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The Utilization of Jurors in the American Judicial System

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ABSTRACT

This Leadership White Paper discusses the utilization of jurors in the American judicial system. After many sensational court trials over the last century and beyond, the question has arisen whether this is truly the best system to be utilized. While the Sixth Amendment of the United States Constitution affords a defendant the right to be tried by an impartial jury (U.S. Const. amend. VI, 1791), it does not stipulate the requirement of being tried by one's peers ("What is a Jury," n.d.). Many spectacular cases and their outcomes are good indicators that this system might be flawed. Other areas of concern are the biases and mindsets of jurors, the incomprehension of legal aspects involving the case tried, the overall attitudes of potential jurors selected to serve on these panels, and the extensive media coverage surrounding some of these trials.

Supporters of this system argue better fact-finding can take place by having a panel of jurors from all walks of life, therefore decreasing the impact of prejudice (Vidmar & Hans, 2007). Another point raised is jurors tend to be more sympathetic toward plaintiffs in civil cases. The danger in the latter, however, is higher amounts of damages are being awarded to plaintiffs in civil cases, causing a negative impact on the economy, even crippling it at times ("Litigation," 2013). And even the fact-finding can be counterproductive if jurors tend to see themselves in the role of a representative of a certain group and argue and decide accordingly so that this group may benefit from it (Vidmar & Hans, 2007). Changes should be considered to the American court room proceedings and its jury system.

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INTRODUCTION

As quoted in Putnam (n.d.), Gouverneur Morris, who was a key player in the creation of the United States Constitution, stated John Peter Zenger's jury trial in 1735 was the "germ of American freedom, the morning star of that liberty which subsequently revolutionized America" (as cited in Vidmar & Hans, 2007, p. 41). According to Vidmar and Hans (2007), this trial "had a significant influence on English law, both before and after the Revolution" (p. 41), and Vidmar and Hans (2007) continued to write that this trial assisted in drafting the First, Fifth, and Sixth Amendments in the Bill of Rights. The American Bill of Rights, in particular the Sixth Amendment, affords a defendant in criminal cases 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, 1791). On the website, *What is a Jury of Peers* (n.d.), it explained “While it isn't specifically stated anywhere in the Constitution, criminal defendants generally have the right to be tried by "a jury of peers" (para. 1).

As suggested in *Origins and History of the Jury* (n.d.), after the British King's army was defeated at the end of the Revolutionary War, the idea of being tried by one's peers was especially important since his authority over the United States had ceased. The article continued, "From that time to this, the jury has become the central tenet of American law" (“Origins,” n.d., para. 4). Furthermore, it stated, "The jury system combines together the rules of law with the common sense of the private citizen" (“Origins,” n.d., para. 5).

As stated in an article, the selection of the jury and its member size is dependent upon the case at trial and in what state it is being held (“How Courts Work,” n.d.). Once

a jury panel is selected, certain rules apply such as listening intently to the testimonies given and refrain from premature conclusions. Furthermore, jurors are not to discuss matters of the case with anyone to include other members of the jury until deliberations ("How Courts Work," n.d.).

There were many spectacular trials over the years as listed by Breyer (2013). There was the Lizzie Borden trial in 1893 (Linder, 2004); the Charles Manson (Tate-LaBianca Murder) trial in 1970-1971 (Linder, 2014); the Rodney King trial in 1992 (Linder, 2001); and, the trial of Orenthal James Simpson (O.J. Simpson) in 1995 (Linder, 2000). A more recent listing includes the George Zimmerman trial (Linder, 2014). In all these cases, jurors were utilized to render a verdict (Linder, 2017). Tremmel (2007) wrote that jurors render verdicts on a daily basis, "ideally leading to prison sentences that fit the crime for the guilty and release for the innocent" (para. 1). However, according to a Northwestern University study, "juries in criminal cases, many times, are getting it wrong" (Tremmel, 2007, para. 1). This study suggests the American judicial system deserves scrutiny. Changes should be considered to the American court room proceedings and its jury system.

