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The Pauper--Short-Changed at the Jury Box

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Fear of governmental domination prompted the founders of the United States to restrict governmental interference with individual liberties. Indeed, the Bill of Rights was added to the Constitution to prohibit tampering with preferred freedoms. One such prohibition is that no citizen can be deprived of his life, liberty or property solely upon governmental accusations. Such deprivation can follow only after determination of guilt by a jury of the individual's peers.[1] However, West Virginia statutorily denies paupers this fundamental right to a trial by their peers. This denial constitutes an invidious discrimination violative of the equal protection clause of the Constitution.[2]

I. INTRODUCTION

Distinctions among individuals are constantly drawn because of some characteristic, *e.g.*, race, religion, sex, wealth. "It is well known that prejudices often exist against particular classes in the community, which sway the judgment of jurors . . . ."[3] Therefore, the ideal jury should be composed of citizens possessing characteristics similar to the defendant. The Supreme Court, however, in balancing society's interest against that of the defendant, realized that this composition lacks practicality and feasibility. "Society also has a right to a fair trial. The defendant's right is a neutral jury. He has no constitutional right to friends on the jury."[4]

A neutral jury is obtained by indiscriminately selecting its members from all citizens eligible for jury service.[5] It must reflect a reasonable cross-section of the community.[6] "This does not mean, of

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[1] "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 . . ." U.S. CONST. amend. VI. "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved . . . ." U.S. CONST. amend. VII. "No person shall be deprived of life, liberty, or property, without due process of law, and the judgment of his peers." W. VA. CONST. art. 3, § 10.

[2] "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1.

[3] Strauder v. West Virginia, 100 U.S. 303, 309 (1880).

[4] Fay v. New York, 332 U.S. 261, 288-89 (1947). Hoyt v. Florida, 368 U.S. 57, 59 (1961) stated that an accused is not entitled "to a jury tailored to the circumstances of the particular case . . . or to the nature of the charges to be tried."

[5] Hoyt v. Florida, 368 U.S. 57, 59 (1961).

[6] Thiel v. Southern Pac. Co., 328 U.S. 217, 220 (1946); Smith v. Texas, 311 U.S. 128, 130 (1940). In *Thiel* the Court was exercising its power of supervision over the administration of justice in federal courts. This power is not restricted to the principles of the Constitution. Accordingly the Court

course, that every jury must contain representatives of all the economic, social, religious, racial, political and geographical groups of the community; frequently such complete representation would be impossible."[7] Nor does it mean that the jury must contain a proportionate representation or even any representation of those persons who have the same characteristics as the defendant.[8] "But it does mean that prospective jurors shall be selected by court officials without systematic and intentional exclusion of any of these groups."[9]

Such patent exclusions permit prejudices—not evidence—to determine guilt.[10] It has long been held that a defendant is denied equal protection of the laws when convicted by a jury from which citizens of his class were arbitrarily excluded.[11] Hence, no qualifications for jury service can be founded on a class basis.[12]

There is no prohibition against states setting standards which citizens must meet before they can serve on juries. Indeed, standards may be established which in fact exclude a particular class of per-

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has "greater freedom to reflect [their] notions of good policy than [they] may constitutionally exert over proceedings in state courts . . . ." Fay v. New York, 332 U.S. 261, 287 (1947). *See also* McNabb v. United States, 318 U.S. 332 (1943). Equal protection however is not a static concept and may expand to include such "good policy" as constitutional mandates. *Cf.* Harper v. Virginia Bd. of Elections, 383 U.S. 663, 669 (1966).

[7] Thiel v. Southern Pac. Co., 328 U.S. 217, 220 (1946) (supervising federal courts); *accord*, Swain v. Alabama, 380 U.S. 202, 208 (1965) (constitutional rule); Akins v. Texas, 325 U.S. 398, 403-04 (1945) (constitutional rule).

[8] Swain v. Alabama, 380 U.S. 202, 208 (1965); Akins v. Texas, 325 U.S. 398, 403 (1945); Neal v. Delaware, 103 U.S. 370, 394 (1881).

[9] Thiel v. Southern Pac. Co., 328 U.S. 217, 220 (1946). "The defendant's concern with the jury selection process is that if it does not reduce the amount of prejudice which finds its way into the jury box, at least the process does not increase the amount." Kuhn, *Jury Discrimination: The Next Phase*, 41 S. CAL. L. REV. 235, 243 (1968).

