



Juries

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Background

Historical Roots in England

The idea for disputes to be resolved by a jury began out of necessity. In medieval England, it had been increasingly difficult to have a peaceful society when the only way of resolving disputes was by force. The first time the idea of a right to a trial by jury was mentioned was in the Magna Carta signed by King John in 1215. However, this new right to a jury trial did not apply to everyone in England at that time. Only knights and landowners were entitled to the right not to have their lives or property taken without a [HEARING](#) before a jury of their peers.

Development in America from Colonial Times

The most famous incident in America that gave a tremendous boost to the idea of the right to have a jury trial occurred in New York in 1734. At that time New York was one of thirteen British colonies administered by a royal governor appointed by the king of England. Peter Zenger, a journalist, had written an article ridiculing this official. The British authorities in response charged Zenger with seditious libel. Zenger's lawyer, Andrew Hamilton, put on a defense stating that his client was not guilty because the statements in Zenger's article were true.

However, there were two problems with Hamilton's trial strategy. First, he was unable to bring in witnesses who could [TESTIFY](#) as to the truth of Zenger's article. More important, as the judge pointed out, this defense could not be used for the crime with which Zenger was charged. As an alternative, Hamilton said that the question of whether Zenger had committed seditious libel should not be decided by the judge but should be left to the jury to decide. The judge capitulated to Hamilton's request and permitted the jury to return a not guilty verdict. The jury in this case took this action based on the principle that a trial cannot be fair if the [ACCUSED](#) is prevented by the court from putting on a defense.

From colonial times until well into the twentieth century, not all citizens of the various states were universally allowed to serve on a jury. At first, only white men owning property were permitted to be on a jury. After the United States became a nation, states were allowed to enact their own restrictions on jury service based on race, gender, and ownership of property. Some of those denied the right to serve on a jury did not see these

restrictions removed until well after they were given the right to vote.

Because in America's early history there were so few lawyers who were specifically trained in the law, juries exercised the power to decide not only factual questions concerning a case but also questions as to how the law should be interpreted in applying it to the facts of the case. Judges on their part were allowed to make comments regarding the [EVIDENCE](#) presented at trial. Today juries in all states can only decide questions of fact, such as whether a car ran a red light prior to an accident. They can no longer decide questions of law which consist of what the law is on a particular issue of the trial and how it is to be interpreted so it can be correctly applied to the facts of the case. Judges can no longer comment on the evidence because this is seen as preventing the jury from being [IMPARTIAL](#).

In criminal trials, it is always required that jury verdicts of guilty or innocent must be unanimous. Beginning in California in 1879, this requirement was phased out for civil trials, proceedings that do not involve criminal accusations, such as whether a driver was not careful enough in backing out of his driveway and injured a pedestrian.

Grand Juries as Distinct from Civil and Criminal Juries

A [GRAND JURY](#) is formed only in criminal cases. The purpose of the grand jury is not to determine whether a [DEFENDANT](#) is guilty or not. This group of usually 23 people meets to determine whether persons suspected by police as responsible for a crime should be indicted, allowing them to be brought to trial before a regular jury consisting of six to twelve persons. Grand juries are required by the Fifth Amendment of the U. S. Constitution which says a person suspected of a crime must be indicted before he is tried. This action is considered a safeguard against prosecuting a person without any legitimate reason.

Constitutional Right to a Jury Trial

Three separate provisions of the U. S. Constitution provide for the right to a trial by jury. Article III, Sec. 2 provides: "The trial of all crimes shall be by jury and such trial shall be held in the state where the said crimes have been committed." The Sixth Amendment says: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state where the said crimes shall have been committed." Finally, for civil matters, the Seventh Amendment provides: "In all suits at [COMMON LAW](#), where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved and no fact tried by a jury shall be otherwise reexamined by a court of the United States."

The first two above provisions as to criminal trials greatly overlap. The Sixth Amendment was added as part of the **BILL OF RIGHTS** that would be guaranteed by the Constitution. However, it has only been relatively recently has this right been mandatory in both federal and state courts. As to the Seventh Amendment which covers civil trials, this provision only applies to federal courts which deal only with laws passed by Congress and signed into law by the president. According to the U. S. Supreme Court in a 1999 decision, the Seventh Amendment does not apply in state courts.

