

VAWA ITWG WEBINAR 1: JURY SELECTION



**Photo from the Intertribal Technical-Assistance Working
Group on Special Domestic Violence Criminal Jurisdiction
1st In-Person Meeting | National Advocacy Center
Columbia, South Carolina**

VAWA ITWG WEBINAR 1: JURY SELECTION

PANELISTS:

Paula Hannaford-Agor, Director, Center for Jury Studies, National Center for State Courts

Hon. Steven Aycock, Judge-in-Residence, National Council of Juvenile and Family Court Judges

John Dossett, General Counsel, National Congress of American Indians

FACILITATORS:

National Congress of American Indians
Tribal Law & Policy Institute



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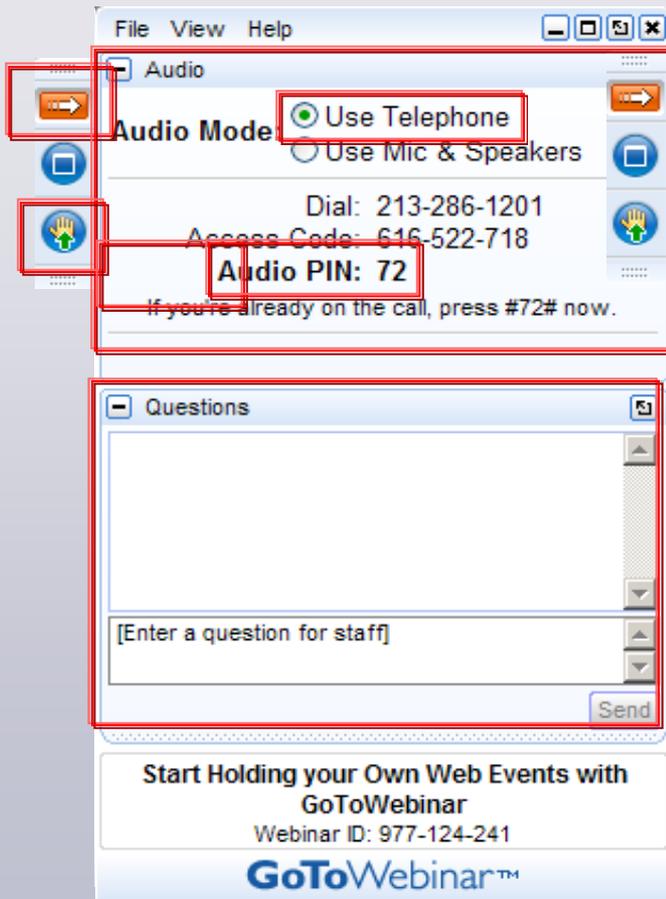
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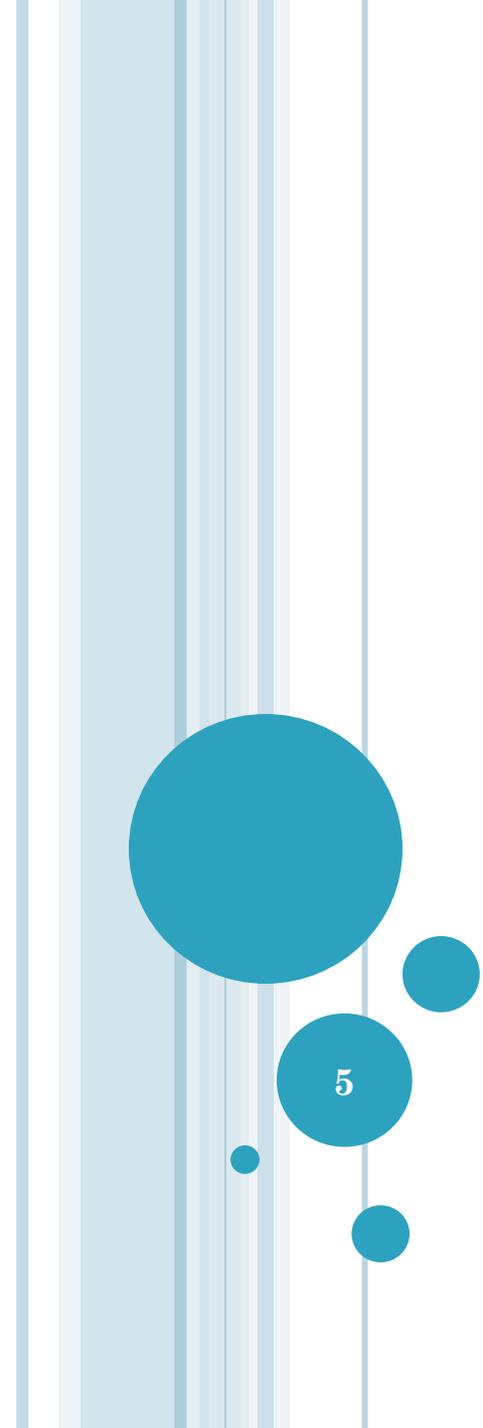
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start  10:29 AM  online

