

# Attachment A

## Glossary of Jury Terminology

**Absolute Disparity:** “Absolute disparity” is one measure of under- or overrepresentation in jury venires. The Supreme Court in Berghuis v. Smith, 559 U.S. 314 (2010), explained that “[a]bsolute disparity’ is determined by subtracting the percentage of African-Americans in the jury pool (here, 6% in the six months leading up to Smith’s trial) from the percentage of African-Americans in the local, jury-eligible population (here, 7.28%). By an absolute disparity measure, therefore, African-Americans were underrepresented by 1.28%.” Compare Comparative Disparity.

**Assignment Judge:** In New Jersey, the Assignment Judge is the highest judge in a single or multi-county vicinage and oversees county-level jury operations. Among other jury-related responsibilities, the Assignment Judge determines the term of service for petit (trial) jurors and has final authority as to juror requests for pre-reporting excusals and deferrals, subject to delegation of such authority to staff such as the jury manager for straightforward matters.

**Attorney’s List:** The Attorney’s List includes all confirmed jurors for a particular selection date, with the names of those jurors listed alphabetically. Compare Judge’s List.

**Batson Challenge:** A Batson challenge -- named for Batson v. Kentucky, 476 U.S. 79 (1986) -- is a challenge by one party to another party’s use of peremptory challenges to strike potential jurors on prohibited grounds, e.g., race, sex, or ethnicity.

The procedure to be followed when one party asserts that the other party is exercising peremptory challenges to exclude jurors on an impermissible basis is outlined in State v. Osorio, 199 N.J. 486 (2009). Osorio refined procedures originally set forth in Gilmore, as detailed in the Bench Manual (pp. 24-25).

In Osorio, 199 N.J. at 492-93, the Court stated that a three-step process must be employed in order to assess an assertion that an exercised peremptory challenge was based on an impermissible

group bias and described the three-step process in the following way: Step one requires that, as a threshold matter, the party contesting the exercise of a peremptory challenge must make a prima facie showing that the peremptory challenge was exercised on the basis of race or ethnicity. That burden is slight, as the challenger need only tender sufficient proofs to raise an inference of discrimination. If that burden is met, step two is triggered, and the burden then shifts to the party exercising the peremptory challenge to prove a race- or ethnicity-neutral basis supporting the peremptory challenge. In gauging whether the party exercising the peremptory challenge has acted constitutionally, the trial court must ascertain whether that party has presented a reasoned, neutral basis for the challenge or if the explanations tendered are pretext. Once that analysis is completed, the third step is triggered, requiring that the trial court weigh the proofs adduced in step one against those presented in step two and determine whether, by a preponderance of the evidence, the party contesting the exercise of a peremptory challenge has proven that the contested peremptory challenge was exercised on unconstitutionally impermissible grounds of presumed group bias.

**Biographical Questions:** The model voir dire questions originally promulgated by directive and later incorporated in the New Jersey Judiciary Bench Manual on Jury Selection include standard biographical questions. For a criminal jury selection, the biographical question (which must be asked of each juror who has not been excused during preliminary questioning) is as follows:

You have answered a series of questions about criminal trials and criminal charges. Now we would like to learn a little bit about each of you. Please tell us the type of work you do; whether you have ever done any type of work which is substantially different from what you do now; whether you've served in the military; what is your educational history; who else lives in your household and the type of work they do; whether you have any children living elsewhere and the type of work they do; which television shows you watch; any sources from which you learn the news, i.e., the newspapers you read or radio or TV news stations you listen to; if you have a bumper sticker that does not pertain to a political

candidate, what does it say; what you do in your spare time and anything else you feel is important.

[Note: This question is intended to allow and encourage the juror to speak in a narrative fashion, rather than answer the question in short phrases. For that reason, it is suggested that the judge read the question in its entirety, rather than part by part. If the juror omits a response to one or more sections, the judge should follow up by asking, in effect: “I notice you didn’t mention [specify]. Can you please tell us about that?”]

**Called Off:** Because jurors are summoned to report around eight weeks in advance, it sometimes occurs that more jurors are scheduled to report than necessary on a given date. When this happens, jury management will “call off” jurors who are not needed through issuance of email and text messages and updates to the jury-reporting message on the Jurors page of the Judiciary website. A juror who is called off for one day of a multi-day term may be required to report on a subsequent day within that term.

