



EDWINA G. MENDELSON • DEPUTY CHIEF ADMINISTRATIVE JUDGE

### **A Call to Action: Advancing Equal Justice in New York's Courts**

In June 2020, amidst the hardships of an international pandemic that changed our way of life, our nation faced its most recent reckoning on issues of racism, bias, and inequality. These are longstanding issues, but recent events – most notably the death of George Floyd – cast a renewed spotlight on the inequality permeating all our institutions. The courts are no exception to this troubling reality. Our Chief Judge Janet DiFiore responded by commissioning former Obama Administration Cabinet member Jeh Johnson to conduct a thorough review on issues of racial bias within the New York State court system. The ensuing report from Secretary Johnson and his law firm team identified that racism and bias remain very present throughout and within the court system. The report also set forth 13 distinct recommendations on how we all can and must do better to combat racism within the courts and promote a more fair and equitable justice system for all.

I have been appointed to lead the Equal Justice in the Courts Initiative focused on the implementation of these recommendations. I consider this work to be a defining moment of my career, which I will briefly describe below before discussing the Equal Justice in the Courts Initiative in detail.

This January, I celebrated my 18<sup>th</sup> anniversary as a Judge. After many years spent representing clients before judges of the NYC Family Court, I was appointed to the Family Court bench myself. I later served as Queens County Family Court Supervising Judge, and then, Administrative Judge of New York City Family Court. For close to four years, I have been honored to serve as the statewide Deputy Chief Administrative Judge for Justice Initiatives. Additionally, in my capacity as a Court of Claims Judge, I have presided over trials involving claims against the State of New York brought by pro se inmates, as well as felony youth cases in New York County Supreme Court's Youth Part. As a judicial leader, I oversee the work of the Office for Justice Initiatives ("OJI"), tasked with ensuring meaningful access to justice for all who pass through the doors of every New York State courthouse. The work of the OJI has dramatically expanded recently in alignment with the belief that necessary enhancements to access to justice encompasses all courts.

The Office for Justice Initiatives, led day-to-day by Chief of Staff Michelle Smith and Deputy Chief of Staff Rosemary Martinez-Borges, is comprised of five divisions, in recognition of the diverse nature of our work and the varied expertise and specialties of our staff.



The five divisions of the Office for Justice Initiatives are:

- Access to Justice, led by Lisa Zayas, Esq.

The Access to Justice Division includes much of the work that comprised the original core of the Office for Justice Initiatives, including pro bono programs for attorneys and volunteer Court Navigators, programs to assist court users with disabilities, community outreach, and a plain language initiative designed to make legal information easier to understand. This work also includes technological resources such as DIY Forms, a document assembly program that uses plain language to assist court users in filling out legal forms, and the CourtHelp website, which provides free legal information to the public on a variety of legal topics.

- Judiciary Civil Legal Services, led by Diana Colon, Esq.

The Judiciary Civil Legal Services (JCLS) Division is responsible for programmatic leadership and oversight of the JCLS program, which distributes approximately eighty-five million dollars to 78 JCLS grantees for the provision of direct civil legal services and access to justice services to address the vital legal needs of low-income New Yorkers. JCLS funding, which is authorized by our Chief Judge and approved by the Governor and Legislature, provides low-income New Yorkers with meaningful access to the courts and the legal assistance they need to secure the essentials of life, such as housing, family matters, access to healthcare and education, and subsistence income. This critical initiative benefits millions of New Yorkers each year. JCLS funding priorities are enhanced by public hearings on the civil legal needs of New Yorkers held by the Chief Judge each year. The findings of those hearings are then reported to the Governor and New York State Legislature.

- Child Welfare and Family Justice, led by Trista Borra, JD, MSW

Building off my Family Court background, I added the Child Welfare and Family Justice Division to our portfolio of responsibility. This Division includes the Child Welfare Court Improvement Project, a federally funded program operating in all states and American territories to promote the safety, lasting family stability, and well-being for child welfare-involved children and families. The work of this Division includes leading regional interdisciplinary stakeholder workgroups, conducting CLE trainings, and supporting a robust and expanding child welfare mediation program.

- Youth and Emerging Adult Justice, led by Thomas V. O'Neill, Esq.

