Memo

To	Hon. David Wiggins, Justice, Iowa Supreme Court and Chair, Supreme Court Advisory Committee on Jury Selection & Committee Members
From	Russell Lovell
Re	Suggestions re Draft 2 Committee Report
Date	February 15, 2018

I. The Preface

In *State v. Plain*, 898 N.S.2d 801 (2017), the Iowa Supreme Court recognized that juries that represent a fair cross section of the community are critical not only to the community's perception of the legitimacy of the judicial system, but also to the accuracy and fairness of verdicts in individual cases, especially cases involving defendants of color. The Preface to the Draft Committee Report rightly recognizes that the requirement that juries represent a fair cross-section of the community is a constitutional right rooted in the guarantee of an "impartial trial" expressed in both the Sixth Amendment to the Federal Constitution and Article I, §10 of the Iowa Constitution. The Preface appropriately quoted the *Plain* Opinion that observed how the fair-cross section requirement "helps legitimize the legal system and is "critical to public confidence in the fairness of the criminal justice system."

The Court in *Plain* also recognized empirical evidence that the accuracy and fairness of individual jury verdicts are furthered by juries that are representative of the community, and I would ask that the following language of the Court also be included in the Preface:

> "Empirical evidence overwhelmingly shows that having just one person of color on an otherwise all-white jury can reduce disparate rates of convictions between black and white defendants." The Court pointed to studies that "found that where there was one or more black jurors, black and white defendants had roughly equal rates of conviction; however, all-white juries convicted African-American defendants 81% of the time and white defendants only 66% of the time." 898 N.W.2d 801, 825-26 (Iowa 2017).

Such data illustrates why the "impartial trial" demanded by Article I, §10 of the Iowa Constitution and the 6th Amendment to the Federal Constitution is a right so important to defendants, those accused of a criminal offense.

The Preface omits mention of two recent United States Supreme Court decisions that demonstrate that Court's renewed effort to protect against racial discrimination in the judicial system, and in particular in jury selection and juror deliberations. Both decisions were based on Federal Constitutional Law and therefore are fully applicable to State Court systems, including Iowa's, and both strengthen the fair-cross section right that is the central focus of the Committee. I propose the Committee add the following text to the Preface so that readers fully appreciate the import of these two decisions:

> The United States Supreme Court has reemphasized the principle "that discrimination on the basis of race, 'odious in all aspects, is especially pernicious in the administration of justice." Like the *Plain* Court, it recognized: "The jury is to be a 'criminal defendant's fundamental 'protection of life and liberty against race or color prejudice. Permitting racial prejudice in the jury system damages 'both the fact and the perception' of the jury's role as 'a vital check against the wrongful exercise of power by the State." *Pena-Rodriguez v. Colorado*, 137 S.Ct. 855 (2017). The Court has fashioned two recent decisions that directly and indirectly strengthen protections against racial discrimination in the selection of jurors, and both necessarily enhance the defendant's right to a jury that reflects a fair cross-section of the community.
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> In *Foster v. Chatham*, 136 S.Ct. 1737 (2016), the Court required trial courts to engage in a searching inquiry of the prosecutor's stated justifications for striking jurors of color, requiring a comparative juror analysis to determine whether the stated race neutral reasons for striking black jurors were in fact even-handedly applied to white jurors. In *Pena-Rodriguez* the Court held that a juror's racially biased comments during deliberations if reflected in his vote can require the trial court to overturn a jury verdict. *Pena-Rodriguez* necessarily requires trial judges to be more attentive to disqualification for cause of prospective jurors whose racial bias has become apparent during voir dire questioning.

There is much to like in the Report. Were the Committee to meet again to discuss and deliberate, I would offer a number of suggestions that would seek to clarify or explain how numerous Committee Recommendations will help to fulfill the

Constitutional mandate that juries reflect a fair-cross section of the community served by the trial court. Instead, in addition to my proposed changes to the Preface, I will focus on three major areas of concern. In making these observations, I want to recall for the Committee that I serve as co-chair of the Iowa-Nebraska NAACP Legal Redress Committee (LRC). Both in my capacity as LRC co-chair and as a member of the Advisory Committee I have consulted with the NAACP leadership and NAACP volunteer attorneys, and their experience and wise counsel is reflected in my remarks. In making these comments, I have strived at all times to maintain focus on the Committee's charge "To propose recommendations that will insure the makeup of jury pools *and jurors* represent a fair cross section of the community." (Emphasis added.)

