is saved in identifying task force members. The experience of commissions and task forces to date suggests that the appointing authority usually has limited access to minority communities; this deficit can make the identification of appropriate task force members a slow process. If the chair comes from a minority community, or is acceptably knowledgeable about minority communities (and all minority communities should be represented), the selection of the chair by the appointing authority may expedite the formation of the commission because the chair will have the knowledge base needed to identify possible task force members quickly without engaging in extended outreach.

Finally, the selection of a chair who is known and respected in minority communities and the community-at-large will send a positive message to the public about the appointing authority's expectation that the commission will make a difference.

General Traits. There is almost universal agreement among the commissions and task forces that the chair should have the following attributes: strong leadership and proven administrative abilities, as well as strong ties to the communities that will be represented by the task force. The chair should be established in his or her field of endeavor so as not to be perceived as using the task force as a stepping stone to higher position. The chair should also have access to a broad spectrum of people in different disciplines and fields so that the task force will have broad-based appeal and access.

Person of Color. The question of whether the chair should be a person of color is often asked. The majority view is yes for a number of reasons. First, as discussed earlier, the appointing authority makes a statement of principle when selecting the chair. Selecting a person of color shows that the authority seeks to empower minority communities with the authority and credibility to investigate issues uniquely affecting them. Too often the study of race issues has been the sole province of white researchers, rendering minorities as the observed "specimen."

A second reason is that a person of color, absent a personal history that may suggest otherwise, may have greater access to minority communities and a greater ability to establish the level of trust needed to gain desirable information. Further, it is not unreasonable to assume that a person of color would have preexisting relationships with other persons of color, thus enhancing access to information for the task force.

It also may be argued that a person of color, by virtue of his or her minority status, has a profound appreciation for both overt and covert aspects of race and ethnic bias. A person of color, therefore, would not have to invest time and energy gaining an appreciation for the problem.

On the other hand, it may be argued that the color of the person's skin does not matter as long as he or she has a keen appreciation of the concerns of those whom the commission represents. Eight of the fourteen state commissions and task forces established have persons of color as chairs.

Which Minority Group? A question embedded in the above discussion is "To which minority group should the chair belong?" Again, the prevailing wisdom is that the chair should be a member of the largest minority group within the jurisdiction. Most of the minority chairs to date have been African-Americans. This selection has been more a function of the demographics of those jurisdictions that have established commissions, the active participation of racial and ethnic groups who have spearheaded the establishment of the commission, and an assessment of the adverse impact the court has on specific minority groups. These jurisdictions have tended to be the larger, more heavily populated states that have sizable, if not majority, African-American populations within predominantly urban communities. If the chair's background does not reflect that of the minorities within the jurisdiction, it is essential to balance the commission with such members.

Member of the Judiciary. Another often-asked question is whether the chair should be a judge. The arguments favoring a member of the judiciary are as persuasive as those countering such a selection. The arguments in favor revolve around the level of trust and credibility such a person would engender from his or her colleagues. With a judge as chair, the participation and support of the judiciary may be easier to obtain because of the belief that a judge would likely take special care not to present the judiciary in an unnecessarily unfavorable light.

The countervailing view is that a judge might be overprotective of the interests of the judiciary, resulting in a less credible commission and even less credible results. Of the fourteen commissions and task forces, twelve have been chaired by judges. If a judge is chosen, it should be the judge of the highest court in the state. This avoids the appearance of constrained leadership because of fear of blocked advancement, and it encourages cooperation with the commission's efforts by bringing into play the tendency of persons to defer to those in higher authority. A final caution here is that commission members may defer too much to the judge as chair, particularly lawyers who may be unwilling to criticize the judiciary in front of judges.

2. *Selecting Vice-Chair(s)*

The New York experience illustrates the need for and the desired attributes of a vice-chair. A year before completion of the final report, the chair of the New York Commission, Ambassador Franklin H. Williams, died. Had it not been for the vice-chairs, there probably would not have been

the seamless leadership transition that occurred. There was little time or energy lost in deciding upon a successor because the chief judge was not required to engage in a new selection process, which could have raised anew all of the issues mentioned above.

The New York Commission had two vice-chairs by agreement of the late chair and the chief judge. One vice-chair, the choice of the chief judge, was a member of the judiciary and a person of color. The other was a nonminority member of the bar and partner in a major law firm. The chief judge selected the latter vice-chair as the successor to Ambassador Williams. The professional affiliations of the successor chair were critical to the transition and report-writing phases of the commission's life. His access to resources and people was instrumental in finishing the final report. For this very reason, at least one vice-chair should have proven administrative abilities.

C. The Role and Responsibility of the Task Force or Commission Members

Careful selection and briefing of task force or commission members will reduce the possibility of appointing individuals who contribute little to the task force or commission. However, task force or commission members will, by their very nature, have differing levels of commitment and available time. While the following list outlines the ideal role of the task force or commission member, there may be valid reasons to appoint a member who will not be able to meet all of these requirements. Such a person may provide important leadership in the implementation phase, enhance the political credibility of the project, or have significant connections in the legal or minority communities. These factors may override the desire for full participation of a member in the work of the task force or commission. Additionally, such a person may be helpful in a narrowly circumscribed area such as fund raising.

The recommended role and responsibilities for the task force or commission members are:

- Attend all meetings (both full and subcommittee). Complete assignments for these meetings and arrive prepared.
- Read materials and become familiar with the substantive issues under investigation.
- Participate with an open mind and listen to the opinions of other members and presenters. Find consensus when possible.
- Maintain the confidentiality of the process and deliberations of the task force or commission.
- Speak in support of commission or task force goals to colleagues and the community.
- Participate in the writing or research assignments necessary for the final report.
- Participate in commission focus groups, public hearings, and town meetings and make public presentations.
- Communicate honestly and clearly all concerns relevant to the goals of the task force or commission.

1. *Selecting Commission Members*

How Many? The decisions regarding “whom to select” as commissioners and “how many” are coextensive. Appointing authorities tend to select as many persons as may wish to serve. Thus, to date, there has been no task force or commission with fewer than fifteen members, with nearly half having memberships ranging from twenty-seven to forty-eight.

The challenge is to balance the need for maximum representation with the need to contain the membership size. Consortium members have learned that a task force with more than twenty members can become unwieldy. With a larger task force or commission, meeting and communication logistics consume much valuable staff time, and consensus building, the operative model of commission decision making, becomes a formidable task.

Representativeness. The nature of the representation will vary. The commission should have members from each of the racial and ethnic minority groups represented within the state. The exclusion of any legally recognizable minority group may undermine the credibility of the task force and may be used to discredit its report. For example, the New York Commission was roundly criticized for not having had representation of Native Americans. Although the selection of a staff member who was from one of the Indian nations located within New York State did abate some of the criticism, the commission’s detractors used the exclusion of Native Americans as a further example of biased treatment by the court system.

Access. Commission members should have sufficient stature and credibility within their communities to provide the commission with the access needed to facilitate the exchange of ideas and information between the community and the task force. Such stature also will allay concerns in the community that task force members will become pawns of the appointing authority.

Interdisciplinary Representation. There should be a cross-section of disciplines represented on the task force. To avoid over-representation of members of the judiciary and the bar, the commission should include academics, community activists, representatives of business and industry, law enforcement and corrections officers, and nonjudicial personnel. Finally, there should be persons, who, by their history, stature, and position, lend additional credibility to the commission, e.g., Ambassador Franklin Williams and Cyrus Vance on the New York State Commission and Frank Scruggs as chair of the Florida Task Force.

The nature of the representation does not end here, however. The commission should include representation from as many of the different interests in the judicial system as possible. Thus, if the commission is to review practices of unions with regard to allegations of bias, for example, it would be helpful to have a union official or representative as a commissioner. Such a presence will allow for access to other union officials and otherwise inaccessible information; it will also provide wider acceptance of the findings and recommendations.

Finally, there should be statewide representation. To avoid over-representation of members from the large urban areas, a common occurrence in existing commissions, try to select persons who represent all parts of the state, including both urban and rural interests.

Notwithstanding the need to maximize the task force's diversity, the key to a successful commission is the extent to which the members are committed to the mission. As in any endeavor, there will be times when that commitment is tested and should be renewed. There will be times when the extent of that commitment is discovered only through the commission process. The commission, however, may suffer if that commitment, or its seed, is not present at the outset. Accordingly, there should be extra effort to ensure that such commitment is present, either through word or deed, and that the commitment will continue throughout the commission's life.

D. The Role and Responsibility of the Task Force or Commission Executive Director and Staff

The position of task force or commission executive director is one of great challenge and stress. In the recommended structure, the director is a full-time employee who is ultimately responsible for all tasks and assignments delegated to staff. It is recommended that the director be an equal participant in the deliberations and work of the task force. The executive director should be responsible for defining work load limitations, project feasibility, and cost/benefit boundaries within the task force mandate and goals. Limited time, staffing, or funds prevent most task forces from accomplishing every goal. It is the executive director's responsibility to balance ideology with practical administrative considerations. Not all issues can be researched and not all research can be exhaustive. The executive director should inform the chair and members of the available options and request that goals be prioritized within reasonable limits.

Following is a list of responsibilities that should be shouldered by the executive director.

- Accountability to the task force or commission chair regarding all aspects of the project. This includes a regular reporting schedule as well as distribution of documents and reports to members, the public, and the courts.
- Administrative authority for hiring and managing staff.
- Administrative authority for the following:
 1. Clerical support
 2. Budget and accounting
 3. Grant requests and reporting
 4. Research and data collection
 5. Public hearings
 6. Report preparation and dissemination
 7. Public relations
 8. Administrative management of external research
- Liaison for task force or commission members and chair. The executive director should be capable of bringing together divergent styles, differing purposes, and challenging personality dynamics to form a workable coalition among task force or commission members.
- Expertise in law, criminology, minority issues, or research theory. The executive director should be capable of both answering questions in the substantive areas of the project's investigation and identifying resource materials.
- Responsibility for all educational programs for the task force or commission. This includes written materials, guest speakers, video presentations, and the hiring of outside consultants to conduct seminars and symposiums.

- Coordination and preparation of all grant requests and research projects. Responsibility for quality control and adherence to reporting protocols.
- Responsibility for the production and editing of all reports.

1. *Selecting the Executive Director*

Whether the individual is called the *project director*, *staff director*, or *executive director*, he or she will have the same goal—to get the job done. How the job gets done will depend in large measure on resourcefulness and scope of authority.

A recruitment announcement for the executive director should include such qualities as proven administrative ability; good communication skills, both oral and written; ability to work well with others; availability for travel; cross-cultural competence; and the commitment to put in the requisite time to complete the tasks at hand. The search for such a person should be the responsibility of the chair.

The chair should search for someone with whom he or she can work as a team. The talents of the chair and executive director should complement each other and provide the task force with dual avenues of strong leadership. In some cases the executive director is hired by the state administrative office of the courts. The same criteria for selection should apply in this case.

It has been often asked whether the executive director need be a lawyer. The answer depends upon the qualifications and preferences of the chair. It is recommended that one of the two be a lawyer; preferably, a litigator. The skills, knowledge, and insight that a litigator brings to an investigation of the treatment of minorities in the courts are obvious—knowledge of the players, exposure to the processes, and experience with the system. Clearly, if the chair is a judge or lawyer, this knowledge and experience base is covered, thus leaving room for other skills, knowledge, and insight to be contributed by the executive director.

A second often-asked question is whether the executive director need be a person of color. Given a goal found in the mandates of most commissions, i.e., to determine the representativeness of the judicial and nonjudicial officers of the courts, efforts to balance representation on the very body engaged in addressing the question should be exerted at every hiring and selection point. Thus, it is imperative that the staff be as reflective as possible of the minority groups to be studied. Accordingly, if the chair is a person of color, the executive director, as the other integral member of the commission's moving force, need not necessarily be. In any case, effort should be expended to select an executive director whose background demonstrates cross-cultural experience, sensitivity to race and ethnic issues, and an appreciation for the subtle, overt, institutional, and individual manifestations of race and ethnic bias.

There is one logistical issue that should also be acknowledged in the selection of an executive director—location. The experience of a number of project executive directors suggest that the chair and the executive director should work and reside near to each other. It will be important for the executive director to confer with the chair at his or her job site since the chair will normally have a full-time job. Where there is substantial distance between their locations, too much time can be lost in transit.

Finally, there is no consensus on whether the executive director should also be a member of the commission. On one side of the debate is the need to elevate the status of the executive director to be commensurate with his or her responsibility. On the other side is the argument that staff functions should be maintained separately from those of commissioners, which is more closely analogous to the policy function of a corporate board of directors.

Two other parties are needed to complete a staff—a research director and secretary. While both play critical roles in the work of the commission, only the secretary need be full-time.

2. Research Director

Whether a research director will be full-time or part-time depends upon the amount of original research to be conducted and availability of resources. Research activities of the commission can be identified as follows: organization and information gathering, issue identification and research, and consensus building and report writing. A research director can effectively contribute to all three phases. If funds are limited, however, a part-time researcher will be most useful during the issue identification and research phase, where the need for research expertise is greatest.

If the decision is made to hire a researcher, various abilities will be important, in addition to excellent research skills. Given the usual low level of funding for task forces, the researcher should have a proactive, “entrepreneurial” view of research; in other words, creativity in identifying needed resources, rather than expecting all resources to be provided.

Research direction can be provided by a consultant or a salaried employee. It generally will be easier to control the time and work product and, therefore, the cost with a salaried researcher. Consulting agreements should be carefully crafted to ensure that the desired product is received for the agreed-upon price.

While it is preferable that the research director have experience with the legal profession and the courts, it is not a requirement, especially if the chair, executive director, or other commissioners have legal experience. The commitment of the researcher to the goals of the task force is crucial to the success of the research agenda. The research director should understand and actively support the commission’s efforts to ensure that the research strategies or initiatives match the goals of the commission.

3. Task Force or Commission Support Staff

It is necessary to have a full-time secretary to the commission. This person may also serve as the office manager and perform other administrative tasks, such as scheduling public hearings and commission meetings. The importance, however, of other support staff cannot be overstated. In the final analysis, they will carry the burden of the project work.

Depending upon the planned scope of work for the task force or commission and available funding, additional staff may be required to perform one or more of the following functions: full-time scheduling of commission meetings, public hearings, focus group sessions, and other information-gathering/exchanging endeavors; full- or part-time data processing; full- or part-time committee

staffing; and depending upon the kind of research planned, temporary or full-time assistance with legal and social science research (e.g., literature reviews and case studies).

There are also various individuals and organizations that can provide assistance to the commission's efforts at no cost, including corporate executive exchange programs and "in-kind" or professional services donated by publishers, colleges and universities, law firms, and volunteers. Volunteers may conduct telephone surveys and mailings, and they may also be willing to provide office administrative coverage. The corporate exchange program provided the services of a full-time fund raiser in New York. In-kind professional services can be a source of additional research or writing expertise; for example, in exchange for proper attribution, several law professors drafted sections of the New York Commission final report.

Again, no matter the number of staff persons, diversity should be a prominent consideration in the selection process. There is a practical side for such diversity. This cross-fertilization may increase access and understanding between minority and nonminority communities. A diverse task force also simultaneously educates both minorities and nonminorities and fosters and promotes greater communication and understanding between racial and ethnic groups.

No matter what funding limitations might exist, the staff should be selected with as much care as is exercised in the selection of other members of the commission. The staff should also be considered a part of the commission. The chair and the executive director should be willing to work across traditional status lines and job titles to involve each staff member in the effort.

A word of caution, however, is in order. The appointing authority and task force chair should be careful that task force staff members' roles are clearly defined. Staff are present to assist the task force in completing its tasks; staff are not in place to direct the task force agenda or control the outcome of the investigation. The task force commission members were selected to bring various points of view and areas of expertise to this endeavor.

This issue may be particularly sensitive when the staff is provided by the administrative office of the courts. Staff roles should be defined in terms of the task force structure, mandate, and the degree of independence needed to produce a credible report.

Chapter VI*

Managing the Task Force or Commission Process

A task force or commission on racial and ethnic bias in the courts is a unique entity. By its very nature, participants in the process are a diverse mix of personalities, views, and purposes brought together to agree upon and accomplish a set of goals. The goals and objectives will be developed by implementing the commission mandate. Before these goals can be achieved, however, these divergent views and personalities should come together in a unity of vision and responsibility. Without such cooperation, the task force or commission faces the very real danger of internal conflict and disintegration. This cooperation is especially important when considering the nature of the task force or commission mandate. Because of the sensitive nature of the issues, any investigation of racial and ethnic bias is likely to evoke strong feelings and reactions. Initiating such an investigation in a system as significant as the judiciary necessarily fosters intense scrutiny. It will take effective management to marshal the divergent views and personalities into a cooperative and productive effort.

This chapter will examine various ways in which task force or commission chairs and directors can strengthen the administrative base of the project. By anticipating and eliminating potential “managerial” problems, the task force or commission can dedicate its time and energy to the substantive work of education, research, and reporting. This can be achieved by adopting the following strategy:

- Create clearly defined reporting relationships
- Develop a strong organizational foundation with clearly defined administrative guidelines
- Establish an effective public relations policy
- Use team development techniques to motivate participants and to maintain commitment to the project
- Use intensive training workshops for key issues

A. Create Clearly Defined Reporting Relationships

The task force or commission is accountable to the source of its mandate for the final product, and to the source of its funding for its expenditures. In most jurisdictions these sources are combined into one entity. However, some states have established multiple reporting requirements. Similarly, most states have adopted a unique reporting relationship between the chair, director, and staff. It seems clear that no one task force or commission structure has been the predominant model. In Chapter V four different task force or commission models are described. Each model reflects a reporting structure that has been used by a state task force or commission. Each model has advantages and disadvantages. In determining the organizational structure of the task force or

* Chapter V, “Financing,” from *Establishing and Operating a Task Force or Commission on Racial and Ethnic Bias in the Courts* was not excerpted for use in this publication.

commission, it is useful to consider the following goals and the likelihood that a given model will achieve these goals.

A task force or commission has a strong organizational structure when:

- There is a low potential for conflict between the mandate source and the funding source. The reporting relationship is not split.
- There is a clearly defined administrative structure. The reporting relationships minimize conflict.
- Administrative resources of the state court administrator's office are available to the task force or commission.
- There is a clear commitment on the part of the judicial branch and the chief justice to the task force or commission mandate.
- There is clearly defined autonomy between the task force or commission and the court system. The appearance of and the potential for improper influence is reduced.
- The task force or commission director reports only to the task force or commission chair.

B. Develop a Strong Organizational Foundation with Clearly Defined Administrative Guidelines

The following guidelines are recommended to assist the chair and the executive director in structuring the commission process. Consistency and accountability are highly effective in moving the project forward. These guidelines are:

- Establish a schedule of meetings early in the process and gain approval and commitment from members for their attendance.
- Notify members of meetings well in advance and provide detailed agendas. Follow the meeting agenda.
- Allocate enough time for the required work and comply with time schedules. If additional time is needed, notify members as soon as possible.
- Review protocol issues with the chair, commission members, and staff. Encourage members and staff to share their concerns with the respective committee chairs or executive director. Discourage direct contacts with the chief justice and state court administrator.
- Do not inundate members with volumes of information. Have supporting material available upon request. Synthesize whenever feasible.
- Assign detail work to staff and committees. Broad policy findings and recommendations should be discussed by the entire task force or commission.
- Appoint committee chairs who are highly motivated, are diplomatic, and have excellent management skills. These individuals, along with the chair, vice-chair, and executive director, should serve as the "executive committee." Their role is to clarify issues, troubleshoot problems, plan agendas, expedite decision making, and provide expertise in the substantive areas of the research.

- Do not follow strict parliamentary procedure during the meeting. Strict procedure may not foster a sense of collegiality and consensus. Establish the mechanics for deciding policy issues. Procedures for voting, quorums, dissenting opinions, and other procedural issues should be agreed upon and adopted by the full task force or commission. Avoid showdown votes and minority positions if at all possible.
- Establish a process for making final findings and recommendations. Individuals who are not present to vote on crucial issues should receive copies of items and be required to register their request to be heard by a certain date. This effectively prevents last-minute revisions and dissents.

C. Establish an Effective Public Relations Policy

Public relations policies and standards of confidentiality should be discussed at the initial meeting of the task force or commission. A policy statement should be drafted, which clearly states the following:

- What part of task force work—proceedings, documents, and deliberations—will be considered confidential.
- A policy regarding open meetings (presence of the public) consistent with the requirements of any “open meeting” laws. Included in this should be a process for inviting guests to attend meetings.
- A media policy should be developed that provides for:
 1. The designation of a media contact person and a public information staff person
 2. An approval mechanism for press and broadcast releases
 3. The compilation of a press kit that includes general information about the task force, the court system, and the plans of action for the task force
 4. The development of a specific press invitation list for the initial press conference announcing the task force or commission, public hearings, announcements of interim and final reports, and any other special events sponsored by the task force or commission
 5. The establishment of a clearinghouse of information and a contact person for members invited to speak to the public on task force or commission matters

D. Use Team Development Techniques

The experience of National Consortium members indicates that many of the unique challenges faced by task forces or commissions have resulted from the process of managing the task force or commission itself. This is not surprising. Task force members are a diverse group of individuals, with differing backgrounds, attitudes, experiences, and levels of commitment. They have been asked, in most cases, to investigate and report on the performance of their colleagues and their profession. The focus of their investigation is a highly charged and sensitive issue—racial and ethnic bias. Discussion of this issue calls into question the fundamental fairness and impartiality of the judiciary. It also has the potential of raising personal issues and feelings of task force or commission members as a result of their own attitudes and experiences. These factors increase the possibility that

the task force or commission may experience some internal stress and that agendas of the individual members may diverge from the common purpose.

Traditional team-building techniques can be useful tools for the task force or commission chair and executive director. By integrating these techniques into the task force or commission process, it is possible to resolve or avoid difficult situations before they escalate into more-serious breakdowns. This will also enable members to develop a greater level of confidence in the work of the group and to work together more productively to accomplish the group's goals.

1. The Leadership Team

The responsibility for leadership rests predominantly with the chair and to a lesser extent with the executive director. The chair and director should work together as a team. Effective leadership is critical to helping the commission accomplish its goals within a prescribed time, budget, and mandate. The following guidelines are suggestions for helping to promote effective leadership to preserve that balance:

- All major policy decisions and task force or commission initiatives should be approved by the full task force or commission. The task force or commission chair should initially inform the members of the time, resource, and funding parameters for each initiative.
- Members should be encouraged to state their concerns. No problem or request should go unanswered. If a member cannot be accommodated, an explanation should be made promptly.
- The chair and executive director should maintain a strong connection with the members, keeping their fingers on the pulse of the project.
- The chair and executive director should be reliable sources for educational materials and information.
- The chair should be quick to identify a source of friction and try to resolve the conflict. Humor and planned social activities are excellent ways to relieve tension and reduce stress.
- The chair and the executive director are responsible for "coaching" the task force or commission to victory. The necessary ingredients include superior technical ability, untarnished credibility, boundless enthusiasm, and a clear vision of the purpose.

2. Communication

The success of the commission report and recommendations may rest on the enthusiastic endorsement of all of the members. A member who feels that his or her input is unimportant or that the results are predetermined might seriously undermine the credibility of the final report. While full and effective communication within the task force or commission cannot ensure that all members will feel heard, it may significantly reduce the likelihood of member dissatisfaction. Below are several methods to enhance effective communication within the task force or commission:

- Define the task force or commission as a forum for exploration, discussion, and discourse. Ask each member to suspend judgmental attitudes and dogmatic belief systems. Emphasize the educational nature of the work.
- Acknowledge the sensitive, sometimes volatile nature of discussions involving racial and ethnic issues. Recognize that views are often informed by stereotyping, cultural isolation, and ethnocentric beliefs. Encourage members to acknowledge their own confusion and fear in discussing these issues.
- Establish clear lines of communication within the task force.
- Encourage members to communicate their concerns first to the committee chair. If the matter is not satisfactorily resolved at that level, the problem should be handled by the executive committee.
- Listen carefully to each member. Before responding, make sure that the content of the message and the emotional intensity of the statement is understood correctly. Avoid making anyone wrong. Offer alternative views and perspectives on a situation.

3. Member Participation

It is likely that every task force or commission will have a number of members who will consistently miss meetings and minimally contribute to the work of the group. As a result, other members of the task force or commission may be asked to carry a disproportionate amount of the work load. Other task force members may feel resentment and be concerned that their work will be undermined by chronically absent committee members. It is also possible that these absent members may appear at the end of the process to object to findings and recommendations that previously have been discussed and approved. Below are suggestions for generating consistent member participation:

- The chair or another member of the task force or commission can be asked to speak to and assure the remiss member that his or her contribution is needed and appreciated.
- The chair or executive director can informally ascertain the reason for member disinterest and absences and attempt to address the situation.
- An important project might be assigned to a seemingly uninterested member in his or her area of expertise, thereby enhancing the likelihood of meaningful contribution.
- The member might be permitted to choose an alternate to represent him or her until he or she can become more actively involved.
- The task force or commission should be empowered to declare and fill a vacancy.

4. Member Resignations

If none of the above recommendations are successful in gaining full participation of an inactive member, the task force chair should decide whether to request or accept a member's resignation. In most instances, the appointing authority will make the final decision. The task force should decide at the outset how to handle a resignation. A resignation should be requested if it can be obtained without embarrassing the member, angering the appointing authority, or risking the loss of influential support. If, however, the cost is too high, the reluctant member will have to be allowed to continue, and the consequences will need to be managed.

5. Conflict Resolution

It is unlikely that a task force or commission will proceed throughout its entire tenure without generating some conflict both within and without. There are four types of conflict that may arise during the life of the task force or commission.

