

COMMITTEE ON THE JURY SYSTEM

PETER D. FITZGERALD

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January 26, 2004

A. Thomas Levin, Esq.
President, New York State Bar Association
One Elk Street
Albany, New York 12207

Re: New York State Bar Association Committee on the Jury System

Dear Mr. Levin:

This letter report serves as a brief **interim report** from the Committee on the Jury System. The Committee was established in June 2003. The Committee, among other responsibilities, is charged in particular to provide input for the Association's consideration, on the issues being examined by the Commission on the Jury System and the Jury Trial Project appointed by the Chief Judge. Members of the Committee are:

Peter D. FitzGerald, Chair, Glens Falls (FitzGerald Morris Baker Firth)

Jonathan Bruce Behrins, Staten Island (Behrins & Behrins)

Eileen Buholtz, Rochester (Connors & Corcoran, LLP)

Charles F. Crimi, Jr., Rochester (Crimi & Crimi)

Vincent E. Doyle, III, Buffalo (Connors & Vilaro)

Darren J. Epstein, New York (Fellows Hymowitz & Epstein)

Norman Goodman, New York (New York County and Supreme Court Clerk)

Jack S. Hoffinger, New York (Hoffinger Stern & Ross, LLP)

Seymour W. James, Jr., Kew Gardens (The Legal Aid Society)

Jessica Kavoulakis, Brooklyn

Susan B Lindenauer, New York (The Legal Aid Society)

Margaret Comard Lynch, Albany (Ainsworth Sullivan Tracy Knauf Warner & Ruslander,
PC)

Judge Robert C. Noonan, Batavia, (Genesee County Court Judge and Surrogate)

John M. Ryan, Kew Gardens (Queens County, Chief Assistant District Attorney)

Ronald R. Schneider, New York (Kirkland & Ellis)

Howard D. Stave, Manhasset Hills

Jay G. Safer, Executive Committee Liaison, New York (LeBoeuf Lamb Greene &
MacRae)

*NOTE: Vincent E. Doyle, Norman Goodman and Susan B. Lindenauer also serve as
members of the Commission on the Jury.*

The Committee convened its first meeting in early July 2003 to identify issues of concern that it anticipated would be reviewed by the Commission, as well as other issues concerning jury procedures and various proposed initiatives and approaches. Members of our Committee attended several of the public hearings held throughout the state by the Commission. The President of NYSBA and the Chair of this Committee, among others, addressed the Commission setting forth the concerns of our Association. At these Commission public hearings, our Committee obtained a grasp of many of the issues and different points of view voiced at the hearings.

Our Committee, after review, identified a number of current jury issues. A written questionnaire was developed containing questions regarding perceived jury issues, and soliciting opinions, comments and points of view. The Committee felt it was essential to seek the view of the bench and bar. It was decided not to solicit responses for individual juror experiences as it appeared to be amply covered in the public hearings.

THE BAR

The Committee identified relevant sections and committees of the NYSBA for input. The questionnaire was provided to the following committees and sections:

Committee on CPLR

Commercial and Federal Litigation Section

Committee on Court Operations

Criminal Justice Section

Committee on Legal Aid

Torts Insurance and Compensation Law Section

Trial Lawyers Section

Committee on the Tort System

All of the above responded to the questionnaire. The questionnaire also was provided to the Judicial Section which decided not to reply as a section.

JUDICIARY

In order to obtain a statewide view of the judiciary, the questionnaire was presented to the Administrative Judges across the state. Eleven of twelve Judicial Districts responded with

detailed responses and comment.

The Committee Chair has been in communication with the Chair of the Commission to openly discuss scheduling and related issues.

The Commission advises that it will convene on January 27, 2004 and requests that we provide our positions if we have such.

Our Committee members have reviewed and studied the responses and comments from our questionnaires. The Committee as a whole met on January 14, 2004. The materials were divided into two groups, one for review on January 14, 2004 and the remainder for review in February.

At the January 14, 2004 meeting, the following recommendations were adopted:

ISSUE #1: Should there be a reduction in the number of peremptory challenges to jurors?

The Association is on record, in a 1994 report approved by the House of Delegates, as opposing a reduction in peremptory challenges in either civil or criminal matters. In a review of this issue at the January 14, 2004 meeting, members of the Committee on the Jury System saw the use of such challenges as aiding in providing for a fair and impartial jury and reiterated the concern, expressed in the Association's position over the years, that decreasing the number of challenges could prolong and complicate selection and could not be justified as part of an effort to conserve jury resources. Use of peremptory challenges was considered to be a means for all sides to avoid extended questioning and avoid "cause" hearings, which can be time consuming.

- **Recommendation on Issue #1:** That there be no reduction in the present number of peremptory challenges in both criminal and civil jury selection. *

* *Note: Members of the Commission also serving on the Committee did not cast votes on this issue.*

ISSUE #2: Should jurors be permitted to ask oral questions directly to witnesses?

The Committee expressed concern about the difficulty in determining the appropriateness of the questions and maintaining control of the proceedings and enforcement of the rules of evidence if questions were to be asked directly. As one attorney survey respondent observed, “One question by a juror before all evidence is in could adversely influence other jurors to the prejudice of a party.” Another said that such questioning “would only confuse and complicate facts, credibility and create confusion.”

- **Recommendation on Issue #2:** That no provision be made for jurors to ask oral questions directly to a witness during trial.

ISSUE #3: Should jurors be permitted to submit questions for witnesses in writing to the judge who would then determine whether the questions are permissible?

It was noted that the Jury Trial Project being undertaken by the Uniform Court System, is experimenting with this issue. The Committee saw the need to await the results of this experience before considering change to permit submission of questions under certain circumstances and if so, appropriate safeguards, *i.e.*, whether submission of questions should be

permitted if considered appropriate in the judge's discretion or in the judge's discretion upon consultation with counsel.

- **Recommendation on Issue #3:** That submission of written questions by jurors during trial should not be permitted, pending further study and review.

FURTHER ACTIVITIES

The Committee plans to complete the review of all remaining issues at a second full Committee meeting in February. A brief second interim report will follow regarding perspectives and positions recommended by the Committee.

A full and complete report will follow after completion of its entire review.

Respectfully submitted,

Peter D. FitzGerald, Chair
Committee on the Jury System

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