Boston Bar Journal

A Peer Reviewed Publication of the Boston Bar Association

DEI Special Edition 2022
Volume 66, Number 2

Board of Editors

Voice of the Judiciary

How You and I See Me

By Hon. Catherine Hyo-Kyung Ham

This day always sticks out to me. I finally had my own cases to prosecute in the pretrial session and as I walked up the stairs of Brockton District Court holding my files, I felt so proud of myself: I am finally a real lawyer! As I passed two men in the hallway, they yelled out, "Ching Chang Ching Chong!"

Wait, is this really happening in the courthouse? Don't I look like a lawyer? Aren't I wearing a suit like all the other lawyers? I was not mad at their racist remarks; I was mad that their comments shook my confidence. My confidence spiraled down to self-doubt. Am I really good enough to be a lawyer? I don't even look like a lawyer, just some girl for men to heckle? In that quick moment, I did what I have always done—a little pep-talk to force myself into that pretrial session to get the job done.

My appearance as a small Asian woman has not helped me as a trial lawyer. No one looked at me and gave me the benefit of the doubt that I would be a great litigator. The stereotype of me is that I will be submissive, quiet, and agreeable. Let's face it, these are all characteristics that are horrible for a "tough" trial prosecutor who can try homicide cases. Frankly, I have seen it all and endured it all, because I needed to get my job done and do what is best for my case, not best for me. Culturally, I have been taught to grin and bear it, and to prove everyone wrong with my hard work, which continually perpetuates the stereotype.

As a Boston Municipal Court judge, I was always mindful of looking at the faces of people when I first entered the courtroom. Are they relieved? Are they worried? Are they confused? The public's unknown reaction stems from not seeing someone like me come out with a black robe. One civil party asked me to recuse myself because the opposing party was Asian. This was a preposterous theory that I would side with one party simply because we have the same skin color. One time, after a decision on the bench, I received threats of sexual assault and violence. I had prepared myself to be criticized for my rulings as a judge. I was not quite prepared for these kinds of threats. I was told to go back to massaging people or to go paint some nails. These are honorable hard-working jobs, I do not necessarily want to dissociate myself with. But these racist comments shook my confidence yet again, even now as a judge.

Now, as the only female Asian judge in Superior Court, I recognize that my presence on the bench is a foreign concept. During a recent virtual hearing, an attorney asked out loud, "Where the hell is the judge," when I was wearing a black robe, seated in front of law books, and my video screen was labeled, "Ham, J." The idea that someone who looks like me is the authority figure is simply not the norm.

In my legal career, I can say that I have seen it all, from explicit and hurtful to implicit and subtle comments and actions. I have survived, quite successfully I might add, by suffering through it all. After venting to my husband, I forced myself to forget about the recent slight because it would not be good for my case. What about me, you ask? It did not really matter—I had a job to do, and I was never going to jeopardize my case to air out my personal frustrations.

It is difficult to wrap my head around the new reality that I am no longer the scrappy underdog, but a Justice of the Superior Court. Now as a judge, am I to stand up and call out people around me, not just for others but for myself as well? If occurrences are explicit and clearly wrong, I have no problem telling that person the harsh truth. But do I make a fuss even if the comment or conduct is subtle and something only I can perceive as discriminatory or offensive? Would taking a stand be making a fuss or making a difference? Do I call out the person who was spreading unfounded rumors of how I got to be appointed on the bench? Do I call out a staff or colleague whose well-intentioned comment was actually demeaning? The explicit "Ching Chang Ching Chong" is an easy call to make. The hard calls involve conduct that I can easily dismiss with an awkward laugh and then internally agonize over whether I should have said something or not.

Recently, I was confronted with an incident which made me ponder: Did this person make this statement to undermine me? Or to tell me their point of view to undercut my authority? Or did this person make this statement without thinking about the effect it would have on me? I was going around and around in circles torturing myself, all to determine if this person had meant to hurt me or was clueless about the statement's sting. I resolved to understand that this person was just not used to someone who looked like me as an authority figure. Regardless of any ill intent, I decided not to hash it out but to interact daily and to change this person's perspective with our continuing professional relationship. This time, I chose not to speak up and let our relationship change this person's mind. Other times, I would speak up. There is no magic formula.

The only solution I can propose is that we force ourselves to live and to learn in proximity with people who are different from us. Interact, make mistakes, interact, be surprised, interact, apologize, interact, learn, interact, and change. I look forward to my long years of interacting and changing on the bench.

Catherine H. Ham is a Justice of the Massachusetts Superior Court. She was first appointed to the Boston Municipal Court in 2019 and then to the Superior Court in 2021. Before her appointment, she was a prosecutor at the District Attorney's Office at Plymouth and Suffolk Counties. She is a graduate of Haverford College and New England Law.

AALAM: Representation Matters

By: Emily Sy

The Asian American Lawyers Association of Massachusetts (AALAM) was founded in 1984, the year before I was born. And over the last 37 years, AALAM has steadily grown from a handful of attorneys to over 500 members. Most recently, we hosted our Annual AALAM Banquet at Empire Garden in Boston's Chinatown. After cancelling our 2020 and 2021 banquets due to the COVID19 pandemic, this year we welcomed over 250 guests to celebrate our achievements and highlight special awardees. I am incredibly proud to report that the AALAM membership includes federal and state judges, partners at AmLaw 100 law firms, successful solo and small firm founders, general counsels at major corporations, leaders of government agencies, chairs of commissions, public servants, prosecutors, law students, and most recently and with immense pride, the mayor of our great city of Boston.

AALAM's founding mission is to promote the representation of Asian American Pacific Islander (AAPI) attorneys in the legal community. And while we have made great strides since our early days, many of us too often find ourselves as the only AAPI voice in the room. We therefore carry the heavy burden of representing all AAPI attorneys, when the reality is that we are not a monolith. In fact, we are made up of lawyers with diverse backgrounds, familial roots in multiple countries, and as a result, face different challenges when it comes to charting our paths in the law. My experience as a first generation Chinese American from Ohio is very different from my fellow AALAM members including Angel, a Taiwanese American who grew up in Argentina and moved to the U.S. for college at the age of 19; Steve, whose family tree traces back to his great-grandfathers who came to the U. S. in the late 19th century and who grew up in a New York City housing project by the Brooklyn Bridge; Jan, a Korean American who got her law degree in Australia before getting an LLM in banking at Boston University Law; and Tony, who was born and raised in Boston and whose mom, a refugee from Vietnam, founded a small Chinese restaurant in Downtown Crossing.

It is important to recognize that, while each of us has charted a unique path and confronted a unique set of challenges over the course of our legal careers, we are united by the shared experience of feeling left out and othered. We have all experienced this sense of isolation, whether it is because a senior partner refused to learn how to pronounce our name; a career advisor told us to focus on immigration law simply because of how we look; a clerk mistook us for the court translator; or a co-worker teased us for the food we brought to lunch. These types of microaggressions, plus the ever-present specter of the model minority myth and imposter syndrome, are not only the result of racism and ignorance but also stem from the fact that we are often the only AAPI attorney present.

Over the last few years, the legal community has taken considerable steps to increase diversity, a development that is welcomed, but long overdue. As an affinity bar association, AALAM is often tasked to help in these efforts, which we gladly do. But the key here is that it is not enough to include just one AAPI voice. Rather, if the Boston legal community is truly committed to diversity, equity, and inclusion then it must rise to the challenge and amplify multiple AAPI voices so that no one attorney must carry the burden of being the sole representative of a vastly deep bench. The more that we, as AAPIs, celebrate and highlight what makes us unique, the more the broader legal community will come to recognize that we are not interchangeable. If there are multiple AAPI attorneys present, then the weight of representing our entire community is lifted for each of us and we can instead focus on ourselves as individuals, each with a different story and perspective. This type of representation, in which we are valued for our contributions both as individuals and as members of the AAPI collective, will only serve to enrich the Boston legal community.

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SABA GB: Reflections on Efforts at Promoting Diversity, Equity, and Inclusion in the Profession

By: Payal Salsburg & Darshana Indira

The South Asian Bar Association of Greater Boston (SABA GB), with a membership of approximately 150 lawyers and law students, has endeavored over the years to promote the advancement of attorneys and law students of South Asian heritage. With a renewed focus on diversity, equity, and inclusion (DEI) in the last few years, we host a variety of programs and events aimed at professional networking and development, legal scholarship and education, and advocacy and community involvement.

Understanding the importance of reducing barriers for the new generation of South Asian lawyers, SABA GB's Mentorship Committee aspires to prepare law students through every step of their legal experience. We host an annual Mock Interview event, sponsored by Kirkland & Ellis LLP, to help students brush up on their skills in preparation for summer internships and post-graduation jobs. This program is open to law students of all backgrounds and ethnicities. Our Mentorship Committee also holds a quarterly Office Hours series for law students, allowing them to chat informally with our members on a range of topics including law school exam support, bar exam preparation, resume writing, career advice, and interview tips. Our members frequently speak on panels at local law schools about their personal career paths and serve as mentors for South Asian law students looking to establish professional relationships with local lawyers. Each summer, SABA GB is extremely proud to collaborate with sponsoring law firms to fund two public interest fellowships that enable law students of South Asian or Asian descent to work in otherwise unpaid internships with non-profit or government organizations focusing on the needs of BIPOC/LGBTQ communities. These fellowships assist students who are passionate about nonprofit work who may otherwise be forced to decline an internship for lack of compensation.

Further, recognizing that our members routinely face chronic stress, high rates of depression, and cultural pressure surrounding career advancement while balancing life at home and in the community, SABA GB remains active in the lawyer well-being space. In the fall of 2021, we joined SABA's national organization for a dynamic presentation and conversation on unpacking and supporting multiracial identities for South Asian children. As part of our Women's Initiative, we encourage our female members to meet in "lunch circles" to have candid conversations, seek advice, and share experiences that foster relationships and strengthen our bonds. Later this summer, we will host a stress management workshop for our members led by Ali Greene, an integrative health practitioner. The program will focus on lawyers of color, female lawyers, feelings of not belonging, anxiety, burn out, and coping skills.

As a bar organization that aspires to address diversity, equity and inclusion issues, it is integral that we ally with fellow affinity bars. We routinely collaborate with other affinity bar organizations to combine our strengths, talents, and resources to promote the advancement of all our members. In addition to supporting each other's events and annual galas, the affinity bar leadership meets regularly to coordinate our work with law firms, in-house legal departments, and legal services organizations.

