



New Jersey Courts

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Jury Reforms: Pilot Program on Attorney- Conducted Voir Dire

August 2022

Background

The Supreme Court in State v. Andujar (2021) called for a Judicial Conference on Jury Selection to examine current processes and develop recommendations for improvements, including ways to reduce the effects of bias in jury selection.

The Court conducted the Conference in November 2021, bringing together members of the New Jersey bar and public, national experts on jury processes, and three Chief Justices from other states that have undertaken jury reform.

Background

The Conference yielded preliminary suggestions as to how to:

- Engage more eligible people as jurors;
- Support more effective voir dire; and
- Mitigate against the effects of discrimination and bias.

Background

Participants expressed support for collection and analysis of juror demographic information, new methods of questioning jurors, a clear and liberal standard for dismissing jurors for cause, and a revised approach to handling objections to peremptory challenges.

Attorneys also championed a transformation from judge-led voir dire -- which has been the practice in New Jersey for more than 50 years -- to attorney-conducted voir dire, or ACVD.

Background

ACVD is intended to support more targeted questioning, and more candid disclosure, in order to discover relevant information about jurors.

With enhanced information, attorneys can raise informed challenges for cause based on individual reasons why a juror may be unable to be fair in a particular case, thereby avoiding reliance on a gut feeling, hunch, or group bias.

The proper dismissal of jurors for cause in turn facilitates a fairer and more equitable process of jury selection.

Background

A Judicial Conference Committee comprised of Executive Branch and Legislative Branch leaders, justices, judges, and legal and community stakeholders worked for months to develop recommendations on the topics highlighted in Andujar and discussed at the Conference.

Background

As recommended by the broad membership of the Judicial Conference Committee, the Court in July 2022 authorized a series of reforms, including the following:

- Collection and sharing of juror demographic information;
- Use of case-specific written questionnaires;
- Formalization of a liberal standard for for-cause dismissals;
- Adoption of a new Court Rule to reduce bias in the exercise of peremptory challenges; and
- A consent-based pilot program on ACVD.

Overview

The following slides introduce and explain key elements of the ACVD Pilot Program with video illustrations of each phase.

All video content is curated from mock jury selections conducted in the pilot vicinages in July 2022.

- The July 2022 mock demonstrations introduced New Jersey judges and attorneys to what ACVD is and how the pilot program is intended to work. The mock selections were not intended to suggest a single or preferred way that attorneys should conduct ACVD.

ACVD Pilot Program

1. Before the trial date, the judge and attorneys will conference the case and discuss willingness to opt into the ACVD Pilot Program.
2. If there is agreement to participate in the Pilot Program, the judge will conduct a hearing with the defendant and counsel.

ACVD Pilot Program

3. In addition to the oral record regarding the ACVD process and voluntary reduction in peremptory challenges, all parties will execute a written consent and waiver, approved by the judge.

This [video](#) shows an example of the hearing at which the State and the defense, including the defendant, agree to participate in the Pilot Program.

Rule 1:8-5 Petit Jury List

As in current practice, the Rule 1:8-5 petit jury will continue to include lists of qualified jurors who are expected to report for service.

Consistent with amendments to Rule 1:8-5, effective September 1, 2022, the petit jury list will also include lists of jurors who have been dismissed (based on lack of qualification), deferred, or excused (based on statutory grounds) before reporting.

Rule 1:8-5 Petit Jury List -- Demographic Data

For cases in the ACVD Pilot Program, the Rule 1:8-5 list will also include aggregate demographic information (race, ethnicity, and gender) for the jury pool.

Distribution of pool-level demographic information will expand beyond cases in the ACVD program sometime in 2023.

ACVD Pilot Program

4. For cases in the ACVD Pilot Program, the judge will conference with the attorneys before the trial date.

A key purpose of the pretrial conference on jury selection is to customize the electronic written questionnaire that will be distributed to and completed by jurors before oral voir dire.

ACVD Pilot Program

The use of a case-specific electronic questionnaire:

- Enables early dismissal of jurors who cannot serve based on hardship or cause;
- Protects privacy and encourages candid responses from jurors who might be reluctant to disclose certain experiences or views orally; and
- Supports effective voir dire by providing attorneys with detailed, relevant information about prospective jurors before oral questioning.

ACVD Pilot Program

The pretrial conference on jury selection also provides an opportunity for the judge and attorneys to address **procedural** (not substantive) aspects of voir dire.

The mandatory model voir dire questions are not used in ACVD. ACVD is a flexible and fluid process that begins from the premise that all relevant questions are permissible.

Accordingly, the pretrial conference is not meant to involve disclosure of specific questions that either attorney intends to ask, or to impose limits on the scope of relevant inquiry.

ACVD Pilot Program

This [video](#) shows an example of the pretrial conference on jury selection issues.