Ideological or Substantive Conflict. This is a basic disagreement about fundamental philosophy and belief. People are likely to be fixed in their views and to have a large investment in maintaining these positions (e.g., race and ethnic bias is a pervasive problem in our society versus race and ethnic bias has largely been eliminated from our society).

When faced with an ideological or substantive conflict, the educational process is the most effective means of promoting compromise. Participants can shift their belief systems through self-examination. As their own research illuminates long-held views of reality, individuals may willingly revise or abandon their ideology. This may result in the creation of powerful advocates for the task force or commission findings and recommendations. It is critical that ideological differences be allowed to surface and that examination and discussion be encouraged as part of the task force or commission process. Premature rejection and challenge of a member's views may entrench that member into a negative position and prevent dialogue and compromise.

Procedural or Methodological. This conflict occurs when individuals agree on the fundamental principles and philosophies, but differ on the execution or means of translating that philosophy into action (e.g., race and ethnic bias is a pervasive problem in our society; affirmative action is the best method of eliminating it versus affirmative action only highlights its existence and does nothing to enhance minority rights).

Procedural or methodological conflict should be encouraged and nurtured in the task force or commission. A free exchange of ideas, approaches, and methodologies will ensure a vital and credible project. As the task force or commission approaches resolution, the use of goal-setting techniques and consensus building will help bring divergent views into a cohesive plan.

Personality Conflict. Personality conflict arises as a result of differences in personal styles and approaches. In some instances, ideological or substantive disputes are symptoms of personality conflicts. These situations are difficult to manage and are sometimes best left alone. They may require the diplomatic intervention of the chair or executive director if the conflict escalates into a source of dysfunction or embarrassment for the task force or commission. Smoothing ruffled feathers and healing wounded egos is a part of any group dynamic. Honest communication is usually the best approach. These problems should not be allowed to fester and grow. In most instances, these conflicts are short-lived and can be resolved quickly if handled with tact and sensitivity at the time of the conflict.

Power Conflict. A power conflict can result from an individual's desire to enhance his or her own authority, expertise, or importance to the project. Where power is in question, the task force or commission chair or executive director will be best served by accommodating and/or collaborating with the individual member. Any attempt to compete with or assert authority will only create a larger arena for the conflict. If the chair should assert authority, this is best done within the context of the

executive committee, with decisions presented as a function of the group consensus (and only after full discussion and input from members).

E. Intensive Training Opportunities

1. Mission and Goal Setting

This intensive training is designed for the start-up phase of the task force or commission and should take place within the first two meetings. It focuses specifically on the creation of the mission and goals of the task force or commission. It is recommended that an outside consultant or qualified staff facilitate this training. All commission members should participate. The training should use traditional corporate goal-setting techniques and group processes. This initial training will set the strategy for all task force or commission endeavors and, ideally, will create group consensus and support for the work ahead. California, Iowa, Michigan, New Jersey, and New York have conducted this type of training.

2. Diversity Training

Several task forces or commissions have found that before their members can adequately investigate racial and ethnic bias, it is necessary for the members to explore the issues within their own group fully. In some instances, this need has become painfully evident far into the project, after positions have solidified and racial and ethnic tensions have become apparent. Racial and ethnic conflict is likely to occur in any diverse group. Personal beliefs, political opinions, and cultural conditioning do not disappear at the task force or commission door.

As a result, it is recommended that the commission sponsor its own diversity training. This training should focus on raising member sensitivity to racial and ethnic issues and setting the stage for a free and meaningful dialogue about the problem of bias in the judiciary. This seminar requires skilled and experienced consultants. All members and staff should participate. It is recommended that the consultants be carefully screened for their ability to enhance the team effort. State task forces or commissions in California, Massachusetts, Minnesota, Oregon, and Washington have used this training.

3. Research Training

Statistical research and survey techniques are both complex and confusing. Task force or commission members often have preconceived ideas about research methodologies, statistical validity, and survey techniques. Many members find themselves committed to the idea that objective data is fundamentally more trustworthy than subjective data. The underlying assumptions about these concepts, however, may be flawed. As a research agenda is defined, it will be necessary for the consultants or staff to educate the members about research methodologies, data collection techniques, statistics, and survey design. This training should precede the actual design and approval of task force or commission research projects.

Included in the training should be the following areas:

- Types of research and data collection methods, as well as the advantages and limitations of each method
- Review of research methodologies
- Terminology
- Resource allocation and time requirements
- Task force or commission priorities
- Development and validation of survey instrument
- Sample selection
- Data analysis and presentation of findings
- Research conducted by other task forces or commissions

The principal objective of this type of training is to prepare task force members to make realistic, better-informed decisions about a diverse research program. Members then will be educated consumers when hiring consultants and will avoid underestimating or overestimating the uses of various data collection techniques. Finally, they will be in a position to provide informed guidance to the research professionals.

The key to planning a user survey is early involvement of competent researchers and involvement of representatives of the stakeholders. Early and continuous involvement of representatives of these stakeholders should yield the following benefits:

- The questions that are most important to those people who will be using the data are addressed.
- The stakeholders will feel a sense of ownership in the research process and the quality of the study.
- The stakeholders will be invested in the findings, increasing the likelihood that the information will be used for creating change.
- The appropriate terminology is used.

(Manual for Conducting Citizen User Survey of Racial/Ethnic and Gender Bias in a State Court System, pages 4-5.)

4. Final Report and Recommendations

Most states have found that the final process of developing findings and recommendations is both long and complicated. Even if committees have created individual pieces of the final report, the entire task force should, at some point, approve the fundamental structure and content of the document. Some task forces have conducted intensive day or weekend workshops for this purpose. During this time a first draft report is prepared with all proposed findings and recommendations. The workshop is designed to create consensus on the substantive material contained in the report. These are some of the principal questions that should be addressed:

1. Does the commission approve the content of the document?
2. Can the findings be supported with the task force data?
3. Does the commission approve the structure of the report?
4. Is there consensus on the findings?
5. Does the commission endorse the proposed recommendations?

CONFERENCE OF CHIEF JUSTICES

Resolution XVIII: Task Forces on Gender Bias and Minority Concerns

WHEREAS, the Conference of Chief Justices has established a Committee on Discrimination in the Courts because the principle of equal treatment of all persons before the law is essential to the very concept of justice; and

WHEREAS, there are a multitude of federal, state and local laws and policies regarding all persons and institutions, both public and private, to avoid actions that may discriminate against any persons on the basis of race, sex, color, national origin, religion, age, or handicap and to take affirmative steps to overcome the effects of discrimination on such grounds; and

WHEREAS, the state courts have been instrumental in enforcing such laws and policies as they apply to other private and public parties in cases coming before the courts; and

WHEREAS, the Conference of Chief Justices is concerned that all participants in the judicial system are treated fairly and that the judicial system operate free of discrimination against any person on the basis of race, sex, color, national origin, religion, age or handicap.

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices urges positive action by every chief justice to address gender bias and minority concerns in the state courts; and

BE IT FURTHER RESOLVED that the Conference of Chief Justices urges each chief justice in every state to establish separate task forces devoted to the study of 1) gender bias in the court system and 2) minority concerns as they relate to the judicial system.

Adopted as proposed by the Discrimination in the Courts Committee of the Conference of Chief Justices at the 40th Annual Meeting in Rockport, Maine on August 4, 1988.

Documenting Bias in the Judicial System: Are There Any Implications? *

Moderator

Chief Justice Ellen Ash Peters, Supreme Court of Connecticut; President,
Conference of Chief Justices

Faculty

Chief Justice Joseph F. Baca, Supreme Court of New Mexico
Chief Justice Paul J. Liacos, Supreme Judicial Court of Massachusetts
Chief Justice Thomas J. Moyer, Supreme Court of Ohio
Chief Judge Annice M. Wagner, Court of Appeals of the District of Columbia

The panel was introduced by Charles Z. Smith, [Justice of the Washington State Supreme Court, and Moderator of the National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts,] who noted that no commission to document or address racial and ethnic bias has been effective without the support of the chief justice.

Chief Justice Baca stated that a distinction between affirmative action and the conference goals is necessary. Chief Justice Moyer stated that the debate over continuing or dismantling affirmative action programs has absolutely nothing to do with the court's obligation to be fair and impartial and to generate an atmosphere that meets the public's expectation of fairness. The other panelists agreed. The chief justices noted that they have the unique role of being in the best position to make this known in their states.

The chief justices felt that it is not only appropriate but also obligatory for the chief justice to take a stand on issues involving the administration of justice and to educate legislators about the potential impact of proposed legislation, such as legislation with a discriminatory impact. The chief justice and judges have a perspective and knowledge that are not shared by others.

When the legislature uses the lack of funding as the rationale for not funding judicial initiatives (such as a commission to address racial and ethnic bias in the courts), chief justices and judges should realize that what the legislature is saying is that the issue does not have enough priority. The court should view this as a challenge to explain the issue so that it is better understood by the public and by the legislature. Legislators must understand that eliminating racial and ethnic bias is, by definition, part of the court's work to improve the public's confidence in the judicial system.

Sometimes it helps to remind legislators and other judges that the court is the one institution that holds our society together and maintains the peace. Even if there were no actual racial or ethnic

* This panel discussion is excerpted from the proceedings of *The First National Conference on Racial and Ethnic Bias in the Courts*, which are entitled *A New Paradigm for Fairness: The First National Conference on Eliminating Racial and Ethnic Bias in the Courts*. The proceedings were written by H. Clifton Grandy and were published in 1995 by the National Center for State Courts, Williamsburg, Virginia.

bias in the courts, the mere perception of bias held by many segments of the community would be a problem. Legislators must realize that establishing a commission to address racial and ethnic bias does not mean that the court is bowing to a special interest group, but that the court is actively ensuring the future viability of the judicial system and our society, which is founded on the principle of the rule of law.

Chief Justice Peters noted that not all problems lie with the legislature. The chief justices must address barriers within the judicial system, such as defensiveness and denial. Admittedly, the task of capturing the mind of an unwilling judge is difficult; therefore, innovative approaches will be necessary to touch the diehards.

The panelists suggested some strategies to reach judges who are not receptive to recognizing the problem. These strategies include using nonaccusatory approaches, getting judges to realize that they are accountable, encouraging introspection so that judges examine how they treat people, and making it known that the chief justice is personally committed to and persistent in eliminating racial and ethnic bias.

The chief justices identified some of the nonaccusatory methods with which they were familiar, such as mandating judicial education on the subject; incorporating fairness and inclusion across the judicial education curriculum; including diversity on the agenda of the mandatory all-courts conferences; great American literature seminars that include discussions about bias or perceptions of bias in the stories; skits that use humor and parody to react to the court and to the behavior and personalities of actual judges; provocative town hall meetings and forums; incorporating a discussion of bias into the mandatory ethics course; holding a national conference, like this *Conference*, that is nonthreatening and that provides interaction with experts from all over the nation and with international observers.

Chief Justice Peters said that the courts want to build models of unity like the ones referred to by Dr. Henderson at the conference opening. While models of unity may not be easy to find, the chief justices need to look for them. She was impressed with the conflict resolution techniques used by some tribal courts that those in the state court system would call alternate dispute resolution. Chief Justice Peters added that courts need to recognize what other cultures have to offer because they can learn from them.

Chief Judge Wagner liked some of the ideas presented by Judge Douglass (pertaining to actions judges can take that do not require any additional funding) at the concurrent session on implementation. One of the suggestions that she is going to try when she returns is to have the arts trust, which already displays multicultural art in the court buildings, start displaying the artwork of children. Such a display would expose the judges to creative and positive activities by juveniles of color. Chief Judge Wagner observed that in many instances, implementation mechanisms are already in place in the budget and staff. The only question is how to use them effectively.

The panelists identified areas where research is needed. One area is the effectiveness of the different approaches and educational techniques that they referred to during their discussion. They also suggested that the NCSC produce a registry of successful diversity training programs and good trainers.

Chief Justice Liacos said that judges do not listen well enough to what the community is saying. One of the many benefits of the commissions is that they bring the judges out into the community to listen to what the public has to say about the courts. Contact with the public leads to learning opportunities for both judges and the community. Eliminating racial and ethnic bias is just another way for judges to carry out their responsibility to be impartial. Eliminating racial and ethnic bias in the judicial branch will put the courts in a better posture to deal with future challenges.

Chief Justice Baca stated that he was honored by the fact that the *Conference* was held in his state, at a site not far from where he was born. He hopes that the *Conference* will be like a garden from which blossoms bloom and that Albuquerque becomes synonymous with that garden in which courts gathered to discuss fairness and access.

A Brief History and Current Status of the National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts*

The National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts was organized initially in 1988 by the four state groups then in existence in New Jersey, Michigan, New York and Washington State. Under the leadership of Ambassador Franklin H. Williams, chairperson of the New York Judicial Commission on Minorities, the group with Judge Theodore Z. Davis (New Jersey), Judge Harold Hood (Michigan), and Justice Charles Z. Smith (Washington) came together to share experiences and coordinate resources in a common effort to determine whether racial and ethnic bias exists in the courts; and where it is determined it does exist, to recommend action to overcome it.

During the meeting it became apparent that commissions were examining many of the same court-related and legal issues, conducting comparable research efforts, and encountering many of the same challenges. The commonalties were so striking and the opportunities for sharing so great that those attending the meeting recognized that their efforts required a collective, or at least a coordinated response.

After the meeting, the representatives of these commissions met with Chief Justice Ellen Ash Peters, who was then the chair of the Conference of Chief Justices (CCJ) Committee on Discrimination in the Courts where they expressed their desire that the chief justices of the states without commissions consider creating them. Chief Justice Peters communicated this request to the CCJ. CCJ's response was CCJ Resolution XVIII—*Task Forces on Gender Bias and Minority Concerns* (1988).

A follow-up meeting was held in January 1989 at which a cooperative group with the name, the National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts (National Consortium), was established and The National Center for State Courts (NCSC) was tasked with providing informal secretariat and information clearinghouse services to the National Consortium. Shortly after the National Consortium was established, it began collaborative efforts with the NCSC to sponsor a national conference of racial and ethnic bias task forces and commissions. These early efforts were not immediately successful. However, the National Consortium and the NCSC were successful in obtaining major funding from the State Justice Institute (SJI) to complete the *Handbook for Establishing and Operating Task Forces and Commissions on Racial and Ethnic Bias in the Courts* in December 1993. The manual was reprinted in March 1995 and distributed at the *First National Conference on Eliminating Racial and Ethnic Bias in the Courts (Conference)*, held in Albuquerque, New Mexico on March 5, 1995. The SJI-funded *Conference* was hosted and staffed by the NCSC, with several members of the National Consortium serving in key roles as Planning Committee members and as panelists, faculty, and facilitators.

* Adapted from the *National Consortium Monitor*, the Newsletter of the National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts, vol. 1 no. 1, January 1997.

To date, the highest courts of about twenty-five states and the District of Columbia have established task forces or commissions on racial and ethnic bias in the courts. A number have concluded their work and issued reports, notably Florida, Iowa and Massachusetts. Some states have appointed "implementation committees" to pursue recommendations of their task forces or commissions (notably California, Florida, New Jersey, Oregon and Georgia). Some states have developed similar programs through Bar Association initiatives (notably New Mexico, Arkansas, and Virginia).

Recently developed task forces and commissions are the Nevada Supreme Court Task Force for the Study of Racial and Economic Bias in the Justice System; the Idaho Supreme Court Fairness and Equality Committee; the Delaware Supreme Court Task Force on Racial and Ethnic Fairness in the Courts; the Colorado Supreme Court Task Force on Diversity; and the Racial/Ethnic Fairness Commission of the Supreme Court of Tennessee.

In 1996, the NCSC began providing formal association management services to the National Consortium. Currently, the NCSC is in consultation with representatives of emerging task forces or commissions in Alabama, Kentucky, New Mexico, Nebraska, and Utah. It is hoped that the highest courts of those and other states will recognize the value of this approach to achieving a greater level of fairness in the courts. Interest in establishing a racial and ethnic bias commission has also been expressed by the Commonwealth of Puerto Rico which already participates as a member of the National Consortium.

To date, the National Consortium has representatives from the following states: Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Louisiana, Massachusetts, Maryland, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Rhode Island, Tennessee, Virginia, Washington, and Wisconsin; the District of Columbia; and the Canadian provinces of Ontario, British Columbia, and Nova Scotia.

Also participating in the National Consortium are representatives of the United States Court of Appeals for the Ninth Circuit; the United States District Court for the Western District of Washington; the United States District Court for the Eastern District of California; and the Federal Judicial Center. Additionally, participating with the National Consortium are representatives of the Hispanic National Bar Association, the National Bar Association, the National Asian Pacific American Bar Association, the Native American Bar Association, the American Bar Association Commission on Opportunities for Minorities in the Profession and the American Bar Association Task Force on Opportunities for Minorities in the Judiciary, Judicial Division.

Appendix B

Annotated List of Diversity Resources

Appendix B. Annotated List of Diversity Resources

Contents

This appendix contains lists sources for diversity education and training as well as general materials useful for understanding workforce demographics, diversity concepts, terminology, and the philosophy and organizational implications of diversity efforts. Some of these resources are available through the NCSC Library. The sources are arranged under the following headings:

- Articles
- Books and Reports
- Education and Training Resources
- Newsletters and Booklets
- Videotapes and Other Resources

Starred items are highly recommended.

Annotated List of Diversity Resources

Articles

- *Carr, Clay. "Diversity and Performance: A Shotgun Marriage?" *Performance Improvement Quarterly* 6, no. 4 (1993): 115–26.

This article suggests that diversity management may not work well in all organizations, especially in traditionally structured hierarchical ones. The author discusses various definitions of diversity, the conflict that is inherent in diversity, and the conditions under which this conflict can benefit the organization.

- *Delatte, Ann Perkins, and Baytos, Larry. "Guidelines for Successful Diversity-training." *Training* 30 (January 1993): 55–60.

This article provides eight key guidelines for successful diversity-training: distinguish between education and training; position training as part of an overall strategy; do not start training prematurely; conduct a thorough needs assessment; include diverse input into the design process to increase relevance; test the program; use a mix of internal and external resources to enhance efficiency and credibility; and incorporate diversity education and training into the core curriculum so that it becomes a way of life in the organization.

- Geber, Beverly. "Managing Diversity." *Training* 27 (July 1990): 23–30.

Companies should examine their hiring, management, and training procedures to ensure that employees achieve their full career potential regardless of ethnic and cultural backgrounds, and through awareness training should encourage managers to examine their management styles for similar barriers. A company that has a policy of valuing and managing diversity will be able to attract and retain quality workers from a changing labor pool. The steps firms can take to manage the culturally diverse workforce of the twenty-first century include surveying employees directly to identify their complaints and needs; examining corporate culture and history to identify underlying values; and making changes in corporate structure and policies to meet the needs of employees.

- Goldstein, Jeffrey, and Leopold, Marjorie. "Corporate Culture vs. Ethnic Culture." *Personnel Journal* 69 (November 1990): 83–92.

Because of workforce diversity, conflicts arise between employees' ethnic culture and corporate culture, but managers can take steps to manage diversity. This article emphasizes that managers should conduct open discussions about employees' differences, become aware of diversity, adhere to equal employment opportunity policies, explain the corporation's unwritten rules about corporate culture, and encourage employees to talk to coworkers about corporate culture.

Gordon, Jack. "Rethinking Diversity." *Training* 29 (January 1992): 23–30.

This article reviews and assesses the criticisms of corporate diversity-training programs (e.g., potential for wide cultural gaps between various ethnic groups, and the tendency for trainers to be sermonistic).

Hill, Alvin C., Jr., and Scott, James. "Ten Strategies for Managers in a Multicultural Workforce." *HR Focus* 69 (August 1992): 6.

This article advises managers to implement programs to heighten awareness of cultural differences, foster appreciation of these differences, and identify the commonalities among various groups. Managers should develop their communication skills, verbalize their concerns and confusion, make efforts to understand the needs and concerns of the different groups, discourage stereotyping of any group in the workplace, and involve all employees in the decision-making processes and in organizational activities.

*Jackson, Bailey W., and Holvino, Evangelina. "Developing Multicultural Organizations." *Journal of Religion and the Applied Behavioral Sciences* 9 (Fall 1988): 14–19.

For an organization to be truly multicultural, it must include members of diverse cultures and social groups as full participants, especially in decisions that shape the future of the organization.

Johnson, Randall. "Diversity-training: Integral Steps for Bridging Race, Language, Gender Gaps." *Training Directors Forum* 8 (April 1992): 1–3.

This article analyzes three approaches to dealing with workforce diversity: (1) implementing "awareness training" to help employees become more sensitive to, and less biased against, others; (2) treating diversity as an organizational and management concern, with efforts focusing on what aids or obstructs diversity management; and (3) systematically reviewing company policies and practices to see how they can incorporate diverse needs and preferences.

Kennedy, Jim, and Everest, Anna. "Put Diversity in Context." *Personnel Journal* 70 (September 1991): 50–54.

Of new employees hired in the 1990s, 85 percent are expected to be women and minorities. A company's success may therefore depend on its ability to adjust to the requirements of a multicultural workforce. An appreciation of the dynamics of intercultural communication provides a basis for evaluating employees from diverse backgrounds. Personnel managers can use the model of high- and low-context cultures developed by anthropologist Edward T. Hall as a means for improving interaction among diverse employees. The model can also be applied in understanding the communication gap between men and women.

Mandell, Barbara, and Kohler-Gray, Susan. "Management Development That Values Diversity." *Personnel* 67 (March 1990): 41–47.

The authors offer a four-phase management development program organizations can use to eliminate bias and stereotyping, and add diversity to the workplace. The phases are (1) assess the organization's commitment to diversity and the career growth of all employees; (2) analyze carefully the organization's current training and development programs designed to eliminate all forms of stereotyping and bias; (3) offer organization-wide workshops on valuing diversity, individual career growth, and life within the organization; and (4) evaluate managerial training and its impact on the organization.

*Mobley, Michael, and Payne, Tamara. "Backlash: The Challenge to Diversity Training." *Training and Development* 46 (December 1992): 45–52.

Discusses the current backlash some organizations have felt as a result of poorly planned diversity-training. Factors that contribute to this backlash include the use of incompetent trainers, the reaction of some white men who "are tired of being made to feel guilty in every discussion of diversity," and the inability of some organizations to develop a training curriculum that meets employees' diversity-training needs. Once organizations recognize the causes of backlash, they can work to avoid them. Organizations that gain support for diversity-training from top management, "affirm the value of each person's experience and viewpoint."

Thacker, Rebecca. "Preventing Sexual Harassment in the Workplace." *Training and Development* 46 (February 1992): 51–53.

Employees who have been sexually harassed but don't complain to management send the message that such behavior is acceptable. Strategies to assist supervisors in training employees on ways to register sexual harassment complaints include assessing why people are reluctant to report harassment, understanding the socialization associated with such reluctance, and defining behavior that constitutes sexual harassment and ways employees can respond to such behavior.

*Thomas, R. Roosevelt, Jr. "From Affirmative Action to Affirming Diversity." *Harvard Business Review* 90 (March/April 1990): 107–17.

The author discusses the difference between affirmative action and managing diversity and suggests ten guidelines for learning to manage diversity: clarify your motivation, clarify your vision, expand your focus, conduct a diversity audit of your organization, modify your assumptions, modify your systems, modify your models, help your people pioneer, apply the special consideration test, and continue affirmative action.

Workforce Diversity Issue. *Training and Development* 4 (April 1993).

This issue of *Training and Development* focuses on many dimensions of workforce diversity. Seven feature articles address the need for American workers to embrace the concept of valuing cultural diversity in the workplace. The articles' topics range from introducing workforce diversity issues to explaining how organizations benefit from diversity. The issue addresses the attitudes people may have about people who are different from themselves and the language that should be used to show mutual respect for one another. Articles about the progress of women and minorities in U.S. firms and sexual orientation issues in the workplace are also included.

Books and Reports

Coates, Joseph F., Jarrat, Jennifer, and Mahaffie, John B. *FutureWork: Seven Critical Forces Reshaping Work and the Workforce in North America*. San Francisco: Jossey-Bass, 1990.

The authors use extensive quantitative data to analyze seven major changes taking place in the American workplace, from the increase in heterogeneity to the integration of work life with home life.

Dooley, Jeanne, Karp, Naomi, and Wood, Erica. *Opening the Courthouse Door: An ADA Access Guide for State Courts*. Washington, D.C.: American Bar Association, 1992.

Although the Americans with Disabilities Act (ADA) does not technically apply to the state courts, this informative guide provides advice on extending fairness to the disabled. Specifically, the guide presents ideas for getting people into the courthouse, assisting people through the court and court processes, ensuring full participation in court processes, making courtroom hearings and trials accessible, and including people with disabilities in juries. Especially useful is a chapter entitled "Understanding the Range of Disabilities," which defines the different types of disabilities outlined in the ADA.

Jackson, Susan E., and Associates. *Diversity in the Workplace: Human Resource Initiatives*. New York: Guilford Press, 1992.

This book presents essays and case studies on workplace diversity issues. It uses case studies from Xerox, Pacific Bell, and the state court workforce to address organizations' need to create a diverse workforce; promote personal growth and team development; and create strategic initiatives to manage workplace diversity. The book concludes with three essays on managing workplace diversity.

- *Jamieson, David, and O'Mara, Julie. *Managing Work Force 2000: Gaining the Diversity Advantage*. San Francisco: Jossey-Bass, 1991.

This book outlines a management model based on greater responsiveness to diverse individual needs and talents. The authors forecast the makeup of America's workforce in the year 2000 and suggest possible implications for organizations. The final chapter describes sixty-five organizations that specialize in issues of diversity in the workplace.