In April, we joined the Massachusetts Black Lawyers Association, the Black Law Students Association, and the Affinity Coalition to co-sponsor a discussion with Dr. Cornel West about overcoming Imposter Syndrome. In April and May, we co-sponsored a series of programs with Northeastern University School of Law on Confronting Racial and Economic Injustice particular to the Asian American Pacific Islander (AAPI) community. We also celebrated AAPI Heritage month with our friends in the Asian American Lawyers Association of Massachusetts (AALAM) and attended AAPI Heritage Night with the Boston

Red Sox at Fenway Park. We also previously worked with Glenn Magpantay, a long-time civil rights attorney, on upstander intervention training aimed at identifying, documenting, and reporting hate incidents. Earlier this year, we partnered with staff of the Trial Court Office of Workplace Rights and Compliance on a program aimed at demystifying reporting incidents of bias and discrimination in the Massachusetts trial courts. To encourage our lawyers to consider judicial appointments and expand diversity in courts in the Commonwealth, we are also working with judges of the Superior Court on programming to demystify the judicial application and nomination process for our members. In March 2022, we also collaborated with AALAM and Lawyers Concerned for Lawyers of Massachusetts to host an AAPI Safe Space meeting, where attendees discussed the impact of recent events that have impacted the well-being of AAPI attorneys and law students.

As a small affinity bar organization with a limited budget, SABA GB leadership continually leverages its relationships with law firms, corporate organizations, fellow affinity bars, and larger bar organizations to ensure that our members can access the opportunities they need and deserve to develop their careers. While the recent interest in DEI in the legal profession is welcomed, there must be a concerted effort to ensure inclusive workplaces. Many organizations have approached SABA GB for help with their efforts, and we encourage these organizations to not only implement diverse and inclusive hiring practices, but also to create programs and policies that encourage the retention and advancement of diverse talent. While the language and transparency around DEI issues has evolved significantly over the last few years, it is important to continue this momentum by not only engaging in productive conversations but also providing the necessary funding to implement concrete changes to address the specific needs of marginalized groups. DEI issues will not be solved overnight, and they will not be solved by marginalized groups alone. DEI must be a long-term commitment involving a change in foundational elements and continuing accountability on an organization-wide basis. SABA GB is thankful to be a partner in these efforts.

Payal Salsburg is a Partner at Laredo & Smith, LLP. She is the co-President of the South Asian Bar Association of Greater Boston (SABA GB). She is also a member of the Board of Directors of the Women's Bar Association of Massachusetts. At the BBA, Payal is the co-chair of the BBA's Business and Commercial Litigation Section Steering Committee, a member of the BBA/BBF Joint Planning Committee, and on the Advisory Committee of the Women's Leadership & Advancement Forum.

Darshana Indira is an employment and litigation attorney at the Maura Greene Law Group. She is the Treasurer and Public Relation chair of the SABA GB. She is also a member of the Joint Bar Committee on Judicial Nominations.

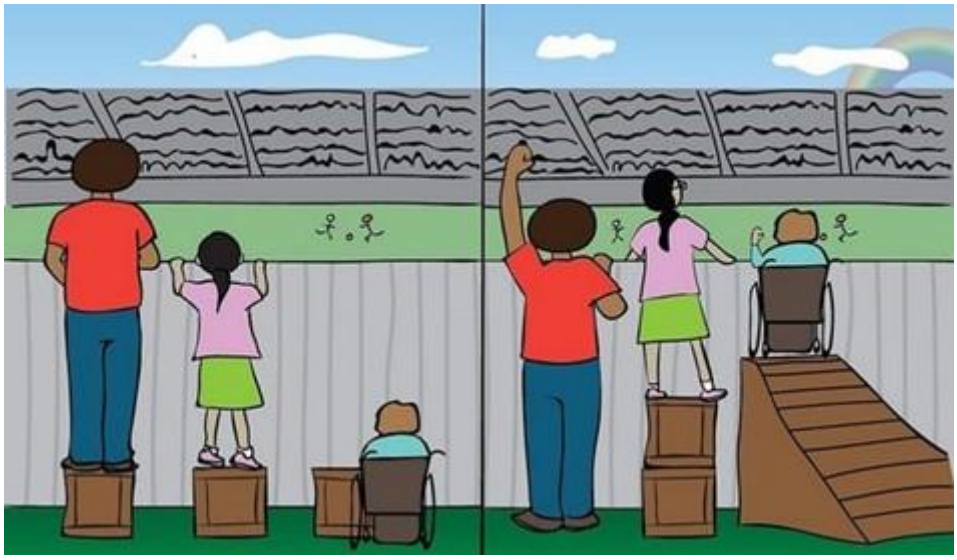
DEI as a Stand-Alone Concept

Diversity Equity and Inclusion, or "DEI," means different things to different people, even in the same organization. For some, "DEI" is a singular noun meaning or relating to people of color, gender identity, or sexual orientation. For others, the acronym means increasing numbers of people belonging to those groups whose numbers are below their relative percentages in the larger population. To be sure, as far as they go, both definitions are mostly accurate. But these definitions fail to grasp the connection between "diversity" and the remaining parts of the acronym, "equity" and "inclusion," and as a result, miss that there is a connection between DEI efforts and wellbeing.

Diversifying the ranks does not create wellbeing. Even diversity in leadership may not be enough to improve the environment so the workforce can thrive. That is because diversity does not automatically lead to equity, any more than equality leads automatically to inclusion. Equity and inclusion are necessary elements to wellbeing in a diverse workforce and they must be intentionally pursued.

Equity and Inclusion Equal Wellbeing

Many ask, "why can't we just treat everyone equally?" The divergence between the concepts of equality and equity can be quickly and easily described. The internet abounds with graphic examples. Here is one that depicts the concepts of equality and equity while also incorporating visible diversity.



This image gives a graphic example of how equity intersects with inclusion. We also see here how equality is depicted as pointless and can even be perceived as intentionally exclusionary. Using the illustration, it is not hard to imagine the harm caused when we fail to be equitable and inclusive.

Given the differences between equality and equity in the illustration, we infer that inclusion is the goal. Assuming the goal is to enable all to enjoy the game, equity produced inclusion, which undoubtedly improved the wellbeing of the participants.

The need to adjust in certain contexts is obvious. In the illustration, the entire set of transactions needed to address the apparent inequities can be completed with little or no communication around problem

identification. The method for removing barriers to inclusion in such circumstances has become common place. Circumstances like these are not very complicated and the remedy is readily recognized.

If the barriers to inclusion are not readily evident, finding equitable solutions presents different challenges. When the complexity of the barriers increases, so too do questions about the goal. There are related and important questions about who bears the responsibility to identify and attend to inequities. In both situations, where the barriers are unclear or complex, communication becomes a critical part of finding equitable solutions.

Leaving aside for a few more moments questions of responsibility for identifying and addressing inequities, the illustration helps us to see that equality does not work across the board, and equity is integral to inclusion and wellbeing. In other words, while DEI and wellbeing may be distinct disciplines, in study, and in life, they are interrelated.

Leaders wanting to create an environment that promotes wellbeing and in which employees can thrive must pay attention to issues of equity and inclusion. Any definition of DEI that ends at diversity of the ranks does not take equity and inclusion into account. While the definition of DEI that involves representation may result in attention to issues of equity and inclusion, it is not a forgone outcome. The goal and strategy must be intentional.

DEI Leaders and Leadership

Even leaders who are committed to creating an inclusive environment will face challenges identifying and addressing barriers, especially barriers outside of their frame of reference. Many are turning to DEI practitioners for help. Inclusion, however, is relational, so there is no way for leaders to outsource their responsibility to show care for employees whose identities have very little overlap with their own.

When considering wellbeing activities generally, leaders should consider activities that all staff can enjoy. Failing to consider the "Big 8" socially constructed identities of race, ethnicity, sexual orientation, gender identity, ability, religion/spirituality, nationality, and socioeconomic status, when choosing activities for the firm or agency can undermine DEI and wellbeing efforts. For some already on the brink of burnout, group activities that do not speak to them can feel compulsory and deepen feelings of being unseen and unheard.

Lean into Discomfort

With concepts like Critical Race Theory, on the one hand, and litmus tests for "being woke," on the other hand, being used today as sword and shield, many are afraid to wade into uncomfortable conversation lest they be hit with the scarlet "R" of racist. In this way, fear can prevent leaders from learning about those who are different from them, driving disconnection and hastening burnout for employees who are already likely at higher risk for such consequences.

The fear of getting it wrong can be particularly exacerbated in lawyers who are taught to be cautious and stay away from areas where they are not competent to avoid malpractice. Typically, our responses will include avoiding these issues altogether, faking it 'til we make it, or, because lawyers like to cover our bases, outsourcing responsibility to a dedicated professional and then, otherwise avoiding the issue. Such responses would be a missed opportunity.

While fear of getting it wrong is rational, leaders who want to create an environment that supports wellbeing will not apply this mindset to gaps in their knowledge about their employees. Relationships are challenging, especially relationships between people who identify differently and where there are significant differences in power dynamics. Relationships are two-way streets. So, while leaders need to build their capacity to identify and address barriers to inclusion, they should not be alone in that endeavor. Employees must contribute to problem identification and provide productive feedback.

Miscues and missteps should be expected. And everyone, including the employees the leader is trying to serve, will make them. Instead of bracing with fear, an effective leader will lean in with curiosity. An effective leader knows one thing: no one knows everything. Leaders who are open and curious might, as with the illustration, be able to observe the impact of office norms or choices of activities on their employees. Many more, though, will need to find ways to learn what they need to know from their employees.

An open and curious leader might learn by reading or listening to stories of others and realize how office norms and activities pose a barrier to employee engagement. An open and curious leader might ask employees directly how they feel about particular norms or activities. Or, an open and curious leader might take an indirect approach, presenting a scenario and waiting for feedback. The exact approach matters less than the effort because it is in the effort that care is shown.

Promote Psychological Safety

Being open and curious is an important aspect of creating a culture that promotes psychological safety. Still, employees need to know that they can trust their leaders with the unseen parts of their identity. Leaders must show some capacity to hold space for employees by being willing to confront challenges to disclosure including challenges coming from the leader herself.

Accepting responsibility for errors such as problems created by ill-considered communications rather than passing it onto someone else, attributing it to the employee, or ignoring it indicates employees can trust their leader. This will require leaders to resist human impulses that come with feelings of rejection. It means showing vulnerability. Remember, missteps and miscues will happen and, everyone will make them.