[10] Allowing such exclusion "would give free rein to those who wittingly or otherwise act to undermine the very foundations of this system and would make juries ready weapons for officials to oppress those accused individuals who by chance are numbered among unpopular or inarticulate minorities." Akins v. Texas, 325 U.S. 398, 408 (1945) (Murphy, J., dissenting); *accord*, Thiel v. Southern Pac. Co., 328 U.S. 217, 223-24 (1946). The Supreme Court has also stated the "[u]ndoubtedly a system of exclusions could be so manipulated as to call a jury before which defendants would have so little chance of a decision on the evidence that it would constitute a denial of due process." Fay v. New York, 332 U.S. 261, 288 (1947).

[11] The first case to so hold was Strauder v. West Virginia, 100 U.S. 303 (1880). *Accord, e.g., Whitus v. Georgia*, 385 U.S. 545 (1967); Hernandez v. Texas, 347 U.S. 475 (1954); Cassell v. Texas, 339 U.S. 282 (1950); Neal v. Delaware, 103 U.S. 370 (1881).

[12] "Jurymen should be selected as individuals, on the basis of individual qualifications, and not as members of a race." Cassell v. Texas, 339 U.S. 282, 286 (1950); *accord*, Thiel v. Southern Pac. Co., 328 U. S. 217, 220 (1946).

sons;[13] but such standards must be relevant to the individual's ability to serve as a juror. Resulting classifications must be reasonable and rest on a rational foundation.[14]

II. Classification in West Virginia

The West Virginia statutes regulating petit jury selection seem to create an irrational and unreasonable classification. The article in the code relating to petit juries begins with the broad pronouncement that "[a]ll persons, who are twenty-one years of age and not over sixty-five, and who are citizens of this State, shall be liable to serve as jurors . . . ."[15] However, the section following restricts this general eligibility by disqualifying from jury service those groups incapable of rational judgment, *i.e.,* lunatics, idiots, and habitual drunkards.[16] Additionally, "paupers" are disqualified by that section.

This disqualification may have arisen from one of two possible theories. It may have evolved as a sanction to punish those who allow themselves to become dependents of the state; but it is now known that such dependency is usually the result of environmental circumstances, not choice.

> There are, one must assume, citizens . . . who choose impoverishment out of fear of work (though, writing it down, I really do not believe it). But the real explanation of why the poor are where they are is that they made the mistake of being born to the wrong parents, in the wrong section of the country, in the wrong industry, or in the wrong racial or ethnic group. Once that mistake has been made, they could have been paragons of will and morality, but most of them would never even have had a chance to get out . . . .[17]

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[13] *Cf.* Hoyt v. Florida, 368 U.S. 57 (1961); Fay v. New York, 332 U.S. 261 (1947).

[14] *See* Carter v. Jury Comm'n, 396 U.S. 320 (1970); Hoyt v. Florida, 368 U.S. 57 (1961); Fay v. New York, 332 U.S. 261 (1947). *See also* cases involving other subjects: Lassiter v. Northhampton County Bd. of Elections, 360 U.S. 45 (1959) (suffrage); Morey v. Doud, 354 U.S. 457 (1957) (licenses); American Sugar Refining Co. v. Louisiana, 179 U.S. 89 (1900) (taxation). *Contra* 1967 Duke L.J. 346, 352-53.

[15] W. Va. Code ch. 52, art. 1, § 1 (Michie 1966).

[16] The following persons shall be disqualified from serving on juries: Idiots, lunatics, paupers, vagabonds, habitual drunkards, and persons convicted of infamous crimes." W. Va. Code ch. 52, art. 1, § 2 (Michie 1966).

[17] M. Harrington, The Other America 14-15 (1962).

It may also have been based "on the theory that there is some reasonable relationship between their poverty and their ability to act as jurors."[18] But poverty does not itself limit one's "ability to understand and judge the issues of a typical trial."[19] Some individuals may be paupers as a result of mental incapacity or illiteracy, and the state can properly exclude these individuals from jury service.[20] However, it is a "violent presumption" that all paupers are disqualified.[21]

> Recognition must be given to the fact that those eligible for jury service are to be found in every stratum of society. Jury competence is an individual rather than a group or class matter. That fact lies at the very heart of the jury system. To disregard it is to open the door to class distinctions and discriminations which are abhorrent to the democratic ideals of trial by jury.[22]

The same standards which exclude non-paupers who are lunatics, idiots, and habitual drunkards must be used to exclude incompetent paupers—not a systematic exclusion. This disqualification of all paupers is an irrational and unreasonable means of obtaining competent jurors.

