

JUDICIAL CONFERENCE ON JURY SELECTION

TESTIMONY OF RYAN RICHMAN ON BEHALF OF NJDA

Friday, November 12, 2021

Good afternoon. My name is Ryan Richman and I am the President of the New Jersey Defense Association. The NJDA is a nonprofit membership organization consisting of approximately 650 New Jersey attorneys who devote a substantial portion of their practices to representing private companies and public entities in the defense of civil lawsuits.

On behalf of the NJDA, we are honored to have been invited by Judge Grant and Chief Justice Rabner to be here today, and we thank you for the opportunity to play a role in this critical discussion. The NJDA comes to this conference with an open mind and will continue to have one moving forward.

It is not often that the NJDA and NJAJ agree, but I do agree with Ms. Reilly that peremptory challenges should be preserved. What I have heard the past two days, is that everyone at this Judicial Conference agrees that we would like to improve the Jury Selection Process. We all agree and embrace the reduction of bias, implicit and explicit, in the justice system. The NJDA believes that implicit bias and preventing discrimination in the way we select juries is of the upmost importance and we have a deep concern and commitment to the elimination of implicit bias in the jury selection process and to ensure fair jury trials. As Mr. Carmagnola stated this morning, this challenge is profound. But, in the NJDA's opinion, improvement does not start with reducing peremptory challenges. At this point, that is premature based on the current data available.

As the NJSBA Working Group on Jury Selection Interim Report states, which the NJDA has endorsed, the Jury Selection Process must undergo rigorous analysis, gather more data, and analyze that data, in order to address the discriminatory impact of implicit and explicit bias. The NJDA fully supports that effort and as the Chief Justice stated on Wednesday at this conference, a thoughtful and collaborate approach to change.

Dr. Glaude, whose speech was very inspiring, stated in his keynote speech on Wednesday that “This Country looks the way it looks because we built it that way”; and the same can be said for New Jersey’s voir dire – “This State’s voir dire is the way it is because we built it that way.” In a voir dire system, here in New Jersey, that relies so heavily on the judge’s discretion and a juror’s own assertion of impartiality, peremptory challenges are one of the only tools a lawyer has to combat juror bias. Peremptory challenges are critical and necessary to the process of ensuring unbiased juries.

Mandating a reduction in peremptory challenges is not the solution. Dr. Rose’s report was very informative and thoughtful. According to Dr. Rose, the role that peremptory challenges play in the dismissal of minority group members is an attenuated one and is not a systematic state wide issue but rather case specific. To answer the question posed by Chief Justice Rabner just before lunch, it is not acceptable to use preemptory challenges for a discriminatory purposes. Not even in one instance. We all agree on that. Where we disagree is on how to approach this challenge.

Dr. Rose found that most attorneys do not use all their peremptory challenges in civil cases. For example, her numbers indicated the average peremptory used in civil cases is 2.7 on the plaintiff side and 3.1 on the defense side. Once conclusion to draw from the statistics is that peremptories are not playing a role in the issues we face.

I thought the Judiciary’s Juror Impartiality video that premiered on Wednesday is a great tool to educate jurors on unconscious bias and impartiality. We should educate jurors on this. But that is not the only thing we should do. We should educate judges. We should educate the bar. We should examine how jurors are summoned, as highlighted by Professor’s Chernoff’s presentation. We should study and improve the voir dire system to be more attorney involved as Mr. Krakora advocated for.

Finally, if the goal is for more expediency in jury selection, we believe that we need to proceed with caution. That invites bias. This could result in less diligence and more widespread bias. As Judge Thornton stated on Wednesday, peremptory challenges are not slowing down the jury selection process in any material way. We should all strive to preserve the quality of

justice in the jury system. Quality service is one of New Jersey Courts' four core values. And in the the showdown between speed and quality, quality must always prevail.

I am going to leave you with a quote from Albert Einstein that I find very relevant to this discussion moving forward: "If I had an hour to solve a problem I'd spend 55 minutes thinking about the problem and five minutes thinking about solutions."

Again, the NJDA comes to this discussion with an open mind and will continue to do so going forward. Chief Justice, we applaud your efforts, the Court's effort, and the AOC's efforts in taking on this significant challenge. Thank you very much for your time and consideration today.