



# From Avoiding Liability to Building Trust: It's on Us

**Melissa Muir**

*Human Resources Director, Seattle Municipal Court*

*Traditional approaches to harassment and discrimination prevention training in the workplace have not worked: employees do not report concerns, and managers do not make it safe to report those concerns. The Seattle Municipal Court is piloting a new approach, focused not on avoiding legal liability but on building trust.*

Our court, in partnership with the City of Seattle's Department of Human Resources, is piloting a *Responsive Workplace Culture* training program. After facilitating training around this topic for more than 20 years, I am seeing firsthand how this new approach is reaping unexpected benefits. For our court, this pilot training has evolved into an ongoing series of candid conversations to build an inclusive culture of trust.



## Discrimination and Harassment in the Workplace: Courts Are Not Immune

Courts at all levels historically report few internal claims of discrimination and harassment. Across the United States, Law360 recently identified just 43 public determinations against state judges involving allegations of sexual harassment or other inappropriate interactions with court staff. And that was over more than a decade from 2008 to 2019. There are few claims in the federal judiciary, and at the state level claims are “almost unheard of” (Coe, 2019).

These low numbers were once reassuring. For two decades, as my peers and I facilitated training on preventing workplace harassment, we emphasized that the small number of claims demonstrated that courts are a model employer. We were wrong. Instead, these numbers show that courts face the same reporting challenges as other organizations.

*Ensuring our workplace culture is inclusive, accountable and respectful for all employees starts with the bench. We are committed to fostering a courthouse that will not tolerate harassment or inappropriate behavior and the Responsive Workplace Culture workshop helps us ensure that our culture reflects these values.*

**Presiding Ed McKenna**  
Seattle Municipal Court

As U.S. Supreme Court Chief Justice John Roberts acknowledged in the federal judiciary’s 2017 year-end report: “Events in recent months have illuminated the depth of the problem of sexual harassment in the workplace, and events in the past few weeks have made clear that the judicial branch is not immune.”

## The Costs Are High

When the Equal Employment Opportunity Commission (EEOC) published its groundbreaking 2016 study on harassment in the workplace, the agency estimated the direct costs of harassment—“just the tip of the iceberg”—at \$164.5 million (Feldblum and Lipnic, 2016). The Society for Human Resources Management (SHRM, 2019) recently estimated the true costs of workplace toxicity, which “often manifests itself as harassment and discriminatory treatment,” at \$223 billion. By any measure, the costs are high.

*3 out of 10 feel their managers don’t encourage a culture of open and transparent communication.*

*4 out of 10 feel their managers fail to frequently engage in honest conversations about work topics.*

*1 in 5 feel their managers fail to foster an environment of trust.*

**Society for Human Resources Management**  
*The High Cost of a Toxic Workplace Culture*

# DO

- *Listen. Listen more.*
- *Use a 90-10 approach where they do 90% of the talking.*
- *Remember that you are not solving the problem.*
- *Ask open-ended questions, especially if you have an impulse to judge. Ask questions until the impulse to judge goes away.*