How People are Chosen for a Jury Pool

Diversity and Cross Section of Community Requirement

The U. S. Supreme Court has repeatedly ruled it is necessary for a jury to be comprised of a "fair cross section of the community" in order to satisfy the trial right guaranteed by the Sixth Amendment of impartiality. The Federal Jury Selection and Service Act of 1968 was written for this same purpose. Thus, a jury pool of

persons eligible to serve reflects the spectrum of society.

In order to comply with the U. S. Supreme Court rulings and the above federal [STATUTE](#), all the states have had to change their laws to insure that a broad cross section will make up the jury pool. Typically names appearing on voter registration lists for each locality are drawn. Many people who are otherwise eligible are not included because they have moved to another locality or state. In order to help solve this problem, names for juror pools are drawn from the list of licensed drivers for that state. Over half the states have made this change, and some have gone even further and have drawn names from lists of customers for utilities and even welfare recipients. This initial list is referred to as a source list.

From the source list, a locality randomly draws a second list referred to as "master wheel" or "qualified wheel" depending upon the statute for that state. These lists are replenished at intervals as required by the law for that state. Questionnaires are sent to those on the "wheel" lists in order to determine whether a particular individual is qualified to serve on a jury. Because between one– quarter to one–half of these forms are not returned, some jurisdictions will send a notice requiring such persons to explain why they have not responded.

Selection Process at the Courthouse

Disqualification Grounds for Jury Service

Each state by law lists what reasons disqualify someone from jury service. Many of these reasons are included because they may prevent explain why a person cannot listen to [TESTIMONY](#) and other evidence with an open mind. Prior contact with one of the parties or lawyers connected with the case as well as knowledge obtained prior to the trial is sufficient reason to excuse a person from serving on the jury for a particular case. Statements made by jurors while they are being questioned by the attorneys for both sides which indicate they are biased in favor of or against one of the parties have the same result as [DISCOVERY](#) that a potential juror has a prior **FELONY CONVICTION**. In criminal trials it is common for an individual to be excused because of a relationship with a witness in the case.

Exemptions from Jury Service

Formerly it was common for people otherwise qualified to serve on a jury to be exempt based on their occupation. Prior to a recent change in the law, New York had recognized more than a dozen such exemptions to include lawyers, doctors, clergy, dentists, pharmacists, optometrists, psychologists, podiatrists, nurses, embalmers, police officers, and fire-fighters. The reason given for these exemptions were that each of these groups performs functions necessary to the [PUBLIC INTEREST](#). As of 2002, 26 states have eliminated occupational exemptions while an additional nine have placed strict limitations on them.

Exemptions are also granted for business or financial hardship according to the circumstances of that individual. A judge may grant a business hardship exemption if they are convinced that jury service would result in the business closing permanently. Financial exemptions are also given to employees of private businesses since in most states the employer is not required to pay them for the time spent on a jury. Other exemptions also granted on a case by case basis at the discretion of the judge or court officials include incapacitating physical or mental illnesses, and extreme inconvenience such as having to travel a much greater distance to the courthouse.

Preemptory Challenges

When selecting a jury, attorneys for both sides ask questions of each person sent to that courtroom to be considered for service on that case. The questions asked are designed to reveal if a particular potential juror has either a conscious or unconscious [BIAS](#) affecting their ability to be impartial. Because these questions may be intrusive, and include such areas as reading habits, favorite television shows, amount of income, and feelings towards different racial, ethnic, or other groups, it is not uncommon for individuals required to answer such inquiries to be less than truthful or to give general answers that may conceal a biased attitude. A good trial lawyer senses bias without needing it stated explicitly.

States give each side a designated number of persons they can have excused without having to give reason. When a person is excused in this way, the attorney is said to have exercised a preemptory challenge. Because personal bias is often difficult to detect, the [PEREMPTORY CHALLENGE](#) allows lawyers to act on their instincts in order to obtain impartial juries.

Sometimes a judge will grant one side more preemptory challenges than is allowed by state law. The attorney who objects to this action and then loses his case will not be able to have the trial judge reversed by a higher court unless that lawyer has exhausted all preemptory challenges and can show to that because they were not granted the same number of preemptory challenges, one or more persons they would have found to be objectionable was able to serve on that jury.

