

**Opening Remarks
Judicial Conference on Jury Selection**

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I'd like to begin by thanking Chief Justice Rabner, Judge Grant, and the Administrative Office of the Courts for organizing this Judicial Conference and for assembling such a diverse and distinguished group of New Jerseyans to examine this issue.

In recent years, leaders in the New Jersey legal community have worked together to develop a series of reforms designed to strengthen our criminal justice system, the most prominent of which resulted in the elimination of cash bail. One of the noteworthy aspects of these initiatives is that they were developed by consensus, with leaders across the ideological spectrum—including prosecutors and public defenders—joining together to advance meaningful reforms. Not everyone got everything they wanted, but everyone got the chance to be heard and contribute to the solution. I hope those prior efforts can serve as a model for the work of this Judicial Conference.

I want to make clear that I come to this Conference with an open mind, ready to listen to others and follow the evidence wherever it leads. To that end, I'd like to offer a few initial thoughts—not to establish red lines in negotiations, but to help frame our discussion today and in the coming months.

Federal and state courts have long held that juries must constitute a “representative cross section” of the community. My personal view is that this is not simply a constitutional obligation, but also a moral one. Our system of justice cannot function unless it reflects the rich diversity of our state and our society. Not only does broad representation lead to better, more thoughtful outcomes, but also bolsters public confidence in those outcomes.

Too many New Jerseyans—especially those in Black and brown communities—feel like they don't get a fair shake in our criminal justice system. We risk further marginalizing these communities if we cannot ensure basic fairness in how we select jurors.

So how do we achieve a representative cross section? I think it's helpful to consider two components of jury selection: the composition of the jury pool and the process of voir dire. In other words, how do we ensure that the jury pool truly reflects the diversity of our state, and then how do we preserve that diversity once the jury selection process moves inside the courtroom?

First, let's discuss the composition of the jury pool.

We must begin by acknowledging that while jury service is a responsibility of citizenship, it is also a burden—and that the weight of this burden correlates with the precariousness of one's personal finances. It is much easier to serve on a jury if your salary is not the sole source of your family's income; if you are not the primary caregiver for a young child or an ailing parent; if you are not dependent on public transportation to travel between towns.

We must find ways to limit the burden that jury service imposes on people of limited financial means—not simply because their lived experiences provide an important perspective inside the jury room, but

because we know that in New Jersey and throughout our country wealth and job stability can be proxies for race.

As we work to identify solutions, I hope that the Judicial Conference will also tackle the difficult task of determining what, exactly, constitutes a financial burden so significant that it should excuse a potential juror from service. Without clear standards, judges are left to make this determination on their own, which results in a lack in uniformity in the jury selection process.

In addition, I also hope that this Judicial Conference will explore whether we should modify any of the current restrictions on jury service. As you all know, for example, in New Jersey we categorically exclude from jury service any person who has ever been convicted of an indictable offense. In recent years, however, our state has sought to limit similar restrictions in other areas, including housing and employment. One possibility is that we move away from a categorical exclusion and instead conduct an individualized analysis of potential jurors based on the recency of their prior convictions and the relationship between the person's criminal record and the matters to be addressed at trial.

Second, I'd like to address the voir dire process.

I know that much of the conversation in the coming months will focus on peremptory challenges. But I actually think it's important to start with a discussion of for-cause challenges, since they offer certain advantages. For-cause challenges are structured like so many other processes in our adversarial justice system: one party proffers evidence supporting a juror's removal; the other party has an opportunity to refute that evidence; and then the judge makes a determination based on the facts and the law. This structure promotes transparency and accountability, with the judge serving as a check against improper gamesmanship.

Peremptory challenges operate differently because they are, well, peremptory. They no doubt offer certain benefits as well, including their speed and efficiency, and they allow experienced trial lawyers to rely on gut instincts that develop over many years and are sometimes difficult to articulate. But the same attributes that make peremptory strikes appealing to lawyers also make them prone to abuse, for the reasons that Thurgood Marshall offered in his *Batson* concurrence. As we have seen in so many other contexts, when we create a system where individuals aren't required to justify their actions, sometimes individuals will act in ways that are simply unjustifiable.

The question, then, is what we do about it. As a starting point, I recommend that we work to strengthen the process surrounding for-cause challenges. We should make it easier for trial attorneys to learn meaningful information about the views and beliefs of potential jurors, in part so that the attorneys can actually articulate why a juror should not serve rather than rely on their gut feelings about the person. And we should work together to develop guidance about what constitutes a permissible basis for removal—and what does not—so that all parties understand the rules of the road.

If we implement such reforms, and create a more robust for-cause removal process, we may find that the need for a significant number of peremptory challenges quickly dissipates.

I'll be the first to admit that I don't have all the answers, and I look forward to hearing from so many others over the next several hours. Working together, I am confident that we can address the issues presented and develop solutions that create a system of justice that is fairer and more just.