Philadelphia Bar Association
Preliminary Comments and Input on the ABA Draft Standards Relating to Jury Trials
October 2004

Preamble:

The Philadelphia Bar Association is committed to preserving the right to a jury trial and supports the promulgation of national minimum standards to protect the fairness and integrity of such trials. However, absolute uniformity would not necessarily advance those goals, because what works best in one jurisdiction may not work well in another given the vast differences in size, resources and controlling law among our various federal and state jurisdictions. Thus, we recommend a careful balancing of national interests and local realities.

Input and Comments:

Principle 1 – The Right to Jury Trial Shall Be Preserved.

We endorse this principle and the enumerated standards, except to the extent that Standard 1.B and 1.C.2 provide that a prosecutor in a criminal case has a right to demand a jury.

While Pennsylvania’s Constitution gives prosecutors the right to demand jury trials, the law on that point is unsettled regarding federal prosecutions. Given the uncertainty regarding federal sentencing guidelines, significant controversy may soon arise on that issue.

Principle 2 – Citizens Have the Right to Participate in Jury Service and Their Service Should Be Facilitated.

We endorse this principle and the enumerated standards, except for one aspect of Standard 2.F.5.

We agree that employers ordinarily should pay employees while on jury duty, but believe that such requirements and exceptions should be left to the appropriate state and federal legislatures. Accordingly, we suggest deleting “be required to” from Standard 2.F.5.

Principle 3 – Juries Should Have 12 Members.

We endorse this principle only with regard to criminal trials.

The federal and state courts in Philadelphia have used civil juries of less than 12 members for many years without any adverse effects. The norm in both courts is 8 jurors, with the trial continuing as long as at least 6 remain. In federal court, judges often empanel more for particularly long trials to ensure that the number will not fall below 6 by the end of the trial. In state court, any party may demand 12 jurors, but most do not. Requiring 12 jurors in every civil case would unnecessarily burden the public with more frequent jury service and would increase the number of hung juries in civil cases.

We endorse this principle only with regard to criminal trials.

The federal court already requires unanimous verdicts, absent an approved agreement by all parties. However, pursuant to Pennsylvania’s Constitution, a five-sixths decision is sufficient in state court civil cases. Moreover, requiring unanimity would increase the number of hung juries in civil cases.

Principle 5 – It Is the Duty of the Courts to Enforce and Protect the Rights to Jury Trial and Jury Service.

We endorse this principle and the enumerated standards.

Principle 6 – Courts Should Take All Reasonable Steps to Educate Jurors Regarding the Essential Aspects of a Jury Trial.

We endorse this principle and the enumerated standards, except to the extent that Standard 6.C calls for instructions inconsistent with our position regarding Standard 13 below.

Principle 7 – Courts Should Protect Juror Privacy Insofar as Consistent with the Requirements of Justice and the Public Interest.

We endorse this principle and the enumerated standards.

Principle 8 – Individuals Selected to Serve on a Jury Have an Ongoing Interest in Completing Their Service.

We endorse this principle and the enumerated standard.


We endorse this principle, but not the enumerated standards.

The grounds for a change of venue are controlled by a substantial body of law that must be followed by the judiciary. Adopting a different standard would be futile and ill advised.

Principle 10 – Courts Should Use Open, Fair and Flexible Procedures to Select a Representative Pool of Prospective Jurors.

We endorse this principle and the enumerated standards, except for one aspect of Standard 10.C.2.b.

We reached no consensus on whether economic hardship should be considered a valid basis for excuse from jury service. Pennsylvania does not recognize economic hardship as sufficient grounds. Nevertheless, it is often relied upon to excuse a potential juror during voir dire.
Principle 11 – Courts Should Ensure That the Process Used to Empanel Jurors Effectively Serves the Goal of Assembling a Fair and Impartial Jury.

We endorse this principle and the enumerated standards. Moreover, we vehemently oppose the revision suggested at the recent ABA Symposium on the American Jury System that would “discourage” peremptory challenges. Such challenges are essential to the selection of impartial juries, because challenges for cause are routinely denied as to jurors who claim they can be fair despite clear biases and unfair preconceptions. As proposed, Standard 11.F provides adequate safeguards against discriminatory challenges, as does Batson v. Kentucky, 476 U.S. 79, 89 (1986), and its progeny. That may not be a perfect solution, but it is far preferable to discouraging peremptory challenges in all cases whether there is any hint of such discrimination or not.

