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P U B L I C H E A R I N G
before
SENATE JUDICIARY COMMITTEE
on
SENATE CONCURRENT RESOLUTION NO. 2010

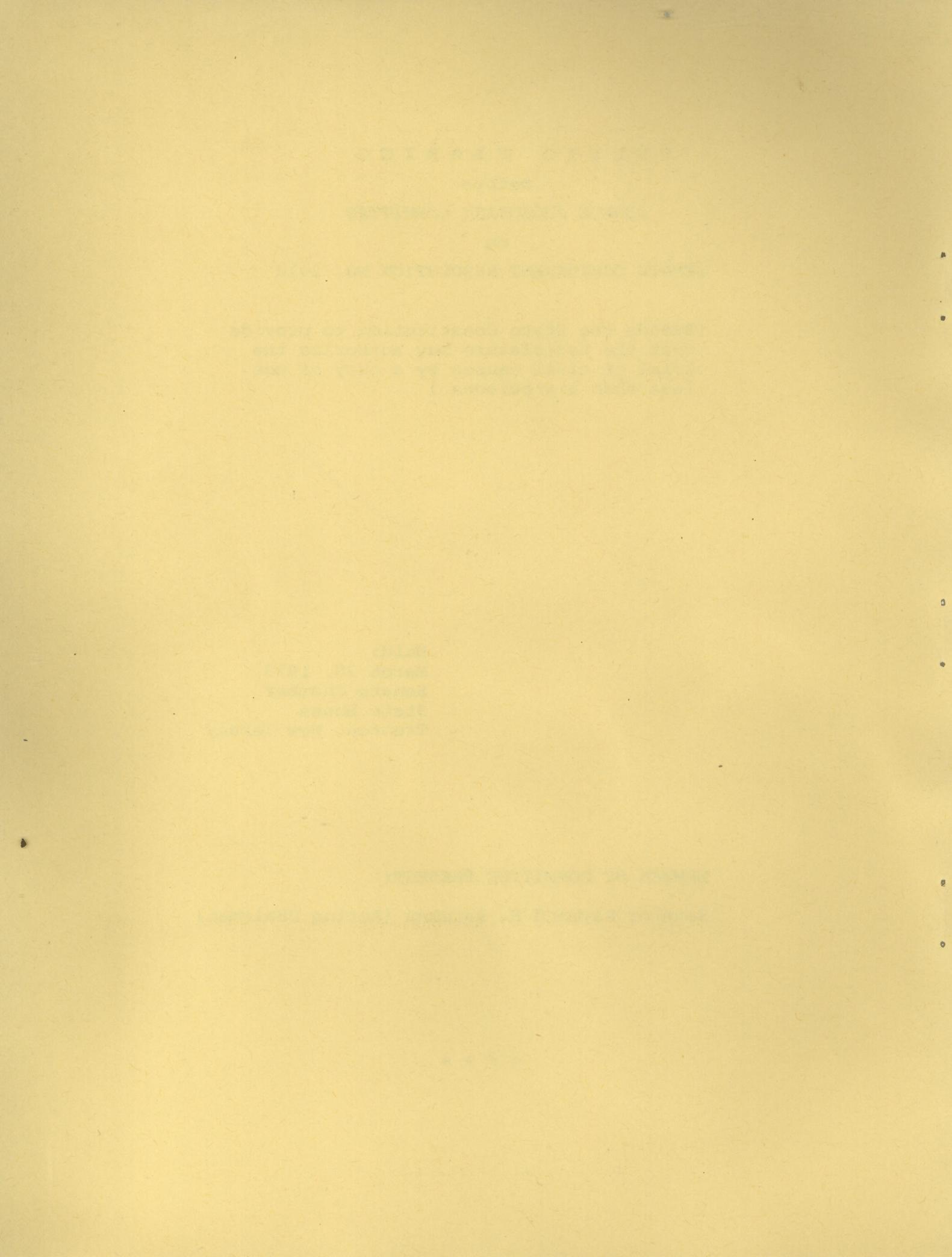
(Amends the State Constitution to provide
that the Legislature may authorize the
trial of civil causes by a jury of not
less than six persons.)