- The judge and attorneys agree on additional questions to include in the questionnaire.
- The group also discusses procedures regarding the timing of sidebar and certain challenges.

ACVD Pilot Program

5. When jurors report to the courthouse, they will receive a link to the electronic questionnaire. While in Jury Assembly, jurors will complete the questionnaire on their smartphone or with Judiciary tablets.

6. Jury management will compile the responses and provide the electronic spreadsheet of those responses to the judge and attorneys (who are present in the courtroom).

ACVD Pilot Program

7. The judge and attorneys will review the juror responses to the questionnaire and address any hardship challenges, as well as potential challenges for cause.

This [video](#) shows this pre-voir dire process.

- The judge with input from counsel determines certain pre-voir dire dismissals.
- The judge and attorneys speak with jurors at sidebar, before bringing the panel to the courtroom.

Refined Data Categories

As illustrated in the videos, the judge will specify the reason why a juror concludes service and will differentiate between hardship dismissals and excusals for cause.

This refinement to longstanding data collection categories will enable further study of the reasons why reporting jurors do not proceed to empanelment.

Amendments to Rule 1:8-3(b)

It will also support evaluation of the handling of applications for for-cause challenges under the clear, low standard established in Rule 1:8-3(b) (as amended effective September 1, 2022).

Pursuant to the amended rule:

If the court finds there is a reasonable basis to doubt that the juror would be fair and impartial, the court **shall** grant the for-cause challenge and state the reason for its determination.

ACVD Pilot Program

8. Jurors who are not dismissed based on answers to the questionnaire (or after sidebar) will proceed for in-person voir dire.

An initial group of jurors will proceed to the courtroom. Other jurors attached to the case will remain in jury assembly.

Note on Logistics

- By way of example, an initial panel of 100 jurors might complete the electronic written questionnaire.
- 15 of those jurors might be dismissed for hardship or excused for cause based solely on responses to the written questionnaire.

Note on Logistics

- Of the remaining 85 jurors, a panel of 60 might be sent to the courtroom.
- Note: Panel size would be based on the number of jurors who can be accommodated in the courtroom without any required social distancing. A larger courtroom and larger panel would be used as necessary, such as for a high profile case.

Note on Logistics

- In the courtroom, voir dire questions would be posed to a group of 28 jurors – the “expanded box” – while the other 32 jurors in the courtroom listen to voir dire.
- Those 32 peripheral jurors would be used to substitute for jurors in the expanded box who are dismissed during voir dire.

ACVD Pilot Program

9. The judge will welcome the jurors, describe the case, and ask foundational questions about qualification, availability, knowledge of parties, and familiarity with other jurors. The judge will advise jurors that they have the option to request to speak privately, at sidebar, if they do not want to answer a question in front of the group.

This [video](#) shows the judge addressing the initial jury panel.

ACVD Pilot Program

10. The attorneys will proceed with questioning, starting with the prosecutor.

These videos ([video 1](#); [video 2](#)) show examples of prosecutor voir dire. The videos show objections raised by counsel and decided by the judge, as well as sidebar discussions.

ACVD Pilot Program

11. The defense attorney will then conduct oral voir dire.

These videos ([video 1](#); [video 2](#)) provide examples of defense voir dire. The videos include objections raised by counsel and decided by the judge, as well as sidebar discussions.

ACVD Pilot Program

Note: Though not illustrated in these videos, the prosecutor can question again after the conclusion of defense voir dire (and the defense will have the same chance after the prosecution concludes), and so on as necessary to voir dire all jurors.

Note on Logistics

- In an actual selection, a juror who is dismissed for hardship or excused for cause will leave the courtroom.
- A juror from the periphery (who has been listening to the questions) will fill in that dismissed juror's empty seat.
- This process will repeat so that the attorneys pose questions to a full expanded box of 28 jurors.

Note on Logistics

- If the initial panel of 60 jurors is depleted to under 28, additional jurors from the assembly room will be called to the courtroom.
- As jurors are added to the voir dire in progress, the attorneys will be permitted to ask additional questions so that all prospective jurors are subject to voir dire.

ACVD Pilot Program

12. In addition to hardship and for-cause challenges exercised during the course of voir dire, additional challenges may be exercised after the conclusion of questioning. The end result will be a panel of 28 jurors from which the jury will be selected.

ACVD Pilot Program

13. The list of 28 jurors in the expanded box will be randomized, and 14 jurors will be drawn at random and seated in the traditional jury box.

14. Attorneys will exercise peremptory challenges individually, in the presence of the jury. Consistent with current practice, if a juror is stricken, another juror will be selected (following the randomized sequence) to fill the empty seat.

Challenges for Cause & Peremptory Challenges -- Mock Selection

The following videos illustrate challenges.

- The [first video](#) shows applications and determinations of for-cause challenges (at sidebar).
- The [second video](#) illustrates the exercise of peremptory challenges.

