October 31, 2005

Hon. Philip S. Carchman, J.A.D.
Administrative Director of the Courts
Administrative Office of the Courts
Hughes Justice Complex, P.O. Box 037
Trenton, New Jersey 08625-0037

RE: Special Committee on Peremptory Challenges and Jury Voir Dire Report

Dear Judge Carchman:

On behalf of the New Jersey State Bar Association, I respectfully offer comments regarding the Special Committee on Peremptory Challenges and Jury Voir Dire which undertook an effort to evaluate what steps might be taken to improve the jury selection process in both civil and criminal cases including the use of peremptory challenges.

First, I would like to express our thanks and appreciation to the Judiciary for extending the comment period from September 15th to November 1st. As a result, we have had an opportunity to thoroughly review the analysis and recommendations of the Special Committee.

Second, I would like to offer our full support for the recommendations 1 through 7, and 10, in the report. Specifically, we welcome recommendation No. 4 which requires the creation of a Supreme Court Committee on jury selection, and the recommendations to provide training, and additional jury voir dire.

In particular, the provision for a more expansive and uniform voir dire including the use of standardized questions complemented with allowance for greater attorney participation will benefit the trial process. Further, the directive that greater liberality be exercised in recognizing challenges for cause serves to answer concerns of our membership that the voir dire practice that has developed since State v. Manley, 54 N.J. 259 (1968) has, as the Committee noted, placed "too much emphasis on expediency, and the process has become too truncated, and its vitality has been compromised".
The decision to endorse the recommendations (excluding 8 and 9) of the Supreme Court Committee is based upon the good faith assumption that the trial judges will fully adhere to the expanded voir dire as well as liberally exercise the discretion afforded by the recommendations both with respect to supplemental questioning by counsel and greater recognition of challenges for cause.

If scrupulously followed, the proposed recommendations will serve to enable counsel to gain greater insight as to the background of each juror and enhance the likelihood of a fair and impartial jury.

Finally, we cannot at this time support Recommendations 8 and 9 and believe they need further study after the other recommendations have been implemented. We remain unconvinced that the evidence provided in the report regarding potential cost and time savings is adequately supported and whether the potential adverse consequences justify such a change. You may be aware that the American Bar Association last year focused on the disappearing trial by jury throughout the nation. The situation is the same in New Jersey where fewer and fewer civil cases are being tried as a result of many factors including legislative enactments and the increasing use of both private and court annexed CDR. Criminal jury trials have also been reduced in recent years as the plea bargaining has increased. In this context, it is more important than ever that the sanctity of the jury trial, as one of the premier institutions created by our founding government and endorsed later by the 1947 Constitution, be safeguarded.

We disagree with the conclusion of the Committee to recommend elimination of the two-tier system utilized in New Jersey's Criminal Court's, i.e. "with offense specific and other mandatory sentencing provisions, many of the so-called less serious offenses carry much more substantial penalties than those deemed more serious," thus leading the Committee to conclude that a reduction of peremptory challenges is in order. The NJSBA recognizes that some societal and criminal justice systemic changes may be viewed as providing criminal defendants with a more favorable trial environment. However, there exist many, if not more, impediments faced by defendants in this era of media-saturated court coverage, that would strongly militate against any reduction in peremptory challenges.

Frankly, we do not know what the effect of implementing Recommendations 8 and 9 will be on the practice of law and administration of justice in New Jersey. There are suggestions that it may save some time and money. However, the more prudent question is whether or not it will impact adversely on the administration of justice. If peremptory challenges are eliminated, or substantially curtailed, in civil and criminal cases this affects our citizens immediately. While we can decide to, at a later date, replace the challenges, there will have been thousands of defendants and litigants who will have been perhaps unfairly prejudiced by their elimination. Therefore, we suggest a cautious approach.

The establishment of a Supreme Court committee on jury selection provides an excellent mechanism for monitoring the implementation of all recommendations but 8
and 9. By closely examining the impact of the other recommendations without interfering with the present number of peremptory challenges available to counsel, the committee can take an incremental approach to implementation. If, after a reasonable time period, the Court determines that additional changes are needed, recommendations could again be advanced to reduce the number of peremptory challenges. However, at this time, we do not believe the interests of justice warrant the implementation of the full report.

Thank you for your time and attention in this regard. Please contact me if you have any questions regarding this or any other matter affecting the practice of law or administration of justice in New Jersey.

Very truly yours,

[Signature]

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NEW JERSEY STATE BAR ASSOCIATION
POSITION ON SENATE 1981 / ASSEMBLY 2715 (ADLER/ROBERTS),
WHICH AUTHORIZES THE NEW JERSEY SUPREME COURT TO
ESTABLISH THE NUMBER OF JUROR CHALLENGES THROUGH ITS
RULEMAKING PROCESS.

The New Jersey State Bar Association strongly opposes S-1981/A-2715 (Adler/Roberts), which provides that the New Jersey Supreme Court shall have the authority to establish the number of juror challenges through its rulemaking process.

This bill was reviewed by the Association’s Board of Trustees, Legislative Committee and referred to virtually every section and committee within the Association, given its far-reaching implications for the Bar.

The NJSBA has played a critical role in New Jersey’s Supreme Court Committee on Jury Voir Dire and Peremptory Challenges, chaired by Honorable Joseph Lisa. NJSBA Representative, John C. Eastlack Jr., Esq. continues to serve on the Supreme Court Committee charged with studying this matter, and former NJSBA Trustee and retired Superior Court Judge C. Judson Hamlin also served on the Committee on behalf of the Trial Attorneys of New Jersey. We welcome the opportunity to continue to engage in dialogue with the New Jersey Supreme Court; however, we have several concerns about S-1981/A-2715.

NJSBA OBJECTIONS TO THIS BILL
First, the model jury selection procedure has only been in place for approximately twenty (20) months, and there have been changes made by the Administrative Office of the Courts, through directives, that have modified certain of the procedures. This is an evolving process, as the original Supreme Court Committee intended that it should be. There is simply insufficient data and analysis of the effect of the more intensive voir dire, open-ended questions, and attorney participation, to determine whether peremptories should be altered or reduced. This uncertainty, we understand, contributed to the Supreme Court Committee’s original decision not to seek reduction in the number and scope of peremptory challenges.

Second, the NJSBA opposes the reduction in peremptory challenges. While some modification may be required in order to address certain outdated provisions regarding the number of peremptories (particularly with regard to certain criminal charges), reductions in the number of peremptories is unwarranted. Despite the Court's apparent objective of promoting expeditious
trials and minimizing backlogs, those goals should be in harmony with the need to safeguard the interests of the parties and the interests of justice in selecting jurors, which is a vital consideration in the administration of justice.

Third, the State Legislature and State statutes play an important role regarding the selection of a jury, as with the Rules of Evidence. In these areas, both the Legislature through its authority by statute, and the Court, through its rulemaking authority, has an important and recognized role to ensure that the interests of justice are met.

Accordingly, the NJSBA respectfully urges you to vote “NO” on S-1981/A-2715.