

# Jury Trials During the Pandemic: New Jersey Supreme Court Maintains Fairness of Virtual Jury Summons Process but Directs Collection of Jury Demographic Data Going Forward

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The New Jersey Supreme Court recently examined a criminal defendant's challenges to a hybrid jury selection process, particularly the fairness of the process. Defense counsel focused its challenge on:

- a claimed lack of transparency of juror demographic data;
- unclear standards with which prospective jurors were excused or dismissed; and
- that the pool may have disproportionately excluded older jurors, those without technological savvy, or those of modest means.

Although the Court rejected the challenges, it did [state](#) that the Administrative Office of the Courts (AOC) should collect jurors' demographic information to prevent underrepresentation and irregularities.

## The Jury Summons Process Changed During the Pandemic

The defendant in this case had a criminal trial scheduled for April 2020, which was delayed due to the pandemic and rescheduled for September 2020. Of note, this was the first trial conducted in Bergen County since the onset of the pandemic.

The jury summons process had changed slightly from its pre-pandemic format to inform prospective jurors of the virtual selection process, social distancing rules, and a COVID-19 questionnaire. The new process held Court staff and assignment judges responsible for pre-screening jurors for technological access and knowledge, and with providing devices and broadband, if necessary.

## Defendant Claimed that the Hybrid Jury Selection Process Failed to Collect Demographic Information

In the defendant's case, 13 prospective jurors were interviewed. The Jury Management System used by the jury managers complied with language about the hybrid selection process. However, the jury managers did not collect demographic information.

The defendant challenged the jury pool on the lack of demographic information, but the trial court rejected the argument and the case proceeded to trial where the defendant was convicted.

## **On Appeal, Court Addressed Fairness of Jury Selection Process**

The matter moved to the New Jersey Supreme Court for review, and the Court held that the defendant had no right to representation during the pre-voir dire disqualification, excusal or deferral of jurors, stating that it was a routine, administrative procedure that pre-existed the pandemic. The Court explained that the selection process was facially neutral and there was no showing any disparity from pre-pandemic times.

The Court also held that the defendant was time-barred because he wanted two hours, after jury selection had begun, to challenge the process. Finally, the Court held while he raised an important issue, he failed to substantiate a claim that the jury was disproportionate and permitted a potential underrepresentation of certain populations.

## **Court Deems Defendant's Jury Selection Process to be Fair but Directs AOC to Collect Juror Demographic Information Going Forward**

But, going forward, to prevent underrepresentation, the Court directed the AOC to begin collecting jurors' demographic information.

This ruling was crucial to the continuation of New Jersey jury trials as COVID-19 disrupted nearly every facet of our daily lives. Allowing jury selection to continue virtually, was important for the judicial system to continue to be available to litigants. However, aspects of virtual litigation may still be challenged on other grounds if a party to a case can prove a disparity that impacted a litigant's rights. At Einhorn Barbarito we closely watch the New Jersey Supreme Court decisions and provide our

clients with up-to-date [information](#) about litigation in New Jersey.