

Some Thoughts of the Jury System

By Steve McNichols

The recent verdicts in the Rodney King beating case, the Menendez brothers murder trial and the O.J. Simpson trial have stirred up a tremendous amount of controversy and discussion about the jury system. We now have politicians and various citizen groups calling for changes that range from using professional jurors, to changing the jury selection process, to eliminating the requirement of unanimous jury verdicts in most criminal cases. The purpose of the article is to analyze and discuss some of the proposed changes.

The jury system enchants us and disgusts us because it exposes in a dramatic way the virtues and vices of democratic society. In Athens jurors sentenced Socrates to death for religious crimes against the state, but in England jurors went to prison rather than convict Quaker William Penn. In Colonial America, jurors refused to convict smugglers who violated the British import taxes that they felt were unjust because they were made without American representation in Parliament. Juries in the South freed vigilantes who lynched Black Americans, while in the North they refused to convict fugitive slaves and the abolitionists who helped them escape. A jury recently acquitted police officers who could be seen on video tape brutally delivering over eighty blows to a prostrate Rodney King, another jury failed to reach a verdict in the Menendez brothers murder trial in spite of their confession and overwhelming evidence of their guilt, and O.J. Simpson goes free in the face of compelling evidence against him. We can all point to miscarriages of justice perpetrated by the jury system as well as courageous juries willing to protect dissenters and outcasts from their fellow citizens and the government.

Professional Jurors: Some would be reformers, have suggested that we should substitute professional jurors for the citizen juror. Professional jurors would undoubtedly produce more consistent and more predictable results. Uniform justice is not necessarily impartial justice. Do we want to empower an elite judicial class to dictate our laws and decide our fate? This change would defeat a fundamental purpose of our legal system. The point of the jury system is to subject law to democratic interpretation, to achieve a justice that reflects the values and common sense of the people. The jury also serves as a buffer against the state and serves to protect minorities from persecution by the majority. The jury is the best tool to test the law to see if it is being applied in a way that is accepted by the people. In a time when record numbers of citizens feel alienated and isolated from their government and helpless to influence its policies, it would not be wise to abandon the last of our truly democratic institutions.

Qualifications of Juror: The history of juries in the United States has shifted over time in several respects. One of those changes involves the pre trial knowledge of the jurors. The American system started as a communal-based system with local jurors who knew about the case, the community and the parties. It has evolved into a system where jurors are disqualified unless they are perfectly ignorant of

the facts of the case and the parties. As a result, particularly in highly publicized cases, inattention and apathy become necessary conditions for an impartial juror. People who have never read or heard about a high publicity case are not representative of the morals, values and common sense of the community. It is submitted that all qualified citizens should be eligible to serve as jurors unless they have a decisive opinion or bias on an essential element of the case. If this standard were used, the quality of jurors would be made more representative and more consistent with the basic philosophy of the jury system. This reform would merely return us to the original interpretation of the Sixth Amendment of the Constitution guaranteeing a trial before an "impartial" jury.

Cross-section of the community: Most of us agree that a jury should be truly representative of the community. The idea is to enhance the quality of the deliberations by bringing diverse insights to bear on the evidence. The jury should represent the diversity of views held in our heterogeneous society. Some critics of the present system contend that outcomes such as the O. J. Simpson case demonstrate that a truly impartial jury must be the mirror image in race, sex, age, economic status of the eligible community population. It is submitted that as long as the jurors are summoned randomly from a representative list and are not eliminated by challenges based on such factors, the cross-sectional requirement is met.

Impartiality requires that jurors be independent not only from the dictates of others, but also from their own opinions and biases. Jurors must put aside their own interests and preconceptions and decide the case on the evidence presented applying their common sense and reason. A juror is not intended to give voice to a particular group, to protect or assert the interests of a group, as if he had been sent as a representative by a constituency. Each juror is there to join with the others in a search for the truth and to reach a just verdict based on community values, by drawing on their own background and experience and listen to what others have to contribute from their prospective. To require that juries must be representative of the demographics of the community would only be justified if we believe that prejudices, such as race, are so deep that the only solution is to select jurors that represent the diverse interests. This would change the jury from a deliberative body to a representative one. Having witnessed how our representative form of government works, do we want jurors to operate in the same way as politicians' - as representatives of a constituency?

Unanimous Verdict: A number of politicians are calling for non-unanimous verdicts in all criminal cases except death penalty cases. Various studies on this subject demonstrate that 5.6% (approximately one out of every twenty) juries requiring unanimity for a verdict deadlock. In Oregon, where 10 out of twelve jurors are required for a verdict in certain criminal cases, 2.5% of the juries still hang. If you add to this the fact that very few criminal cases go to trial as most are disposed of by a plea, the small reduction in hung juries would have little effect on the overall efficiency of the system. Secondly, everyone who is inclined to this

view should see the movie "Twelve Angry Men" with Henry Fonda before they make up their mind. Unanimity serves one essential and indispensable function. It requires the jurors to discuss the case and persuade each other, and not merely outvote one another. The requirement of unanimity requires deliberations to continue long enough for reason argument to prevail over initial reactions and opinions. It fosters the evolution of the collective wisdom of the jury.

Conclusion: I hope that this article has stimulated some thinking on the subject of juries, and that it has demonstrated that we should be extremely cautious before tinkering with this venerable institution which is the cornerstone of democracy's fundamental claim: that people make their own best governors and that every citizen is equally competent to do justice.

Steve McNichols is a trial lawyer and partner in the law firm of McNichols Randick O'Dea & Tooliatos, LLP, and has tried over 55 jury trials to verdict. He specializes in business litigation. He can be reached at SMcnichols@McNicholsLaw.com.