

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE

SUB-COMMITTEE ON JURY SELECTION AND COMPENSATION

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Verbatim report of hearing held
in the House Majority Caucus
Room, Harrisburg, Pennsylvania,
on Thursday,

September 20, 1973

9:30 A.M.

* * *

HON. WILLIAM HUTCHINSON, Chairman

COMMITTEE MEMBERS

Hon. I. Harry Checchio
Hon. Donald W. Dorr

Hon. Leonard Martino
Hon. Stephen Wojdak

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CHAIRMAN HUTCHINSON: This is a meeting of the Sub-Committee of the Judiciary Committee of the Pennsylvania House of Representatives on the selection of -- on jury selection and compensation in Pennsylvania. We have called these hearings for the purpose of obtaining testimony and information on the existing systems in Pennsylvania, selection of juries, as they work in practice and the problems both practical and constitutional in connection with those workings. In that connection, the Sub-Committee has solicited testimony from a large number of groups which would have interest in this problem, including the Pennsylvania Bar Association, the Uniform Commissioners on State Laws, the Jury Commissioners Association of Pennsylvania, the American Civil Liberties Union, the Philadelphia District Attorney's Office, the Allegheny District Attorney's Office, the Pennsylvania District Attorneys Association, the Pennsylvania Public Defenders Association, the State Association of Trial Judges, and the Office of the Administrator of the Pennsylvania Supreme Court. We have asked all of these groups to present such testimony or evidence as they may desire.

At this stage of our work, and we have also advised them that following the conclusion of this stage of the Committee's work, we will request draft legislation and again

contact them for comments on the draft.

We have with us this morning Professor Louis Del Duca of Dickinson Law School, who is here as spokesman I believe for the Pennsylvania Bar Association which has been in the process of preparing a study on jury selection and Professor Del Duca has prime responsibility for that. We are very happy to have you here, Professor Del Duca, and we appreciate your taking time to come and give us your viewpoint on this. I believe you have an initial statement that you would like to make and testimony to present. We then may have some questions.

PROFESSOR LOUIS F. DEL DUCA, called as a witness, testified as follows:

PROFESSOR DEL DUCA: Thank you, Mr. Chairman. We appreciate the privilege and the opportunity to be with you today and to share with you the results of the study that we have been carrying on for some time. My name is Louis Del Duca. I am Professor of Law and Dean of Admissions at Dickinson School of Law. And I am here today in my capacity as the reporter for the Joint Council on Standards for Criminal Justice. I think the perspective of this study will be focused more sharply if I just take a minute to tell you what the Joint

Council on Standards for Criminal Justice is. It is a group whose membership I have outlined for you on this sheet that I have presented to you, Mr. Chairman. I believe you have a copy of that.

CHAIRMAN HUTCHINSON: If you have a copy, I would ask that we have it marked as an Exhibit. And I will present it to the stenographer and we will mark it as Professor Del Duca's Exhibit 1.

Study - produced and marked for identification as Professor Del Duca's Exhibit No. 1.

PROFESSOR DEL DUCA: The Joint Council on Standards for Criminal Justice has members from both the Pennsylvania Bar Association and the Pennsylvania Conference of State Trial Judges. This Council was appointed to do the job of reviewing a very voluminous set of recommendations that the American Bar Association developed to try to improve the whole criminal justice system. And part of this long study that the American Bar Association made between the years 1964 and 1972 is a study on the selection of jurors.

We will focus our attention today only on that part of that. The Joint Council has been reviewing all of the 17 standards which run the gamut from Pretrial, release pro-

cedures, on through the trial, on through appellate review procedures and probation parole and also post-conviction hearing matters. The Council was very fortunate to have the privilege of being funded with money that was provided by the Pennsylvania Bar Association through its insurance trust fund. It was also funded in part by an L.E.A.A. grant through the auspices of the Governor's Justice Commission. The membership of the Council is worth taking a look at just for a moment. You can see distinguished Judges from all around the State who are serving on it. I won't enumerate their names at this point in the interest of saving time. But you can also see that there are distinguished practitioners of the law from all around the State and geographically the representation has been good, functionally the representation is balanced. There was an effort made, a deliberate effort made here, to see to it that the defense function, the prosecution function, that all the varying perspectives that go into developing a sound and balanced system of criminal law and a sound and balanced jury selection procedure to focus it on a subject that we are concerned with today would be fully represented. You have distinguished prosecutors, you have distinguished defense people, you have distinguished Judges and you have distinguished practitioners in this Council.

The Council continues to review the research that we produce for the Council and, if you turn to the other Exhibit that I gave you, Mr. Chairman, which is a portion of the trial by jury study which the Council has produced and we have only included in the materials that we are submitting to your Committee today, Mr. Chairman, the portion of that study that deals with selection of a jury.

CHAIRMAN HUTCHINSON: Excuse me, would it be appropriate for us to have this tabulation and study also marked as an Exhibit?

PROFESSOR DEL DUCA: If you wish, Sir.

CHAIRMAN HUTCHINSON: Mark this Exhibit 2 please.

Comparative analysis of American Bar Association Standards for the Administration of Criminal Justice re Trial by Jury - produced and marked for identification as Exhibit No. 2.

PROFESSOR DEL DUCA: Before we get into the details of this portion of our study, that part of it dealing with selection of jury, perhaps in very, broad, general terms we might try to relate to the Committee some of our general observations as to what the state of the Pennsylvania law is on this question of jury selection and what alternatives might be available in the form of the uniform act proposal that the

Commissioners on Uniform State Law have presented, have made available. In that regard, I would hasten to say that already in Pennsylvania the uniform law on jury selection and service act, which has been promulgated by the Commissioners on Uniform State Laws, is already substantially law in one class of county in Pennsylvania; namely, second class counties have, as of December 6, 1972, the legislature, Pennsylvania legislature, did enact this for second class counties substantially.

The job of finding out what the law in Pennsylvania is on jury selection is a formidable one. And is buried in the inner recesses of Purdon's in a great number of different statutes and any one of us lawyers that has utilized Purdon's and the not too magnificent indexing that you sometimes run into there, can appreciate the difficulties that that involves. If there is any single serious most fundamental problem that we have in Pennsylvania with the jury selection law at the moment, it is that the law is badly fragmented, it is fragmented in that first, second, third, 2A class counties each have separate statutes that deal with the problems in different fashions. Fourth to eighth class counties are operating under a very difficult to find set of rules that are set forth in three or four sections of Purdon's and which date way back to 1867. Most of the judiciary laws that were in

effect at that time were repealed but those three or four sections of the 1867 law are still in effect. So that if you try to come up with a set of rules as to what the law in Pennsylvania is, you have to come up with a number of sets of rules, depending on which class of county you are dealing with.

Some of the county laws are substantial -- let me correct myself, only one of the county laws is substantially complete and integrated and covers most of the subjects that should be covered and that is the second class county law, Allegheny County, which was just passed by this legislature on December 6, 1972 when it went into effect. That is the only law that is really a complete package and which is readily available and can be evaluated quite readily.

CHAIRMAN HUTCHINSON: Excuse me, Professor Del Duca. I see Mr. Von Stark, who is very much interested in the uniform act which has been prepared by the Uniform Commissioners on State Laws, is here and he does have to leave at 10:00 o'clock for another engagement. And I wonder if you would mind if we would interrupt you for just a few seconds so that Mr. Von Stark could --

PROFESSOR DEL DUCA: Would be very happy to.

ERNEST VON STARK, called as a witness,
testified as follows:

CHAIRMAN HUTCHINSON: Would you identify yourself.

MR. VON STARK: I am Ernest Von Stark, member of the Bar of one of the Pennsylvania Commissioners on Uniform State Law and I participated as a member of the Committee of the Commissioners Conference which dealt with this problem of uniform jury selection act. With the indulgence of the Professor, I would just like to state that we, of course, support all of the Commissioners Uniform State Laws, support the adoption or basic use of the uniform act. When we were considering it, I had some question in my mind as to whether this was a proper subject for a uniform act, that is, whether or not it is essential or even desirable that every state have a uniform act on the subject. Aside from that question, I think there is no question that Pennsylvania ought to have a uniform act within its own jurisdiction and that this act which we have prepared after considerable study is certainly, would be acceptable I would think and with some modifications, could be readily adapted to the Pennsylvania system.

I would like to recommend especially the fact that the uniform act provides some flexibility within the local jurisdiction, particularly as to the sources for the selection of names. And I would recommend strongly to this Committee that if an act is drafted here that this same flexibility be

permitted so that the particular situation in any particular county, that is, the difference between a rural county and an agricultural county and a metropolitan county, could be recognized by the Courts and that the legislature would not have to deal with it repeatedly. I think that we can probably be most helpful to the Committee not at this stage but after a draft has been prepared and we would like the opportunity to submit suggestions at that time.

CHAIRMAN HUTCHINSON: We would be delighted to accept them.

MR. VON STARK: Thank you very, very much. I apologize for having to leave, but I do have a hearing at 10:00 o'clock.

CHAIRMAN HUTCHINSON: I would state, Mr. Von Stark, that the Committee had as one of the prime sources of the study for prospective legislation has had before it from its inception the uniform act which our examination indicates is quite similar to the act which is now in force in second class counties referred to by Professor Del Duca. And we thank you. You did do an excellent job on the uniform act. We thank you for coming this morning.

(Witness excused)

CHAIRMAN HUTCHINSON: I'm sorry.

PROFESSOR DEL DUCA: Mr. Chairman, the first point that I made was that the existing law is fragmented, quite diversified, and incomplete in many respects, depending on which class of county you are looking at.

The next point I would like to make in the way of a general observation is that not all of the county laws assure a cross section of the citizenry as a base from which to select the jurors. Now this is achieved many times, but it is achieved despite the fact that the particular statute that is applicable to that class of county does not provide standards which are to be utilized in achieving the result. In other words, a lot of counties are doing what they should be doing, but not because they are mandated to do so by any statutory law. The rules for determining the basis on which jurors will be excused are greatly diversified and once again they are fragmented, they are incomplete in many instances, depending on which county law you are looking at. Again, on particulars the whole question of procedures that are to be utilized in orienting juries after you have selected them, in compensating them, in reimbursing them, would be an area in which you would want to focus on. There is a statute that deals with compensation and reimbursement which is quoted in our study. However,

on that point you might very well want to consider whether \$9 a day is sufficient compensation under today's standards.

The question of penalties that should be invoked in the event of refusal to take on the responsibility of being a juror, the question of automatic exclusion of certain classes of persons definitively merely because it falls into a given occupation, is a policy question that I am sure you will want to direct some considerable attention to. In the process of automatically disqualifying a given category of employment, you are also in a sense depriving that category of the opportunity of the privilege that they have as citizens to act as jurors. So it is a step that should not be lightly taken and is also an area in which a considerable number of qualified jurors who, even though they are working in a particular class of employment at the moment, may not be critically needed to do that particular job, and some attention I am sure you will want to give to resolving that problem. There are some suggestions in our study and a thorough, complete listing of what is presently done under the existing statute and under the uniform act that the Commissioners have promulgated as well as a reference to the proposed Judiciary Code.

