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Francis V. Kenneally, Clerk
Supreme Judicial Court for the Commonwealth
John Adams Courthouse
One Pemberton Square, Suite 1400
Boston, MA 02108

**Re: *Commonwealth v. Heywood* (SJC-12724) -- Boston Bar Association
amicus curiae letter in support of convening a Study Group on
Jurors with Physical Disabilities**

Dear Clerk Kenneally:

The Boston Bar Association (BBA) respectfully submits this *amicus curiae* letter in the case of *Commonwealth v. Heywood* (SJC-12724). As you know, in April 2019, the Supreme Judicial Court solicited amicus briefs in this matter. Specifically, the Court posed three questions to potential *amici*. First, whether the trial judge erred by determining that a blind juror was competent and qualified to be seated on a case involving a charge of assault and battery causing serious bodily injury, where the evidence included photographs and other documentary evidence. Second, whether appropriate accommodations were made to permit the blind juror to be seated as a juror.¹

Because the right to trial by an impartial jury comprised of competent, qualified jurors is a fundamental constitutional right of the criminally accused, and because citizens with physical disabilities have the right to serve on juries except where a trial judge finds such service is not feasible, the answers to the Court's questions are complex and evolving.

Many years ago, William Sloane Coffin Jr. noted “[d]iversity may be the hardest thing for a society to live with, and perhaps the most dangerous thing for a society to be without.” The BBA submits that having the benefit of the diverse views of citizens with physical disabilities is essential to a fair and impartial process and, in particular, in a trial before a jury of one’s peers. Given the historical limits that persons with disabilities have experienced in their attempts at serving as jurors, the Court’s questions raise issues well beyond the specific ones in the *Heywood* case. The BBA thus supports the establishment of a Study Group to evaluate the broader issues of how trial judges should evaluate the feasibility of service by prospective jurors with disabilities and to provide guidance to all stakeholders – judges, attorneys, jurors and litigants – under the myriad of circumstances that may arise when a citizen with a physical disability is summoned for jury service in both criminal and civil cases.

¹ The third question the Court asked potential *amici* to consider was whether the evidence was sufficient to warrant a finding of serious bodily injury. This letter does not address the case-specific issues relevant to that question.

Mark D. Smith
Richard A. Soden
Carol A. Starkey
Kathy B. Weinman
Raymond H. Young

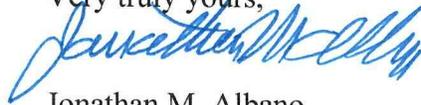
Specifically, the BBA envisions a Study Group that will research the current barriers to jury service by citizens with physical disabilities such as (1) architectural barriers (*i.e.*, doors that are too heavy, lack of assistive listening and reading systems, lack of American Sign Language interpreters, fixed seats or benches with no room for wheelchairs or service animals, inaccessible toilets, and jury boxes or witness stands that can be accessed only by climbing a step); (2) hidden or unintended barriers; and the (3) the jury selection process itself (including changing attitudes on legitimate challenges for cause and the use of peremptory challenges for a discriminatory purpose). Additionally, the Study Group could research current technologies that can accommodate our fellow citizens and bridge any gaps between a person's disability and their competency and qualifications to serve.

The BBA contemplates that the Study Group also would examine the current best practices in accommodating jurors who have physical disabilities in an effort to standardize statewide procedures for the Court. At present, there does not appear to be any guidance available to trial judges or attorneys on how best to accommodate jurors who have physical disabilities. Ideally, these best practices would also include the development of standardized preliminary jury instructions, *voir dire* questions and guidance on challenges for cause and peremptory challenges.

Finally, the BBA envisions that the Study Group might recommend that the Court create a Standing Committee or Committees on people with physical disabilities who are summoned to jury service, to develop professional training programs for judges, court personnel and lawyers on the new practices and procedures, and to monitor new developments in technology that may require modification of said practices and procedures from time to time.

Ultimately, our citizens with physical disabilities must be allowed to enjoy the honor and privilege of jury service in the same manner as all citizens. The BBA believes it is the responsibility of the bench, the bar and the legislature to provide equal access to jury service to our citizens with physical disabilities. Equal justice under the law and the right to an impartial jury of one's peers demands nothing less.

Very truly yours,



Jonathan M. Albano
President

cc: Counsel of Record