III. UNCONSTITUTIONALITY

There is little doubt that the disqualification of paupers from jury service is unconstitutional, although it has never been challenged. Most cases which have found a jury selection system to deny equal protection have involved racial exclusions.[23] But "the

[18] Kuhn, *Jury Discrimination: The Next Phase,* 41 S. CAL. L. REV. 235, 306 (1968). Kuhn was referring to indigents in general. "Pauper" technically means "[a] person so poor that he must be supported at public expense." BLACK'S LAW DICTIONARY 1284 (rev. 4th ed. 1968). Currently an increased awareness of poverty has caused the word often to be used as a synonym for indigent. However, the meaning with which to be concerned is the one used by the jury commissioners. This note assumes they use the technical one.

[19] Kuhn, *Jury Discrimination: The Next Phase,* 41 S. CAL. L. REV. 235, 306 (1968).

[20] *See* cases cited note 14 *supra.*

[21] *Cf.* Neal v. Delaware, 103 U.S. 370, 397 (1880).

[22] Thiel v. Southern Pac. Co., 328 U.S. 217, 220 (1946).

[23] Turner v. Fouche, 396 U.S. 346 (1970); Carter v. Jury Comm'n, 396 U.S. 320 (1970); Whitus v. Georgia, 385 U.S. 545 (1967); Cassell v. Texas, 316 U.S. 400 (1942); Norris v. Alabama, 294 U.S. 587 (1935); Bush v. Kentucky, 107 U.S. 110 (1883); Neal v. Delaware, 103 U.S. 370 (1881); Strauder v. West Virginia, 100 U.S. 303 (1880). Indeed the fourteenth amendment was drafted to eliminate racial discrimination. *See* Strauder v. West Virginia, 100 U.S. 303, 307-08 (1880); Slaughter House Cases, 83 U.S. (16 Wall.) 36, 81 (1873).

constitutional command forbidding intentional exclusion [is not] limited to Negroes. It applies to any identifiable group in the community which may be the subject of prejudice."[24] Thus, the initial burden in challenging the West Virginia statute is to prove that the classification "pauper" is an invidiously discriminatory one.[25]

Classifications become suspect when the affected groups are politically impotent, stigmatized as inferior and disgraceful, and distinguished by an unalterable trait.[26] Upon examination it is seen that paupers possess all of these requisites. Until recently they were politically unorganized; by definition they lack economic power; and they have long been considered inferior. They may not, however, be distinguished by an unalterable trait; they might be able to escape from poverty through employment. But much respectable opinion has now concluded that poverty is often selfperpetuating and therefore an unalterable condition.[27] Thus paupers likely are a suspect group, at least where important personal rights such as trial by jury are involved.[28]

The right to trial by one's peers seems to be as important as the right to vote. In fact, the Supreme Court has stated that "the State may no more extend [jury service] to some of its citizens and

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[24] Swain v. Alabama, 380 U.S. 202, 204-05 (1965). *Accord,* Hoyt v. Florida, 368 U.S. 57, 59-60 (1961); Hernandez v. Texas, 347 U.S. 475, 477-78 (1954). *See also* Fay v. New York, 332 U.S. 261 (1947); Pierre v. Louisiana, 306 U.S. 354 (1939).

[25] In Hernandez v. Texas, 347 U.S. 475 (1954), the systematic exclusion of persons of Mexican descent from jury service was held to have deprived the defendant of equal protection of the laws. The Court stated that "[t]he petitioner's initial burden in substantiating his charge of group discrimination was to prove that persons of Mexican descent constitute a separate class in Jackson County, distinct from 'whites.'" *Id.* at 479. Since the classification of paupers is not based upon race, stronger proof than merely a separate class may be necessary before the classification becomes unconstitutional. Therefore, it is assumed that an invidiously discriminatory classification is necessary.

[26] *Developments in the Law—Equal Protection,* 82 HARV. L. REV. 1065, 1124-27 (1969).

