



The Legal Aid Society

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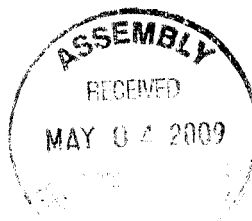
Alan Levine
Chairperson of the Board

Theodore A. Levine
President

Steven Banks
Attorney-in-Chief

April 30, 2009

Helene Weinstein and Joseph Lentol
Members of Assembly
Chairpersons
Committees on Judiciary and Codes
New York State Assembly
Albany, New York 12248



Re: A2374 "Jury Pool Fair Representation Act"

Helene at Joe
Dear Chairpersons Weinstein and Lentol:

We at The Legal Aid Society fully support the expansion and updating of source lists from which jury pools are drawn. Our attorneys confront issues of juror bias and the fairness of trials every day. Widening the pool from which eligible jurors are drawn will diversify the participation of the community in the trial process and enhance confidence in its fairness for those exercising their right to trial by jury.

We would like to contribute an observation with respect to an aspect of the relevant law. Our clients, as well as all other parties in the litigation process, have a right to a "venire," that is, a jury pool, drawn from "a fair cross-section of the community." The Supreme Court has ruled, however, that the actual petit jury chosen in an particular case does not have to represent a fair cross-section. See Holland v. Illinois, 493 U.S. 474 (1990).

The reason for the discrepancy is that the parties in a case have the right to exercise peremptory challenges to prospective jurors. The aim is to remove jurors who may be biased against one's cause, with the judge ensuring that challenges are not based on race or sex. In the


working of the adversarial system, the Constitution requires an impartial jury, but not necessarily a representative one. Id. at 480.

This overview highlights the importance of the Committee's proposal. Our system of trial by jury would clearly benefit from expanding the source of potential jurors beyond the lists that have been relied upon in the past. Ensuring wider participation by those with lower incomes and more diverse race and class backgrounds can only augment the shared experience, knowledge, and perspective of the juries who decide the cases of our fellow citizens.

Yet, as noted above, the lawyer who represents an individual client at the trial stage is not in a position to advance such a goal, however beneficial it may be. His or her professional obligation as an advocate is to persuade a jury to rule in the client's favor. But those dependent on the justice system will benefit, as a class, if juries are drawn from the widest and fairest cross-section of the community. With the knowledge that a diverse jury pool enhances the ability of our clients to get a fair trial, we therefore fully support the Committee's efforts.

We are grateful for this opportunity to present our views.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'S. Banks', written over a horizontal line.

Steven Banks
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