Principle 12 – Courts Should Limit the Length of Jury Trials Insofar as Justice Allows and Jurors Should Be Fully Informed of the Trial Schedule Established.

We endorse this principle and the enumerated standards.


We endorse this principle and the enumerated standards, except as follows.

We recommend deleting Standard 13.B. Providing jurors with trial notebooks could lead to jurors reading included materials when they should be listening to testimony. Including “selected exhibits” would also spawn new battles over which exhibits to include. The jury may also conclude that any exhibits not included are unimportant. Displaying exhibits during the testimony and giving jurors a set of the admitted exhibits at the end of the trial, if appropriate, is a much better approach.

We also recommend deleting Standard 13.C. Encouraging jurors to ask questions may lead them to focus on what to ask or to write out questions when they should be listening to testimony. In addition, their questions will often seek inadmissible evidence, leading to further frustration when the answers are not provided. Jurors ask questions occasionally anyway when they do not understand an important point, and it would be better not to encourage less important questions.

We also recommend revising Standard 13.H. to say, “In civil cases the court should seek a single, unitary trial of all issues in dispute before the same jury, whenever practical.” We do not agree that the exceptions currently stated should be the exclusive grounds for bifurcation, particularly in multiple cases with common issues or other situations where bifurcation would promote settlement or greatly enhance judicial economy.

Principle 14 – Jurors Should Be Advised by the Court in a Succinct and Comprehensible Manner Regarding the Applicable Law and the Conducting of Deliberations.
We endorse this principle and the enumerated standards, except for the second sentence of Standard 14.A

Providing each juror with a set of instructions as proposed could lead to jurors reading instructions when they should be listening to the court during the charge or to other jurors during the deliberations. It would also increase the risk of a particular instruction receiving undue emphasis as opposed to the charge as a whole. We support providing only a single set of the instructions for use as a reference source during the deliberations.

Principle 15 – Courts and Parties Have a Duty to Facilitate Effective and Impartial Deliberations.

We endorse this principle and the enumerated standards, except for one aspect of Standard 15.B.

In most cases, we would support providing a set of all admitted exhibits to the jury for use as a reference source during their deliberations. However, in some cases, particularly where there are only a few exhibits, providing them to the jury during deliberations may give them too much prominence relative to the other evidence. Accordingly, we suggest revising Standard 15.B to say, “The court should consider providing exhibits admitted into evidence to the jury for use during deliberations.”

Principle 16 – Deliberating Jurors Should Be Offered Assistance When an Apparent Impass [sic] Is Reported.

We endorse this principle and the enumerated standards, but note that “Impasse” is misspelled in the Principle and “inquire” is misspelled in Standard 16.A.

Principle 17 – Jury Decisions Should Be Afforded Great Deference by Trial and Appellate Courts.

We endorse this principle and standard.

Principle 18 – Courts Should Give Jurors Legally Permissible Post-Verdict Advice and Information.

We endorse this principle and the enumerated standards, except for Standard 18.A.

Discussions between the court and jurors on the record after the trial is concluded could provide increased fodder for verdict impeachment attempts by the losing party or parties. We support appropriate remarks by the court to the jury, such as thanking them for their service. However, inviting discussion by the jury would be likely to do more harm than good. For example, such a discussion might invade the confidentiality of deliberations, intimidate jurors or influence future trials due to comments regarding the probable guilt of acquitted defendants.
Principle 19 – Appropriate Inquiries into Allegations of Juror Misconduct Should Be Promptly Undertaken by the Trial Court

We endorse this principle and the enumerated standards, except as follows.

This principle covers more than “Post-Verdict Activity.” Thus, it should be preceded by a new heading, such as “Juror Misconduct.”


The exceptions specified in Standard 19.A.2 should not be limited to verdicts by lot and clerical errors. We suggest adding “or by any unlawful conduct.”