My service as a Judge presiding over young people charged as adults in the Youth Part of New York County Supreme Court led to OJI's work in Youth and Emerging Adult Criminal Justice. This Division focuses on the ongoing implementation, guidance, and training on the Raise the Age law, and promoting innovation in the expanding 18-25-year-old emerging adult justice field.

- Policy and Planning, led by Steven Helfont, Esq.

As of January 1, 2021, I assumed leadership of the Office of Policy and Planning (now the Division of Policy and Planning), overseeing over 300 problem solving and accountability courts, designed to address areas such as opioid and other drug abuse, juvenile and family treatment, mental health, veterans' treatment, human trafficking intervention, domestic violence, young adult diversion, impaired driving, and community courts. All these courts have specially trained judges and staff with coordinated enhanced services for participants. The Division of Policy and Planning also leads our state court system foreclosure policy work.

While the work of OJI is divided into these five distinct divisions, all our initiatives serve the same common purpose: striving to ensure that all who interact with our court system, regardless of who they are or where they come from, are treated with dignity and respect. The Equal Justice Report has shown that there remains much more work to be done to provide true justice for all. The mandate of the Equal Justice in the Courts Initiative is to implement the recommendations of the Special Adviser on Equal Justice Report on racial bias within the court system.

Before continuing, I pause here to recognize the great pain being experienced this season – as has occurred in many past seasons – by the Asian-American and Pacific Islander communities throughout our state and beyond. The increase in expressions of racism and violence targeted towards members of our community, and the questions about the responses from our systems of justice, is something we must acknowledge and redress.

In early June 2020, we collectively witnessed on our devices and screens the horrors of a life taken in a way that challenges our notions of racial justice, and the role played by our systems of justice, including the court systems in which we all serve. This tragedy was compounded by reported instances of deeply disturbing racist images and messages displayed and shared on social media not long after the death of George Floyd – by our very own court employees, on our home turf in New York.

On the day of George Floyd's funeral, Chief Judge DiFiore demonstrated her courage and unique leadership during these troubling times. She engaged former Obama administration cabinet member Jeh Johnson, a respected attorney and public servant, to serve as Special Adviser to the Courts and conduct an Equal Justice Review of our court system's policies and practices as they relate to issues of racial bias and fairness in our courts. Speaking on this subject, Chief Judge DiFiore said,

"The death of George Floyd, and the issues it has brought into harsh focus, are a painful reminder of the repeated injustices and institutional racism that have long undermined the value and unity of our nation. The court system's commitment to these values is especially vital. Their preservation is a cornerstone of the rule of law, the subject of sacred

oaths taken by all judges and lawyers, and the daily endeavors of the thousands of court employees around the State who work tirelessly to advance the cause of justice.”

Secretary Johnson and his assembled team performed a rigorous and independent assessment of our court system. They conducted close to 100 interviews with nearly 300 individuals, including current and former judges and court staff, public and private law practitioners, bar, judicial and civic associations, and other community stakeholders. Secretary Johnson and his team’s expansive review also covered numerous submissions from the public, assessed past reports and ongoing work addressing racial bias in the courts, and examined Unified Court System policies and practices on hiring, promotion, workplace conduct and bias training.

This work culminated in the issuance of the Special Adviser on Equal Justice 100-page report, which opens with the welcome news that many who serve in our courts work hard to “get it right and make it better.” However, this encouraging finding is immediately followed by a more grim message: our court system still presents a dehumanizing experience for people who appear in overburdened, high-volume courts, who are disproportionately people of color and who are experiencing poverty, and the presence of racial intolerance, even from within the court system. These words, and much of the realities made clear in the report, are deeply painful to read, but reinforce the report’s call to action. We must strengthen and support our courts’ commitment to diversity and meaningful inclusion in our judicial and non-judicial personnel ranks, enhance and clarify our discrimination policies, and improve their enforcement.