Showing employees how to handle disappointments and setbacks will give them an indication of how their leader will receive them when reporting emotionally challenging feedback. Equally, modeling respectful delivery of feedback to ill-considered communication will not only let employees know that they can safely disclose things to a leader but will also give them guidance on how to appropriately give feedback when facing similar circumstances.

Create a Culture of Feedback

Developing an inclusive environment requires a culture of giving and receiving effective feedback. Being open to feedback, also a critical part of improving psychological safety, means being open to hearing that an effort failed or did not land well with some employees. Further, a good leader will want to learn more than that something did not work; good leaders will want to know why it did not work. Getting to the heart of the matter is a skill that takes practice.

Anonymous surveys and the like might be popular and tempting options but consider the message they send about psychological safety as well as the limitations they pose on feedback. Instead, consider feedback an exchange of ideas with the goal being mutual respect and understanding. Practice being specific and avoid generalities and characterizations. Developing this culture will provide leaders open channels to learn what their employees need to thrive.

Conclusion

It is easy to think that DEI and wellbeing are unrelated specialties. They can be, but for leaders committed to protecting and improving the wellbeing of their employees, they cannot be. In fact, leaders who keep the two important concepts or goals separate risk negatively impacting the wellbeing of those employees who were the focus of their DEI efforts.

Stacey Best is the Executive Director of Lawyers Concerned for Lawyers (LCL) and, in that role is responsible for the strategic direction, daily operation, and management of the staff. Stacey represents

and participates with key stakeholders at various agencies and Committees of the Supreme Judicial Court (SJC), including the SJC Standing Committee on Lawyer Well-Being, the BBO, and the Standing Advisory Committee on Professionalism to improve the quality of the legal profession.

Stacey joined LCL after spending 18 years with the Board of Bar Overseers (BBO) and the Office of Bar Counsel (OBC) as an assistant bar counsel. Before leaving the BBO to join LCL, with her deep knowledge and strategic approach to attorney discipline, Stacey became the Inaugural Director of Diversity Equity and Inclusion(interim) at the BBO. Stacey is interested in the topics of ethics, wellbeing, DEI, and leadership.

Hair I Am

By Stesha A. Emmanuel & Cherina D. Wright

Curls. 'Fro. Straight. Braided. Wavy. Natural. Relaxed. Colored. There reaches a point where every woman, in particular women of color, are faced with the age-old question – how should I style my hair to conform to the image of a [fill in the blank]. In this case, it is a lawyer in the Massachusetts legal community. I've especially asked this question when applying to law firms. Despite the progress made and glass ceilings shattered by the likes of First Lady Michelle Obama, Vice President Kamala Harris, U.S. Supreme Court Justice Kentanji Brown Jackson and U.S. Representative Ayanna Pressley, women are judged by their appearances and hair. Years later, my mentees ask the same question – how should I style my hair? This sentiment permeates in both the workplace and the education system. Let us not forget the six-hour detention and suspension from sports imposed on two black teenage girls for wearing braids while attending **Mystic Valley Regional Charter School**. The policy that unfairly discriminated against and regulated hair was within the school's policy. The school was in Massachusetts. In turn, the Massachusetts Attorney General Office, in an open letter, determined that the policy unfairly targeted students of color on subjective and unreasonable grounds and ordered the school to stop the enforcement of the policy.

In her song "I am Not My Hair," India Arie describes the everyday battle Black and Brown women go through when being judged and questioned for their hair choices. The song says, "I am not my hair. I am not this skin. I am not your expectations, no." Yet I remember a time when Black and Brown women were expected to look a certain way, wear our hair a certain way. An expectation that not only came from educational spaces and workplaces but for many of us there were family members, friends, and professional mentors telling us exactly how we had to wear our hair to fit in, to be successful, and get where we wanted to be professionally. We often found ourselves living up to societal norms and expectations in order to eliminate any additional hurdles as we worked to climb the professional ladder. Creating an affinity bias, not realizing that even with our hair bone straight or slicked in a bun, there was and is still room for us to be seen as inferior.

The CROWN Act, which stands for "Creating a Respectful and Open World for Natural Hair," **prohibits race-based hair discrimination** in employment and educational opportunities because of hair texture or hairstyles. The Crown Act is liberating in many ways, including acknowledging that Black and Brown people do not have to fit any one person's expectations, including our own ill, preconceived notions of what is "unprofessional" or "unkempt" for public spaces. The issue of hair is not exclusive to women, and many men face similar problems. For all people, regardless of gender, this legislation prohibits discrimination based on natural and protective hairstyles (i.e., styles that keep hair ends safely tucked away) in the workplace and school-related organizations. Which ultimately means, in the legal profession, employers cannot deny someone employment due to the texture of their hair or protective styles such as braids, twists, or locs, which can serve as proxy for race.

The Crown Act is an important act to help curtail and prevent discrimination on the bases of immutable characteristics. While unspoken, many Black and Brown women are told to wear their hair slick back in a bun to avoid being distracting. And while many think about discrimination with respect to race, gender and sexual orientation, the stereotypes associated with one's aesthetics are also at play. This new bill will give Black and Brown people the right to wear their hair as they wish, and if their aesthetics are considered when determining their qualifications for a position, candidates now have legal protections and remedies for such discrimination under the Act.

However, to "**C**reate a **R**espectful and **O**pen **W**orld for **N**atural Hair", we must eliminate our expectations for everyone to look the same. We have to appreciate that 'fro or natural, curly or relaxed, people are more than just their hair. In the legal community, it means we should refrain from telling law students and young attorneys how to "tame their hair" or "be more conservative in their hairstyle." During the

interview and hiring process, it is imperative that sensitivity and cultural awareness training are provided to interviewers. This ultimately means recognizing that one's aesthetics shouldn't be a part of the hiring requirements, especially one's hair. We need to have real conversations about biases and how one is judged based on appearance before they even open their mouth.

For Black and Brown people who were taught to wear our hair a certain way, this goes beyond legal or policy dictates. Creating a respectful and open working environment for all means finding the power to never let anyone tell you how to wear your Crown. It means being your authentic self in all spaces you occupy and wearing your Crown however you feel comfortable. Today, I tell my mentees a different answer than what I was told as a law student – wear your hair in the style you choose, not one that is chosen for you. You are enough. Your words and intelligence are enough. Be your authentic self. The act of this is liberating and revolutionary. The Crown Act provides the support of this revolution.

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DEI Leaders' Roundtable

For this issue, the Boston Bar Journal reached out to several of Boston's DEI leaders to share their reflection on the keys to successful DEI efforts, to describe the challenges they are tackling, and to preview what the future holds for DEI work.

By De'Von Douglass

In the summer of 2020, the United States experienced widespread civil unrest following searing displays of the devaluation Black lives that were played and replayed across our video screens. The violent acts that catalyzed the protests were physical manifestations of decades of unaddressed racial pain, and they were all the more devastating because they occurred in the face of a global pandemic that cried out for increased solidarity, not increased brutality.

As the sheer rawness of these atrocities spurred an increase in the support for the movement for Black lives, it seemed that many individuals and organizations were finally becoming more open to addressing the collective racial pain in this country. The discipline of diversity, equity, and inclusion (DEI), with both internal and external elements, became corporate America's answer to the demand to 'do something' in the face of this new pressure to respond to the moment. But so far, for too many entities, including those in the legal sector, DEI has not yet lived up to its potential.

For many organizations, typical internal response began by reviewing compliance with federal, state, and local regulations on antidiscrimination. The discerning CEO would call upon their team to go beyond basic compliance with the Equal Employment Opportunity Commission; this often meant analyzing the defects in inclusion policies that had failed to achieve meaningful equity. Next, affinity groups proliferated. Then, a person of color in the human resources department had diversity added to their job description. Then the one-off Zoom training on implicit bias was rolled out – often well-meaning but not well-attended.

As for external responses, law firms, universities, and nonprofits all wanted to signal that they could be tolerant and welcoming. At 12:01 a.m. on June 1, companies' LinkedIn backgrounds dutifully switched from their normal brand to some version of rainbow for Pride Month. But much like one-time training sessions untethered to meaningful systemic changes, these signals provided only the veneer of progress. For those of us from historically marginalized communities, our identities are not as thin as bumper stickers, social media filters, or flags plastered on office doors. We cannot remove them or attend to them only in 30-day increments. While visual signals of a company's intentions to be open can indicate a willingness to start on an inclusion journey, these gestures remain far from the change we need.

Systems of oppression are upheld by policies, practices, and physical spaces. And all of these were imagined and designed by people. That can seem terrifying: human beings created these deeply unjust systems and continue to perpetuate them every day. But my hope as a DEI professional is that, if taken seriously, our presence in these organizations can equip those of us in the legal profession and across sectors with the tools to both squarely confront these cancerous systems of oppression and courage to simultaneously recognize that if people created these systems, people are equally capable of rebuilding them in an equitable and inclusive way to reflect values of diversity and belonging.

Take for example the **City of Boston's Resilience Strategy**. In partnership with **100 Resilient Cities** and the **Rockefeller Foundation**, Boston released a **plan** to begin addressing the racialized outcomes in the region. One key shift was the creation of a cross-departmental team focused on using data to measure how Boston's municipal policies disparately impact communities of color. The program also provided training

and a toolkit to assist policy makers and community leaders in addressing the harm caused by city policies. Concrete, measurable, actionable steps for which leadership can be held accountable.

At their best, DEI programs will foster these kinds of organization-wide, measurable, actionable steps that are commensurate with the gravity of the oppression we are fighting. Celebrations of Pride Month, Native American Heritage Month, and Women's History Month are important, but they will ring hollow if not accompanied by challenges to management structures to reflect true inclusivity. The only way to make a Zoom training on bias useful is to ensure that it is the baseline, not the high water mark, of our efforts to interrogate how we, individually and collectively, perpetuate bias and how we can carry through on our commitment to dismantle systems that inhibit true inclusivity in the legal profession and beyond.

De'Von Douglass is Director of Diversity, Equity, and Inclusion at Greater Boston Legal Services.

By April English

In reflecting on diversity, equity, and inclusion within the Massachusetts legal profession, I take as my starting point the day I began my legal journey, twenty-nine years ago. Having graduated from an Historically Black Women's College, my first day of law school orientation was a complete culture shock. I had gone from seeing people who looked like me every single day for four years to being one of only fifteen Black law students in my class of over 200. Our small community of fifteen made it through what were some of the toughest years of my life. We survived being purposefully and intentionally called upon whenever the class read any cases that impacted the lives of Black people: from Plessy v. Ferguson to Brown v. Board of Education, there was no escaping it.

