



We Need To Talk: Navigating Challenging Conversations about Diversity

Presented by the
Illinois Supreme Court
Commission on Professionalism

Listening to Understand



Be curious about their story

- Lower your internal voice to remain interested in what the speaker says.
- Incline your body toward the speaker.
- Maintain an appropriate distance from the speaker.
- Establish effective eye contact.



Inquire to learn their perspective

- Ask open-ended questions, e.g. “Can you say a little more about that?”
- Ask why this issue is important to them.
- Ask for any additional information that has not been shared, e.g. “What information do you have that I/the other doesn’t?”



Paraphrase and reflect

- Express, in your own words, your understanding of what the speaker is saying, e.g., “What I hear you saying is...”, “Do you mean...”, “Are you saying...”



Summarize and restate the main points of the conversation

- “I now understand your concerns about this matter, and I agree that discussing at our staff meeting would be the best way to bring it to everyone’s attention and get feedback on how to proceed.”
- “In summary, we all agree that...”

Do's and Don'ts of Approaching Difficult Conversations

The person who experiences the bias



- Do make a few notes in advance of the conversation regarding what happened and how it made you feel
- Do focus on the other person's words/behavior as opposed to their intentions
- Do suggest how the other person could have handled the situation in a way that made you feel valued and respected



- Don't blame yourself for the other person's behavior or comment
- Don't apologize for initiating the conversation
- Don't hold yourself responsible for the conversation's outcome

The person who exhibits the bias



- Engage the conversation in good faith
- Ask questions to clarify
- Be open to changing your perspective
- Be open to changing your behavior
- Validate what you can sincerely affirm



- Do nothing
- Sidetrack the conversation
- Appease
- Terminate the discussion
- Become defensive

To Address Implicit Bias, Disrupt It

[Last year, the Conference of Chief Justices and Conference of State Court Administrators issued a resolution](#) to intensify efforts to combat racial prejudice in the justice system, both explicit and implicit. While those exhibiting explicit bias are aware of their prejudices and attitudes toward a certain group, implicit biases are hidden. They are subconscious attitudes or beliefs people have about others [based on](#) past experiences or influences.



Implicit biases manifest themselves everywhere and can be more difficult to uncover and address. However, [a recently released report](#) from the National Center for State Courts ([NCSC](#)) says they may be lessened by teaching people how to override their automatic gut reactions.

“Embedded in the architecture of our daily lives, many of these associations can be, or have become, invisible to us,” Jennifer Elek and Andrea Miller, NCSC researchers, wrote in the report. “We may not endorse these associations, but they can nevertheless contaminate our choices and leak out through our behavior to impact others in ways that we do not intend.”

The report, titled “[The Evolving Science of Implicit Bias: An Updated Resource for the State Court Community](#),” explores how implicit bias fits into broader conversations about equity and fairness and summarizes current psychological research around implicit bias, including effective and ineffective strategies. Additionally, the report defines key terminology originating from research into implicit bias and addresses implications for legal professionals.

Implicit Bias Interventions – What’s Working and What Isn’t

Based on their analysis of physiological research on bias interventions, the authors offered three key takeaways on addressing implicit bias that have practical implications for courts and their communities:

1. General interventions that attempt to reduce prejudice and discrimination through positive, meaningful intergroup contact are some of the most effective strategies for courts.
 - Activities that include the following have the biggest impact: 1) different groups working toward a common goal, 2) the groups have equal status in the activity, 3) the activity allows individuals to get to know each other on an individual basis, and 4) the activity receives institutional support or support from the relevant authority figures.
2. Implicit bias interventions that attempt to change implicit associations in memory are not consistently effective.
 - While some of these “change interventions” can reduce the strength of implicit associations, they are difficult to implement, don’t last long, and typically fail to change subsequent behavior.

3. Implicit bias interventions that bypass or disrupt biased responding show more promise.
 - “Expression interventions,” which disrupt the expression of underlying implicit biases by teaching people how to override their automatic gut reactions and make decisions based on a more egalitarian response, show more promise than trying to retrain the brain.

Implicit bias research is continually developing, meaning there are still many unknowns. However, legal professionals across the board would be wise to make themselves aware of how their implicit biases may be impacting the advancement of a more equitable and effective justice system. As summarized by Elek and Miller, “Educate not just to raise awareness, but to build capacity for change.”

If you’d like to learn more about implicit bias, including strategies to counter it in your personal and professional life, take our free CLE, [“Rebalance the Scales: Implicit Bias, Diversity, and the Legal Profession.”](#)

Staying up to date on issues impacting the legal profession is vital to your success. [Subscribe here](#) to get the Commission’s weekly news delivered to your inbox.

2civility.org blog excerpt

2civility.org blog excerpt by Jayne Reardon

Inclusive Language is Allyship

Should lawyers use legal terms of art that may be considered offensive? A provocative series of posts recently lit up a listserv I’m on, bringing this issue into sharp focus. Some comments articulated a historically neutral explanation for a term, another sought evidence that a receiver took offense, another dismissed the kerfuffle with a pithy “Micro-Aggressions warrant no more than a Micro-Concern.” Another comment that said acceptable language, like people, changes and evolves over time.