Commissioner Stark made an observation here which I think in terms of general consideration is worthy of note at

this point. The legislature, I am sure, will want to exercise its prerogative to come down heavily on solving the basic policy question that needs to be resolved in this area. You might, as a legislature along the road, want to ask yourself whether you want to be bothered, or I shouldn't phrase it that way, whether your valuable time when you have so many other responsibilities to discharge, should in future years be taken up with resolving relatively minor questions that might arise in implementing the basic policy structure that you decide should be adopted in this area, whatever it might be. And in that regard, you might want to follow the lead of the Commissioners on Uniform State Laws in their statute and in addition to recognizing that the Supreme Court already has extensive rule-making power under the State Constitution, you might want to explicitly set forth a grant of power or statement to the effect that implementation of the basic policy should be handled by the Supreme Court in its rule-making capacity. I believe the uniform act has a provision to that effect in Section 18.

Now, Mr. Chairman, we don't want to unnecessarily impose on your valuable time. Those are, in a very general kind of way, the -- some of the basic considerations that we have run into in our study. If you like, at this time, we would

be very happy to try to highlight some of the details of our study and we could do that by following through seriatim the study that was presented to you as Exhibit 2.

CHAIRMAN HUTCHINSON: We would appreciate that.

PROFESSOR DEL DUCA: The materials that we have presented as Exhibit 2 are in the form of a proposed draft study issued by the Joint Council on Standards for Criminal Justice. This is not official Pennsylvania Bar Association policy, it is not official policy of the Pennsylvania Conference of State Trial Judges. We are merely trying at this stage to give you, to share with you, the research that has been done up to this point. The outline on the second page of Exhibit 2 is captioned, Part II. Selection of the Jury. Section 2.1 is captioned, Selection of Prospective Jurors, and it is this section which poses the greatest number of problems, substantive problems, that have to be resolved in this area.

If you turn to the next page, you will find it is numbered Page 9. The reason for that is that the first eight pages of our study were not immediately relevant to the assignment of this Committee and, therefore, we didn't want to burden you with a lot of extra material. The left-hand column is -- on this page represents the official recommendation of the American Bar Association as to how the particular problem

should be resolved. In the middle column, we have reproduced or summarized the existing Pennsylvania law that relates to the particular point and over in the right-hand column, we have included a recommendation made by the Joint Council of Standards on Criminal Justice as to what their preference is on the subject. I repeat, this is the Council recommendation rather than the Pennsylvania Bar Association or Trial Judges recommendation. 2.1(a) in the left-hand column deals with the question of random selection from representative cross sections and the American Bar Association, on the basis of its study, recommended that the names of those persons who may be called for jury service should be selected at random from sources which will furnish a representative cross section of the community.

Now in Pennsylvania we have, I believe, five different sets of rules on that question. [We have, in the middle column, we have reproduced for you a summary of what the first class county rule is. The jury selection Board selects names from a certified list of all the registered electors. The second class counties, the Act of '72 that we refer to is effective. There is a nice policy statement on the representivity of the group of names that should be utilized and the rights and duties of citizens to serve as

jurors. But Section 7 of the second class county Act, which is almost verbatim with the uniform act, the Commissioners on Uniform State Law uniform act, enumerates five classes of sources that are to be utilized in developing initial jury lists. Persons registered to vote, persons listed in the telephone, city and municipal directory, persons who pay or who are assessed for taxes, persons participating in State, county, or local programs authorized by law, or any person participating in any Federal program authorized by law, and any other qualified person who makes application to be listed as a prospective juror.

Second class counties A on Page 10 of our report are given the option to utilize the second class county procedure or alternatively, third class county procedure, and we have indicated the statutory source from which that rule is developed. Third class county, there is a procedure for selection of Commissioners for a jury Board, but there are apparently no statutory requirements governing the sources from which the Commissioners in third class counties derive the qualified jury. This is one of the holes that occurs so often because this body of legislation has been developed on a hit-and-miss piecemeal basis rather than on one concerted effort basis itself.

Counties for the fourth to the eighth class we had a great deal of difficulty tracing this down as a research matter and we finally came up with an 1876 and 1867 statute which very, very generally gives power to the Judges of these several judicial districts of this Commonwealth to cause the issuance of such number of venires for the attendance of jurors. That language is reproduced for you on Page 11.

Then the Jury Commission from the county, fourth to eighth class, from the whole qualified electors of the respective county at large shall select a number, affixed by the Court, the Common Pleas Court, at the prior term and they shall be "sober, intelligent and judicious persons".]

REPRESENTATIVE DORR: As a side comment, Professor, as you probably know, the legislature is fortunate to have a computer system which has in its program all of the laws of the Commonwealth and as a part of the original study that we made, we asked that computer to furnish us with these standards and it did turn up with that '67 statute. So if you have future difficulties like that, you might ask the computer.

PROFESSOR DEL DUCA: Well thank you. Thank you for the offer and we will --

CHAIRMAN HUTCHINSON: Representative Dorr has the study. I always have difficulty in asking the right questions

of the computer. He apparently asked the right questions and they got the right answers.

PROFESSOR DEL DUCA: And those particular statutes, the 1876 and the 1867 statutes, are not designated as being applicable to fourth to eighth class counties. The other types of statutes, in the first and second 2A and 3 class counties do say they apply to those particular counties. In this instance, because there was no other law on the books, you infer that the fourth to eighth class counties that are covered by another kind of game that you have to play to try to find out really what the law is. It really needs clarification and systemization very, very badly. It should be in one single code or one single statute that handles the problem.

On Page 12 we have summarized what the proposed Judiciary Code does and what the Uniform Jury Selection Service Act of the Commission does on the subject. We have developed some case law for you on Page 13 and 14. The random selection procedure has been sustained. And in the Commonwealth v. Carroll case, even though the jury ends up not having a specific quota of a particular type of person, if the random selection procedure was utilized initially and statistically, the possibility of every segment of the community having a fair shot at having a fair representation on that jury is

established, then the equal protection and due process requirements of the 14th Amendment of the United States Constitution are fully met.

CHAIRMAN HUTCHINSON: It would be a prerequisite though to establish the statistical possibility in the initial procedure of everybody, every group --

PROFESSOR DEL DUCA: Very much so, very much so, and that's why it's so important, Mr. Chairman, you have put your finger right on it, to define the sources from which the initial selection of jurors is going to be made in a rather broad fashion.

CHAIRMAN HUTCHINSON: I suppose otherwise the Court might impose a quota system, it might look at least to the -- if you couldn't establish a prerequisite, they would probably look to the actual composition of the jury and if that did not seem to be in accordance with the relative preponderance of different groups and classes in the community, you might not be able to meet your burden of proof and you might have a bad panel.

PROFESSOR DEL DUCA: That is right. And after a long trial, there is a challenge to the whole array and you have lost all that valuable trial time too.

On the question of whether or not the very exten-

sive variations that we have in the whole jury selection process in Pennsylvania violates equal protection requirements of the 14th Amendment of the United States Constitution, there have been two cases that have held -- that as long as the selection is on a broad base, the original source of jurors is on a broad base, the fact that different counties have different rules per se does not violate any equal protection or due process requirements of the Federal Constitution. Although I would hasten to add that as we have on Page 14 on our comment on Pennsylvania law, "although the variances among the counties do not violate equal protection requirements, several of the Pennsylvania statutes cited while requiring selection of jurors by designated officials, provide inadequate or no selection standards at all". Such as in the fourth to eighth class counties, they are apart from the reference to sober, judicious, etc., there is no other standard as to the sources from which the jurors are to be selected.

Coupled with the inadequacy of the criteria in the remaining statutes, the Pennsylvania juror selection statutes do not appear to adequately guarantee a representative cross section in all counties. In some counties it does, but not in all counties.

Our -- if we can turn back to Page 9 of the report

and in utilizing this at a later date, you might want to keep this framework in mind, the right-hand column contains the conclusion, or the recommendation I should say, of the Joint Council membership and that is the present fragmented and incomplete rules for selection of jurors should be replaced by basic standards which should be uniform throughout the State. And I might add with implementation probably being -- of these basic standards being left in the hands of the rule-making power of the Pennsylvania Supreme Court.

The recommendation is that registration and taxable lists should be the starting point, only the starting point, for compiling a list of prospective jurors and should be supplemented by other lists reasonably calculated to provide a representative cross section of the county. That is not a matter of choice, that is a matter of constitutional law, Mr. Chairman. Whatever system we come up with, we ^{had} better do at least that much.

On Page 14, we have in the middle of the page, under Pennsylvania law a caption, The Mechanics of Selecting Citizens Who Shall Be Subject to Jury Duty. And usually it is done through the jury wheel process. This is the means which is used throughout the State by which Jury Commissioners select a sufficient number of persons to constitute the re-

quired jury panel.

In second class counties, in addition to the jury wheel, the Commissioners are given the power by the statute to use mechanical or electromechanical devices or business machines, computers, etc. But strangely enough, even though first class counties are -- population-wise larger, there is no explicit power or for that matter it is not even implied I suppose, that they can use computers or mechanical means in lieu of the -- to supplement the jury wheel. This is again an indication of the fragmentation that has occurred here. I would imagine that a large county like Philadelphia would want to, they are using the computers for so many other things down there, they would certainly want to have the right, they are not forced to use it, but if at some future date they want to get into a computer system, it would seem to me that the legislature would want to give them that option.

CHAIRMAN HUTCHINSON: One of the questions that occurred to me, under the uniform act and the second class county act and this may solve it if they use the computers, since you are going to seek, you are going to use initially voter registration lists and taxable lists, but then you are also directed under the statute to use other lists and telephone directories, lists of people who are participating in

State or Federal projects and various other things. It would seem to me, and maybe you would like to comment on this, that you'll almost have to provide for computer programming otherwise you are going in large areas, at least you are going to get into impossible duplication of lists and people. It would be a very difficult job it seems to me mechanically to avoid duplication of persons because you will have the class of people in the telephone book will intersect or some of those people will be the same as the class in the voter list and all of these classes will have intersections and, as a result, you would have problems.

PROFESSOR DEL DUCA: I agree with you wholeheartedly. The same name would end up being in the wheel three or four times, as a taxpayer, as a voter, as a driver, registered driver. As you say, when you increase the number of lists that you are utilizing, the duplication problem will be a very real one.

BY CHAIRMAN HUTCHINSON:

Q. Do you know of any experience with computer usage that -- have adequate computer programs been developed to your knowledge, it may not --

A. In Pennsylvania, I don't believe that there has

been any real experience with it yet.

Q. I see that we have three representatives of the State Association of Jury Commissioners, Mr. Barnhart, Mrs. Dugan, and Mrs. Cooper. And I noticed that they had raised their hands.

A. Well if they want to say something at this point, at this time, I would be very happy to relinquish

CHAIRMAN HUTCHINSON: Would you like to, Mrs. Dugan?