II. Recommendation VII

The Draft Report makes numerous Recommendations that have the potential to facilitate real, tangible progress toward achieving jury "pools" that reflect a fair cross section of the community. In Recommendations VII and VIII the Report also contains two Recommendations that are important first steps toward achieving *trial juries* whose composition also reflects a fair cross section of the community. The biggest shortcoming of the Report, and one that is surely fixable, is its failure to explain the "why and how" for each Recommendation. I have no doubt that State Court Administrator Todd Nuccio doesn't need any explanation of this sort as he has a long record of implementation of fair cross-section reforms in North Carolina and has fully participated in the Committee's discussions; but Judges, Jury Managers, lawyers, and the public at large have not been privy to our discussions or available readings. The Report addresses many issues, some of which are complex and some of which require an understanding of facts that are not of common knowledge. Acceptance and

implementation of our Report will be furthered by explaining why and how the fair cross-section right will be furthered by each Recommendation.

Recommendation VII provides the best example for the need for the Committee to explain its reasoning. This Recommendation addresses the tension between the fair cross-section right for trial juries and the traditional practice of discretionary strikes and recommends that "[t]he Supreme Court Should (1) Reduce the Number of Peremptory Strikes Provided For in Rule 2.18(9) of the Rules of Criminal Procedure." However, our rationale for the proposed reduction of strikes is not explained. I submit the Committee's rationale is two-fold. First and foremost, the Committee embraces the extension of the fair cross-section right to the composition of trial juries—for all of the important reasons articulated by the Court in *State v. Plai*n. Second, although there is not a consensus as to the full extent of the reforms that may be needed, the Committee recognizes (1) that discretionary strikes can destroy achievement of a jury that represents a fair cross-section of the community and (2) that the procedures that have been invoked to protect against discretionary strikes motivated by intentional or implicit racial bias have proven ineffective. *Batson at Twenty-Five, Perspective on the Landmark, Reflections on Its Legacy*, 97 Iowa. L. Rev. 1393-1744 (2012).

I have prepared revised text for Recommendation VII and its Committee Comment for the Committee's consideration. I respectfully submit it provides a balanced summary of the contending views and the rationale for our recommendation.

> VII. The Supreme Court Should Extend the Fair Cross-Section Right to the Composition of Trial Juries and Initiate a Rule-Making Proceeding to Determine Reforms that May Be Needed to Protect against Implicit Bias Influencing Discretionary Strikes. In the Interim, the Court Should (1) Reduce the Number of Peremptory Strikes Provided For in Rule 2.18(9) of the Rules of Criminal Procedure (Juries: Strikes) and (2) Establish Training for Judges on *Batson* and *Wheeler* Challenges, Courtroom Management, and Disqualification for Cause

that *Pena-Rodriguez* Requires When a Juror's Racial Bias Becomes Apparent During Voir Dire.

Committee Comment

The Committee is aware that the United States Supreme Court has, thus far, only held the constitutionally required fair cross-section right applicable to jury pools. However, the Iowa Supreme Court has authority to provide greater protection for the fair cross-section right through its rule-making and its own independent constitutional authority under Article I, §10 of the Iowa Constitution's Bill of Rights. To that end, we recommend that the Court exercise its own authority to reduce the substantial risk that gains in realizing a fair cross-section of the community in jury pools and jury panels will not be lost by discretionary strikes at the stage of choosing who will be the trial jurors.

We understand there is tension between achieving trial juries whose composition reflects a fair cross-section of the community and the longstanding practice of discretionary strikes. The proposed reduction in the number of discretionary strikes is intended as a first step in mitigating this tension, but the Committee recognizes that it cannot in good faith affirm, as the Court's Charge to the Committee requires it to do, that this step alone will "insure" that the makeup of the "jurors," the 12 persons who comprise the trial jury that will decide cases, will regularly reflect a fair cross section of the community. The Committee views this Recommendation as an interim step; and it therefore also recommends that the resolution of full implementation of the fair cross-section right at the trial jury stage be accomplished through the Court's Rule-Making Procedures that will allow for input from all stakeholders. The Rule-Making process will provide the opportunity for full exploration as to whether additional reform of discretionary strikes is necessary, such as the abolition of discretionary challenges as has been done in the United Kingdom, and whether some differentiation between criminal and civil proceedings is warranted.