Given that “effective communicator” is part of a lawyer’s job description, we should be sensitive to how listeners may interpret our language.

Metaphors May Offend

The unfortunate truth about America’s status as a “melting pot” includes discrimination toward each new wave of immigrants. Often, that discrimination has included labeling immigrants with an ethnic slur.

Over time, some of these ethnic slurs have been abandoned as unacceptable. However, others live on in our language as shortcuts or analogies. Speakers or writers may intend no discrimination or malice but offend nonetheless.

Given that “effective communicator” is part of a lawyer’s job description, we should be sensitive to how listeners may interpret our language.

Metaphors May Offend

The unfortunate truth about America’s status as a “melting pot” includes discrimination toward each new wave of immigrants. Often, that discrimination has included labeling immigrants with an ethnic slur.

Over time, some of these ethnic slurs have been abandoned as unacceptable. However, others live on in our language as shortcuts or analogies. Speakers or writers may intend no discrimination or malice but offend nonetheless.

Take the term “Chinese wall.” When I was practicing, I recall my firm using the term to defend against a possible motion to disqualify due to the lateral hiring of an attorney who represented an opposing party at a previous firm.

By using screening procedures to isolate the attorney with confidential information, the hope was that the conflict of interest would be restricted to the individual lawyer and not be imputed to other attorneys in the firm.

“Chinese Wall” actually appears in Black’s Law Dictionary. There it is defined as “more commonly known as ‘ethical wall’ or ‘firewall,’ this term refers to ‘[a] screening mechanism maintained by an organization, esp. a law firm, to protect client confidences from improper disclosure to lawyers or staff who are not involved in a particular representation.’”

Justice Law in [Peat, Marwick, Mitchell & Co. v. Superior Court \(1988\)](#) firmly asserted that the term “Chinese Wall” should be jettisoned in favor of “screen” or “ethical wall”:

‘Chinese Wall’ is one such piece of legal flotsam which should be emphatically abandoned. The term has an ethnic focus which many would consider a subtle form of linguistic discrimination. Certainly, the continued use of the term would be insensitive to the ethnic identity of the many persons of Chinese descent.

A strained metaphor when crafted, it is uncomfortable but important to acknowledge this example at this time in history. It shows how pervasive discrimination is, even in our profession.

As diversity advocate and former General Counsel Rick Palmore shared in his talk at [The Future Is Now: Legal Services](#) conference, awareness and acknowledgment are the first steps toward greater inclusiveness. Action must follow for true allyship.

History and Intent Doesn’t Mitigate Effect

Similarly, our collective path is riddled with examples of people being targeted or ostracized for having a disability. Terms that lawyers use regularly in arguments may smack of ableism, or discrimination in favor of able-bodied people.

For example, “the blind leading the blind” describes a situation when someone who knows nothing about a subject gets advice from another person who knows little more. Similarly, “turning a blind eye” may refer to ignoring facts or an argument and “turning a deaf ear” may mean to ignore or refuse to listen.

I learned from a listserv commenter that the expression “turn a blind eye” is believed to have [come from](#) the 1801 Battle of Copenhagen in which Horatio Nelson, a British naval commander, was ordered to withdraw. Nelson, who was blind in one eye due to an earlier battle, pretended not to see the signals by putting his telescope to his wounded eye.

However, whether or not this or any term originated from a historical event doesn’t ameliorate the harmful effects this language can have on a person.

In addition, that our intent may be benign in using certain terms is irrelevant. As another commenter on the listserv said, “Personally, I don’t believe that I have standing, as you lawyers might say, to tell someone else what they shouldn’t find offensive.”

Language Can Signal Inclusiveness...or Not

As lawyers, our stock in trade is language. We can choose language that makes our points persuasively or language that is distracting and possibly offensive. Distracting or offensive language, of course, doesn’t serve our clients, our profession, or our image in the eyes of the public.

When we disregard how others may interpret our language or are unthoughtful with our words, we risk offending members of our professional community, like the judge, judge’s staff, opposing counsel, or others who may hear the oral argument or read the brief. In choosing more inclusive language, we choose allyship.

Allyship, [according](#) to Nicole Asong Nfonoyim-Hara, the Director of the Diversity Programs at Mayo Clinic, describes an action of “a person of privilege work[ing] in solidarity and partnership with a marginalized group of people to help take down the systems that challenge that group’s basic rights, equal access, and ability to thrive in our society.”

Allyship is also defined as a form of action by [Ellie Krug](#), Founder and President of Human Inspiration Works.

In a conversation about her [talk](#) at The Future Is Now conference, Krug explained that “ally” is a noun. “An ally acts to help humans who often lack a voice to speak on their own behalf or who aren’t always in the room when demeaning or marginalizing comments/behaviors occur, or marginalizing policies or plans are made,” [she writes](#).