MRS. DUGAN: Fourth class, from Beaver County, we have been using computers for four years. I have presented the forms. Now we do take it only from voter registration because our Judges had ruled that a qualified elector was those who were registered to vote. Now in the last couple years, we have accepted names from volunteers. Now, I will testify later on some of these recommendations that I do not agree with because of having worked with it and wanting to know. But we have used it and it has come out. Now last year we were taken to the District Court by two Defendants. The Judges, the Jury Commissioners, the Court Administrator and the I.B.M. were all taken, but first they threw the Petition against the Judges out and then they threw it out against us because we can prove that when the law was changed allowing 18-year-olds to vote,

we immediately, because we used this as qualified elector meaning anybody who was able to vote, immediately put our 18-year-olds in as we were going through the registration list. It has worked out -- the only way that we have checked it, we have not checked it against occupation, we have not checked it against those who are not registered to vote, of course, were not in except when they volunteered. We did check it against a majority and minority party and when we got through taking the number of votes out, we had one percent less -- no, a half a percent less Democrats than what the registration showed, a half a percent less Republicans and the rest of that went into non-political.

PROFESSOR DEL DUGA: You had a good sample.

MRS. DUGAN: Right, it was a very good sample. Our former President Judge, Judge Scalera, I have been Jury Commissioner now, this is my eighth year, and seven years ago we went in our class from 2500 names in the wheel to 5,000 in the wheel. At the time we did this by going into the registration office and going through the files and pulling the names. This is what we did at that time. And at that time, we sat down with him and our I.B.M. and we started this, pulling the wheel, but we were still taking volunteers. Now in the last few years we have taken no volunteers except non-registered

And I feel this is very, very wrong because the non-registered voter has a chance to not be in the wheel and they also have a chance to be in the wheel more often than the registered voter. And, of course, we have registered voters who have threatened to pull their names out in order to get away from it.

I feel myself that the personal tax which every community uses for their schools is the best way to pull jurors and this is a complete reversal of what I thought all these years because I am a politician and I am proud to be one. And I have always felt that if you were not a good citizen enough to vote, then you had no business serving on the jury wheels. But I have completely reversed my feeling on this and feel that it should come from the tax rolls, one of the ones that is complete. Otherwise, the people who are allowed to volunteer will keep appearing on your jury wheels which is what we were trying to get away from when we took over because they were calling them professional jurors.

I'm sorry, I have taken a lot of your time. But really, I think the computer is marvelous if you have the availability of it.

PROFESSOR DEL DUCA: What county?

MRS. DUGAN: Beaver County, we are a fourth class county. We did have Federal money brought into the county to

allow us to start this. We made the study there which was used I think was one of the initial study groups for it which allowed us because it was expensive to get started, especially the first year we were allowed to -- the first year we went through and took off anybody who said, we used just a card that we mailed out. The new forms that we are mailing out this year instead of people being excused when their name is pulled to serve on a jury, when we mail this out which we will do in the next month, if they have a reason to be excused they will ask before we put them in the automatic wheel and the Judges will then decide whether they should be excused or not.

BY CHAIRMAN HUTCHINSON:

Q. Then you do not have the problem of/a ^{getting} lot of excuses at the time the Subpoena goes out.

A. Right, yes, this is what we have had and it puts the Judges on a very big spot because in some counties the Judges say no excuses, in others they do excuse. I feel in our county we are too easy on excuses. I honestly do and I feel this is one of the areas where we should have a uniform system that excuses should be for certain things only, much as the Federal has. There are certain excuses that are completely absolute, but I don't think it should be that we can't draw

schoolteachers, that we can't draw -- that they are automatically excused. I don't think that nurses should automatically be excused, things like that. I think that should be at the judgment of the Judges at that time. I'm sorry.

CHAIRMAN HUTCHINSON: Thank you. We will certainly be interested in your further testimony.

PROFESSOR DEL DUCA: Again, coming back on the -- continuing from the comments that were just made, but relating them to the fact that the statutory framework that we have in Pennsylvania now is badly fragmented and incomplete, on this question of the option to utilize mechanical processes like computers, we end up running down through the first through eighth class counties. First class counties are not permitted to do so. Second class counties under the statute are permitted if they want to. Second Class A counties, since they have an option to utilize either second or third class county procedures, are permitted to do so and this is delineated for you. The applicable statutes are cited on Page 14 and 15.

Third class counties are given an option of utilizing data processing machines if they so desire.

In the fourth to eighth class counties, only the fourth class counties, you are very fortunate, only the fourth class counties are given power by a special statute to utilize

the mechanical means such as computers. So a fifth through eighth class county at this point, if they wanted to use it, they would be taking a chance because there is no legislative authorization on the books that permits them to do it. It is another example of how a patchwork type of an approach to legislation in this field needs to be corrected and you gentlemen of the Committee are certainly to be commended for taking the time to become interested in this and to bring it to the public's attention that it needs action.

REPRESENTATIVE DORR: Just a side comment there too. I think probably, to my knowledge more than anyone else's, we are indebted to the chief counsel to the majority leader, William Kramer, for bringing this to the attention of the legislature the last session.

CHAIRMAN HUTCHINSON: That's right. It was Mr. Kramer who suggested that this Sub-Committee be appointed and that we investigate this in the hope of having some uniform legislation.

PROFESSOR DEL DUCA: I'm happy to agree that he is a very able chief counsel and also a former student of mine.

On the question of determination of qualifications of jurors, that begins on Page 16 of our materials and the American Bar Association's proposal is on the left-hand side of

the page. They state jury officials should determine the qualifications of prospective jurors by questionnaire or interview and disqualify those who fail to meet specified minimum standards. The grounds for disqualification should be clearly stated objective criteria, such as: inability to read, write, speak, and understand the English language; incapacity by reason of mental or physical infirmity to render efficient jury service; failure to meet reasonable requirements concerning citizenship, residence or age; and pending charge or conviction of a felony or a crime involving moral turpitude.

Now on the first phase of that, before we get into the substantive side of it, in the middle column we first address ourselves to the procedures, that is, either the personal interview or questionnaire that is authorized under the existing statute of Pennsylvania. For first class counties, the Board is directed to make inquiries by questionnaires, personal interviews, or otherwise and that is a considerable amount of latitude.

In second class counties, a juror qualification form devised by or for the Jury Commission shall be mailed to each person selected by the President Judge from the master list.

Second class A counties, again they have the

option of going second or third.

In the third class counties, there are no prescribed procedures for verifying the qualifications of prospective jurors, but there is a requirement for publication in two newspapers of the compiled jury list. But there is a hole there again on what third class counties are authorized to do in the way of procedures for getting this information.

On fourth through eighth class counties, apparently the only procedure for determining juror qualifications is the due diligence of the Jury Commissioners, that is in the statute, that language, in selecting sober, intelligent, and judicious persons to serve as jurors. The mechanics of how that is to be done, again, is an area not covered under the present statutory scheme. The proposed judiciary Court would leave this to general rules or rules of Court either way. The uniform jury selection act provides that the Clerk of the Jury Commission should send each prospective juror, whose name is chosen from the master wheel, a juror qualification form.

On this point, the Council, the Joint Council, has recommended that on Page 16 in the right-hand column that the A.B.A. standard should be implemented by statute in Pennsylvania.

On the question of substantive criteria for

determining qualifications, the present Pennsylvania law on that is set forth beginning on Page 17 of our study. The basic standards for jurors is found in the 1867 Act. Again, sober, intelligent, and judicious persons selected from the whole qualified electors of the respective county. Electors has been interpreted by the State Supreme Court, our State Supreme Court, to mean those possessing the constitutional and statutory qualifications to vote. A case is cited there.

We have a few specialized statutes. One of them is set forth there at the top of Page 18. In any prosecution for any offenses in the nature of mob violence, the statute is cited there, disqualifies from jury service every person who shall have participated in the lynching or inflicting of bodily violence upon any person without authority of law, or any person who shall have expressed approval or excuse therefor and the same statute goes on to say every person who refuses to answer any inquiry on his voir dire on the ground that he may thereby incriminate himself shall also be ineligible to serve as a juror.

We have different provisions for, again, first, second, second class A, third class and fourth through eighth class counties and they are reproduced for you and I don't want to take the valuable time of the Committee at this juncture

in re-reading them verbatim. They are in the study and in your second class county law of 1972, you came very close to incorporating what is in the uniform act. You may want to use that as a starting point in your wisdom, but that is a policy matter for you to decide upon.

On Page 21 the A.B.A. standard in the left-hand column concerns itself with grounds for excusing jurors from service. And the A.B.A. standard, the American Bar Association standard, states that prospective jurors may be excused from jury service upon request on the basis of clearly stated grounds for exemption such as prior jury service, that the person has previously served as a juror within a specified period of time; or critical occupations, that the person is actively engaged in one of a limited number of specifically identified critical occupations. And as was stated earlier here, the law in Pennsylvania is really chaotic and all over the lot, depending on which county you are in, depending on which class of county you are in, and I question whether there should be that much difference depending on which county you happen to be tried in. The statutes are set forth there. First of all, on frequency of jury service, we have an old 1834 Act in Pennsylvania, the effect of which is that you will be required to serve not more than once within a year on any jury

panel.

The various kinds of critical occupations have some general statutes that are applicable across the board apparently to all counties. In the middle of Page 21 we cite the statute which applies to election officers in cities during terms of service, their terms of service. We have an unusual one in the middle of the page, operators, assistant operators, clerks and other persons, in the employ of the different telegraph companies in the State of Pennsylvania while doing duty in the offices of said companies, or along the routes of their telegraph lines, whether you are working indoors or outdoors is of no moment, as long as you are working for a telegraph company you are still immunized.

CHAIRMAN HUTCHINSON: But not a telephone company?

PROFESSOR DEL DUCA: Apparently not, apparently not, and this is, as you can well imagine, is something that we have inherited from a time in our history when telegraph companies were expanding and it was important to get the telegraph lines built quickly. 1862 that made a great deal of sense, but it isn't too relevant in this day and age. It is still on the books however.

The 1949 Act would give exemptions across the board to the Pennsylvania National Guard while in service.

Then, beginning on Page 22, we have delineated those statutes which apply to specific classes of counties only. And first class counties is set forth there. I don't want to unduly use your valuable time, particularly since this is all detailed for you in the study itself. I would just add at this point that the position which the members of the Joint Council took on this question is set forth in the right-hand column of Page 21. The Joint Council would recommend the adoption of the A.B.A. standard with inclusion of a three-year period within which the juror had previously served.

On the question of critical occupation, the recommendation of the Joint Council is that the adoption of the A.B.A. standard be recommended in a slightly modified form. They would have it read that the person -- that one ground for exemption be the person is actively engaged in a critical occupation. Now the whole thrust of that change in language, what they had in mind, was very much in line with the comments that the representative from Beaver County made here a little earlier as part of her statement, her informal statement; namely, that it would be a mistake in their judgment to automatically give any class of persons because they are involved in a particular occupation like telegraph lines for example, a total immunity from jury service not only because of the

fact that they are not carrying their fair share of responsibility as citizens, but even more so in light of the fact that the right to serve on a jury is an important right that every citizen should have. And if he wants to exercise it, he should not be deprived of it automatically because he falls into a particular category of employment. That is a serious right that you are depriving him of. So on both counts the Council felt rather emphatic on this one that if the subject of critical occupation should be in terms of whether the duty that is being performed at the time that the person is called for jury service is a critical duty rather than automatically categorizing it as a critical duty. If we had that kind of a standard, ladies and gentlemen, we long since would have been able to get around the telegraph line problem that we have had since 1862.