POSITION

One of the concerns of ignoring that changes are needed is the jurors' biases. As stated above, Linder (2004) discussed the Lizzie Borden trial and stated the jury would have been more willing to render a guilty verdict had the defendant been a male. He further stated, "One of the defense's great advantages was that most persons in 1893 found it hard to believe that a woman of Lizzie's background could have pulled off such brutal killings" (Linder, 2004, para. 22).

Linder (2000) also discussed the O.J. Simpson Trial on his website. According to Linder (2000), the question of what exactly had occurred the night of the murder "is still disputed" (para. 2). The trial resulted in an acquittal, and among other things, it also "demonstrated the polarization of racial attitudes on issues such as law enforcement that still exists in our country" (Linder, 2000, para. 32).

When looking at an article in the Washington Post that had been written by Ross (2016), the outcome of the O.J. Simpson trial might have been different today. Ross (2016) wrote American's belief of Simpson's probable or unquestionable guilt of the murders of his ex-wife Nicole Brown Simpson and her friend Ronald Goldman has unified and is disregarding racial boundaries. She continued by stating there has never been a time where a vast majority of Americans, black and white, share a similar view of his probable guilt (Ross, 2016).

Linder (2000) wrote about racial attitudes during the O.J. Simpson Trial that do not seem to be the only bias. More than 30 years ago, Levine (1983) pointed out that a low conviction rate in rape trials in New York likely correlated back to the number of male jurors and did not improve until more women began to serve on juries (as cited by Vidmar & Hans, 2007). According to a news article in the New York Times this trend still existed ten years later. During an interview, a defense attorney suggested gender can have a significant impact during jury selection (Tabor, 1994). He further suggested women tend to be unrelenting in sex crime trials but more sympathetic during criminal trials in general (Tabor, 1994).

What also needs to be addressed are the rates of erroneous verdicts. As stated previously, a Northwestern University study found “juries in criminal cases many times

are getting it wrong” (Tremmel, 2007, para. 1). That study showed that a wrong verdict was rendered in every one out of eight cases out of a total of 271 cases (Tremmel, 2007). A book written by O.J. Simpson, titled "*If I Did It,*" which was to be published by "Regan Books" in November 2006, seemed to support the outcome of that study (Linder, 2000). According to Simpson’s publisher, Judith Regan, "This is an historic case, and I consider this his confession" (as cited in Linder, 2000, para. 33). In his own book, Simpson (2006) wrote "Something went horribly wrong, and I know *what* happened, but I can't tell you exactly *how*" (cited in Linder, 2000, para. 33). O.J. Simpson (2006) continued, "The whole front of me was covered in blood, but it didn't compute" (as cited in Linder, 2000, para. 33).

The biases of jurors are not the only concern to be taken into consideration. A closer look should also be taken at the lack of interest by jurors to engage in their civic duty. Lubin (2013) wrote an article titled *"Getting Out Of Jury Duty Is Easier Than You Think."* In this article, Lubin (2013) stated, "but when I got the summons, I — like many Americans — wasn't ready to take an extended leave from work, so I started looking for a way out of it" (para. 2). Lubin (2013) spoke of a slideshow that can be located within the top 10 sites when searched on Google giving suggestions on how to avoid jury duty. And when Lubin (2013) discussed this subject with a lawyer, an easy way to escape this civic duty was by mentioning "jury nullification" (para. 4). Lubin (2013) explained "this term refers to the ability of a juror to decline to convict based on a law he disagrees with — no matter the evidence", and he believed this to be an excellent idea (para. 4).

Author Sutcliffe (1922) dedicated an entire chapter in his book *titled "Impressions of an Average Juryman"* on how to *"Evade Jury Duty”* (as cited by Vidmar & Hans,

2007, p.77-78). Then, there is the shopping site, "Amazon," that offers "10 Ways to Get Out of Jury Duty: A Guide Explaining Jury Selection and Giving Tips on How to Avoid or Minimize Jury Service," which is published by TheAnonymousAttorney (2008) and can be found among other books that guide one through the process of avoiding jury duty. And, Waters (2011) spoke about an individual's willingness to go through a painstaking process just to avoid jury duty, even though it is not that difficult.

