

Jury Selection Issues
Highlights of Testimony, March 28
California Commission on Fair Administration of Justice

Summary

- Limited source lists, economic hardships and lengthy trials all combine to narrow the group of citizens able to serve on a death penalty jury, resulting in juries that are not representative of the community.

Limited Source Lists

- California courts currently rely solely on voter registration & DMV lists to create jury source lists.
- In contrast, to increase the diversity of the venire, New York uses five source lists, including state income taxpayers, state unemployment and welfare rolls.
- Jury commissioners should expand their source lists, as they are already authorized to do under California, see Code of Civil Procedure 197(a).

Economic Hardships

- Economic factors have a significant impact on jury composition.
 - The most important determinant of whether a juror seeks to be excused is his or her employer's policy on paying employees during jury service.
 - Those with lower annual incomes are particularly underrepresented, even more so than African Americans, Latinos, or women as a whole.
 - People of color of lower social-economic status are the most underrepresented group on jury panels.
- Jury Compensation and the Need for Innovation
 - California Courts pay jurors at the rate of \$15 per day, an amount that may barely cover out-of-pocket expenses but certainly does not compensate for lost income.
 - According to a California survey of jurors:
 - 1/3 of employers reported that they pay employees for 5 or fewer days of jury service.

- Only 40% of employers reported paying employees for 11 days or more of jury service.
- Lower income earners, particularly hourly wage earners, have significantly fewer paid days.
- At least 31 states and the Federal courts pay jurors fees greater than California (e.g. Colorado, Connecticut, Massachusetts, North Dakota and South Dakota pay \$50/day).
 - For example, in Colorado and Massachusetts, employers are required to pay actual wages for the first 3 days of jury service after which the state pays for all days at the rate of \$50/day.
 - New York requires employers with at least 10 employees to pay jurors a minimum of \$40/day for first three days, after which the state pays at this rate for all days.
 - In other states, jury fees increase after a set number of days of jury service (e.g., Florida, Michigan, Nevada, New Jersey, North Carolina, Oregon, Pennsylvania, Texas, and Utah).
 - In New Mexico jurors are paid the hourly minimum wage.

Lengthy Trials Magnify Economic Hardships

- The Jury Administrator for the Federal District Court of Northern California reported that for every 1,000 time qualifying questionnaires he sends to prospective jurors in a lengthy trial, he estimates that 75-80 will actually be available for jury service. The principle reason is economic.
- Some California courts use group rather than individual voir dire in capital cases, adding additional juror time to an already lengthy trial process.
 - In cases in which voir dire is conducted in large groups, individual jurors spend many more days in court (frequently ten days or more).
 - When individually sequestered voir dire is used, individual jurors spend only three partial days in court.
- Innovation in trial schedules can help reduce the impact of lengthy trials on jurors.
 - Many courts run a 10 am to 4:30 pm calendar with a 90 minute lunch and at least two 15 minute breaks. Actual in court time at its best is 4.5 hours.

- But the use of an 8:30 am to 1:30 pm trial schedule, with no lunch and two 20 minute breaks, affords a trial day of almost the same duration – 4 hours and 20 minutes, and permits jurors to use their afternoons for work.

The Death Qualification Process in Death Penalty Cases Magnifies These Impacts, Resulting in Juries That Are Even Less Representative.