Advocates for discretionary or peremptory strikes contend they represent a source of public trust and confidence, and reflect a mechanism to ensure fairness for both sides in a legal proceeding. However, peremptory strikes, when exercised against minority jurors and particularly when such strikes result in an all-white jury, undermine citizen confidence in the jury system to be fair and impartial. *Batson v. Kentucky*, 476 U.S. 79 (1986), and *People v. Wheeler*, 583 P.2d 748 (Cal. 1978), have prohibited discretionary or peremptory strikes that are racially motivated for more than 30 years. However, there is a national consensus that the procedural protections to implement *Batson* have proved ineffective because, rather than focusing on the defendant's right to a jury that reflects a fair cross-section of the community, courts have required proof that the strike was intentionally discriminatory; courts have also failed to recognize that a strike based on implicit bias is just as invidious and has the same impact as purposeful strike. See Recommendation VIII [as revised below] that would deny a strike that reflects implicit bias. The committee has not arrived at a consensus on the

> proper number in different case types, nor as to whether the prosecution should have fewer strikes than the defense, as is done in the Federal criminal system. The committee noted England has removed all peremptory strikes. Although initially there was trepidation in England when peremptory strikes were abolished, those fears have vanished.[1]
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> The judicial education department should include a major segment on *Batson* and *Wheeler* challenges, with special emphasis on the necessity of the comparative juror analysis and more searching scrutiny required by *Foster v. Chatham*, 136 S.Ct. 1737 (2016), and the practical limits that *Pena-Rodriguez v. Colorado,* places on judicial rehabilitation of jurors whose voir dire responses suggest racial bias."

Sources:
Batson at Twenty-Five, Perspective on the Landmark, Reflections on Its Legacy, 97 Iowa. L. Rev. 1393-1744 (2012).

There should be no doubt that whether the promise of *Plain* has been fulfilled will be measured by the bottom line—whether Iowa's trial *juries* reflect a fair cross-section of the community. That is true both in terms of more thoughtful and fair jury deliberations and in the public's perception of the fairness of the Iowa judicial system. In sum, surely we need to step up and state the Committee is in agreement that the fair cross-section right should be extended to the composition of the twelve persons who will serve as the trial jury. Should the Committee not say explicitly that the Court should review any practice or procedure that impedes or tends to impede fulfillment of the right to an "impartial trial" through trial juries that regularly reflect a fair cross-section of the community, and that any practice or procedure so identified should be subjected to strict scrutiny, and modified or eliminated unless there are compelling reasons for its continuation?

[1] Perhaps the Court will conclude that, since discretionary strikes are statutory and not of constitutional origin, experimentation with the United Kingdom's abolition approach is warranted. The business and drug courts provide recent precedent for a pilot project in one or more judicial districts where discretionary strikes would be abolished.

III. Recommendations IV and XI

Let me return to my overriding concern that, with the exception of Recommendation X, none of the Recommendations and the Committee Comments explain how each Recommendation will help to "insure the makeup of jury pools and jurors represent a fair cross section of the community." At best, I believe this is a lost opportunity to explain the Committee's research and reasoning and to help the Bar and the public understand the advisability and feasibility of the recommended courses of action; at worst, it fails to persuade and can be misconstrued as fiat. The Committee's Report should systematically use the words "fair-cross section of the community," show how each Recommendation would help to secure it, and emphasize that a "fair cross-section of the community" is the measure of the fundamental right to an "impartial trial" guaranteed in both the Federal and Iowa Constitutions, as well as Iowa Code 607A. In doing so, the Report should explicitly state that action and inaction have resulted in jury pools and panels—and thus trial juries—that have *not* represented a fair cross-section of the community served by the court because they have failed to include members of that community whose race or ethnicity is not the majority.

As a matter of constitutional law, awareness of the adverse racial impact of the existing system, and the necessity of correcting it, are not only permissible but essential. In terms of gaining the public's confidence in the fairness of the judicial system, much more is to be gained by addressing the problems of race head on and making clear that the Court insists upon trial juries that reflect a fair cross-section of the community so that both in reality and in appearance the impartial trial guarantee is realized.

