The Supreme Court of Texas

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The Senate Jurisprudence Committee
The Capitol of Texas
Austin, Texas 78701

hand delivered

The Honorable Jeff Wentworth, Chair, and
Members of the Senate Jurisprudence Committee:

I understand that the Senate Jurisprudence Committee's interim charges include a study of "practices intended to enhance the jury experience and increase jury participation". The Supreme Court, as part of its responsibility for the rules of civil procedure and judicial administration, has been engaged in a study of the same issues, assisted by its Advisory Committee.

The Advisory Committee has been in existence for nearly seventy years. It currently has 52 members — academics, judges, lawyers, and court support personnel — chosen from a variety of backgrounds for their breadth of experience and knowledge of the civil justice system in all parts of the State. The Advisory Committee's charter is to "assist[] the Supreme Court in the continuing study, review, and development of rules and procedures for the courts of Texas, taking into consideration the rules and procedures of other courts in the United States and proposals for changes from whatever source received." See Order dated March 1, 2006, Misc. Docket 06-9019. A verbatim record is made of all its proceedings, available online at http://www.supreme.courts.state.tx.us/rules/scac.asp.

Since last year, the Advisory Committee has been considering proposals by the State Bar's Pattern Jury Charge Oversight Committee to rewrite the standard mandatory jury instructions in plain English so that they can be better understood by jurors. These instructions are set out in Rule 226a of the Texas Rules of Civil Procedure. Writing clear instructions requires a clear understanding of jury procedures, which has led the Advisory Committee to revisit those jury procedures and whether they can be improved.

This has been an ongoing process, and proposals have been refined over time. The Supreme Court's Jury Task Force recommended in September 1997 that trial judges have discretion to allow jurors to take notes, and some trial judges have experimented with this. Since 1994, the Court of Criminal Appeals has permitted juror note-taking in criminal cases, but subject to procedural restrictions and strict supervision by the trial judge. *Price v. State*, 887 S.W.2d 949 (Tex. Crim. App. 1994). Experience in actual trials as well as mock trials seems to indicate that juror note-taking can be beneficial to the process but only in the trial court's sound discretion and with its careful

oversight. The Task Force also recommended that lawyers be allowed to summarize the evidence during the trial, but that jurors not be permitted to discuss the evidence among themselves until the end of the trial. The Task Force recommended against allowing juror questions to witnesses without clear procedural safeguards to the parties.

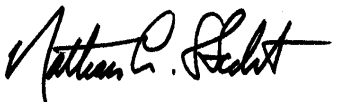
The Advisory Committee has considered these proposed changes and others in the past and has revisited them in earnest this last year. Earlier this month, the Advisory Committee voted to recommend to the Supreme Court that jurors be instructed that they may take notes but may not show them to each other, and that a juror's notes are not evidence and should not be given any more weight than another juror's memory. In the lengthy debate, members acknowledged the benefits of note-taking but expressed concerns that juror notes could also be misused in myriad ways. It remains unclear whether jurors can keep their notes, whether notes can ever be made part of the record to show misuse, or whether they must be destroyed. Like the Task Force, the Advisory Committee does not recommend allowing jurors to discuss the evidence before the end of the trial, but it is still discussing whether the reasons for this prohibition should be better explained to jurors so that they can appreciate its importance.

Transcripts of the Advisory Committee's debates, which are available to you, reflect the difficulties involved in these issues and the care with which they are being considered. I expect the Advisory Committee will also consider whether jurors should be allowed to submit written questions for witnesses and whether counsel should be allowed to summarize testimony for the jury as the case proceeds.

The simplicity with which proposals for changes in jury procedures can be stated belies the nuanced complexities involved in their application. This is especially true in Texas, with the breadth of civil cases in its courts and the differences in actual practice across 254 counties. Changes in jury procedures affect the very core of the civil justice system. They offer possibilities of improvement but could also create serious unfairness and injustice in some cases. The Supreme Court, like its Advisory Committee, has been cautious in changing jury procedures to protect against any adverse affect on parties' rights. National study of the issues has also been very beneficial, such as the National Center for State Courts in its *National Program to Increase Citizen Participation in Jury Service Through Jury Innovations*, which was presented at a *Texas Civil Jury Trial Summit* in Houston in October 2006.

The Supreme Court is grateful for the Legislature's interest in these issues. Frequently, the Legislature has made policy choices to be implemented through the Court's rule-making process. This ensures that legislative policies become fully effective through detailed procedural rules hammered out by judges and lawyers who must practice under them. The Court's staff and I, as well as the Advisory Committee, stand ready to provide you any assistance we can.

Sincerely,



Nathan L. Hecht
Justice