REPRESENTATIVE DORR: I wonder, Professor, if you would comment whether or not the Council had any difficulty in defining critical. It could be critical to the company that person is employed by, it could be critical to the populace at large, there could be a substantial difference there. And again, I don't think you want to put the Judges on the spot. Many inquiries that come from employers who deem it, supposedly deem it critical to their particular operation, to have that

individual with them.

PROFESSOR DEL DUCA: Well you undoubtedly either would want to perhaps put some guidelines in the legislation or alternatively this would be one of the areas which as a matter of rule of Court you might delegate onto the Pennsylvania Supreme Court. But with reference to the attitude of employers and the attitude of jurors themselves, prospective jurors themselves, there are provisions in the uniform act. I believe they are also, they may be included in the second class county act version of the uniform act that you enacted last year. But Section 16 of the uniform act provides that a person summoned for jury service who fails to appear or complete jury service as directed shall be ordered by the Court to appear forthwith and show cause for his failure to comply with the summons. If he fails to show good cause for non-compliance with the summons, he is guilty of criminal contempt and upon conviction may be fined not more than \$100 or imprisonment for not more than three days or both. Now the dollar amount, the length of the sentence, is a question of policy that you gentlemen are equipped to decide.

CHAIRMAN HUTCHINSON: Would you recommend that there be some sanctions?

PROFESSOR DEL DUCA: Definitely, otherwise there is

not going to be any real capacity to enforce it.

On the question of protection of jurors' employment, the uniform act in Section 17 says this. "An employer shall not deprive an employee of his employment or threaten or otherwise coerce him with respect thereto because the employee receives a summons, responds thereto, serves as a juror, or attends Court for prospective jury service. Any employer who violates this rule is guilty of criminal contempt and upon conviction may be fined not more than \$500 or imprisonment not more than six months or both. If an employer discharges an employee in violation of the rule that was stated above, the employee within a specified number of days, whatever the legislature would want to put in there, may bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall not exceed lost wages for six weeks. If he prevails, the employee shall be allowed a reasonable attorney's fee fixed by the Court."

Now these two Sections, that is, coercing a juror, a citizen to serve as a juror in effect, and requiring an employer to permit him to serve as a juror should be read in connection with Section 15 of the Act, which says in any two-year period a person shall not be required to serve or attend

Court for prospective service as a petit juror more than 10 Court days or except as necessary to complete service in a particular case. So it is a maximum normally of 10 days out of every two years, assuming that in the random selection process he is going to come up every two years and that is not likely to happen. He is more likely to come up every six or 10 years if that often rather than every two years for a 10-day stint of jury duty.

CHAIRMAN HUTCHINSON: I notice that you said, and I don't recall, that I think the statute, the proposed statute, did use the term petit juror.

PROFESSOR DEL DUCA: Well, on the length of service it's -- well, then to go onto other juries, to serve on more than one grand jury or to serve as both a grand and petit jury, the way Section 15 of the uniform act is worded.

CHAIRMAN HUTCHINSON: So that they still get protection.

PROFESSOR DEL DUCA: Yes, I'm sorry I didn't read the whole statute for you, Mr. Chairman.

Well, that is an area in which there are a lot of competing interests that need to be balanced and yet the individual juror in those few instances where he might be subject to punitive action by an unreasonable employer probably

does need some degree of protection against that possibility. If he is required to report, then he reports and he incurs punitive action, there should be some common sense area of standards there that would adequately protect the employer's right not to be harassed with numerous absences from his labor force caused by the need to fill jury panels and at the same time should give the Commonwealth the opportunity to get a reasonably balanced jury in all instances.

Well again, the skipping down to the last category on this question of exemptions, the -- on Page 24 the American Bar Association recommends that an additional reason for exemption be undue hardship or extreme inconvenience. The Courts may excuse other persons upon a showing of undue hardship or extreme inconvenience is the wording of the standard, A.B.A. standard. We have a variety of provisions depending on which county you are in, which class of county you are in. The recommendation of the Joint Council on Criminal Justice Standards is that the A.B.A. standard should be adopted in Pennsylvania.

Now the remainder of the material in our study dealing with subjects, the subjects of challenges to the array, voir dire examination, challenges for cause, peremptory challenges, alternates or additional jurors, is primarily

covered under Pennsylvania law by rules of the Supreme Court. The rules that are applicable are set forth, quoted, or summarized, in our study immediately adjacent to the A.B.A. recommendation and probably the only other area of legislative -- where legislation presently exists in Pennsylvania is the matter covered on Page 27 of our report, lists of prospective jurors. The A.B.A. standard says that upon request the parties should be furnished with a list of prospective jurors with their addresses. The -- we have a rule of Court which says, 1104(a), which says that the official designated by law to select persons for jury service shall prepare, publish, and post such lists of the names of persons to serve as jurors as provided by law. We have inspection requirements in all of the classes of counties, this is one area where across the board the requirements -- the law has achieved some uniformity and that is set forth for you on the middle column of Page 27.

The recommendation of the Joint Council is that the A.B.A. standard should be adopted with the current rules and statutes of Pennsylvania also being retained, the substance of those rules and statutes.

Members of the Committee and Mr. Chairman, I do want to thank you for the -- for myself personally and also on behalf of the Joint Council on Standards for Criminal Justice

of Pennsylvania Bar Association and the Pennsylvania Conference of State Trial Judges for this opportunity to share the results of our research with you. I have been asked to assure you that if in any way the Joint Council or the staff of the Joint Council can be of any assistance as you progress down the road in translating these hearings into legislation, we will be very happy at your request to cooperate in any fashion you deem worthwhile and desirable. Thank you.

CHAIRMAN HUTCHINSON: Thank you, Professor Del Duca. We appreciate very greatly your coming here and the study seems to me and I believe to the other members of the Committee, will appear to be quite comprehensive and very helpful to us. You have pinpointed many of the problem areas and given us some tentative alternate solutions in certain areas.

Representative Dorr, do you have any questions which you would like to ask?

REPRESENTATIVE DORR: I don't believe so at this time. I do appreciate your coming, Professor. I am sure that we will be in touch with you as we begin to develop proposed legislation on the matter.

PROFESSOR DEL DUCA: Thank you very much.

CHAIRMAN HUTCHINSON: We certainly thank you very much.

(Witness excused)

CHAIRMAN HUTCHINSON: I believe we have with us today also a representative of the Philadelphia District Attorney's office, Mr. Wellman, I believe, who desires to give some testimony on this subject as it relates to problems in Philadelphia, Mike Wellman.

MR. WELLMAN: That's correct.

MICHAEL WELLMAN, called as a witness, testified as follows:

CHAIRMAN HUTCHINSON: And your capacity with the District Attorney --

MR. WELLMAN: I am Assistant District Attorney and Chief of the Policy and Planning Division in the Philadelphia office.

CHAIRMAN HUTCHINSON: And you can be reached through the District Attorney's office?

MR. WELLMAN: I can, yes. I appreciate the opportunity to appear before you this morning. My remarks will necessarily be considerably less comprehensive than Professor Del Duca. I admit that I bring a very parochial perspective to your consideration. I would like to talk to you

solely about Philadelphia and solely, I think it's a fair statement, from the prosecutorial point of view.

In preparation for meeting with you this morning, I took the liberty of discussing the jury selection and compensation procedures in Philadelphia with Nicholas Koza (phonetic) who is the Chairman of the Jury Selection Board there and who, I was somewhat surprised to learn, you had not invited to testify before your Committee. And I also took the liberty of discussing them with President Judge D. Donald Jameson, to the extent that --

CHAIRMAN HUTCHINSON: We would be glad if Mr. Koza would wish to express his views either at a future hearing or in writing. We would be glad to --

MR. WELLMAN: He was unaware of even the existence of the Committee and somewhat surprised when I informed him why I was inquiring of him as to some of the procedures and I think he would appreciate an opportunity to express his opinions to you. Of course, I also consulted with the various trial division chiefs in the District Attorney's office in order to, as I said, bring you that prosecutorial perspective that we would like you to consider.

Perhaps a very brief description of how the
in Philadelphia
system operates/is in order. I am sure you are probably aware

of the procedures that are utilized, but we do have a computer system of the -- the entire Court system is in the process of being computerized. Jury selection, as a recent addition of that system, it goes so far as having the questionnaire which is sent to prospective jurors prepared by the computer. And I brought a sample for you. I would be happy to offer it to you.

CHAIRMAN HUTCHINSON: I think we would like to have it and I think we might like to have it marked as an Exhibit and made part of the record. I think one of the things we will have to go into here is the problem of computerizing the system not just in Philadelphia, but throughout the Commonwealth.

MR. WELLMAN: I appreciate that.

CHAIRMAN HUTCHINSON: Would you mark this as an Exhibit.

Sample of questionnaire - produced and marked for identification as Exhibit No. 3.

MR. WELLMAN: Mr. Koza informed me in Philadelphia, contrary to my previous belief, we have slightly over a million registered voters. I thought we were slightly under. In the course of a given year, 90,000 of those registered voters receive this questionnaire in the mail. They are selected at

random by the so-called Court computer. Of those number, approximately 27,000, 27,000 last year and perhaps 28,000 this year, will eventually end up on the wheel as they say. Of that 90,000, some are eliminated by one of the four masters' review of the answers on the questionnaire. An additional number, I cannot pinpoint it for you, are called in for personal interview and are either accepted or eliminated on the basis of the master's interpretation of the answers that they give at that point in time.

As of May, our jurors begin serving -- began serving for a two-week period as opposed to a three-week period which they had in the past. Of course, our grand jurors serve for the entire month. At any given time it would average out that approximately 300 to 350 individuals could be called in a given week. That would be supplemented, of course, by the number called for grand jury service in that particular week. And that would be the service, Mr. Koza tells me, anywhere from 30 to 40 Judges sitting at a given time to service potentially that number of Judges. So that of the 28,000 or so that will go on the wheel this year, it is safe to say that somewhere between 15 and 20,000 will actually have an opportunity to become prospective jurors.

Speaking with Mr. Koza, I discovered a difference

of opinion between his interpretation of the facts as they exist in Philadelphia and the problems and the interpretation that our office would place on it. From this point on, the opinions I express are solely those of the District Attorney's office.

As we see the problem, and as I said I admit we bring a very parochial perspective to it, it is simply a matter of whether you determine jury service is a right, as Professor Del Duca indicated a moment ago, or perhaps an obligation. I think we come closer to feeling it is an obligation. The problems as they affect our office, it is an indirect effect, but one that we consider important nonetheless. I think could be summarily characterized as too many excuses. I don't know what the practice is in other counties. I am only familiar with the statutory scheme which sets up the Jury Selection Board in Philadelphia and I am familiar to a limited degree with how that system operates. But it is our conclusion, after a review of the panels as they reach the courtroom, and this is not a scientific review by any means, I wouldn't want to deceive you into thinking that we had approached it on a statistical basis, that there are a number of groups of people which simply are not represented at all. We think that does a disservice not just to the Commonwealth, but also to the Defendant. The kinds

of people that seem to be excluded, and again I emphasize that this is a non-scientific conclusion on our part, are blue collar workers, mothers particularly with younger children, many times simply with teen-age children, and professionals of all varieties. The reasons I think are obvious. Financial hardship for a self-employed person, for a person who is an hourly employee, all of those considerations which go to the tenure of his employment and to the method of compensation are all very important. But I think in our minds we would strike a balance as to whether it is important to have a cross section of the community as it is limited by your initial means of selection, voter registration or whatever, or whether it is more important to meet the individual, I won't -- I hesitate to call them demands, individual needs perhaps or articulations of needs by a prospective juror.