In recent years, two decisions by the U. S. Supreme Court have placed limits on the use of preemptory challenges if the complaining side or party is able to prove that the use of preemptory challenges by the opposing lawyer were designed to exclude persons from a jury based on their race and gender. In the first of these cases, an African-American criminal defendant named Batson was convicted of [BURGLARY](#). On appeal to the U. S. Supreme Court, his lawyer argued the prosecution used his preemptory challenges so that no black person in the jury pool served on the jury. The Supreme Court ruled in Batson's favor for three reasons. First, excluding jurors on the basis of race denies a defendant the right to an impartial trial since it works against the cross section of the community requirement for jury membership. Second, the excluded jurors are denied the right to take part in the judicial process. Third, this use of preemptory challenges is harmful to the local community because it encourages its citizens to believe that a fair trial cannot be obtained there.

However, the Supreme Court made clear that future defendants in seeking to have trial verdicts against them overturned on appeal to a higher court would have to prove to that court all of the following: first, the defendant is a member of an identifiable racial group. Second, the prosecution used preemptory challenges to prevent those of the defendant's race from serving on the jury. Third, the lawyer for the defendant must show that the facts and circumstances of the case imply the prosecution did this intentionally.

Even though the defense attorney is faced with having to prove all of the above, the [PROSECUTOR](#) must show the preemptory challenges were applied neutrally. Non-African American defendants have not been successful in challenging their convictions because U. S. Supreme Court decisions have declined to apply *Batson v. Kentucky* to their racial group. The principles in Batson have since been made applicable in civil as well as criminal trials.

In 1994, eight years after *Batson* was decided, the U. S. Supreme Court said preemptory challenges could not be used to exclude members of a particular gender from jury service. In *J. E. B. v. Alabama*, the state agency regulating the welfare of children filed a [PATERNITY](#) action against J. E. B. for failing to pay the [CHILD SUPPORT](#) he owed to the mother. Alabama used its preemptory strikes to prevent nine men from serving on the jury eventually resulting in a panel consisting entirely of women. The jury found J. E. B. guilty of the charge, and he successfully argued for the application of *Batson* to his case on grounds that the use of

preemptory challenges based on gender violated the constitutional principle that persons should not be discriminated against or treated unequally on the basis of sex.

However, it is now questionable how useful *Batson* and *J. E. B.* will be in future cases for defendants. In 1995, in *Puckett v. Elam*, the Supreme Court said that a prosecutor's reason for excluding a juror on a preemptory challenge does not have to make any sense so long as it is applied neutrally as to the race and gender of the defendant. Justice John Paul Stevens in disagreeing with other justices on the Supreme Court, complained that the Court had made its decisions in *Batson* and *J. E. B.* meaningless.

Some state and federal courts lower than the U. S. Supreme Court have said preemptory challenges cannot be used to exclude persons of particular religious groups. Other courts on these levels have ruled in the opposite way. The U. S. Supreme Court has not yet resolved the difference of opinion among the courts on this issue.

Use of Jury Consultants

There are two scenarios in which attorneys may consider using a jury consultant to further assist them in selecting jurors. First, if their client is a celebrity, there may be very strongly divided opinions among potential jurors on whether they like or dislike that client. This would be a great obstacle to finding at least an impartial jury. Second, even if their client does not provoke any strong sentiment, if he has a great deal to lose, they may still want to improve the probability of a favorable outcome. In either instance, to use a jury consultant constitutes an additional expense. The average cost is \$250 per hour, and it could total anywhere from \$10,000 to \$250,000.

Most jury consultants have backgrounds in law, psychology, or sociology. In spite of the expertise a jury consultant may have, the profession is largely unregulated. Although jury consultants claim to be accurate in their appraising potential jurors, many scholars are skeptical. Another criticism is that using a jury consultant gives the general public the impression that a favorable verdict can be purchased if the right jury is selected. In light of this criticism, some judges have taken the initiative to have consultants appointed for indigent defendants.

The primary purpose of hiring a jury consultant is to help uncover hidden bias of potential jurors. Because preemptory challenges are limited, lawyers may be unsure about some of those questioned. The job of jury consultants is to give attorneys the criteria necessary for the ideal jury for their clients and to assist in determining what biases do not fit that criteria.