Held:
March 30, 1973
Senate Chamber
State House
Trenton, New Jersey

MEMBER OF COMMITTEE PRESENT:

Senator Raymond H. Bateman (Acting Chairman)

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SENATE CONCURRENT RESOLUTION No. 2010

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 5, 1973

By Senators BATEMAN, LAZZARA, GIULIANO and DeROSE

Referred to Committee on Judiciary

A CONCURRENT RESOLUTION proposing an amendment to Article I, paragraph 9 of the Constitution of the State of New Jersey.

1 BE IT RESOLVED by the Senate of the State of New Jersey (the
2 General Assembly concurring):

1 1. The following proposed amendment to the Constitution of the
2 State of New Jersey is hereby agreed to:

3 Amend Article I, paragraph 9 to read as follows:

PROPOSED AMENDMENT

4 9. The right of trial by jury shall remain inviolate; but the
5 Legislature may authorize the trial of civil causes by a jury of
6 six persons [when the matter in dispute does not exceed \$50.00].
7 The Legislature may provide that in any civil cause a verdict may
8 be rendered by not less than five-sixths of the jury. The Legisla-
9 ture may authorize the trial of the issue of mental incompetency
10 without a jury.

1 2. When this proposed amendment to the Constitution is finally
2 agreed to, pursuant to Article IX, paragraph 1 of the Constitution,
3 it shall be submitted to the people at the next general election oc-
4 curring more than 3 months after such final agreement and shall
5 be published at least once in at least one newspaper of each county
6 designated by the President of the Senate and the Speaker of the
7 General Assembly and the Secretary of State, not less than 3
8 months prior to said general election.

1 3. This proposed amendment to the Constitution shall be sub-
2 mitted to the people at said election in the following manner and
3 form:

4 There shall be printed on each official ballot to be used at such
5 general election, the following:

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.**

- 6 a. In every municipality in which voting machines are not used,
 7 a legend which shall immediately precede the question, as follows:
 8 If you favor the proposition printed below make a cross (X),
 9 plus (+) or check (✓) in the square opposite the word "Yes."
 10 If you are opposed thereto make a cross (X), plus (+) or check
 11 (✓) in the square opposite the word "No."
 12 b. In every municipality the following question:

	Yes.	JURY TRIALS
	No.	Do you approve of the amendment to the Constitution of the State of New Jersey, agreed to by the Legislature, providing that the Legislature may au- thorize the trial of civil causes by a jury of not less than six persons.

STATEMENT

The present New Jersey Constitution (Article I, paragraph 9) specifies the number of jurors to be impaneled in civil cases as six when the matter in dispute does not exceed \$50.00. This bill merely deletes the monetary limitation of \$50.00.

It has been shown that, in practice, the difference in civil cases between the twelve-member and the six-member jury in terms of the cross section of the community requested is negligible. Also, neither currently available evidence nor theory suggests the twelve-member jury is necessarily more advantageous to the defendant than a jury composed of fewer members. The allowance of six-man juries would speed trials and help to lessen the ever-increasing burdens on the State courts while maintaining high standards of justice.

I N D E X

Page

Caroline K. Simon, Judge (retired)
New York State Court of Claims

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Statements from:

