



Gus J. Solomon Inn, American Inns of Court, Portland, Oregon

February 19, 2008
Group 4 Presentation
“Jury Pool Diversity- The Oregon Experience”

Judge Diana Stuart, Co-Leader (J)
Robert Simon, Co-Leader (M)
Judge Chris Larsen (J)
David Meyer (M)
Paul Conable (B)
Kim McGair (B)

Frank Weiss (B)
J. Curt Edmundson (A)
Bob Schulhof (A)
Christine Tracey (B)
Beth Wolfsong (A)
Sara L. Allen (B)

The criminal defense bar, over time, has raised the challenge to the representative cross section of the jury pool from which the jurors are summoned to court for service. The most recent two challenges occurred in 2003- 2004 and a detailed and scientific statistical study was funded by the Judicial Department. Using a questionnaire distributed to potential juror when they reported to the clerk which incorporated the same questions as the 2000 Census the researchers sampled over 650 potential jurors in Clackamas and Tillamook Counties who responded to the summons to serve. The survey revealed statistically significant differences between the assembled prospective jurors and the 2000 Census of the counties on a variety of demographic attributes (though not race or gender based). However, Clackamas County Circuit Court Judge Hon. Robert Selander, entered an Order in which he determined that the under-representation did not amount to a deprivation of the criminal defendant’s rights under the Oregon Constitution or statute ORS 136.001 or ORS 10.030. Our panel includes participants on both sides of the Clackamas

County challenge and provides many of the materials upon which the sides relied.

Panelists:

Richard F. Rankin: *Demographer*
Laura Graser: *Defense Counsel*
Greg Horner: *State Counsel*
Hon. Robert Selander: *Presiding*

Applicable Laws:

136.001 Right to jury trial; waiver. (1) The defendant and the state in all criminal prosecutions have the right to public trial by an impartial jury.

(2) Both the defendant and the state may elect to waive trial by jury and consent to a trial by the judge of the court alone, provided that the election of the defendant is in writing and with the consent of the trial judge. [1973 c.836 §221; 1997 c.313 §21]

136.005 Challenge to jury panel. (1) The district attorney or the defendant in a criminal action may challenge the jury panel on the ground that there has been a material departure from the requirements of the law governing selection of jurors by filing a motion with the court supported by an affidavit alleging facts that, if true, constitute a material departure from the requirements of the law governing the selection of jurors. The party making the motion shall serve the motion and supporting affidavit on the other party, the trial court administrator and the State Court Administrator.

(2) A challenge to the panel shall be made before the voir dire examination of the jury.

(3) If the court determines that there has been a material departure from the requirements of the law governing selection of jurors, the court shall:

(a) Stay the proceedings pending the selection of a jury panel in conformity with the applicable provisions of law; and

(b) Grant such other relief as may be appropriate.

(4) The procedures prescribed by this section are the

exclusive means by which a district attorney or defendant may challenge a jury panel. [1973 c.836 §22; 2001 c.779 §17]

10.030 Eligibility for jury service; discrimination prohibited. (1) Except as otherwise specifically provided by statute, the opportunity for jury service shall not be denied or limited on the basis of race, national origin, gender, age, religious belief, income, occupation or any other factor that discriminates against a cognizable group in this state.

(2) Any person is eligible to act as a juror in a civil trial unless the person:

(a) Is not a citizen of the United States;

(b) Does not live in the county in which summoned for jury service;

(c) Is less than 18 years of age; or

(d) Has had rights and privileges withdrawn and not restored under ORS 137.281.

(3)(a) Any person is eligible to act as a juror in a criminal trial, beginning on or after December 5, 1996, unless the person:

(A) Is not a citizen of the United States;

(B) Does not live in the county in which summoned for jury service;

(C) Is less than 18 years of age;

(D) Has had rights and privileges withdrawn and not restored under ORS 137.281; or

(E) Has been convicted of a felony or served a felony sentence within the prior 15 years.

(b) As used in this subsection:

(A) "Felony sentence" includes any incarceration, post-prison supervision, parole or probation imposed upon conviction of a felony or served as a result of conviction of a felony.

(B) "Has been convicted of a felony" has the meaning given that term in ORS 166.270.

(4) A person who is blind, hearing or speech impaired or physically disabled shall not be ineligible to act as a juror or be excluded from a jury list or jury service on the basis of blindness, hearing or speech impairment or physical disability alone.

(5) No person is eligible to act as a juror in any circuit court of this state within 24 months after being discharged from jury service in a federal court in this state or circuit court of this state unless that person's service as a juror is required because of a need for additional jurors.

(6) In addition to the disqualifications listed in subsection (2) of this section, a person is ineligible to act as a juror on a grand jury if the person has been convicted of a felony, other than a felony traffic offense, or has served a felony sentence, other than a sentence for a felony traffic offense, within the prior 15 years. As used in this subsection, "conviction" means an adjudication of guilt upon a verdict or finding entered in a criminal proceeding in a court of competent jurisdiction. [Amended by 1971 c.630 §1; 1975 c.781 §4; 1977 c.262 §1; 1985 c.703 §2; 1989 c.224 §3; 1997 c.313 §8; 1997 c.736 §1]

10.050 Excuse from jury duty. (1) A judge of the court or clerk of court shall excuse a person from acting as a juror upon a showing of undue hardship or extreme inconvenience to the person, the person's family, the person's employer or the public served by the person. In applying this subsection the judge or clerk of court shall carefully consider and weigh both the public need for juries which are representative of the full community and the individual circumstances offered as a justification for excuse from jury service. A person may request and be granted excuse from jury service under this subsection by means of telephone communication or mail.

(2) Notwithstanding ORS 10.030 (4), a judge may, by own motion, excuse a juror whose presence on the jury would substantially impair the progress of the action on trial or prejudice the parties thereto.

(3) A judge of the court or clerk of court shall excuse a person from acting as a juror upon the request of that person if the

person is 70 years of age or older. A person may request and be granted excuse from jury service under this subsection by means of telephone communication or mail.

(4) A judge of the court or clerk of court shall excuse a woman from acting as a juror upon the request of the woman if the woman is breast-feeding a child. A request for excuse from jury service under this subsection must be made in writing.

(5) Unless the public need for juries in the court outweighs the individual circumstances of the person summoned, a judge of the court or clerk of court shall excuse a person from acting as a juror upon the request of that person if the person is the sole caregiver for a child or other dependent during the court's normal hours of operation, the person is unable to afford day care or make other arrangements for the care of the dependent, and the person personally attends to the dependent during the court's normal hours of operation. [Amended by 1967 c.389 §1; 1975 c.160 §3; 1977 c.262 §2; 1977 c.631 §2; 1979 c.728 §2; 1985 c.703 §5; 1995 c.808 §1; 1997 c.313 §35; 1999 c.1085 §1]

10.055 Deferment of jury service. A judge of the court or clerk of court may allow, for good cause shown, a person summoned to serve as a juror for a particular jury service term to defer jury service to any other term beginning within one year after the end of the term for which the person was summoned. The name of a person allowed to defer jury service shall be included with the names of persons to be summoned as jurors for the subsequent term to which jury service is deferred. [1967 c.473 §2; 1969 c.176 §1; 1971 c.207 §1; 1975 c.342 §13; 1985 c.703 §6]