A good illustration of this principle is the trial of Daniel and Philip Berrigan in 1972, the first known use of jury consultants. The Berrigan brothers were accused of conspiring to plan violent demonstrations against the Vietnam War. The defense attorneys decided that in order to have the best jury possible they should poll those persons likely to qualify as jurors in Harrisburg, Pennsylvania, the site of the trial. The purpose of this polling was to determine which demographic groups would be most sympathetic to their clients. The results led the defense attorneys to conclude that Episcopalians, Presbyterians, and other Protestant denominations with a fundamentalist outlook would favor the prosecution, as would college graduates because of their support for the position of the U. S. Government on the Vietnam conflict. Accordingly, the defense was successful in having a jury selected that consisted of entirely blue collar workers who would likely not have graduated from college and who were also of a different denomination from those listed above. This jury deadlocked at 10-2 in favor of [ACQUITTAL](#). The government afterwards declined to retry the case.

There are two kinds of techniques jury consultants use. The first category is pretrial research. The easiest research in this category is attitude surveys conducted in phone or in person as was done in the *Berrigan* trial. A second technique is to form a trial simulation with a group of people representative of what the jury picked will most resemble. At the end of this mock trial, the participants are surveyed as to how persuasive each side

was in general and in its use of the evidence. Also, a focus group may be formed and the facts of the case and the position of each side will be explained to it. Those in the focus group will be asked how they would decide the case and their opinion on which side had the best arguments supporting their position. A third method is personal background research made through credit checks, hand writing analysis, and an [EXAMINATION](#) of property and tax records.

A second category relates to what they do when the trial takes place. One commonly used method is for the consultant to prepare a questionnaire for the attorney designed to uncover juror biases. Another is for the consultant to observe the facial expressions and posture of those being considered for the jury; these unconscious reactions may indicate whether the response to the questions of the lawyer are sincere or misleading. A third technique is to observe the jury during breaks for lunch; if certain persons on the jury always eat together this may indicate that alliances have formed that could impact how the juries will deliberate once the case is given to them to decide and could help determine the verdict they reach. In some cases, consultants will recruit a shadow jury resembling by various demographic factors the one actually deciding the case. This shadow jury will be interviewed during the trial for the purpose of determining how the real jury is perceiving their side.

Moreover, some jury consultants believe that people in general fall into one of two groups: Those who conclude that what happens to a person is determined by the person's reaction to those events, and the rest who believe what happens to an individual is dictated by circumstances and context.

The Function of the Jury at the Trial

Role as a Factfinder

In every case there are allegations made. In a civil case, they are made by the party known as the plaintiff while in a case involving criminal law, the party making the charges or allegations is the prosecutor who is employed by the state [JURISDICTION](#) in which he practices. If the case involves federal law, the prosecutor is the U. S. **JUSTICE DEPARTMENT**, a federal agency.

In order to win the case, the plaintiff, or whoever is making the allegations, must make his case by showing the allegations are true according to a given standard of proof to the satisfaction of a jury. For example, Smith alleges that Jones negligently backed his car into Smith, breaking his leg. In order to prove the allegations to be true, Smith must present evidence based on facts and testimony.

The facts that Smith is able to prove are true are then applied to see if the four elements necessary for Smith to win are proven. These elements in this [NEGLIGENCE](#) claim are the issues that the judge will submit to the jury. The issues are: did Jones owe a duty to be reasonably careful to Smith, did Jones breach or violate that duty, was this violation by Jones of his duty to Smith the cause of Smith's broken leg, and did Smith actually have his leg broken.

In its role as a fact finder, a jury decides, based on the evidence presented, what is the truth in regard to the facts of the case. The jury will decide on the above four issues based on the facts they have found to be true, and if their answer is yes to all four of these issues, Smith wins. In determining what their conclusion is to each of these issues, the jury is given considerable discretion even when evidence regarding the same fact conflicts to the extent that opposite inferences could be drawn. This discretion even extends to cases in which the facts are undisputed; different inferences could still be found by a rational jury.

However, the judge still has discretion to withhold from the jury the right to decide a particular issue if he

believes the evidence is insufficient for the jury to come to a reasonable conclusion. Because each of the issues that Smith must prove in his favor to the jury are essential to his case, a decision by the judge that the evidence presented is not enough to support only one of the four issues would result in Smith losing the case.