# DON'T

- *Ask "why."*
- *Rush to solve the problem.*
- *Ask close-ended questions.*

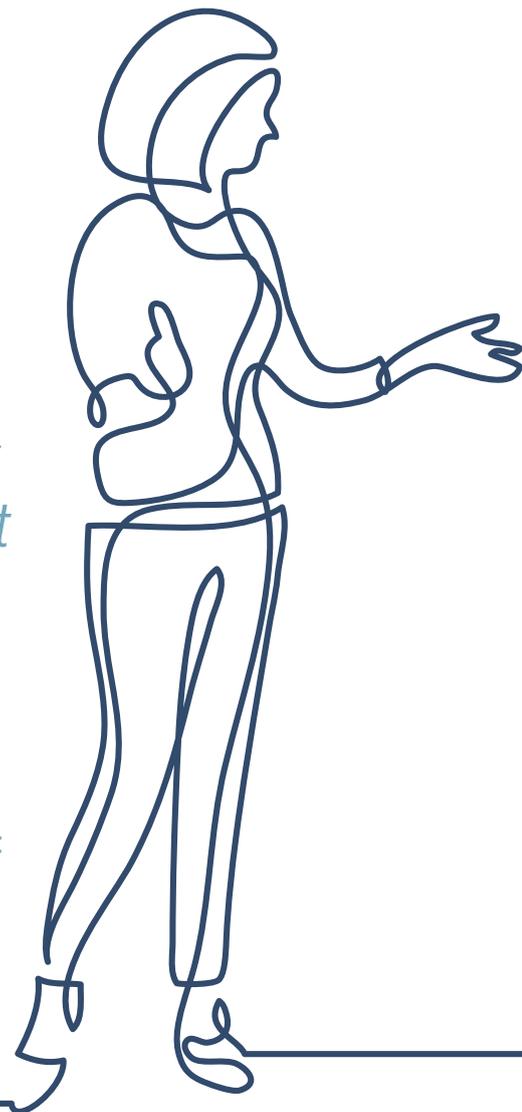
## People Do Not Report Concerns

In the wake of the #MeToo movement and its widespread impact on the workplace, courts throughout the country are reexamining their harassment policies, investigation procedures, and training. Although most organizations have programs in place, victims remain unlikely to report harassment or discrimination: employees do not report concerns, and managers do not make it safe to report those concerns.

- 3 out of 4 people who have experienced harassment do not report it (Feldblum and Lipnic, 2016), and those who do report wait an average of 12-16 months to come forward
- 4 out of 10 people who observed behaviors of concern at work did not report it (FBI, n.d.)
- 4 out of 10 leaders have personally witnessed sexual harassment and discriminatory treatment that they believe was not reported (SHRM, 2019)

*The training emphasized a culture where having conversations about difficult things is ok. Let's do more on that!*

Training Participant



## Training Must Change

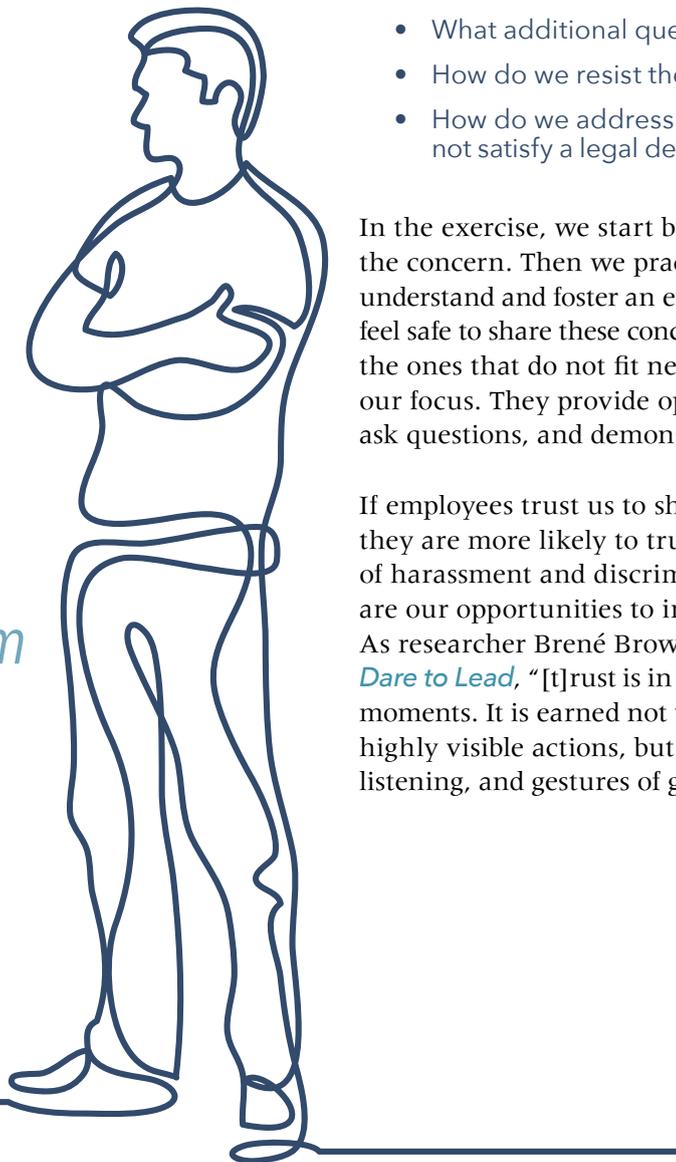
Traditional training has not worked. As a long-time trainer in this area, I acknowledge the discomfort, and reality, of this statement. As the EEOC cautioned in its 2016 report, “[m]uch of the training done over the last 30 years has not worked as a prevention tool—it’s been too focused on simply avoiding legal liability.” The EEOC suggests that training that is tailored to the specific workplace, offers tools to intervene, and focuses on respect and civility “may offer solutions.” Employment experts encourage us to focus less on compliance and more on interactive content, leadership buy-in, and engagement in preventing harassment and building trust (West, 2020).

