

HAWAII HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY

January 28, 1994
1:30 p.m.
Conference Room 802
Leiopapa A. Kamehameha Building

Testimony of
Professor Jon M. Van Dyke
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on H.B. Nos. 2304 and 2305
Relating to Jury Size in Criminal Cases

This testimony does not present an institutional position of the University of Hawaii, but is based on my professional expertise based on teaching Constitutional Law over a 25 year period and engaging in several studies on jury selection and jury conduct. I regret that I am not able to deliver this testimony in person because of conflicts that I was unable to reschedule.

I recommend strongly that these bills not be enacted. Reducing the size of juries significantly alters the way in which a jury functions and reduces its ability to stand as a bulwark to protect individual liberty.

1. Reducing the size of a jury makes it more difficult to empanel a jury that represents a cross section of the community. Indeed in Hawaii--because of the diversity of our pluralistic community--a reduction from twelve to six would make it impossible to achieve this crucial goal. If a jury does not represent a cross-section of the community, its verdict will not be seen to be legitimate by the community.

2. Smaller juries are less reliable than larger panels. This result should be intuitively obvious. On a purely statistical basis, the pooling of individual judgments reduces random error. Twelve jurors are better than six for the same nonsocial reason that twelve thermometers would be better than six. Social science studies on jury behavior have consistently confirmed that small juries produce results that are more erratic than larger panels.

3. Smaller juries are more likely to be dominated by a single strong individual and are less likely to produce a true group decision. In addition, individuals in a small group feel the individual burdens of their decisions more directly while persons in a larger group feel able to accept and justify serious decisions because their views are confirmed and supported by the larger group.

These findings are discussed in more detail in Jon M. Van Dyke, Jury Selection Procedures: Our Uncertain Commitment to Representative Panels 194-203 (1977).

The jury of twelve has served our democratic system well for hundreds of years. Although any number is arbitrary, twelve allows for enough diversity to ensure that a number of different perspectives are heard and yet is small enough to be manageable. Reducing the size of juries transforms this venerable institution into something else. To retain the jury's important roles as a reliable factfinder and as a preserver of independence and freedom, the size of the jury should remain at twelve.