



2021 FORUM FOR STATE APPELLATE COURT JUDGES

JURIES, VOIR DIRE, *BATSON*, AND BEYOND: ACHIEVING FAIRNESS IN CIVIL JURY TRIALS

DISCUSSION QUESTIONS

Morning Discussion Groups (Prof. Hans's paper, "Challenges to Achieving Fairness in Civil Jury Selection"):

- How well do you think civil juries in your jurisdiction represent the community?
- In your jurisdiction, have you observed positive (or negative) effects of jury diversity?
- During the COVID pandemic, some courts have experimented with virtual jury selection. A few of these courts have reported the same or better representativeness for virtual jury venires than with in-person jury venires. Post-pandemic, should we move to virtual jury selection, or return to requiring in-person jury selection?
- Professor Hans identifies some of the advantages of expansive voir dire. Other than time concerns, what, if anything, do you see as the disadvantages of expansive voir dire?
- EXTRA CREDIT: In practice, courts nationwide have moved away from special juries. Are there particular types of cases for which a special jury (selected for advanced education or specialized training) would be more appropriate, more competent, and/or more acceptable to the parties and the public, than a representative jury?

Afternoon Discussion Groups (Prof. Diamond's paper, "Judicial Rulemaking for Jury Trial Fairness"):

- Should courts be more willing to find discriminatory exclusion in the exercise of peremptory challenges in light of the evidence for implicit as well as explicit bias?
- Should court systems encourage legislatures to expand eligibility for jury service to include felons who have completed their sentences? To include legal permanent residents?
- How many challenges should be permitted for a jury of twelve? For a jury of six?
- How many jurors should a civil jury have? Why?
- EXTRA CREDIT: Professor Diamond discusses possible changes in jury management:
 - Expand eligibility to include convicted felons who have completed their sentences;
 - Use up-to-date and comprehensive juror lists;
 - Adopt the "objective observer" standard to judge a *Batson* challenge;
 - Limit availability of peremptory challenges; and
 - Increase jury size to increase jury diversity.

Which of these do you think would enhance the fairness of civil jury trials?