**Challenge for Cause:** The goal of jury selection is to empanel a fair and impartial jury. Accordingly, jurors will be excused for cause either by the court or upon a party’s request when it appears that the juror will have difficulty being fair and impartial. A potential juror who claims that service will pose a hardship -- e.g., because the trial is anticipated to be lengthy and the individual will not be paid by their employer during service -- is included within the category of cause challenges (in contrast to peremptory challenges).

**Cognizable Group:** A “cognizable group” of jurors or potential jurors refers to one with a common trait or characteristic among them that is recognized as distinguishing them from others. In State v. Gilmore, 103 N.J. 508 (1986), the Supreme Court noted that cognizable groups might be based on race, religion, color, ancestry, national origin, or gender. In Andujar, the Court noted that such protection from categorical exclusion extends as well to individuals identified based on sexual orientation or other primary aspects of identity.

**Community:** For purposes of fair cross-section analysis, a “community” refers to the geographic area from which a jury is summoned and selected. The Sixth Amendment provides in part that, “[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury *of the state and district wherein the crime shall have been committed*, which

district shall have been previously ascertained by law.” In New Jersey, the community for trial jury purposes is determined at the county level. Only State Grand Jury is selected from the larger statewide community.

**Comparative Disparity:** “Comparative disparity” is one method of measuring the representativeness of jury venires. As described by the Supreme Court in Berghuis v. Smith, 559 U.S. 314 (2010), “[c]omparative disparity’ is determined by dividing the absolute disparity (here, 1.28%) by the group’s representation in the jury-eligible population (here, 7.28%). The quotient (here, 18%), showed that, in the six months prior to Smith’s trial, African-Americans were, on average, 18% less likely, when compared to the overall jury-eligible population, to be on the jury-service list.” Compare Absolute Disparity.

**Compensation:** Petit (trial) jurors are paid \$5 for each day of service. If a petit juror serves more than three days, the pay rate will increase to \$40 per day beginning on the fourth day. Grand jurors are paid \$5 for each day of service. Except for State Grand Jury, jurors are not reimbursed for expenses.

**Confirmed:** A juror is “confirmed” after completing the qualification process and indicating ability and availability to appear on the scheduled reporting date. The Rule 1:8-5 list is comprised of confirmed jurors and does not include jurors who have been dismissed as ineligible for service, or who have been excused or deferred.

**Deferred:** A juror who meets statutory qualification criteria can request to be deferred (or rescheduled) to a future date. Initial deferral requests are liberally granted.

**Demographic Information:** The New Jersey Supreme Court in State v. Dancil, 248 N.J. 114 (2021), directed the Administrative Office of the Courts to collect voluntary juror demographic information at the qualification phase. Such demographic information will include race, ethnicity, and gender.

**Dismissed:** At the pre-reporting stage, a juror is “dismissed” if they are excluded from the pool because they do not meet statutory qualification criteria. The term is sometimes also used to refer to a juror who is removed during the voir dire process, whether based on hardship, other cause grounds, or peremptory challenge.

**Duplicate Elimination:** As part of the “sort merge” process used to create the master jury list, the Judiciary attempts to eliminate duplicates, i.e., records that pertain to the same person as drawn from multiple sources. This process is designed to ensure that a potential juror is equally likely to be summoned whether they have records in one or more contributing sources. See also Master Jury List; Sort Merge.

**Empaneled (or Impaneled):** A juror who is selected to serve on a trial, or as part of a grand jury panel, is “empaneled.” In the petit (trial) jury context, additional alternate jurors are also selected.

**eResponse:** Summoned jurors are encouraged to complete qualification online through the eResponse jury portal. eResponse includes all of the same questions, in the same sequence, as the hard copy summons questionnaire. Statewide, around 85% of jurors complete qualification using eResponse.

**Excusal (Pre-Reporting):** N.J.S.A. 2B:20-10 sets forth grounds for pre-reporting excusals. Such grounds include: age 75 years or older; recent jury service; severe hardship, including medical inability, financial hardship, and caregiving or specialized employment responsibilities; or service as a volunteer firefighter or on a first aid squad. The Judiciary maintains records of jurors who are excused before reporting and the basis for such excusal.

