



Washington State
**Office of
Public
Defense**

Title: The 6th Amendment

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January 23, 2023 (Brennan Center for Justice)

[A Conversation with Washington Supreme Court Chief Justice Steven C. González - YouTube](#)

**A Conversation with Washington Supreme Court Chief Justice Steven C. González
(begin @ 19:08 min. into interview)**



Diversity in Juries Makes a Difference

“The studies all show that a heterogeneous body is better than a homogeneous one.”

“Many of them in jury deliberations show that a mixed jury is better on every objective measure than a homogeneous jury is except maybe on the measure of efficiency.”

“If you are going to do it better sometimes it takes a bit longer.”

“So, I think that sacrifice in efficiency, is well worth it because we found that mixed

juries, for example, were more likely to talk amongst themselves, they were more likely to actually read and follow the instructions from the court.”

<https://www.brennancenter.org/StateCo...>

<https://www.brennancenter.org/our-work/research-reports/conversation-washington-supreme-court-chief-justice-steven-c-gonzalez>

Diversity in Juries Makes a Difference

They were more likely to examine carefully the exhibits that were given to them, and I think that's true for us too as a court of last review.”

“There are nine of us, and that diversity among us helps us, I think be better decision makers and the outcomes are different and improved.”

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How Does Diversity In Juries Actually Happen?

Compatible

If things, for example systems, ideas, and beliefs, are compatible, they work well together or can exist together successfully.

<https://www.collinsdictionary.com/us/dictionary/english/compatible>

Is the initial venire, from which you are to choose potential jurors who will deliberate and determine the fate of your client, compatible with the mandates of the 6th Amendment?

What are those mandates? (substantial guarantees, bedrock rights of the accused)

Sixth Amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

<https://constitution.congress.gov/constitution/>

Courts' Jurisprudence

Impartiality:

The Sixth Amendment to the U.S. Constitution guarantees criminal defendants an impartial jury, and the Supreme Court has held that “an essential component” of this guarantee is the “selection of a [trial] jury from a representative cross-section of the community.” *Taylor v. Louisiana*, 419 U.S. 522, 528 (1975).

The Supreme Court further explored the representative-cross-section guarantee a few years later, in *Duren v. Missouri*, 439 U.S. 357 (1979), where it provided a framework for determining whether a fair cross-section claim has been established.

**The Duren framework requires:
The party making the fair-cross-section
challenge to satisfy each of three prongs in
order to establish his or her prima facie case.**

To make out the **prima facie case**, the party must show:

“[1] that the group alleged to be excluded is a ‘distinctive’ group in the community;

[2] that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and

[3] that this underrepresentation is due to the systematic exclusion of the group in the jury-selection process.”

Then, if the prima facie case has been established, (First prong of the Duren Test)

the burden then shifts to the other party to prove “that a significant state interest [is] manifestly and primarily advanced by those aspects of the jury-selection process . . . that result in the disproportionate exclusion of a distinctive group.” *Id.* at 367-68.

Once the prima facie case has been established, the burden shifts to the other party to prove a compelling justification for the exclusion, and recent cases make clear that states retain broad discretion to establish qualification, exemption, and excusal criteria. See, e.g., *Berghuis v. Smith*, 559 U.S. 314 (2010).

Second prong of the *Duren* test

The second prong of the *Duren* test requires that the party making the challenge show “that the representation of [the] group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community.” *Duren*, 439 U.S. 357. In exploring the second prong, the question thus is not about the makeup of the jury panel itself, but, rather, about the representativeness of the *sources* from which the jurors are selected.