Color-blind approaches all too often result in inattention and indifference, and can result in negligent systematic exclusion of African Americans and other minority

group members, as Paula Hannaford Agor has so ably explained. *Systematic Negligence in Jury Operations: Why the Definition of Systematic Exclusion in Fair Cross Section Claims Must Be Expanded*, 59 Drake. L. Rev. 761 (2011). With possibly two exceptions, the 13 Draft Recommendations read principally like reforms on court efficiency and economy. Recommendation X regarding change of venue is the lone Recommendation that mentions both the fair cross-section right and race; otherwise, race is only mentioned once in the entire document. In contrast, the Committee's charge is to recommend reforms that will achieve jury panels and jurors that represent a fair cross-section of the community—rather than, as in *Plain*, a jury panel with only one African American out of 56 and a 12-person jury with no African American member (the "inexorable zero")—in a community in which the African American population was 9%.

The Report of Governor Branstad's Criminal Justice Working Group (GCJWG) in November 2015 was forthright in captioning its Recommendation: "Increasing the Diversity of Jury Pools." The Governor's Criminal Justice Working Group recognized progress in achieving a fair cross section of the community would require a pro-active role by the Court system, and that securing a more diverse pool is critical to securing actual juries that are representative of the community. Decades of civil rights experience has made clear that achieving juries that reflect a fair cross section of the community requires awareness of the racial impact of criteria and practices at every stage of the jury selection process, even though the means or tools that will be used to achieve reform are race neutral. The GCJWG recognized this reality in its final recommendation: "The responsibility of [the State Judicial Branch and each Judicial District] to take affirmative steps to ensure jury pools that truly reflect a fair cross section of the community will require ongoing monitoring and coordination at both the

State and District Court levels." https://governor.iowa.gov/documents/governors-working-group-on-criminal-justice-policy-reform-final-recommendations, p. 6.

I have no doubt the Committee intends such a pro-active role on the part of the key actors in the jury selection process system, but the Report needs to say so and should demonstrate as to each Recommendation how each will enhance the likelihood the composition of the trial jury will reflect a fair cross-section of the community. The Report should make clear this is a top priority for the Court. If this shortcoming is not corrected in the final draft of the Committee Report, it suggests that, despite an unanimous Iowa Supreme Court in *State v. Plain*, the Committee is uncomfortable with the race conscious role that is required to make significant progress in implementing this fundamental constitutional right that seeks to guarantee racial justice and equality I recommend the Report add language used by the GCJWG Report (as extended to the trial jury) to Recommendation IV:

> IV. The Supreme Court Should (1) Define the Roles and Responsibility of the Jury Manager Including, But Not Limited To, the Relationship of the Jury Manager With the Office of State Court Administration, (2) Clarify the Responsibility of the SCA and Each Judicial District To Take Affirmative Steps to Ensure Jury Pools and Jurors that Reflect a Fair Cross Section of the Community, and (3) Require Ongoing Monitoring and Coordination at Both the State and District Court Levels of Court Administration.

It is apparent that, over the past twenty-five years, effective, ongoing monitoring and coordination of Iowa's jury pools has been missing, and as a result, compliance with the fair cross-section has not received the attention the Constitutional right to an "impartial jury" requires. It is critical that this Committee recommend that the Court embrace the Governor's Criminal Justice Working Group's recommendation of pro-active and ongoing monitoring and coordination by the SCA, District Courts, and Jury Managers. Those who have worked to achieve jury diversity report that success

requires hard work and a concerted effort and commitment, as there are many obstacles, socioeconomic and otherwise.

Paula Hannaford Agor's Drake Law Review article provides the blue print. She takes courts and jury managers through the selection process, step by step, explaining how each recommended jury management practice will seek to further the fair cross section goal by helping the jury pool to be more inclusive, more diverse. It is of course constitutionally permissible to be aware of, and to seek to ameliorate, the adverse racial impact of particular governmental practices using race neutral means. *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007); *Fisher v. Univ. Of Texas-Austin*, 136 S. Ct. 533 (2015). At a minimum these policies and procedures should be consistent with and include those recommended in the Jury Managers' Tool Kit published by the National Center on State Courts; and I ask that the Committee's Recommendation and Comment say so explicitly.