**Explicit Bias:** “Explicit bias” refers to the attitudes and beliefs we have about a person, group, or other entity on a conscious level. It includes those preferences and views of which we are consciously aware, e.g., a preference for basketball over tennis, or for springtime over winter.

**Failure to Appear:** In the jury context, “failure to appear” refers to jurors who have completed the qualification process and confirmed that they will report for service but who do not appear on the scheduled reporting date. Failure-to-appear rates for most counties are around 10 to 15 percent. Jury managers adjust the numbers of jurors required to report based on the documented and anticipated percentage who will fail to appear.

**Failure to Respond:** A potential juror is categorized as having failed to respond if the summons notice and follow-up summons questionnaire are not returned as undeliverable, but the juror does not complete the qualification process or otherwise communicate with the court. Statewide, up to 20 percent

of potential jurors fail to respond when summoned. In some situations, the summons document may not have reached the intended recipient.

**Fair Cross-Section:** Fair cross-section analysis is guided by three United States Supreme Court cases. In the first, Taylor v. Louisiana, 419 U.S. 522 (1975), the Court held that the systematic exclusion of women from jury service violated a defendant's constitutional right to an impartial jury. A Louisiana statute excluded women from jury service unless they filed a written declaration of their desire to be subject to same. Consequently, while women comprised 53% of the jury-eligible population, they accounted for less than 1% of those summoned for jury service, as well as zero members of the venire. The Court emphasized that representativeness was relevant to the jury selection process, not the resulting jury.

[I]n holding that petit juries must be drawn from a source fairly representative of the community we impose no requirement that petit juries actually chosen must mirror the community and reflect the various distinctive groups in the population. Defendants are not entitled to a jury of any particular composition . . . but the jury wheels, pools of names, panels, or venires from which juries are drawn must not systematically exclude distinctive groups in the community and thereby fail to be reasonably representative thereof.

[Id. at 538.]

Next, in Duren v. Missouri, 439 U.S. 357 (1979), the Court considered a statutory scheme in which all women were entitled to claim an exemption from jury service and women who failed to respond when summoned were presumed to elect such exemption. As a result, while women accounted for 54% of the jury-eligible population, they constituted only 26.7% of those summoned for jury service and only 14.5% of the venires from which jurors were selected. Such disparity was held to violate the constitutional guarantee of a fair and impartial jury.

In Duren, the Supreme Court established a three-prong test to evaluate fair-cross-section challenges to the jury selection process:

In order to establish a prima facie violation of the fair-cross-section requirement, the defendant must show (1) that the group alleged to be excluded is a "distinctive" group in the

community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury-selection process.

[Id. at 364.]

The next fair cross-section challenge considered by the Court was based upon race rather than gender. In Berghuis v. Smith, 559 U.S. 314 (2010), an African-American defendant convicted of murder by an all-white jury in Kent County, Michigan, challenged the composition of the jury venire, asserting that a juror-assignment procedure systematically excluded African Americans from jury pools for felony matters.

The Court held that the evidence failed to demonstrate systematic exclusion of African Americans and that a fair-cross-section challenge could not prevail based on a laundry list of factors that, taken together, might result in underrepresentation of a particular population in jury pools. The Court declined “to take sides today on the method or methods by which underrepresentation is appropriately measured” and did not sanction to the exclusion of other methods the comparative disparity test embraced by the Sixth Circuit or the absolute disparity approach advanced by the State. Id. at 329-30.

**Grand Juror:** The Judiciary summons all jurors -- petit, county grand, and state grand -- using the same master jury list. Whereas a petit (trial) juror is required to report during a specified term for potential selection for a single trial, a grand juror, if empaneled, serves on a routine basis (typically one or two days per week) for a period up to 20 weeks.

**Implicit Bias:** The Supreme Court in Andujar explained that implicit bias is different from explicit bias of which we are consciously aware. “Implicit bias refers to . . . attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner.” (quoting Cheryl Staats et al., Kirwan Inst. for the Study of Race and Ethnicity, Implicit Bias app. at 62 (2015), <http://kirwaninstitute.osu.edu/wp-content/uploads/2015/05/2015-kirwan-implicitbias.pdf>.) The Court noted that “[s]uch biases ‘encompass both favorable and unfavorable assessments, [and] are activated involuntarily and without an individual’s awareness or intentional control.’ In other words, a

lawyer or self-represented party might remove a juror based on an unconscious racial stereotype yet think their intentions are proper.” (quoting ibid.)

