Jury Selection

News and Observer

Death-penalty foes absent from Boychuk jury
By THOMAS HACKETT, Staff Writer
RALEIGH -- Today in Wake County Superior Court, attorneys for murder suspect William Boychuk will begin defending him before 10 men and two women who already have said they would be capable of sentencing him to death.

Gone are those prospective jurors who said they never could deliver a death sentence or those who would like to think they could but just aren't sure. Those people typically are dismissed from duty in death-penalty cases, either by the judge or by the prosecutor. The US Supreme Court has found that these "death-qualified" juries pass constitutional muster. It reviewed the question in 1986 and ruled that a jury didn't have to be representative of various viewpoints of a community; it only had to be able to follow the law.

Excluding "those who cannot and will not conscientiously obey the law" didn't bias a jury, wrote Chief Justice William Rehnquist. The court also has ruled that people inclined to automatically deliver a death sentence must be equally excluded. "What every party is entitled to is a fair jury," says Burley Mitchell, chief justice of the North Carolina Supreme Court. "The court wants jurors who can consider both alternatives."

But critics of the death penalty contend that the system often results in jurors primed and poised to return a verdict of death. "We don't normally purge a jury of everybody of particular opinions on a pressing moral issue and call the result a fair cross-section of the community, but that's exactly what we do with a death-qualified jury," said David Bruck, a South Carolina lawyer best known for defending Susan Smith, who was convicted two years ago of murdering her two young sons by driving them into a lake. "Any way you look at it, you're fiddling around with the representativeness of a jury."

But the critics argue that the full citizenry is not involved because only those people are seated who have expressed a willingness to condemn a suspect to death -- a decision that Canada and all of western Europe do not ask of their citizens.

Several studies have shown that the jurors chosen in death-penalty cases are more distrustful of defense attorneys, more hostile to an insanity defense, more likely to view with suspicion a defendant's failure to testify and more prone to convict. Since blacks and women tend to be more opposed to the death penalty, they are under-represented on death-penalty juries.

Boychuk's jury bears that out: only two women and no blacks...

A few days later the following letter to the editor appeared.

Letter: Death penalty math
Your article on "death-qualified" juries and the Boychuk case was interesting, but didn't begin to describe how unusual those juries are (Sept. 22 article, "Death-penalty foes absent from Boychuk jury").

A natural inclination is to think they are the norm, since roughly 75 percent of jurors favor the death penalty. Nothing could be further from the truth. The chances of randomly or freely selecting two jurors, both of whom favor the death penalty, is .75 times .75, or roughly 56 percent. The chances for three is .75 times .75 times .75, or roughly 42 percent.

In other words, any group of three potential jurors is more than likely to contain at least one opposed to the death penalty. The chances of randomly or freely selecting 12 jurors, all of whom favor the death penalty, is .75 to the 12th power, or roughly 3 percent. Thus the process of excluding members of the 25 percent minority also excludes 97 percent of the juries that would be randomly or freely selected, any one of which would contain at least one (on average three) of the excluded minority.

M. B. HARDY Raleigh
The writer is a statistician in a Raleigh engineering consulting firm.

1. Think of jury selection in a death-penalty trial as a binomial experiment. Define a success as the outcome that a selected juror favors the death penalty; use \( p = .75 \), the value mentioned in the letter.
a. Verify the probability given in the last sentence of the first column of the letter by using the binomial probability distribution with \( n = 3 \); that is, find \( p(3) \) when \( p(x) = \binom{3}{x} (0.75)^x (0.25)^{3-x} \).

b. Verify the probability given in the second sentence of the second column by using the binomial probability distribution with \( n = 12 \); that is, find \( p(12) \) when \( p(x) = \binom{12}{x} (0.75)^x (0.25)^{12-x} \).

c. Verify the claim “(on average three)” in the last sentence of the letter. (Hint: what is the expected number of jurors that favor the death penalty on a 12-person jury?)

d. Use the partial binomial probability table below to find the probability that:
   
   (i) exactly half of the jurors favor the death penalty.
   
   (ii) at least \( \frac{2}{3} \) of the jury favors the death penalty.

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### Partial Binomial Probability Table

Table value is \( P(x \leq \alpha) = \sum_{x=0}^{\alpha} \binom{12}{x} p^x q^{12-x} \)

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<th>( n=12 )</th>
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