The Equal Justice Report sets forth 13 recommendations in service of these goals, and I am privileged and honored to have been assigned by Chief Judge DiFiore and Chief Administrative Judge Marks to lead their implementation within the court system. The UCS executive implementation team includes leaders from Counsel’s Office, the Department of Public Safety, the Division of Professional and Court Services, the Division of Technology and Court Research, the Division of Human Resources (including Workforce Analysis), the Franklin H. Williams Judicial Commission, the Inspector General’s Office (including the Office of the Managing Inspector General for Bias Matters), the Jury Support Office, the New York State Judicial Institute, the Office for Justice Initiatives, the Office of Diversity and Inclusion, as well as other key OCA executive leaders.

I have been actively engaged with judicial and executive court system leaders, court managers, judges, and staff across the state to develop and implement our strategic plan on Equal Justice in the Courts. I am also meeting with fraternal organizations, affinity groups, and other stakeholders to ensure broad-based input as implementation plans are developed and acted upon. I recently met with hundreds of supervisory judges and court managers throughout the state, and we discussed their charge in leading local implementation of this work. I’m happy to report that I’ve heard from a number of court leaders who have begun plans for local working groups on equal justice.

With their support, I am confident that our implementation of the recommendations offered by the Equal Justice Report will result in a better, more fair system of justice. Those recommendations are as follows:

## **1. Commitment from the Top**

The first recommendation – considered the most important to Chief Judge DiFiore – is a commitment from the top, including judicial and executive court system leaders, to embrace a policy of zero tolerance for racial discrimination and bias in the courts. Judge DiFiore has fully embraced that principle and responsibility and expects that every member of the court system closely adheres to it. Other specific action items to express commitment from the top include:

- A commitment from the Chief Judge and Chief Administrative Judge to promote a diverse and inclusive judiciary and workforce including leadership appointments,
- Engaging the Office of Justice Support and Town and Village Resource Center to promote diversity and inclusion and ensure zero tolerance for racial bias in local courts,
- Promoting diversity and inclusion on all UCS Advisory Committees and Commissions,
- Promoting community outreach and engagement regarding implementation efforts,
- Explore the implementation of voluntary compliance with appropriate aspects of the Minority- and Women-Owned Business Enterprise Program to increase participation by such businesses in the procurement of UCS-funded professional services contracts,
- Including Equal Justice in the Courts and diversity and inclusion updates in the New York State Unified Court System Annual Report,
- Mandatory bias education for top judicial leaders and court managers in advance of presentation to others, and
- Assignment of local Equal Justice Champions to promote system improvement in all courts.

## **2. Promote Existing Institutions**

The F.H. Williams Judicial Commission and the UCS Office of Diversity and Inclusion are long-standing entities tasked with addressing issues of racial justice in the courts. These organizations must have a strong platform. They must be supported and incorporated into OCA initiatives to enable all members of the court system to understand and have access to the processes available to combat racial injustice. The Williams Commission and the Office of Diversity and Inclusion (ODI) have developed specific action plans for clarifying, promoting, and strengthening their impact. Informational materials regarding their roles, as well as that of the Inspector General’s office, have also been developed, and all accompanying websites have been enhanced to further clarify and make transparent the roles of these organizations.

### **3. Expand Bias Training**

The Unified Court System has engaged subject matter experts to assist in the development of mandatory comprehensive racial bias, cultural awareness, and procedural justice educational opportunities for all judges (including the Town and Village courts) and non-judicial staff. This enhanced training must include trauma informed practices and customer service skill building – a particularly crucial element for personnel who regularly interact with court users.

Our educational and professional development work will not be “one and done,” but instead involves the creation of a comprehensive plan of action that will include a variety of training modalities and resource sharing. The court system will also work with partner organizations, including bar associations, legal practitioners, and other legal interest groups, to create and co-sponsor a variety of training opportunities for the public and legal community.

### **4. Address Juror Bias**

We are consulting with subject matter experts to update the jury orientation video used in our state to address juror bias, develop new voir dire materials pertaining to bias, and plan to amplify civil and criminal pattern jury charges related to bias. All new voir dire question development materials, as well as potential enhancements to pattern jury instructions on implicit bias, will be made available for public comment prior to enactment.