Batson v. Kentucky

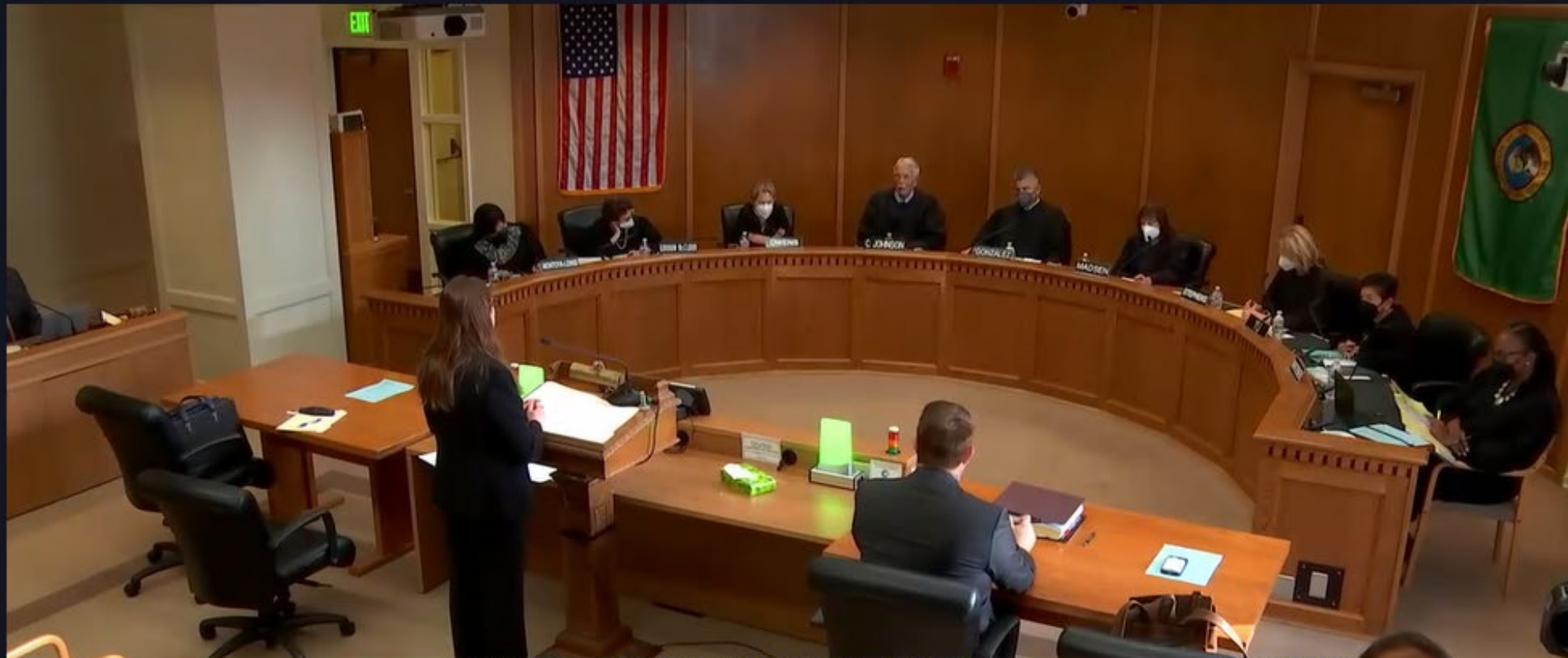
476 US 79 (1986) (The Court found that the prosecutor's actions violated the Sixth and Fourteenth Amendments of the Constitution). 7-2 Decision

During the criminal trial in a Kentucky state court of petitioner, a black man, the judge conducted *voir dire* examination of the jury venire and excused certain jurors for cause. The prosecutor then used his peremptory challenges to strike all four black persons on the venire, and a jury composed only of white persons was selected. Defense counsel moved to discharge the jury on the ground that the prosecutor's removal of the black veniremen violated petitioner's rights under the Sixth and Fourteenth Amendments to a jury drawn from a cross-section of the community, and under the Fourteenth Amendment to equal protection of the laws.

Washington Courts addressed the shortcomings of Batson through rule making, General Rule 37: GR 37 is good when it comes to preventing unfair exclusions of jurors based on race, but it can't do too much if we don't have diverse pools coming into the door in the first place.

**WA State Supreme Court recently
heard oral arguments in a case on
September 15, 2022:
State of Washington v. Paul Rivers**

<https://twv.org/video/washington-state-supreme-court-2022091163/?eventID=2022091163>



STATE OF WASHINGTON V. PAUL RIVERS

9/15/22

DID KING COUNTY'S JURY SUMMONS PROCESS VIOLATE THE DEFENDANT'S STATE OR FEDERAL CONSTITUTIONAL RIGHT TO AN IMPARTIAL JURY DRAWN FROM A FAIR CROSS-SECTION OF THE COMMUNITY?

WASHINGTON STATE SUPREME COURT



Chief Justice Gonzales asked Counsel for Mr. Rivers, “Where does the responsibility for fixing the problem with jury venires fall? Is it within the wheel house of the court through rule making, through a decision in a particular case or with the legislature – specifically by addressing juror pay?”

Counsel for Mr. Rivers: “The responsibility defining the scope of the constitutional right lies with this Court and the Court has a duty to recognize under WA’s Constitution, we tolerate less racial disparity in jurors than the 6th amendment. This Court should define a more protective right under the constitution and should establish a new standard.

Justice Madsen asked: “Is the court to look at the venire that appears in the court house or are we looking at who was summoned for service?”

Counsel for Mr. Rivers: “The people that are actually coming to the courtroom for jury selection in a particular case.”

Justice Johnson inquired as follows:

“It sounds like an applied challenge. And when there must be a right that must be preserved in this , in the form of a motion , am I correct ? Those are those two things that would be required. We’re looking just at the individual case and whether the issue has been preserved.”

Counsel for Mr. Rivers: I think that that’s correct your honor.”

Link to the OPD Zip Code Mapping Tool:
<https://arcg.is/0S8un5>

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