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NEWS

## 'Reluctant to Trust'?: NY Courts Continue to Grapple With Complexities of Jury Diversity

Increasing jurors' compensation, creating a travel stipend, child care services, and relaxing limits on people who struggle with English were among suggestions to diversify jury pools in upstate New York. The ideas were discussed during the second forum on jury diversification by the Franklin H. Williams Judicial Commission.

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A lack of diversity on New York juries, particularly upstate, continues to plague courts, with the concern highlighted during Thursday's daylong public hearing in Albany.

It was the second forum on the topic by the Franklin H. Williams Judicial Commission, a statewide body of judges, attorneys and court administrators dedicated to promoting racial and ethnic fairness in courts. The commission is making the rounds to each of the Appellate Division's four locations to gather input for a forthcoming report.

A Black jurist, Ithaca City Court Judge Seth Peacock, offered that during his approximately 20 years as an attorney and judge, he's seen just one person of color on a jury pool, despite pockets of diversity in the city.

Peacock joined a procession of fellow jurists, bar advocates, jury commissioners and others who weighed in on the subject at the Robert Abrams Building for Law & Justice, where the Appellate Division's Third Department hears civil and criminal appeals from 28 counties. The jurisdiction has diverse cities such as Albany, Schenectady and Troy, but mostly rural communities where diverse jurors are harder to find.

Many panelists agreed that increasing jurors' daily compensation, and providing a travel stipend and in-court childcare services were potential

solutions.

Jurors' current per diem is \$40 per day, last increased in 1998 from \$15.

Sullivan County Court Judge E. Danielle Jose-Decker said the \$40, adjusted for inflation, amounts to \$77.42. It means that New York would still be "behind the eight ball" if pending legislation to increase jurors' pay to \$72 is advanced by New York lawmakers. Jose-Decker also called for lawmakers to relax rules that exclude people whose primary language is not English.

Peacock agreed with increasing the current pay rate, which equates to \$5 an hour for an eight-hour trial.

"The last time I made \$5 an hour, I was working retail and I was 17 years old," he said, while suggesting that if the pay is aligned with New York's current minimum wage rates, upstate jurors would be paid \$124, and downstate jurors would get \$132.

Christine B. Sonsire, the New York State Academy of Trial Lawyers' vice president for the Third Department, called the current pay "shockingly unreasonable," while Madison County senior assistant district attorney J. Sam Rodgers said it was "frankly kind of embarrassing that that's what we're offering, if we really covet it as we do."

Rodgers also suggested logistical accommodations for jurors, such as adhering to strict schedules so that they would know, for instance, that they will get a mid-morning break at 10:15. He said they should be dismissed promptly at 4 p.m., even if parties weren't finished questioning a witness.

Julie Nociolo, a partner in Hacker Murphy of Troy, said she's also observed the scarcity of diverse juries in both civil and criminal matters.

She said that her fellow partners recently represented clients in a medical malpractice case in Rensselaer County, where the lone racially

diverse prospective juror was excused because he said he couldn't feed his family on \$40.

Nociolo, who primarily practices in criminal law, said she recently represented a witness before a grand jury in Schenectady County, where there wasn't a racial minority among approximately two dozen grand jurors, despite the jurisdiction's 25% racial diversity.

Nociolo also observed that better parking accommodations for jurors would address a unique concern in the Third and Fourth judicial districts.

She said many of her racially diverse clients, both retained and indigent, factor the likelihood of being judged by an all-white jury in deciding whether to take their case to trial.

"Simply put, my clients are reluctant to trust a system that will judge them justly and fairly if it does not include jurors who are their peers," she said.

The Albany hearing also touched on Gov. Kathy Hochul's recent veto of the Jury of Our Peers bill, which had aimed to lift the Empire State's ban on allowing persons with felony convictions to serve on juries. A number of panelists urged Hochul to reconsider the bill if it again passes the Legislature in 2025.

"It appears our lobbying efforts need to be across the street there," Broome County Public Defender Michael Baker said, referring to the governor's office. "People want to be involved in the community, but have been excluded, oftentimes because of one stupid mistake they may have [made] in the past."

New state Assemblymember Gabriella Romero, D-Albany, a former Albany County's assistant public defender, also advocated for the legislation, which she said would help balance odds in communities of color that are "over-policed."

Romero also suggested grant opportunities to add child care centers in criminal courthouses for jurors.

Otsego County Courts Clerk Michael McGovern said his jurisdiction abandoned a child care drop-off for jurors after funding was exhausted. He said child care continues to be available for litigants in family and surrogate courts, but jurors still express a need for child care. He said they also say they can't participate in jury service because of the need to care for an elderly loved one.

"It's a continuing problem that we're going to have that is not easily rectified, at least at this point," he said. "Perhaps they could find some funding to open the child care center again, but it's certainly not on anybody's frontburner at this point in the county."

Hank Greenberg, a shareholder of Greenberg Traurig's Albany office, and past president of the New York State Bar Association, commended the commission for confronting jury diversity. He said the subject had only been "whispered" about, "under the breath of policymakers" in rural regions of upstate New York.

Greenberg said the problem is exacerbated by New York's mostly rural makeup, and he added that the lack of diversity on juries in rural areas extends to secular groups, with Muslim and Jewish jurors scarce.

He said the commission's work was all the more important in the face of jury trials vanishing in New York and throughout America.

Greenberg said he didn't have a specific solution to offer the commission, but rather, an attitudinal approach and recommendation that if it allows nature to take its course, jury diversification won't happen.

As chairman of the Third Department's Judicial Screening Committee, Greenberg said Hochul, former Gov. Andrew Cuomo, and leaders of the court jurisdiction proved their commitment to diversifying the bench over the years by adding Hispanic and LGBTQ jurists, while achieving a more equal gender balance. He said two African American attorneys from the New York City area were recruited to the Albany court. Prior to 2014, there were no African Americans on the Third Department.

Greenberg implored the commission to "be as bold as you were in having the conversation, grapple with it and understand it will require a determined effort to address the problem. But merely having the conversation is an invaluable first step."

Sonsire, the Academy of Trial Lawyers representative, highlighted the importance of the commission's goals in the face of President Donald Trump's administration. Sonsire noted that Trump had blamed DEI programs as a factor in Wednesday's night's fatal plane crash in Washington, D.C.

"I'm not an expert in aviation," she said, "and I have no idea what caused the plane crash. But my message to you is this. This commission has never been more important. The idea of diversity itself is under assault in our country right now."

The commission is co-chaired by Court of Appeals Associate Judge Shirley Troutman and Appellate Division, First Department Justice Troy Webber. It's been a permanent part of the court system for more than 30 years, and was the first court-based body in the U.S. dedicated to promoting racial and ethnic fairness in courts.

Officials said its third hearing on jury diversification will be held in the Bronx in April.

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