### **5. Adopt a Social Media Policy**

As evidenced by the reprehensible Facebook post referenced earlier in this message, social media unfortunately has the potential to foster offensive or abusive language. The Unified Court System has reinforced and reaffirmed the firm zero tolerance stance on bias, discrimination, and harassment contained in its existing policies and rules, and has clarified that they apply to social media. A memorandum clarifying the courts system’s expectations for all UCS personnel regarding the anti-discrimination and anti-harassment policy was issued by Chief Judge DiFiore and Chief Administrative Judge Marks on February 3, 2021 and is available on the UCS public website. This policy provides clear guidelines regarding prohibited online communications (that comport with First Amendment considerations), including communications made via social media.

### **6. Strengthen the Inspector General Process for Bias Complaints**

We are engaged in a robust campaign and communications strategy to educate court system staff and court users about the existence and purpose of the Inspector General’s office, including the Bias Matters Unit, and procedures to lodge bias complaints. The Bias Matters Unit

will track and regularly report on racial bias complaints that have been received, investigated, and substantiated.

We have clarified and promoted the existing anonymous complaint, informal complaint and “no retaliation” policies to better assuage concerns about filing complaints. Additionally, we will develop processes to notify complainants and complaint subjects regarding status and outcome of complaints where appropriate.

The Unified Court System has also appointed Eva Moy from the Bias Matters Unit as an ombudsperson within the Inspector General’s Office. As ombudsperson, Ms. Moy will be available to answer questions concerning the complaint process.

## **7. Review of Rules Changes for Bias**

Included in the Special Adviser’s report, we are exploring the development of a process to review key legislative and rules proposals pertaining to the New York State Judiciary for potential bias or disparate impact on people of color. This review will include the Legislative team from Counsel’s Office, assisted by standing advisory committees to the Chief Administrative Judge and, where appropriate, the Williams Commission, ODI and OJI. Forming partnerships with bar and judicial association leaders is a particularly important factor to successfully executing this type of work, so that we may fully keep up to date with potential disparate impact of the thousands of new laws proposed yearly, including legislation, proposed constitutional amendments, and new rules and regulations.

## **8. Continue Progress on Translation and Interpretation Services**

Over 30% of New Yorkers speak a language other than English at home. It is critical that court translation and interpretation services are able to continue to respond to growing requests for language access services. As recommended by the Special Adviser’s report, the Unified Court System will continue robust implementation of the 2017 NYS Advisory Committee on Language Access strategic plan and will provide quarterly progress updates. Additionally, uniformed court officers and staff will receive regular training to learn best practices in working with those with limited English proficiency and deaf court users.

## **9. Improve Data Collection**

Data collection and analysis on the impact of racial bias in case outcomes is a critical tool in combatting and remedying that bias. The Special Adviser’s Report notes that current practices result in an opaque landscape that make it difficult to determine where data comes from, how it is collected, and where it is shared. UCS will enhance data transparency by making user-friendly

publicly available reports and explore collection and distribution of data points regarding race, ethnicity, sex and age in various court and case types. In addition to transparency, statewide implementation of the Unified Case Management System (UCMS) and regular trainings for clerks on data entry will help to ensure the accuracy of reported data.

UCS will also provide demographic data on judges in accordance with newly passed legislation amending Judiciary Law section 212, as well as other voluntarily collected data related to judges and non-judicial staff.

#### **10. Improve Diversity in HR Practices**

Improving diversity and inclusion within Human Resources practices will result in more representation of diverse talent across the entire court system workforce. New initiatives and practices will focus on increasing transparency in selection, interview, reclassification, and performance evaluation practices, developing best practices and diversity initiatives to recruit, maintain and promote diverse applicants for all court system positions, and engaging court managers throughout the state to monitor system improvement and evaluate success. Existing initiatives and practices will also be analyzed and enhanced to advance diversity and promote career opportunities.

#### **11. Enhance Trust between Court Officers and the Community**

We will spearhead a multitude of efforts to enhance trust between court officers and communities. These efforts include:

- Establish a community affairs officer in each court facility, along with an information desk and clear signage to address court user concerns,
- Create a robust community-and-the-courts outreach program,
- Engage in community listening sessions,
- Collaborate with local law enforcement community affairs entities,
- Mandate name tags for all uniformed court personnel, and
- Establish enhanced training on cultural awareness, tenets of customer service, trauma informed care principles, and procedural justice for court officers.