As a transgender lawyer, Krug finds the language of “us vs. them” particularly pernicious to our democratic values. She exhorts lawyers to embrace the diversity, equity, and inclusion practices that the business community adopted long ago.

Increased allyship through language and actions is essential for the legal profession to remain relevant. The topic may make us uncomfortable, but that is where growth occurs.

Concrete steps toward allyship were explored at the Commission on Professionalism’s [The Future Is Now](#) conference on April 29, 2021. Krug, Palmore, and Hon. Ann Claire Williams, a retired federal judge now at Jones Day, shared specific strategies for actively re-shaping the culture of our profession.

Staying up to date on issues impacting the legal profession is vital to your success. [Subscribe here](#) to get the Commission’s weekly news delivered to your inbox.

2civility.org blog excerpt from Jayne Reardon



2civility.org blog excerpt by Mark Palmer

Providing justice for your clients through proximity, listening

I sat waiting in a windowless, narrow room built of concrete blocks. Between me and the hot summer day were three steel doors controlled by a deputy sheriff behind a closed-circuit monitor. Eventually, the sound of doors opening and closing told me that Kevin (a pseudonym) was about to join me.



He was accompanied by another deputy who reminded me, as he had on previous occasions, that, “The buzzer’s broken, so just pound on the door when you’re done.”

In came Kevin, dressed in a white T-shirt, gray sweatpants, and socks with flip-flops, the typical uniform of inmates at the Ford County Jail in Paxton, Ill. Kevin was a detained federal criminal defendant waiting for his sentencing hearing after pleading guilty and accepting responsibility for possession with intent to deliver crack cocaine and the possession of a firearm by a felon. This would be my last meeting with Kevin, my client, before his sentencing hearing.

He talked. I listened. We had developed a mutual trust in the time between my court appointment to represent him and our final meeting. I was his adviser, his counsel, and his advocate and he knew it.

Kevin was a Black man in his 20s, a high school graduate, and a star football player. At 6-feet-7-inches tall and weighing nearly 300 pounds, he was massive in stature. Yet, he was still vulnerable to the socioeconomic factors that pushed him to the margins of society, led by drugs, gangs and crime. I learned all I could about Kevin, from Kevin. He talked. I listened.

•

Acclaimed public interest lawyer Bryan Stevenson often speaks of the power of proximity. He emphasizes that we can discover things in proximity that we cannot when proximity is absent. For Stevenson, whose career was defined around repeated immediacy to incarcerated and often condemned individuals, it was this proximity that helped him understand the power of the law in protecting the vulnerable.

When I heard Stevenson speak in 2018, he stressed that while proximity isn’t the definitive solution, it is a crucial, albeit uncomfortable, step into difficult places. “Even if we don’t have any answers once we get there, find ways to engage and invest in the excluded, marginalized, disfavored, left out,” Stevenson said. “At a very minimum, we can find collective, institutional, and meaningful ways to embrace these communities. And sometimes it is that witness who can be transformative.”

•

As Kevin's defense attorney, I would seek out myriad mitigating factors relevant to the sufficiency component of the parsimony principle — that a sentence is sufficient, but not greater than necessary to comply with the purposes of sentencing. His family background, education, employment, contributions to his community and society might impact his sentencing memorandum, and my argument on his behalf. While I crafted it, Kevin provided it.

Former President Barack Obama once said, "Learning to stand in somebody else's shoes, to see through their eyes, that's how peace begins. And it's up to you to make that happen. Empathy is a quality of character that can change the world."

That day in Ford County Jail was much more than fulfilling my ethical obligation to provide Kevin with competent legal representation. It was getting proximate, listening, and respecting Kevin as a person and his advocate.

As I left the jail that afternoon, I was consumed by one of the greatest compliments of my career. Before I left, Kevin said, "Thank you for listening to me. No one has ever done that."

In one of his lowest moments, when he felt alone, ignored, and even disrespected for mistakes he had made and accepted responsibility for, someone was listening to him. Finally.

•

In one of Martin Luther King Jr.'s best-known quotations, he said, "The ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands at times of challenge and controversy." We, as lawyers and defenders of justice, must find opportunities to stand in proximity to disputes and injustices to change the narrative.

The legal profession is not for the faint of heart or spirit. As lawyers, we are charged with carrying out justice to solve problems for our clients. The better we are able to step into our clients' shoes, and embrace the diversity of thought experienced from different perceptions, perspectives, and values, the better we can serve those ends of justice.

Will you take the first uncomfortable and inconvenient step by getting proximate?

Staying up to date on issues impacting the legal profession is vital to your success. [Subscribe here](#) to get the Commission's weekly news delivered to your inbox.

2civility.org blog excerpt from Mark Palmer



About the Illinois Supreme Court Commission on Professionalism

The Illinois Supreme Court Commission on Professionalism was established by the Illinois Supreme Court in 2005 under Supreme Court Rule 799(c) to foster increased civility, professionalism, and inclusiveness among lawyers and judges in Illinois. To learn more, visit www.2civility.org.