HOW TO PARTICIPATE TODAY



- Open and close your Panel
- View, Select, and Test your audio
- Submit text questions
- Raise your hand
- Q&A during 2nd half of today's session
- Everyone will receive an email within 24 hours with a link to a survey about today's session
- Recorded webinar will be made available



**DEVELOPING AN EFFECTIVE
AND DEFENSIBLE JURY
PLAN FOR TRIBAL COURTS**

September 13, 2013

25 USC § 1304(d) – RIGHTS OF DEFENDANTS

- In a criminal proceeding in which a participating tribe exercises special domestic violence criminal jurisdiction, the participating tribe shall provide to the defendant

...

3. the right to a trial by an impartial jury that is drawn from sources that
 - A. reflect a fair cross section of the community; and
 - B. do not systematically exclude any distinctive group in the community, including non-Indians; and

DUREN V. MISSOURI, 439 U.S. 357 (1979)

- Three-pronged test to establish a prima facie violation of the fair cross section requirement of the Sixth Amendment
 1. The group excluded is a “**distinctive group**”
 2. Representation of the distinctive group is **not fair and reasonable** in relation to the number of persons in the community;
 3. Under-representation is due to “**systematic exclusion.**”
- If the defendant establishes a prima facie violation, the burden shifts to the State to demonstrate a compelling reason for the exclusionary practice.
- States retain broad discretion to define qualification and exemption criteria for jury service.

IMPORTANT TERMS

- Distinctive Group
 - Generally “heightened scrutiny” classifications under the Equal Protection Clause of the 14th Amendment (gender, race, ethnicity)
 - Statutory provisions may specify other classifications (e.g., non-Indian, color, national origin, religion, economic status, political orientation)
- Not Fair and Reasonable Representation
 - No clear numerical thresholds
- Systematic Exclusion
 - Does not have to be intentional (Equal Protection), just inherent in the jury selection process

WHAT IS A JURY PLAN?

- Detailed documentation of the procedures used to summon and qualify prospective jurors for trial.
- Usually adopted by the court as a formal expression of court policy.
- Essential Components
 - Statutory and regulatory authority
 - Jurisdictional authority of the court
 - Creation of the Master Jury List including description of the source list(s), criteria for identifying and removing duplicate records, suppression files, randomization methods
 - Jury Size
 - Verdict decision rules (unanimous or non-unanimous verdicts)
 - Qualification and exemption criteria
 - Excusal/deferral policy
 - Delegation of authority to determine eligibility, excusals?
 - Terms of service, compensation/expense reimbursement
 - Responsibility for jury system integrity including summons enforcement methods

BASIC PROCEDURES

- Identify and obtain juror source list(s)
- If using two or more lists, merge and identify/remove duplicate records
- Randomize the Master Jury List
- 2-Step or 1-Step Summoning/Qualification Process?
- Mail jury summons/qualification questionnaire
- Review summons/questionnaire responses for eligibility and availability to serve
- Jurors call in to learn whether to report for service

CHARACTERISTICS OF AN EFFECTIVE MASTER JURY LIST ...

- ***Inclusive*** of the jury-eligible population;
 - Includes the largest possible number of jury-eligible persons within the jurisdiction
- ***Representative*** of the jury-eligible population;
 - Proportionately reflects the demographic characteristics and geographic distribution of the jury-eligible population within the jurisdiction
- ***Accurate*** address records.
 - Jury-related mailings will be delivered to the addressee.

POTENTIAL SOURCE LISTS

- Tribal membership
- Residents on tribal land
- Tribal employees
- Registered voters
- Licensed drivers/state identification card holders

- Consider requesting the master jury list from the local county court or from the state Administrative Office of the Courts.