**Judge’s List:** The Attorney’s List includes all confirmed jurors for a particular selection date, with the names of those jurors listed randomly. Compare Attorney’s List.

**Jury Charge:** Judges administer standard “charges” -- i.e., instructions -- to the jury at various junctures in the process. The jury charge is one vehicle to advise jurors of their role and responsibility, including their duty to operate impartially.

**Jury Management System (JMS):** The Judiciary uses a statewide, integrated jury management system (JMS) to create pools; issue summonses; track and document dismissal, deferral, and excusal requests; call off jurors; create panels; and manage juror attendance and payment.

**Jury Manager:** The jury manager is a court executive with responsibility to manage county-level jury operations under the direction of the Assignment Judge. Pursuant to N.J.S.A. 2B:20-9, the Assignment Judge may delegate certain routine administrative tasks to the jury manager.

**Master Jury List:** N.J.S.A. 2B:20-2 governs the composition of the master jury list and provides in part that

[t]he names of persons eligible for jury service shall be selected from a single juror source list of county residents whose names and addresses shall be obtained from a merger of the following lists: registered voters, licensed drivers, filers of State gross income tax returns and filers of homestead rebate or credit application forms.

The Judiciary annually updates the master jury list. See Duplicate Elimination.

**Model Voir Dire Questions:** The New Jersey Judiciary Bench Manual on Jury Selection includes model voir dire questions for civil and criminal trials. Those questions include qualification criteria, standard yes/no questions, open-ended questions, and biographical questions.

**National Change of Address (NCOA):** The NCOA registry is one source used by the Judiciary to ensure that contact information for potential jurors remains current. Once the master jury list is compiled, the list is forwarded to cross-check and update based on United States postal information so as to include the most current official address for potential jurors.

**Noncompliant:** Two categories of jurors are considered “noncompliant”: those who never respond to the summons (Failure to Respond) and those who respond and confirm service but do not report when scheduled (Failure to Appear). The Judiciary follows up with noncompliant jurors by rescheduling them for a future service date. The Judiciary before the COVID-19 pandemic was exploring the use of additional outreach efforts, such as requiring jurors who repeatedly failed to appear to report before a judge to explain their noncompliance.

**Not Reached:** A juror who reports for service and is sent to voir dire but is not questioned is “not reached.” The percentage of jurors per venire who are not reached is the third phase of juror utilization, following the percentage told to report and the percentage sent to voir dire. Jurors who are not reached are not engaged in the jury selection process and may view their time as wasted.

**One-Step:** In a one-step summoning process, the summons both directs the potential juror to complete qualification and notifies them of their reporting date. In a two-step process, the initial summons only requires that the recipient complete qualification. A second summons is sent in the future, once the reporting date is determined.

**Open-Ended Questions:** Open-ended questions -- questions that ask jurors to express their thoughts, feelings, and attitudes about particular issues -- may be posed to the individual juror either in open court or at side bar.

**Orientation:** By the time prospective jurors enter a courtroom for the actual voir dire and selection process, they have undergone several orientation and organizational procedures. The jury manager is responsible to provide or oversee the standard orientation process, which includes a review of qualification requirements and instructions as to policies, such as those governing electronic devices in court facilities. During orientation, jurors watch the “You, the Juror” video and receive county-specific information about parking, lunch options, and other operational details.

**Panel:** As used in jury management, the panel includes all confirmed and reporting jurors who are available on the selection date. The panel does not include potential jurors who did not receive or did not respond to the jury summons.

