

87 Bayard Street, New Brunswick, NJ 08901  
Telephone: (732) 828-3433  
Fax: (732) 828-5862  
Website: [www.mcbalaw.com](http://www.mcbalaw.com)  
Email: [admin@mcbalaw.com](mailto:admin@mcbalaw.com)

2008-09 Term

July 16, 2008

**OFFICERS**

Mary P. Nelson  
*President*  
Edward J. Rebenack  
*President-Elect*  
Thomas J. Denitzio, Jr.  
*First Vice President*  
John P. Paone, Jr.  
*Second Vice President*  
Renee Anthony  
*Treasurer*  
Tara Auciello  
*Secretary*  
Lynn F. Miller  
*Immediate Past President*

Hon. John H. Adler  
1916 Route 70 East  
Suite 3  
Cherry Hill, NJ 08003

Hon. Joseph J. Roberts, Jr.  
Brooklawn Shopping Plaza  
Rt. 130 South & Browning Rd  
Brooklawn, NJ 08030

Re: S.1981/A.2715

Dear Senator Adler & Assemblyman Roberts:

On behalf of the Middlesex County Bar Association, please accept this letter to express our opposition to the pending legislation which seeks to repeal the statute establishing the right to, and setting the number of, peremptory challenges that are presently afforded to litigants in both criminal and civil cases. Repealing this statute would place in the exclusive hands of the New Jersey Supreme Court the ability to fix the number of peremptory challenges.

For over 200 years our citizens have had a statutory right to the number of peremptory challenges. Both the present statute (N.J.S.A. 2B:23-13) and by Rule 1:8-3, permit litigants to exercise peremptory challenges to remove potential jurors thought by the litigants to be biased, prejudiced, or incapable of remaining impartial. This legislation, if passed, will create a radical change in New Jersey trial practice. Trial lawyers universally agree that jury selection is a critically important step in the trial process, because a well defined jury selection process helps yield a panel of fair and impartial jurors. Those involved in the trial process know that different panels of jurors, hearing the same evidence, are likely to yield differing verdicts. This uncertainty that is an unalterable part of the trial process, is precisely why litigants must be permitted to exercise peremptory challenges to remove jurors whose life experiences or personal circumstances would, in the view of the litigants, make them less likely to decide a case based solely on the evidence presented in the courtroom. The long-standing right to peremptory challenges - which goes back over 200 years in this State - must not be diluted in the name of expediency by leaving the entire process in the hands of the rule-making authority of the Court.

The jury selection procedures adopted in New Jersey, by statute and rule, are designed to pursue the goal of producing a jury in each case that is "as nearly impartial as the lot of humanity will admit." State v. Tinnes, 379 N.J. Super. 179, 183 App. Div. 2005) (quoting State v. Williams, 93 N.J. 39, 60 (1983)). Our courts have long recognized that fair and impartial jury selection is an integral component of the process to which every criminal defendant is entitled. State v. Singletary, 80 N.J. 55, 62 (1979). As Judge Fisher noted recently in Tinnes:

"[T]he peremptory challenge is a "creature of statute designed to eliminate extremes of partiality on both sides; [and] to assure the parties that the jurors before whom they try the case will decide on the basis of the evidence placed before them and not otherwise."

**TRUSTEES 2009**

Joshua Altman  
Craig M. Aronow  
Daniel N. Epstein  
Angela Foster  
Peter Tu

**TRUSTEES 2010**

Nicole Albert  
Darren M. Gelber  
Richard P. Klein  
Joseph V. Leone  
Andrea J. Sullivan

**TRUSTEES 2011**

Colleen M. Flynn  
Louis J.R. Kady  
Bruce J. Kaplan  
Robert R. Levinson  
Ellen F. Schwartz

**NJSBA TRUSTEE**

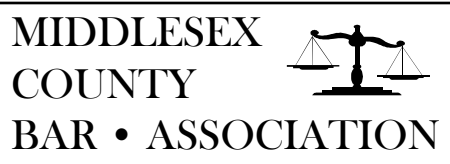
Eric Christopher Landman

**EXECUTIVE DIRECTOR**

Jonathan P. Cowles

**ASSISTANT DIRECTOR**

Elaine Miller



87 Bayard Street, New Brunswick, NJ 08901  
Telephone: (732) 828-3433  
Fax: (732) 828-5862  
Website: [www.mcbalaw.com](http://www.mcbalaw.com)  
Email: [admin@mcbalaw.com](mailto:admin@mcbalaw.com)

*Letter to Senator Adler and Assemblyman Roberts  
Opposition to S.1981/A.2715  
7/17/2008, Page 2*

379 N.J. Super at 185 (quoting State v. DiFrisco, 137 N.J. 434, 468 (1994) (citations omitted)).

The proposed legislation to repeal the statutory right to peremptory challenges appears to have had its genesis in the 2005 recommendation of the Supreme Court Special Committee on Voir Dire and Peremptory Challenges. That committee, comprised by a majority of members of the judiciary, cited what we respectfully view as flawed reasoning to support its recommendation.

The logic of that Committee's reasoning in support of the drastic reduction of peremptory challenges is extremely flawed. For example, one cited justification to reduce peremptory challenges was the unsupported assertion that jurors were upset when removed from sitting on juries. No empirical, or even anecdotal, data supports this hypothesis. Those actually involved in trial work know that most jurors are all too happy to be excused from sitting.

The Committee report also suggested that greatly reducing the number of peremptory challenges would minimize instances of improper discrimination in their use. Yet, reliance upon racial or other immutable characteristics as the basis to exercise a peremptory challenge is already against the law. See Batson v. Kentucky, 476 U.S. 79 (1986), and State v. Gilmore, 103 N.J. 508 (1986).

The Committee also took note of the fact that other states permit fewer peremptory challenges than New Jersey. This is certainly no compelling reason to retreat from an entrenched part of our state's system of justice, dating back more than 200 years, absent compelling evidence that the practice is outdated or unnecessary. Neither is the case.

There is simply no evidence that the present statutory and court regulated practice regarding peremptory challenges has been detrimental to the trial process in our State. The trial bar overwhelmingly supports maintaining the present system. With the repeal of the death penalty, any concern over the lengthy process required to select a jury in a death penalty case is no longer a concern.

For these reasons, in addition to those cited in the litany of other expressions of opposition to this bill cited by others, the Middlesex County Bar Association opposes the proposed legislation eliminating the statutory right to peremptory challenges.

Respectfully,

*Mary P. Nelson*

MARY P. NELSON  
President

MPN/jpc

Cc: Timothy Lydon  
Frank Dominiguez  
Patricia K. Nagle  
All Middlesex County Legislators  
New Jersey State Bar Association  
All New Jersey County Bar Associations  
New Jersey Law Journal & New Jersey Lawyer