- **BE SURE TO OBTAIN BOTH MAILING AND STREET ADDRESSES**

- **WARNING:** there is a direct correlation between the number of source lists used to create the master jury list and the degree of complexity in creating the list. Consider whether the benefits of adding another list outweigh the challenges it will cause to the list creation process.

DUPLICATE MATCHING CRITERIA

- Standardize the records
- Specify on what basis the system will determine that two records reflect the same person
 - Surname, first name (or initial)
 - DOB or SSN
 - Address?
 - Missing information
- Specify the list priority

SUPPRESSION FILES

- Used to remove/suppress records of individuals who are ineligible for jury service:
 - Deceased persons
 - Permanently excused for medical hardship
 - Previous jury service
 - Undeliverable at that address
- **USE SUPPRESSION FILES WITH GREAT CAUTION!!!**

RANDOM SELECTION

- “Any selection method may be used, manual or automated, that provides each eligible and available person with an *equal probability of selection*”

ABA Principles for Juries and Jury Trials,
Principle 10(B)(1).

- Generate a random number and assign to each record on the Master Jury List;
- Order the Master Jury List by the random number.

JURY SIZE

- *Ballew v. Georgia*, 425 U.S. 223 (1978)
 - U.S. Supreme Court rules that the minimum size for a criminal jury is 6 persons.
- Federal court: jury size for criminal trials is 12.
- State court: jury size for criminal trials ranges from 6 to 12.
 - 6-person jury (non-capital felony): Connecticut, Florida
 - 7-person jury (misdemeanor): Virginia
 - 8-person jury (non-capital felony): Arizona, Utah

VERDICT DECISION RULES

- *Apodaca v. Oregon*, 406 U.S. 404 (1972) and *Johnson v. Louisiana*, 406 U.S. 356 (1972)
 - U.S. Supreme Court rules that Sixth and 14th Amendments do not require unanimity in state court jury trials.
- Only Oregon and Louisiana have non-unanimous verdict rules
 - Both require super-majorities to convict
 - Louisiana: 10/2 rule, Oregon: 11/1 rule
- *Burch v. Louisiana*, 441 U.S. 130 (1979)
 - Juries comprised of only 6 persons must use a unanimous verdict rule in criminal cases.

2-STEP OR 1-STEP JURY PROCESS

○ 2-Step Process:

- Randomly select names from the Master Jury List to receive a qualification questionnaire for jury service;
- Place names of qualified jurors on a Qualified Jury List;
- Randomly select names from the Qualified Jury List to receive a summons for jury service.

○ 1-Step Process:

- Randomly select names from the Master Jury List to receive BOTH a qualification questionnaire and summons for jury service.

QUALIFICATION AND EXEMPTION CRITERIA

- Under *Duren*, states/tribes have great discretion to determine the qualification and exemption criteria for jury service;
 - If those criteria systematically exclude a distinctive group, the tribe must provide a compelling justification for the criteria.
- Common qualification criteria in state/federal courts:
 - US citizenship, residency, age 18 and over, English fluency, criminal history
- Common exemption criteria in state/federal courts:
 - Previous jury service, age (e.g., 70 and over), occupational and status-related exemptions

EXCUSAL / DEFERRAL POLICIES

- Can the authority to excuse prospective jurors be delegated?
- Excusal criteria
 - Medical hardship, financial hardship, extreme inconvenience
- Excusal/deferral policies should be neutral so that distinctive groups are not disproportionately excused from service.

TERMS OF SERVICE

- What is the maximum period of time that prospective jurors must be available for jury service?
 - Number of days, number of trial days, number of trials
- What is the compensation policy for jury service?
 - No mandatory minimum fee required
 - Flat or graduated juror fee
 - Mileage reimbursement
 - Childcare reimbursement
 - Other “out-of-pocket” expenses (parking, lunch, etc.)

SUMMONS ENFORCEMENT

- Fair cross section depends on consistent, even-handed enforcement of the jury summons/qualification questionnaire
- Authority to enforce summons is an inherent power of the court
- Enforcement Programs
 - An ounce of prevention: reminders ...
 - Second notice/summons approach
 - Order to Show Cause
 - Capias (Bench) Warrant
 - Fines/Fees

QUESTIONS AND ANSWERS

FUTURE WEBINARS