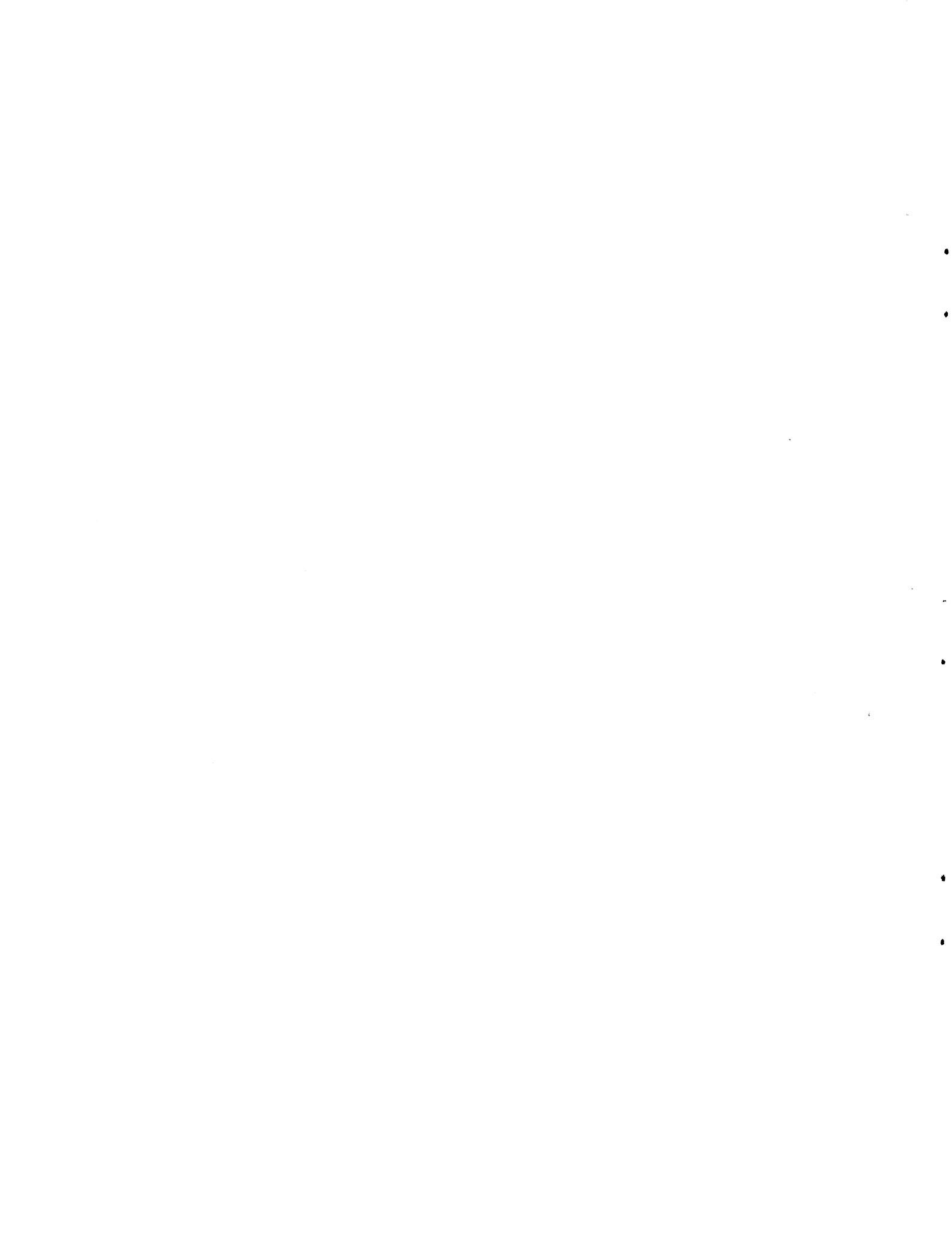
William A. Stoever, Study Director
"A Comparison of Six and Twelve-Member
Civil Juries in New Jersey Superior
and County Courts"

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John N. Dennis, Assemblyman
Essex County

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SENATOR RAYMOND H. BATEMAN (Acting Chairman): This is a public hearing on Senate Concurrent Resolution number 2010, which was introduced on February 5th by Senators Bateman, Lazzara, Giuliano and DeRose.

The public hearing is being held by the Senate Judiciary Committee. My name is Raymond Bateman, I am a member of the Committee. The hearing is being held pursuant to the Constitutional requirement for public hearings on potential amendments to the New Jersey Constitution.