And if the Black students who were put under this microscope expressed multiple points of view about the issues raised by those cases, we were dismissed as "all over the place" simply for reflecting our non-monolithic reality. We survived that environment because we had Black professors who cared about our success and nurtured our matriculation; because our Black dean told us "look to your left and right because you will graduate with that person sitting next to you"; and because we had a network of faculty, alumnae, classmates, the Black Law Students Association, and each other to keep us grounded and mindful that it takes a village. We survived because of that community.

Law school was the beginning of my acutely feeling like the minority, and nearly thirty years later, that feeling still persists in this profession. After participating in conversations that led to the **Supreme Judicial Court Standing Committee on Well-Being's Affinity Bar Report**, I see that I am not alone in feeling that I am being treated differently the moment I step foot onto the courthouse stairs, into a conference room for negotiations, or into a board room. I am a minority because I am the only person, or one of a handful, who looks like me in those spaces. I am treated differently because of systemic racism and how pervasive it is in our legal system. As a Black woman, I am still assumed to be the defendant or defendant's relative, not the lawyer.

I credit the American Bar Association for openly addressing the lack of diversity, equity, and inclusion in the legal profession with its **Model Diversity Survey** and **Resolution 113**, which finally catalyzed a focus on the well-being of lawyers, including our Black lawyers, lawyers of color, LGBTQIA+ lawyers, and lawyers with disabilities. But it has taken quite a long time for us to get here. George Floyd's horrific murder had the effect of casting in starkest relief these deeply ingrained inequities; while it is gratifying to finally be listened to, it is also tragic because we understand just how much has been sacrificed to allow us to finally be heard.

James Baldwin said, "the horror is that America changes all the time without ever changing at all." I feel the same can be said of the legal profession's progress in this area.

One significant positive change is that DEI specialists are now part of bar associations, law firms, and public service entities. There is certainly additional intentionality to increasing diverse representation across such organizations: hiring practices are beginning to include standardized questions, panels are becoming more reflective of diversity, and efforts have been made to eliminate as much bias as possible throughout the hiring process. However, I would still ask everyone to look in the courtrooms, conference rooms, and board rooms and tell me whether change has truly arrived. Do we feel included, welcomed, and as if we belong at these tables and in these rooms? Are numbers substantially increasing at law schools, law firms, on the bench, in leadership, partnership, and equity? The fact that these questions persist tells us all we need to know about how meaningful progress has been.

After nearly three decades in the legal arena, it's about time that I should truly matter beyond just words, really be included, feel like I belong, and no longer feel like the minority. But until we fill these tables in these rooms with faces of the global majority, we will walk the same strenuous path as those who came before us, with the burden of blazing trails even in 2022 and beyond. The work to dismantle centuries of systemic racism continues and it is a direct charge for the legal community. We must be the change we want to see starting today.

April English is Chief of Organization Development & Inclusion at the Massachusetts Attorney General's Office. This article represents the opinions and legal conclusions of its author and not necessarily those of the Office of the Attorney General; Opinions of the Attorney General are formal documents rendered pursuant to specific statutory authority.

By Kathy Cloherty Henry

One of my first impressions in 2016 as the new General Counsel of Eastern Bank was the diversity represented at each of the meetings I attended – from our operational headquarters in Lynn to our Board meetings in Boston. My impressions were reflective of Eastern's long-standing commitment to diversity, equity and inclusion (DEI), which was the subject of an article in the **Wall Street Journal in 2020**—an unusual spotlight for a Boston-based community bank. And while Eastern has a powerful story to tell about DEI, and while we are proud that 50% of our Board of Directors is comprised of women and people of color, and 67% of our workforce is female and 28% is diverse, we have more work to do.

As a result of the racial reckoning following the murder of George Floyd, Breonna Taylor and many others, Eastern's leadership has become more intentional and action-oriented in our approach to DEI.

- First, we took a deep dive into our data. We soon understood that while we have a richness of diversity at the non-officer level of our Company, we have become less diverse in the more senior levels of the organization. We were tracking our diversity hiring—which was impressive—but not tracking where the diverse hires went within the organization or monitoring turnover by race or gender. And we did not track all the different ways our community may be diverse, and our lack of visibility into dimensions of, for example, those with disabilities, made it harder to track progress on that axis of inclusion. We are now tracking data across our talent lifecycle and will be rolling out an enhanced self-identity tool.
- Second, we set measurable goals. Simply stated, we want to reflect the communities we serve at every level of our organization. We want to reflect the Metropolitan Statistical Area (MSA) census data in our footprint by 2030 based on current census data with projected growth in specific diverse communities.
- Third, we incorporated these goals within a strategic plan, the Road to Equity, which reflects DEI objectives across all of Eastern: human capital management; products and services; supplier diversity; and our philanthropic Foundation.
- Fourth, we put in place a governance structure to support and drive progress and accountability on the Road to Equity, from our Board of Directors to Executive Leadership,

to a newly formed DEI Steering Committee with leaders of our employee resource groups and external board members.
- Finally, we educated all stakeholders about the Road to Equity, starting with employees, so that everyone understands the "why" behind this imperative. We buttressed the rollout with ongoing seminars and live sessions on Understanding Racism and Driving Organization Change to further drive home with managers and all employees alike why Eastern, a recognized leader in this space, has more work to do.

We rolled out the Road to Equity about a year ago and are seeing early progress. We created a dashboard so that all divisions have easy access to the demographics of their teams to better plan for talent management that supports greater diversity. We created enhanced onramps into areas of our Company where diverse talent is under-represented, and require diverse candidate slates for recruiting senior positions. We increased supplier diversity spend year over year and have transformed the Foundation's grant application process to better understand the diversity of the communities benefitting from our support and partnership.

We've hit some bumps in the road and expect there will be more. The biggest challenge has been retaining high potential, diverse talent, who are heavily recruited and have much to offer. Relatedly, we've struggled to grow diverse talent at the senior levels of our Company, where the overall population is small and turnover is low. We must be more strategic, more intentional and more energized. But we will stay the course.

Kathy Cloherty Henry is Executive Vice President, General Counsel, Corporate Secretary, and Chief Human Resources Officer, Eastern Bank.

By Cherina Wright

From law schools to law firms to courtrooms, the legal profession has promoted itself as one that stands for representation and fair access. Yet, both the quantitative and qualitative data has shown that the profession is still overwhelmingly White and majority male. The lack of inclusivity is one of the biggest drivers for our growing DEI initiatives.

I began my role at Suffolk Law in August 2020, right when we as a country were at the height of two pandemics: COVID-19 and systemic racism. The COVID-19 pandemic was uncharted territory in many respects, but it also exacerbated disparities in healthcare treatment for Black and Brown communities that were long-standing. At the same time, Black and Brown people found themselves yet again reminded of the inequities and inequalities in the legal system and how the police show up for us. It has been a challenging and rewarding two years since the country and the legal profession decided to take a renewed stance on racism and other forms of inequities that plague us. These too have become drivers for my efforts.

Changing our frame so that we view law school not as a gatekeeper, but, instead, as a part of the pathway, or pipeline, to the legal profession has been important to our work in shifting the culture at law schools. We can't diversify the legal profession without diversifying law schools. To do that, it is equally important to design meaningful points of entry for prospective law students from underrepresented communities as it is to establish impactful resources and initiatives for students after they become members of the law school community. That has meant having real conversations about past practices, however difficult, so that a common understanding of our strengths and weaknesses can allow us to come together to create actionable change.

For Suffolk, these changes include two new scholarships, a pipeline program for underrepresented students, and an alternate admissions program. Our free pipeline program provides pre-law undergraduate students with the opportunity to take legal classes that mirror the 1L experience, get one-on-one

application assistance from experienced admission officers, and meet practicing attorneys. Our alternate admission program was created for applicants who show exceptional potential for law school academic success but whose LSAT scores are below the median for the entering class; studies have shown that many students from historically underrepresented backgrounds who do not have the same access to the expensive test prep programs or mentors in legal community find themselves in that category.

In addition to broadening access to law school, our initiatives recognize that law school itself can be inequitable and isolating for underrepresented students once admitted. That is why we have empowered our affinity student groups to bring their authentic selves to the hallways of our institution. And that is why we have created programs such as Progress to Success, which provides extra support to diverse and non-traditional law students in three parts: a pre-orientation summer academy so students can begin their law school journey in community with people who look like them and share their experiences; a peer mentorship program for first-years; and a continuing community enrichment program that features workshops on professional development, networking opportunities with diverse alumni, study skills sessions, and, eventually, bar exam preparation sessions. These initiatives provide diverse students with practical academic, professional, and community support.

My work as a DEI professional in the academic legal setting is about ensuring that all law students successfully find their way through that legal pipeline. This includes breaking down barriers so that our diverse and non-traditional law students enjoy the same access to scholarships, job opportunities, and bar resources. If being hired as a licensed attorney is not the outcome for these students, then that pipeline will have failed in some way and we will have to redouble our efforts. It continues to be my role to support the legal profession's desire to be diverse, equitable, and inclusive – a goal on which law schools must lead.

Cherina Wright is Assistant Dean of Diversity, Equity, and Inclusion and Adjunct Professor of Law at Suffolk University Law School.

Interview with Attorney Alexander Chen

By Sophia Hall & Bill Gabovitch

Share some of your reflections regarding the impact your identity has had for you in your early law school career.

Not dissimilar to being gay a generation ago, or not even that long ago, my fear was that being trans was such an underrecognized and underdiscussed concept that my classmates would not really be able to see me as an individual or human being. I really felt like if I came out at the beginning of law school everyone would be like "that's that transgender law student" and I would be walking around as if I was wearing some kind of neon sandwich board. Not disclosing my identity though, made it difficult for me because I went to law school to advocate for my community, to do transgender civil rights.

So, what changed?

I got an internship at the ACLU National LGBT and HIV Project. I ended up interning there during the time that the Supreme Court decided US v. Windsor, the precursor to Obergefell v. Hodges. We at the ACLU were counsel on that case for Windsor. During my internship, I was able to work on some of the post decision matters. I was able to meet Edith Windsor. That year, we marched at the front of the New York City pride parade because everyone was so thrilled about that work. And it was so powerful to meet the attorneys there and see how passionately they advocated and how hard they had worked for decades to secure that victory.