How Juries Weigh the Evidence

Allowing evidence in the form of facts, such as testimony, to be admitted at trial by the judge depends on whether it is pertinent or relates to the issue the jury is asked to decide and whether it has probative value, meaning it helps to determine whether a fact is true or false. Once the evidence is actually admitted and the jury tries to reach a verdict they must evaluate this evidence as to its [CREDIBILITY](#). For example, if a witness saw Smith being struck by Jones's car, the jury will determine whether the facts [WARRANT](#) their accepting his testimony as being a true account of what occurred, issues such as whether the witness was close enough to see what had occurred.

Standards of Proof Used

In a civil court case such as one of Smith, the plaintiff, versus Jones, the defendant, the burden is on the plaintiff to show or prove by the facts presented into evidence he has been injured by the defendant. In other kinds of civil lawsuits, such as those involving contracts between the plaintiff and defendant, the plaintiff still has the burden. The standard of proof that the plaintiff must meet is the preponderance of the evidence. This means that a fact put into evidence in supporting Smith's contention Jones was negligent is more likely to be true than false. The degree to which the jury must believe a fact is more likely to be true than not true in order to meet this standard of proof need only be by the smallest degree; 51 percent would be sufficient.

Sometimes the rules of evidence in a given case will have a standard of proof known as clear and convincing evidence. In order to show that a fact presented into evidence is true according to this standard, the plaintiff Smith must show there is a high probability that a given fact is true or that a juror according to the evidence presented would come to firmly believe the fact alleged by Smith was true. This is a greater degree of proof than preponderance of the evidence, but it is not as high as the [BEYOND A REASONABLE DOUBT](#) standard required in criminal cases.

In a criminal trial, the plaintiff is not a person or corporation, but the state or federal government as represented by the prosecutor. The prosecutor, regardless of his title, has the responsibility of enforcing the criminal laws of his jurisdiction. The elements of the allegations a prosecutor must prove will vary with the offense charged, but in any event, it must be proven the defendant committed the offense he is accused of and that he intentionally did so willingly. Because the consequences of a criminal conviction are more severe than in a civil lawsuit, the highest standard of proof, beyond a [REASONABLE DOUBT](#), is required. This burden of proof is always on the prosecution because a criminal defendant can remain silent if he chooses. This standard means the prosecutor must convince the jury to the point where they firmly believe the defendant is guilty as charged.

Jury Instructions and Their Purpose

A jury instruction is a guideline given by the judge to the jury about the law they will have to apply to the facts they have found to be true. The purpose of the instructions is to help the jury arrive at a verdict that follows the law of that jurisdiction. In his instructions a judge may explain the legal principles pertaining to the subject matter of the case, make it clear to the jury the legal issues they must decide in order to arrive at a verdict, point out what each side must prove in order to win, and summarize the evidence he sees as relevant and explain how it relates to the issues they must decide. For example, do the facts admitted as evidence and

found credible by the jury according to the preponderance of the evidence combined with the application of the legal principles of negligence law warrant a finding by the jury that Smith owed a duty to Jones to be reasonably careful in operating his car?

In giving these instructions, the judge binds the jury. The judge makes clear to the jurors that they are to apply the law to the facts as he gives it to them; they are not to substitute their own judgment as to whether a different law should be applied or whether the law as has been explained to them is unjust. The instructions are to be given in terms a layperson can easily understand. In order to help the jury understand the instructions, the judge may give preinstructions prior to the time immediately following the presentation of both sides of the case. However, the judge is forbidden to comment on the evidence presented in the case. It is the jury's responsibility to independently evaluate the evidence.

Special Kinds of Instructions Limiting the Discretion of the Jury

The judge has a number of devices by which he can limit the discretion of the jury in applying the instructions to their deliberations. Through an additional instruction, the judge may supplement instructions he has already given. These instructions are usually given at the request of the jury to clarify some point regarding the law given in a previous instruction they do not understand. If a judge gives a mandatory instruction, this requires the jury to reach a verdict in favor of a particular party if the evidence indicates that a particular set of facts is true. Through a peremptory instruction, a jury is directed to find in favor of a particular party regardless of how credible they regard the evidence to be. The judge is taking the case away from the jury because he believes a reasonable juror could not rule in favor of the other party.