So far, the biases of jurors and the lack of interest were discussed. The lack of education should also be addressed. In her article, *"Do We Need Einsteins in the Jury Box? The Role and Impact of Juror IQ,"* Bennett (2010), raised the question, "What role does a juror's IQ play in a jury decision-making?" Additionally, Bennet (2010) asked whether low IQ jurors could pose a threat to defendants. In her writings, Bennet (2010) discussed definitions and stated, "Thus, a low IQ juror would be defined as one who is fundamentally unable to understand or reason through the facts at a trial, or one who is largely incapable of consistent rational thinking" (para. 3). Bennet (2010) further stated that in order to reach a just verdict, the jury would theoretically need to consist of exceptional individuals who are capable of a reasonable thought process.

In his book, Jonakait (2003), who is an attorney, talked about his and another attorney's role of defending an English and Irish immigrant who were accused of commiting the offense of assault together. Jonakait (2003) continued to write about the testimony given and the verdict reached by the jury. The other attorney's defendant was found not guilty; however, a verdict could not be reached on Jonakait's defendant. Jonakait (2003) stated, "This seemed nonsensical. The evidence suggested that both or neither were guilty" (preface). He further stated that the trial judge in this case had

instructed the jurors to make an assessment in regards to the defendant's previous conviction for an assault case and how it could have impacted his credibility. Jonakait (2003) wrote, "Since I was not entirely sure what that instruction meant, I doubted whether jurors could understand it" (preface).

Lastly, there is today's media coverage of sensational trial cases - mostly criminal in nature. Beyer (2013) wrote an article on this topic in which she stated there has been media coverage in excess, especially of criminal cases in the last century that grabbed this nation's attention. Beyer (2013) further stated, "...,which feeds the public a diet rich in gory details and makes us ravenous for more" (para. 2). In 2003, Scott Peterson was charged with the murder of his wife Laci in California (Vidmar & Hans, 2007). According to Vidmar and Hans (2007), fierce news media coverage existed during this trial. Vidmar and Hans (2007) further wrote, "one of the jurors was dismissed during the trial because of improper contact with a media representative at the courthouse" (p. 107). In their book, Vidmar and Hans (2007) pointed out the difficulty of presenting a fair trial if there is a strong interest by the public.

COUNTER POSITION

Various positions were raised, showing why there should be a reform of today's American judicial system. However, a closer look should be taken at counter positions to address why the system might not require any changes. One of the counterarguments is that according to Hans (n.d.), “in general, the diversity of views strengthens the group’s ability in fact-finding" (as cited by Kelley & Off, 2015, para. 11).

As stated previously, according to the Sixth Amendment, a defendant has a right to an impartial jury (U.S. Const. amend. VI, 1791). Vidmar and Hans (2007) found "the

idea of a representative jury is a compelling one" (p. 74). They suggested more accurate fact-finding can take place if the jury consists of individuals with a wide range of backgrounds and life experiences (Vidmar & Hans, 2007), and "a diverse and representative jury should decrease the impact of prejudice" (p. 75). However, political scientist Abramson (1994) found "that there could be a danger in overemphasizing the cross-sectional ideal in composing a jury" (as cited in Vidmar & Hans, 2007, p. 76). According to Vidmar and Hans (2007), jurors might believe themselves to be representatives of their own respective group within their community and that their key role is to represent said group during those proceedings. Vidmar and Hans (2007) wrote, "Jurors who focus on the fact they're in the Asian-American slot, the Christian fundamentalist slot, or the business leader's slot may concentrate more on their imagined constituents than on their responsibility to engage in robust and vigorous debate" (p. 76).