I remember that I saw my supervising attorney read the decision and then weep, because the decision talked about it being a good thing for gay people to parent, and for decades the attack had been that it was a bad thing for gay people to be around children, especially in the educational context. You are seeing a similar rhetoric now being used against transgender people. It is the same playbook that you see time and time again. I thought then that this is the work that I came here to do. If I am not even willing to say that I am trans to anyone in the legal community, how can I really advocate for my community when I am afraid to be honest about who I am. I came back from that summer and started coming out to my friends.

What ultimately motivated you to come out as trans in law school?

It was a very personal decision for me. It was very difficult to be honest about my lived experience and that made it very difficult for me to make honest connections with the people around me. Look at the facts of a case like Bostock v. Clayton County. The named Plaintiff, Gerald Bostock, was fired not because he said he married a man or anything like that but because his employer found out that he was in a gay softball league. And when historically people have said to gay people "don't flaunt it because it is sexual" what is overlooked is that it is not sexual any more than a husband talking about a wife is sexual. It's like, "What did you do on the weekend? Oh, I went to the movies. I got my nails done. I stayed home." But you have to lie. You are always thinking that you can't tell anyone about the softball league because then they might come to a game and find out that we are all gay. This isolates people socially and it prevents people from making authentic human connections. In a professional setting, it prevents people from making the kind of connections that help them succeed in the workplace.

I held off coming out for so long because I was really worried that coming out as trans would limit my ability to advance my career. I was worried about being tokenized or marginalized, and not getting certain kinds of opportunities if people found out that I was transgender. At that time, there were even fewer out transgender attorneys than there are now. And there were very few of them who were, for example, law firm partners. There has still never been an Article III judge who is openly transgender. And so, I worried that it would prevent people from being able to evaluate my abilities on the merits. I was also concerned when it came to things like clerkship applications where I needed to decide whether I should cleanse my

resume of LGBT affiliations because it might make me less attractive to judges. These are the kinds of things that when you don't belong to marginalized communities, you don't have to spend your time thinking about and it's actually The mental bandwidth of putting so much time and energy into thinking of these components that holds people back. Part of it was that I didn't want that to be me and ultimately, I didn't want the next generation to have the same kinds of agonizing thought processes.

What does mentorship look like for you now?

After I graduated, I ended up being involved with a group of attorneys that ultimately banded together, and they were both cisgender and transgender attorneys. We formed a new bar association called the National Trans Bar Association (NTBA). Of course, there has been a national LGBT Bar Association, where historically transgender lawyers meet each other. But we really saw a need for this bar association that was focused on transgender attorneys because of that feeling of a lack of mentorship and support and not being connected to attorneys who knew how to navigate different kinds of challenges associated with being transgender in the legal profession. And they can be things as simple as when you apply for the bar exam you have to disclose any former names. People ask questions like "Do I have to disclose my former name if I have changed it legally? Will that "out me" before these courts? Will that affect how judges perceive me?" We give them mentorship about things like this. For example, I put in those forms, "I respectfully decline to share my former legal name because I changed it before I even entered law school, not to mention before I practiced law, and it has no legal relevance to my admission. If you have questions about that, please feel free to contact me." I've actually gotten handwritten notes from clerks of court saying your note was very moving and got me to think of this issue in a way that I have never thought of this before. NTBA also operates a mentorship program that pairs mentors, who are more experienced attorneys with mentees who are often law students or young attorneys, to help people navigate questions like that.

I think mentorship is so important because I teach law students every day now and they really don't know anything about the legal profession typically unless there are lawyers in their families or they worked as a paralegal. Students really have no idea what they are getting themselves into in so many different ways. They then often have this shopworn conventional wisdom that they pass around on what they are supposed to do with their careers that doesn't survive first contact with the reality of practice. I always tell my students you should be spending ten times less time talking with your fellow students and ten times more time talking with practicing attorneys because you are going to learn so much more from doing that, grounded in reality and experience. That is true generally, and specifically with having to navigate being transgender or being nonbinary and what that means in terms of how people are going to treat you, how that might play out in different practice settings with client interaction and court interaction. It's the kind of thing that is really helpful to talk over and to create a relationship with someone that can be a sounding board because they have more experience. It's critical that we nurture and support young professionals to be the best lawyers that they can be, to find careers that are fulfilling to them, and to provide some space for them so that they can have a life outside of work. It is an important responsibility that we have for the next generation of attorneys.

Tell us generally about your work at Harvard Law School (HLS).

The LGBTQ+ Advocacy Clinic started in January 2020 as a pilot at HLS in response to an ongoing demand from students. There is a huge appetite from the students to learn about gender and sexuality law, and to engage in LGBTQ+ work. This is one of the most live legal issues of our time, at the intersection of law, politics, social events and lived experience. The LGBTQ+ community is also a growing percentage of the law school population. Our Lambda student legal group at HLS for example has over 200 members out of 1500 students. So, we have more than 10% representation. Students really want to understand, intellectually and in the prism of their legal education, what is going on in this area and understand it using the tools they learn to use in law school.

I also teach a course on Gender Identity and Sexual Orientation at HLS where I have two main objectives: to teach the substance of this area; and to encourage students to think about how to use law for social change. My course looks at impact litigation, amicus strategy, policy reform, and legislative reform. We discuss activism through a review of boycotts and public campaigns. We discuss which of these strategies make sense at different times and on different issues. The common approach in law school is sometimes that if you have a hammer, everything looks like a nail. My course encourages a different sort of thought. I am really trying to get them to see beyond the casebook.

Students can take my course whether or not they are in the clinic. The clinical aspect of the program, however, is where the students can come in and get to work. This clinic is distinctive because we focus on both impact litigation and policy advocacy, while thinking about how we can strategically leverage our institution, our students and our community relationships. We also try to lean into the benefits of being housed in an institution like Harvard. We think of ourselves as partners to LGBTQ+ non-profit groups. Those groups are often very much focused on immediate battles. There are presently over 200 anti-LGBTQ+ bills and someone has to challenge them. That can sometimes make it harder to do medium and long-term work that is more about establishing a strategic future of this area of practice. Our clinic also focuses on marginalized people within the community.

We have also published an Intersex Legislative Advocacy Toolkit in connection with InterACT, which is the world's leading intersex advocacy organization. The toolkit is designed to help activists at the state level who are interested in passing bills that either raise awareness or protect rights. We also helped Free State Justice defeat a Maryland bill that had a transgender sports ban, by providing testimony from my colleague who is a transgender woman and who has deep ties to Maryland.

Tell us about a couple of your most significant cases.

As we are housed in a legal services center, we think about who are the poor and marginalized within the LGBTQ+ community and we are focused on supporting their needs. That includes especially disproportionally LGBTQ+ people of color, transgender, gender non-conforming, gender non-binary, intersex people and LGBTQ+ elders and people who belong to Southern rural and faith communities.

In the fall, we settled an impact case that we co-litigated with the Center on Constitutional Rights called Lopez v. New York City Department of Homeless Services. This case involved Mariah Lopez, a Black Latina transgender woman, who was discriminated against while briefly homeless and living in shelters. It started with her being denied the right to bring in her service animal. She then experienced a great deal of verbal and sexual harassment from that shelter system and also a denial of adequate medical care. After doing interviews with dozens of transgender people in the shelter system we found that Mariah's experience was unfortunately representative. We managed to achieve a landmark settlement where the New York shelter system, for the first time, agreed to engage in comprehensive anti-discrimination training with respect to transgender and gender non-conforming individuals in their shelter system. They also agreed to open specific transgender and gender non-conforming shelter units in every borough, except Staten Island where they don't have shelters, by the end of this calendar year. That was a huge victory for the community.

In the beginning of this year, we filed a case: Amaya Cruz v. Miami Dade County, with co-counsel from the Southern Law Poverty Center and the Transgender Legal Defense & Education Fund. This case involves three young transgender people who were arrested in the Summer of 2020 while protesting at vigils for Black Lives Matter and Black Trans Life Matters. They were arrested for the sort of charges you typically see during protest arrests: breaking curfew or occupying a site illegally. Our clients were subject to horrible and degrading treatment while held in the local jail. The two transgender women plaintiffs were asked if they were sex workers. One of our clients has a disability involving an extra appendage on her hand, and the police caused a lot of pain to her when she was fingerprinted. The police engaged in unnecessary strip searches of our clients, and isolated them from the other inmates. It is a clear

example of why many transgender people are afraid of involving themselves in civil protest because there is this fear of their treatment if arrested.

One primary benefit for the students is that we do this work in partnership with other organizations. The students work with attorneys on the cases for the whole term, and when they are on the cases they participate on all our case calls. They join the attorneys and staff and talk about what is going on and why we are doing things. It truly gives them this ability to understand how this work happens on the ground, why we are making the decisions we are making, and how the work fits in to a bigger strategy. I think it is a very valuable opportunity for the students to be working with leading civil rights organizations as well as our inhouse attorneys.

Thoughts on the recent wave of anti LGBTQ+ laws and policies?

This is not the first wave of anti-transgender or anti-LGBTQ+ legislation. There have been certain parts of our political framework that have been using our community writ large as a cultural war flashpoint for generations. What is depressing to me is that the playbook never changes. They never apologize. LGBTQ+ people are not a threat, or a phase, or a joke. We are just human beings who are asking to live our lives and have homes, jobs, families and friends like anyone else. In the 70's, the culture war was over whether gay people could be teachers and scout masters. When that idea started losing salience, the culture warriors started saying that gay people would end up destroying the institution of marriage. And when they lost on that and realized they were losing steam, they decided to leave gay people alone and target transgender people. Then they fearmongered about what would happen if transgender people would be allowed to change their IDs or use the bathroom. They have now turned to trans youth and women's sports. There are now curriculum bills designed not just to prevent LGBTQ+ issues from being discussed in school, but also to prevent LGBTQ+ youth from reporting bullying at school. All of these efforts are particularly despicable because they target young people. And they target young people when we know darn sure that this kind of targeting that makes it much more likely that these kids are never going to make it to adulthood, and if they do, they are going to be scarred and traumatized.

The opposition does not have science on their side. They don't have empirical data on their side. They don't have common sense on their side. We are a more powerful community than we have been in the past because of the fact that we are willing to come out and live authentically, and because we have the support of people who are not part of our community such as our family members, friends and loved ones. Ultimately, I am optimistic that we will be able to defeat these latest attempts to demonize our community, but at the same time I am cognizant, doing the work day to day in the trenches, of the immense human damage that is being done.

