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From: Law office of Chris Van Vechten [mailto:chris@soundlawyering.com]
Sent: Wednesday, December 15, 2021 11:02 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment on GR 41

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No Virtual Jury Selection

Before the pandemic began, I averaged 3 to 4 jury trials a year. I have done only one since March of 2020 thanks in large part to the policies the courts implemented to try and slow the spread of Covid which has included prolonged suspensions of trial by jury itself. I have never done virtual jury selection but I have done multiple other virtual court appearances and of course participated in mass zoom events that lead me to believe this is a mistake.

While I can imagine there may be a few advantages to this method, I think they are probably dwarfed by the problems they will cause. Ultimately being on a jury is being a member of a group project and – from the perspective of a trial attorney – I therefore want to see how they interpret voire dire questions in a group setting. Zoom undermines that effort.

I understand there is a demographic who might be able to better access the initial phases of jury selection if it went remote but – in my experience as a defense attorney – the biggest challenge to getting a diverse panel of jurors is the length of a trial itself. Whether a trial is conducted in person or remotely, if it last more than 2 or 3 days, low income people, people with children, and working people are disproportionately not going to be able to participate because they can't afford it. Addressing this problem requires investing in juror compensation and/or the passage of laws requiring employers to provide paid jury duty. It can further be reduced by expanding the hours he court spend in trial on a given day. In Pierce County trials end every day at 4pm per contract with the county staff. In Thurston County I've seen them continue past 6pm and that means that 4 days in Thurston County achieves the equivalent of 5 in Pierce, meaning jurors lose less time.

But expecting a low-income person to spend 2 or 3 weeks in jury service if their employer does not provide compensation is going to necessitate their release from duty regardless of whether the hearing is conducted remotely or not.

Our neighbor to the south – Oregon – has not suspend trial by jury during this pandemic at any time for anyone in custody because their judges rightly concluded that was unconstitutional.
<https://www.opb.org/news/article/oregon-jury-trials-coronavirus-risk/>

Statewide they conducted all of their jury service in person until October of 2021, when Multnomah County became the first in the State to experiment with virtual jury selection. Hopefully they will soon jettison this.

<https://www.oregonlive.com/coronavirus/2021/11/jury-selection-is-online-for-now-how-the->

[pandemic-is-reshaping-some-oregon-courtrooms.html](https://www.soundlawyering.com/pandemic-is-reshaping-some-oregon-courtrooms.html)

And yet Oregon has lower covid numbers than Washington, demonstrating – if nothing else – that this is not a significant tool in the effort to slow covid.

This country doesn't ask very much of its citizens. There's no military draft anymore, so really the only civic duty we have left is to pay your taxes, to vote and to show up if called for jury duty. This is ultimately a minor hardship but one that truly has a profound impact on the individuals involved in our justice system as well as our society at large. It is also the only civic "group project" left which – unlike voting by mail or paying your taxes online – suggests that it should continue to be done in a real world setting with real people instead of pixels on a screen.

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