The first person to testify on Senate Concurrent Resolution number 2010 is Caroline Simon of 500 5th Avenue, New York City, a retired judge of the New York State Court of Claims.

It is nice to have you here, Judge.

C A R O L I N E K. S I M O N: Thank you, Senator Bateman. It is rather ironic that the court of which I was a member of the bench, is a court where you sit as trier of the law, in fact, without a jury. Nevertheless, I do have a long interest in the use of juries in our courts and many years ago the New York Times published an article that I wrote on the jury system at a time when the Appellate Division was considering the abolition of civil juries.

Since that time I have been serving, for the last year, as Chairman of a committee on the jury. It is a subcommittee of a committee of the Appellate Division, first and second department, in our state, and I have been working with the Pareto Fund which is a non-profit organization fund set up for public purposes and which has had a great interest in the whole problem of the use of juries in our courts.

The fund financed, largely, a study made of the New Jersey system. The results of that study were published in a book by the Institute of Judicial Administration, entitled "A Comparison of Six and Twelve-Member Civil Juries in New Jersey's Superior

and County Courts." I am certain that your Committee has received copies of that report.

SENATOR BATEMAN: Yes we have had copies. We have read it. As a matter of fact, we used it in the drafting of Senate Concurrent Resolution 2010.

JUDGE SIMON: It is very heartening to know that. I was present with Mr Phillip Allen, the president of the Pareto Fund and David Morse of our law office when we first talked to Chief Justice Joseph Weintraub of the New Jersey Supreme Court about the possibility of making such a study and I am glad to say we had great cooperation from the New Jersey courts and the administrative system of the courts in making the study.

The study warrants some of the statements that I am going to make as it warranted the article which appeared in the New Jersey Law Journal on March 22, 1973 by Mr. Allen. That article was entitled "Financial Savings Realizable from New Jersey's Adoption of a Mandatory Six Member Civil Jury." I talked with Mr. Allen this morning. Only the fact that he is under treatment for a heart ailment prevents his being here himself today to present argument before this honorable group.

He told me that every statement made in this article is something that is supported by figures in our office and that any questions pertinent to the article are questions we would be glad to answer, either in writing or orally. We feel convinced that the statements made there are warranted by the information we possess.

I have carefully read the Senate Concurrent Resolution number 2010 to which you, sir, made reference, and I note in it that you say the right of trial by jury shall remain inviolate, which I think is a very important statement. But you go on to say that the

Legislature may authorize the trial of civil causes by a jury of six persons and you delete what heretofore was in the statute, "when the matter in dispute does not exceed \$50." So that the right for trial by jury in civil cases would then be to have a jury of six persons, whatever the amount involved.

For a long period, as you know, we thought of a jury as requiring twelve people, until the United States Supreme Court ruled that that concept is not necessarily the binding one. Since that action by the United States Supreme Court, as you know, the Federal Courts have moved toward six-man juries and in New York State, if I may be permitted to mention another State before you, we already now have civil juries numbering just six.

It is our belief, and we think that our studies justify this belief, that a jury of six gives justice - and of course that is what we are seeking - just as well as a jury of twelve. We believe that it is just as fair to the defendant and to the plaintiff as a jury of twelve. So the first question, "does a jury of six maintain high standards of justice", is one that we feel we could answer affirmatively. It does. We believe it gives justice to both the plaintiff and defendant in the same way as a jury of twelve and that it does give proper cross section representation to a jury, just as a jury of twelve does.

The second question we would pose is, "does it speed trials with the log-jam in the courts?" That is a very pertinent question. We think we can prove that it does speed trials, that a jury of six takes less time in its deliberations, requires less time for the voir dire and therefore trials would be speeded.

Third, "does it lessen costs?" Since there are savings in time in both the voir dire and in the deliberations when there is a six-man jury as compared

to a twelve-man jury, the judge's time is saved, the court officer's time is saved, there is less need to use buildings and therefore more trials can be held in fewer buildings and the jury commissioner's time is saved. So it does answer affirmatively that third question; it lessens costs.

