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April 7, 2021

VIA EMAIL: Comments.Mailbox@njcourts.gov

Honorable Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Comments on Proposed Juror Impartiality Initiatives
Hughes Justice Complex; P.O. Box 037
Trenton, New Jersey 08625-0037

Dear Acting Administrative Director Grant:

Please accept the following ("Appendix 1") as the Department of Law and Public Safety's response to the Model Voir Dire Questions Regarding Implicit Bias, which were published as a Notice to the Bar on February 2, 2021. We are happy to continue discussion on this important topic, and appreciate the Supreme Court's attention on this matter.

Sincerely,

A handwritten signature in blue ink that reads "Jonathan Garelick".

Jonathan Garelick
Chief of Staff &
Assistant Attorney General
New Jersey Office of the Attorney General

CC: Christina Broderick, DAG & Counsel to the Attorney General
Steven Bonville, Chief of Staff, Administrative Offices of the Courts



APPENDIX 1

Model *Voir Dire* 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 not be affected by any biases you may have - explicit or implicit? Please explain.

PROPOSED COMMENT

Implicit bias is a term about which one must assume jurors have no knowledge prior to watching the juror orientation video. While the video seeks to explain the concept and is shown to jurors immediately prior to jurors being subjected to *voir dire* questioning, jurors cannot reasonably be expected to know what their implicit biases are and whether they will be able to decide the case without being influenced by them. It is not possible to create a brief video that is individually tailored to reveal what those biases may be for each juror, and awareness of one's own implicit biases cannot reasonably be imparted by watching a brief, single video. The challenge of unearthing individual implicit biases lies in the fact that implicit bias is unconscious bias and is triggered without conscious awareness of how such bias is affecting one's decisions and behavior. Implicit bias is also highly individualized; not everyone has the same implicit biases because everyone's life experiences are different and the stereotypes and associations that are internalized and operate to create implicit biases are unique to a person's lived experience. While the juror orientation video may speak to broadly held implicit biases, there is no ubiquitous, one-size-fits-all, approach to identifying what implicit biases each person has.

Accordingly, while it is highly commendable to address the topic of implicit bias in the juror orientation video, it is not realistic to expect that any juror could say that they would be able to decide a case without being affected by implicit bias and we suggest that Question 1 be modified to delete the reference to implicit bias.

Model *Voir Dire* 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.

PROPOSED COMMENT

We request that the Court consider including gender and gender identity along with race, ethnicity and religion.