Over the past year, our court has reexamined our training, our trust building, and our culture. With the support and insights of learning and development experts, we have introduced an approach designed to be impactful and meaningful. The initial results are promising.

*When an employee brings a concern, what assumptions do we make?*

*What past experience and knowledge inform what you believe and question?*

### Exercise Questions



## Our approach has changed in three key ways.

### 1. Moving away from legal definitions of harassment and discrimination to a broader understanding of workplace harm

For years our training began with a self-quiz: Is It or Isn't It? The answers fell into one of three categories: harassment, discrimination, or “arguably inappropriate.” The last category, arguably inappropriate, was not addressed in the curriculum. At the end of each session, managers would review and self-grade their quiz silently.

Now we open our training with a quick review of definitions and a small-group exercise. We display the categories on a continuum: Discrimination, Harassment, Wrongful Conduct and a fourth category, Trust-Building Behavior. As managers grapple with relevant and ambiguous scenarios, we dig deeper than Is it or Isn't it:

- What additional questions do we want we ask?
- How do we resist the impulse to judge?
- How do we address wrongful conduct that does not satisfy a legal definition yet does not feel right?

In the exercise, we start by categorizing and naming the concern. Then we practice active listening to understand and foster an environment where employees feel safe to share these concerns. Messy real-life examples, the ones that do not fit neatly into categories, become our focus. They provide opportunities to react, listen, ask questions, and demonstrate trust-building behavior.

If employees trust us to share conduct that feels wrong, they are more likely to trust us with deeper concerns of harassment and discrimination. These discussions are our opportunities to incrementally build trust. As researcher Brené Brown (2018) reminds us in *Dare to Lead*, “[t]rust is in fact earned in the smallest of moments. It is earned not through heroic deeds, or even highly visible actions, but through paying attention, listening, and gestures of genuine care and connection.”

## 2. Thinking more about the biases we as court leaders bring to conversations and how these impact court staff

Previously, training moved from legal definitions to workplace responses. We covered rights, responsibilities, and remedies. We used a scripted “assertive communication” model that was so uncomfortable to practice that my co-trainer and I often resorted to demonstrating it in front of the group rather than make people role play.

In our approach now, we go back to the initial scenarios and look inward. We ask ourselves what information we created to fill in the gaps of the limited information we were provided. We stop and ask ourselves what learned stereotypes, what life experiences, what assumptions are influencing our judgments even before an employee raises a concern. This second exercise focuses not on a scripted response but rather on what gets in the way of true listening: assumptions about gender, race, position, even assumptions about whether something happened.

We recognized this exercise’s success when we watched it fail. As outlined in the highlighted story, offhand remarks in the scenarios led participants to question how leaders would treat real employee concerns. Such remarks are one of the very reasons employees hesitate to report. Our activity, intended to encourage employees to raise concerns, had instead discouraged them. Our biases and assumptions got in the way of making ourselves fully available to hear what employees were trying to say.

In our sessions since then, we call out this real-life challenge when examining how our biases and assumptions impact our ability to communicate with others. For employees to bring their authentic self to the workplace, we must *ask questions until the impulse to judge goes away*.

The scenario was brief. One of your employees approaches you to share that the night before, a male coworker drank to excess at happy hour and made advances toward a female coworker, which she declined. The employee is “grossed out” but doesn’t want to get the male coworker in trouble.

As our leaders were debriefing this small-groups exercise, Supervisor “T” raised her hand, unseen by the directors sharing thoughts on the scenario. By the time I returned to her, the conversation had moved on. I followed up with her the next day and was surprised by what she said next.

*What impacted me after the exercise scenario was how all levels of leadership at the table erupted into comments, feeding off each other, laughing and even mocking:*

*“That guy’s just gossiping!”*

*“The two of them were probably on a date!”*

*“What if it’s just a rumor?”*

*“What if they’re being oversensitive?”*

*“They’re not at work so he needs to mind his own business!”*

*Once the ruckus died down, I was able to comment that as leaders we must remember that our job is not to make a knee-jerk judgment or assumption. Rather, our job is to professionally and neutrally ask questions and gather information from the person reporting before determining the right steps to take.*

Most of the leaders around the table were questioning the motive of the observer raising a third-party concern from a setting outside of work. Any employee with a concern like that—at any level in the organization—would think about how it would be received by their leader and probably stay silent.