The fourth question is a very pertinent one - "does it make more efficient use of jurors and thus bolster juror morale?" - because it is tremendously important, as all of us concerned with efficient use of jurors and good court administration know, to have the jurors feel that their time is not being wasted. That time, even though a jury fee is paid, is never, by the juror, felt to be properly compensated in anything except his sense of doing a civic responsibility. If he feels that instead of using his time well we have wasted it, he becomes very annoyed about this misuse of his time, understandably. And since we feel that a six-man jury uses his time better, requires less waiting around time for him, requires smaller panels and obviously shows him that we have a concern about using his time well, we believe that the fourth question, "does it make more efficient use of jurors and bolster juror morale" is a very important one, and that we can answer that question yes.

For all of these reasons we believe that the Senate Concurrent Resolution lowering the requirement from twelve to six, in matters over \$50, is basically important to the improvement of the administration of justice in the State and we urge it be adopted.

SENATOR BATEMEN: Thank you, Judge. You have marshalled your arguments well. Can I ask you your thoughts - although this Resolution doesn't embody criminal matters - on six-man juries in criminal cases?

JUDGE SIMON: Individually, I believe that six-man juries should come in criminal cases as well.

It is my belief that when we have proven that they worked fairly and in the interest of justice in civil cases, we will then be more easily able to have them acceptable in criminal cases. I think this is a first step toward that proof.

SENATOR BATEMAN: Thank you very much.

For the record I am going to keep this hearing open for a few more minutes. A number of judges from the New Jersey Bench have expressed their interest in, and approval of, this proposal to me, individually, and to other members of the Senate Judiciary Committee. Friday afternoon is not a particularly impressive time for our judges to come and testify but we have had a great deal of response from people who are working on the bench in New Jersey.

In addition, the Senate Judiciary Committee, in interviewing prospective judges in these past few weeks - we have had a large number of new judicial appointments just going through - has asked each one the question as to their thoughts on six-man juries and we have had unanimous opinion in, I'd say, between twenty and twenty-five judicial interviews - prospective judicial interviews - that six-man civil juries, which are being tried now in New Jersey in a number of counties, is a change for the good in New Jersey's judicial system.

JUDGE SIMON: I am certain that thoughtful people who have done any analysis of the use of six-man juries, as it has already been possible to do because there have been so many such trials, will be convinced that it is in the interest of justice, in the interest of money-saving and in the interest of improved juror morale, all of which are basically important.

SENATOR BATEMAN: Is there anybody else who wishes to testify?

Judge Simon, I appreciate your coming. You have

made the hearing because you are not only the only one that testified but you were very effective in your testimony. Thank you for coming.

JUDGE SIMON: Thank you very much, Senator.

SENATOR BATEMAN: If there is no one else who wants to testify, I declare the hearing on Senate Concurrent Resolution number 2010, which proposes that New Jersey have, through an amendment to the Constitution, six-member juries in all civil cases, be closed.

(Hearing Concluded)

Prepared Statement on Study:
"A Comparison of Six and Twelve-Member Civil Juries
In New Jersey Superior and County Courts"

by William A. Stoever

Study Director

The study comparing six and twelve-member civil juries in New Jersey Superior and County courts was initiated for the purpose of gathering reliable statistical data and a broad sampling of opinion in order to compare the conduct, timing and outcomes of trials before six and twelve-member civil juries. Those of us carrying out the study monitored trials and interviewed judges, lawyers, and court clerks. We also collected data by questionnaires: we tried to get a questionnaire from the judge, all lawyers, and the court clerk on every civil trial during March and April 1972. (We selected 11 counties for this purpose.) We collected more than 600 questionnaires from the judges, 600 from the court clerks, and over 1,000 from the lawyers. Many of the questionnaires had extensive comments on them.

Summary of Findings

As a result of the study, I believe that use of six member juries in civil cases can achieve substantial savings in trial time and juror manpower without affecting the conduct or outcome of trials. Six-man juries are not the final word in expediting trials and eliminating unnecessary wastage of jurors' time and fees, but they are a worthwhile

beginning.