We would prefer a system with somewhat strict guidelines. As a part of that system, we would hope that the compensation rate for jurors would be raised so that the immediate problem of financial hardship could be obviated in some cases. The Federal Court in Philadelphia pays \$20 a day for jurors. We pay \$9 a day. I would not want to be in the position of suggesting the City of Philadelphia, financially burdened as it is, would undertake another burden. I suggest

to you perhaps if your review is as comprehensive as it appears to be that you might want to consider the position of the Court system generally with respect to financing. The Court system is desirous of having the State absorb as much of that burden as possible. The arguments behind it are fairly obvious in terms of the Court system's function as an arm of State Government. I think that if you were to consider, look favorably upon the problem of compensation for jurors, and by the way all of the grand jury panels who sit in Philadelphia for the last X number of years have recommended that their compensation be increased. They have a somewhat self-serving point of view, but I think their claims are worth noting. If you would consider perhaps the possibility of jury compensation being absorbed as a cost across the Commonwealth by the State, then I would be less hesitant to fully express my feelings about the desirability of increasing the compensation level. We went before the most recent grand jury and indicated we were coming here to speak to you gentlemen this morning. And the one thought that those grand jurors expressed to us was to please indicate to you that the present level of compensation was totally inadequate. One woman who was a mother with young children at home indicated that by the time she had paid her travel expenses to City Hall and paid for a babysitter, she had

no money left. In fact, she was losing money, money out of her own pocket in terms of her service on the grand jury for that particular month. But she also indicated it was very valuable experience and one that she wouldn't give up, but she thought it was an imposition.

BY REPRESENTATIVE DORR:

Q. Could I interrupt you just a minute.

A. Sure.

Q. I'm wondering, you're speaking now in terms of number of jurors called, in all other respects in terms of just the criminal side of the Court system, are you not?

A. The numbers I gave you are the number of jurors that are called for both civil and criminal duty.

Q. I see, so that's in the neighborhood of 20,000 people a year.

A. Between 15 and 20,000 depending on the exact number in a given week, yes. We had 378 criminal jury trials in Philadelphia last year. I couldn't tell you the number of civil, but it was relatively small.

Q. Can you comment as to the number of cases, criminal cases, taken to the grand jury.

A. To the grand jury in a given year --

Q. Indictments.

A. I'd say that it is on an average we probably take between 20 and 22,000 bills before the grand jury, of which maybe 19 to 20,000 are returned as true. The bills, of course, do not reflect individual Defendants, but if that is responsive to your question, those are the figures.

Q. You don't have any comment on the number -- idea of the number of civil cases?

A. Unfortunately I do not.

BY CHAIRMAN HUTCHINSON:

Q. May I ask, I assume Mr. Koza would have statistics or information, speaking of the fiscal burden, that he would have statistics or information that might show the number of juror days which are received in the Court.

A. I am sure he would. Unfortunately I do not.

Q. I wouldn't expect you to have them, but I think that information would be helpful.

BY REPRESENTATIVE DORR:

Q. The point I'm getting at, just to make my point, I have also been thinking how do you finance the system if you are going to talk about increasing the compensation? I'm wondering about the possibility of adding costs on cases.

CHAIRMAN HUTCHINSON: Mr. Barnhart, who is I be-

lieve --

MR. BARNHART: I'm searching for a figure where it might cost a city, you know, what figure. The City of Allegheny County they told me would run approximately \$500,000 a year if they increased it from \$9 to \$20.

CHAIRMAN HUTCHINSON: Thank you. Where did you get that information?

MR. BARNHART: We have a bill in increasing the grand jurors to \$15.

CHAIRMAN HUTCHINSON: There has been a fiscal study done on that bill?

MR. BARNHART: Yes.

CHAIRMAN HUTCHINSON: I'm sorry.

MR. WELLMAN: It's perfectly all right. Returning to the point, I think it's a relatively simple one. Mr. Koza, for example, disagrees. He says there is no money problem, perhaps expenses should be increased. We disagree based on what grand jurors have told us and based on the experience of our assistants as they have engaged in jury trials and have had contact with jurors and as these matters have been articulated to us in relatively informal settings.

The problem I think goes a little bit beyond that and really perhaps it is a public relations problem. In

Philadelphia, jury service is not something that one aspires to except in somewhat rare instances. It rather seems to be something one attempts to avoid. That is hardly a desirable situation, particularly when you are dealing with large numbers of jurors. I couldn't begin to express to you how that kind of sentiment affects the outcome of trials in terms of the feelings of people who actually do serve in terms of the way they are treated and their willingness to be where they are. Some, of course, are quite willing to serve and take I guess a civic pride in their serving. Others do not. And because dealing with the guilt or innocence of any given individual however inconsequential the charge may seem to be, it is such a serious matter I think it really behooves all of us and perhaps from your vantage you might be able to do something about it or at least suggest a way that the problem might be addressed, but the obligation to serve is felt a little more strongly perhaps. Maybe this is not a problem outside of Philadelphia, I don't really know.

CHAIRMAN HUTCHINSON: May I say from what I have been hearing throughout the Commonwealth and we have asked for input before today's hearing and have through the State Association of Jury Commissioners and through various counties replies from a number of counties that I think would be repre-

sentative, possibly 20, the problem does seem to exist. But Philadelphia is not as parochial in these respects as it would appear to be. And I would also say that I have served six and a half years as Assistant District Attorney in my home county, which is a fourth class county, and one of the large -- we have major problems also there with excuses and with complaints about the compensation.

MR. WELLMAN: Okay, well I am delighted to hear that. We are parochial in so many ways I am delighted to hear that this is not one of them. Our suggestions go a little bit beyond simply the possible statutory guidelines for excuses. Your judgment would be much better on that matter than ours, but we simply suggest it to you as an area you might want to inquire into.

A number of our trial division chiefs have suggested that perhaps the matter being excused, once you have been called for possible jury duty, is of sufficiently high importance that it rises to the level that a Judge should make the decision as opposed to a master. Now if your inquiry takes you at all into the guts of the Philadelphia jury selection system, you may have a better feel for the underpinnings of that suggestion. I wouldn't want to articulate it any more clearly than I have and I realize it isn't very clear. But I

think you can infer from what I have said what I am pointing towards.

CHAIRMAN HUTCHINSON: Once again, if I catch your inference, I believe you will find that Philadelphia again is not as parochial as you might think.

REPRESENTATIVE DORR: You wouldn't want to comment on the compensation of masters?

MR. WELLMAN: I would not. I'm certainly no creature of the board of Judges. Well, we will leave it go at that. We would also favor a proposal which Professor Del Duca discussed with you, an employment protection clause. And Mr. Koza would agree with us in this regard at least based on my conversation with him earlier this week. There seems to be, and it is difficult again to articulate, a problem of some employers indicating to their employees that since they have been called for jury duty they just don't want them to serve for whatever reason. And sometimes the attempts at coercion are relatively subtle I gather and other times they are anything but subtle. A protection of jurors employment statute with possible criminal contempt penalties and civil recourse for back wages -- we appreciate the exigencies of political life at this time of year among other things.

Continuing, as I said, we would favor such a

clause both in terms of possible criminal contempt penalties and to the extent that it might provide civil recourse as well. Our assistants have suggested that perhaps going beyond the guidelines for the excuse of potential jurors and going beyond the possibility of having the question arise as to the level of one decided by the Judge that at some juncture a criminal extract on all prospective jurors should be available. And that all prospective jurors at some point in time should be asked the question whether they have friends or relatives who have ever been convicted of a crime or who are presently under indictment for a crime or awaiting trial in those cases that no longer come to indictment. That, of course, reflects the peculiar concerns of the prosecutor's office, but I bring it to your attention nonetheless.

BY CHAIRMAN HUTCHINSON:

Q. Would that pose constitutional problems?

A. Not in terms of our very limited informal reflection on it. Others might suggest that it would. None appear to me on the face of it. My quick, off the top of my head answer is no, but that is certainly not responsive to the question.

That really forms the substance of what we would

like to suggest to you. I realize, as I have said, that our perspective is very limited, but I hope that our concerns will at least be considered by the Committee in terms of compensation, in terms of the manner in which excuses from jury service are made, the whole matter of whether it is a right or an obligation and certainly with respect to the employment protection clause. And if you could consider those questions, we would be most appreciative because we think they would probably be helpful in the way you would determine the outcome.

CHAIRMAN HUTCHINSON: Let me assure you we will consider those problems. And as I said once or twice in the course of your testimony, these particular problems are not, from our investigations, just peculiar to Philadelphia. They may be aggravated possibly in Philadelphia and I'm not -- I don't even suggest that. Frankly, I doubt that they are, except for the fact that in any major metropolitan area, most of our social problems seem to be more difficult and intractable, but nevertheless problems that appear out in the country.

I thank you for coming, Mr. Wellman. And I would appreciate it if you would apologize to Mr. Koza for our overlooking him in our invitation. I will see that he is placed on the list and we will want the benefit of at least a statement from him and I suspect that we will possibly have an

opportunity for him to testify at a future date.

MR. WELLMAN: I am sure he will appreciate it and we appreciate the opportunity to come here this morning. Thank you.

(Witness excused)

CHAIRMAN HUTCHINSON: Now we have the representatives of the jury Commissioners here, Mr. Charles Barnhart --

MR. BARNHART: William Barnhart.

CHAIRMAN HUTCHINSON: Beg your pardon?

MR. BARNHART: Bill.

CHAIRMAN HUTCHINSON: All right, and Mrs. Dugan who has already spoken briefly, and Mrs. Cooper. And I believe that you people have some input that you would like to give us. I take that Mr. Barnhart will be the first spokesman.

MR. BARNHART, MRS. DUGAN, AND MRS. COOPER,
called as witnesses, testified as follows:

CHAIRMAN HUTCHINSON: Give the stenographer your name, your exact capacity and title.

MR. BARNHART: William Barnhart, the Legislative Chairman for the Jury Commissioners Association.

We really intended to give an informal dissertation

here, but I would first like to thank the member from Philadelphia who has taken his time to come up here and has practically voiced verbatim what we intended to say, and the Professor, he pretty well covered the whole situation too. I don't know why but nobody has ever contacted the Jury Commissioners Association. I don't know whether they ever knew that they existed or not. We are a young organization, about seven or eight years old and primarily that is really our job, as Jury Commissioners. I think we recognize the inadequacies of the system and the fallacies and whatnot. We certainly have been frustrated pretty near to the point of frustration in trying to interpret the laws and trying to get the system to work. And it is almost impossible, like the Professor said, our laws go back into the 1860's and '70's and it is really hard in these days to really come up with a law that works for today.