[27] *E.g., Annual Report of the Council of Economic Advisers,* 1964 ECONOMIC REPORT OF THE PRESIDENT 69-70:

> Poverty breeds poverty. A poor individual or family has a high probability of staying poor. Low incomes carry with them high risks of illness; limitations on mobility; limited access to education; information, and training. Poor parents cannot give their children the opportunities for better health and education needed to improve their lot. Lack of motivation, hope, and incentive is a more subtle but no less powerful barrier than lack of financial means. Thus the cruel legacy of poverty is passed from parents to children.

Although this statement was referring to all poor persons, it is particularly applicable to paupers. These same factors often foreclose all employment opportunities.

[28] *See Developments in the Law, supra* note 26.

deny it to others on racial grounds than it may invidiously discriminate in the offering and withholding of the elective franchise."[29] The state also should be no more able to deny jury service on the basis of wealth than it is able to deny suffrage on the basis of wealth; and

> [w]ealth, like race, creed, or color, is not germane to one's ability to participate intelligently in the electoral process. Lines drawn on the basis of wealth or property, like those of race . . ., are traditionally disfavored. To introduce wealth or payment of a fee as a measure of a voter's qualifications is to introduce a capricious or irrelevant factor. The degree of the discrimination is irrelevant. In this context—that is, as a condition of abtaining a ballot—the requirement of fee paying causes an "invidious" discrimination . . . that runs afoul of the Equal Protection Clause.[30]

One denial of jury service on the basis of wealth has been struck down by the Supreme Court.[31] Day laborers were excluded from federal jury lists because of the financial difficulty jury service imposed. The Court feared that "[w]ere we to sanction an exclusion of this nature we would encourage whatever desires those responsible for the selection of jury panels may have to discriminate against persons of low economic and social status. We would breathe life into any latent tendencies to establish the jury as the instrument of the economically and socially privileged. That we refuse to do."[32] Although the Court was exercising its jurisdiction over the administration of justice in federal courts, prohibiting such discrimination is more than good policy and is probably required by the Constitution.[33]

After establishing the pauper's existence as a class, discrimination must be proven.[34] All that is necessary is an admission by the

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[29] Carter v. Jury Comm'n, 396 U.S. 320, 330 (1970).

[30] Harper v. Virginia Bd. of Elections, 383 U.S. 663, 668 (1966). Other areas where invidious discrimination based upon wealth was found violative of the equal protection clause include imprisonment for nonpayment of fine, Tate v. Short, 401 U.S. 395 (1971); access to the courts, Boddie v. Connecticut, 401 U.S. 371, 383 (Douglas, J., concurring); right to counsel on appeal, Douglas v. California, 372 U.S. 353 (1963); free transcripts, Griffin v. Illinois, 351 U.S. 12 (1956).

[31] Thiel v. Southern Pac. Co., 328 U.S. 217 (1946).

[32] *Id.* at 223-24.

[33] *See* note 6 *supra.*

[34] Hernandez v. Texas, 347 U.S. 475, 480 (1954); *accord,* Whitus v. Georgia, 385 U.S. 545, 559 (1967); Swain v. Alabama, 380 U.S. 261, 284-85 (1947).

jury commissioners that in making the jury list they followed the statute.[35] It is patently discriminatory; it excludes all paupers.

IV. STANDING

Two avenues exist for challenging this discrimination. First, a pauper, as a defendant in a criminal action, can challenge the verdict if paupers were systematically excluded from the jury.[36] Similarly a pauper involved in a civil action should be able to challenge a verdict against him.[37] Secondly, a class action can be instituted on behalf of all paupers.[38] They are entitled to the same rights as other citizens. No matter which avenue is used to challenge the constitutionality of the statute, the outcome should be the same—judicial deletion of the word "paupers" from the statute.

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[35] *Cf.* Cassell v. Texas, 339 U.S. 282 (1950). "The statements of the jury commissioners that they chose only whom they knew, and that they knew no eligible Negroes in an area where Negroes made up so large a proportion of the population, prove the intentional exclusion that is discrimination in violation of petitioner's constitutional rights." *Id.* at 290; *accord* Hill v. Texas, 316 U.S. 400, 404 (1942). *See also* Strauder v. West Virginia, 100 U.S. 303 (1880).