The most important question with regard to six-man juries is whether they are as capable of deliberation as twelve--whether their verdicts are the same "quality" as those by twelve. Virtually everybody we talked to felt that there was no difference. The questionnaire asked the judge presiding at each civil trial which size of jury he felt was most appropriate, and 97.0% said either six-member juries were more appropriate or that jury size made no difference. They agreed with the verdicts on liability by six-member juries 80% of the time, and they agreed with those by twelve 80% of the time. In the cases which went to a verdict, 59% of the six-man and 57% of the twelve man verdicts were for plaintiffs. In 96% of the cases judges said they thought a "jury of the other size" would have rendered the same verdict. Many judges commented that "verdicts are comparable" or that "jury size does not affect results."

In interviews 60% of the judges stated that they favor making six-member juries mandatory for all civil cases, and another 20% favor mandatory six for some types of cases. If juries are reduced to six, two-thirds of the judges think the number of peremptory challenges allowed to each side should be reduced from six to either four or three.

Less than 12% of the lawyers change their trial tactics depending on the size of the jury. This tends to indicate that jury size is not an important factor in determining the conduct of a trial. In fewer

than 10% of the cases did lawyers think that a jury of the other size might have rendered a different verdict. Still, more than 70% of the lawyers oppose making six mandatory, even though most were willing to go with six in most cases. Although New Jersey law allows either lawyer to demand a twelve-member jury, almost three-fourths of all civil cases in the counties studied were in fact tried to six. If six are made mandatory, two-thirds of the lawyers favor retaining six peremptory challenges for each side.

As for timing data and the dollar amounts of verdicts, the study found significant differences between six and twelve-member juries. However, I believe that most of these differences are due to the types of cases lawyers select for trial to each size of jury rather than to the fact that six or twelve people are sitting in the jury box. In interviews both judges and lawyers said that lawyers are content to go with six for "ordinary" cases, but they tend to demand twelve for "heavy" or "serious" cases--those with complicated fact situations or where a large amount of damages is sought. These "heavy" cases tend to produce the larger settlements and verdicts. They also require more average trial time, more time to select the jury, and more deliberation time.

The following table shows average settlements and verdicts before each size of jury.

average settlement in six-member cases:	\$ 5,832.52
average settlement in twelve-member cases:	15,786.29

average verdict in six-member cases:	8,621.90
average verdict in twelve-member cases:	24,259.74

The average settlement in twelve-member cases was 2.7 times the average settlement in six-member cases. I believe the reason for this has nothing to do with the size of the jury, but is because the cases started before twelve tend to be those with larger damage claims. Similarly, the average verdict in twelve-member cases was 2.8 times the six-member average. I think this was also due to the nature of the cases rather than the size of the juries.

The same phenomenon holds true with timing data. For example, the data show that twelve-man cases which were settled during trial took almost twice as much trial time as six-man cases which settled. I believe the reason for this is that the more complicated cases are started before twelve, so the lawyers have to get farther into it before they decide what a good settlement would be. Similarly, twelve member cases going to verdict took approximately twice as much trial time as six-member, in my opinion for the same reason.

cases ending in settlement:

started before six-member juries:	2.9 hours
started before twelve-member juries:	5.4 hours

cases going to verdict:

six-member juries:	5.6 hours
twelve-member juries:	11.0 hours

The study did find some differences in voir dire times (the time to select the jury) and deliberation times.

voir dire times:	cases started before six:	25.5 minutes
	cases started before twelve:	46.6 minutes

deliberation times:	six-member:	1.2 hours
	twelve-member:	1.8 hours

In my opinion these differences may be due partly to the fact that cases started before twelve tend to be more complicated and have larger verdicts, but I think they are also partly due to the fact that it takes less time to select six prospective jurors than twelve and to the fact that six people can arrive at a consensus faster than twelve. So I think some time savings in voir dire times and deliberation times can be achieved by reducing the size of the juries.