In the seven or eight years that we have been in existence, we have been working with the local Government Commission in trying to get some of these glaring inadequacies corrected at the present time until your Commission was appointed. I am certainly glad that it has been appointed. We have gone through many days or many meetings with local Government asking them if we couldn't have a complete re-write

of all the laws to make them feasible for today's operation. I'm glad to see that you are really getting down to it right now.

Most of our problems have been with the laws, in interpretations of the laws, just who was going to interpret the laws and the meanings of words. I know that you are familiar that there is 67 counties and we have always said there is probably 72 different systems of doing it. And this has really led to frustrations.

The computer run that they spoke about is out of Aspin Company in Pittsburgh. We had a computer run of our own made. We have that, we went over it, picked out things that should be corrected and with this, we have tried to come up with recommendations to local Government as to just what should be written into the laws. Some of the laws that they have talked about is the computer system for selecting jurors. Your second class county can do it. Your third class county can do it, your fourth class county has the option of doing it and we have asked them to put an amendment onto the present bill allowing each county, the fourth through the eighth class counties, to use this if they had the facilities to use it. We realize at the time the expense for going into computerization for the seventh and eighth class counties would probably

be pretty near prohibitive to ask those counties to go into computerization unless they get some assistance from someplace else, other than their present tax structure.

BY CHAIRMAN HUTCHINSON:

Q. Do you have a cost figure on the computer operation?

MRS. DUGAN: No I don't. I should have brought that. I will mail it to you.

CHAIRMAN HUTCHINSON: I would appreciate it if you would just drop me a line so that we have that information.

MR. BARNHART: Local Government is going to look into what the cost of computerization for the counties would be. Now many of the counties have Vo-Tech schools available to them where they have computers in the system. And to make this a may bill would allow them, if they have the facilities right now to do it, that they could actually go into computerization.

As far as the remuneration for the jurors, we presently have a bill in, I think there are four or five different bills saying the same thing, and we recommend the bill that the local Government has come up with, the local Government Commission has come up with, that says \$15 a day.

Now originally we had asked for \$20 a day, but with a little talking back and forth, we agreed to \$15. We realize this isn't our area, but we were concerned about it.

BY CHAIRMAN HUTCHINSON:

Q. It is part of the subject matter which this Subcommittee has been directed to study and report on.

A. Well presently the bill, the last I heard, the bill is in the Appropriations Committee and really what it is doing in the Appropriations Committee, I have no idea because there are no State funds involved in it. It should actually --

Q. The reason for that is the current session of the legislature has passed a statute at the request of many local Governments, which requires a fiscal memo not just on bills which involve State spending, but bills which involve local spending. The feeling was that in many cases the legislature passed statutes which had significant/^{financial} impact on the taxpayers, but because that impact came through local taxes, there was no adequate study. That is the reason it is now in Appropriations.

A. Well, ordinarily they wouldn't go into it where there was appropriations other than State. They spoke about options open to selecting jurors. This seems to be a sore spot in the selection of jurors. There is many, many different

methods in the State of selecting them and where you get the names. I think we are as much concerned as anybody is to get a uniform method of selecting or where to get these jury names from. We question the fact on telephone books and voter registration lists. The reason we feel that voter registration lists are not the method is because people will not register to vote if they feel that they will stay off of jury duty. Like the man from the District Attorney's office in Philadelphia said, they should have to serve actually. We feel that they should have to serve. So actually not to serve on jury you just don't register to vote and we don't think this is right. There is some other method of getting as many names in that county, there is some other way, maybe it is the school tax rolls, but I think there is some other method other than just saying voter registration lists.

We have been concerned about the excusal of jurors. Mrs. Dugan has spoken a little on it and I think the consensus of the whole Association is that we should take a much stronger look at these excuses because I know in -- at our conventions we have had meetings and we discussed this stuff and it is pretty near indiscriminate excuses because I think I figure I want to get elected next year so I'm going to get them excused. That's a vote. We don't feel this is right. We

don't feel that there should be classes excused. I think if we're going to excuse, we give them the option of asking for an excuse and if they feel it is right, then maybe they should be excused. But I think we will have a much better jury system if we do not accept excuses like I heard before. For instance, one that had worked at Bethlehem Steel Company wrote a letter, his superintendent wrote a letter, and said that it was a critical occupation and I know the guy and I know his job and it is no more critical than probably what mine is or anybody else's. But they disturb me when I see that.

The standardization of the questionnaire, I think in the Federal Guidelines the questionnaire should be standardized. I feel very strongly that this should be a standard form, including all the ideas that the gentleman from Philadelphia has asked and the Professor. I wholeheartedly agree with all the parts that they have brought up, and the uniform act which we feel should really be done too.

One of the things that was brought up was the flexibility of selecting in each county. I'm not too sure I am going to agree with that. Because I think that is one of our major problems right now, the flexibility in the law that says where we get the jurors. When you take that into consideration, I would advise very strongly to see just how flexible

you are going to let them be.

BY CHAIRMAN HUTCHINSON:

Q. When you speak of flexibility, are you speaking of the very -- the great variations in the methods that are used?

A. Right.

Q. I take it you say that you would prefer to have at least some standard which all counties would follow?

A. We should have most standards and maybe some flexibility, but be very careful in the amounts or the fields of variations that you can go into. Because I think this is where one of our big problems is today, that the flexibility because there are 67 different methods right now and I feel very strongly about this one.

Q. Well it would appear not only from what the replies that we have, it would appear that not only is there a great fragmentation in the statute that Professor Del Duca said, but within the statutory framework there are great differences beyond that in each --

MRS. DUGAN: May I interrupt a minute? I believe as there are no set guidelines, fourth to eighth really, that the President Judge determines in most cases what is to be done

and this allows for a great area of difference. This is one of the things -- well we had one fourth class county told us that they did not put anybody in the wheel who was over 60 years of age.

BY CHAIRMAN HUTCHINSON: (To Mrs. Dugan)

Q. Which would of course, if attacked, would create a problem with the entire --

A. Others who do not agree with me that we should not have professional jurors who were using the same people that the Judges found were good jurors and were resubmitting their names which to me is very wrong.

CHAIRMAN HUTCHINSON: Thank you.

MR. BARNHART: When I talk about these variations and flexibility and I think that is a big problem, the way the laws are written today it does give us so much flexibility and this is where all the confusion is coming from, because every Judge, regardless of who he is, has a little empire going in the county and the presiding Judge is the one who says how we are going to select these jurors, where we are going to get their names, and how the whole procedure is run. And I feel very strongly about this flexibility, just how far you are going to let them go. It's like Mrs. Dugan said, I know that

some of the things that were brought up at our convention, which we prewarned them at our convention this year, that like they said on 60 or 65 they don't let them serve on any kind of jury. The guy said he was mad at me, I said he should have been mad because you had no business doing anything like that. Many areas where they will set standards like that that they shouldn't be allowed to set a standard like that. The law should say 18 years old and up and whatever requirements are necessary to have them serve.

We had written down some of the areas in all the counties here, but I think we have pretty well covered them, some get off the registration lists, some get them off the tax rolls, and some of them go out and interview the ministers and bankers and people like that. It says in the law that you should interview these people and find out if these are good people, qualified people, to serve on juries.

On the qualifications, it says the qualifications you have to be an elector. Now I don't think anybody really knows what a definition of an elector is. Some determine it as being -- just meeting the requirements other than being registered. Some determine it as being -- the requirements being that you are registered to vote. So a qualified elector could be two different classes of people. It just depends on

the way you look at it.

BY CHAIRMAN HUTCHINSON:

Q. I think there is a difference between the elector and the qualified elector in this capacity. I believe the difference is that the elector is a person who is --

A. Qualified by age and --

Q. Qualified whether or not he is registered, a qualified elector --

A. I think you will find in some of these laws that you have qualified electors and also electors, there is no distinction between the two of them. I think we are aware of what an elector is and what a qualified elector is. Because a qualified elector is in the Federal Code.

MRS. DUGAN: No, it says qualified citizen, right, that's what the Federal says.

MR. BARNHART: Well the two gentlemen that preceded us cut our chores down considerably. So -- oh one thing I haven't got clear in my mind. If all these things that were talked about today are taken into consideration, it looks to me like you're going to have a full-time Jury Commission in eight classes of counties. Because I can see a tremendous volume of work.

BY CHAIRMAN HUTCHINSON:

Q. This is the problem that we would like you to discuss if you would with us. Because as -- we may draft a very fine looking statute, but the quality of the product that comes out under that statute in operation is going to depend upon the quality and efforts of the people who administer that statute. One of the areas with which the Committee is concerned is how we should administer the problem now. Now there have been suggestions we leave some areas to the Supreme Court for rule making because they can adjust more rapidly to changes than we can. But your suggesting that if all of this is done possibly the Jury Commissioners may have to be upgraded as far as time and efforts and compensation.

A. I am really sure about this.

MRS. DUGAN: I feel very definitely -- right now our salaries are based on classification of county. Now some of our Jury Commissioners work a lot of days. I know when I first became a Jury Commissioner I made less than two cents an hour for the time that I put in when we were first trying to do something different and trying to make them better. I will say now that I do not work the hours I did then as much -- although I have a feeling that we are going to use this year, I'm going to be called in more. I have to use my own self mostly as a --

but the thing here is that in a lot of the counties you used to be on per diem. We were a fourth class county, Bill and I. And we had eighth class county Jury Commissioners who were making more than we're making now because they were being brought -- their Judges were allowing them to serve as many days as they wished where we were not able to get -- this is why we put the salary bill in so that we would become all full time -- that we can be called in. This is another area where we have found, we were hoping our new system will eliminate. I have a job and I was in Butler County and I received a call from the Court to be back in Beaver County that afternoon to pull more jurors because we had had too many excuses. And these are the things, we are being called back in for other days. Now myself, I work, Bill works, quite a few of our Jury Commissioners do. It means taking time off and we receive no extra pay for those days that we are called back in. I think, as Bill said, stating the number of hours that at least if you worked over a certain number of hours then you would receive more pay, would be very good if it could be done that way. I don't know. I have been out of touch a little bit with the local Government. I have not served on it the last few years. But that really in any of the ones where you are going to have a large number like we do and we have at least 5,000 that we're

doing, now I'm going to have to go in and all of those that come back, I am going to have to review and all of the ones that don't come back, we are going to have to get summons out to get them into the courthouse to fill -- to complete them, which is our new letter. If you do not fill them out and send them back because last year we only had 2800 out of 7800 that had come back. So we met with the President Judge and he said put them all in whether they have responded or not, put them all in the wheel. So we ended up with 7800 in our wheel. Thank goodness it was computerized. So we do have to come up with something that will -- I feel that the Jury Commissioners, I feel any elected official, serves for less pay than what you can hire somebody for. One of my big concerns in our county is the Court Administrators who are appointed are having far more control of everything than what the elected officials are and I feel this is very wrong. I do not think the Court Administrator should be the one to tell we, the Jury Commissioners, what we shall do. Now this is a personal gripe, but I think we're finding that where there are Court Administrators.