Jury Nullification

Jury nullification is the right of a jury in a criminal case to disregard the evidence admitted at trial and the law as explained to them by the judge and to give a verdict of not guilty for reasons having nothing to do with the case. There may be several reasons for ignoring the evidence and the instructions of the judge. First, they may wish to use a not guilty verdict to communicate to the community their views on a social issue outside the scope of the trial. Second, having to convict a defendant may offend the jurors' sense of justice and fair play or jurors may believe the law itself is immoral.

A judge is powerless to [SANCTION](#) the jury in any way. The jury is not required to give any reason at all for its decision which cannot be appealed by the prosecution to a higher court because of the **DOUBLEJEOPARDY** Clause of the Constitution that says a defendant is prohibited from being tried more than once for the same crime.

The right of jury nullification originated in what is referred to as Bushell's Case, an English court decision from 1670. William Penn, the eventual founder of Pennsylvania, was accused of holding an illegal meeting. The jury, based on inconclusive evidence, acquitted Penn and his co-defendant Bushell. The judge retaliated against the jury by fining and imprisoning them. After several weeks, Bushell asked for an appeal of the trial judge's action against the jurors. The judge for a higher court set the jury free and said that because reasonable people can look at the same evidence and come to a different conclusion, juries are free to decide as they see fit regardless of whether the judge believes they had an legally adequate reason.

Although this case is English and would not normally be binding in the United States, U. S. courts over a long period of time consistently upheld the right of juries to use the right of nullification. However, the use of this device by juries seems at least on the surface to apply only to criminal cases. Some scholars contend that it takes place in secret because the jury proceedings are confidential but have been unable to document any case that expressly endorse nullification in a civil trial.

Issues Pertaining to the Jury's Performance of Its Duties

The Hung Jury and the Unanimous Requirement

It is required that in order for a jury to reach a verdict, everyone must agree to the decision made. Unanimity is required in all federal court civil and criminal trials, in all state court criminal trials, and in most civil trials in those courts. Sometimes the entire jury is not able to agree on the verdict, resulting in a deadlocked or [HUNG JURY](#).

When judges are informed this situation has occurred, they tell the jury to continue the deliberations because the alternative is to have the entire case tried over again with a new jury. In order to push the jury into arriving at a verdict, judges urge those in the minority to reconsider their positions by reexamining the evidence carefully and to ask themselves whether their disagreement with the majority is still correct from their viewpoint. Although this device was popular among judges, many courts have abandoned it because it seems coercive.

Many courts now use another instruction drafted by the American **BAR ASSOCIATION** which asks jurors in the minority to reconsider their position and the evidence; jurors should change their stand only if they are convinced based on the evidence but not because they feel pressed to conform to the majority view.

Judge's Discretion to Set Aside Verdicts

In a civil trial, a judge may set aside the verdict regarding how much money should be awarded by the jury to the plaintiff in [PUNITIVE DAMAGES](#). These damages consist of a dollar figure the jury awards the plaintiff in order to punish the defendant. This amount is totally distinct from [COMPENSATORY DAMAGES](#), which are meant to reimburse the plaintiff for lost wages as well as pain and suffering. Given the purpose of punitive damages, juries can award verdicts that in punitive damages alone amount to millions of dollars.

The Seventh Amendment to the U. S. Constitution precludes review by any court of a judgment over \$20. In light of this provision, courts will not overturn an award made by a jury just because of its large size or because the judge, if he had been standing in their shoes, would have awarded a smaller sum. However, a judge may reduce the amount of the award if it is far in excess of any rational calculation. Because compensatory damages such as lost wages have formulas by which juries can arrive at an acceptable figure, the reduction of an award is usually applied to punitive damages. The specific ground judges use to justify this action is that the award was made out of "passion and prejudice".

In criminal cases, judges may disregard a jury's guilty verdict and [ACQUIT](#) or grant a new trial if they believe the evidence was insufficient to support the decision made by the jurors. Judges may also set aside a verdict if they believe the verdict was reached on a basis that violates the U. S. or respective State constitution or if the legal theory on which the jury based their decision does not conform to the law.

