

Attachment K

Supporting Juror Impartiality

Implicit bias has the potential to affect jury selection at various stages, including through the deliberations of empaneled jurors. As one tool to educate jurors about implicit biases, the federal district court for the Western District of Washington developed and distributed a video on Unconscious Bias. The Connecticut state court system and other jurisdictions have explored similar approaches to juror education, either as a standalone initiative or in conjunction with other methods to support impartiality.

The New Jersey Supreme Court has preliminarily approved three interrelated initiatives to support juror impartiality: (1) a video on implicit bias, to be used as part of juror orientation; (2) additional voir dire questions on implicit bias; and (3) enhancements to standard jury charges. The proposed new video will be shown for the first time at the Judicial Conference on Jury Selection. The following summarizes the voir dire questions and jury charge enhancements.

By February 2, 2021 notice to the bar, the Supreme Court solicited public comments on two proposed model open-ended voir dire questions on implicit bias and proposed model jury instructions on implicit bias. The notice described in general the plan for a supplemental video on implicit bias, with that video to be shown to jurors as part of mandatory juror orientation. The strong majority of the comments reflected support for the goal of reducing the effects of implicit bias in the context of jury trials.

Following review and consideration of the public comments, the Court determined to add the following two voir dire questions:

- Question 1: In the juror orientation video and my introductory remarks, the concept of implicit bias was defined and discussed. Do you think you will be able to decide the case fairly and impartially and to be mindful of the potential effects of any biases you may have -- explicit or implicit? Please explain.

- Question 2: Some of the witnesses, parties, lawyers, jurors, or other people involved with this case may have personal characteristics (such as their race, ethnicity, or religion) or backgrounds different from yours, or they may be similar to yours. Would those differences or similarities make it difficult for you to decide this case impartially based solely on the evidence and the law? Please explain.

The Court further approved enhancements to three model jury charges: (1) preliminary instructions; (2) instructions after the jury is sworn; and (3) final instructions. The additional language builds on existing instructions related to the duty of impartiality. For example, the preliminary instructions would be expanded by adding the underlined text in the opening:

The first step in a jury trial is the selection of the jury. This process is important because both the State and the defendant are entitled to jurors who are impartial and agree to keep their minds open until a verdict is reached. Jurors must be as free as humanly possible from bias, prejudice, or sympathy and must not be influenced by preconceived ideas.

Every one of us makes implicit or unconscious associations and assumptions, and has biases of which we are not consciously aware. Implicit or unconscious thinking, including implicit bias, affects what we see and hear, how we remember what we see and hear, and how we make decisions. Jurors have an obligation to judge the facts and apply the law as instructed without bias, prejudice, or partiality. To do so, jurors need to acknowledge their own implicit or unconscious biases so as to not be affected by them during the trial and jury deliberations.

An additional reference to implicit bias would be added later in the instructions, as follows:

As we mature we all to some extent develop certain biases, prejudices, fixed opinions and views. We develop these from our families, others around us, the media, and from our everyday experiences. You are entitled to be who you are and to feel and think about things as you do. It is important

to recognize any biases, prejudices, fixed opinions and views that you may have and to disclose them to me during jury selection. **This includes recognizing and not being guided by implicit or unconscious biases.** If for any reason my questions do not cover why you would not be able to listen with an open mind to the evidence in this case or be unable to reach a fair and impartial verdict, it is necessary that you volunteer this information to me when you are questioned.

Similar enhancements would be made to the instructions provided when the jury is sworn, as follows:

Following summations you will receive your final instructions on the law from me, and you will then retire to consider your verdict. You are not to form or express an opinion on this case but are to keep an open mind until you have heard all the testimony, have heard summations, have had the benefit of my instructions as to the applicable law, and have been instructed to begin your deliberations.

The responsibility of all jurors is to reach a fair verdict based on the law as the judge explains it and on the evidence in the case. The court's goal in every jury trial is to seat jurors who will decide the case before them without prejudice or bias because under our Constitution everyone deserves a fair trial.

Jurors fulfill this responsibility by remaining impartial, or neutral, until the jury reaches a verdict. Remaining impartial throughout the trial means ensuring that jurors are not guided or influenced by biases or any preconceived ideas about the case.

It is your duty to weigh the evidence calmly, **impartially**, and without **explicit or implicit** bias, passion, prejudice, or sympathy, and to decide the issues [upon] **on** the merits.

Last, the final instruction to the jury would be amended to incorporate this underlined language:

As jurors, it is your duty to weigh the evidence calmly and without passion, prejudice or sympathy. Any influence caused by these emotions has the potential to deprive both the State and the defendant(s) of what you promised them -- a fair and impartial trial by fair and impartial jurors. Also, speculation, conjecture and other forms of guessing play no role in the performance of your duty. **As jurors, your oath requires that you not be affected or influenced by any personal likes or dislikes, opinions, prejudices, sympathy, or biases, including implicit, or unconscious, bias. During your deliberations if you think unconscious bias is affecting your evaluation, think about the evidence again with the video and this instruction in mind.**

In combination with the new Juror Impartiality video and additional voir dire questions, the additions to the model jury charges would remind jurors of their continuing responsibility to be aware of implicit biases and to work to avoid being guided by such biases in their deliberations.