ACVD Pilot Program

To recap:

100 jurors complete the questionnaire;

- 15 jurors are dismissed based on questionnaire responses;

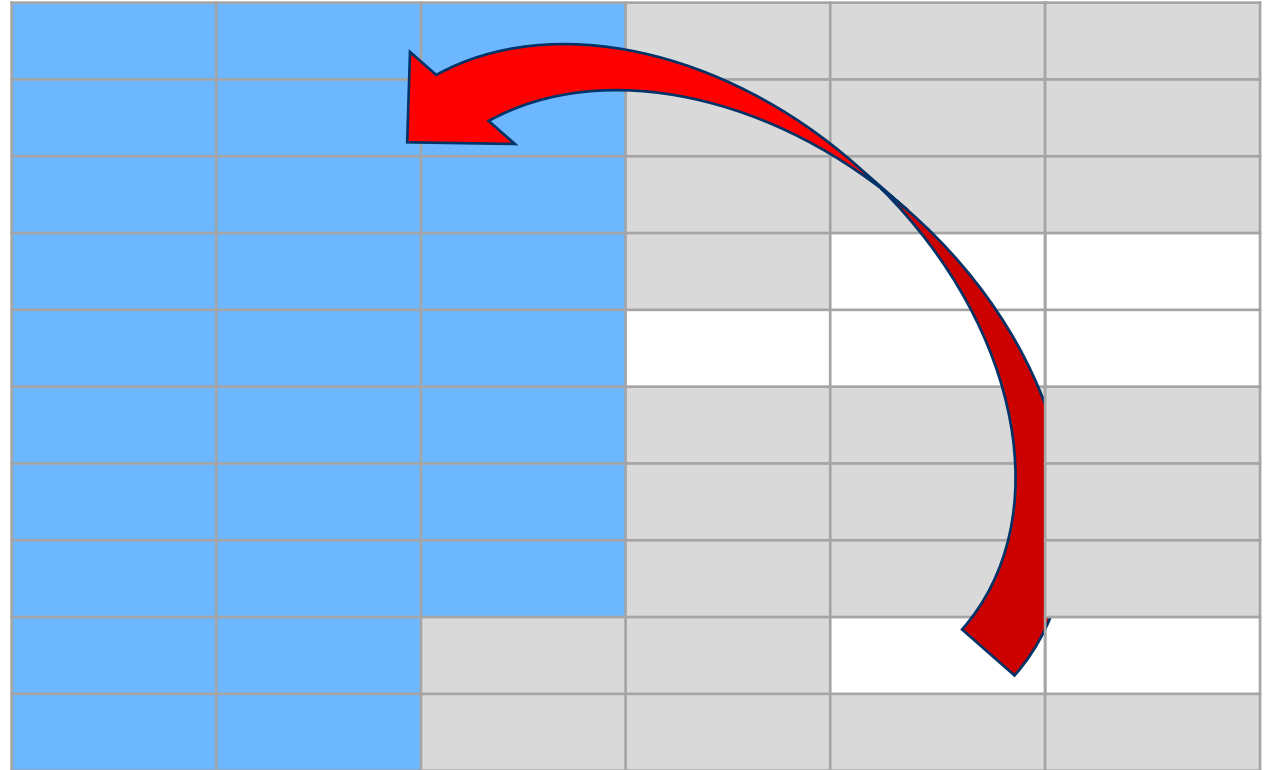
- 60 jurors report to the courtroom (w/ remainder staying in jury assembly)



ACVD Pilot Program

Questions are posed within hearing of all jurors, with the 28-person expanded box responding to questions.

As jurors in the box are excused, others from the periphery are substituted.



ACVD Pilot Program

Once for-cause challenges have been completed, the 28-juror box is randomly sequenced.

The first 14 jurors are seated in the jury box.

Attorneys exercise peremptory challenges.



ACVD Pilot Program

After each peremptory challenge is exercised, a new juror is substituted.

Once counsel is satisfied with the jury, any remaining jurors (the remainder of the 28-juror box) are dismissed.



Rule 1:8-3A (“Reduction of Bias in the Exercise of Peremptory Challenges”)

For cases in the ACVD pilot program, any objection to a peremptory challenge will be handled in accordance with the provisions of new Rule 1:8-3A.

For further information, see the Court’s [July 12, 2022 Rule Amendment Order](#).

Additional materials on Rule 1:8-3A will be posted on the Judiciary’s website.

Next Steps

The Supreme Court has authorized a Pilot Program on ACVD in order to explore options to improve jury selection in order to support the involvement of eligible jurors and to reduce the effects of bias.

ACVD is intended to work in conjunction with the other interrelated reforms recommended by the Judicial Conference Committee and authorized by the Court.

Next Steps

As with any change to longstanding practices, this will be a learning process with opportunities for ongoing adjustment.

The Judiciary invites feedback on the pilot program, including suggestions for potential refinements.