[36] *See* Whitus v. Georgia, 385 U.S. 545 (1967); Hernandez v. Texas, 347 U.S. 475 (1954); Smith v. Texas, 311 U.S. 128 (1940); Norris v Alabama, 294 U.S. 587 (1935); Strauder v. West Virginia, 100 U.S. 303 (1880). The person convicted has to be a member of the excluded class before he can show a denial of equal protection and obtain a constitutional reversal of a state conviction. Fay v. New York, 332 U.S. 261, 287 (1947). However, such membership is not necessary for reversible error in the federal courts. Exercising its power of supervision over the administration of federal justice, the Supreme Court has ruled that "reversible error does not depend on a showing of prejudice in an individual case. The evil lies in the admitted exclusion of an eligible class or group in the community . . . . The injury is not limited to the defendent—there is injury to the jury system, to the law as an institution, to the community at large, and to the democratic ideal reflected in the processes of our courts." Ballard v. United States, 329 U.S. 187, 195 (1946). This membership requirement may eventually be eliminated even for constitutional challenges to state convictions by a changing notion of equality. *Cf.* Harper v. Virginia Bd. of Elections, 383 U.S. 663, 669 (1966).

[37] Juries for civil proceedings should be just as impartial as juries for criminal proceedings. The Supreme Court, supervising the administration of justice in the federal courts, allows any party to a civil action to challenge the verdict where some class was systematically excluded from the jury. He need not be a member of the excluded class or show he was prejudiced. Thiel v. Southern Pac. Co., 328 U.S. 217 (1946). For a discussion of its applicability to state courts see note 28 *supra.*

[38] *See* Carter v. Jury Commission, 396 U.S. 320 (1970). The Court said:

> People excluded from juries because of their race are as much aggrieved as those indicted and tried by juries chosen under a system of racial exclusion. Surely there is no jurisdictional or procedural bar to an attack upon systematic jury discrimination by way of a civil suit such as the one brought here.

Id. at 329-30.

V. ADMINISTRATION

Although deletion of "paupers" from the statute will make it constitutional on its face, the potential for gross underrepresentation will linger because of the administration of West Virginia's jury selection system. Under this system jury commissioners prepare a list of inhabitants whom they believe "well qualified to serve as jurors, being persons of sound judgment, of good moral character, and free from legal exception."[39] No mechanics are prescribed for the preparation of this list. Thus the system seems overly broad, leaving the commissioners unrestrained in their exercise of discretion. It appears at first blush the system could be vulnerable to attack on constitutional grounds because it fails to establish any standards for jury selection, but the United States Supreme Court has rejected this contention in cases challenging statutes similar to West Virginia's.[40] The Court felt the terms did set up standards which could be properly applied and did not themselves discriminate against any class.

It seems only natural that the jury commissioners, in fulfilling the duties of their office, would select jurors who they know are qualified. But such knowledge is limited mainly to personal acquaintances, and these are probably most often citizens of the commissioners' general economic status. Therefore, although deletion of "paupers" will make the jury selection system valid on its face, its administration may exclude paupers and continue the invidious discrimination sought to be eliminated.[41] The Supreme Court has at-

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[39] W. VA. CODE ch. 52, art. 1 § 4 (Michie 1966). The jury commissioners are two persons in each county appointed by the circuit court. They are "of opposite politics, citizens of good standing, residents in the county for which they are appointed, and well-known members of the principal political parties thereof." W. VA. CODE ch. 52, art 1, § 3 (Michie 1966).

[40] Turner v. Fouche, 396 U.S. 346 (1970) ("upright" and "intelligent" jurors); Carter v. Jury Comm'n, 396 U.S. 320 (1970) (jurors "honest and intelligent and . . . esteemed in the community for their integrity, good character and sound judgment"); Smith v. Texas, 311 U.S. 161 (1940) (no unfit or unqualified jurors); Franklin v. South Carolina, 218 U.S. 161 (1910) (jurors "of good moral character" and "otherwise well qualified to serve as jurors, being persons of sound judgment and free from all legal exceptions"). These cases all involved racial discrimination and may be distinguishable from discrimination against indigents. The jury commissioners may believe poverty indicated the person lacks "sound judgment." However, this would probably be a tenuous distinction.

