

# New Jersey Law Journal

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## Breaking: New Jersey Revamping Jury Selection With Attorney-Conducted Voir Dire

"We're going to be able to walk into jury rooms around the state and see they look like communities across the state. We live in one of the most diverse states in the country and our juries should reflect that diversity," said Alexander Shalom of the ACLU-NJ.

By Charles Toutant | July 13, 2022



**Credit: sirtravelalot/Shutterstock.com**

The New Jersey Supreme Court launched a pilot project permitting attorney-conducted voir dire as part of a wide range of reforms designed to eradicate bias in the jury-selection process.

Also announced Wednesday are plans to ask legislators to increase pay for jurors, and to restore juror eligibility to persons with prior criminal convictions who have completed their sentences, as ways to broaden the pool of prospective jurors. And the number of peremptory challenges to jurors is decreased significantly under the court's announcement.

Those initiatives were part of a list of 25 proposals concerning jury selection procedures that the court adopted in order to address voir dire and peremptory challenges, institutional and implicit bias and systemic barriers to jury service.

The justices also adopted a series of changes to the rules of court that concern juror challenges and availability of juror records.



**Domenick Carmagnola of Carmagnola & Ritardi. Courtesy photo**

The changes to juror selection were part of a plan “to examine the jury selection process” and “consider additional steps needed to prevent discrimination in the way we select juries,” Chief Justice Stuart Rabner said in announcing the changes, which were developed at a judicial conference on jury selection held in November 2021.

Plans for the conference were announced in a July 2021 Supreme Court ruling in a criminal case, *State v. Andujar*.

In *Andujar*, the justices said a study of discrimination in jury selection was needed, after ruling that defendant Edwin Andujar was denied a fair trial on homicide charges after a prosecutor ran a background check on a Black prospective juror and arrested him when a warrant was discovered.

The rule changes concerning collection of juror demographic data follow the justices' August 2021 ruling in *State v. Dangcil*. In that case, the court rejected a defendant's claim that the state's virtual method of jury selection excluded minorities, the elderly and people with low incomes from the jury pool, but the court also ordered jury managers to begin collecting demographic data about potential jurors.

Under the pilot program

([//images.law.com/contrib/content/uploads/documents/399/82155/ACVD.pdf](https://images.law.com/contrib/content/uploads/documents/399/82155/ACVD.pdf)), which begins Sept. 1 in Bergen, Camden and Middlesex counties, single-defendant criminal trials will be eligible for attorney-conducted voir dire. Participation will be voluntary.

Proponents of attorney-conducted voir dire “submit that a transition from judge-led voir dire to an attorney-conducted process would reduce the effects of discrimination and bias in jury selection,” Rabner said in his statement introducing the changes. New Jersey is one of a small number of states where voir dire is conducted by judges.

The revised procedures aimed at addressing barriers to jury service include adding records from the state Department of Labor to the data used to create the list of prospective jurors. The court also said it would forward to the state Legislature proposals to restore juror eligibility to persons with prior criminal convictions who have completed their sentence and to increase juror compensation.

The court also approved a proposal to ask prospective jurors their race, ethnicity and gender in the three counties selected for the attorney-conducted voir dire program, with the collection of demographic data to expand to the entire state in 2023. The court system will also begin publishing annual reports on aggregate juror demographic data.

The court also adopted recommendations calling for presenting the issue of implicit bias to jurors by showing a video on juror impartiality during jury orientation sessions, changing model jury instructions to reinforce juror awareness of implicit bias, and promulgating new questions to ask during voir dire.

Under the court's attorney-conducted voir dire pilot program, parties must consent to participate and to accept a reduced number of peremptory challenges.

In trials for homicide, sexual assault and certain other major crimes, the defendant is now allowed 20 peremptory challenges and the prosecution is allowed 10. But to take part in attorney-conducted voir dire, the defense must accept eight peremptory challenges and the state must agree to six. In other criminal cases, the prosecution and defense now get 10 peremptories each. But if an attorney-conducted voir dire takes place, each side must agree to five such challenges.



**Alexander Shalom, senior staff attorney at the ACLU-NJ. Photo: Carmen Natale/ALM**

## Concerns

Domenick Carmagnola, the immediate past president of the New Jersey State Bar Association who was a member of the court's jury selection reform committee, said the pilot program's rules on peremptories makes him wonder how many attorneys will want to participate in the pilot program. He said the bar association registered its concerns with the court but the court stuck to its guns, since allowing fewer peremptories allows the court to call in smaller groups of prospective jurors.

"We're not opposed to the pilot project. We're opposed to how they want to implement it," Carmagnola said. "Requiring this significant waiver of rights puts the litigant in a tough spot. It also puts the lawyer in a tough spot. You have to give advice on whether or not you think the attorney-conducted voir dire alone is significant enough for you to advise your client to waive these statutory rights concerning the number of challenges you can assert," he said. "One of the questions that comes to mind is who's going to agree to this?"

Alexander Shalom, senior supervising attorney and director of Supreme Court advocacy at the American Civil Liberties Union of New Jersey, said he was pleased with the outcome of the court's study of jury selection, but the project is not finished until the Legislature approves some aspects of the plan. He said the large and varied membership of the court committee had a variety of viewpoints but showed a high level of agreement on many of the key issues. The circumstances of the *Andujar* case were "weird" but he is pleased that it prompted the court to take a broad examination of bias in juror selection.

"There was a wide consensus among people who spoke at the judicial conference that you can't fix one part unless you fix the bigger picture," he said. "We're going to be able to walk into jury rooms around the state and see they look like communities across the state. We live in one of the most diverse states in the country