- *Johnson, Molly Treadway. *Studying the Role of Gender in the State Courts: A Research Guide*. Washington, D.C.: State Judicial Center, 1995. (Available from the NCSC Library.)

Almost half of the state courts have formed task forces to study how gender or attitudes about gender affect the work of the circuits. This guide was designed to help circuits or courts form gender task forces, select issues to study, and carry out various research methods. Appendices provide descriptions of state court task force studies as well as sample research instruments (e.g., survey questions and interview protocols).

- *Johnston, William B., and Packer, Arnold E. *Workforce 2000: Work and Workers for the 21st Century*. Indianapolis: The Hudson Institute, 1987 (Prepared for the U.S. Department of Labor).

This report presents original research on the future of the American economy and workplace. Many diversity initiatives were built on this report. Major trends are documented and analyzed.

- *Loden, Marilyn, and Rosener, Judy B. *Workforce America!: Managing Employee Diversity as a Vital Resource*. Homewood, Ill.: Business One Irwin, 1991.

This book presents a discussion of how organizations can respond to a diverse workforce in a constructive, rather than a reactive, manner. It emphasizes the need for sensitivity to the styles, needs, and values of diverse individuals, and suggests specific strategies for building more productive relationships in the workplace.

- *Morrison, Ann M. *The New Leaders: Guidelines on Leadership Diversity in America*. San Francisco: Jossey-Bass, 1992.

The author uses empirical research to analyze the nature and extent of differential treatment based on ethnicity and gender, and to identify three key factors (challenge, recognition, and support) essential for sustained leadership development. This source addresses practices for promoting and sustaining diversity, such as education, enforcement, and exposure. It also provides a step-by-step, chapter-by-chapter process for developing a coherent diversity plan that can be tailored to the specific needs of any organization.

Powell, Gary N. *Women and Men in Management*. Newbury Park, Calif.: Sage, 1988.

The author explores the changing norms about women's roles, particularly in management. The book addresses a wide range of topics, from female-male relationships at work to gender stereotyping. Noteworthy chapters are "Promoting Equal Opportunity" and "Looking Ahead."

Thiederman, Sondra. *Profiting in America's Multicultural Marketplace: How to Do Business Across Cultural Lines*. New York: Lexington, 1991.

This book offers information and techniques for bridging the cultural barriers increasingly present in government, nonprofit, and business workplaces. It includes such chapters as "Interviewing and Assessing the Culturally Different Worker," "Guidelines to Understanding the Nonnative English Speaker," and "The Importance of Learning About Values."

*Thomas, R. Roosevelt, Jr. *Beyond Race and Gender: Unleashing the Power of Your Total Workforce by Managing Diversity*. New York: American Management Association, 1991.

The author emphasizes the limits of traditional approaches to dealing with diversity issues and stresses the importance of an organization's assessing and modifying its cultural roots with a "culture audit." A culture audit is a tool used to gain information regarding the cultural makeup of the organization and the interactions and operations affected by the composition of the staff. This book presents extensive case studies and a sample culture audit.

Education and Training Resources

*Allender, Julie Ann. "Men and Women Working Together: Beyond Gender Stereotypes." In *Twenty Active Training Programs*, edited by Mel Silverman. San Diego: Pfeiffer and Co., 1992.

This seven-hour training program is designed for a mixed group of men and women of approximately equal numbers. The purpose is to decrease gender role tension, increase awareness of pressures from stereotypes and past teachings, and help individuals develop more flexible role models. The program allows participants to evaluate gender-role stereotypes, examine gender-defined roles in the workplace, learn about the concept of androgyny, expand their repertoire of gender cooperation skills, and learn how men and women can be productive partners. It includes a program outline and learning activities and forms as well as a bibliography of books, videotapes, and other resources related to gender issues.

- *Anderson, Marie. "Appreciating Diversity: A Window of Opportunity." In *Twenty Active Training Programs*, edited by Mel Silverman. San Diego: Pfeiffer and Co., 1992.

This training program introduces participants to the various ways in which they can build effective interaction and communication in diverse groups. It provides an outline of a six-hour training program on examining differences and planning for change. It includes structured learning activities, such as small-group discussions, simulations, presentations, guided teaching, games, and writing assignments. It can be modified to meet the specific training needs of individual courts.

- Cooper, Kenneth, C. "Confronting Sexual Harassment in the Workplace." *Trainer's Workshop* 3 (September/October 1989): 1-64.

The American Management Association describes an effective sexual harassment training module with four topics for discussion: (1) the psychological background of harassment; (2) legal and behavioral definitions of sexual harassment; (3) management concerns; and (4) case studies to tie the other training sessions together. The training module has tear-out pages that serve as overheads for outlining key points discussed in the training program.

- Dickerson-Jones, Terri. *50 Activities for Managing Cultural Diversity*. Amherst, Mass.: Human Resource Development Press, 1993.

This resource includes and explains fifty activities and handouts to help managers explore the effects of differences among employees. Reproducible activities are classified according to the training objectives they are designed to meet: managing diversity, valuing uniqueness, prejudice awareness, prejudice reduction, and affirmative action.

- Gardenswartz, Lee, and Rowe, Anita. *Managing Diversity: A Complete Desk Reference and Planning Guide*. Homewood, Ill.: Business One Irwin, 1993.

This is a comprehensive resource of information on how to conduct a diversity audit; create an organizational culture that embraces diversity; maximize the potential of meetings to work for everyone; conduct performance evaluations in a diverse organization; and hire, train, and promote a diverse workforce. It includes worksheets, activities, charts, and forms to use in implementing the ideas presented.

- Goodman, Neal R. "Cross-Cultural Effectiveness: Obtaining Success in the Global Arena." In *Twenty Active Training Programs*, edited by Mel Silverman. San Diego: Pfeiffer and Co., 1992.

This seven-hour training program is designed to enhance the effectiveness of all people whose work brings them into contact with people from other countries or cultures. The goal of the program is to increase participants' awareness of hidden cultural assumptions, expand their repertoire of culturally appropriate behaviors, and help them understand how cultural factors affect job performance. A program outline

and learning activities, and a bibliography of books, videotapes, and other resources relating to cultural awareness are included.

*LaMountain, Dianne, and Abramms, Bob. *The Trainer's Workshop on Cultural Diversity*. Amherst, Mass.: Human Resource Development Press, 1993.

This resource of training aids and tools provides practical and useful information on workforce diversity-training. It includes a definition of diversity, a description of the origins of diversity, a discussion of the kinds of programs organizations need, and explanations of what diversity consultants do and how to work with them.

Linkemer, Bobbi, Beebe, Carolyn, and Matthes, Karen. "Managing Under ADA." *Trainer's Workshop* 7 (May/June 1993): 1-48.

This American Management Association training module is designed to assist managers in complying with the Americans with Disabilities Act (ADA). The module covers four topics: what is the ADA, its impact on the workplace, its impact on recruitment procedures, and how to manage employees with disabilities. Each topic is designed to be presented during separate sixty-to-ninety-minute training sessions. This module helps supervisors in the state courts learn about the intricacies of the ADA and its implications for the physical work environment and employee training. Tear-out pages serve as overheads for outlining key points discussed in the training program.

Myers, Selma. "Basics of Intercultural Communication." *Info-Line* (September 1990): 1-5.

This article discusses the major stumbling blocks to communication among people from diverse cultural backgrounds and ways for people to become more sensitive to cultural differences. It identifies four factors that influence intercultural communication: language, place, thought processing, and nonverbal behavior. The article discusses these factors and their effects and provides communication models and training techniques for helping to create a successful multicultural environment. An extensive list of references and a checklist for diagnosing intercultural problems are included.

Myers, Selma, and Lambert, Jonamay. *Beyond Awareness: Skills for Managing a Culturally Diverse Workforce*. Solano Beach, Calif.: Intercultural Development, 1992.

This manual provides sample agendas, case studies, inventories, handouts, materials for transparencies, and adaptable exercises dealing with cultural changes, intercultural communication, employee development, and conflict.

*Parker, Barbara J., ed. "Managing a Diverse Workforce." *Trainer's Workshop 7* (November/December 1993): 1-48.

This highly interactive, one-day training module teaches managers and supervisors to "identify how workforce diversity affects the operations of their departments and organizations, use a structured methodology for resolving workplace problems stemming from diversity, and create a work environment in which all employees fully contribute their talents and skills to the success of the organization." The module includes five sessions with objectives, lecture, discussion questions, visuals, and learning activities covering diversity in the workplace. Visuals are included that can be used as overhead transparencies or flip charts, and work papers, a diversity audit, and sample employee diversity survey are provided.

Payne, Tamara, and Mobley, Michael. "Valuing and Managing Diversity." *Info-Line* (May 1993): 1-15.

This training resource provides a historical perspective on the topic, ways to gain organizational commitment, sample diversity-training modules, training do's and don'ts, methods of delivery, possible pitfalls, and references and resources.

Talley, B. D., and Waller, M. L. "Sexual Harassment: What Trainers Need to Know." *Info-Line* (February 1992): 1-15.

This issue outlines sexual harassment policies and practices and recommends steps that an organization can take to make the workforce more aware of sexual harassment as well as ways to prevent it. This issue discusses the EEOC guidelines regarding sexual harassment, gives statistics indicating the occurrence of sexual harassment, and outlines some landmark court cases dealing with harassment. It provides guidelines for organizations that have not yet formulated a written policy regarding sexual harassment, and offers suggestions for trainers who may be asked to present the subject matter. A list of books and articles and a checklist for handling sexual harassment complaints are included.

Weiss, Donald H. "Managing a Diverse Workforce: How to Deal with Value Conflicts." *Trainer's Workshop 2* (December 1987): 1-64.

This resource identifies potential value conflicts in a diverse workforce and ways to prevent the crises they can produce. It indirectly discusses broader issues: civil rights, labor-management relations, and employee motivation. A training module is provided which consists of five sessions that cover the following topics: (1) value conflict—a critical issue of diversity; (2) negative consequences of pluralism; (3) the importance

of individual diversity; (4) how to prevent open conflicts of value; and (5) the positive consequences of diversity. Tear-out pages serve as overheads.

Newsletters and Booklets

American Association of Retired Persons. *America's Changing Workforce: Statistics in Brief*. Washington, D.C.: AARP, 1992. (Available free from AARP-EEO 167, 601 E St., N.W., Washington, DC 20049. Ask for publication D12633.)

This booklet provides information about the changing workforce, particularly workers age 45 and older. Included are such topics as the composition of the workforce of today and tomorrow by age and sex, labor force participation rates, industrial and occupational employment, and general characteristics of workers age 45 and older.

Coberly, Sally. *An Employer's Guide to Older Worker Employment and Transition Programs*. (Available from Washington Business Group on Health, 777 N. Capitol St., N.E., Suite 800, Washington, DC 20002; phone: [202] 408-9320.)

This guide describes how employers can work with community organizations to recruit and train older workers, and outlines innovative ways employers can use older workers, including part-time options, retiree job banks, and phased and partial retirement.

Mickens, Ed, ed. *Working It Out*. New York City: Ed Mickens, 1992. (Annual subscription is \$60. For subscription information and a free sample issue, contact Ed Mickens, Editor, P.O. Box 2079, New York, NY 10108; phone: [212] 769-2384.)

This quarterly newsletter is intended as a central source for organizations interested in examining their policies toward gay and lesbian employees in the workplace. Contents include case studies and successful models for change.

*Patterson, Leo, ed. *Managing Diversity: A Monthly Source of Information, Ideas, and Tips for People Managing a Diverse Workforce*. Jamestown, N.Y., 1991. (Available from Jamestown Area Labor Management Committee, Inc., P.O. Box 819, Jamestown, NY 14702-0819; phone: [716] 655-3654.)

This concise newsletter is useful to all managers and others interested in diversity issues and resources.

Sussman, Harris. *Questions and Answers About Diversity*. Cambridge, Mass.: Diversity University, 1991. (Available at volume discounts from Harris Sussman; call 1-800-827-1783.)

This is a twenty-page compilation of *Managing Diversity* newsletter's regularly featured column "Diversity Questions and Answers." It provides practical, thought-provoking responses to a wide range of diversity-related questions asked by managers struggling with important workplace issues.

Videotapes

Advantage Media, Inc. *Sexual Harassment: The Other Point of View*. 1985. 37 minutes.

Simulates a training session for supervisors. Helps supervisors understand their role in handling sexual harassment issues in the workplace. Vignettes describe physical harassment, verbal harassment, graphic harassment—the display of offensive pictures, calendars, or posters—and hazing—harassment that occurs when a woman enters a traditionally male-dominated job. Includes a training manual.

American Media, Inc. *Closing the Gap: Gender Communication Skills*. 1994. 20 minutes.

Explores traditional differences in the ways in which men and women communicate and presents six communication styles. The narrators warn trainers not to overgeneralize “male” and “female” communication styles and to focus on providing skills to enhance communication between men and women. Includes training materials.

American Media, Inc. *The Dynamics of Diversity*. 1994. 49 minutes.

Provides a solid definition and explanation of managing diversity. Serves as a useful introduction to the subject of diversity for educators, trainers, diversity education planning committees and task forces, and court managers who need a cogent, clear, and thoughtful explanation of diversity and its implications for the workplace.

BNA Communications, Inc. *A Winning Balance*. 1993. 34 minutes.

Introduces Workforce 2000 and promotes the importance of appreciating and understanding differences in the workplace. Interactive exercises and vignettes illustrate a range of workplace behaviors and encourage discussion. Includes comprehensive participant’s and trainer’s guides.

Barr Films. *Making the ADA Work for You*. 1992. 22 minutes.

Uses vignettes and narration to explain the essential components of the Americans with Disabilities Act (ADA). These components include interviewing and essential functions, marginal functions, court user and employee reactions, effective supervision, reasonable accommodation, and undue hardships. Although the courts are not required to comply with the ADA, the videotape emphasizes that one intent of the ADA is to encourage employers to look at a person’s abilities, not disabilities, when hiring and supervising employees. Includes a trainer’s guide.

CRM Films. *Managing Diversity*. 1990. 22 minutes.

Shows a fictional organization's efforts to effectively manage a diverse workforce. Deals with two major challenges facing managers in the organization: negative stereotypes employees hold toward one another, and the resulting behavior associated with those stereotypes. Equips managers with specific skills to recognize these concerns and address them constructively. Includes a leader's guide.

Copeland and Griggs Productions. *Valuing Diversity*. 1987-90. Videotape series, 7 tapes, 28-60 minutes each.

Includes the following seven titles:

- Tape 1: *Managing Differences* (50 minutes)
- Tape 2: *Diversity at Work* (28 minutes)
- Tape 3: *Communicating Across Cultures* (50 minutes)
- Tape 4: *You Make the Difference* (30 minutes)
- Tape 5: *Supervising Differences* (30 minutes)
- Tape 6: *Champions of Diversity* (30 minutes)
- Tape 7: *Profiles in Change* (60 minutes)

Workplace scenarios and interviews with senior executives and diversity managers at major corporations and workplace scenarios illustrate diversity situations relating to age, race/ethnicity, gender, language, and physical handicaps. Tape 6 is one of the few tapes to include some insights into issues of sexual orientation in the workplace. Tapes 1, 3, and 4 may be more valuable for their relevance to the courts. Includes a trainer's guide.

Crisp, Inc. *Working Together: Managing Cultural Diversity*. 1990. 25 minutes.

Emphasizes three essential elements to help employees learn to work more effectively: (1) accept the differences of others, (2) manage communication, and (3) manage the future. Focuses on the need for employees to embrace, learn from, and profit from change. Includes a leader's guide and five copies of a participant's guide.

Enterprise Media, Inc. *The Power of Diversity: Creating Success for Business and People*. 1993. Videotape series, 4 tapes, 20 minutes each.

Includes the following eight titles :

- Tape 1: *Sexual Harassment and Gender Discrimination*
Disabilities: Hiring and Promotion
- Tape 2: *Career Development: Minority Issues*
Career Development: Reverse Discrimination and Ageism
- Tape 3: *Performance Appraisal*
Balance of Work/Family Issues
- Tape 4: *Sexual Orientation*
Career Mobility: Language

Uses eight vignettes to portray the challenges confronted by many employees in the workplace. Presents diversity issues within a management and employee relations context to allow for multiple discussion perspectives. Includes a set of twenty-four participant's workbooks and a leader's guide.

Enterprise Media, Inc. *The Sexual Harassment Quiz*. 1992. 59 minutes.

Uses a talk show format to candidly and effectively address sexual harassment. Allows viewers to judge scenarios, answer questions, and analyze their responses. Generates open discussion and illustrates many misconceptions about sexual harassment at work. Includes a brief written description of the video and a quiz.

Goodmeasure, Inc. *A Tale of "O."* 1993. 45 minutes (Available from the NCSC Library).

Provides an introductory but thorough overview of diversity issues for individuals who have little knowledge of the concept. Rather than using labels for people who are different, the video presents a series of animated "X's" and "O's": the "X's" represent majority groups and the "O's" represent minority groups. Appropriate for work environments where tension and communication problems exist because of differences. The tape includes both 18-minute and 27-minute versions; however, the 18-minute version may be more appropriate for training purposes than the 27-minute version. Includes a 174-page instructor's and user's guide.

*MTI Film and Video. *Breaking the Attitude Barrier: Learning to Value People with Disabilities*. 1991. 34 minutes.

Provides tools and information to help employees understand, appreciate, and value people with disabilities. The video dispels myths about people with disabilities and explores employees' reactions, fears, and discomforts in working with people with disabilities. Highlights one organization's efforts at sensitizing its workforce to these issues. Includes a trainer's guide and is closed captioned for the hearing impaired.

MTI Film and Video. *Prejudice: Dividing the Dream*. 1993. 25 minutes. (Available from Coronet/MTI Film and Video, 420 Academy Dr., Northbrook, IL 60062; phone: 1-800-621-2131. Purchase price: \$450, rental price: \$75.)

Narration and interviews are used to examine prejudice based on race, ethnicity, and religion. Encourages employees to "realize that eliminating prejudice begins by stopping blame." Excellent film footage of ethnically diverse young people attending a youth summer camp, the effects of prejudice on young African Americans, and a Holocaust survivor's story. Includes a concise but useful discussion guide.

PBS. *A Class Divided*. 1992. 60 minutes.

Documents discrimination based on eye color with both a third grade, all-white, all-Christian class in a small Iowa town and adult employees of the Iowa state prison system attending a day-long human relations workshop. The first segment of the video, originally filmed in 1970, is supplemented by a discussion of the exercise by the now adult third-grade class participants. In the second segment of the video, which was produced in 1991, prison employee participants discuss their reactions to discriminatory attitudes, treatment, and behavior based on their experience in the exercise. Persuasively demonstrates the debilitating effects of any kind of discrimination on individuals and society. Includes a useful study guide that outlines key concepts, discussion topics, suggested activities, and a bibliography.

Pacific Resource Development Group. *Sexual Harassment: Shades of Gray*. 1990. Videotape series, 5 tapes, 10–15 minutes each.

Includes the following five titles:

- Tape 1: *What Are We Doing Here?* (15 minutes)
- Tape 2: *What Is Sexual Harassment?* (10 minutes)
- Tape 3: *Costs of Sexual Harassment* (10 minutes)
- Tape 4: *What Does the Law Say?* (11 minutes)
- Tape 5: *What Should I Do?* (11 minutes)

Provides a brief history of sexual harassment, gives the behavioral and legal definitions of sexual harassment, spells out the costs associated with sexual harassment in the workplace, explains the legal background and the Equal Employment Opportunity Commission's guidelines on sexual harassment, and offers tips to both supervisors and employees on how to prevent sexual harassment in the workplace. Includes a resource manual, a training manual, a leader's guide, and twenty-five copies of a participant's workbook. (For a more interactive format on this topic, see *The Sexual Harassment Quiz*.)

Salenger Films. *Sexual Harassment: Walking the Corporate Fine Line*. 1987. 30 minutes.

Stresses the need for a strict and explicit organizational policy regarding sexual harassment. Traces the legal history of sexual harassment and describes the essential elements of an effective organizational sexual harassment policy, including an effective procedure for handling complaints, a fair investigative procedure, and appropriate disciplinary action. Includes a thirty-page program workbook and a user's guide.

Other Resources

Bibliography

Female Management Style. New York: Catalyst, 1990.

This annotated bibliography includes twenty-five articles, research reports, and books about women managers, and covers such topics as differences between male and female management styles, the extent to which women exemplify the traits of corporate leaders, and the way female managers are perceived.

Games

The Diversity Game. Quality Educational Development Inc., 1994. (For more information, contact Quality Educational Development Inc., 41 Central Park West, New York, NY 10023; phone: [212] 724-3335.)

This board game is designed to raise awareness of diversity issues in a nonthreatening way. Topics covered include demographics, legislation, society issues, and management issues.

Diversophy: Understanding the Human Race. George Simons International, 1992. (For more information, contact George Simons International, 335 Golf Club Dr., Santa Cruz, CA 95060; phone: [408] 426-9608.)

A board game in which players roll dice and move around a game board, trying to avoid four diversity traps: ethnocentrism, stereotypes, bias, and assimilation.

Appendix C

Questionnaires

Appendix C. Questionnaires

Contents

This appendix contains information about how to effectively use questionnaires as a data collection method. It includes:

- Techniques for Ensuring Confidentiality
- Techniques for Increasing the Response Rate
- Sample Cover Letter
- Sample Needs Assessment Survey of Diversity-related Problems
- Optional Personal Data Form
- Optional Add-on Survey for Managers

Techniques for Ensuring Confidentiality

To receive honest answers and a sufficient number of returned questionnaires, the court must ensure the confidentiality of responses. If employees fear that a manager or someone else will find out how they answered the questionnaire, they may choose not to respond or their answers may not be candid.

Here are some things you can do to assure employees that their answers will be confidential:

- Send the questionnaire directly to employees rather than sending it to them through their supervisors.
- If possible, arrange for an organization outside the court to receive the questionnaires, compile and analyze the responses, and report the results to the court without court employees ever seeing the completed questionnaires. Provide a metered, preaddressed envelope with each questionnaire so that employees can return their completed questionnaires directly to the outside consultant.
- If you cannot use an organization outside the court, keep to a minimum the number of people who will analyze the responses. These are the only people who should see the questionnaires. Choose individuals who are trustworthy.
- Provide a box in a neutral location where questionnaires can be returned. The box should not be kept in someone's office.
- Do not code the questionnaires or put any other identifying marks on them unless absolutely necessary.

Techniques for Increasing the Response Rate

The response rate refers to the percentage of questionnaires that are completed and returned. There are various rules of thumb about how high a response rate is necessary to allow confidence in the results, but in general, a 50 percent rate should be adequate.

Not only must the rate of returns be acceptable, but the returned responses must be representative of the population. In other words, the individuals who do respond must represent the diversity of the entire staff as determined by a statistical analysis.

There are several ways to increase the response rate:

- Use a well-designed questionnaire with carefully worded questions.
- Ensure confidentiality.
- Conduct follow-up activities. Some examples of ways that you can follow-up are:
 - Draft a memo reminding everyone to complete and return their questionnaires. Send the memo to each individual involved in the assessment or post the memo where people will read it.
 - Broadcast a message on E-mail, if possible.

Note: To facilitate follow-up, some researchers assign a code number to each questionnaire. The code number is recorded in an unobtrusive place on the questionnaire (e.g., in the bottom right-hand corner of the last page or in a corner on the opposite side of the last page). Information about the code number associated with each questionnaire should be maintained on a separate list and seen and used only by the person who is administering the questionnaire. The drawbacks to using code numbers are that they increase the amount of administrative work and they can affect the respondents' confidence in the anonymity of their responses.

Sample Cover Letter

To administer questionnaires most effectively, you should attach a cover letter to the survey form. Cover letters convey information to the participants about the purpose of the questionnaire and the importance of their participation. Adapt the cover letter to your specific needs, but include the elements listed below. Refer to the sample cover letter on page C5.

- The purpose of the questionnaire
- Who is conducting the study
- Why the study is important
- Why it is important for each person to complete the questionnaire
- How the answers will be used
- How to complete and return the questionnaire
- Date the completed questionnaire should be returned
- Name of a person respondents can contact if they have questions.

Note: If you are using code numbers on the questionnaires, state in the cover letter that the questionnaires are coded merely to facilitate follow-up with nonrespondents and the code numbers will not compromise respondents' anonymity or confidentiality.

Sample Cover Letter for a Diversity Needs Assessment Survey

Dear Court Employee:

The court is considering developing a training program that will recognize the diversity of our workforce and help improve opportunities for all of us to contribute to the work of the court. The program will be held on *(date)* at *(time)* in *(location)*.

So that we can design a program that will meet the specific needs of *(court)*, we are asking all employees to complete the attached needs assessment survey. The completed surveys will be sent directly to *(name of recipient)*, who will compile and analyze the results. The planning committee and *(name of expert)* will design the training program based on the results of this survey.

The questionnaire will take forty-five minutes to an hour to complete. Your response is critical; we need to understand the perceptions, experiences, and observations of all staff in order to design activities and exercises for the training program that address staff priorities. Only *(name of recipient)* will see the individual responses. We have placed a code number on each questionnaire merely to facilitate follow-up with those who do not respond.

Please return the completed questionnaire by *(date; usually about three weeks from the date questionnaires are distributed)* in the enclosed self-addressed envelope. If you have questions about the questionnaire or about the diversity training program, please see *(contact person in the court for the program)*.

Thank you for your cooperation.

Sincerely,

(name and title of the person sending this letter)

Enclosure(s)

Sample Needs Assessment Survey of Diversity-related Problems

This sample needs assessment survey of diversity-related problems was designed in response to requests from court managers for questionnaires to help them assess employees' perceptions of diversity-related issues in their courts. Add or delete questions to adapt this survey to your court's individual needs.