MR. BARNHART: In answer to your pay for Jury Commissioners, I don't know as we can answer it right now until we find out what the law is going to require. I think we could have a pretty good idea of about the amount of work required by

the wording of the law or the requirements of the law, what you should do. The Commissioners under the Federal level get \$50 a day and mileage and meals and I don't know what else. But I feel that some people might take advantage of that.

MRS. DUGAN: I feel that. And we fought for the right to be included into the pension, the insurance, and everything as regular officeholders instead of per diem. When we were on per diem, of course, we had no benefits. And I do not feel that these should be taken away from Jury Commissioners. It is very little they get along with their pay.

MR. BARNHART: Under the fees for jurors, they changed it from \$10 to \$20 and from \$14 to \$25 and 10 cents a mile.

BY CHAIRMAN HUTCHINSON:

Q. Who is that?

A. This is the Federal guide. And the -- where did I see that \$50 a day?

Q. The document you're referring to is what?

A. Operation of the Jury System.

Q. Federal.

A. Title I, Chapter 121 Jury, Trial by Jury, and then it takes in Section 1861 Declarations of Policies down to 1874

where it includes the definition, discrimination, drawing of names, qualifications of jurors, things like that. But in here, each Jury Commissioner shall receive compensation fixed by a District Court plan at a rate not to exceed \$50 a day for each day necessarily employed in the performance of his duties, plus reimbursement of travel subsistence and other necessary expense incurred by him in the performance of such duties.

BY CHAIRMAN HUTCHINSON:

Q. Now the Federal Jury Commissioners are appointed officials?

A. Right.

Q. Does your Association take any position or discuss the desirability of elective as opposed to --

A. We most certainly have. We have taken a definite stand as far as elected and appointment goes. Because I think you will probably find --

Q. What is that stand?

A. That we definitely want our Jury Commissioners elected and the Federal contradicts the system by saying that the Jury Commissioner will not be of the same party as the Clerk. So they're separating the party affiliation there, but still want to appoint them. And I think you will agree with me to the effect that most of your elected county officials do

serve for much less money than what it would be for an appointed official.

BY CHAIRMAN HUTCHINSON:

Q. Is your Association -- has your Association taken a position on the desirability of retaining the present method of election under which one Jury Commissioner is selected from each major political party?

A. This is definitely our standard that the present system does remain in effect, you do elect one from each political, major political party, actual law.

Q. Then you would be in favor of retaining that?

A. We certainly are, yes, sir.

MRS. COOPER: I think the majority of our Judges are too.

CHAIRMAN HUTCHINSON: Mrs. Cooper, I believe.

BY CHAIRMAN HUTCHINSON: (To Mr. Barnhart)

Q. May I ask you one or two more questions?

A. Certainly, that is what we are here for.

Q. I am wondering, because again the great variation in practice from county to county, makes me familiar with what happens in my own county and I would like to outline that for you and then if you have an impression of how many counties

that practice exists in, maybe you can help me. In our county, prior to December 1st, and I cannot give you the exact date, a Judge of the Court on a rotating basis sitting enters an Order setting the number of jurors who will be placed in the wheel for the forthcoming year. The wheel is then filled by having each Jury Commissioner present one name constituting one-third of the number who have been selected and the Judge who is assigned on a rotating basis by the President Judge putting in an equivalent number, pardon me, I'm going to say that that had been the practice in our county. We have some new Judges and younger Judges and just in the past year we have adopted a new system using voter registration lists after the number has been set. That had been the practice and I wonder if you have any feel or ideas as to whether that type of practice is common throughout the Commonwealth.

A. No, I wouldn't say it is common.

Q. Would you say --

A. I agree it is legal, but I don't say it is common.

Q. It is not common?

A. No, Sir. It's like I say, there are 67 counties and I think there are 67 different methods. I am pretty sure of that. Even in that field where in our county ourselves we

don't set a specified number for any one person to put in. Because you might give me a thousand names that I have to come up with and maybe we can't come up with that many names unless we go to the voter registration list or something like that, like you're saying. And most of the counties, I don't think the Judges want to get involved in getting, say, a third, 2,000 to 3,000 names, something like that. Now they will come in with whatever names they have that they would like to have serve or have them put in the wheel, but ours doesn't come near that. Very seldom they even give us names.

CHAIRMAN HUTCHINSON: Mrs. Cooper.

MRS. COOPER: I'll have to argue on that one. Our Judge --

BY CHAIRMAN HUTCHINSON:

Q. And you're from?

A. Tioga County.

Q. That is what class?

A. Sixth.

Q. Sixth class?

A. A little more rural than the rest. Our Judge always in the past has designated X number that we will put in the wheel. He sends out a list, each Jury Commissioner sends

out for a list from the keyman system, this was in prior years. He puts in a name, the other Commissioner puts in a name, I put in a name, and we go round and round the table. He puts in just as many names as each one of us. This last year, we have a new Judge and he says this year we are going to send out no letters. How are we going to fill the wheel? We are going to take the registration list, we are going to say X number down there and go from this number, every 25th, every 35th name or whatever we are going to need to fill the wheel.

Q. In other words, your county, Tioga County, had had up until this year the same system my county, Schuylkill County, had?

A. Definitely, and the majority of your, I would say, 6th, 7th, 3rd class counties are still doing it this way.

MR. BARNHART: This could possibly happen in smaller class counties.

CHAIRMAN HUTCHINSON: Well our county is a fourth class.

MRS. DUGAN: We had been doing it prior to eight years ago.

CHAIRMAN HUTCHINSON: We have a problem with the stenographer when you all talk at once. She can't get for the record who is speaking.

MR. BARNHART: Well I'm sure there is some way to come up of getting these names. And I'm pretty sure of this, that it is going to have to be a random selection from some list where the list will get the most number of names within the county of electors.

BY CHAIRMAN HUTCHINSON:

Q. I think that possibly, I can only speak for myself, but that is the trend that I foresee in any legislation. And I think there are two reasons for that, Professor Del Duca expressed one of them, that if you are to preserve your juries against challenges on constitutional grounds, you must be able to demonstrate that either that you have quotas with various groups which create other problems or else you must be able to demonstrate that the selection method is such that you would get a random sample. So that despite, I think in our county, we found that new system of using voter registration and taxable lists created additional problems with excuses that we didn't have before. It would seem to me that we may very well have to face that problem because otherwise we have constitutional issues.

MR. BARNHART: I think this, that when we go to these lists, that we're going to have to put teeth into what

we say is going to happen.

BY CHAIRMAN HUTCHINSON:

Q. Are you in favor of sanctions both on the employer and employee?

A. Right, Sir, yes, Sir, definitely. I think the public will understand why they are being called for jury duty. That it is a service, a necessary service, that these individuals should serve. That we should also protect them by making them serve and be very, very careful in who we excuse. Because you will be surprised how many, the first person that gets excused, he's going to tell everybody in the town that he got excused from jury duty and he better have a good reason to excuse him.

BY CHAIRMAN HUTCHINSON: (To Mrs. Cooper)

Q. Mrs. Cooper, have you had any experience in your county in using lists insofar as problems on the excuses?

A. Off of the registration list?

Q. Yes.

A. We haven't done that. This is going to be our first year in the Fall of doing this. But our new Judge says absolutely there will be no excuses unless it is a medical or something of that sort. Schoolteachers are no longer excused

in our area. He met with the School Board and the School Directors and says, we are going to call schoolteachers for jury duty. And unless there are more than two from a school, nobody will be excused. We have had good luck with our schoolteachers serving this last year.

CHAIRMAN HUTCHINSON: Mrs. Dugan.

MRS. DUGAN: May I say one thing? That if I was a professional person or a person of high education, I would hate to be tried by our jury panels as they stand now. Because we do not get the professionals. We do not get, you see, you are supposed to be tried by a jury of your peers. And you are not tried by them if you are in higher educated groups. They are the ones that usually get excused. They are the ones seemingly have pull or jobs -- I would feel very bad if I was one of them and was tried.

CHAIRMAN HUTCHINSON: Thank you, I think that is a problem.

MRS. DUGAN: And that is a very big problem. I, fortunately, when we started this new way, my husband happens to be a supervisor in a steel company in Aliquippa and up to that time they had a very bad -- they had a very bad relationship with getting people in to serve on juries. They were always getting excused. And I was very fortunate, I was able

to meet with some of them and explain just what they were doing to people. We were getting the ones that belonged to unions because they get compensated, but we weren't getting these others. And we have been very fortunate there in being able to get all types of people, which to me, I feel, is very good. Between our President Judge and myself we managed to talk them into leaving their supervisory come in and serve on juries. In fact, I almost forced them to.

MR. BARNHART: I have one more thing I might insert here on these excuses of jury duty. If there are excuses, I think you should put their name back in the wheel. This is the way the Federal Courts do it and that will deter them from saying, I'm sick today, but they know they are going on the next time it is up. The fact is, the Federal law specifies a time limit that they will be called again if they are excused for any reason at all.

BY CHAIRMAN HUTCHINSON: (To Mr. Barnhart)

Q. Is your Association in favor of removing, as opposed to excuses I'm going to use the term exemptions from jury, would you be in favor of having a statute which provides for no exemptions but does provide for excuses in limited circumstances?

A. I think this is what the Professor was really saying, that there should be no exemptions but if they are chosen, then let them ask for their excuse if they don't want to serve. Because you are excluding -- and he felt it might be unconstitutional to do that.

Q. And you would be in favor of that?

A. I certainly would, Sir.

MRS. DUGAN: I have one more thing. On this filling of the wheel, if a person, if we used an all-over -- well in my county it would work very well, school tax list, because every person in our county, they go around and they interview every household and get those from all ages, so we would take everybody from 18-year-olds on up. If we used that alphabetically, not school district, not precinct, used it alphabetically completely and took a certain number every time, wouldn't that not stand up under the constitutional as not being discriminatory where they could not say we have to put in a certain percentage of this group and a certain percentage of that group?

CHAIRMAN HUTCHINSON: I am no expert on the constitutional problem. However, I have done some reading in the field and I think that in many counties, for instance in my home county where the schools take a census and it is an

accurate census, I believe it would stand up. I can conceive of problems that could be raised in more urban areas where, as you know, we have problems in locating and identifying many people because they are not on a tax list, they are very mobile, they move from one room or apartment or place to another very quickly and in that kind of a situation, we might have to provide for some alternate means. But I think that we could probably give some discretion and this might be an area where there could be some flexibility.

MRS. DUGAN: As of right now, when we are picking, we do not pick them alphabetized from A to Z over at the county. We pick them precinct by precinct. Say we take number seven -- more of a variety, number 35. All right, we have small areas which are really cheated when it comes to taking every 35th name out of that area. And it also cheats the people who start out with A and B or C in their name and that's why I would like to see it alphabetized county-wide instead of precinct by precinct or school district by school district. And if you are going to use the computer anyhow, the computer can do anything like that. So we should be able to do something like that. That is one of my own recommendations.

CHAIRMAN HUTCHINSON: We have, I think Mr. Barnhart addressed himself to problems some small counties might

have in working with a computer because of cost. And the Committee has been concerned about that. Personally, and I don't think any members of the Committee are sufficiently familiar with the computer programs to know or understand whether or not it would be possible to do that on a joint basis among a number of small counties so that you could create a program and it would be cheaper than having each one do it. We will address ourselves to that problem, but we are concerned about the cost.