Jury Sequestration

Judges will have members of a jury sequestered or kept together in order to protect juries from outside influences. This includes any communication with persons not allowed to be in contact with the jurors as well as the content of news reports concerning the case. Courts view sequestration as a great burden on the personal lives of the jurors as well as the cost involved, and it is used, therefore, only if the lawyer for the defense is able to show the judge there is prejudice in the surrounding community against the defendant, or that news reports would prevent members of the jury from being impartial. While even criminal defendants do not have the right to have the jury sequestered, it may be required under state law where a defendant could be

sentenced to death.

Sequestration is more common in criminal than in civil trials and is likely to be imposed once the jury has been selected. In a civil trial, jurors are not sequestered until the jury has heard all of the evidence and has received their instructions from the judge.

Once a jury is sequestered, strict measures are imposed to insure their objectivity. For example, jurors are not allowed to use a public restroom without a court [BAILIFF](#) or marshal being present. Receiving and making telephone calls is forbidden but will not result in a trial verdict being reversed by a higher court so long as the court officer can hear the conversation and nothing pertaining to the case is mentioned. Jurors must also be transported as a group, eat together, and sleep at the same lodging.

Juror Misconduct

Even if they are not sequestered, jurors are instructed not to discuss any subject pertaining to the trial prior to the time the jury begins their deliberations. This includes fellow jurors.

Each juror has a duty to report as soon as possible any incident where any person attempted to influence any member of the jury outside of the room where the jurors deliberate. A Jurors must report to the court any violation they see committed by other jurors against warnings given by the judge not to discuss the case outside the jury room or against listening, reading or viewing news reports about the case. In regard to jurors' avoidance of any contact with news reports, the judge in many jurisdictions is required to explain to the jury his reason for warning them to do so.

There are a number of documented examples of juror misconduct that illustrate the above principles. The first kind of example is jurors bringing in outside information not given to them at trial. In an automobile accident case, a juror on his own visited the accident site and drew a diagram of the intersection. The next day when the jury deliberated, he showed the jury the diagram and brought into the room a copy of a book on state traffic laws, the contents of which they discussed. In a second instance communication was said to have taken place between members of the jury and a customer in a restaurant who approached their table and urged them to impose the death penalty. In these instances, what occurred was clearly prejudicial and resulted in the trial verdict being overturned.

There are some instances in which the rules about outside communication were not followed, but were not considered egregious enough to warrant the verdict being overturned. In one case, the jury did not understand what was meant by the term proximate cause. Instead of asking the judge for clarification, they brought in a dictionary to help them. Because the dictionary definition did not conflict with what the judge had told them earlier as to what that word mean, it was not considered to be prejudicial.

There have been a large number of cases where jurors have gone to the judge or other court officials after the trial is over to complain they were intimidated by other jurors into voting with the majority. Courts will not take any action at this point for these reasons. First, before deliberations have concluded, a juror can report intimidation to court officials. Second, the jury can be polled individually in [OPEN COURT](#) to see if each person voluntarily agrees with the verdict. Third, courts are unwilling to meddle in or speculate about how the jury reached its decision; a jury's deliberations are meant to be secret in order for non-jurors not to have any influence. Outbursts of emotion, such as throwing chairs or cursing, are looked upon by courts as consequences that should not be unexpected and will not in themselves be sufficient to have intimidated jurors into not voting according to their own evaluation of the evidence. Finally, allowing inquiries after a verdict would jeopardize the finality of a jury's decision and might result in endless additional time wasted.

Notetaking by Jurors

As trials have become more complex, and the information given more difficult to remember and place in perspective, a number of states have made express permission for jurors to take notes during the trial. These states include Arizona, Arkansas, Connecticut, Missouri, New Jersey, New York, North Dakota, Ohio, Washington, Wisconsin, and Wyoming. Although only one state expressly prohibits this practice, in most jurisdictions whether members of a jury are allowed to take notes will depend upon the discretion of the judge. One survey indicated that 37 percent of the judges in state courts indicate they do not allow jurors to take notes during a trial. In federal courts, this matter is also left up to the judge.

Many judges oppose juror notetaking because in their view jurors cannot make the distinction between important and trivial evidence. As a result, the more vital evidence may not be recorded and the less important may be, making it impossible for a jury to reach a rational verdict. However, studies performed in Wisconsin and Arizona indicate that notetaking did not influence the verdict, or distract the jurors; notes taken were accurate and did not result in the notetakers dominating non-notetakers in the jury deliberations.