Questions 1-23 ask for your perceptions of the nature and magnitude of problems, if any, related to the diversity of your court. **For the purpose of this survey, diversity is described as differences in characteristics, such as race, ethnicity, age, gender, language, sexual orientation, and physical ability, or combinations of these characteristics.**

Please indicate the extent to which you believe each of the following items is a problem in your court by checking one response for each item.

	1 Not at all a problem	2 A small problem	3 A moderate problem	4 A large problem	5 A grave problem	6 No opinion
1. Insufficient diversity in judicial staff.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Insufficient diversity in non-judicial staff.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Inadequate diversity of English, Non-English language (e.g., Spanish, Korean, signing) skills of employees.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Employees' resistance to working with people different from themselves.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Slurs, jokes, or negative comments by staff about people based on such characteristics as race and gender.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Unwanted verbal or physical sexual advances or harassment by employees against other employees.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	1 Not at all a problem	2 A small problem	3 A moderate problem	4 A large problem	5 A grave problem	6 No opinion
7. Unwanted verbal or physical sexual advances or harassment by attorneys, litigants, and other court users against employees.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Employees' poor treatment of court users who are different from themselves.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Inappropriate comments by employees about other employees' physical appearance or clothing.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. Inappropriate comments by attorneys, litigants, and other court users about employees' physical appearance or clothing.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Discrimination in hiring, promotions, or other conditions of employment.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. Employees' fear of reprisal if problems of bias or discrimination are brought forward.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. Difficulty recruiting or retaining employees who are different from the majority.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	1 Not at all a problem	2 A small problem	3 A moderate problem	4 A large problem	5 A grave problem	6 No opinion
14. Productivity problems due to employees not working together well because of differences in race, gender, ethnicity, age, disability, etc.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15. Failure of employees to appreciate individuals for their unique contributions to the organization.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. Exclusionary employee cliques based on such characteristics as race, language, and gender.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17. Barriers in promotion for employees who are different from the majority.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18. Employees' inadequate or poor skills in communicating with other employees and court users from diverse backgrounds.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19. My uncertainty about appropriate terminology or labels to use when referring to or talking with individuals from backgrounds different from mine.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20. Frustrations and irritations for me resulting from cultural differences among staff.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	1 Not at all a problem	2 A small problem	3 A moderate problem	4 A large problem	5 A grave problem	6 No opinion
21. Little opportunity for mid-level and lower-level employees to participate in appropriate organizational decision-making or problem-solving processes.	[]	[]	[]	[]	[]	[]
22. Little opportunity for individuals from diverse backgrounds to participate in appropriate decision-making and problem-solving processes.	[]	[]	[]	[]	[]	[]

23. For each of the following dimensions of diversity, please indicate whether or not that dimension:
- (1) affects your day-to-day interactions with fellow staff, supervisors, court users, or clients, and
- (2) affects the opportunities (for hiring, promotion, training, etc.) that people in your court receive. For each dimension, circle one response in column 1 and one response in column 2.

Dimension	1		2	
	Affects day-to-day interactions?		Affects opportunities people receive?	
a. Race	Yes	No	Yes	No
b. Ethnicity	Yes	No	Yes	No
c. Gender	Yes	No	Yes	No
d. Religious affiliation	Yes	No	Yes	No
e. Sexual orientation	Yes	No	Yes	No
f. Age	Yes	No	Yes	No
g. Disability	Yes	No	Yes	No
h. Language (e.g., accents, regionalisms)	Yes	No	Yes	No
i. Parental status	Yes	No	Yes	No

Dimension	1		2	
	Affects day-to-day interactions?		Affects opportunities people receive?	
j. Marital status	Yes	No	Yes	No
k. Salary level	Yes	No	Yes	No
l. Education	Yes	No	Yes	No

If you circled yes for any dimensions above, please give examples of the kinds of effects you have seen or experienced.

a. Race _____

b. Ethnicity _____

c. Gender _____

d. Religious affiliation _____

e. Sexual orientation _____

f. Age _____

g. Disability _____

h. Language (e.g., accents, regionalisms) _____

i. Parental status _____

j. Marital status _____

k. Salary level _____

l. Education _____

The next set of questions (24-35) relate to your perceptions of diversity-related policies in your court and whether they are practiced. For the purposes of this survey, a *policy* is a written rule. A *practice* is usually not written, but there is an understanding that a particular procedure or set of procedures have been adopted, used, and accepted by your court. Please check the one response that best describes whether a policy or practice, or both exist in your court for each of the following items.

	1 Policy only	2 Practice only	3 Policy and practice	4 Neither policy nor practice exists
24. Flexible work schedules to accommodate elder-care or child-care needs of the staff.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
25. Flexible work locations.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
26. Fair or adequate leave for childbirth.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
27. Fair or adequate leave for adoption.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
28. Equal employment opportunity.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
29. Managing diversity.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
30. Staff performance system (to set standards; monitor, evaluate, and encourage good employee performance; and identify areas for development).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
31. Managerial performance system (to allow employees to assess performance of supervisors and managers, and to identify areas for development).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
32. Dealing with sexual harassment.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
33. Continuing education or staff development.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
34. Physical access for people with disabilities.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

35. Are there any other diversity-related problems or concerns you have that were not addressed above? If so, please describe them below.

These last few questions (36-40) concern the type of diversity training, if any, you believe is needed in your court. Diversity training can enhance your understanding and knowledge about the diversity of the workforce and those who are different from you in race, gender, age, ethnicity, sexual orientation, religion, physical ability, educational level, parental or marital status, and so forth. Diversity training also teaches skills for assessing how individual behavior and organizational policies and practices can affect opportunities for staff to contribute to the organization's mission.

36. In what areas do you think diversity training is needed in your court? Please check each area in which you think training is important. Please check "I" if you think no training is needed in your court.

- a. _____ General training in awareness of the changing workforce and its implications for the courts, the purpose and relevance of diversity training to the courts, how diversity training differs from equal employment opportunity and affirmative action programs, and what it means to "value or manage differences."
- b. _____ Training about the nature and impact of individual values, stereotyping, assumptions.
- c. _____ Skills training in communication, conflict management, team building, problem solving, decision making, total quality management, or managing change.
- d. _____ Training that explores the impact of staff diversity on alternative work schedules and locations, and job sharing and how these various options affect the work environment.
- e. _____ Training on equal employment opportunity policy and related policies as they apply to the judiciary.
- f. _____ Training on grievance procedures for court employees.
- g. _____ Training on the nature of sexual harassment and gender discrimination.
- h. _____ Training on the nature of racial discrimination.
- i. _____ Training on how to deal with "backlash" (i.e., resentment of the attention given to diversity issues).
- j. _____ Other training (please describe). _____

k. _____ A combination of the above (please specify letters). _____

l. _____ No training is needed in this court.

37. Would you prefer separate training sessions for supervisors and non-supervisory staff, training for all employees simultaneously, or a combination? Please check one. If you check c, please explain the combination you would prefer. If you have no preference or don't know, please check d.

a. _____ Separate training sessions for supervisors and non-supervisory staff.

b. _____ Combine supervisors and non-supervisors in the same training sessions.

c. _____ Combination of the above (please explain). _____

d. _____ Don't know; no preference.

38. Are you a supervisor or non-supervisory staff member? Please check one.

a. _____ supervisor

b. _____ non-supervisory staff

39. Are there any other issues of concern to you that are related to office interactions or policies regarding race, gender, sexual orientation, ethnicity, religion, age, physical ability, and so forth? If so, please describe them below.

This image shows a single page of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper appears slightly aged or off-white. There is no handwriting or other markings on the page.

Optional Personal Data Form

You may wish to include an optional personal data form with the questionnaire. The reason for collecting personal data is to compare patterns of responses for various groups of employees. Advantages of collecting personal data are listed below.

- The responses can help ensure that the training program addresses the specific perceptions and experiences of particular groups.
- The responses will show areas of concern for the staff as a whole and for different types of staff.
- The data document the range of diversity characteristics among staff. This will help employees understand that diversity is not restricted to race, ethnicity, gender, and physical ability.

There are also disadvantages to using the personal data form. Disadvantages are listed below:

- The form may alienate some staff members.
- People different from the majority may be highly suspicious of how the data on the form will be used.
- Employees may respond dishonestly if they find the questions too intrusive or if they mistrust the promise of confidentiality.

The issue of trust is a major consideration in collecting personal data. If you decide to use the personal data form, stress that completing the form is optional. According to sound equal employment opportunity policy, you should not force employees to answer questions like these. There is a sample personal data form on page C17.

Sample Optional Personal Data Form

This optional, confidential form will help determine whether the court's problems, if any, primarily affect particular groups of employees, such as non-supervisors or specific minority groups. With this information, those designing the program can determine how best to structure the training and which specific concerns should be addressed through training.

You are not required to complete any of the questions on this form.

The purpose of the questions is to gather information helpful in designing the training program. If you do choose to complete this form, your responses will not be seen by anyone but (*name of recipient*). That person will prepare a summary of the information based on all returned questionnaires, for use in designing the program.

If you choose to answer the following questions, please place a check on the line next to the appropriate response or fill in the requested information.

1. Position/Title _____

2. Court division

a. _____ Supreme Court

b. _____ Court of Appeals

c. _____ Trial Court

d. _____ Probation Office

e. _____ Other (please specify) _____

3. Age

a. _____ under 21

b. _____ 21-29

c. _____ 30-39

d. _____ 40-50

e. _____ over 50

4. Number of years employed by this court

- a. _____ under 3
- b. _____ 4–8
- c. _____ 9–13
- d. _____ 14–18
- e. _____ 19–23
- f. _____ 24–29
- g. _____ over 29

5. Race/Ethnicity

- a. _____ African American
- b. _____ Hispanic/Latino-American
- c. _____ Asian/Pacific Islander-American
- d. _____ Native American/American Indian
- e. _____ Caucasian _____ -American
- f. _____ Other (please specify) _____

6. Marital status

- a. _____ Single
- b. _____ Married
- c. _____ Divorced
- d. _____ Spouse deceased
- e. _____ Have significant other (check only if living with)

7. Gender

- a. _____ Male
- b. _____ Female

8. Would you describe yourself as having physical or mental disabilities that may affect your work?

- a. _____ Yes
- b. _____ No

Please return this completed questionnaire in the pre-addressed envelope to (*name and address of recipient*).

Optional Add-on Survey for Managers

You may wish to include an optional add-on survey for managers. The purpose of this form is to collect data about diversity-related issues that managers may observe or experience. It also seeks information about managers' perceptions of their responsibilities. The data from this form will assist you in structuring training programs that address managers' perceptions of management specific issues. Again, the confidentiality of these responses is critical.

Sample Optional Add-on Survey for Managers

This set of questions is for managers. The purpose is to collect data on diversity-related problems that managers are most likely to encounter or experience. For the purposes of this survey, managers are defined as employees who must complete performance appraisals for at least one staff member. Please note that managers should complete either the main questionnaire only, or the main questionnaire and the optional add-on survey.

1. Please indicate the extent to which you believe each of the following items is a problem in your office by checking one response for each item.

	1 Not at all a problem	2 A small problem	3 A moderate problem	4 A large problem	5 A grave problem	6 No opinion
a. Increase in equal employment opportunity complaints about discrimination in hiring, promotions, or other conditions of employment in the last five years.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Increase in employee grievances in the last five years.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Lack of structure or standard organizational procedures for involvement of staff in appropriate decision-making and problem-solving processes.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Difficulty motivating a particular group of employees.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Difficulty resolving problems with clients, employees, or court users who are different from you.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	1 Not at all a problem	2 A small problem	3 A moderate problem	4 A large problem	5 A grave problem	6 No opinion
f. Lack of a systematic method for tracking employee turnover and reasons for turnover.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g. Lack of participation by diverse staff in informal work-related activities that lead to professional development.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2. For each of the following statements, please indicate whether you agree or disagree.

	Agree	Disagree
a. A certified court interpreter should be available to translate for defendants and witnesses who speak no English or for whom English is a second language.	<input type="checkbox"/>	<input type="checkbox"/>
b. Managers should be evaluated, in part, on whether they recruit, hire, train, and develop diverse employees.	<input type="checkbox"/>	<input type="checkbox"/>
c. There is little opportunity or flexibility in this court for staff to choose different ways to be rewarded and recognized (e.g., public vs. private recognition, monetary rewards vs. administrative leave).	<input type="checkbox"/>	<input type="checkbox"/>
d. I lack adequate skills in communicating with employees, clients, and court users from diverse backgrounds.	<input type="checkbox"/>	<input type="checkbox"/>
e. I am uncertain about appropriate terminology or labels to use when referring to or talking with individuals from backgrounds different from mine.	<input type="checkbox"/>	<input type="checkbox"/>
f. There is little opportunity for the diverse members of the staff to participate in training and development opportunities.	<input type="checkbox"/>	<input type="checkbox"/>
g. There is little opportunity for mid-level and lower-level staff to participate in training and development opportunities.	<input type="checkbox"/>	<input type="checkbox"/>

3. Do you have any other comments about diversity-related issues you encounter as a manager? If so, please write them below.

Please return this completed questionnaire in the pre-addressed envelope to (*name and address of recipient*).

Appendix D

Interviews and Focus Groups

Appendix D. Interviews and Focus Groups

Contents

This appendix contains guidelines and protocols for conducting one-on-one interviews and focus groups. It includes:

- Interviewing Guidelines
- Sample Interview Protocol
- Focus Group Guidelines
- Sample Focus Group Protocol

Interviewing Guidelines

The following guidelines will enable you to conduct effective one-on-one interviews. They will assist you in collecting useable data, managing time effectively, and analyzing the results of the interviews.

1. Develop an interview protocol. An interview protocol is a series of questions about the topic you are investigating. Tips for writing interview questions appear below. You may also refer to the sample interview protocol on page D-3.
 - Write clear, concise questions that cover only one issue. Don't ask rambling, ambiguous questions covering multiple issues.
 - The beginning questions should be simple to answer and non-threatening.
2. Begin the interview by introducing yourself and explaining your role in the project.
3. Explain the purpose of the interview.
4. Describe how the respondent was selected.
5. Assure the respondent that the interview is confidential.
6. If you are taping the interview, ask the respondent for permission. Explain why it is necessary to use the tape.
7. Plan to ask for clarification on any responses that are unclear, vague, or confusing. Follow the written questions you have prepared, but allow enough flexibility to follow up with other questions.
8. Take detailed notes on the answers to the questions as well as on any spontaneous comments the respondent adds.
9. Thank the respondent and explain that he or she may be contacted to clarify answers or respond to additional questions. Describe the next steps in the project.

Sample Interview Protocol

The following questions are designed to be illustrative in scope and format. These sample questions are not intended to be used as the sole questions for an interview.

1. Do you feel that some or all of the staff resist working with people different from themselves?

☐ 1 Yes

☐ 2 No

[If yes, continue to Question 2; if no, skip to Question 3.]

2. Do you feel that this staff resistance is based upon differences in: *[Interviewer should read each characteristic separately and check if a yes or no response.]*

a. Race?

☐ 1 Yes

☐ 2 No

b. Gender?

☐ 1 Yes

☐ 2 No

c. Ethnicity?

☐ 1 Yes

☐ 2 No

d. Educational level?

☐ 1 Yes

☐ 2 No

e. Rank in organization?

☐ 1 Yes

☐ 2 No

f. Age?

☐ 1 Yes

☐ 2 No

g. Sexual orientation?

☐ 1 Yes

☐ 2 No

h. Other dimensions? (please describe) _____

i. Combinations of the above dimensions? (please indicate letters) _____

3. In the past year, have you heard a court employee make a slur, joke, or negative comment about people different from himself or herself?

☐ 1 Yes

☐ 2 No

a. If so, about how often have you heard these comments in the past year?

_____ times

b. Do these comments come from only one or two people, or from several?

☐ 1 One or two people

☐ 2 Several people (Interviewer asks for an estimate of the number of people) _____

c. What differences are the comments based on? (e.g., gender, age, ethnicity, race)

4. In the past year, has a court employee made unwelcome comments to you about your physical appearance?

☐ 1 Yes

☐ 2 No

5. In the past year, has a court employee made unwelcome sexual advances toward you?

☐ 1 Yes

☐ 2 No

6. In the past year, has a judge made unwelcome comments to you about your physical appearance?

☐ 1 Yes

☐ 2 No

7. In the past year, has a judge made unwelcome sexual advances toward you?

☐ 1 Yes

☐ 2 No

8. In the past year, has an attorney, litigant, or other court user made unwelcome comments to you about your physical appearance?

☐ 1 Yes

☐ 2 No

9. In the past year, has an attorney, litigant, or other court user made unwelcome sexual advances toward you?

☐ 1 Yes

☐ 2 No

[Interviewer says, "Now I'd like to ask a few questions about the personnel policies in your office."]

10. Does your office have flexible work schedules to accommodate the elder-care or child-care needs of the staff?

☐ 1 Yes

☐ 2 No

☐ 3 Don't know

[If yes, continue to Question 11; if no or don't know, skip to Question 12.]

11. How are these work schedules working out in practice?

12. Do you think your leave policy for childbirth is fair as written? as practiced?

- ☐ 1 Yes, the policy is fair as written and as practiced.
- ☐ 2 No, the policy is not fair as written or as practiced.
- ☐ 3 The policy is fair as written but not as practiced.
- ☐ 4 The policy is fair as practiced but not as written.
- ☐ 5 Don't know about such a policy.

Focus Group Guidelines

Keep the following guidelines in mind if you elect to conduct focus groups.

- Focus groups should be held in a neutral, private, quiet, convenient location arranged by the court and moderator.
- If the consultant cannot conduct all the focus groups, ask him or her to prepare guidelines for moderators. The moderators should be given written discussion guidelines that describe the purpose of the focus group and how the sessions should be structured. Refer to the sample focus group protocol on page D-7.
- The moderator should arrange for audiotaping equipment and extra blank audiotapes.
- The moderator should begin by introducing himself or herself and the note-taking assistant, and explaining "ground rules" (e.g., only one person should speak at a time, participants should direct their comments to each other as well as to the moderator).
- The moderator should explain the purpose of audiotaping equipment and assure participants that names will not be associated with any comments when tapes are transcribed.
- The moderator should follow the guidelines in Chapter 6 of *Studying the Role of Gender in the State Courts: A Research Guide* by Molly Treadway Johnson.

Sample Focus Group Protocol

Focus group protocols should include six to ten basic questions with follow-up questions ranked in order of priority (e.g., questions that raise issues that will generate the most discussion or are of the greatest interest based on information collected in a survey, during one-on-one interviews, or through less formal methods should be asked first). The following are sample questions.

(General open question for non-supervisory staff)

1. What is your office environment like? Is it generally a positive one for everyone regardless of their positions, physical characteristics, or other differences?

(Follow-up questions)

2. In what ways is the environment less positive for certain groups of employees? Are certain groups of employees treated differently? How are they treated differently? (e.g., Are they given similar promotional or training opportunities, or new job assignments? Are they included in informal networking activities?)

(General open question for court managers)

3. Do you have any difficulty motivating specific groups of employees?

(Follow-up questions)

4. In what ways have you had difficulty motivating these groups? What motivation techniques have you used? How have they not worked with specific groups?

(General open question for court managers)

5. Do you feel that the employees in your office adequately reflect the diversity in the labor force within your region?

(Follow-up questions)

6. How do you usually recruit and hire new staff? Where do you advertise? Who participates in the interviewing process? Who monitors the applicant pool to ensure that members of protected classes are included? What are your monitoring procedures?

Appendix E

Sample Program Outlines

Appendix E. Sample Program Outlines

Contents

This appendix contains sample program outlines for two diversity-training programs. These outlines suggest basic topics and activities, but are not prescriptive. Modify them to meet the needs of your court based on the needs assessment. The sample outlines include:

- Sample Content Outline
for an Introductory One-Day Program
- Sample Content Outline
for a Half-Day Program for Managers

Sample Content Outline for an Introductory One-Day Program

You may use the following program for all staff, in either separate programs for supervisors and non-supervisors or one combined program. This introductory program provides an overview of diversity issues, terminology, and concepts and helps participants understand how diversity affects the workforce in concrete and specific ways. Feel free to modify this outline to meet the needs of your court.

Training Goals

At the end of this program, participants will be able to:

- Define “managing diversity” and how it relates to, but differs from, equal employment opportunity and affirmative action.
- Identify the opportunities and challenges presented by diverse court employees and the diverse clients and court users the court serves.
- Describe how diversity affects the operations of the court.
- Describe strategies for recognizing and managing personal prejudice.
- Identify and describe individual and organizational strategies that create an environment in which all employees have the opportunity to contribute to the effectiveness of the court.

Content Outline

I. Introduction (Time: 30 minutes)

- A. State the objective of the Introduction: to establish an atmosphere of trust, identify participants’ personal goals for the workshop, and provide an opportunity for participants to assess their current level of diversity awareness.
- B. Identify participants’ anxieties about diversity training and one primary objective participants would like to accomplish in the training session.
- C. Identify ground rules and ask participants to agree to them: confidentiality, honesty of responses, and respect for opinions and perspectives different from their own.
- D. Have participants take the Sample Diversity Awareness Quiz. The quiz is located in Appendix F.
- E. Review the Sample Diversity Awareness Quiz with participants.

- F. Suggested activity: Write on a flip chart participants' objectives for the program. Address and refer to these objectives during the session.

II. Definition of "Managing Diversity" (Time: 60–80 minutes)

- A. State the objective of Part II: to define diversity, its various dimensions, and the specific ways in which it affects the workplace.
- B. Ask participants to define diversity and assess their understanding of the concept.
- C. Discuss R. Roosevelt Thomas's definition of diversity (see Module 1-3 of this *Guide*) and the range of dimensions of diversity, and compare them with participants' definitions and understanding; discuss why people generally tend to focus on race, ethnicity, and gender.
- D. Identify organizational diversity within the court (e.g., younger employees and older employees; those with higher education and those without it; professional staff and administrative support staff; employees who have court experience and those who do not; supervisors and non-supervisors).
- E. Identify the differences between diversity, equal employment opportunity, and affirmative action and how these concepts relate to each other (for a comparison of affirmative action, valuing differences, and managing diversity, see Table 1-1 in Module 1 of this *Guide*).
- F. Suggested activities: Write on a flip chart participants' definitions of diversity and the organizational dimensions before giving participants a complete list. Participants can discuss these dimensions in one large group or in small groups. Have participants complete the Diversity Defined exercise located in Appendix F.

III. Factors that Contribute to the Changing Workforce, Clients, and the Public (Time: 15–20 minutes)

- A. State the objective of Part III: to provide participants with some background and contextual information about why diversity issues are being addressed now. (This section is to be presented by a manager, judicial educator, or court training specialist.)
- B. Discuss the background: changes in the court workforce; your court's EEO plan and related policies and practices; and task forces and commissions established to study effects of race, ethnicity, age, gender, and disability. Solicit participant responses to specific examples of factors affecting the court's interest in managing diversity:
 - 1. increasing complexity and overlap of social and criminal issues; (move from "white-collar" to "blue-collar" crimes);
 - 2. increasing diversity of clients, attorneys, and court users (i.e., pro se litigants);
 - 3. increase in minority and women deputy clerks and probation officers;

4. increase in families in which both parents work and an increase in single-parent families and its affect on work and home life; and
 5. new workers on the fast track.
- C. Identify other factors affecting the court's interest in managing diversity.
- D. Explain the purpose of diversity training:
1. to help employees and managers effectively deal with the mixture of backgrounds and characteristics of employees, clients, and court users; and
 2. to enhance productivity.

IV. Opportunities and Challenges Presented by Diversity (Time: 60 minutes)

- A. State the objective of Part IV: to assist participants in understanding how diversity can increase productivity and how it presents challenges to the court.
- B. Ask participants to identify opportunities and challenges presented by workforce diversity.
- C. Solicit responses to the following questions:
1. How can diversity enhance the operations of the courts? Possible responses are effects on productivity; use of the skills, talents, expertise, experiences, and perspectives of a heterogeneous group of people who serve a heterogeneous population; creative problem solving and decision making if the talents and skills of all employees are used.
 2. What challenges does diversity present to the courts? Possible answers are managing individuals with different cultural backgrounds, expectations, motivations, experiences, educational levels, communication styles, and lifestyles; handling conflicts arising from diversity issues; recruiting creatively and ensuring that selection, promotion, and assignments are not biased or discriminatory; fostering open communication around issues of diversity; creating systems in which all employees have an opportunity to contribute to the organization.
- D. Review the purpose of training: to maximize opportunities and provide skills to address challenges.
- E. Suggested activities: Have participants discuss the following experiences in small groups. If participants include supervisors and non-supervisors, you might want to divide them into supervisor and non-supervisor groups, and have participants report responses to the large group.
- First, ask participants to share an experience in which the obvious or not so obvious differences between themselves and a coworker, or between two other coworkers, or

between themselves and a friend were valuable assets for a project or task. What made the project or task successful?

- Second, ask participants to share an experience in which the obvious or not so obvious differences between themselves and a coworker, between two other coworkers, or between themselves and a friend were obstacles for completing a project or task. What made this experience different from the one they presented above?
- Discuss Case Study 1 or Case Study 2. Case studies are located in Appendix G of this *Guide*.