Another counterpoint is that jurors tend to sympathize a lot more with the victim in civil cases and, therefore, award higher amounts of damages according to an online article titled “Why trial by jury is usually a better choice than a bench trail,” (n.d.) This article stated, "Thus, it is no surprise that the biggest verdicts in US history have all come from jury trials" (para. 8). Vaidyanathan (2009) wrote, "lawsuits filed by consumers against big business took off in the 1990s in the golden era of tort litigation. In 1994, a 79-year-old woman won $2.86 million for spilling scalding hot McDonalds coffee on her lap” (Vaidyanathan, 2009, para. 1) And in another article, Callahan (2009) wrote about a 50-year-old smoker who was awarded $28 billion by a Los Angeles jury in 2002.

However, these types of lawsuits are alarming. Kingston (n.d.) is quoted as saying, the "U.S. has more frivolous lawsuits and greater– cost of litigation per person– than any other industrialized nation in the world, and it's crippling the economy" (as cited in "Litigation," 2013, para. 1). The article continued on, "litigation can ultimately diminish a company's value, drive down sales, or even cause a business to fold" ("Litigation," 2013, para. 2). Additionally, a survey was done that showed "... of 500 U.S. CEOs found that lawsuits caused 36% of their companies to discontinue products, 15% to lay off workers, and 8% to close plants" ("Litigation," 2013, para. 4).

RECOMMENDATION

The Constitution of the United States and its Bill of Rights have existed for over 200 years. The Sixth Amendment protects the right of an individual to be tried by an impartial jury. However, the US Constitution is a living document, and as such, it is not impossible to make changes or improve upon (Strauss, 2010).

A study of 271 cases, conducted at the Northwestern University, showed that in one out of eight cases, the wrong verdict was rendered. Professor Spencer (n.d.) determined, "they are more likely to convict an innocent person than to acquit a guilty person" (as cited in Hannaford-Agor, 2007). In order to minimize faulty decisions that have been rendered by juries in the past, the entire concept of a jury system in the American judicial system should be evaluated.

Spectacular criminal trials in the last 100 years have made the news. Some of them raise the question of whether a correct verdict was rendered by the jury. Many verdicts show the juror's own biases of issues that existed during that particular time of the trial, such as the Lizzie Borden trial. The jury in that case voiced their belief that a

woman of the defendant's background would not have been able to commit brutal killings like the ones in this case.

Then there would be the O.J. Simpson trial and the not guilty verdict. During trial, it was suggested that the law enforcement agency who had investigated this case was racially biased against the defendant. Sometime later, O.J. Simpson wrote a book in which he indicated he was guilty of the crime he had been accused. And not only the O.J. Simpson trial suggested there is bias. When interviewed by a writer for the New York Post, an attorney suggested the gender of a potential juror could have a significant impact during jury selection. He explained women tend to be unrelenting in sex crime trials, but more sympathetic during criminal trials in general (Tabor, 1994). There seems to be something to the previous statement as Levine (1983) pointed out an increase with time in the conviction rate of rape cases in New York as more women began serving on juries (as cited by Vidmar & Hans, 2007).

Biases are one of the problems that is present in American jurors. Another problem is that there are some potential jurors who do not take their civic duty seriously or have other agendas that make them find ways of avoiding their civic duty altogether. There are a lot of websites and books that exist in educating potential jurors on how to avoid jury duty.

When looking at the American judicial system, the question of whether potential jurors are intelligent enough to serve on the jury should also be discussed. There is documentation showing that, in theory, a jury needs to consist of intelligent and rational thinkers in order to reach a just or sound verdict. Reasonably, it should not be assumed

a jury can reach this "just or sound" verdict if even an attorney has difficulties understanding the instructions given by a judge, as suggested by Jonakait (2003).

Media coverage of sensational trial cases also creates concern for the impartial rendition of a verdict. Premature conclusions are to be avoided but, in light of media coverage that is given in some of the cases, such as the Scott Peterson case, it is difficult to avoid the obstacles of being confronted by news media and maintain an almost ignorant or innocent view of the case particulars. Turning a blind eye to the ever "in your face" explosion of news or the regurgitation of every little detail that had been released by the law enforcement agency, prosecutor, or other individuals connected to the case, seems like an impossible task to accomplish.