Recommendation XI provides another example of passive language that fails to express the affirmative commitment on the part of the Judicial Branch that will be necessary to "insure" that Iowa's trial juries will reflect a fair cross-section of the community. It recommends a needed systemic approach to the collection of comprehensive jury data and that is important as data collection is a necessary prerequisite to monitoring and assessment. But the Recommendation goes no further, stating only that the jury data be "maintained and available to the public, as necessary." The Recommendation does not express a commitment that the Courts, the State Court Administration (SCA), and Jury Managers will be monitoring and assessing the data and prepared to take corrective steps should underrepresentation of persons of color continue.

In the words used—"available to the public, as necessary" and "available for review but not without limitation"—Recommendation XI also unfortunately strikes a grudging tone as to public access that runs counter to *Plain*'s goal of gaining the confidence of the public in the fairness and impartiality of the judicial system. Protection of the fair cross-section right only requires access to aggregate data, so the Committee Comment that "the protection of personal information and the safety of jurors should trump disclosure" seems to address a problem that should rarely if ever arise. Securing the public's perception that the judicial system is fair and impartial requires ease of access to the aggregate jury data, and the Report should recommend that aggregate jury data be posted for each County at least quarterly on the Judicial Branch web page.

IV. Recommendations VI and VIII

Recommendation VI fails to recommend that "racial or ethnic bias or prejudice" be added a basis for disqualification for cause. This Court should make a clear statement of this indisputable, constitutionally mandated principle in the Iowa Rules of Criminal Procedure. The Committee should explicitly recommend amendment of Rule 218.5(c) to so state:

> V. The Supreme Court Should (1) Review Rule 2.18(5)(a) of the Rules of Criminal Procedure Providing a Challenge For Cause Based on "a Previous Conviction of the Juror of a Felony" and Its Omission of Racial or Ethnic Bias as Ground for Disqualification, and (2) Establish Training for Judges on Challenges for Cause

The 2017 United States Supreme Court ruling in *Pena-Rodriguez v. Colorado*, 137 S. Ct. 855 (2016), reinforces the necessity of removing jurors who are racially biased through challenges for cause, including sua sponte by the trial judge if necessary. *Pena-*

Rodriguez held that a juror's racially biased comments during deliberations if reflected in his vote can be the basis for impeaching and overturning a jury verdict.

I suggest that the Comment make clearer the recommendation that judges receive training on challenges for cause. At least in those cases in which a juror expresses a racial or ethnic bias or makes a comment strongly indicative of prejudice and stereotyped thinking, trial judges should not "rehabilitate" the juror. If a juror indicates she is uncertain that she can be fair because of her views on race, or gives an answer indicating racial bias or stereotyping, the Judge should dismiss her for cause as it is too great a risk to have a juror who is likely biased sitting on the case. *Pena-Rodriguez*'s express recognition that general voir dire questions about and assurances of fairness and impartiality are ineffective as a constraint on racial bias, 137 S. Ct. at 866 (2016), confirms the need for courts to end so-called "easy rehabilitation" practices. As *Peno-Rodriguez* expressly held, race is different, and a vigilant effort must be made to ensure that jurors who are biased, or even likely to be biased, are removed for cause.

The Draft Report also is silent with regard to Iowa Rule of Criminal Procedure 2.18(5)(a)'s life-time disqualification for cause based on a felony conviction, without regard to restoration of an ex-offender's civil rights, including the right to participate on a jury, as a result of the Executive Orders issued by Governors Vilsack and Culver, or individual restoration by Governors Branstad and Reynolds. Because of the longstanding racial disparities in Iowa's criminal justice system, disqualification based on a prior conviction—although a race neutral basis—has a serious adverse and disparate racial impact on blacks and browns. As a result, it is a substantial obstacle to achieving a fair cross-section of the community if left unaddressed.

If the Committee is unprepared to make a recommendation on this issue, at minimum its substantial impact should be directed to the Court's attention as should the rule recommended by the *American Bar Association Principles for Juries and Jury Trials,* Principle 2.A(5) that provides for juror eligibility once an offender has completed his sentence:

> Principle 2--Citizens Have the Right to Participate in Jury Service and Their Service Should Be Facilitated. A. All persons should be eligible for jury service except those who: . . . 5. Have been convicted of a felony and are in actual confinement or on probation, parole or other court supervision.