MR. BARNHART: I think there should be a real concern about the cost to the smaller type counties because they just don't have the money available to them under the present tax structure to institute a computer program.

BY CHAIRMAN HUTCHINSON:

Q. But it does seem to many of us that if you are going to use various types of lists, that you are going to have to in the larger counties go to the computer.

A. Well, now the larger counties I think can stand the cost of the computer system, but when you go into the fifth, sixth, seventh and eighth class counties, there are counties that are small enough that they can possibly use these lists and still do it by hand the way they are doing it at the pre-

sent time.

MRS. DUGAN: Do you want to mark this as an Exhibit?

CHAIRMAN HUTCHINSON: Yes.

MRS. DUGAN: This is what we are doing this year.

CHAIRMAN HUTCHINSON: That would be the Jury Commissioners' Exhibit No. 4.

Questionnaire - produced and marked for identification as Jury Commissioners' Exhibit No. 4.

MRS. DUGAN: Of Beaver County, and this just came up, as I said, long before I guess it was really legal, but what our Judges had ruled was there was nothing to say that we could not do it in this manner. It only stated, there was nothing definite on this, of course, we didn't use the computerized wheel. We only used computers to get our names and then we did the investigating.

CHAIRMAN HUTCHINSON: I am not convinced, frankly, that it is illegal to use a computer in counties of the fourth to eighth class so long as you also use the wheel as you have been doing.

MRS. DUGAN: Now see we don't have to use the wheel any longer, fourth class, we may use the computer.

CHAIRMAN HUTCHINSON: But I do think if we need computers, it would be wise to expressly authorize it.

MRS. COOPER: We have one county in the State that is a sixth class county that is going on the computer. They are all set to go on the computer as of the first of the year. This is the State College area.

CHAIRMAN HUTCHINSON: Centre County?

MRS. COOPER: Centre County, but they have computers available. And Lycoming County is a fifth class county and they're going on the computer. Now they were all set to go the first of June because the Commissioners told me this themselves that they were all set to go the first of June on the computer, but the law doesn't permit it.

MRS. DUGAN: It doesn't say they can, but it doesn't say they can't.

MRS. COOPER: So there's a holdup there on this. But now you take seventh and eighth class counties, even if they combine to go to another county, you've got a lot of distance to cover for somebody to go and run the computers for the Jury Commissioners or whoever is going to do this because sixth, seventh and eighth class counties, some of them are miles away.

CHAIRMAN HUTCHINSON: Oh yes.

MR. BARNHART: I think that's about all we have. We certainly do appreciate your asking us to come and somebody found out there is a Jury Commissioners Association. I am glad to hear that.

CHAIRMAN HUTCHINSON: Well speaking for myself and also I am sure for the other members of the Committee, we had been very much interested in obtaining information from the people who do the actual work. All too often it seems to be legislation is passed, prepared, drafted and passed based upon testimony of people who have made studies and done an excellent job on those studies, but lack the practical field experience that is necessary that is going to work. We did want your information.

MR. BARNHART: I'm glad that you were interested enough to get it and I think we can be of a good bit of help to you and I would like to at this time offer our help in the future. If there is anything that comes up, we would like to be part of making a good jury system in the State.

CHAIRMAN HUTCHINSON: Well the present plans of the Committee are when the transcript of today's hearing is prepared, it will be circulated among the Committee members, and the Committee will then meet, hopefully within the next few weeks, to make some -- to get a consensus on what kind of

legislation we think should be drafted. We will then ask the Legislative Reference Bureau to prepare a draft bill and we'll circulate that draft bill among all of the groups that we have asked here today, not just the ones who were here, but there were others who were asked and submitted letters and written statements and, of course, we will include you in that, and then we would like to have any comments that you may have on that legislation.

MR. BARNHART: Fine.

CHAIRMAN HUTCHINSON: Before we actually bring it before the full Judiciary Committee.

MRS. DUGAN: In fact I would say this, that if we get and there is enough time, we would even try to have a Board meeting of all of our officers, not just two representatives and myself, to go over this and see just what -- if there's not enough time, I would try to get it copied and sent out to the Jury Commissioners.

CHAIRMAN HUTCHINSON: Well within our own limitations here we will try to get it to you so that you will have sufficient time to take some position on it. Our timetable that we have adopted is that we would like to have our ideas to the Legislative Reference Bureau by mid-November and have back from Legislative Reference a draft bill in early

December. And we would then like to have our comments during that month and by mid-January be in a position to go to introduce a bill which would go before the Committee. Because if we don't get it in by that time, we may have problems in getting it through the General Assembly this session.

I thank you for coming.

(Witnesses excused)

(The following is the jury selection process used in the Courts of Clarion County)

In evaluating the jury selection process used in the Courts of Clarion County, it would be wise to review the procedure as it stands, to give a clearer understanding of the advantages and disadvantages of such a system.

The selection procedure is closely tied to the party system of Clarion County. The Jury Commissioners, elected party officials, request that their party Committeemen and women submit a prescribed number of names from each district to be placed in the jury wheel. Usually this number is a percentage of the area's population. The names are then checked against current registration lists, with those names that appear being entered into the jury wheel. Those which do not appear are stricken from the list and replaced. A non-

registered voter may be selected to serve upon his request, although this is left up to the discretion of the Jury Commissioners.

Six hundred names (300 from each party) are placed in the jury wheel each quarter session. The mechanics of the jury selection process require that 120 names be drawn out for each quarter session of Court. Those selected must be notified by registered letter at least 37 days before the jury meets for the upcoming term of Court. On the indicated date, the prospective jurors must report to Court Room One of the Clarion County Court House for formal selection.

Once gathered, a list of cases scheduled for the session is called. The District Attorney and defending lawyers for those cases call upon the prospective jurors until 12 names have been agreed upon for each scheduled case.

There are a number of ways in which a registered voter may be excused from jury duty. Those with physical disabilities or limitation, such as heart conditions, poor hearing, etc., may be dismissed by submitting a doctor's verification of such handicaps. Unforeseen circumstances, such as a family death or illness may also exempt a selected juror from serving. In Clarion County, doctors and nurses are permanently excluded due to the need for their professional abilities in

the area.

Any individual may be called for jury duty only once in a two-year period. When called for duty, however, it is possible that the juror may serve on none or all of the cases occurring in that quarter session, although this does not usually happen. There are no set number of trials per quarter session, although it may be noted that this number has been increasing.

Once selected to serve, the following facilities are available for the juror's use. Toilet facilities are available in the courtroom area (women's at the back of the courtroom, men's beside the Judge's Chambers). Jurors are excused for meals, except in the case of a murder trial. Then the meals are brought and paid for by the county for the sequestered jury. Lodging is also provided in the case of a murder trial. Breaks occur only when the Judge calls for a recess, usually once in the morning and once in the afternoon. A juror is paid \$9 a day for serving.

Evaluation.

One problem that seems to be of concern is that of selecting names to go into the jury wheel. It has been suggested that when the registered letter goes out from the Sheriff's office, follow-up should occur. If the letter is not

received, the Sheriff must determine why the letter did not reach the prospective juror. If the individual has moved or is deceased, the Sheriff is responsible for notifying the Jury Commissioner so that an additional name may be selected.

It has also been suggested that the Sheriff's office require that notification be made to the Jury Commissioner when one is moving from the area or is deceased.

Several individuals associated in some way with the Court system in Clarion County were asked to discuss the problems they see with the jury selection process. An attorney in Clarion, who wishes to remain anonymous, feels that the current selection procedure is not representative of the county's population. Because of the failure of the Commissioners to recognize the student body of Clarion State College as part of the county's population, the students are grossly underrepresented in the legal system.

A juror who served during the March, 1973 term of Court feels that the present system is very good. He felt that the voter status was very good as it reflected the individual's activity and interest in the Government. The juror did state, however, that those who knew the Committeemen could ask to be chosen or to be avoided, while those who merely wish to serve as a juror might never be selected.

Both Jury Commissioners of Clarion County stated that they found the present system adequate and equitable. Both felt, though, that it probably could be improved, although no suggestions were made. When asked about the constitutionality of the registered voter requirement, both defended the provision strongly, stating that if one were not interested enough to vote, they would be poor jurors.

Judge Robert B. Filson of Clarion County was also asked his opinion of the present jury selection process. He felt that it was very fair and representative of Clarion County population. Judge Filson felt that the voter registration requirement was an equitable and practical means of determining an individual's ability to serve and an excellent way to keep the jury lists up to date.

Geographic Location of Jurors According to
Township and Borough
Clarion County
March, 1973

Township or Borough	n	%
Ashland Township	0	0
Beaver	7	5.8
Bradey	2	1.7
Clarion	6	5
Elk	5	4.2
Farmington	3	2.5

Highland	0	0
Knox	5	4.2
Licking	3	2.5
Limestone	5	4.2
Madison	3	2.5
Mill Creek	1	.8
Monroe	5	4.2
Paint	2	1.7
Perry	5	4.2
Pitney	0	0
Porter	3	2.5
Red Bank	6	5
Richland	3	2.5
Salem	4	3.3
Toby	5	4.2
Washington	2	1.7
Callansburg Borough	0	0
Clarion	10	8.3
East Brady	7	5.8
Foxburg	2	1.7
Knox	4	3.3
New Bethlehem	5	4.2
Rimersburg	6	5

Shippenville	3	2.5
Sligo	0	0
St. Petersburg	5	4.2
Strattanville	3	2.5

Table 2

Distribution of Jurors by Age
Clarion County
March, 1973

Age Group	n	%
18-25	3	2.5
20-35	21	17.5
36-45	22	18.3
46-55	27	22.5
56-65	27	22.5
66-75	19	15.1
76-85	1	.8
86-95	0	0

(The following persons, representing the
following organizations, have been contacted)

Pennsylvania District Attorneys' Association

Pennsylvania Prothonotarys' Association and Clerk of Courts

American Civil Liberties Union

Pennsylvania Bar Association

Philadelphia District Attorney's Office

Allegheny District Attorney's Office

Pennsylvania Public Defenders Association

Pennsylvania Conference of State Trial Judges

Commissioner of the National Conference of Commissioners on
Uniform State Laws

Court Administrator of Supreme Court of Pennsylvania

Pennsylvania Legal Services Center

Philadelphia Bar Association

Allegheny Bar Association

Judge Robert Honeyman, Montgomery County

Judge George Heffner, Schuylkill County

Judge Warren Morgan, Dauphin County

(The following is a list of counties who
gave information on the methods employed in
selecting jurors)

Clarion County

Juniata County

Bucks County

Lycoming County

Centre County

Bradford County

Fayette County

Armstrong County
Westmoreland County
Beaver County
Tioga County
Schuylkill County
Erie County
Philadelphia County

(The hearing was closed at 11:50 A.M.)

I hereby certify that the proceedings and evidence taken by me in the within matter are fully and accurately indicated in my notes and that this is a true and correct transcript of same.

Dorothy M. Malone

Dorothy M. Malone
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