V. Individual and Organizational Similarities and Differences (Time: 45 minutes)

- A. State the objective of Part V: to provide participants with an opportunity to reflect on and identify similarities they have with coworkers, such as common personal goals and workplace goals, while recognizing and respecting differences.
- B. Discuss what all human beings have in common regardless of race, gender, geographic location, place of birth, language, age, education, physical ability, sexual orientation, income, and values: the need for respect and to feel valued, recognized, and rewarded; the need to communicate and have productive work relationships; the need for support; the need to contribute. Explain that the ways in which individuals express these common needs may differ.
- C. Discuss workplace similarities. For example, ask participants if they share a common organizational vision, values, and goals.
- D. Discuss the implications of this mix of commonalities and differences for the ways in which we work together.
 1. Ask participants, how does this mix affect office interactions, morale, issues of respect, motivation, and productivity?
 2. Ask participants, how does this mix affect work schedules? (e.g., compressed time, flex time, comp time, job sharing, and locations; balancing organizational and personal values and priorities; balancing home and work life)
 3. Ask participants, especially managers, how does this mix affect office operations? (e.g., hiring, promotions, coaching, training, mentoring, performance reviews, motivation, communication mechanisms and styles, and reward and recognition systems)
- E. Suggested activity: Discuss one of the case studies located in Appendix G or ask participants to discuss the following two questions in small groups and then report their responses. What are the basic needs, interests, and goals you share with other employees in your court? What are some obstacles to achieving your common goals? (individual and organizational)

VI. Effects of Differences in Personal Values, Experiences, and Stereotyping in the Workplace (Time: 90 minutes)

- A. State the objective of Part VI: to help participants identify stereotypes as one of the major obstacles to achieving goals, to recognize one another's strengths and capabilities, and to treat one another fairly and respectfully.
- B. Show *A Winning Balance* or *A Tale of "O."* Annotations of these videos are located in Appendix B of this *Guide*. Discuss the following questions:
 - 1. What are stereotypes? (see Appendix I for a working definition of stereotypes). Conceptualize stereotypes through the iceberg model. The model states that one can only see 20 percent of the iceberg; the other 80 percent is underneath the surface. Thus, if we focus only on the 20 percent of a person we see, we miss 80 percent of the person.
 - 2. How are stereotypes formed? Discuss the compact disc model: A compact disc records our life experiences that emanate from parents, teachers, neighbors, friends, media (print and electronic), significant others, school, and religious teachings. Experiences may be negative or positive, or negative and positive (e.g., some people have never had a personal or professional relationship with a Native American, a gay man or lesbian woman, or a person with disabilities; therefore, they rely on the experiences of others or the media). Compact disc recordings of these experiences continue to play back in our minds even with the addition of new recordings.
 - 3. Discuss the effects of stereotyping on the person being stereotyped (to be identified by the participants through suggested activities).
 - a. Stereotyping limits opportunities and expectations; it can result in people anticipating or predicting performance or behavior without real experience.
 - b. Stereotyping can result in people ignoring the individual differences and uniqueness we all have and the fact that people grow and change over time.
 - c. The disadvantage of stereotyping is that the person doing the stereotyping cannot learn about what motivates people because he or she is not tuned in to each person's abilities, uniqueness, talents, and skills.
- C. Explain how to overcome stereotyping.
 - 1. Get to know people as individuals.
 - 2. Ask someone from a different culture and background whom you trust, and who trusts you, to help you ask the right questions about your differences and similarities.
 - 3. Discuss how you can be a change agent by responding to slurs, jokes, or stereotyping.

4. Ask participants and faculty to identify other strategies and models for overcoming stereotyping.

D. Suggested activities:

- Depending on time and needs, have participants complete the Cross-Cultural Personal Biography (located in Appendix F) and discuss it with them. Ask participants to share an experience in which they felt they or a friend or a coworker was stereotyped, and to describe how they felt and what, if anything, they did about it.
- Discuss a case study.

VII. Practicing Diversity Initiatives in the Workplace on an Individual Level (Time: 30 minutes)

- A. State the objective of Part VII: to help participants identify actions that they can take to create and sustain a workplace environment that promotes diversity.
- B. Ask participants how they can practice positive diversity efforts in their organization.
- C. Ask participants what skills and information they need to help them promote diversity.
 1. For example, ask participants if they are confused about what are the most appropriate labels to use when identifying a particular group. If they are confused, provide the following guidelines:
 - Ask the people in the group for their preferred term.
 - Pay attention to how people refer to themselves or their own group (a feminist organization, the Latino Employee Support Group, or the Association for the Asian Pacific League, for example).
 - Remember that all group members will not necessarily have the same preference.
 - Realize that just as fashions change, so do the terms used to describe groups.
 - Understand that terms used within a group may not be acceptable when used by an outsider. The epithets used in joking banter and teasing may be reserved for members only.
- D. Suggested activity: Discuss a case study.

VIII. Practicing Diversity Initiatives in the Workplace on an Organizational Level

(Time: 60 minutes)

- A. State the objective of Part VIII: to help the court identify actions that will create and sustain a workplace environment that promotes diversity.
- B. Ask participants the following: Do our policies, procedures, and practices need to change if we are to create an environment in which everyone can contribute? If so, which ones and how do they need to change?
- C. Ask participants: What skills and information do we need to help us identify which policies, procedures, and practices need to change?
- D. Suggested activity: Have participants anonymously complete the Diversity Training Action Planning Form located in Appendix F. All participants should fill in both sections of the form. The consultant/facilitator then compiles the information on actions that the organization should take and shares the results with managers in preparation for additional training (see IV under course for managers) and follow-up activities and initiatives.

Sample Content Outline for a Half-Day Program for Managers

This suggested program outline is a follow-up to an introductory diversity program. It is targeted to managers and assumes that they have completed the introductory program. This program helps managers assess the ways in which specific court operations and systems support or hinder diversity management. Modify this outline so that your course focuses on the specific issues or situations identified in your needs assessment.

Training Goals

At the end of this program, participants will be able to:

- Explain why it is important to manage diversity in the courts.
- Identify court operations and systems that support diversity management.
- Identify court operations and systems that impede diversity management.

Content Outline

I. Introduction (Time: 30 minutes)

- A. State the objective of Part I: to review why it is important to effectively deal with diversity in the courts.
- B. Ask participants to identify their expectations for the training session.
- C. Engage participants in a discussion of factors contributing to the changing workforce and the public it serves. Quickly review the introduction in the content outline in the program for all staff.
- D. Review the definition of diversity (individual and organizational) (see II in the introductory program outline for all staff).

II. Determine the Specific Diversity-related Issues that Exist in an Increasingly Diverse Work Environment (Time: 90 minutes)

- A. State the objective of Part II: to assist managers in identifying ways to assess operations.
- B. Assess the court's strengths and weaknesses with respect to diversity initiatives; focus on process (how to assess diversity-related problems) and content (what specific operations should be assessed).
 1. Discuss ways to identify perceived issues or problems (e.g., surveys, focus groups, one-on-one interviews, task forces) and which court users should be queried. It is important for managers to collect data, not to operate on assumptions. Suggested activity: Have participants organize into small groups to think of ways to identify perceived diversity-related problems or issues; give them a few examples.
 2. Identify the types of interactions that should be assessed:
 - interactions or operations in the office;
 - operations in the "field," especially between probation officers and their clients; and
 - courtroom interactions.
- C. Based on needs assessment results, identify the specific operations or systems that managers should review. (There is no need to discuss all ten points that follow; participants may identify other operations or systems.)
 1. Mission, goals, values, and vision statements (e.g., Does your office have them? Does everyone know about them, and are they committed to them? Were they created by all employees or only senior managers? When were they last revised?)
 2. Recruitment, hiring, interviewing, and the selection process (e.g., Are all positions posted? How is hiring monitored for adherence to the EEO plan? Who participates in interviews? What sources are used for recruitment?) Suggested activity: Discuss a case study.
 3. Orientation of new employees, training, job assignments, and promotions (e.g., Are training opportunities fair for all staff at all levels? How are job assignments determined?) Suggested activity: Have participants complete and discuss Norms: The Unwritten Rules of This Organization (see Exercise 5 in Appendix F).
 4. Staff development. Suggested activity: Show and discuss the videotape *The Power of Diversity: Creating Success for Business and People—Career Development* (Tape 2 in the series).

5. Communication mechanisms, including information-sharing, decision-making, and problem-solving processes (e.g., Do processes—both formal and informal—allow for easy and flexible communication by employees at all levels of the organization?)
6. Performance evaluation and review (e.g., How often is performance evaluated? Is the evaluation based on clear performance criteria or objectives identified by employee and supervisor? Are career expectations and opportunities for growth clearly understood and articulated? Is there an opportunity for supervisors to receive feedback on their performance from their employees?) Suggested activity: Show and discuss the videotape *The Power of Diversity: Creating Success for Business and People—Performance Appraisal* (Tape 3 in the series).
7. Rewards and recognition systems (e.g., Are they flexible enough to accommodate individuals who prefer private recognition over public recognition? Can employees choose to take annual leave or flexible work schedules for a reward rather than just monetary compensation?)
8. Work schedules and locations (e.g., Are they flexible enough to accommodate staff needs yet ensure office coverage? Is there any flexibility in work locations for telecommuting?) Suggested activities: Show and discuss the videotape *The Power of Diversity: Creating Success for Business and People—Balance of Work/Family Issues* (Tape 3 in the series), or discuss a case study.
9. Policies—EEO Plan, maternity and adoption policy, policy against sexual harassment, diversity policy, grievance procedures, conflict resolution policies and procedures (e.g., How are they practiced? Does everyone know about them?) Suggested activity: Discuss a case study.
10. Other operations and interactions—subtle and overt. Suggested activity: Have managers identify other interactions they may wish to assess. Show and discuss the videotape *The Power of Diversity: Creating Success for Business and People—Sexual Harassment and Gender Discrimination and Disabilities: Hiring and Promotion* (Tape 1 in the series).

III. Assessing Diversity Issues between the Court and Clients and Court Users

(Time: 60 minutes)

- A. State the objective of Part III: to help managers identify and assess diversity-related problems between court personnel and clients or court users.
- B. Discuss and identify diversity-related issues with clients or court users and in the courtroom.
- C. Suggested activities: Discuss an appropriate case study.

IV. Methods for Addressing Diversity-Related Issues (Time: 90 minutes)

- A. State the objective of Part IV: to provide managers with a model plan that can be used to address diversity-related issues (resource: Ann Morrison, *The New Leaders*).
- B. Discuss methods for identifying and addressing diversity problems in the organization:
 - 1. Strengthen top management's commitment to diversity, provide resources to support diversity initiatives, provide incentives to continue promoting diversity, and so forth.
 - 2. Identify solutions to problems that are consistent with the organization's overall goals.
 - 3. Analyze solutions to problems identified in II.C.
 - 4. Identify ways to sustain interest and commitment and strengthen diversity efforts.
- C. Suggested activity: Using the Action Planning Tool in Appendix F, ask participants to (1) choose a barrier or problem that is a high priority, (2) describe how they would confirm that the barrier chosen was appropriate, (3) identify possible causes for the problem, (4) identify additional barriers, (5) discuss possible actions or approaches to addressing problems, and (6) describe how management can support the actions. Try to make discussion groups as diverse as possible, or make some groups heterogeneous and other groups homogenous and ask participants to report on their responses and the group dynamics that unfolded as they completed the exercise. For example, did the heterogeneous groups come up with more creative causes and solutions? Did the heterogeneous groups encounter more problems in listening to one another?

Appendix F

Sample Diversity Exercises

Appendix F. Sample Diversity Exercises

Contents

This appendix contains sample diversity exercises that you may modify or use as is in your diversity-training program. The exercises in this module include:

- Exercise 1. Sample Diversity Awareness Quiz
- Exercise 2. Diversity Defined
- Exercise 3. Cross-Cultural Personal Biography
- Exercise 4. Norms: The Unwritten Rules of the Organization
- Exercise 5. Valuing Differences
- Exercise 6. When I Felt Different
- Lecturette. Valuing Differences: The Concept and a Model
- The Diversity Action Planning Tool

Exercise 1. Sample Diversity Awareness Quiz¹

Review these questions about work-force and court demographics and the answers on the next page. They might surprise you.

1. _____ By the year 2000 (a) two out of every six, (b) three out of every six, or (c) four out of every six workforce entrants will be women.
2. _____ Of top executives in American companies, (a) 5%, (b) 10%, or (c) 15% are women.
3. _____ Approximately, what is the total of minority judges in the state courts? (a) 500, (b) 1500, or (c) 2500.
4. _____ Approximately, what is the total number of African American judges on the state courts of last resort? (a) 10, (b) 15, or (c) 25.
5. _____ By the year 2030, the number of senior citizens will be (a) almost equal to, (b) less than, or (c) more than the number of teens in the United States.
6. _____ By 2015, what will be the *second* most practiced religion in the United States?
7. _____ Sexual harassment cost the state government \$ _____ million in turnover from May 1978 to May 1980.
8. _____ Of new entrants to the workforce over the next thirteen years, _____% will be white men.
9. _____ By the year 2050, the average U.S. resident will trace his or her descendants to which four regions in the world?
10. _____ Of 43 million disabled Americans who are of working age, (a) one-half, (b) one-third, or (c) one-fifth are in the work force.
11. _____ What state has the highest percentage of women in its judiciary? (a) Alaska, (b) California, or (c) Colorado.
12. _____ Women own (a) 7%, (b) 15%, or (c) 30% of all U.S. businesses.

¹ Data drawn from Information Service, National Center for State Courts, and Johnston, William B., and Packer, Arnold E. *Workforce 2000: Work and Workers for the 21st Century*. Indianapolis, Ind.: The Hudson Institute, 1987 (Prepared for the U.S. Department of Labor); Office of Equal Employment Opportunity, Administrative Office of the U.S. Courts.

Sample Diversity Awareness Quiz Solutions

1. c
2. a
3. c
4. a
5. c
6. Islam will be the second most practiced religion in the United States; Christianity will be first; Judaism will be third.
7. \$189 million
8. 32%
9. Asia, South America, Latin America, Africa
10. c
11. a
12. b

Exercise 2. Diversity Defined²

Time

- 15 minutes

Objective

- To develop a group understanding of the term “diversity”

Method

1. Diversity means different things to different people. This exercise will enable participants to understand what diversity means to us as a group and to build some common language and perceptions about what can be an abstract term.
2. Standing at a flip chart, ask the group, “What are some characteristics of people that come to mind when you hear the term ‘diversity’?”
3. Record the responses on a flip chart. If the group becomes stymied, suggest a term or probe for suggestions. The completed list will most likely include terms covering a variety of characteristics, such as age, physical ability, ethnicity, skills, national origin, and economic status.

Discussion Points

- Diversity includes many characteristics and need not center exclusively on race or gender.
- We may define ourselves as belonging to several groups.
- Diversity may also include perspectives, ideas, and practices based on one’s unique background and set of experiences. People from similar backgrounds may see things similarly because of a shared set of experiences, but other influences may negate those experiences. It is unlikely that two people will have exactly the same set of experiences from which to draw.
- Rather than thinking of people in a “box” that defines who they are, think of them as being shaped by a set of influences.

² Adapted from Dickerson-Jones, Terri. *50 Activities for Managing Cultural Diversity*. Amherst, Mass.: Human Resources Development Press, 1993.

Exercise 3. Cross-Cultural Personal Biography³

Objectives

- To allow participants to identify their experiences with people different from themselves.
- To allow participants to see that many of their experiences are similar to those of others.
- To begin to establish the foundation for participants' understanding of how stereotypes begin.

Method

1. Ask participants to complete the Cross-Cultural Personal Biography. Give them brief explanations: "Across the top of the columns are listed periods in or experiences from your life ('significant relationships' is for marriage or living together relationships; 'business/real estate' is for when you have made major purchases of a car, real estate, appliances, and so forth; if you have not been in the military or college, leave those columns blank). Down the left-hand side is a listing of different groups of people." (Explain the term "National": Asian American is someone born and raised in the United States; Asian National is someone born elsewhere who has emigrated to the United States).
2. "In each square of the page put one of the following symbols: + if you had a positive experience with a member of the group listed in the left-hand column; - if you had a negative experience; +/- if your experience was a mix of positive and negative; or 0 if you had no personal experiences with any members of this group or you cannot remember them.
3. Give participants ten minutes to complete the form. Watch them—if they finish earlier, continue earlier. If a few people are still working on the form in ten minutes, however, proceed with the exercise, because they can finish it later.
4. Divide participants into groups of three to four and ask them to discuss what they wrote on their forms—what it could tell them and how the forms of others in their group are similar to or different from their own. Allow ten minutes for small-group discussion.
5. In the larger group, ask people what observations they had in their small groups.

³ Adapted by Professor Lamar Cyprian Rowe.

Exercise 3. Cross-Cultural Personal Biography

Your cultural group: _____

	Family/ Pre-school	K-6	Middle School	High School	College	Military	Work	Significant Relationships	Neighborhood	Social	Religion	Business/ Real Estate
Asian American												
Asian National												
Black American												
Black National												
Disabled												
Hispanic American												
Hispanic National												
Jewish												
Native American												
White American												
White National												
Other												
Other												

+ positive experience

- negative experience

+/- mixed experience

0 no experience

Exercise 4. Norms: The Unwritten Rules of This Organization⁴

Dress

- What is the organizational uniform? How do people dress? Who wears suits? At what level are jackets required? Do women wear pants?

	Men	Women
Senior management		
Middle management		
Supervisors		
First-line staff		
Other		

Communicating and Addressing

- How are people addressed? (First name, title, etc.) How are people contacted? (Phone call, memo, appointment)

	Men	Women
Senior management		
Middle management		
Supervisors		
First-line staff		
Other		

⁴ Adapted from Gardenswartz, Lee, and Rowe, Anita. *Managing Diversity: A Complete Desk Reference and Planning Guide*. Homewood, Ill.: Business One Irwin, 1993.

Employee Gatherings and Interacting

- Who interacts? Who convenes the meeting? Who facilitates it? Who is invited? Who participates? Is promptness valued?

	Format (Time, Place, Length)	Participants (and Their Roles)
Meetings		
Breaks		
Lunch		
After work		

Note:

- The following are suggestions for using Norms: The Unwritten Rules of This Organization.

Objective:

- To help potential managers learn the unwritten rules of behavior in the court.

Intended Audience:

- Mentors, coaches, or supervisors working with potential promotees or new employees so that they can teach them the organization's unwritten rules.

Processing the Activity:

- One-on-one discussion between mentor or coach and employee or promotee.

Points for Discussion:

- Whatever is on the worksheet and whatever other norms the mentor or supervisor suggests are important.

Caveats and Considerations:

- It is possible for a trainer to design and use a seminar format to determine what the norms are so that all mentors or supervisors in a given organization teach and reinforce the same norms.

Exercise 5. Valuing Differences⁵

Objectives

- To provide participants with a philosophical framework for the essence of diversity, which is Valuing Differences.

Time

- 60 minutes

When to Use

- Toward the beginning of a session

Group Size

- Twelve to twenty-four participants
- Unlimited (see “Variations”)

Materials

- Chart paper
- Markers
- Lecturette: *Valuing Differences: The Concept and a Model*. (see section following exercise)

Physical Setting

- A room in which participants can comfortably be seated at tables.

Handouts

- *Lecturette: Valuing Differences: The Concept and a Model* (The Lecturette follows Exercise 6.)

Instructions

1. Announce the purpose and give a brief overview of the activity.
2. Present the lecturette *Valuing Differences: The Concept and a Model*, by Barbara A. Walker, making sure you give credit to the author and original publisher of that material. Use the overheads supplied with the lecturette. (Twenty minutes.)
3. Instruct the group to form subgroups of four or five members each. Ask each subgroup to brainstorm the following four types of recommendations for its own department:
 - How to help people feel more valued
 - How to help people feel more empowered
 - How to ensure that individual perspectives are better heard.

⁵ Adapted from O'Mara, Julie. *Diversity Activities and Training Designs*. San Diego, California: Pfeiffer and Company, 1994.

- How to better take into account the department's individual and group differences
- 4. Distribute chart paper and a marker to each subgroup and instruct them to select a spokesperson and to chart recommendations to report back to the large group. (Twenty minutes.)
- 5. Reconvene the total group and solicit a report from each spokesperson. (Twenty minutes.)
- 6. Close the activity by analyzing trends and capturing the macro or generic threads running through participants' recommendations.
- 7. Review the purpose of the activity.

Variations

Any one of the following four variations can be substituted for Instruction 3. (All other instructions remain the same.)

- Ask subgroups what they see as the key action items to implementing this model in their departments.
- Direct each subgroup to pick one of the following three topics to discuss:
 1. Stripping away stereotypes
 2. Building relationships with people one regards as different
 3. Enhancing personal empowerment
- Ask each subgroup what it finds to be the barriers to "Valuing Differences" and what can be done to lessen their impact.
- Ask the subgroups to give examples of how this model can directly and positively impact productivity in their departments.

Exercise 6. When I Felt Different⁶

Objectives

- To provide an opportunity for participants to share their feelings and emotions in circumstances in which they have felt different.
- To allow participants to reflect on how feeling different impacts self-esteem, teamwork, and productivity.
- To provide a new insight for participants who have never felt different.
- To allow participants to reflect on how long people remember the impact of feeling different.

Time

- 45-60 minutes

When to Use

- At any time during the training session
- At the close of a session as a wrap-up

Group Size

- Unlimited

Materials

- Prepared chart (see “Prior to the Session” Instructions)
- Chart paper
- Markers
- Masking tape for posting charts

Physical Setting

- A room in which participants can be comfortably seated at tables and can view charts.

Handouts

- When I Felt Different Information Form

Instructions

Prior to the Session

- Prepare an “Instructions” chart similar to the one shown below:

1. Complete the handout.

⁶ Adapted from O’Mara, Julie. *Diversity Activities and Training Designs*. San Diego, California: Pfeifer and Company, 1994.

2. Form a small group of three, preferably with people that you do not know and people you consider different in race, gender, age, and/or other characteristics.
3. Discuss your responses with other members of your group until _____ a.m./p.m.
4. Be prepared to share and discuss your experiences with the large group.

At the Session

1. Give an overview of the activity and its purpose. The following instructions would be appropriate: "This activity will give you an opportunity to examine the emotional implication of how feeling different impacts others. There are lots of opportunities for people to feel similar in work environments. When people feel similar, they feel welcomed and a part of the team. In most instances, people do not remember the feelings of being similar, because it is a comfortable experience. However, people do remember the experiences of feeling different, and many times the memory goes back to early years of education and the socialization process. With the changing workforce demographics, there are more opportunities for feeling different because of the different cultures that are a part of the workforce."
2. Begin the activity by sharing a time you felt different, describing the incident and how it influenced your life. This self-disclosure works best when the incident was a critical or pivotal one. (*Note:* Incidents of discrimination, prejudice, assumptions, stereotyping, isolation, and being singled out due to membership in a certain culture provide an excellent illustration. Set the tone for this activity. If the incident is seen as funny or frivolous, the impact of the feelings and emotions can be misleading. Frame the exercise in a serious tone.) (Five minutes.)
3. Distribute the handouts to each participants and display the "Instructions" chart. Answer any questions participants have regarding the handout.
4. Allow five minutes for participants to fill out the handout. When you finish, look for others who have also finished to form your group of three people. Be sure to use the criteria on the Instructions chart to choose your group. Discuss your experience: the circumstances, feelings, and message about you. Discuss how you would respond to that experience if it happened today. Finish your discussion by _____ a.m./p.m.
5. Also write the finish time on the "Instructions" chart.
6. Check in periodically with each small group to ensure equal time for sharing of experiences. (Twenty minutes.)
7. Reconvene the total group. Ask all the participants who had positive experiences to stand on one side of the room. Ask all of the participants who had negative experiences to stand on the other side of the room. Ask participants to observe how many people had negative and positive experiences.
8. Distribute chart paper and markers to both of the groups. Instruct the positive-experience group to record positive words on the chart paper to describe their experiences; ask the negative-experience group to do the same with negative words. (Five minutes.)
9. Place the completed charts next to each other and ask the participants to react to the positive versus negative words and discuss the possible impact on the workplace. Solicit insights regarding valuing and understanding diversity. (Ten minutes.)

10. Close the activity by discussing the implications for feeling different, given changing demographics. Ask participants to provide recommendations on how to help people have more positive experiences. Review the purpose of the activity. (Five minutes.)

Variations

- Before Instruction 8, ask for two or three volunteers to share their experiences and describe what they would do differently today.
- Eliminate Instruction 5, 6, and 7.
- Invite participants to share their stories with the total group. After all individuals have completed their forms, ask the participants to sit in a large circle. Instead of asking subgroups of three to discuss their responses privately, allow members of a subgroup to bring their chairs into the center of the circle and discuss their responses while the outer circle listens. Continue until all subgroups have shared their stories.

Exercise 6. When I Felt Different Information Form⁷

Instructions

- Complete the information requested. After you have finished, form a group of three, preferably with people you do not know and people different from you in race, gender, age, and/or other characteristics. Please share the responses on this sheet with the people in your small group. Try to get in touch with the feelings and emotions that you felt during the experience.

1. Describe a time when you felt different.

2. Describe the experience. What were the circumstances?

3. Describe your feelings regarding this experience.

⁷ Adapted from O'Mara, Julie. *Diversity Activities and Training Designs*. San Diego, California: Pfeifer and Company, 1994.

4. Describe the messages you received about yourself.

5. Describe how you would respond to that experience today.

Lecturette: Valuing Differences: The Concept and a Model⁸

Valuing Differences: The Concepts

“Valuing Differences” is a cluster of concepts that shapes an approach to helping people deal with issues created by their differences. This approach focuses people on the value of differences to help them become open to learning from people they regard as different and to help them build empowered relationships in which they work together interdependently and synergistically.

On one level, Valuing Differences is an approach to the work of affirmative action and equal employment opportunity, but it is more than that. It is a way of helping people think through their assumptions and beliefs about all kinds of differences—individual, cultural, geographical, and organizational. As such, Valuing Differences is an approach to both the work of personal growth and development and the work of increasing an organization’s productivity.