Alexander Chen is the Founding Director of the LGBTQ+ Advocacy Clinic at Harvard Law School, where he also teaches Gender Identity, Sexual Orientation, and the Law. Alexander attended Oxford University (B.A. 2009), Columbia University (M.A. 2012), and Harvard Law School (J.D. 2015), where he was the first openly trans editor of the Harvard Law Review. He clerked on the Ninth Circuit for the Hon. M. Margaret McKeown, and in the Southern District of California for the Hon. Gonzalo P. Curiel.

Fighting Anti-Asian Hate: Community-Based Solutions Beyond Prosecutions and the Cycle of Violence

By Janet H. Vo

More than a year after the **murder of six female Asian workers at an Atlanta spa**, many members of the Asian American community still live in fear of hate-motivated violence. The FBI's 2020 data already reflected a **73 percent increase** in hate-motivated crimes against Asian Americans, but after the Atlanta shootings in March 2021, one third of Asian Americans reported living in **fear of physical violence**, and a majority believed that violence against them was rising. In fact, hate-motivated violence has continued to escalate to unprecedented levels nationwide, with **anti-Asian hate crimes increasing by 339 percent** as compared to last year.

Though violence and bias against Asian Americans is not new in this country's history, the rise in hate-motivated incidents has garnered nationwide attention. At the forefront of the discussion on how to address hate-motivated violence is how to achieve justice for victims and impacted communities when the current criminal legal system has been ineffective in preventing these crimes. A bigger question for the Asian American community is how to advance the fight against anti-Asian prejudice when the very same criminal legal system perpetuates violence and discrimination against communities of color.

Anti-Immigrant Rhetoric and Harmful Stereotypes

The recent string of hate crimes and anti-Asian rhetoric continues a long history of **exclusionary laws**, **systemic anti-Asian discrimination**, and scapegoating of Asians, including for the COVID-19 pandemic. Anti-Asian hate is deeply rooted in anti-immigrant sentiments, reflected in the "Yellow Peril" trope, the perpetual foreigner stereotype, and the model minority myth. These characterizations perpetuate xenophobic images of Asians as an existential threat to the Western world as well as the alien "other" whose enviable success can be used as a wedge against cross-racial solidarity and conveniently negates the role of oppression and violence in the continuing struggles of communities of color.

Stereotypes which erase the diversity among Asian Americans also dehumanize and reduce individuals to caricatures, rendering Asian American women and the elderly as especially easy targets of hate crimes. They also ignore the diversity among the 22 million Asian Americans who comprise the **fastest growing racial group** in the U.S. with unique migration histories, varying immigration status, different language proficiencies, color, culture, education, income, and levels of assimilation and achievement.

Reframing Justice and Accountability

Solutions to address hate and violence vary by how justice is defined. As part of this country's racial reckoning in recent years, more community members are challenging the traditional approach to addressing hate crimes which equates justice with punishing the perpetrator. That traditional reliance on **prosecutorial approaches and law enforcement agencies** to resolve hate crimes is problematic insofar as it relies on the same criminal legal system that has systematically discriminated against marginalized groups and communities of color.

Shortly after the Atlanta attacks in March 2021, the federal **COVID-19 Hate Crimes Act** ("Act") became law. The Act aims to improve data collection on hate crimes related to COVID-19 and increases funding to law enforcement for investigating and prosecuting hate crimes. In the wake of the George Floyd protests, however, more than **85 nationwide community-based groups**, including those serving Asian Americans, opposed the legislation for failing to address what many saw as the underlying cause of anti-Asian hate and for ignoring the history of police violence against communities of color (e.g., where Black and brown people are **overrepresented in prosecution** for hate offenses although the most common perpetrators of hate crimes are white). Within the Asian American community, approximately 16,000

Southeast Asians are subject to final orders of deportation under the **Illegal Immigration Reform and Immigrant Responsibility Act of 1996** due to prior criminal records resulting from over-policing practices targeted at impoverished communities of color where many Southeast Asian refugees were resettled. The Act overlooked how the fear of detention and deportation deters both undocumented and documented non-citizens from interacting with police to report hate crimes. Prosecutorial responses also focus on heightened punishment and increasing law enforcement power, mainly against communities of color, but those strategies are not proven to be as effective in deterring violence and **fail to address the needs and concerns** of communities impacted by hate crimes.

Community Strategies to Addressing Hate Crimes

Unlike other violent crimes, **hate crimes are motivated by bias and prejudice**, which means the targeted individual is not the only victim. Rather, **hate crimes send a public message that the victim's membership group** as a whole is unsafe and unwelcome. In addressing hate crimes, therefore, it is important to understand the effects of the hate crime not only on the targeted victim but also on the victim's membership community.

Understood in this context, community-based solutions outside of the criminal legal system likely offer better support to the individual and communities in addressing trauma and safety concerns. This past year, the family of a hate crime victim contacted Asian Outreach at Greater Boston Legal Services for support. The family sought help for community-based aid centered on public housing assistance, social services, and mental health resources instead of concentrating on punishing the perpetrator.

Justice for victims and communities cannot solely be achieved through prosecution, as the residual impact, trauma and fear of hate crimes remain. In the Commonwealth, access to state and local funding to help individuals and community-based organizations providing direct aid to hate crime victims is essential. The Massachusetts Victims of **Violent** Crime Compensation Fund ("Fund") aims to provide such support but is not sufficient, as it requires a victim to navigate all possible financial and social service options before accessing aid through the Commonwealth. A victim must also report the violent incident to the police within five days to receive assistance from the Fund. Because communities with longstanding distrust and fear of police are less likely to report hate-motivated violence immediately, access to the Fund is often limited without the necessary in-language support and outreach resources. Through the **Massachusetts Civil Rights Act**, the Attorney General's Office can also enforce civil penalties to provide alternative relief to victims without relying on criminal prosecution.

Turning to community-based strategies to combat anti-Asian hate crimes is critical because community groups serving Asian populations are best equipped to provide the necessary support to victims based on their front-line response system and culturally appropriate network of resources. By shifting the reliance from enforcement and incarceration to more **community-based** solutions, communities can heal without feeding into the same systems of violence. In 2021, the **Massachusetts Advisory Committee to the U.S. Commission on Civil Rights** proposed the following non-police and prosecutorial alternatives to address hate crimes:

- Invest in community-based restorative justice programs;
- Improve data collection through mechanisms for victims to report violence anonymously;
- Increase access to culturally competent and linguistically appropriate mental health services;
- Secure additional funding for social services, community-based legal assistance, and bystander training;
- Integrate ethnic studies into the education curriculum to understand the history of racism; and
- Promote data equity to dispel harmful stereotypes and ensure equitable allocation of resources based on community needs.

The fight against anti-Asian hate must adopt holistic solutions that look beyond the current criminal legal system and center around more community-based solutions, financial relief, and legal support to address

the direct needs and concerns of the Asian American community. Most importantly, the movement against anti-Asian hate should not create a wedge but instead become a source of solidarity with other marginalized groups and communities of color.

Janet H. Vo, is a Senior Attorney at Greater Boston Legal Services-Asian Outreach where she focuses on deportation defense, housing displacement and nail salon workers' rights. In line with Asian Outreach's movement lawyering model, Janet and her team partners with community-based organizations to respond to the needs of the Asian American community through direct legal service, organizing and legislative campaigns, and impact litigation. Janet previously led the Asian Outreach and Advocacy Project at Community Legal Aid in central Massachusetts.

Going Beyond Equality and Striving Toward Equity: Addressing Systematic Racism and Bias in the Courts

By Chief Justice Paula M. Carey (Ret.)

State court systems must provide services and deliver justice in a manner that inspires public trust and confidence. All individuals must be treated fairly and impartially in every interaction with the court system. To achieve public trust and confidence, the existence of systemic racism in the courts must be acknowledged. Specifically, courts must recognize that Black and other individuals of color who have contact with the legal system are often not treated equitably or with the same dignity and respect as their white counterparts. A compelling illustration of this idea is that "Equality is giving everyone a shoe, equity is giving everyone a shoe that fits." The Massachusetts Trial Court has embarked on an intentional journey to address issues related to diversity, equity, and inclusion.

Over the last decade, numerous studies have documented how racial disparities and high rates of incarceration in our nation's criminal justice system have had a devastating impact on communities of color. Massachusetts has one of the lowest overall incarceration rates in the nation, but some of the highest rates of disparity in incarceration. As the late Supreme Judicial Court Chief Justice Ralph Gants noted in his **2016 State of the Judiciary** speech, data collected by the Sentencing Commission showed that while the national rate of imprisonment for African Americans was 5.8 times greater than for whites, in Massachusetts, it was nearly eight times greater. Moreover, as a nation, in 2014 the rate of imprisonment for Hispanics was 1.3 times greater than for whites; in Massachusetts, it was nearly five times greater. After acknowledging these disparities, Chief Justice Gants announced that he had asked Harvard Law School to convene a team of independent researchers to analyze the data and "find out why."

After four years of research and review, in September 2020, Harvard released the results of its study in a report entitled "**Racial Disparities in the Massachusetts Criminal Justice System.**" Based on available data from 2014 to 2016, the researchers found that "Black and Latinx people sentenced to incarceration receive longer sentences than their White counterparts, with Black people receiving sentences that are an average of 168 days longer, and Latinx people receiving sentences that are an average of 148 days longer." The researchers also concluded that defendants of other races, including Asian, Cape Verdean, Native Hawaiian/Pacific Islander, American Indian/Alaskan, and Other Race/Multi-Race received longer sentences than their white counterparts. Furthermore, the regression analysis utilized in the study "indicates that even after accounting for factors such as criminal history and demographics, charge severity, court jurisdiction, and neighborhood characteristics, Black and Latinx people are still sentenced to 31 and 25 days longer than their similarly situated White counterparts." While the Harvard study was limited in scope due to obstacles relating to data, the overall conclusion was anticipated, and led the Trial Court to further prioritize its efforts to address systemic racism.

Even before the publication of the Harvard report, the Massachusetts Trial Court engaged in comprehensive efforts to address issues of bias impacting both criminal and civil cases within the court system. These efforts have resulted in a systematic and transparent approach to our work that includes data collection, experiential training, and accountability.

The Trial Court began its intentional journey to address issues related to diversity, equity, and inclusion in 2013, after a survey reflected that judges of color and female judges had been treated differently based upon their race or gender. In examining these issues, we now understand that disparities did exist, and this conclusion led to the reflection that, if judges experienced this treatment, our employees and court users were likely having similar experiences.

In September 2015, the Trial Court held a conference to open a dialogue among Massachusetts judges about implicit bias in the work they do every day across the Commonwealth. Following the conference,

each of the seven Trial Court departments developed and provided implicit bias bench cards to all judges and magistrates.