Our study did not find any time savings filing in and out of the courtroom and passing around exhibits, partly because most New Jersey judges don't require the jurors to leave the courtroom every time the lawyers approach the bench for a sidebar conference and usually don't halt testimony while jurors examine exhibits. But some judges we interviewed (and some articles I've read) did feel that six-man juries save some time at these points. It may be that this depends on the way the particular court operates.

In conclusion on our study, we found some savings of time and juror manpower and no decrease in the "quality" of the verdicts when

six-member juries were used. Therefore, in my opinion adoption of six-member civil juries is a useful step toward reform.

Footnote: Six-Member Juries in the Federal Courts

Six-member civil juries are a coming thing in the federal district courts too. As of last December, 58 of the 94 federal district courts had adopted local rules requiring or encouraging six-member juries in all or most civil cases. The District of New Jersey adopted such a rule on May 28, 1971. Chief Judge Anthony Augelli wrote an article on his court's experiences with the reduced juries, which was published in the Seton Hall Law Review for Spring 1972. He discussed possible savings of trial time, particularly in the voir dire and deliberations, and he also estimated the possible dollar savings in jurors' fees. In the experience of his court, verdicts by six-member juries were not substantially different from those by twelve, and reduction of the jury size did not have an adverse effect on verdicts.

Statement for Amendment Hearing

By John N. Dennis

Committee members and interested citizens:

I am pleased to appear here today to testify in favor of this Constitutional amendment that would provide six-member juries in our civil cases. I think its passage and ratification will go a long way towards relieving our taxpayers of some of the expense juries entail, will mean less interruption in the daily lives of citizens subject to jury duty and will streamline the trial-by-jury process, all without violation of a citizen's traditional right to his day in court and trial by jury.

But I must hasten to say that as a sponsor of a concurrent resolution in the Assembly on the same subject, I do not feel this proposal goes far enough. My resolution calls for an amendment enabling the Legislature to permit six-member juries in all civil and criminal cases, except where a life sentence or a death penalty is involved.

I realize there has been opposition to reducing the size of juries in criminal cases, much of it apparently from the legal profession. I can understand the reluctance of those in criminal practice to experiment with a long-established custom from English common law, the custom of "twelve men good and true." Well, we have gotten away from the "men only" part and I trust some day we'll get away from the twelve, retaining only the good and the true.

So, while I still wish this amendment we are discussing today went further than it does, I am willing to accept the realities of the moment. Reform is usually a slow process, and any step that moves us away from the antiquated requirement of 12 jurors can only be a welcome one.