Capitalizing on the Value of Differences

It is often acknowledged that differences among people and cultures are the wellspring of life’s richness and excitement. But the reality is that differences create discomfort and conflict. As a result, managers and leaders in the workplace face the critical challenge to find the most effective way to help people deal with their differences. Generally, people are comfortable with their sameness. Some managers insist that the best way to reduce conflict and maintain harmony is to focus on the ways in which people are alike. It is argued that people work together best if they ignore their differences.

When, however, people believe that their differences make up an essential part of who they are, they may find it difficult to see the ways in which they are alike. They may even see their sameness differently.

Having to stay focused on the similarities often means that those who recognize their differences feel left out and devalued. Ignoring differences, therefore, not only supports the fiction of a homogeneous workforce, but it leads to the potentially dangerous conclusion that differences are unacceptable.

Differences in and of themselves fuel creative energy and insight. They are the points of tension that spark alternative viewpoints and ideas and ignite the kindling forces behind creativity and innovation. They are the reference points for probing the meaning of beliefs and core values for refining the understanding of who we really are.

⁸ Adapted from O’Mara, Julie. *Diversity Activities and Training Designs*. San Diego, California: Pfeiffer and Company, 1994.

Difference is intrinsically valuable to individual growth and development. Diversity, the mix and various combinations of human differences, is essential to growth and synergy in any organization. People and their differences make up the foundation of an organization's ability to develop broad perspectives and to approach business problems in new and creative ways.

This Valuing Differences model outlines and explains the work of helping people and their organizations learn how to capitalize on differences and reach their fullest potential. The work begins by focusing people on their differences.

At the core of the Valuing Differences approach, is the wisdom of an old adage: "Every person is, in many respects, like all other people, like some other people, like no other person" (Kluckhohn and Murray, 1948). Human beings share many of the same hopes and fears. But in important ways, people are different from each other; not only as unique individuals but as members of groups that share a perspective of the world unlike that of any other group. Valuing people requires paying attention to these differences.

If people feel that their differences make up an essential part of their worth, then they feel most valued when they believe they are seen in their fullest dimensions, both as individuals and as members of their own group(s). The central Valuing Differences task is learning to pay attention to people as unique individuals, while recognizing and taking into account their differences as members of particular groups. This is the real work of individualizing people; that is, learning to see them in their fullest dimensions. This work enables people to see others as equal though not the same.

Valuing Differences: Principles and Process

The Valuing Differences model is based on the following key principles:

1. People work best when they feel valued.
2. People feel most valued when they believe that their individual and group differences have been taken into account.
3. The ability to learn from people regarded as different is the key to becoming fully empowered.
4. When people feel valued and empowered, they are able to build relationships in which they work together interdependently and synergistically.

These principles have shaped the content and steps in a process that helps people sort through their beliefs and assumptions about others and their individual and group differences. The following are the five steps in this process:

1. Stripping away stereotypes.
2. Learning to listen and probe for the differences in people's assumptions.
3. Building authentic and significant relationships with people one regards as different.
4. Enhancing personal empowerment.
5. Exploring and identifying differences.

These steps are involved in the work of an ongoing process of personal development and growth. The first four are not necessarily sequential and may be undertaken simultaneously. The fifth step, for reasons explained later, should be undertaken after some of the other work has been done. The following discussion highlights some of the critical points in the Valuing Differences process.

Stripping Away Stereotypes

The first step in the process is to help people learn how to identify and strip away their stereotypes, defined in this work as fixed inflexible notions about a group. Gordon Allport (1979) wrote that prejudice is “an antipathy based upon a faulty and inflexible generalization” (p.9). In other words, stereotypes, whether positive or negative, are the heart of prejudice and block the ability to think about people as individuals.

It is very important not to confuse stereotyping with the processes of prejudgment and generalization, which are essential aids to thinking and building an orderly life. But many generalizations are based on misconceptions and errors in judgment. Sometimes people over-generalize and stereotype simply because they do not have the facts. It is necessary to recognize that stereotypes develop when people are unable to reverse and erase their prejudgments after they receive new information and facts. In the Valuing Differences process, participants are encouraged to examine their prejudgments openly and, where possible, to substitute facts.

Erasing stereotypes liberates people from the need to manage their lives by forcefitting others into neat, tidy categories and roles. It is also an important step in learning to accept one’s own differences. In doing so, people are better able to manage the tension of holding on to their own views, while respecting and protecting others’ rights to believe differently, even in ways that appear flatly contradictory to their own values and beliefs.

Learning to Listen and Probe for the Differences in People’s Assumptions⁹

The next step is developing the skill of listening for the differences in the assumptions of others. This skill, which is sometimes simply referred to as “slowing down,” involves learning to stand back from oneself and suspend one’s own judgment. Sometimes this may mean encouraging others to sort through their opinions and judgments so that they can articulate their fundamental values and assumptions.

This step is based on the recognition that in important ways people can be very different. Of course there are many ways in which people are the same; as human beings, we all share many of the same hopes and fears. But there are important ways in which we are all different from one another—

⁹ Additional information for this step was provided by Barbara A. Walker, 1993.

not only as unique individuals but as members of groups that hold a shared perspective on the world. People form different cultures and different geographies approach the world with different operating assumptions.

The task is identifying the differences in people's approaches and working to understand the shades of their meaning. Doing this work, that is, examining the assumptions of others, often enables us to better understand our own assumptions.

Building Relationships with People One Regards as Different

Another step in the Valuing Differences approach is encouraging people purposefully to do the work of building authentic and significant relationships with those they regard as different. Too often, individuals only take the time to get to know, depend on, and trust those with whom they feel most comfortable—usually people they view as most like themselves. They do not take the time to build relationships with people whose differences make them uneasy.

This is a particularly disturbing problem for personnel professionals who struggle with the question of how to achieve parity at the top of an organization. Managers in these positions, often white men, fill the positions regarded as critical only with people whom they feel they know and can trust, and on whom they can depend. A first step toward breaking this cycle is to encourage managers to go out of their way to build meaningful, authentic relationships with people they regard as different.

Relationships across the lines of group differences give people an opportunity to understand that members of different groups have been socialized into different but equally valid assumptions and ways of seeing the world. As a result, one can understand that conflicts and tension created by differences are not always irreconcilable clashes in values and principles, but sometimes are mere differences in perspective.

"Bonding," a term used to describe the work of building authentic and significant relationships, deepens the investment in learning about issues one would not even think about otherwise. Honest ignorance of some issues created by differences is, in part, the result of a natural process of selective self-education. Often people simply do not choose to learn about issues that do not appear to affect them personally. Bonding helps people understand others' viewpoints and the burdens that they feel they carry. For some individuals, this is a significant point of human connection: When allowed to see another person's pain, one works harder to see that other person in fuller dimensions.

In addition, bonding deepens the investment in being authentic; that is, being the same person with others as one is with people in one's own group. Authenticity is important particularly when developing relationships across the lines of differences because it is a key to trust. The more people can trust others, or at least predict their behavior with some accuracy, the more they are willing to depend on them.

Developing such relationships is an important step in learning to take one another seriously and in eliminating the patronizing behavior that may occur between colleagues who are uneasy with each other. When people get to know each other, it is more likely that they will give honest feedback and even share important, unsolicited information. Although people may have some highly divergent differences, some of which they may never understand, they acquire the ability to see each other as potential allies, if not friends.

The process of bonding with people regarded as different, like building any significant relationship, is not without risks. In learning to depend on others, people risk the possibility of being let down and feeling devalued, sometimes even betrayed. Part of the Valuing Differences work is taking the time to put these risks in perspective.

Enhancing Personal Empowerment

Enhancing one's sense of inner personal power is a pivotal step in the Valuing Differences approach. It is at once both the means and the end of the work. The more comfortable people are working with and learning from others regarded as different, the more empowered they become. The more empowered people are, the more open they become to learning from differences in the perspectives of others.

The ability to grow and learn is often constrained by a self-referent point of view; that is, seeing one's own way as the right way and the norm by which to measure all others. Audre Lorde (1984) states:

that individuals are inclined to see human differences in simplistic opposition to each other: dominant/subordinate, good/bad, up/down, superior/inferior. . . Too often, we pour the energy needed for recognizing and exploring differences into pretending that differences are insurmountable barriers, or that they do not exist at all (p. 114).

Locked into an either/or approach to life, people become threatened by any deviation from their perceptions of the norm. They fear that others' differences mean that they must change. Therefore, they close in and join ranks with people whom they believe to be most like themselves. They respond like victims. The differences between feeling and not feeling like a victim is one's sense of personal empowerment—one's ability to accept, move toward, and even embrace different ideas and perspectives. The process of opening oneself up and becoming comfortable with others' differences is then synonymous with empowerment.

An empowered person listens and probes for differences in others' assumptions and even "tries on" different perspectives to glean others' strengths and wisdom. People like this will take risks to build authentic relationships and, though making mistakes from time to time, allow others the right to do the same.

Personal empowerment deepens the ability to trust in oneself and in the constructive potential of others. It allows one to commit to stay in the dialogue and wrestle with the complexities of issues created by differences. This sense of empowerment helps individuals accept and even anticipate

change and, in some cases, figure ways to respond productively to those who have not learned to value differences.

When people are empowered, they are more comfortable with the fundamental question underlying almost all conflict: “By whose standards shall we decide, yours or mine?” Rarely is there an easy answer to this question. However, people who have internalized the understanding that power is not a zero-sum game are more willing to share it. Sometimes they learn that the answer can be: “Ours.” Personal empowerment enables an individual to accept the fact that there may be times when complex issues must be decided on the basis of others’ standards. Certainly empowered people include in their search for the answer the well-being of others and the success of the whole.

Identifying Group Differences

The last step in the Valuing Differences process is working together with the people regarded as different to identify and articulate the core identity issues held by different groups. This involves probing for group differences in the assumptions and perspectives that shape people’s values and view of the norm, or their interpretation of what the norm should be. In some cases, a group’s difference may be a shared perspective that has developed as a result of the way it has been treated by another group. In other cases, the differences may be cultural. Studying the implications of group differences regarding issues such as building relationships, sharing power, and styles of bonding is a component of this work. Understanding group differences is an important step toward developing effective strategies to help people learn how to work together interdependently.

Although this work is critical to helping people deal effectively with issues created by differences, it requires a careful approach. Whenever possible, participants in the process should be encouraged to begin by learning to recognize stereotypes. Otherwise they may find themselves working at cross purposes. The problem with focusing on identifying group differences lies in the risk of promulgating stereotypes. The question is: Can individuals talk safely about group differences without legitimizing or reinforcing stereotypes?

Allport (1979) struggled with this same question in his classic work. He stated that probably in no case can it ever be said that a group difference marks off every single member of a group from every single non-member. “Strictly speaking, therefore, every statement concerning a group difference (unless suitably qualified) is an exaggeration” (p. 37).

He added that an identifying group differences “perhaps the best that can be done is to say that members of a [group] all use the term ‘we’ with the same essential significance” (p. 37). In the Valuing Differences process, participants explore together the information that the groups share about themselves in an effort to arrive at the truth about group differences.

Addressing All Differences

In this country, each group protected by Equal Employment Opportunity (EEO) legislation seeks the power to influence others and to make changes consistent with its standards for a better world; non-EEO groups also seek the same power. But, traditional EEO approaches focus on protected-class groups over others. Consequently, there is an “us versus them” view of the work, which victimizes and disempowers everyone. It reinforces the prevailing notion that people of difference, those in the EEO groups, have no power, and those in the non-EEO groups have all the power and responsibility for making changes.

The Shift in Focus

Valuing Differences neutralizes this disempowering approach by shifting to a view of every individual as a person of difference. To bring about meaningful and lasting change, the task is to build environments in which every person feels valued and empowered. Each one must perceive that there is an opportunity to influence the process of making the choices and tradeoffs necessary to correct the inequities imposed on victimized groups.

This will occur only when people trust that their own perspectives will be heard. Then they can be open to hearing and taking into account others’ perspectives. They become willing to examine their own behaviors and may even be willing to alter their thinking about the issues of power and control in their relationships with others, including EEO-protected groups.

The word “differences” in terms of “Valuing Differences” is all-inclusive. It applies not only to the traditional EEO differences, but also to other categories that must be dealt with effectively. Included are obvious differences, such as geographical and cultural perspectives on work styles and ways of doing business. Included, too, are less obvious but important and more subtle differences such as thinking and learning styles, which have received little attention. Whether dealing with one end or the other of the continuum of obvious to subtle diversity, Valuing Differences provides an inclusive focus for working with differences in a way that opens up blocked communications between organizations and between people.

It is important to note that, in a Valuing Differences environment, valuing may include a wide range of positive responses to differences. At a minimum, it means recognizing and accepting the fact of difference. It may mean going as far as actually embracing the difference; that is, adopting or using it in one’s own thinking or behavior. In some cases, it means caring enough about another person or group to expend energy exploring and studying the assumption behind the difference. Or valuing a difference may mean simply respecting and accepting it as worthwhile, without the need to understand it and certainly without giving in to any impulse to judge it.

Race and Sex as Metaphors

The Valuing Differences approach often refers to race and gender as metaphors for all differences. This reference is based on the discernment that, whatever the difference, the dynamics of the conflict or struggle created by discomfort with differences are the same. The same question underlying EEO issues also underlies issues created by other kinds of differences: “By whose standards, yours or mine?”

Raising one’s level of comfort with the issues one regards as either most difficult or emotional allows one to become open to dealing effectively with issues created by any kind of difference. In the United States many people regard race and gender as two of the foremost emotional issues. The perspectives and patterns of our relationships in these areas reinforce behavior in other areas of discomfort and conflict created by differences. Accomplishing the Valuing Differences work in these areas may provide people with the key to opening up to thinking differently and to unlocking their rigid perspectives on the world.

Moving Beyond the Multicultural Approach to Differences

The goal of the Valuing Differences approach is substantially broader than that of multicultural work. Multicultural programs give people the opportunity to study a wide range of specific cultures. Though these programs can be an important part of the Valuing Differences process, it is important to distinguish between the two. First, the differences people must learn to deal with often are not cultural in the strictest sense of the word. For example, whites, blacks, men, women, gays, and physically disabled people are not distinct cultural groups. Categorizing them so simplistically only reinforces stereotyped thinking.

Second, a strict multicultural approach to learning about differences can be impractical because it would be extraordinarily time consuming. In the United States alone, the number of cultures and subcultures is overwhelming. In effect, Valuing Differences is a simpler approach. It focus primarily on helping people develop an empowered mindset that is comfortable with differences, some of which a person may never have an opportunity to study but must still respect.

Using Small Groups in the Valuing Differences Process

The work of learning to value differences is accomplished best in small, ongoing discussion groups. Howard and Howard (1985) describe the theory behind the value of these groups.

Most of us learn from our own experience, not simply from having things happen to us but from reflecting on what happens, both alone and in exchange with others, so that the meaning of our experience becomes clear and we can make choices on growing awareness rather than unchallenged assumptions. . . . Very often such learning is enhanced and deepened when we work with a supportive group—a group where we can do more than discuss ideas objectively. We need a chance to work

experimentally with the ideas, as scientists experiment in a laboratory, and then apply our finding to our lives (p. 126).

Small groups are laboratories in which people help each other explore the issues created by differences with others. Most people join these groups because they intuitively recognize that the honest, in-debt exploration of differences cannot be done in isolation. It must be done with others and in most cases, with people one perceives as different. Other people make a conscious decision to join these small groups to take a disciplined approach to thinking critically about issues raised by differences.

In small-group work, it is essential that people take into account how highly emotional the work of dealing with differences can be. This means that the groups' leaders should know how to help participants feel safe. When people talk openly and honestly about differences, the often feel threatened and challenged. With or without justification, they believe that they are being asked to change, and they feel the risks that come with honest self-disclosure. According to an old saying, one may accuse oneself of prevarication or theft, but seldom of prejudice.

Only when people feel safe, do they hear and learn from one another. Therefore, the first and foremost responsibility of the small group leader is to help participants establish and maintain a safe environment in which they are willing to explore the issues as peers and maintain the dialogue.

Developing Human Potential and Increasing Organizational Productivity

Valuing Differences legitimizes a focus on people's personal needs as individuals, managers, and leaders. Given the issues and conflicts created by differences, this work becomes a unique context for exploring a broad range of issues critical to personal development, including such issues as intimacy and loneliness. Because organizational productivity relates directly to effective use of human resources, development of individuals as managers and leaders is a critical outcome of the approach.

Management Development

Productivity depends on how well people work together, which in turn depends on how they deal with each other's differences. Prejudice, intolerance, and insensitivity to individual differences create barriers to becoming effective managers, to learning to work with these issues, and to tapping into the strengths of all people, including those regarded as different.

The Hawthorne Studies of the 1920s and 1930s demonstrated, among other things, that worker morale and productivity improved as a result of paying attention to employees. The Valuing Differences process is a principal form of valuing them. When they feel that they are valued and that their differences add value, they are motivated to do their best work.

Leadership Development

The Valuing Differences approach allows participants in the process to work on developing leadership skills and attributes such as empathy and authenticity, as well as the ability to be forthright and to take risks. It provides an opportunity for managers to work through and refine their views and assumptions about power and the processes for empowering people.

This work helps an organization's leadership to multiply faster than it would otherwise. As more people are empowered to deal with issues created by differences and are in touch with their leadership skills and responsibilities, the organization is then in a powerful position to establish specific strategies to capitalize on its diversity and the synergy of differences as sources of collective growth, creativity, and strength.

Name _____

Date _____

1. Assessing Your Court's Readiness for Diversity Training

Is your court fertile ground for diversity training? What essential policies and practice are absent from your court? What measures do you use to assess your court's readiness for diversity training? Will your court's organizational structure and management practices support or diminish diversity training? Do you need to convince judges and court managers to implement policies and practices that will support diversity initiatives? If so, what strategies will you use? How will you "sell" the program to them? Use Module 1 of this *Guide* for assistance. See Appendix A for model policies and practices.

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

2. Getting Started:

How will you get started with the planning process? Do you need to do some background work on what diversity is and means so you can be well informed? See Module 2 of the *Guide*, and try to identify at least two videotapes you might view. See Appendix B for diversity-training resources.

Videotape Titles:

1. _____
2. _____
3. _____

Book Titles:

1. _____
2. _____
3. _____

Other Resources:

1. _____
2. _____
3. _____

3. Assessing the Diversity-training Needs of Your Court:

Part A. How do you determine your court's diversity-training needs? Refer to Modules 3 of the *Guide*. See Appendix C for diversity-training assessment tools.

Part B. Review the sample materials and questionnaires in Appendix C. Design two multiple-choice questions that you think should be added to this survey instrument based on your court's need, **AND** identify one **OR** two questions you might omit:

(ADD) Question 1:

(ADD) Question 2:

(OMIT) Question: (reference question you are omitting and describe why you are omitting it)

(OPTIONAL OMIT) Question 4: (reference question you are omitting and describe why you are omitting it)

4. Planning Process

Describe how you will use a diversity education planning committee by answering the following questions:

1. Who should be on the committee?

2. How will you choose individuals to serve on the committee? (e.g., take volunteers, ask judges and senior managers, ask for representatives from various levels in the court and office staff?)

3. Who will chair the committee and why?

5. Designing the Program: Respond to Part A OR Part B for this question.

Part A. What goals would you like to accomplish in your court through diversity training? What objectives or program design method would you use to for your program? (Think about what you want participants to do differently or to know or understand as a result of the program.) Second, list three questions or points you would like to see a consultant cover in a training program that relates specifically to your experiences in the court:

Goals: _____

Objectives: or Program Design Methods

1. _____

2. _____

3. _____

Part B. Review the list of case studies in Appendix G on of the *Guide*, and skim through the ones that sound relevant for your court. Choose one case study that might be appropriate for your court to use in a training program. What would you change about the case study to make it more appropriate or relevant for your court?

I chose case study # ____ entitled _____
because _____

I would change the following (you can focus on content of the case study OR questions listed at end of the case study):

6. Finding and Working with Outside Consultants:

List some of the sources you would use to locate a diversity consultant for your court:

What criteria would you use in selecting a good diversity consultant?

7. Promoting and Evaluating the Program:

What kind of evaluation do you plan to do for the program? Individual or focus group? Why?

How do you plan to build in follow-up so participants continue to use the information and skills gained through the training program? How can your consultant help? What are some of the roles of judges and managers? Refer to Module 2 of the *Guide* for assistance on this issue.

Appendix G

Sample Diversity Case Studies

Appendix G. Sample Diversity Case Studies

Contents

This appendix contains sample case studies that you may use in your diversity-training program. Modify these case studies to represent situations that are realistic in your court, or use these as models to develop new case studies.

The contents of this appendix include:

- Learning Objectives of Case Studies
- Guidelines for Using Case Studies
- Case Studies 1-12

Learning Objectives of the Case Studies

Use these case studies as learning activities to supplement your training program. They may either reinforce discussions and learning or they may stimulate new learning through the experience.

The specific learning objectives of the case studies are:

- To increase awareness about diversity issues that occur in the work environment.
- To increase awareness about the implications of these situations for productivity, work quality, and morale.
- To practice managing diversity-related situations in the court environment.
- To recognize the positions of all characters represented in the case studies.
- To encourage open and honest discussion of court-specific diversity issues.

Guidelines for Using the Case Studies

Design These case studies were drafted by court employees to reflect a wide range of real issues and situations in the courts. The case studies vary in diversity issues and situations; court environment, type, and location; and interactions and job titles or positions of the main characters.

Specific guidelines Use the following guidelines to incorporate the case studies into your program.

1. Select case studies that match your training objectives, course content, and court situation.
2. Review the discussion questions that follow the case studies. Determine whether court-specific terminology, situations, or nuances in some case studies need further explanation.
3. Discuss possible responses to discussion questions with those planning the program. The point is not simply to have participants agree that prejudicial attitudes and behaviors are bad, but to encourage them to effectively manage the conflicts depicted in the case studies. Although the case studies describe people's biased behavior or lack of knowledge, awareness, or experience in dealing with different groups, the conflicts depicted are rarely totally one-sided. The case studies should encourage an open discussion and exchange of different perspectives on the issues in light of training objectives and program content.
4. Participants should work on the case studies in groups of about six people each. Ask each group to select a reporter to report to the entire group on the responses to the discussion questions. Groups can be assigned to the same case study or each group can discuss a different case study.
5. Reporters should discuss the content of the case studies and, if time allows, the dynamics of the group process. The following are some process questions to consider:
 - How did the small group decide who would serve as the facilitator or reporter?

- Was everyone encouraged to participate in the group discussion? Did the group hear all opinions, including unpopular ones?
- Did participants hear and listen to the perspectives of the women, racial and ethnic minorities, older or younger participants, support staff as well as professional staff? Were these perspectives valued?
- Were responses and perspectives on issues clarified or better understood when someone in the group directly identified with a character in the case study?

Case Study 1. Balancing Religious Obligations and Workplace Needs

Joe was hired as a deputy clerk in the district court over a year ago. Shortly after he was hired, his supervisor, Felicia, determined that he needed to improve his writing skills in order to perform his job adequately. Felicia shared literature and course information with Joe and encouraged him to take an appropriate writing course to enhance his skills. Felicia explained to him, "Joe, it's really important that you get your writing up to par. Please try to find a course that would be appropriate, and let me see the course description. The court may even be willing to pay part of your tuition."

It is time for Joe's six-month performance review. His writing skills have not improved and he still has not taken a course. Felicia asks Joe at the performance interview, "Have you been actively looking outside the office for a good writing course?" Joe responds, "I tried but I couldn't find one because they're all located too far from my home. Besides, I bought a home study course with videos and workbooks, and I think my writing is getting better." Felicia responds, "I wish I could agree with you, but I don't see much change, and I'm tired of getting all the pressure from my bosses about it."

At this point, Felicia realizes she must take care of the situation. After a few weeks, she finds what she believes is a workable course. It is close to Joe's home and offered right after work. Felicia asks Joe to stop by her office so that she can share this information with him. He looks over the course information and tells her he will not be able to take the course because it is scheduled the same nights as his church meeting. Frustrated, Felicia insists, "Look, Joe, you really have to work something out or think about looking for employment elsewhere." Joe responds, "Look, Felicia, you have no good reason to make it difficult for me to exercise my religion. I have my rights." Joe leaves the office angry, goes straight to Delores, Felicia's manager, and complains that Felicia is insensitive to his religious obligations. Knowing Joe's writing deficiency, Delores supports Felicia's position. She thinks that Joe is overly sensitive and rigid about his religious obligations.

As a supervisor with the court for more than twelve years, Felicia feels she has had her share of employees with bad attitudes. Felicia feared that there would be problems with Joe as soon as he told her about his religious background and beliefs. When she asked Joe to be on the birthday committee, he became agitated and replied in a raised voice, "I don't celebrate birthdays or participate in any other celebrations. And I don't want anyone to celebrate my birthday either!"

After Joe's outburst, Felicia thought to herself: "This is great. Now he thinks I'm on his case about his religion, which is going to make it even harder to get his writing improved. Joe always seems to have an excuse for his errors, and he didn't even move the literature that I put on his desk." Felicia feels she has always been able to get positive responses when she has tried to help employees. Joe, however, seems different to her. He does not seem to have a sense of office loyalty, and it appears to her that he is always throwing his religious beliefs around, as if he was the only one with beliefs and obligations.