In 2016, the Trial Court established a Race and Implicit Bias Advisory Committee (TRIBAC) to address bias issues related to race and gender within the organization. The Trial Court also established a **Trial Court Office of Diversity, Equity, Inclusion & Experience** (ODEIE), which works to create an inclusive culture and support continuous systemic improvement within our system. In connection with these efforts, the Trial Court retained two nationally recognized consultants from Columbia Law School's Center for Institutional and Social Change (CISC) to help develop strategies for the Trial Court to address racial bias and construct a leadership curriculum. Working together, Trial Court leadership, TRIBAC, ODEIE, and CISC sought to transform Trial Court culture by integrating diversity, equity, and inclusion efforts into all aspects of court operations, including recruitment, hiring, training, conflict resolution, and strategic planning. The Trial Court developed and implemented a system-wide, evidence-based curriculum and methodology that brings together employees with different roles and identities and builds the capacity to engage and address issues related to diversity, equity, and inclusion of employees throughout the court system. Our objective is to build a self-sustaining infrastructure, so that issues surrounding race and bias remain at the forefront for all Trial Court employees and leadership. Court leaders and staff also collaborated to create a video urging everyone inside and outside the court system to be an "Upstander" – to stand up against acts or words reflecting conscious or unconscious bias.

The Trial Court has implemented strategies to eliminate racism and bias through several programs administered by ODEIE. Our Leadership Capacity Building Workshops are designed to support judges and court staff in leading difficult conversations on race and identity and addressing issues involving diversity, equity, and inclusion. Additionally, nearly all Trial Court personnel have completed the Signature Counter Experience training – a program centered around customer service and designed to ensure that all court users are treated respectfully and professionally. ODEIE's program Beyond Intent: Understanding the Impact of Our Words and Actions educates court personnel about the impact of words and actions on the development of a safe, healthy, and inclusive workplace, and identifies actionable steps to embed more inclusive practices into daily practices. ODEIE's Cultural Awareness and Racial Empathy (CARE) program is an opportunity for all Trial Court employees to engage in safe discussion and dialogue with each other to gain a greater understanding of the history of the marginalization of communities and individuals of color, and to reflect on their personal identity and the identity of others.

In 2019, the Trial Court established the **Trial Court Office of Workplace Rights & Compliance** (OWRC) to address and investigate concerns and complaints of discrimination, harassment, or retaliation involving protected classes including race, gender, and disability. OWRC is also responsible for enforcing the Trial Court's Policy Prohibiting Discrimination, Harassment and Retaliation, which was promulgated in 2019, and applies to employees and court users.

In the summer of 2021, the Trial Court convened the Committee to Eliminate Racism and Other Systemic Barriers. The committee is taking a different approach to address critical issues that impact racism, and its members are reviewing court systems and processes through the lens of racism and other barriers to ensure justice and fairness throughout the court system. The committee is charged with advising the Chief Justice of the Trial Court and the Court Administrator regarding policies and initiatives to address institutional racism and systemic barriers based on race, ethnicity, gender, gender identity, sexual orientation, mental or physical disability, age, socioeconomic status, or other matters of identity that may give rise to inequity among Trial Court users, judicial officers, or court personnel. The committee's nine working groups are working on several initiatives, including data collection for civil matters, employee mentoring, an updated social media policy, an affinity group for employees, and proposed jury data collection changes. This collaborative approach, with internal and external stakeholders to study and review, is essential to moving the system forward.

Another means of addressing racial and ethnic inequity in our legal system is by increasing the diversity of court personnel. A more diverse workforce brings a broader range of perspectives into the courts and

helps to educate us all about the experiences of those who are different from us in race and ethnicity, as well as in gender identification, sexual orientation, or class background. A court workforce that mirrors the diversity of our Commonwealth also promotes litigants' trust in the equity of our judicial system. As stated in the **Trial Court's Strategic Plan 3.0**, "we want our workforce to reflect the diversity of our users and to be culturally competent and welcoming." Accordingly, we have made it a strategic priority to increase the diversity of our workforce through recruitment, outreach, career development, and promotion. To measure progress toward this goal, the Trial Court instituted an Annual Diversity Report. These reports show an overall increase in Trial Court employees who are members of racially/ethnically diverse groups from the publication of the initial Diversity Report, issued for Fiscal Year 2017. The Trial Court has also made improvements in the percentage of racially and ethnically diverse employees in its managerial ranks. Each year, we celebrate our increased diversity with our annual cultural appreciation events that encourage court staff to share and learn more about each other's cultural heritage.

Notwithstanding these efforts, there is still much work to do to root out bias in all aspects of our court operations. After the release of a 2021 **report** from the Supreme Judicial Court's Committee on Lawyer Well-Being, summarizing a series of Town Hall meetings with Affinity Bar members, we learned of the negative experiences of many attorneys of color when engaging with our court system. In response, we began meeting with Affinity Bar leaders to engage in open dialogue to collaborate on strategies the Trial Court could undertake to address the issues raised. We have taken steps to facilitate discussions on how to best interact with court users in a more respectful and culturally proficient manner.

We recognize the importance of open communication and direct outreach to communities of color, so that we can better understand the experience of these communities in our courts and can work to address their concerns. Massachusetts was among six states chosen by the National Center for State Courts (NCSC) to participate in a pilot community engagement program to collectively expand gateways to substance use treatment in the courts. Additionally, ODEIE has worked with local court and community leaders to hold a variety of public engagements designed to increase public trust and confidence in the courts by providing the opportunity for communities of color to share their experiences with the justice system and provide feedback on how we can become more equitable and just. Our Access to Justice coordinator, along with ODEIE organized several virtual Town Hall sessions which engaged local court leaders and officials to share information on court operations during the COVID-19 pandemic.

Additionally, the Trial Court conducted listening sessions at houses of correction, in which judges and staff from the Massachusetts Probation Service and Trial Court Security Department met with detainees and heard about their experience with the justice system. The Trial Court also provided forums for internal listening sessions where employees shared their experiences working in the courts.

The Trial Court continues to collaborate with Harvard on issues related to race. One example is Harvard's work on a **quantitative analysis** of the impact of the diversion and non-prosecution policy of the Suffolk County District Attorney's Office. Additionally, the Trial Court maintains several **public interactive dashboards** that contain demographic and case information. The dashboards allow users to filter information using different data points. The Trial Court is also working with the NCSC to perform a diversity, equity, and inclusion analysis to estimate the demographic makeup of parties involved in select civil case types. Civil case types include Pathways in case types such as evictions, civil asset forfeiture, tax lien, debt collection and mortgage foreclosure.

As leaders of state court systems, we hold unique positions and need to be comfortable with being uncomfortable, because this work is not easy. We need to be more introspective about the fact that what we do, and what we fail to do, impacts the lives of others who have experienced the indignities of racism and injustice throughout their lives. We need to listen to the experiences of diverse populations as we work to change our systems. The time is now, and it will take all our collective efforts to eradicate racism in our justice system and beyond. Failure is not an option. As a nation, and as a system of state courts committed to equitable justice for all, we must not rest until we have eliminated these barriers.

Paula M. Carey retired as Chief Justice of the Trial Court in January 2022. She continues to work on issues involving Diversity, Equity, Inclusion in the Trial Court, which was a major focus of her work before her retirement.

Looking Back, Looking Forward: Challenging the Mindset of the Legal Profession from Awareness and Acceptance to Inclusion of Attorneys with Disabilities

By Salomon Chiquiar-Rabinovich

In July 2015, on the 25th anniversary of the passage of the Americans with Disabilities Act, the Boston Bar Association held the charter meeting of the Committee for Attorneys with Disabilities ("Committee"). In announcing this new Committee, the BBA recognized the need to create a space for attorneys with disabilities to share their experiences, resources, and strategies for career advancement. (**https://bostonbar.org/mobile/mobile-calendar/mobile-event-details?ID=18423**). The creation of this Committee was an innovative step toward including those with disabilities in the broader BBA vision of diversity, equity, and inclusion. It was meant to provide a platform not only for those with visible disabilities, but for those with invisible or non-apparent disabilities like my own, dyslexia.

In the Committee's early days, it was clear that the stigma attached to invisible disabilities was significant and far-reaching. Some members who participated in the charter meeting were uncomfortable with having their names appear in print, as they feared potential negative impacts on their careers. But the BBA was undeterred. The Committee's establishment marked the BBA's commitment to serving attorneys and law students with physical disabilities and neurodivergent conditions, which are reflective of the variations in how the human brain works such as dyslexia, autism spectrum disorder, dyspraxia and ADHD. For me, it was profoundly liberating. I have grappled with dyslexia for my entire life and, here, in this Committee, I found support and camaraderie. It was akin to the support and welcome I received as a member and regional leader of the Hispanic National Bar Association.

Since its establishment, the Committee has been dedicated to providing a safe, inclusive platform where self-identified attorneys and law students with a disability can find peer support and tools for professional success. The Committee has hosted panel discussions on Equal Employment Opportunity Commission investigations into discriminatory practices, as well as presentations on transitioning reasonable accommodations from academia to the workplace. At the time of this writing, the Committee is preparing to sponsor a panel on neurodiversity in the post-pandemic work environment. As we return to the office, this panel will examine the current opportunities for the long-overdue de-stigmatization of neurodivergent attorneys and their inclusion in organizational workplace DE&I initiatives.

The Committee strives to address the distinction between attorneys with visible disabilities that can be accommodated through accessibility, and attorneys with invisible disabilities that do not present as readily and, thus, can be more difficult to accommodate. This reality is corroborated by Bloomberg Law's 2021 Legal Operations Survey finding that, of the 72% of respondents that track diversity or well-being, only 17% track neurodiversity. (**https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-why-neurodiversity-remains-deis-least-tracked-metric**).

For me, there are many accommodations that set me up for success. Dyslexia affects the speed and accuracy with which one decodes letters and numbers. Accommodations can include extra time for tasks, support in proofreading, larger fonts, audiobooks, and recorded classes and materials. These accommodations are relatively easy to obtain in academia but not so easy in the professional world. In my case, from my first year of law school at Georgetown and onward, I was fortunate that, even a decade before the passage of the ADA, I was offered accommodations, such as time and a half to complete exams and the ability to both hear a recording of the questions and to tape record my answers.

Throughout my career as an attorney and in the public sector, the stigma attached to disclosing being dyslexic (synonymous with underperforming) has been an impediment to my advancement. To excel, I depend on being provided with live proofreading and clerical support, just as someone with a limitation in mobility requires specific accommodations to move independently and be productive.

