

PREPARED STATEMENT

OF

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BEFORE THE

HOUSE JUDICIARY COMMITTEE

IN REGARDS TO

H.B. 683

MAY 1, 1990

COMMENTS IN SUPPORT OF HOUSE BILL NO. 683

I. HISTORICAL BASIS FOR HOUSE BILL 683

HOUSE BILL 683 amends the Constitution of the Commonwealth of Pennsylvania by establishing trial by jury as a substantive right. The amendment to Section 10(c) of Article V, Judicial Administration contains the following language:

Trial by jury is a substantive right.

All laws shall be suspended to the extent that they relate to rights of procedure and are inconsistent with rules proscribed under these provisions.

The following historical information is relevant to H.B. 683. The General Assembly, in 1978, amended Section 5104 of the Judicial Code by adding subsection (c) which provided the Commonwealth with the same right to a jury trial as the accused. However, the Pennsylvania Supreme Court in Com. v. Sorrell, 500 Pa. 355, 456 A.2d 1326 (1982), held that the Legislature exceeded its constitutional authority. The Sorrell court declared 42 Pa.C.S.

Section 5104(c) unconstitutional and suspended pursuant to Pa.Const. Art.V, Section 10(c). The Court's rationale was based on the inconsistency of 42 Pa.C.S. Section 5104 with Pa.R.Crim.P. 1101. Rule 1101 provides for an impartial decision by the trial court. The Sorrell court determined that Section 5104(c) precluded the trial court from exercising the discretion conferred by Rule 1101 in assessing whether the non-jury trial should be permitted.

II. ARGUMENTS IN SUPPORT OF H.B. 683

A. Equal Treatment of Prosecution and Defense.

The state and the defendant are parties to a trial. Both require an equal voice as to the method of trial. The defendant alone should not control the method of trial. The prosecution cannot force a bench trial upon a defendant. Similarly, a defendant should not be allowed to force the prosecution to have the case tried without a jury.

B. Protection of the Public

The state as a litigant should have the right to insist upon a jury trial. There is less likelihood of collusion and less occasion for criticism of the

final result. The United States Supreme Court in the decision of Singer v. United States, 380 U.S. 24 85 S.Ct. 783, 13 L.Ed 2d 630 (1965), articulated that "the Government, as a litigant, has a legitimate interest in seeing that cases in which it believes a conviction is warranted are tried before the tribunal which the Constitution regards as most likely to produce a fair result". Id. at 36.

C. Protection of the Accused

The state has an interest in protecting its citizens. The prosecutor, in the interest of justice, shall require a jury trial. The prosecutor, as a servant of the law, has a duty to ensure that only the guilty are punished. The prosecutor, in the interest of justice, has the duty to obtain a fair trial to both the defendant and the Commonwealth.

D. Preservation of the Role of the Jury

Traditionally, the jury has been, and still is, the most trusted method of determining guilt or innocence. Our United States Supreme Court in

Patton v. United States, 281 U.S. 276 (1930),
enunciated:

"...maintenance of the jury as a fact finding
body in criminal cases is of such importance
and has such a place in our tradition, that,
before any waiver can become effective, the
consent of the government counsel and the
sanction of the court must be had ...".

Id. at 312, (See III Federal Authority).

III. FEDERAL AUTHORITY

Our United States Supreme Court, in Singer v. United States,
380 U.S. 24, 85 S.Ct. 783, 13 L.Ed.2d. 630 (1965), held that the
Federal Constitution neither confers nor recognizes the right of
criminal defendants to have their cases tried before a judge alone.
The Court in Singer ruled that Federal Rule of Criminal Procedure 23
(a) is consequently valid. Fed.R.Crim.P. 23(a) provides:

"Cases required to be tried by jury shall
be so tried unless the defendant waives a
jury trial in writing with the approval
of the court and the consent of the
government". (emphasis added).

Clearly, Rule 23(a) permits an accused to waive a jury trial with the court's approval and the consent of the government. Rule 23(a) does not allow an accused to obtain a non-jury trial unless the court approves and the government consents. Moreover, the government is not required to state its reasons for refusing to consent to a non-jury trial.