As the exercise focused on how our assumptions can impact employees’ reporting, we were making assumptions that discouraged reporting! We’ve since built that observation into the exercise itself as a moment of self-reflection.

As court leaders, people watch us and think about how we will react to their vulnerability. How we talk among ourselves, what we say informally, our sarcasm and deflection as we deal with difficult subjects—these can have a chilling effect on people long before we realize there is a concern. By addressing our assumptions directly, we illustrate the importance of the culture we support, our commitment, and the trust we build before these conversations.

### 3. Engaging leadership in building trust to prevent behavior from escalating to illegal harm

Previously, we covered rights and responsibilities, both of court employees and court leadership. We encouraged people to handle situations at the lowest possible level, which sometimes meant we asked employees themselves to handle the situations they had finally brought to us for help.

Now we look more broadly at our responsibilities as leaders. First, we look at how we listen—making ourselves fully available to hear the concern and practicing active listening skills. Next, we look at what impacts how we listen—developing awareness of the impact of our own position, power, and biases. Last and not least, we practice building trust.

In the third exercise, we work through realistic scenarios in groups of three, rotating the roles of manager, employee, and observer. The employee role has a few pieces of information and plenty of latitude. The manager role has sample active-listening questions and reminders of ways to create respectful workplace norms. Observers have questions to guide their notetaking. The ensuing conversations quickly get lively and animated. The conversations have been so valuable that we have continued them in ongoing, hour-long skill-building sessions.

Finally, we end with a self-reflection exercise. Rather than a quiz, each court leader identifies ways to create and nurture a culture of respect, thinks about situations they wish they had intervened in earlier, and identifies a trust-building skill they want to further develop in themselves.

*Thank you for coming to me with this. I know it might not be easy to talk about. There are some things I can keep between you and me and some things I can't, but I hope you will let me help.*

Sample opening language when employee shares a concern

## How Do We Know It Is Working?

The EEOC points out that previous training is not working and offers insight into what may work; employment experts recommend leadership ownership and interactive, discussion-based training grounded in respect (West, 2020). While there is not a lot of external data available yet, our court sees signs that this new approach has promise. Shortly after we facilitated our pilot sessions, an employee came forward about harmful conduct in a meeting. They had hesitated in the past but felt that the court had shown increasing openness. When approached with the concern, the manager, rather than defensive, was curious. Both want to work through it. The fact that we are even having this difficult conversation is a tangible sign of the willingness to engage and build trust.

For more than 20 years, I have worked with judges and court staff to address concerns about workplace harassment and discrimination. I have arguably been part of the problem. Now in Seattle we are pleased with the response to our new and simpler approach: less on avoiding liability and more on creating and supporting a culture where we address concerns long before they rise to the level of illegal harm. We're building a respectful and *Responsive Workplace Culture*.

## References

- Brown, B. (2018). *Dare to Lead: Brave Work. Tough Conversations. Whole Hearts*. New York, Random House. Online at <https://daretolead.brenebrown.com/>.
- Coe, E. (2019). "Discipline Rare for State Judges in Sexual Misconduct Cases." *By the Numbers, Law360 in-Depth*, April 15. Online at <https://tinyurl.com/yd8rnnoa>.
- Federal Bureau of Investigation (n.d.). "Making Prevention a Reality: Identifying, Assessing, and Managing the Threat of Targeted Attacks." Report, U.S. Department of Justice, Washington, D.C. Online at <https://tinyurl.com/ybcasenu>.
- Feldblum, C. R., and V. A. Lipnic (2016). "Select Task Force on the Study of Harassment in the Workplace." Report, U.S. Equal Employment Opportunity Commission, Washington, D.C., June. Online at <https://tinyurl.com/y9ljpjhz>.
- Roberts, J. (2017). "2017 Year-End Report on the Federal Judiciary." U.S. Supreme Court, Washington, D.C., December 31. Online at <https://tinyurl.com/yaxgx4gp>.
- Society for Human Resource Management (2019). "The High Cost of a Toxic Workplace Culture." Report.
- West, A. (2020). "Make Your Harassment Prevention Training Impactful." *Emtrain Blog*, February 19. Online at <https://tinyurl.com/ybuxjgso>.