It is inspiring to read the success story of an attorney with autism, as set forth in attorney Haley Moss's book Great Minds Think Differently, published by the American Bar Association in 2021. Moss offers a comprehensive examination of how neurodiversity affects law schools and legal workplaces, in making hiring decisions and otherwise. She re-enforces the idea that active change needs to be made to include and accommodate neurodiverse individuals, as well as promote the notion that people who think differently can be an asset in the legal profession.

The Committee for Attorneys with Disabilities is just one step. Others have contributed to our understanding of this critical issue. For example, through its Diversity and Inclusion Center, the American Bar Association began a campaign to encourage employers to hire attorneys with disabilities. Because of this, attorneys with neurodivergent disabilities are more likely to identify themselves as such and not feel they must hide being neurodivergent in a neurotypical work environment. (**https://www.americanbar.org/groups/diversity/disabilityrights/initiatives_awards/ndeam/2020-video/**)

The pandemic has brought forth a greater need for marginalized employees to be seen in a different light as part of Diversity, Equity and Inclusion initiatives. For us, the attorneys with disabilities, what lies ahead is not just the acceptance of our disabilities but, rather, how the legal profession can effectively transform itself to genuinely value and include its attorneys, both those with visible disabilities and those with nonapparent disabilities.

The author is enormously grateful to Christina Farmer and Nicholas Lojo, Boston College Interns with the Boston Bar Association's Committee for Attorneys with Disabilities, for their research, editing and collaboration with this article.

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Racial Trauma in Juvenile Justice Reform

By Sharifa Garvey, Joshua Rosa, and Dr. Maryam Jernigan

In recent years, the Massachusetts' juvenile justice system has adopted new practices based on adolescent brain development research and trauma informed care practices.**[1]** While laudatory, these efforts have not addressed a critical component – racial trauma. "Racial trauma" describes the negative psychological and emotional impact of racism on youths of color that can lead to post-traumatic stress disorder (PTSD).**[2]** According to the Clinical Child and Family Psychology Review, more than two-thirds of children and youth report having had some kind of traumatic experience before the age of 16.**[3]** Youth of color encounter additional exposure to traumatic experiences driven by racism, discrimination, and prejudice. Further, according to a **2018 report** authored by the Department of Corrections, Black and Brown youths in Massachusetts were roughly three times more likely to end up in the juvenile justice system than White youths.**[4]** Accordingly, the Massachusetts juvenile justice system should consider and address racial trauma experienced by juveniles in its trauma-informed care practices.

To understand racial trauma, it is imperative to understand the concepts of race and racism. "Race" is the sociopolitical categorization of people to differentiate between groups of people based mostly on physical features and genetics.**[5]** With the introduction of enslaved Africans in the Americas, the concept of race evolved in the Americas by labeling enslaved Africans as inferior and fit for manual labor based on their shared skills.**[6]** This construct has single-handedly defined the role of people of color in American society for generations and plays a crucial role in identifying and combating racism. "Racism" is prejudice or discrimination. It is often directed at someone based on a belief that one's own race is superior. Scholars describe four levels of racism: individual, interpersonal, institutional, and systemic.**[7]** Generally, youths of color experience all four levels of racism, and each creating its own trauma.

Repeated experience with racism, may lead to the development of racial trauma.**[8]** Racial trauma is caused by a series of isolated exposures that accumulate and result in PTSD.**[9]** This exposure includes experiences such as youths of color being depicted as menaces to society in the media; Black children being ridiculed for their hair texture; and youths of color being compared to animals because of their physical attributes. When Black and Brown children experience racism, they often internalize these experiences, which then in turn affects self-esteem, and stifles positive identity development.**[10]** Many youths of color in the Commonwealth come from impoverished neighborhoods, with low socioeconomic backgrounds. They have been ill-served by their school systems and have experienced situations that demonstrate that society views them poorly. From this, they develop a perception that people of color are inferior and deserve to be punished. This instills a lack of self-worth in youth of color that is almost irreparable. This lack of self-worth can cause such children to make poor decisions that lead to a life in and out of jail. Normalization of these experiences prevent youths of color from recognizing that they are experiencing racial trauma. Teaching children of color about race and racial identity can assist them in responding more productively to issues of racism.**[11]** In fact, children who learn about racial development and racial socialization are more likely to graduate from college and work in positions that promote racial equity.**[12]**

Since 2008, the number of juveniles detained in Massachusetts have decreased significantly, largely as the result of various strategies, including diversion programs, raising the age of juvenile arrest, and discussing ways to implement trauma informed care practices.**[13]**

While Massachusetts' juvenile detention numbers have sharply declined over the last decade and a half, the decline is lower for Black and Brown youth.**[14]** Thus, more action is needed. Massachusetts Juvenile Courts must also address the direct needs of youth of color by incorporating more of an understanding of racial trauma into their care practices, giving a full and nuanced perspective of each child. Data from various state and municipal sources can identify who the Black and Brown youths are in the system and

why they are there.**[15]** This information could assist judges in addressing the direct needs of Black and Brown youth and allow them to implement equitable, community-based solutions.

By analyzing racial trauma and addressing it as a component to existing programs in Massachusetts, the juvenile justice system can better understand the children they serve, work toward building a bridge between communities of color and the criminal justice system and provide the support necessary for at risk youth. All of these efforts will help children to become productive members of society.**[16]** The first step is to provide more specialized training on race, racism, and racial trauma to Juvenile Court staff, to help them understand how our youth and families of color are detrimentally impacted by racial trauma.**[17]** The Court may then engage in cross-agency hearings**[18]** that listen to the voices and experiences of youth and families specifically about racial-trauma with the goal of making recommendations to provide equitable and appropriate treatment or alternatives to detention that would decrease recidivism, provide for holistic treatment, and give families the freedom to find solutions that work best for them. Additionally, community grassroots programs should be used to serve as positive alternatives to detention. Working alongside grassroots programs will also help to bridge the gap between communities of color and the justice system. Increasing the courts' collaboration with community partners may allow communities of color to put more trust into the justice system and create a space to engage in a mutually beneficial exchange of ideas and dialogue on how to move forward together.

The Courts can and should be a voice for the communities they serve. Addressing the impact of racial trauma on juvenile offenders is a critical first step.

[1] *See* **Juvenile Offenders, TMHC MA-CLE 15-1** (highlighting Mass. courts adopting the practice of adolescent brain development in juvenile cases); *see also* ***Roper v. Simmons*****, 543 U.S. 551 (2005)** (barred death penalty for children under 18); *see also* ***Graham v. Florida*****, 560 U.S. 48 (2010)** (prohibiting life without parole for juveniles convicted of nonhomicidal crimes); *see also* ***Graham v. Florida*****, 560 U.S. 48 (2010)** (prohibiting life without parole for juveniles convicted of murder).
See Childhood Trauma Task Force *A Report of the Childhood Trauma Task Force December 2019* ***https://www.mass.gov/lists/childhoodtraumataskforcecttf*** (describing how the juvenile justice system can incorporate trauma informed care practices).
[2] *See* Jernigan, Maryam M., and Jessica Henderson Daniel. *Racial Trauma in the Lives of Black Children and Adolescents: Challenges and Clinical Implications.* Journal of Child & Adolescent Trauma, vol. 4, no. 2, 2011, pp. 123–141, doi:10.1080/19361521.2011.574678 (explaining that racial discrimination presents in symptoms of PTSD)
[3] *See* Saleem, Farzana T., et al. *Addressing the 'Myth' of Racial Trauma: Developmental and Ecological Considerations for Youth of Color.*" Clinical Child and Family Psychology Review, vol. 23, no. 1, 2019, pp. 1–14., doi:10.1007/s10567-019-00304-1 (explaining that the numbers might be underreported and varies based on race and ethnicity).
[4] *See* Disproportionate Minority Contact Statewide Assessment Report for 2018, **https://www.mass.gov/doc/disproportionate-minority-contact/download** (providing data on racial disproportionality for detention, arraignment, arrest, etc.)
[5] *See* Historical Foundations of Race." *National Museum of African American history and Culture*, 16 Dec. 2021, **https://nmaahc.si.edu/learn/talking-about-race/topics/historical-foundations-race** (providing historical context on the evolution of race as a social construct).
[6] *See supra*, note 5
[7] *See* "Summary of Stages of Racial Identity Development." Interaction Institute for Social Change. **https://interactioninstitute.org/wp-content/uploads/2019/01/FFRJW-Updated-Pre-Work-1.3.2019.pdf**
[8] *See supra*, note 2 (explaining that though not all people of color who experience racial discrimination show signs of PTSD most if not all show signs of fear, anxiety, helplessness, and other symptoms of trauma).
[9] *See supra*, note 8.
[10] *See supra*, note 2.

[11] *See* Gaskin, Ashly. *Racial Socialization*. American Psychological Association, American Psychological Association, Aug. 2015, **www.apa.org/pi/families/resources/newsletter/2015/08/racial-socialization**.
[12] *See supra*, note 10
[13] *See* Juvenile Detention Alternatives Initiative. **https://www.mass.gov/lists/dashboards-for-the-juvenile-detention-alternatives-initiative-jdai-in-massachusetts** (providing race-based data on the decrease in arrest, arraignment, detention, and probation for juvenile youth); *see also* The Office of Child Advocacy. *Massachusetts Juvenile Justice System data*. **https://www.mass.gov/doc/massachusetts-juvenile-justice-system-data-trends-webinar-presentation/download** (highlighting significant decrease in juvenile systems using data from 2017-2021).
[14] *See supra*, note 13.
[15] *See* Annie E. Casey Foundation. *Centering Racial Equity Throughout Data Integration*. **https://assets.aecf.org/m/resourcedoc/aisp-atoolkitforcenteringracialequity-2020.pdf** (explaining how to accurately collect cross sector data with a focus on racial equity to create a better equip youth serving system).
[16] *See eg.* Youth Advocacy Foundation **https://www.youthadvocacyfoundation.org/**, and Racial Reconciliation and Healing **http://www.racialrec.org/**
[17] *See eg*. Massachusetts JDAI; Discovering Justice **https://discoveringjustice.org/**; Citizens for Juvenile Justice (CFJJ) **https://www.cfjj.org/**
[18] Using cross-system collaboration includes things like round table restorative justice hearings where the youth and their families discuss their experiences and the barriers that may stifle progress or positive outcomes. Each agency will provide their recommendations based on the information they receive from the young person and family.

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