Joe sees things differently. Every place he has ever worked, he has felt that his supervisors have given him a hard time because of his religious convictions. He told himself that once Felicia found out about his religious faith there would be trouble. Despite what Felicia says, Joe knows he took the initiative to look for the course they wanted him to take. He believes he has worked hard,

and he feels his writing skills have improved. He thinks Felicia doesn't like him because of his religious beliefs and would like to see him leave so that she no longer has to deal with him. Joe thinks, "I feel like an outsider because I do not participate in their office parties. They simply do not understand how important it is for me to follow the dictates of my faith."

Suggested Discussion Questions

1. What is the problem here from Felicia's perspective and from Joe's perspective? Do they understand each other's perspective on the problem? If not, what makes you think they don't understand?
2. What is the best way for Felicia to meet her obligation as a manager to help Joe contribute his best to the court? Should Joe be expected to compromise his convictions to adapt to the workplace? Is Felicia expecting Joe to do that?
3. What could Delores, Felicia's manager, do to help in this situation?
4. What are some immediate and long-range approaches for management and employees to deal with balancing religious obligations and meeting workplace requirements?

Case Study 2. Managing People with Disabilities

Tim supervises a unit of six deputies in the clerk's office. One of the deputies, Sally, lost her left leg to cancer several years ago. Her health since then has been poor, as she also suffers from an arthritis condition. Sally has been cheerful and upbeat through all of her troubles and always tries to do her best. When she is in the office, she is one of Tim's best employees.

The work performed by the deputy clerks involves some filing and lifting. Tim has helped Sally move some of the heavy files. "After all," says Tim, "it's obviously hard for her to do this work, and I'd help anybody in her situation." Tim has also been extremely lenient with Sally's leave. If she needs a couple of hours to go to the doctor, he often just lets her go without requiring a leave slip. "Since Sally is always in leave trouble and no longer qualifies for leave sharing, she tries to work late to make it up. You just ought to be grateful you don't have her problems," Tim tells the other members of the unit when they ask about Sally's hours.

During a week when Sally was absent because of illness, Tim did much of Sally's work. While the other members of the unit were grateful they didn't have to do her work, this was the last straw for Dave, a deputy clerk. Dave thinks that Tim is wrapped around Sally's little finger. On Monday of the next week, Dave confronts Tim at the soda machine and tells him that he is being unfair by favoring Sally. Later that day, Sally, sensing her coworkers' unhappiness with the situation, decides to talk to Tim about it. "I know you think you're being helpful, but it's alienating my coworkers. I'm beginning to feel that I'm not being allowed to do all of the work I'm capable of doing," Sally explains to Tim. In her mind, Tim's presumptions about people with disabilities are causing him to think that she can't handle her job. She is grateful for his concern, but she is angry too.

Suggested Discussion Questions

1. Are Tim's actions in violation of the Americans with Disabilities Act?
2. How should Tim handle both of these confrontations? Is Sally justified? Is Dave justified? Are they both justified? Why or why not?
3. Is Tim really doing the right thing by doing Sally's work? What specific things does he do for her? Are his responses always appropriate? Can you have good intentions and still do the wrong thing? Who defines what is right or wrong in this situation—the employee or the manager?
4. If you as a manager did the same thing for a staff person in a situation like Sally's, would other staff who are not in that situation have a right to complain? Why or why not?
5. What specific resources might Tim use to help him deal with this situation?
6. Would your responses to the above questions be different if Sally were a man? Would your responses be different if Sally were an older employee, rather than an employee with disabilities?

Case Study 3. Gender Roles

Mary has been a court reporter in the district court for three years. This Monday morning she rushes into the courtroom and hurriedly begins to set up her equipment a few minutes before court begins. Lucius, Mary's coworker and a courtroom deputy clerk who has been with the court for twenty-five years, watches as Mary races against the clock before the security officer opens court. As Mary fumbles with her equipment, she hurriedly explains to Lucius, "I forgot that I signed up to drop some cookies by the school for my daughter's party, and I got caught in traffic." Lucius responds rather impatiently, "I don't see what dropping off cookies has to do with running an efficient court."

Mary tries to dismiss his comments—she has heard them many times before—as she continues organizing her equipment. Daniel, an African American law clerk from Harvard, overhears the conversation between Mary and Lucius, who are both white. He approaches them to introduce himself. As he is about to return to the judge's chambers Daniel comments, "I have a special appreciation for court reporters who can maintain a family life given the demands of their work." Lucius shakes his head as he says to Daniel and Mary, "All we need are women's libber sympathizers. Pretty soon they'll be pushing for a day-care center for employees instead of worrying about how to make the court run efficiently."

Suggested Discussion Questions

1. How would you characterize the interactions between Mary and Lucius, and among Daniel, Mary, and Lucius? Should Mary have responded differently to Lucius? Given the fact that he is a coworker, not a supervisor, what options does she have for dealing with him?
2. Why do you think Daniel came to Mary's defense when Lucius made his comments to her?
3. Discuss Lucius's comment to Daniel and Mary about a day-care center in the court. Is accommodating the child-care needs of court employees at odds with running a court efficiently? Why or why not?
4. Should Lucius's comments to Mary and Daniel be dealt with at all? If so, what role should and could Daniel play, if any? Is this a situation to be resolved by Mary, Daniel, and Lucius, or should a supervisor or the judge be brought in?
5. Describe the differences between attitudes and behaviors as they relate to prejudice in the workplace. How can we effectively deal with prejudicial behavior? What is the role of the supervisor or manager in handling such situations?

Case Study 4. Balancing Work and Home Life

Bill is a courtroom deputy assigned to Judge Monitor. He has been with the clerk's office for seven years and was promoted to the courtroom deputy position two years ago. When Renee, the clerk, interviewed him for this position, she carefully explained the hours for the job. She said, "There are many days when court is in session that you will be required to work beyond the eight-hour day. Do you have any obligations that will prevent you from keeping this kind of schedule?" Bill replied, "No, I should be able to handle this schedule."

Bill is married and has four-year-old twin girls. Bill's wife, Maggie, is employed full-time as an account executive for a local television station. This fall, Maggie has gone back to college to earn an M.B.A. Since Maggie is employed full-time, she must pursue her studies at night and is currently attending classes three nights a week. As a result of Maggie's schedule, Bill is required to pick up his daughters on the nights his wife attends class. He must pick them up by 6 p.m. at the day-care center.

Judge Monitor is an aggressive young judge who firmly believes that court time and bench hours are indicative of a judge's productivity. He rates among the top in case dispositions in the district. Judge Monitor generally holds court in the evening and expects his courtroom deputy to be available when he is on the bench.

Renee has been the clerk for almost four years. Although she has no children, she empathizes with families who must balance work and home responsibilities. Instead of requiring Bill to make other arrangements for picking up his children, Renee chooses to find a relief courtroom deputy to fill in for Bill on the nights he must pick up his daughters. As an incentive, she has offered comp time for the relief courtroom deputy for the hours he or she must work in Bill's place. Other courtroom deputies are told that working late goes with the job.

Other employees have found out about the special arrangements designed for Bill and the relief courtroom deputy and have become resentful because comp time in the office has never been allowed. Although these employees have never asked for comp time in order to meet their children's school schedules and day-care hours, they would greatly benefit from such a schedule and feel it is only fair that comp time be offered to everyone.

Suggested Discussion Questions

1. Should Renee require Bill to meet Judge Monitor's schedule according to the requirements of the duties of the courtroom deputy position? If so, what are the consequences to Bill if he is forced to meet these requirements? If not, is it fair to the other employees?
2. If a relief courtroom deputy is allowed to earn comp time when filling in for Bill, should the court adopt a policy for the entire office? Should the court adopt a policy just for employees with child-care problems? Why or why not?
3. If such a policy were drafted, what would it look like? Should the policy apply to all employees regardless of position and responsibility in the court? Who should be involved in drafting such a policy? Why?

4. Would your responses to Questions 1–3 be different if Renee were a male clerk? What if Bill were a female courtroom deputy who wanted to go back to school? Why, if at all, would you alter your responses?

Case Study 5. The Selection Process and Gender Issues

Janis, the district court administrator in a four-county judicial district is interviewing Molly for the position of deputy court administrator/chief clerk of the Slippery Ice County court, a three-person office. The county courthouse in Slippery Ice is approximately three hours from the district office in Snowshoe County.

The caseload of Slippery Ice is high for a court of its size. There is one full-time resident county judge who hears limited-jurisdiction matters, and district judges travel to the county weekly for general jurisdiction motion days and as needed for other hearings and trials. The incumbent, David, is retiring in a month. He has been a model employee. He has extensive knowledge of both limited and general jurisdiction court matters and, more important, is extremely reliable. No matter what the weather or state of his health, David is always in his office.

During the interview, Janis discovers that Molly lives on a farm approximately sixty-five miles away from the divisional office and has a family—a husband, a two-year-old daughter, and a one-year-old son. Janis also learns that Molly has been in the work force for eight years and has an excellent attendance record. In the interview, Janis inquires, “Molly, do you anticipate that you will have any problems getting to work on time every day? You live a ways from the courthouse, and I know your kids are small.” Janis further notes that during the winter there are many snow and ice storms and, therefore, she wonders if Molly will be able to drive to the courthouse. Molly quickly replies, “I have a good child-care situation, and I am comfortable and experienced in driving in all kinds of inclement weather.”

The chief judge of the four-county district has been delegating more and more responsibility to Janis for operational oversight of all of courthouses in the district. Janis has worked very hard to gain his trust and wants to do an excellent job. In fact, the chief judge told her that he trusted her to select the best possible candidate for the position. Janis is concerned that if she hires the wrong person, the chief judge will lose confidence in her judgment and stop delegating to her the more substantive tasks.

Molly has worked in a legal setting for more than eight years and has supervised a number of people. She is very organized and can handle multiple tasks well. She has received praise in every job she has held and is extremely reliable. In fact, during the last eight years, she has taken only five sick days. She felt that the interview did not go very well, since Janis asked several questions that implied that she wasn’t sure if Molly would be able to be at work on a daily basis. Molly tells her husband after the interview, “I never would have applied for this job if I felt I couldn’t handle it. I really want this job.”

Suggested Discussion Questions

1. Are Janis’s fears about Molly warranted? Why or why not? Do you think she should hire Molly in spite of her reservations? Why or why not?

2. What are the diversity issues here for Janis and for Molly? What assumptions, stereotypes, or both does Janis hold? What role, if any, does her position in the court and relationship with the clerk play in Janis's behavior?
3. Does Janis ask any discriminatory questions in the interview? Which one or ones? How would you have handled these questions if you were Molly? If she is not hired, what recourse does Molly have, if any?
4. If the candidate had been a man, do you think the questions about child care, driving, or reliability would have been raised? Why or why not?
5. If you as a supervisor had legitimate concerns about distance to be traveled to and from work, timeliness, and attendance of a potential employee, what questions would you ask in an interview with this person? What other resources can you use to deal with these concerns?

Case Study 6. Gender and the Job Interview

Marie appears for her first interview at a probation office. She is directed to wait in a common reception area. During this time, two male probation officers appear at the reception area. Marie notices that on two occasions the officers whisper to one another while glancing at her.

Shortly thereafter Marie is ushered in to meet with three supervisory probation officers: Joe, Tom, and Larry. After a brief introduction, Tom casually asks, "What is your nationality?" Marie does not understand what nationality has to do with her qualifications for the position.

Joe then says, "Your resume describes your professional qualifications, but it doesn't include any information about you personally. Tell us something about yourself." Marie is bewildered by this type of questioning, but proceeds to speak briefly about her family and background and some of her personal interests. She believes that she has satisfied their curiosity and feels somewhat relieved. She is then barraged by questions from all three officers, including the following:

"Are you married or single?"

"Do you have children? How old are they?"

"Do you go to discos or out dancing?"

"Do you exercise much?"

"How old are you?"

"What do you do in your spare time?"

"What else do you do in your spare time?" (This was asked three consecutive times.)

The officers sense that Marie is quite surprised by their questions. They quickly explain that being a probation officer is a demanding and dangerous job and that officers must often team up to make home visits. Marie still feels as if she is being interviewed by a dating service. Later when she mentions her experience to others who have applied for positions in that probation office, she finds that her experience is not unusual.

Suggested Discussion Questions

1. Do you think that this probation office is in compliance with the court's EEO Policy? Which questions are discriminatory, if any? Why?
2. Do you think the supervisory probation officers knew about their court's EEO plan? Whose responsibility was it to inform them of the plan? Did you find the officers' explanations for asking such questions to be credible? Why or why not?
3. What are the effects of such practices on this individual court? On the entire court system?
4. Should this probation office restructure its interview process and questions? If so, what specifically should it change?
5. What recourse, if any, does Marie have if she is not hired based on her responses?

Case Study 7. Gender and Race in Promotion Decisions

A probation office in a diverse community of 100,000 people has fourteen probation officers, including two male supervisors. In June, one of the supervisors announced his intention to retire in four months. Two senior officers—one white man, Lance, and one black woman, Allyson—are equally qualified to apply for the position.

The chief, Harry, states that following interviews by a search committee in September, he will announce his decision in October. As the weeks pass there is much speculation about who will become the next supervisor. The female officers and support staff are betting on Allyson, as the district has never had a female supervisor.

By the end of September, the interviews are completed, and as expected, the two senior officers are the two finalists for the position. At about this time, Allyson discovers that she is two months pregnant. She and her husband are very excited, as they have wanted a family for many years.

The news of Allyson's pregnancy somehow reaches Harry, and he is less than enthusiastic about it. Harry remarks to his deputy chief, Michael, "Anyone who would become pregnant at this time in her career is not serious about advancement. If I were to hire Allyson, the office would need a full-time supervisor while she is on maternity leave."

Word of Harry's concern reaches Allyson, who becomes very upset. She decides to call the chief to discuss the issue openly. In their meeting, Harry denies that he made any statements suggesting that she is not committed to the job. He does mention, however, that the office needs a full-time supervisor. Allyson advises him, "This pregnancy would not interfere with my job responsibilities in any way."

Harry responds, "I'm leaning toward hiring Lance for this position, Allyson. But I will give you an opportunity to convince me why I should hire you instead."

Suggested Discussion Questions

1. How might the court's EEO plan apply in this situation? Are Harry's actions in violation of the 1993 Family and Medical Leave Act? In what ways, if any, could the 1993 Family and Medical Leave Act relate to this situation?
2. If you were Allyson, what would you say to convince Harry that you are committed to your job and are prepared to assume a more responsible position?
3. If you were Harry, what issues would you need to weigh in considering Lance? What issues would you want to weigh in considering Allyson?
4. What communication problems are revealed in this case study? How could these problems have been avoided or diminished?
5. Discuss the selection process for filling middle-level and senior-level positions in your office. Who participates in the interview process? Is the search committee diverse? Who has the

responsibility for educating the search committee about the procedures it is to follow and the court's EEO plan, if any?

Case Study 8. Relations Between Court Employees and Court Users

Angela has been an intake deputy in the court of a small district for about five months. Although she sometimes feels the work is monotonous and unchallenging, she quickly became very good at her job. After being out of work for a year, she desperately needed this job to support her children and is grateful to the clerk of court, Jim, for hiring her. One of her strengths is the way she deals with court users. She is always helpful, courteous, and patient, regardless of how rude and demanding some attorneys are. She never wants to appear rude. Angela is the only minority employee (she is Latino) in the office and feels under some pressure to be more efficient than the other intake clerks.

One day, a male attorney whom Angela has not seen before strolls up to the intake desk to ask her a question about filing procedures. He is impeccably dressed in an obviously expensive suit. As Angela turns around to assist him, he looks her over from head to toe. "Hi, gorgeous," he says as he almost hangs over the intake counter. "I was going to ask you a question about these papers, but now you've made me lose my train of thought. How long have *you* been working here?" Angela chooses to ignore the question, and in her most professional and detached tone of voice, accented slightly by her native Spanish, she says, "Please continue with your question about the papers." The attorney responds, "My name is Horace, and I was just trying to be friendly. How long did you say you've been working here? I've known Jim a long time, but he never told me clerks were hiring pretty ladies like you."

At this point, Angela, not wanting to appear rude, responds to the question by replying gingerly, "Nice to meet you. I've only been working here for five months. How can I help you?" At this point, Horace smiles broadly and asks his question about filing procedures, but not without winking and adding a final remark, "Looks like I'll be coming in regularly, since I just signed on as a new partner with Mead, Connors, and Redford. I hope to see you again soon, and I hope you will continue to be as friendly as you've been these last few minutes—maybe friendlier. See you next time, baby."

Angela tries to muster a weak smile, but can only think of how she will manage this joker the next time. Maybe he'll just ignore her. But what if he gets even more familiar with her? She also wonders if the other female intake clerks are approached by male attorneys in the same way. And how well does he really know Jim?

Suggested Discussion Questions

1. What did you find objectionable, if anything, about Horace's behavior? What was his purpose in telling Angela that he has known the clerk of court for many years?
2. Do you think Angela should have been offended by Horace's remarks? Why or why not? Do you think Angela handled the situation appropriately? What would you have done differently?
3. Put yourself in Angela's place. How does the fact that she is a Latino employee complicate the situation and/or her reaction to it? What effect do you think her position, parental status, and economic status would have on her reaction to the situation, now and in the future?

4. What are Angela's choices for handling the situation now that Horace has confronted her? Should Angela take further action? If so, define and explain the action.
5. Would your responses to the above questions change if Angela's and Horace's positions were reversed? (That is, Angela, the attorney, approaches Horace, the new intake clerk.) Why or why not?

Case Study 9. Stereotyping in the Workplace

Ronald is a court manager in the court of appeals. He has held this position for about five years, rising from the rank of docketing clerk. A sizable portion of the population in his jurisdiction is Latino and Native American, yet the only members of his staff from these two ethnic groups are in clerical positions. Whenever anyone tells Ronald, "You really need to get more minorities into your office and into management," he replies, "What are you talking about? Half the people here are women."

One day, Ronald learns that Josephine, one of the courtroom deputies on his staff, reported her purse stolen from her office. He also hears from a reliable source that a rumor is circulating about the alleged thief. He has heard that Candace, a librarian, confided in one of her colleagues, "I saw the new Indian clerk snooping around Josephine's desk. I suspect he stole it. You really have to watch them."

A trusted deputy clerk, Eunice, tells Ronald directly about how this rumor is affecting relationships in the office: "The employees in the building are even discussing it. It's creating bad feelings between the minority and non-minority staff as well as between the professional and support staff. We've got to do something to address the underlying problems before they continue to escalate." Ronald, too, is afraid that the incident is a sign of a larger problem that is affecting productivity and the court's effectiveness. He tells Eunice, "I tried to hire minorities on the staff and to encourage people to get along, but obviously it's not working. How do we begin to deal with these problems?"

Suggested Discussion Questions

1. What are the relationships that you see unraveling in this situation? Describe the kind of court environment that exists based on the incident that occurred. What factors do you think caused this problem to occur?
2. What do you think was Candace's motivation behind spreading the rumor about the Native American deputy clerk? How should she have handled this information? Would it have made any difference if she had used the term "Native American" rather than "Indian" in describing the alleged thief? Is it significant that Candace does not call the Native American clerk by his name?
3. How would you deal with this situation if you were the clerk rumored to have stolen Josephine's purse? As the manager of the court, what should Ronald say to that clerk?
4. What are Ronald's options for dealing with this situation immediately and in the long run? What can he do to prevent this problem from occurring in the future? How can he begin to address the larger issues here? To whom can he turn for advice?
5. What are the immediate and long-term consequences of not addressing this problem now?

Case Study 10. Relations Between Coworkers

David is forty years old and was employed as a probation officer in February. He was promoted to supervisor eight months later. He supervises seven officers.

David's chief, Terry, tells him that based on workload statistics, another officer will be assigned to David's team. However, Terry explains that he is having some difficulty deciding whether to assign 24-year-old Charlene, who was hired just four months earlier, or 37-year-old John, who has nearly ten years' experience as an officer with the agency.

Following some deliberation, Terry and David mutually agree that Charlene is the better choice for this assignment, since she has more flexible work habits, and she will find it easier to adapt to the work processes in David's unit. Terry informs David that Charlene will begin working with his team following the new employee orientation training during the first two weeks in January.

On November 20, David receives a letter inviting him to attend the supervisory skills training sponsored by the court during the second week in January. With Terry's approval, David accepts the invitation for training. David and Charlene are responsible for making a presentation to the chief judge as soon as they return from training.

During David's second day at training, he sees Charlene in the cafeteria eating lunch by herself and asks to join her. Charlene nods. While eating lunch, they share some of their work experiences. David says, "I'm really looking forward to working with you on the presentation before we go home. Let's spend some time together while we are here to become better acquainted and begin work on our presentation." Charlene indicates her training schedule is very structured and includes evening assignments. David suggests, "I would be more than happy to help you with any of your evening assignments. Just give me a call." He further adds, "You are a very attractive woman, Charlene, so you probably have many options about how you could spend your evenings here, but we really need to get started on our project." Charlene quickly informs David of her wedding scheduled for next June. She offers no eye contact at this point and excuses herself with a cool observation that her next training session is about to begin.

Charlene makes no attempt to contact David during the remaining days at training. However, each evening David leaves several phone messages for her to let her know he is available and would like to discuss the project with her. Charlene tries to avoid him, but knows she cannot continue to do so. After all, he'll soon be her boss.

Suggested Discussion Questions

1. What are David's intentions? Is he merely interested in the presentation, is he flirting with Charlene, or is it something more?
2. What behaviors, if any, has David engaged in that are inappropriate, unwanted, or nonreciprocal?
3. What effect can David's behavior have on his professional relationship with Charlene? What effect can it have on Charlene's performance?

4. What action, if any, should Charlene take while at training? What action, if any, should she take when she returns to work?
5. What, if any, is the chief's role in this situation?

Case Study 11. Evaluating Clients

Nancy, a court services officer, blots her face as she enters the building and murmurs under her breath, “Not another scorcher today. This makes two weeks in a row that the temperature has climbed to eighty-five degrees. And it doesn’t help knowing that I’ll probably have another heated discussion with a client about his drug abuse problems.”

Nancy, a 30-year-old white officer who has been in her position for five years, detests these weekly drug tests for Lloyd Smith, a 28-year-old African American defendant. But since this is part of the job, what choice does she have? Lloyd enters her office a few minutes late, as usual. He is clean, but untidy. His pants are worn, and his shirt is much too short for his lanky arms. Nancy thinks to herself, “He looks guiltier than sin. I cannot imagine his test will be negative today.” He sits down in one of the chairs in Nancy’s office, trying to prepare himself for Nancy’s weekly grilling. “Have you been using this week, Lloyd?” Lloyd’s eyes do not meet hers as he replies, “No, I’m clean.”

“We’ll see how clean you are. Are you staying away from those folks in your neighborhood you used to hang out with? You know, Lloyd, they aren’t helping you stay clean. You’ve got to stop hanging around those folks.”

Instead of responding directly to her comment, Lloyd snatches the urine container off her desk and says he’ll be back shortly to prove her wrong. After Lloyd leaves her office, Nancy stops in to chat with a coworker, Jonathan. “How’d it go with Lloyd this time, Nancy?” he asks. She responds, “Well, I gave him the usual spiel about making sure he stays away from those folks he hangs out with. You know, I really doubt if he can kick the habit. I’ve seen it too many times before among his kind.” Jonathan asks hesitantly, “And what kind would that be, Nancy?” Nancy replies matter-of-factly, “*You* know, his kind. They rarely break the cycle.” Jonathan shakes his head, but says nothing more to her.

The next week, Howard, a 35-year-old white offender, comes to Nancy’s office for his weekly urine test. Nancy loves her meetings with Howard. He is so articulate, well dressed, and handsome. She’s just not sure how he got mixed up with drugs. “Someone probably forced it on him,” Nancy thinks to herself. She greets Howard warmly, “Well, Howard. Good to see you this week. How are you?” Howard smiles broadly and enthusiastically and replies, “Just fine, Nancy. Glad to see you, too. Just wish it were under more pleasant circumstances.” Nancy smiles back as she responds, “I know everything will go well for you, Howard. I’ve seen plenty, and I can tell you’re a winner.” “It’s good to know you have so much confidence in me, Nancy. I’ll stop by to chat after I’ve finished my test,” he says.

Once Howard leaves, Jonathan comes over to see if Nancy is ready to go to lunch. He notices that she is humming. “Why are you in such a good mood, Nancy?” he asks. Nancy responds, “Howard was just here. He has so much promise. Now, he, my friend, will kick his habit, such as it is. There’s a big difference between him and Lloyd. One’s a winner, the other—well it goes without saying.” Again, Jonathan just shakes his head, and they leave the office to have lunch together.

Suggested Discussion Questions

1. What is your reaction to Nancy's behavior toward Lloyd and her comments to her coworker? Do you see anything wrong in her actions and attitude? What effect, if any, might Nancy's comments have on Lloyd or offenders who have similar backgrounds? What differences does Nancy perceive between Lloyd and Howard?
2. Does it appear that Nancy is keeping her relationship with Howard on a professional level? Why or why not? Is her interaction with Howard simply a humane response to someone with his background or is it something more?
3. Has Nancy violated any professional ethics in her interactions with Lloyd or Howard? Why or why not? If so, which ones?
4. How would you describe Jonathan's role and behavior in this study? What, if any, responsibility does he have to help Nancy focus on the consequences of her behavior and attitude? If you were Jonathan, what would you do?
5. What does your office do to encourage or discourage the type of behavior exhibited by Nancy and Jonathan?

Case Study 12. Sexual Orientation in the Workplace

Jerry has been working as a court manager for approximately two years in a district court. He came from a job in a private firm where the salary and benefits were superb, but the atmosphere was conservative and rigid. He was told he had to behave like the consummate company man: wear dark suits, grow no facial hair, show up at the obligatory company picnics, dinners, and holiday parties with a spouse, and so forth.

