

MESSAGE FROM CHIEF JUDGE JANET DIFIORE

August 15, 2022

Thank you for giving us a few minutes of your time for an update on the latest developments affecting our courts and the justice system.

In my last two messages, I have focused on our efforts to enhance public trust and confidence in the courts and the justice system, and specifically, on the important work that is underway to strengthen the efficiency, fairness and integrity of our jury system.

Last week, the New York State Justice Task Force issued an important report with recommendations designed to help us achieve these vital goals by ensuring that a diverse pool of jurors appears for service and by protecting against implicit bias in the procedures by which jurors are selected and empaneled.

The Justice Task Force, which was created in 2009, consists of experts representing the full spectrum of the criminal justice system in our state who are committed to working together to identify and help eliminate the principal causes of wrongful convictions through systemic reform of our criminal justice system. The Justice Task Force has an excellent track record of advancing well-researched and sound recommendations that have laid the groundwork for impactful

statutory and regulatory reforms to improve the fairness and accuracy of the criminal justice system, including among others: greater access to post-conviction DNA testing by defendants; implementation of best practices for electronic recording of custodial interrogations and for lineups and photo identifications; and “Standing Brady Orders” explicitly advising prosecutors and defense counsel of their constitutional and professional responsibilities.

And so, when I became Chief Judge I wasted no time in expanding the Justice Task Force’s mission in order to address broader issues of concern to our criminal justice system. In June 2020, I appointed my late Court of Appeals colleague, Paul Feinman, to serve as Chair of the Justice Task Force, and I asked him to lead a comprehensive examination of apparent racial disparities at key stages of the criminal case process, from arrest to sentencing.

And although Judge Feinman passed away in 2021, he exhibited all of his characteristic diligence, energy and foresight in developing a careful blueprint to guide the Justice Task Force’s work, a blueprint that led directly to last week’s report advancing a package of reforms to help prevent discriminatory jury selection and foster a jury system that genuinely reflects the rich diversity of all communities throughout the state.

The Justice Task Force's report proposes changes to the statutory law governing the use of peremptory challenges. By definition, peremptory challenges may be used by prosecutors and defense counsel to dismiss or strike prospective jurors without stating any cause or explanation.

And while there is a constitutional framework in place, famously articulated in Batson v Kentucky, to enable courts to assess whether a peremptory challenge is motivated by intentional racial or gender discrimination, the so-called Batson test has not worked well to prevent peremptory challenges that reflect a different form of discrimination,-- one based on "implicit bias" or "unconscious racism."

In order to minimize the effects of implicit bias in the jury selection process, the Justice Task Force has recommended the adoption of a more expansive set of protected classes to serve as the basis for challenging a peremptory strike and, also, that courts apply a more exacting "reasonable person" standard in evaluating the facially neutral reasons given to justify the use of a peremptory strike.

Under this new approach, the court would be asked to evaluate: "Whether, in the view of a reasonable person, the race, color, national origin, ancestry, gender, gender identity or expression, religion, religious practice, age, disability, or sexual orientation of a juror was a factor in the exercise of the peremptory challenge."

Remedying the use of peremptory challenges is just one of the many reforms the Justice Task Force has advanced to foster a fair, equitable and bias-free jury system, including: new jury instructions on implicit bias; creation of a uniform questionnaire to guide the court and counsel in probing for potential implicit biases during voir dire; implicit bias training for District Attorneys' Offices, institutional defense providers, and judges and nonjudicial staff; and increased community outreach and public service announcements to encourage jury service.

These are sound, rational and appropriate legislative, regulatory and administrative measures that our entire criminal justice system can get behind and support. And combined with the significant steps that we've taken to combat juror bias in New York, such as the new video on implicit bias shown to every prospective juror during orientation, this package of reforms from the Justice Task Force will go a long way toward preventing the unfair exclusion of jurors, thereby strengthening the public's trust and confidence in the fairness and accuracy of our criminal justice system.

I encourage everyone to review the Task Force's full report, which is available at www.nyjusticetaskforce.com, under "Recommendations."

Finally, I want to express my thanks and appreciation to each and every one of the members of the Justice Task Force, led by the

outstanding Co-Chairs, former New York Court of Appeals Senior Associate Judge Carmen Beauchamp Ciparick, and Deputy Chief Administrative Judge for New York City Courts Deborah Kaplan. They have done a truly remarkable job of advancing mission of the Justice Task Force, and improving the fairness and effectiveness of our criminal justice system for the benefit of all New Yorkers. And a very special thank you goes out to the Task Force’s stellar Counsel, Angela Burgess, and the exceptional pro bono team at Davis Polk & Wardwell, which has so ably supported the Task Force over the last 13 years. Thank you.

And now, I’d like to share some exciting news about our court system, which was recently nominated for two “Emmy Awards” in connection with our role in producing two very special documentaries:

- “9/11 Reflections,”-- a moving video tribute to the 28 New York State Court Officers who rushed to the World Trade Center on September 11, 2001, to aid in the rescue efforts,-- including the three Court Officer heroes who lost their lives that day; and
- “A Bridge to Justice: The Life of Franklin H. Williams,” documenting the remarkable career of the late civil rights leader and founding Chair of the “New York State Judicial Commission on Minorities.”

What an incredible honor for our court system. I want to thank and recognize the court professionals and court organizations and partners who helped produce these very special documentaries:

- For “9/11 Reflections,” David Handschuh from the Office of Public Information; the New York State Office of General Services/Media Services; the New York Bar Foundation; and the Historical Society of the Courts;
- And, for a “Bridge to Justice,” John Caher, Senior Advisor for Strategic Communications; the members of the Franklin H. Williams Judicial Commission; and renowned actor Sterling K. Brown.

Kudos to all of them, and best of luck as we await the announced winners of these year’s Emmy Awards in October.

And on that positive note, thank you for tuning in to this week’s message, and for doing all that you can and should be doing to keep yourselves, and those around you, safe and healthy.