

Litigating Capital Jury Issues
Handout

The death penalty is “an expression of the community's outrage-its sense that an individual has lost his moral entitlement to live.”

Witherspoon v. Illinois (1968) 391 U.S. 510

-Data on conviction-proneness not fully developed “too tentative and fragmentary.”

-Support for DP below 50% at time of case.

-If a state excuses prospective jurors for cause on the basis of general objections to the DP or scruples against its infliction, **then the resulting jury cannot speak for the community.**

Holding: Sets the limit on who the state may exclude.

Unmistakably clear (1) auto vote against DP (2) prevent impartial decision on guilt.

Due Process through the “filter of Sixth Amendment values” (no 6th right to a jury for sentencing but sentencing must comply with due process)

Ballew v. Georgia (1978) 435 U.S. 223

Challenge: Is the purpose and functioning of a jury impaired by the challenged procedure (5-person jury). Relied extensively on social science research. *Non-capital*

- Holding: the Sixth Amendment mandated a jury only of sufficient size to promote group deliberation, to insulate members from outside intimidation, and to provide a representative cross-section of the community.

Duren v. Missouri (1979) 439 U.S. 357

Challenge: Does statute allowing women an automatic exemption from jury service violate 6th Amendment right to fair cross-section?

Holding: procedure violates 6th Amendment cross-section requirement. *No intent to discriminate need be shown under the Sixth as compared to Equal Protection.*

Adams v. Texas (1980) 448 U.S. 38

- Post- *Furman* capital case holding *Witherspoon* limits who may be excluded from capital juries.

Hovey v. Superior Court (1980)28 Cal.3d 1

Challenge:

- Those who would automatically vote against DP should be excluded from deciding guilt/innocence.
- Violates Sixth Amendment cross-section/ Due Process as set out in *Witherspoon* and state statute.
- DQ process causes jurors to convict

Holding:

- Petitioner did not show that California DQ (as compared to *Witherspoon*) are not neutral (ADP not excluded in studies) i.e more likely to convict.
- Sequestered voir dire to minimize impact of DQ

Hovey Analysis

- *Witherspoon* due process through the “filter of Sixth Amendment” = “constitutionally neutral jury”
- A neutral jury is one drawn from a pool which reasonably mirrors the diversity of experiences and relevant viewpoints of those persons in the community who can fairly and impartially try the case.
- *Ballew* Sixth Amendment analysis of the process

Spaziano v. Florida (1984) 468 U.S. 447

- Challenge: Is Florida's statute permitting a judge to override a jury's decision to impose a sentence of other than death a violation of the Eighth Amendment?
- Holding: No. This does not result in an arbitrary or discriminatory application of the death penalty.
- Dissent: **"The constitutional legitimacy of capital punishment depends upon the extent to which the process is able to produce results which reflect the community's moral sensibilities."**

Wainwright v. Witt 469 U.S. 412 (1985)

- *Witherspoon* is not a ground for excluding, but a limitation on the state's power to exclude.
- Dissent Court doesn't even mention constitutional right *Witherspoon* sought to protect. "These juries will be unlikely to represent a fair cross section of the community, and their verdicts will thus be unlikely to reflect fairly the community's judgment whether a particular defendant has been shown beyond a reasonable doubt to be guilty and deserving of death."
- "A jury unlikely to reflect such community views is not a jury that comports with the Sixth Amendment."

Lockhart v. McCree, 476 U.S. 162

- Challenge: DQ violates the Sixth Amendment “fair cross-section” and right to an impartial jury requirement because DQ jurors are more conviction prone and process biases jurors.’
- Holding: Assume DQ produces more conviction prone juries does not violate Sixth Amendment right to fair cross-section or impartial jury.

Note: Lockhart was not sentenced to death, therefore this was a straight Sixth Amendment case. No Due Process or Eighth Amendment decision or analysis.

Lockhart

- *Witherspoon* excludables not a “distinctive group” for cross-section purposes.
- Serves the states interest of obtaining a single jury.
- “Moreover, both *Witherspoon* and *Adams* dealt with **the special context of capital sentencing, where the range of jury discretion necessarily gives rise to far greater concern over the effects of an ‘imbalanced’ jury.**”

Morgan v. Illinois (1992) 504 U.S. 719

- Due process (14th Amendment) requires a jury provided in a capital sentencing phase be impartial and indifferent to the extent required by the Sixth Amendment.
- States interest in having a single jury decide guilt and penalty.

California Code of Civil Procedure 229(h)

A challenge for implied bias may be taken for one or more of the following causes, **and for no other: ...**

(h) If the offense charged is punishable with death, the entertaining of such conscientious opinions as would preclude the juror finding the defendant guilty; in which case the juror may neither be permitted or compelled to serve.”

Arguments

- Capital sentencing as distinguished from *Lockhart*.
Witherspoon controls. Due process through the filter of the Sixth.
 - X% of community excluded- does not speak for community
- Eighth amendment protection “heightened reliability”
 - More prone to find aggravation; less weight to mitigation; more guilt prone
 - Due Process *Morgan*
- Equal Protection (non-capital v. capital murder)
 - Jurors more guilt prone- give less weight to defenses.
- State statute- DQ excludes jurors who are eligible to serve

Data from Survey

- Almost 30% of the community is excluded from serving on a capital jury (not including “nullifiers”).
- Of excludable jurors 12.8% are opposed to DP while 8.1% are in favor.
- Jurors who favor DP give less weight to mitigators; more weight to aggravators (of 29 categories- all but 4).
- DQ changes 2:1 in favor of death to nearly 4:1 in favor of death.
- Jurors who favor DP are more guilt prone.

Relief Sought

- I. No death qualification/ *Strict Witherspoon*
- II. Separate trials
- III. Simultaneous juries
- IV. Expand juror rolls
- V. Increase juror pay

Lockhart

Capital jury sentencing “gives rise to far greater concern over the effects of an ‘imbalanced’ jury.”