#### **12. Facilitate Navigation of Courthouses**

The Office for Justice Initiatives' Court Navigator Program provides specially trained volunteers and students who can give information, written materials, and general assistance to court users to welcome and assist them in navigating court buildings. This program will be expanded statewide so that all court users have a better opportunity to receive support and guidance upon their entry into the courthouse.



We will also improve directional courthouse signage in critical areas of courthouses, including but not limited to courtrooms, Help Centers, and locations for assistance from interpreters.

### **13. Independent Monitor**

An independent third party to oversee our reform efforts, issue public reports, and provide ongoing recommendations to us will help keep our court system accountable and ensure implementation of transformative change. Alphonso David, well-respected public servant, former Counsel to the Governor, and current President of the Human Rights Campaign, has been appointed to serve as Independent Monitor. He will review and guide our implementation endeavors.

While Mr. David has agreed to monitor the courts' work and progress as we engage in this significant system improvement endeavor, he will not be the only or final source of accountability. The Franklin H. Williams Judicial Commission will eventually serve as the permanent monitor of the Equal Justice in the Courts initiative. Additional internal and external monitors abound, as well as other official and informal monitors, including court users and the public at large.

Implementing these equal justice recommendations is two-fold work: Many of these recommendations are inward-facing, and require the courts to develop plans and policies and track their results; other recommendations are outward-facing, and must be done in collaboration with the community – particularly, members of judicial and bar associations. We fully expect all who are interested in the community at large to hold us accountable. To that extent, here are some ways that you can help our endeavors as we begin these challenging but necessary implementation efforts:

- **Read the Special Adviser on Equal Justice Report:** Although it is often distressing, please take the time to read all 100 pages of this remarkable report. The original Minorities Commission (now the Williams Commission) report on racial justice in the courts, issued over 30 years ago, is also useful to read to note its striking similarity to the Equal Justice Report. Share this work with your colleagues and make it required reading for those you supervise. A thorough comprehension of the issues we are facing is critical – to address issues of systemic racism, we must go beyond a superficial understanding of the issues presented.

The most discussed aspect of the Equal Justice report is not something courts can fix on our own: the under resourced, overburdened housing, family, and criminal courts. Secretary Johnson noted the dehumanizing and disparate impact that appearing in those courts has on court users of color and those living in poverty, that often results in what appears to be a “second-class system of justice.” Improvements for our high-volume courts require investments, resources, and

action by state and local executive and legislative branches of government in cooperation with the courts. That requires advocacy by all who are invested in true system improvement.

- **Encourage all within your sphere of influence to engage in the difficult, thorny, and necessary racial reckoning work** in their own homes, with their own families, their own friends, and in their workplaces. Education and engagement on issues of race and other bias should not be limited to lawyers and judges, but is a shared responsibility for us all. With our implementation of the Equal Justice in Courts Initiative we join the nation in seeking to combat systemic and institutional racism. All institutions and entities that interact with our courts are encouraged to engage fully in this work. Do not dismay if you encounter differing perspectives. While some may surprise you, this work, and your participation, is critical in this process of racial reckoning.
- **Look for local working groups that you can join.** Court leaders are already devising and establishing working groups on equal justice for their local courts and districts. There may be other equal justice groups among your own networks or associations – or you may wish to start your own. These working groups are an excellent way to meaningfully participate in equal justice work.

The Equal Justice in the Courts Initiative is still in its early stages, but it is deeply impactful at all levels of the court system. True and lasting impact requires much hard work and perseverance. This is a multi-faceted, multi-layered, and multi-year endeavor for which we are building a foundation and a living strategic planning document to guide court leaders throughout the state. We will attempt new interventions, some of which may not work. We will return to try other new things.

These efforts will not come swiftly or easily. Racial bias and discrimination take many forms and have many layers. Much of this work intersects with other reform efforts to combat bias and discrimination related to gender, sexual orientation, gender identity or gender expression, disability, and more – all of which we are fully responsible to address. Our efforts to realize equal justice can only be successful with the partnership of all those who engage with our court system. With your help, our endeavors will improve not only the courts, but our communities and those around us. I have deep faith and a strong belief that together we will make great strides.