Questioning of Witnesses by Jurors

A small number of states have changed their laws and court rules to allow jurors to ask witnesses questions, either orally or in writing through the judge. Written questions submitted in advanced allow attorneys for both sides to make objections based either on the ground they would violate the rules governing the admission of evidence or would result in prejudice against their clients.

The states that expressly encourage judges to allow jurors to question witnesses are Arizona, Arkansas, Florida, Indiana, Iowa, Kentucky, Nevada and North Carolina. Out of these jurisdictions, Arizona, Florida, and Kentucky require that judges allow jurors to ask written questions. The respective highest state courts of Indiana and Kentucky have ruled jurors have a right to ask questions of witnesses.

Other jurisdictions give a more restricted endorsement of this practice. In Pennsylvania and Michigan, the respective state supreme courts have said it is permissible at the discretion of the trial judge. Texas does not permit jurors to question witnesses in criminal trials and Georgia law requires all questions to be written and submitted to the judge. Only Mississippi law expressly forbids jurors from questioning witnesses.

Plaintiffs of civil trials and prosecutors in criminal proceedings favor this practice because it assists them in sustaining the burden of proof required in order for them to win their case. When jurors ask questions, they are able to gain a better understanding of the facts brought into evidence, especially when it is highly technical, such as DNA analysis. Bias in members of the jury that was undetected during the selection process can be exposed through questions they ask, enabling the judge to give an instruction against this bias or removing and replacing jurors with alternates.

Defense attorneys in civil and criminal trials are against jurors questioning witnesses at least partly because it may lead to information being disclosed that could be detrimental to their case. If oral questions are permitted, it could put the defense attorney in an uncomfortable position if a truthful answer would prejudice the jury as a whole against their client. One example would be if a juror were to ask if the defendant had a prior criminal record. If the defense attorney objects to the question, the attorney runs the risk of antagonizing the jury. If the attorney chooses not to object, his client may have waived any right on appeal to a higher court that his verdict should be overturned because of the prejudicial nature of the question. Even if the questions are submitted to the judge first in writing, defense attorneys say jurors will inevitably put more weight than they should on their own questions and makes it more likely jurors will rush to judgment without taking into account all the evidence admitted at trial.

Future Prospects of the Jury System

Decline in the Use of Jury Trials

Only two percent of civil cases and a similar proportion of criminal cases that are not dismissed are settled by [PLEA BARGAINING](#) are decided by a jury.

The low percentage of criminal prosecutions being resolved by a jury trial is the result of their being settled by [PLEA](#) bargaining which helps manage the heavy caseloads in most jurisdictions. The reason for the low use of trials in civil cases is more complex. Various studies have indicated that compared to a bench trial where a case is heard only by a judge, a jury trial costs much more and lasts from twice to three times as long. The increasing complexity of what a jury has to decide in a civil trial makes such alternatives as [MEDIATION](#), negotiation, [ARBITRATION](#), and mini-trials attractive because individuals involved in the proceedings are already knowledgeable in the subject matter of the case. The increased complexity of modern civil cases makes jurors less likely to understand the judges' instructions. Finally, the jury selection process itself tends to weed out the more well informed jurors who are able to handle complex case subject matter.

Prospects for Reform

Jury reform is needed because less than half of those summoned to the courthouse bother to show up, and out of this group between 85 to 95 percent do not serve since they are either exempt, disqualified, or not chosen. Because of the increased importance placed on the ideal jury as conceived by jury consultants, less informed and qualified persons are more likely to be on a jury.

Arizona has made the following reforms: allowing jurors to take notes during a trial, allowing them to question witnesses, and permitting jurors to discuss the case among themselves prior to the time all evidence has been presented. These reforms are needed because the present laws and court rules on juries were put in place many years ago and do not reflect the advances scientists have made regarding how people retain and process new information.

In Arizona, a committee including former jurors made further recommendations such as increasing public awareness of jury service, having short opening statements prior to attorneys selecting juries, giving jurors copies of jury instructions, encouraging jurors to ask questions about these instructions, offering assistance by the judge and attorneys for both sides to a deadlocked jury, and obtaining jurors' reaction to their experience after the verdict is rendered.

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