**Peremptory Challenge:** N.J.S.A. 2B:23-13 allocates set numbers of challenges, or strikes, that can be used by attorneys to remove a juror for any reason, other than a discriminatory reason, without explanation. It provides as follows:

Upon the trial of any action in any court of this State, the parties shall be entitled to peremptory challenges as follows:

- a. In any civil action, each party, 6.
- b. Upon an indictment for kidnapping, murder, aggravated manslaughter, manslaughter, aggravated assault, aggravated sexual assault, sexual assault, aggravated criminal sexual contact, aggravated arson, arson, burglary, robbery, forgery if it constitutes a crime of the third degree as defined by subsection b. of N.J.S. 2C:21-1, or perjury, the defendant, 20 peremptory challenges if tried alone and 10 challenges if tried jointly and the State, 12 peremptory challenges if the defendant is tried alone and 6 peremptory challenges for each 10 afforded the defendants if tried jointly.
- c. Upon any other indictment, defendants, 10 each; the State, 10 peremptory challenges for each 10 challenges allowed to the defendants. When the case is to be tried by a jury from another county, each defendant, 5 peremptory challenges, and the State, 5 peremptory challenges for each 5 peremptory challenges afforded the defendants.

**Petit Juror:** A “petit juror,” or trial juror, is summoned to report for potential selection for a civil or criminal trial.

**Pool:** The jury “pool” refers to the starting group of potential jurors to whom summonses are mailed. An inclusive pool is the first step to support jury venires drawn from a fair cross-section of the community.

**Prescreening:** For lengthy trials, judges -- in consultation with counsel -- may authorize limited prescreening of prospective jurors as to their availability to serve for the anticipated duration of the trial.

**Qualified:** A potential juror is “qualified” if they meet all statutory criteria for service.

**Response Rate:** The “response rate” is the number of prospective jurors who respond to the jury summons questionnaire, either online or in hard copy. The rate is calculated by adding the numbers of (i) confirmed, (ii) disqualified, (iii) excused, and (iv) deferred jurors in a pool.

**Sort Merge:** As required by N.J.S.A. 2B:20-2, the Judiciary annually prepares the master jury list by combining records supplied by the Department of Taxation, the Motor Vehicle Commission, and the Board of Elections. The Judiciary uses an iterative sort-merge process that is designed to prioritize the most reliable and current record and to avoid duplicates.

**Source Records:** The three records custodians -- the Department of Taxation, the Motor Vehicle Commission, and the Board of Elections -- supply records to the Judiciary for purposes of the annual sort merge and creation of the master jury list. The records are the most current available from each custodian.

**Summons Notice:** The first document mailed to a potential juror is the “summons notice,” which directs the recipient to complete qualification using the eResponse online portal.

**Summons Questionnaire:** If a potential juror does not respond to the summons notice, then 21 days later a hard copy “summons questionnaire” will be issued. The summons questionnaire sets forth all qualification questions, in the same format and sequence as in eResponse.

**Summoned (or Summoned):** The pool of summoned jurors includes everyone to whom a summons is mailed.

**Term of Service:** In New Jersey, the term of petit jury service ranges from one day (or one trial) to up to one week (or one trial).

**Undelivered:** In all jurisdictions, some percentage of jury summons documents do not reach the intended recipient and instead are returned to the courts based on an outdated or insufficient address. Since the transition to the new JMS, the Judiciary has reduced the statewide undelivered rate to around 10 percent, which is a few points lower than the national average.

**Utilization:** Juror utilization is a measure of how effectively courts use their jury pools after they have gone to the trouble of summoning and qualifying jurors. It is typically measured in terms of (1) percentage of confirmed jurors told to report; (2) percentage of reporting jurors sent to voir dire; and (3) percentage of jurors sent to voir dire who are reached for questioning.

**Venire:** The term “venire” refers to the entire group from which jurors are drawn. Accordingly, the term may be used in some contexts to describe the full cohort of individuals summoned for jury service, or to the subset of individuals required to report to the courthouse, or even to the panel sent to a particular voir dire.

**Voir Dire:** Voir dire is the process of questioning prospective jurors. The Bench Manual provides as follows:

The trial court’s duty is to take all appropriate measures to ensure the fair and proper administration of a trial and that must begin with voir dire. A vital aspect of that responsibility is to ensure the impaneling of only impartial jurors by searching out potential and latent juror biases. To carry out that task, a thorough voir dire “should probe the minds of the prospective jurors to ascertain whether they hold biases that would interfere with their ability to decide the case fairly and impartially.” State v. Erazo, 126 N.J. 112, 129 (1991).

**Yield:** The juror yield is the number or percentage of jurors in a pool who are both (1) qualified for service and (2) available (i.e., did not request a pre-reporting excusal or deferral) to be called to report on their summons date.