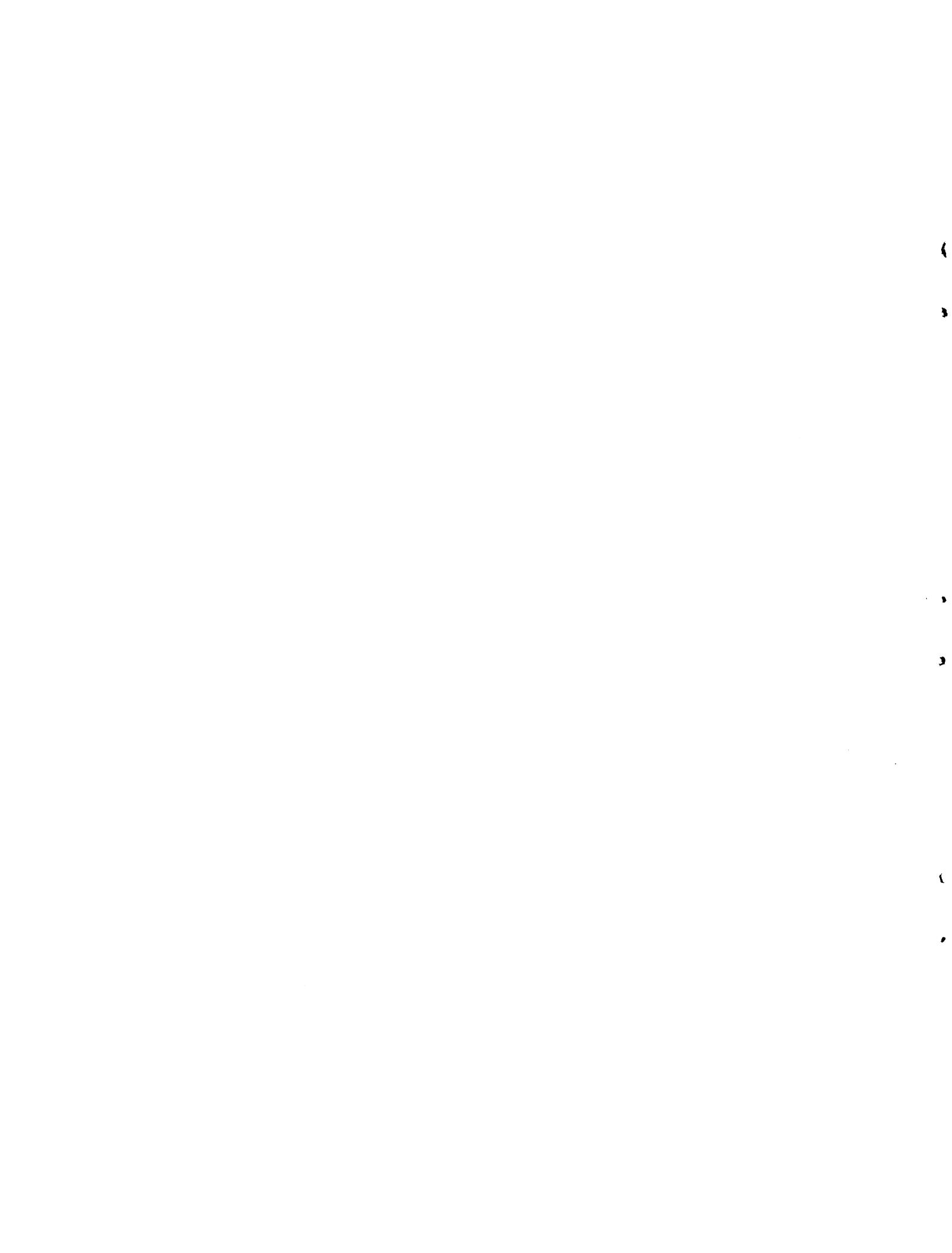
Certainly the case for smaller juries has been supported by eminent opinion. A survey and questionnaire of New Jersey judges, lawyers and court clerks conducted by the Institute of Judicial Administration, Inc. resulted in a summary by the Institute that "use of six-member juries in civil cases can result in substantial savings in trial time and juror manpower without affecting the outcome of trials." The Institute selected New Jersey for its inquiry because this state had experimentally used six-man juries in civil cases under a 1971 rule by the State Supreme Court.

Mandatory six-man juries for all civil cases were backed by 60% of the judges interviewed in the study. And 97.6% of the judges responding said that either six-member juries were more appropriate or that jury size made no difference. Though a majority of lawyers responding were opposed to mandatory six-member panels, most seemed to favor them in a majority of the cases.

I think perhaps the key point here is that most of the judges felt the size of the jury had no bearing on the outcome of cases. We want, I think all of us, to speed up our judicial processes. But we don't, any of us, want to do it at the expense of justice. A drum-head court martial is speedy indeed, and so obviously speed cannot be an end in itself. Such court martials are also relatively cheap and efficient, and therefore we cannot lose sight of our priorities.

As a layman, I would hesitate to confront the legal profession on the delicate issue of a person's right to the protection of his rights from possible administrative or judicial tyranny, which is what our jury system is all about. But I do feel there is more than sufficient legal opinion in support of the case for smaller juries and I think it is also heartening that

much, if not most, of the drive for change has come from within the profession.



JUN 27 1985