And yet, there is something to this judicial system. After all it is part of the Sixth Amendment in the Bill of Rights, and it has been in existence in this country for over 200 years. It was suggested that a juror's role is to be part of a fact-finding body that comes from all sorts of backgrounds and possesses different life experiences that should certainly help them in rendering this "just" verdict and decrease the impact of prejudice. It does become a problem, however, if jurors have ulterior motives when coming to a decision. If the jury renders a decision based on what they believe rather than what their respective members of their community expects of them, or they attempt to secure a gain - may it be financially or otherwise - this argument becomes moot as the jury system shows to be flawed once again.

It is suggested that a trial by jury is preferred over one by bench, which means a verdict is to be rendered by the trial judge. Jurors tend to be more sympathetic to the victim in civil cases, therefore, rendering higher amounts of damages. The concern that

comes with this concept, however, is the unrealistic amounts of the damages that are being awarded. A whopping $2.86 million for a hot cup of coffee that the plaintiff spilled over her lap or the $28 billion that were awarded to a 50-year-old smoker almost make it appear like hitting the jackpot in a lottery. It was mentioned that the biggest verdicts in US history have all come from jury trials, which is not hard to believe when looking at the previous two cases as stated in "*Why trial by jury is usually a better choice than a bench trial*" (n.d.).

The issue is that these pay-outs affect the economy, and, therefore, each and every citizen. It was also mentioned that products have been discontinued, workers were laid off, and some of the businesses were shut down due to these verdicts ("Litigation," 2013, para.4). This has the potential to not only affect a small group in a community but a broad range of citizens. Changes need to be made. Law enforcement and society would greatly benefit from a more educated, willing, and unbiased jury pool. The greed for more sensational media coverage of the most gruesome trial cases have the potential of influencing future jurors in their decision making.

An Amendment to the Constitution might change the way business is conducted and bring about change. Strauss (2010) wrote, "it can be amended, but the amendment process is very difficult" (para. 1) when speaking of the United States Constitution and its Bill of Rights. However, an amendment to the United States Constitution is not necessarily needed. Change can also be achieved by arguing this point in the United States Supreme Court, which "is the highest tribunal in the nation for all cases and controversies arising under the Constitution or the laws of the United States" (The Supreme Court of the United States, n.d.). The Sixth Amendment should be argued in

front of this tribunal to have the Justices interpret the meaning of "impartial jury", and whether it actually requires a jury of one's peers.

REFERENCES

Bennet, A. K. (2010, November 1). *Do we need einsteins in the jury box? The role and impact of juror IQ*. Retrieved from http://www.thejuryexpert.com/2010/11/do-we-need-einsteins-in-the-jury-box-the-role-and-impact-of-juror-iq

Bill of Rights of the United States of America, 1791. (1791). Retrieved from http://www.billofrightsinstitute.org/founding-documents/bill-of-rights/ (VI Amendment)

Breyer, M. (2013, July 16). *11 trials that caused a media frenzy*. Retrieved from http://www.mnn.com/earth-matters/politics/stories/11-trials-that-caused-a-media-frenzy

Callahan, D. (2009, December). *The most outrageous jury verdicts ever awarded*. Retrieved from https://www.legalzoom.com/articles/the-most-outrageous-jury-verdicts-ever-awarded

Hannaford-Agor, P. (2007). *Voir Dire - On second guessing jury verdicts*. Retrieved from http://www.ncsc-jurystudies.org/~/media/Microsites/Files/CJS/What%20We%20Do/Second%20Guessing%20Jury%20Verdicts.ashx

How Courts Work. (n.d.). Retrieved from http://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/juryselect.html

Jonakait, R. N. (2003). *The American Jury System* (preface). Ann Arbor: Sheridan Books.

