



D I S T R I C T O F C O L U M B I A B A R  
*Criminal Law and Individual Rights Section*

**Criminal Law and Individual Rights Section  
Statement Concerning Proposed Reduction of Number of Peremptory Strikes in  
Superior Court Felony Trials**

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The Criminal Law and Individual Rights Section of the District of Columbia Bar joins the many other agencies and organizations that have expressed their opposition to a portion of the “Jury Trial Improvements Act of 2006” currently pending before the Council of the District of Columbia. Specifically, the Criminal Law and Individual Rights Section opposes the portion of that bill that would amend Section 23-105(a) of the District of Columbia Code by reducing the number of peremptory challenges in criminal trials to three per side. The Steering Committee of the Criminal Law and Individual Rights Section\* has approved and adopted this statement on behalf of the Section. The views expressed herein represent only those of the Criminal Law and Individual Rights Section of the D.C. Bar and not those of the D.C. Bar or its Board of Governors.

Peremptory challenges play a vital role in ensuring the fairness of criminal trials. During the jury selection process, it is quite common that a prospective juror provides information that may not justify a “for cause” strike by the court, but nonetheless indicates to an experienced trial lawyer that the prospective juror’s beliefs, experiences, or perceptions would bias the juror for or against one party in the case. Indeed, in felony trials in the District of Columbia – in which many judges apply an extremely strict standard for “for cause” strikes – many jurors who have expressed such a bias in their initial responses to the *voir dire* questions remain in the panel of prospective jurors after the judge has made the “for cause” strikes. Peremptory challenges allow each party to remove an equal number of such potentially biased jurors from the panel, and create a jury selection process that is thus most likely to yield the fairest possible juries.

While it is impossible to fix a precise number of peremptory challenges that will allow the parties to remove only the most biased prospective jurors in every case, the Criminal Law and Individual Rights Section concurs with the view expressed by both prosecutors and defense lawyers who most regularly practice in Superior Court – including the Office of the United States Attorney, the Office of the Attorney General of the District of Columbia, and the Public Defender Service for the District of Columbia – that the current law permitting both the prosecution and the defense to make ten peremptory strikes appropriately balances our system’s essential need for fair and unbiased juries with judicial cost and efficiency concerns. The ten peremptory strikes allowed under current law places the District of Columbia within the mainstream of other jurisdictions; should the proposed bill become law, the District of Columbia would be the one of only four jurisdictions with as few as three peremptory strikes in felony cases, and the only one with only three peremptories in serious felony cases.

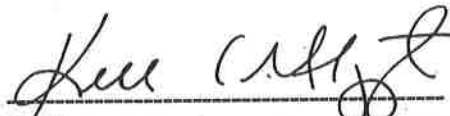
The proponents of a reduction in the number of peremptory strikes rely primarily on two rationales. To begin with, they argue that peremptory challenges afford attorneys with opportunities to make strikes based on race and gender, and that reducing the number of challenges would help prevent such discrimination in the jury selection process. The Criminal Law and Individual Rights Section believes that concerns about unconstitutional

discrimination should be taken seriously. However, the Section agrees with the institutional prosecutors and defenders practicing in Superior Court that such discrimination in jury selection is adequately policed by Superior Court judges -- many of whom remind attorneys of the requirement of race and gender-neutral strikes in their written courtroom procedures, and all of whom analyze the neutrality of peremptory strikes as they are made. Indeed, the fact that the District of Columbia Court of Appeals has issued only a few opinions regarding discrimination in the use of peremptory strikes over the past decade serves as evidence of the ability of judges to prevent discriminatory strikes under current law. Ironically, reducing the number of peremptory strikes to three per side would make it nearly impossible for judges to regulate such discrimination, as it would become much more difficult to establish or discern a race or gender-based pattern in a party's strikes.

In addition, the proponents of the proposed reduction in peremptory strikes contend that such a change will save our court system time and money. While the Section certainly views such judicial economy concerns as legitimate, the supposed cost and time savings of this proposal are wholly speculative. While reducing the number of strikes may save some time and money in the jury selection process (which already takes less than a day in most Superior Court felony trials), such savings would likely be overwhelmed by the additional amount of time that parties will spend arguing for additional "for cause" strikes, and by the significant costs of additional hung juries, appeals, and even wrongful convictions that will result from the actions of jurors who would have been removed had the parties been able to exercise additional peremptory strikes.

Perhaps more importantly, the Section believes that the primary concern in felony trials should be ensuring justice for the defendants, for victims, and for the community, and that a system that strives to provide such justice cannot do so on the cheap. For the reasons set forth above, the proposed reduction in strikes would inflict costs on our system of justice that would far outweigh any savings in judicial economy, and the Criminal Law and Individual Rights Section thus urges the Council to reject this proposal.

\*The elected members of the Steering Committee of the Criminal Law and Individual Rights Section of the District of Columbia Bar are Ashley Bailey, Todd Edelman, Sarah Gill, Marlon Griffith, Jonathan Jeffress, Mary Kennedy, Kelli McTaggart, Amit Mehta, and Seth Rosenthal.

  
Kelli C. McTaggart    Date 11/13/06  
CLIR Steering Committee Co-Chair

  
Marlon C. Griffith    Date 11/13/06  
CLIR Steering Committee Co-Chair