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Jury-trial dangers in district court

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Most of the recommendations of the Cox Commission report will undoubtedly cause significant and sorely needed improvements in the administration of justice. Among these recommendations are the assumption by the commonwealth of full-funding responsibility for the administration of justice, improved management of the judicial system and diversion of unnecessary litigation.

However, the recommended changes in the trial de novo system for criminal cases are a step backwards for the cause of justice.

Under this system, a defendant convicted by a district court judge of a misdemeanor or a lesser felony can appeal for a jury trial in the Superior Court. Contrary to the widespread misconception, the Cox report does not abolish trial de novo; it merely shifts the locale of the jury trials to the district courts — with district court judges and six-member, rather than 12-member, juries. This portion of the report has been hitherto immune from public criticism, partly because the district court judges obviously support a proposal that will increase their authority and partly because of public indifference.

The fact is that most district court judges are not qualified either in experience or in temperament to sit on criminal jury trials. Few of them have significant trial experience. Most of them dominate their courtrooms in an arbitrary, though well-intentioned, fashion The concepts of presumption of innocence and guilt beyond reasonable doubt, the cornerstones of our system of justice, are hollow slogans in many district courts; rules of evidence and constitutional law are often disregarded.

Draconian sentences and bail rulings are not unknown in some district courts. District court judges were not selected and approved to sit on jury trials and to have final sentencing jurisdiction. Some of them have the qualifications to sit on de novo appeals, but many do not. Even the current system, which indiscriminately utilizes district court judges in Superior Court, has already proven to be disgraceful in the absence of a meaningful training program and a stringent certification requirement.

Aside from the question of the judges' qualifications, anyone familiar with the trial courts can recognize the difference in atmosphere between the superior and district courts. The latter are closely tied to local communities and local police; some district courts are in the same buildings as the local police stations. District court judges are subject to powerful community pressures, which usually favor order rather than law. These judges see the same police officers regularly; and these police officers are part of the constituencies of the judges and the "club" of court personnel in these local courts.

If the de novo trial is held at the same district court, the de novo judge will undoubtedly be reluctant to change the factual or sentencing disposition of the judge who heard the bench trial — since they are both sitting, either temporarily or permanently, in the same court. They share the same chambers, they go to lunch together, and they inevitably discuss cases.

The present de novo system serves a useful screening function which results in the speedy disposition of 90 percent of the district court criminal cases. The Cox Commission's de novo proposal would undermine the quality of justice for the expedience of a speculative increase in efficiency. The jury system is the foundation of our criminal justice system which protects each of us from unfounded accusations. Though the Cox Commission focuses on the adage that "justice delayed is justice denied", it is even more apparent that justice diluted is justice denied.

Harvey Silverglate is a member of the steering committee of the Massachusetts Association of Criminal Defense Lawyers. This statement has been adopted as the association's official policy.