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## Commentary

### One Step Forward, Two Steps Back

Fewer defense peremptories would nullify proposed voir dire improvements

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The report by the Supreme Court Special Committee on Peremptory Challenges and Jury Voir Dire should be a cause for concern, not only for defense attorneys but all members of the bar.

Although the committee argues that the recommendations with respect to criminal defendants are designed to strengthen the right to a fair trial, a reduction in the number of peremptory challenges will accomplish the opposite.

No one takes lightly a request by the Court to evaluate current practices that so closely impact defendants' rights, but a reduction in the number of challenges from 20 to eight is hasty and misguided.

Notably, the committee acknowledges the disparities throughout the state in the manner in which voir dire is conducted. Indeed, the report makes clear that a somewhat superficial and hasty inquisition of jury bias is often substituted for a thorough and meaningful voir dire.

To this end, the committee's recom-

mendations of standardization of the voir dire process, education of the bench and bar, participation of counsel in questioning and use of more probing questions are to be applauded.

Should the Court agree with these recommendations, however, criminal defendants would be given little more than snow in the winter because an accused already has a right to a thorough voir dire to ensure that bias and prejudice do not find their way into jury deliberations. A judge who refuses to voir dire jurors on issues germane to the case or grant a valid challenge for cause does so at his or her peril. These modifications, therefore, will give teeth to an accused's existing right to a fair trial.

While the committee's report recognizes that peremptory challenges are a "safety net" for criminal defendants to ensure their constitutionally guaranteed right to a fair trial, the recommendation to reduce the number of such challenges is shocking, especially in light of the committee's reasoning — or lack thereof — for selecting eight as the appropriate number.

The committee reasons that such a reduction is necessary because New Jersey offers an accused more peremptory challenges than any other state. That rationale begs the question: since when are an accused's rights under our state constitution judged by what other states do? Our courts have

consistently shown a profound respect for our state constitution and have never shied away from granting greater protection to an accused than is granted by other states or the federal government.

Our constitutional jurisprudence views the peremptory challenge as a vital ingredient in ensuring a fair trial. Indeed, history teaches that the reason for a greater number of challenges for an accused than for the state is because of the public's inherent trust in and association with the prosecution as opposed to the defendant.

In reaching for another justification, the committee suggests that historical abuses of the peremptory strike will also be reduced. This rationale is the classical non sequitur. Make no mistake about it, the committee is suggesting that because a prosecutor may unconstitutionally abuse peremptory challenges, the number of such strikes given to a defendant should be reduced. Cutting a hole in an accused's safety net that protects his right to a fair trial because of potential prosecutorial misconduct flies in the face of common sense and cannot serve the stated purpose.

To suggest that peremptory challenges should be reduced without first determining what effect the more thorough and meaningful voir dire will have is an ill-advised and dangerously precipitous recommendation that will ultimately erode defendants' rights to a fair trial — rights that New Jersey has spent decades strengthening. ■

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