[41] A conviction or judgment against a pauper can still be challenged by him even if "paupers" is deleted from the statute. If he shows the absence or substantial underrepresentation of paupers on the jury lists over a long period of time, he makes a prima facie case of discrimination which the state must rebut. *See* Turner v. Fouche, 396 U.S. 346 (1970); Whitus v. Georgia, 385 U.S. 545 (1967); Hernandez v. Texas, 347 U.S. 475 (1954); Norris v Alaba-

tempted to eliminate administrative discrimination by holding that standards such as West Virginia's impose a duty upon the jury commissioners to familiarize themselves with all eligible jurors in the county without regard to any class distinctions.[42] If they do not, they are excluding eligible members of the ignored class.[43] The resultant discrimination is as violative of the equal protection clause as intentional discrimination.[44]

The duty imposed is too onerous. What is really needed is a legislative reconstruction of the entire system.[45] The discretion of the jury commissioners in selecting citizens for the jury list should be eliminated. Specific sources need to be prescribed for gathering names of all persons liable for jury service. Unfortunately, a complete list would probably be impossible without conducting an annual census or requiring population registration; but a combination of sources such as voters registration, income taxpayers, welfare recipients, and motor vehicle registrants and drivers would render a fairly comprehensive list.[46] This list could then be alphabetized and so many names selected by some random selection process, such as every *n*th name.[47]

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ma, 294 U.S. 587 (1935). *See also* Finkelstein, *The Application of Statistical Decision Theory to the Jury Discrimination Cases,* 80 HARV L. REV. 338, 349 (1966-67).

[42] Cases cited note 40 *supra.*

[43] Cassell v. Texas, 339 U.S. 282, 289 (1950); Hill v. Texas, 316 U.S. 400, 404 (1942).

[44] Turner v. Fouche, 396 U.S. 346, 360 (1970); Cassell v. Texas 339 U.S. 282, 289, (1950); Hill v. Texas, 316 U.S. 400, 404 (1942); Smith v. Texas, 311 U.S. 128, 132 (1940).

[45] An alternative would be for the legislature to delegate authority to the judiciary for regulating jury selection. The courts could develop a practical system and amend it whenever necessary.

[46] Such a system is used in Alaska:

> The jury list shall be based on a list of all persons who purchased a resident trapping, hunting or fishing license during the preceding calendar year which showed an Alaskan address (to be prepared by the Department of Fish and Game), a list of all persons who filed a state income tax return during the preceding calendar year which showed an Alaskan address (to be prepared by the Department of Revenue), and a list of all persons who have registered to vote in this state (to be prepared by the lieutenant governor).

ALAS. STAT. § 09.20.050 (b) (Michie Supp. 1971).

[47] "Statisticians have developed techniques of random selection that can be applied without special skill. Most of the time taking every nth name will suffice." Zeisel, *Dr. Spock and the Case of the Vanishing Women Jurors,* 37 U. CHI. L. REV. 1, 16 (1969). At least two states have adopted this method already—Illinois ("choosing every tenth name, or other whole number rate necessary to obtain the number required," ILL. ANN. STAT. ch 78, § 1 (Smith-Hurd Supp. 1972)) and Ohio (selecting names "as the key number . . ., or the multiples thereof, appear opposite said names on said list," OHIO REV. CODE ANN. § 2313.08 (Page Supp. 1970)).

Those persons selected could then be examined for qualifications.[48] In this manner much of the discretion would be eliminated, and any deviations from the procedure would be more easily detected.[49] In addition the impossible duty of ascertaining the qualifications of all eligible jurors would be taken from the jury commissioners.[50]

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[48] ILL. ANN. STAT. ch. 78, § 12 (Smith-Hurd 1966), provides for the judge to examine the jurors to determine "who are qualified and not subject to any exemption, or any of the disqualifications provided."

[49] "If the rules of random selection are violated, the resulting list reveals the flaw." Zeisel, *Dr. Spock and the Case of the Vanishing Women Jurors,* 37 U. CHI. L. REV. 1, 17 (1969).

[50] Although not affecting paupers, another factor which causes the lower economic class to be underrepresented on juries is the low petit jurors' fees —five to eight dollars per day. W. VA. CODE ch. 52, art. 1, § 21 (Michie 1966). Those persons who are employed at minimum wage cannot afford to miss work because they need every possible dollar to subsist, and they are accordingly excused from jury duty. Jurors need to be paid fees equivalent at least to the minimum wage, "fees that enable all to serve." Kuhn, *Jury Discrimination: The Next Phase,* 41 S. CAL. L. REV. 235, 323 (1968). Alabama has done this by requiring the juror's employer to pay the juror the difference between the juror's fee and his usual compensation. ALA. CODE tit. 30 § 7 (1) (Michie Supp. 1969).