Kelley, P., & Off, G. (2015, July 25). Wes Kerrick jury won't mirror Mecklenburg's diversity. *The Charlotte Observer*. Retrieved from: http://www.charlotteobserver.com/news/local/crime/article29073877.html

Linder, D. (2000). *The trial of Orenthal James Simpson*. Retrieved http://law2.umkc.edu/faculty/projects/ftrials/Simpson/Simpsonaccount.htm

Linder, D. (2001). *The Rodney King trial in 1992*. Retrieved from http://law2.umkc.edu/faculty/projects/ftrials/lapd/lapdaccount.html

Linder, D. (2004). *The trial of Lizzie Borden*. Retrieved from http://law2.umkc.edu/faculty/projects/ftrials/LizzieBorden/bordenaccount.html

Linder, D. (2014). *The Charles Manson (Tate-LaBianca Murder) trial in 1970-1971*. Retrieved from http://law2.umkc.edu/faculty/projects/ftrials/manson/mansonaccount.html

Linder, D. O. (2014). *George Zimmerman trial: an account in 2013*. Retrieved from http://law2.umkc.edu/faculty/projects/ftrials/zimmerman1/zimmermanaccount.html

Linder, D. O. (2017). *Famous trials*. Retrieved from http://law2.umkc.edu/faculty/projects/ftrials/ftrials.htm

Litigation protects and ruins businesses: litigation impact on cost, valuation... social media... Outlook for litigations-2013. (2013, February 7). *BizShifts-Trends.* Retrieved from: http://bizshifts-trends.com/2013/02/07/litigation-protects-and-ruins-businesses-litigation-strategies-and-impact-on-cost-valuation-social-media-outlook-for-litigations-2013

Lubin, G. (2013, February 9). Getting out of jury duty is easier than you think. *Business Insider, Law & Order*: Retrieved from http://www.businessinsider.com/how-to-get-out-of-jury-duty-2013-2

Origins and history of the jury. (n.d.). Retrieved from https://www.vermontjudiciary.org/MasterDocument/jury-originsandhistory.pdf

Ross, J. (2016, March 4). Black and white Americans can now agree: O.J. was guilty. *The Washington Post.* Retrieved from https://www.washingtonpost.com/news/the-fix/wp/2015/09/25/black-and-white-americans-can-now-agree-o-j-was-guilty

Strauss, D. A. (2010). *The living Constitution*. Retrieved from http://www.law.uchicago.edu/alumni/magazine/fall10/strauss

Tabor, M. B. (1994, February 6). The nation; stereotyping men, women and juries by trial and error. *The New York Times*. Retrieved from http://www.nytimes.com/1994/02/06/weekinreview/the-nation-stereotyping-men-women-and-juries-by-trial-and-error.html

TheAnonymousAttorney's. (2008). *10 ways to get out of jury duty: A guide explaining jury selection and giving tips on how to avoid or minimize jury service.* Retrieved from https://www.amazon.com/Ways-Get-Jury-Duty-TheAnonymousAttorneysebook/dp/B001A8H482/ref=sr_1_1?ie=UTF8&qid=1484583351&sr=81&keywords=10+ways+to+get+out+of+jury+duty

The Supreme Court of the United States. (n.d.) *Mission Statement*. Retrieved from http://www.supremecourt.gov/about/about_us.aspx

Tremmel, P. V. (2007). *New study shows how often juries get it wrong*. Retrieved from http://www.northwestern.edu/newscenter/stories/2007/06/juries.html

Vaidyanathan, G. (2009, November 11). Ten ridiculous lawsuits against big business. *Business Insider, Law & Order*. Retrieved from http://www.businessinsider.com/the-ten-dumbest-lawsuits-against-big-business-2009-11

Vidmar, N., & Hans, V. P. (2007). *American juries.* New York: Prometheus Books.

Waters, J. (2011, May 9). Want to get out of jury duty? Here's how. *MarketWatch.* Retrieved from http://www.marketwatch.com/story/want-to-get-out-of-jury-duty-heres-how-2011-05-09

What is a jury of peers? (n.d.). Retrieved from http://criminal.findlaw.com/criminal-procedure/what-is-a-jury-of-peers.html

Why trial by jury is usually a better choice than a bench trial. (n.d.). Retrieved from https://www.hg.org/article.asp?id=6613