Jerry left that stifling environment in search of a job that gave him more flexibility to be himself while using his well-honed managerial skills. He enjoys the court environment and finds his coworkers and colleagues to be hard working and cooperative. He is well respected by the staff for his skills and ability to learn quickly. Moreover, his supervisor, Elise, is a fine manager and a trusted confidant. He has told her that he is gay, and she has kept this in confidence. Yet, Jerry feels that the courts are more conservative than he expected. "I'm not sure I can really be myself here, either," Jerry laments to Elise one day. "We are having our first office picnic at the end of the summer, and the staff are bringing their spouses and children. What am I going to do?"

Elise explains impatiently, "Jerry, you have three choices. You don't have to bring anyone; after all, everyone knows you're not married. Or you could bring a female friend. Or you could bring George and introduce him as your friend, which he is."

"Elise, I left my other job largely to work in a place where I am able to express who I am without fear of getting ridiculed or being disrespected. I don't want to continue pretending I'm something I'm not. The staff and my coworkers always talk about their family life—what they do as a family, how proud they are of their spouses and children. I'd like to tell them about my life. But what if they don't respect me as a supervisor once they find out I'm gay? Can I afford to take that risk now?"

"Jerry, I'll support whatever you want to do. As your supervisor, I understand there is a risk. Let me think about it," Elise says.

The next day, Sally, who reports to Elise, comes to see her because Sally suspects Jerry is gay. "Come on, Elise," Sally remarks sarcastically, "A good-looking guy like that who isn't married and drives to work everyday with some guy?" Sally tells Elise she is worried about contracting AIDS and thinks Elise should put out an announcement about the danger of AIDS and advise employees to be cautious about using the common facilities in the kitchen. "If you won't do it, Elise, I intend to share my concerns with others. I don't care what anyone says, AIDS is nothing to fool around with."

Suggested Discussion Questions

1. Can you empathize with Jerry's situation? Why or why not? What about Elise's situation? If you were Elise, how would you advise Jerry?
2. Do you think Sally's fears and concerns are real? Why or why not? What do you think is her motivation behind questioning Jerry's sexual orientation?

3. How should Elise respond to Sally? What problems does she face? What options does she have, and what are the consequences of these options?
4. What is the role of court employees in this situation? Do employees need to approve of Jerry's sexual orientation in order to have a productive work relationship with him? Would your answers be different if Jerry were a judge? What if Jerry were a deputy clerk? (For probation or pretrial services, would your answers be different if Jerry were a client?)
5. What is the difference between sexual orientation and sexual preference? Why do you think people hold such strong feelings about gays?
6. Is it appropriate for issues of sexual orientation to be addressed in the workplace? If so, how should these issues be addressed?

Appendix H

Sample Evaluation Forms

Appendix H. Sample Evaluation Forms

Contents

This appendix contains sample evaluation forms for diversity-training programs.

- Sample Individual Evaluation Form
- Sample Group Evaluation Form

Sample Individual Evaluation Form for a Diversity Program

Program Title: _____

Faculty: _____

Location: _____

Date: _____

Instructions:

This form provides you with an opportunity to evaluate the diversity program in which you participated today. The information you offer is anonymous and will be used only to enhance the quality of diversity programs and plan follow-up activities. Thank you for your assistance. Please use the scale below to rate the program on each of the dimensions listed. Circle only one number for each dimension.

1	2	3	4	5
Poor	Fair	Good	Very good	Excellent

- | | | | | | |
|--|---|---|---|---|---|
| 1. Clarity of program objectives | 1 | 2 | 3 | 4 | 5 |
| 2. Effectiveness of program in meeting objectives | 1 | 2 | 3 | 4 | 5 |
| 3. Effectiveness of program in helping you understand diversity in the workplace | 1 | 2 | 3 | 4 | 5 |
| 4. Content knowledge of faculty | 1 | 2 | 3 | 4 | 5 |
| 5. Clarity of faculty presentations (e.g., how well organized, how clearly delivered) | 1 | 2 | 3 | 4 | 5 |
| 6. Faculty's effectiveness in presenting material (e.g., use of visual aids, encouragement of open discussion) | 1 | 2 | 3 | 4 | 5 |
| 7. Helpfulness of training materials and handouts | 1 | 2 | 3 | 4 | 5 |

8. Opportunities for discussion and interactive activities	1	2	3	4	5
9. Effectiveness of the following learning activities:					
a) Diversity quiz or ice breaker	1	2	3	4	5
b) Videotape	1	2	3	4	5
c) Case studies	1	2	3	4	5
d) Small-group discussions	1	2	3	4	5
e) Action planning	1	2	3	4	5
f) Other activities, if used	1	2	3	4	5
g) Time allotted for program	1	2	3	4	5
h) Safety of environment for open and honest discussion of diversity concerns	1	2	3	4	5
i) Opportunities for all staff to participate in planning the program	1	2	3	4	5

For the following questions, please write your responses in the space following the question.

10. What were the program's strengths?

11. What were the program's weaknesses?

12. If a follow-up diversity program is offered, what specific topics or issues would you like to see covered that were not covered at all or not covered well in this training program?

13. Please rank the following follow-up activities in order of importance on a scale of 1 to 6, with 1 being least desirable, and 6 being most desirable. Write your number rank in the blank next to the activity. **Do not** use the same number twice.

- a. _____ Diversity training for managers or supervisors.
- b. _____ Training sessions on personnel policies, including but not limited to the court's EEO plan, the Family and Medical Leave Act, and the court's sexual harassment policy.
- c. _____ Staff participation in writing diversity policy and/or incorporating diversity initiatives into the district's or court's mission, values, or goal statements.
- d. _____ Formulation of a diversity task force or committee to develop and design follow-up activities, including educational and cultural learning activities.
- e. _____ Diversity issues incorporated into other training programs, such as programs on leadership, communication, and managing change.
- f. _____ Other activities (please identify.) _____

Please circle your overall rating for this program.

1	2	3	4	5
Of no value	Of little value	Valuable	Very valuable	Extremely valuable

Sample Group Evaluation Form for a Diversity Program

Instructions:

Please select a facilitator. Then read the open-ended questions below, discuss them among yourselves, and select a recorder to summarize the group's responses to each question on this form. The group is not expected to reach a consensus on each question. Describe the individual responses for each question if responses vary. If there is consensus, please indicate that there was group consensus on that question. Use extra sheets if necessary. The facilitator should return the completed form to the facilitator. Thank you.

1. What program components or modules did you find useful? Why were they useful? How will you use them?

2. What program components or modules were not particularly useful? Why?

3. Do you think there should be follow-up training on diversity? If so, what ideas or issues were not covered in this program that you would like incorporated into a possible follow-up diversity program?

4. Would you recommend using the same faculty in a follow-up diversity-training program? Why or why not?

5. What exercises or learning activities worked best for you? Why? Which ones did not work well? Why?

6. What further comments or suggestions do you have for enhancing the quality of the program?

Please circle your overall rating for this program.

1	2	3	4	5
Of no value	Of little value	Valuable	Very valuable	Extremely valuable

Appendix I

***Diversity-related Terms, Concepts,
Definitions, and Thoughts***

Appendix I. Diversity-related Terms, Concepts, Definitions, and Thoughts

Contents

This appendix contains useful terms, definitions, concepts, and thoughts on diversity and diversity-related issues.

Diversity-Related Terms, Definitions, Concepts, and Thoughts

Affirmative Action Refers generally to an approach to personnel management by which an organization takes positive steps to recruit, hire, train, and promote qualified individuals who are members of groups that have been subjected to arbitrary discrimination.

In a state government context, refers to an executive branch policy requiring state executive branch contracting agencies and departments, and agencies that administer programs that receive state financial assistance, to take positive efforts to recruit, hire, train, and promote qualified employees of previously excluded groups.

Taking positive steps to correct an imbalance in traditionally segregated job categories and to ensure an equal representation of all groups in the workforce. A company has an obligation to examine its hiring, upgrading, and firing system to ensure that they do not have the effect of discriminating against groups of persons protected by law.

African American Includes all persons having origins in any of the black racial groups of Africa (not of Hispanic origin).

Asian Pacific American Includes all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa.

Assimilation A pattern of intergroup relations in which a minority group is absorbed into the majority population and eventually disappears as a distinct group (Kormblum, 1994).

Bias An inclination of temperament or outlook; often such prepossession with some object or point of view that the mind does not respond with impartiality to anything related to the object or point of view; prejudiced behavior.

A predisposition to evaluatively interpret certain social phenomena in such a way as to deliberately uphold a preferred frame of reference, and deliberately suppress an opposing one (Zadronzny, 1959).

Preference or an inclination to make certain choices which may be positive (bias toward excellence) or negative (bias against people), often with a resultant unfairness to someone (Simons, 1993).

Inclination; bent; a preconceived opinion; a predisposition to decide a cause or an issue in a certain way, which does not leave the mind perfectly open to conviction (Black, 1990).

A preference or inclination that inhibits impartial judgment; a prejudice.

Deciding a cause or an issue by factors or any consideration other than its merits. It is the way we behave toward other people.

Culture The set of values, beliefs, behaviors, language, and thought processes that is learned and exhibited by a group

Is the integrated pattern of human behavior that includes thoughts, speech, action and artifacts.

Takes into account the customary beliefs, social forms, and material traits of a racial, religious or social group.

Is always changing; values, attitudes, and beliefs are constantly adapting to individual and group differences.

Cultural Identity

One's individual image of the behaviors, beliefs, values, and norms, that is, the cultural features that characterize one's group(s) together with one's feelings about those features and one's understanding of how they are (or are not) reflected in oneself (Ferdman, 1995).

The process by which a person comes to realize what groups are significant for him or her, what attitudes concerning them he should form, what kind of behavior is appropriate (Gleason, 1983).

Cultural forms help determine how a people will think and act and feel, but they also help determine what a people will *imagine*.

The mind that imagines a cultural form also imagines (which is to say "creates") its reverse, and to that extent, at least, a good measure of diversity and contrast is built into the very text of a culture. Thus, the idea and its counterpart become natural partners in the cultural order of things, setting up what I call an axis of variation that cuts through the center of a culture's space and draws attention to the diversities arrayed along it.

The term "culture" refers not only to the customary ways in which a people induce conformity in behavior and outlook but the customary ways in which they organize diversity (Erikson, 1976).

Organizational Culture	Written and unwritten rules for the ways an organization conducts its business and manages its employees.
Culture Values	<p>Represent the beliefs and behaviors which are held important by society.</p> <p>Give a common sense of identity to all of its members.</p> <p>The values held by a people, ethnic group, or nation.</p>
De facto segregation	Segregation created and maintained by unwritten norms (Kormblum, 1994).
Disability	Disabled people are often misjudged as a result of their disabilities. Some people are comfortable around disabled people and know instinctively, or through experience, how to relate naturally with disabled people. Others are ill at ease, afraid, embarrassed, or patronizing. Lack of contact with disabled people can reinforce the negative reactions. Courtroom personnel most probably display the same range of reactions, from comfortable to awkward, as does the general public.
Discrimination	<p>The unequal treatment of certain groups.</p> <p>Prejudiced or prejudicial outlook, action, or treatment.</p> <p>The act of making a difference in treatment on a basis other than individual merit.</p> <p>Behavior that treats people unfairly on the basis of their group membership (Kormblum, 1994).</p>

Discrimination, Institutional

Policies or practices established by an organization that are intended to be neutral and apply to everyone, but have a negative effect on individual or groups identified by their race, religion, sex, national origin, age, physical capability, military status, sexual lifestyle, etc.

The systematic exclusion of people from equal participation in a particular institution because of their group membership (Kormblum, 1994).

Discrimination, Unintentional

Actions that have a negative effect on an individual or group; it could be the result of ignorance or lack of understanding.

Diversity

The collective *mix* of similarities and differences in the workplace. Differences include, but are not limited to, gender, race, ethnicity, age, disability, marital status, parental status, sexual orientation, educational level, geographic location, language, skills, experience, values, personality, lifestyle, religion, and income.

The traditional image of diversity has been assimilation: the melting pot where ethnic and racial differences were standardized into a kind of American puree (Roosevelt, 1990).

Refers to differences in race, gender, ethnic or cultural background, age, sexual orientation, religion, and physical or mental capability. It also refers to the myriad ways we are different in other respects, such as personality, job function, class, educational level, marital status, whether or not one has children, where one lives, the region in which one was raised, and how one was raised (Leach, 1995).

Diversity in organizations is typically seen to be composed of variation in race, gender, ethnicity, nationality, sexual orientation, physical abilities, social class, age, and other such socially meaningful categorizations, together with the additional differences caused by or signified by these markers (Ferdman, 1995).

The current term used to describe a vast range of cultural differences that have become factors needing attention in living and working together. Often applied to the organizational and training interventions in an organization that seek to deal with the interface of people who are different from each other (Simons, 1993).

Diversity refers to any mixture of items characterized by differences *and* similarities. Diversity is not synonymous with differences but encompasses differences and similarities. A discussion of diversity must specify the dimensions in question (race, gender, sexual orientation, product line, age, functional specialization). Diversity refers to the collective (all-inclusive) mixture of differences and similarities along a given dimension (Roosevelt, 1995).

**Judge Janice Brice Wellington:
Thoughts on Diversity Training**

It is not about being bias free, eliminating all of one's assumptions and biases. It is about making you aware of them. In becoming aware of your own biases you are empowered to choose how you are going to react.

Diversity training concerns values and a values system, and it is not something that can be accomplished in one time slot. It is something that must be revisited and incorporated into all that you do.

Diversity training should be given to groups such as a commission or a workplace task force. Do not assume that because a group of people are interested in and concerned about the same set of issues, including addressing bias in the judicial system, that they do not have any biases.

Human beings all have biases and assumptions by virtue of our life experiences, world view, and our culture. Each of us sees the world differently. In the purest sense, diversity training is not about other people. It is not information about racial, ethnic, or cultural groups different from your own, making you culturally competent. The essence of diversity training is about finding out more about yourself. Diversity training gives you the learner an opportunity to find out how they treat people who are different from them, then they understand their assumptions. Then they see the connection between their assumptions and their behavior, decision making, and view of people. And how all of these pieces impact upon the ultimate ruling in a case.

Certainly one of the goals of diversity training is to have a culturally competent court. The culturally competent court has the ability to honor and respect the beliefs, interpersonal styles, attitudes, and behaviors both of litigants, their families, and the multicultural court staff who are providing court services. In doing this the court incorporates these values into policy, administration, and practice.

Managing Diversity

Managing an organization's culture and systems, by drawing on employees' differences, to try to ensure that each employee is given the opportunity to fully contribute his or her talents and skills to the mission and success of the organization.

**Equal Employment
Opportunity (EEO)**

Refers generally to organizational policies or efforts to prohibit discrimination in personnel matters based on any arbitrary distinctions.

Refers to state statutes and implementing regulations that prohibit public and private agencies and organizations from engaging in discrimination in hiring, promotion, firing, job assignments, and training based on race, color, religion, sex, national origin, physical handicap, or age.

Protects employees from reprisal discrimination. Title VII of the Civil Rights Act of 1964, the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, the Rehabilitation Act of 1973, the Pregnancy Disability Amendment of Title VII (1978), and the Civil Rights Act of 1991 apply to most of the state government and to the private sector. Judges and court managers should consult with their human resources office for guidance on affirmative action, EEO, or diversity policies.

Ethnic (or Racial) Nationalism

The belief that one's own ethnic group constitutes a distinct people whose culture is and should be separate from that of a larger society (Kormblum, 1994).

Ethnic Stratification

The ranking of ethnic groups in a social hierarchy on the basis of each group's similarity to the dominant group (Kormblum, 1994).

Ethnicity or Ethnic Group

A subculture within a society with distinctiveness due to race, national origin, or religion.

A population that has a sense of group identity based on shared ancestry and distinctive cultural patterns (Kormblum, 1994).

Ethnicity The characteristics of a people with similar cultural, religious, or language traditions within the same race and or country.

Groups set apart from others because of their national origin or distinctive cultural patterns.

An ethnic group is biologically self-perpetuating; shares fundamental cultural values, realized in overt unity in cultural forms; makes a field of communication and interaction; has a membership which identifies itself and is identified by others as constituting a category distinguishable from other categories of the same order (Narroll, 1964).

An ethnic group is a form of social organization; actors use ethnic identities to categorize themselves and others for purposes of interaction. Orient themselves to the group in terms of overt signals or sign (dress, language, house-form) and basic value orientation: standards of morality and excellence by which performance is judged (Barth, 1969).

An ethnic group can be operationally defined as a collectivity of people who (a) share some patterns of normative behavior and (b) form a part of a large population. The term ethnicity refers to the degree of conformity by members of the collectivity to these shared norms in the course of social interaction (Cohen, 1974).

Third generation ethnicity or symbolic ethnicity is a nostalgic allegiance to the culture of the immigrant generation, or that of the old country; a love for and a pride in a tradition that can be felt without having to be incorporated into everyday behavior (Gans, 1979)

Political ethnic groups are usually seen as culturally distinct groups within a state, that retain their cultural identity while accepting and operating within the political, institutional framework of the state. The future of such groups is in constant negotiation with other groups within the overall political arena of the state (Clay 1989).

Ethnocentrism The belief that one's own ethnic group has the only appropriate and acceptable practices, values and customs.

Gender Of all the variables that can be used to divide people into groups, sex is probably the most fundamental and pervasive. Sex bias is evident in a broad variety of ways at every job level, and is often found in the courtroom. The thinking, and therefore behavior, of both men and women appears to be influenced by preconceived notions of what men and women are supposed to do and how they are supposed to behave.

Hispanic Includes all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

Internal Colonialism A theory of racial and ethnic inequality that suggests that some minorities are essentially colonial peoples within the larger society (Kormblum, 1994).

Language A conveyor of expectations. Many of us tend to respond more favorably to those who speak standard English. On the other hand, we often respond negatively to those who speak other languages.

Minority Group A population that, because of its members' physical or cultural characteristics, is singled out from others in the society for differential and unequal treatment (Kormblum, 1994).

Native American	All persons having origins in any of the original peoples of North America who maintain cultural identification through tribal affiliation or community recognition.
Needs Assessment	In a training context, the process undertaken by organizations to collect data (quantitative and qualitative) to help identify specific technical or educational skill deficiencies and other concerns about job-related behaviors that can be addressed through training programs.
Occupation	The fact that certain groups, minorities in particular, hold low-paying jobs has long been a contributor to the formation of expectations about an individual who holds one of those jobs. Hence, we often make all kinds of inaccurate judgments about people based on the jobs they hold.
Perceived Intelligence	There is much evidence in research to suggest that we often form our expectations of the intelligence of others based on our preconceptions about the abilities of a particular group, rather than on any actual evidence of the intellectual ability of any individual. For example, several research studies indicate that teachers' expectations for their students are sometimes based on preconceived notions, arising from factors such as intelligence, race, appearance, or language.
Physical Appearance	A characteristic that appears to be important in forming our expectations of others during an initial interaction. For example, people often have their own stereotypic view of what a criminal would look like. We all have heard statements that equate appearance with intelligence (e.g., a dumb blonde, muscle head).

Pluralistic Society A society in which different ethnic and racial groups are able to maintain their own cultures and life-styles while gaining equality in the institutions of the larger society (Kormblum, 1994).

Prejudice A preconceived judgment or opinion

An adverse opinion or learning formed before sufficient knowledge is gained.

An irrational attitude of hostility directed against an individual, a group, a race, or their supposed characteristics.

An adverse opinion or judgment about a situation or an individual formed without an adequate examination of the facts or knowledge of the situation or individual.

Generally, an unfavorable ethnic attitude (Zadronzny, 1959).

In a legal context, a forejudgment; bias; partiality; preconceived opinion. A leaning towards one side of a cause for some reason other than a conviction of its justice (Black, 1990).

The inclination to take a stand for one side (as in a conflict) or to cast a group of people in a favorable or unfavorable light, usually without just grounds or sufficient information (Simons, 1993).

An antipathy based upon a faulty and inflexible generalization. It may be felt or expressed. It may be directed toward a group as a whole, or toward an individual because he is a member of that group. (Allport, 1979)

According to exploitation theory, racial prejudice may be used to justify keeping a group in a subordinate position, such as a lower social class (Schaefer, 1996).

Scapegoating is a form of prejudice practiced by people who believe they are society's victim. The theory of scapegoating suggests that an individual, rather than accepting guilt for some failure, transfers the responsibility for failure to some vulnerable group (Schaefer, 1996).

Projection, the psychological term for visiting upon others what we find or imagine—deep down—lacking in ourselves, is the basis of prejudice in the human psyche. (Gioseffi, 1993)

According to Pettigrew, prejudices are societal influences that shape a climate for tolerance or intolerances. (Schaefer, 1996).

Ethnocentric prejudice is a tendency to assume that one's culture and way of life are superior to all others, which can lead to prejudice against cultures viewed as inferior (Schaefer, 1989).

A feeling or response to persons or things which is prior to, and therefore not based upon, actual experience. It may be either positive or negative, and it may be directed to any one of a large variety of objects (Klineberg, 1954).

An unfavorable attitude toward an object which tends to be highly stereotyped, emotionally charged, and not easily changed by contrary information (Kretch, Crutchfield, and Ballachey, 1962).

An attitude unfavorable to or disparaging of a whole group and all the individual members of it (Marden and Meyer, 1962).

A pattern of hostility in interpersonal relations which is directed against an entire group or against its individual members; it fulfills a *specific irrational function* for its bearer (Ackerman and Jahoda, 1950).

An attitude that considers selected categories of people in terms of stereotypes, usually for some purpose (conscious or unconscious) believed to be of advantage to the person who has the prejudice. Usually used to refer to a negative attitude toward a racial, religious, or nationality group (Rose, 1965).

An attitude that prejudges a person on the basis of a real or imagined characteristic of a group of which that person is a member (Kormblum, 1994).

Projection The psychological process whereby we attribute to other people behaviors and attitudes that we are unwilling to accept in ourselves (Kormblum, 1994).

Protocols Standard written procedures and instructions for asking questions in one-on-one interviews or focus groups as part of a needs assessment.

Race A division of the human species characterized by more or less distinct combination of physical traits that are transmitted by descent.

An inbreeding population that develops distinctively physical characteristics that are hereditary (Kormblum, 1994).

Race and Ethnicity Appears to influence expectations and judgment at all levels of the spectrum of our society. Skin color has long been a factor that influences judgments and behavior, as evidenced by the continuing problems of racism throughout our nation. As a socially defined symbol, race is more visible and more historically embedded than any other symbol in practices that have been handed down from one generation to another. It often results in heightened emotional behavior. The interaction of race, sex, attractiveness, perceived intelligence, diversity, socioeconomic class, and language, combines to make a powerful set of characteristics that influence our expectations and, therefore, our behavior toward our fellow citizens.

Racism Any activity based on the belief that one group is superior and another group is inferior; it serves to maintain the supremacy of one group through the oppression to subjugation of members of ethnic, racial, or minority groups.

The extension of a hostile attitude; an ideology based on the belief that an observable, supposedly inherited trait is a mark of inferiority that justifies discriminatory treatment of people with that trait (Kormblum, 1994).

Racism, Cultural The elevation of the cultural heritage of one group to a position of superiority over the cultural experiences of ethnic minority groups.

Involves elements of both institutional and individual racism.

Racism, Individual The belief that ethnic minorities are inferior because of their racial identity and the corresponding behavioral patterns, which serve to perpetuate these attitudes and positions.

Racism, Institutional	<p>Any institutional activity creates racial inequalities and results in the subordination and oppression of minorities, whether intentional or the result of business as usual.</p> <p>Is apparent in all major institutions—educational, political, religious, economic, legal, military, health and welfare, and communications. These institutions operate under the auspices of customs, laws, mores, habits, and other cultural sanctions. Therefore, institutional racism is an extension of individual racism and indicative of the racism inherent in the culture.</p>
Scapegoat	<p>A convenient target for hostility (Kormblum, 1994).</p>
Socioeconomic Class	<p>A factor that contributes to our expectations of the abilities of others. Some examples of status designations include poor, disadvantaged, undependable, unmotivated, and uncooperative.</p>
Stereotype	<p>A fixed, rigid, or exaggerated belief or generalization associated with a category or group of people.</p> <p>An oversimplified, preconceived belief or opinion about a group of people.</p> <p>An inflexible image of the members of a particular group that is held without regard to whether or not it is true (Kormblum, 1994).</p>
Values	<p>Fundamental beliefs about behavior, customs, and institutions that are judged either favorably or unfavorably by a people, ethnic group, or nation.</p>
Valuing Differences	<p>Various activities designed to encourage awareness of and respect for diversity within the workplace.</p>

Geared to the individual and interpersonal levels. Objective is to enhance interpersonal relationships among individuals and to minimize blatant expressions of racism and sexism. Valuing Differences:

- Fosters awareness and acceptance of individual differences.
- Fosters greater understanding of the nature and dynamics of individual differences.
- Helps workers understand their own feelings and attitudes about people who are different.
- Enhances work relations between people who are different.

White Includes all persons having origins in any of the original peoples of Europe, North Africa, or the Middle East (not of Hispanic origin).

The National Center for State Courts

*Promoting Justice by Providing
Leadership and Service to State Courts*

The National Center for State Courts

Promoting Justice by Providing Leadership and Service to State Courts

The National Center for State Courts stands in a unique place in this country, as the only institution representing all of the state courts. The work of the National Center seldom produces headlines; it does produce a higher quality of justice for our citizens. The past year has been marked by change and introspection as the National Center positions itself for an even stronger role in the administration of justice.

*Ohio Chief Justice Thomas J. Moyer, Past Chair,
National Center for State Courts Board of Directors, 1996*

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