Juror service is a fundamental aspect of citizenship in our democracy, and those who have paid their debt to society should be embraced by the community and should be able to participate as jurors. Consistent with the ABA Principles, I believe that Iowa's lifetime exclusion of persons convicted of a felony from jury service should be rescinded and replaced. At a minimum the Committee should recognize that this rule requires reconsideration. If it is concluded that "some felon exclusion may be appropriate, it should be carefully considered and should not be based on inflexible generalizations about crimes, criminal, and trials. Instead, felons who are worthy should have a chance to contend as individuals for a seat on a jury, under the same constraints as everyone else." Brian Kalt, *The Exclusion of Felons from Jury Service*, 53 American U. Law Rev. 65 (2003) (Abstract). The current lifetime disqualification is extraordinarily harsh. It takes no account of when a person committed a crime, how many years have passed since that time, rehabilitation and citizenship since the person was discharged, and whether the crime has any real relationship to the person's veracity and impartiality at the time of jury selection. And, without question, the lifetime felon exclusion has a

significant adverse racial impact on the composition of Iowa's jury pools and panels, and trial juries, too, of course.

As an interim step, the Committee should recommend that the Court clarify that all ex-offenders whose civil rights have been restored by the Executive Orders of Governors Vilsack and Culver, and individually by Governors Branstad and Reynolds, are not subject to disqualification because of their prior convictions. NAACP volunteer lawyers advise there is inconsistency among Judges and Jury Managers across the State, with many Judges striking ex-offenders without checking whether they have had their civil rights restored by the Vilsack-Culver Executive Orders.

Recommendation VIII

As was pointed out by the Washington Supreme Court in *Saintcalle v. State*, 309 P.3d 326, 338 (Wash. 2013), a major flaw in the *Batson* prohibition on racially discriminatory strikes is that it only applies to purposeful, intentional racial discrimination and does not reach implicit racial bias. The United States Supreme Court in *Foster v. Chatham* requires that trial judges engage in a searching inquiry of the prosecutor's stated reasons for striking minority jurors, including a comparative juror analysis that examines whether the prosecutor has even-handedly applied his justification for striking jurors of color to white jurors. See also *People v. Gutierrez*, Nos. S224724, S240419, 2017 Cal. LEXIS 4242 (Cal. S. Ct. June 1, 2017). *Foster* represents an important step towards strengthen the *Batson* procedures, but the bigger step that is needed is to recognize, as did *Saintcalle*, that implicit bias is the greater problem in the 21st century and the *Batson* focus only on intentional discrimination is far too narrow. The Court in *Plain* unanimously recognized the reality of implicit bias

and urged trial judges to be pro-active in addressing it. I respectfully submit the greatest problem of implicit bias in the judicial system is the implicit bias inherent in discretionary or peremptory strikes. As addressing implicit bias in the context of discretionary strikes would seem to be the logical next step, and in keeping with Recommendation VIII to "develop a comprehensive review of methods to reduce implicit bias in jury selection," I recommend that Recommendation VIII add language stating explicitly that discretionary strikes that reflect implicit racial bias be denied:

> VIII. The Supreme Court Should Develop a Comprehensive Review of Methods to Reduce Implicit Bias in Jury Selection and Throughout the Course of the Trial, and Should Fashion a Rule that a Discretionary Strike that Reflects Implicit Racial Bias Will Be Denied.

VI. Conclusion

While I continue to believe, as I think the Committee believes, that the underrepresentation of persons of color on Iowa's juries has principally been the result of inattention and implicit bias, rather than intentional discrimination, this result—to use the words of the Court in *Plain*—is nonetheless "especially troubling" given the stark racial disparities in Iowa's criminal justice system. The changes I am encouraging the Committee to make in its Report will make clear that the Court has made achieving and maintaining trial juries that reflect a fair cross-section of the community a top Judicial Branch priority, and that the Judicial Branch has embraced the pro-active monitoring role this necessarily requires; these Suggestions, I submit, also help to clarify the rationale for our thirteen Recommendations and to emphasize the urgency of the reforms we are recommending

> Respectfully submitted,
> Russell Lovell, Member
> Dedric Doolin, Member (Reviewed and Approved Suggestions)
> Supreme Court Advisory Committee on Jury Selection