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Jury Trials: In Favor

Neil Vidmar

Jury trials not only give credibility within a community about verdicts reached in court cases, but also seem to turn jurors into better citizens. Neil Vidmar is Russell M. Robinson II professor of law at Duke University School of Law in North Carolina and coauthor with Valerie Hans of the 2007 book American Juries: The Verdict.

The jury is a unique institution. Twelve ordinary citizens, sometimes as few as six, who have no legal training, are summoned to hear evidence about an important criminal or civil dispute. While the trial judge decides what evidence they can hear and instructs them on the law, in the end these ordinary citizens deliberate alone and render verdicts about guilt or innocence; sometimes about who should be sentenced to die; or, in civil cases, who should prevail in a dispute that sometimes involves many millions of dollars. But are juries competent and responsible enough to make these decisions? Overwhelming evidence indicates that they are.

Hundreds of studies have assessed the competence of jurors. A classic 1966 study by two University of Chicago professors, Harry Kalven and Hans Zeisel, involving 3,576 criminal trials and more than 4,000 civil trials, asked the trial judges, who heard the same evidence as the jurors, to render their own verdict before they learned what the jury decided. Judges and juries agreed about 80 percent of the time.

What about the other 20 percent? The study showed that jurors understood the evidence and

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Jury Trials: Opposed

Peter J. van Koppen

The jury trial system is so complicated and expensive that it forces most defendants to accept plea bargains arranged in secret. In the relatively few cases that go to trial, jurors are often considering technical issues beyond their aptitude. Peter J. van Koppen is professor of legal psychology at Maastricht University Law School and Free University Law School, both in the Netherlands.

One day you visit your general physician. You are greeted there by a panel of 12 individuals. The one person who apparently is the chairwoman cheerfully tells you that this panel is replacing your doctor for the next month. With confidence she adds: "Do not worry, dear, most of what doctors do is common sense anyway." What would you do?

In fact, the chairwoman is right: Most of what doctors do is common sense. But an important part is not. And that part is the vital part of your doctor's work. Even more vital, maybe, is that your doctor is able to distinguish the odd difficult case and the dangerous condition of a patient from the average run-of-the-mill disease.

The defendant who enters the courtroom and who has decided not to plea bargain is confronted with such a cheerful bunch of jurors. They are there to evaluate the evidence and decide whether the defendant is guilty or not. The question is whether such a jury is better than the alternative. What I mean by alternative, I shall discuss shortly.

For sure, everybody would prefer a general physician with a diploma to the general

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the law in those cases, but simply differed from the judges in the perspectives and values they applied to the issues. In short, the juries applied community standards while the judges applied technical legal standards. That study's findings have been replicated many times.

Still other research has compared jury verdicts in medical malpractice cases with independent judgments made by physicians regarding whether negligence occurred. The jury verdicts corresponded closely with the doctors' judgments. Moreover, juries often sided with defendants, even when the patients were severely injured, indicating that the jurors were not swayed by sympathy in making their decisions.

Detailed interviews with jurors after they rendered verdicts in trials involving complex expert testimony have demonstrated careful and critical analysis. The interviewed jurors clearly recognized that the experts were selected within an adversary process. They employed sensible techniques to evaluate the experts' testimony, such as assessing the completeness and consistency of the testimony, comparing it with other evidence at the trial, and evaluating it against their own knowledge and life experience. Moreover, the research shows that in deliberations jurors combine their individual perspectives on the evidence and debate its relative merits before arriving at a verdict.

Arizona Jury Project

I was involved in an extraordinary project in which I and my co-investigators videotaped the whole trial and the actual deliberations of juries in 50 Arizona civil court cases. Our findings strongly supported the conclusions of other empirical studies about the competence of jurors. For instance, in one trial the jurors submitted questions to a physician who testified on behalf of a woman injured in a collision between two autos, an Oldsmobile and a Lincoln:

- Why [are there] no medical records beyond the two years prior to the accident?
- What tests or determination besides subjective patient's say-so determined [your diagnosis of] a migraine?
- What exact symptoms did he have regarding a migraine?
- Why no other tests to rule out other neurological problems?
- Is there a measurement for the amount of serotonin in his brain?
- What causes serotonin not to work properly?
- Is surgery a last resort?
- What is indothomiacin? Can it cause problems if you have prostate problems?

Questions to the plaintiff's accident reconstruction expert in the same case included the following:

- Not knowing how she was sitting or her weight, how can you be sure she hit her knee?
- Would these factors change your estimate of 15 [feet per second] travel speed?
- If a body in motion stays in motion, and she was continuing motion from prior to the impact, how did this motion begin and what do you base this on?
- How tall is the person who sat in your exemplar car to reconstruct the accident, and how heavy was he?
- What is the error in your 10 [miles per hour] estimate?
- Is the time of 50 to 70 milliseconds based on an estimate of the size of the dent?
- Do you conclude that the Olds was slowed and pushed to the left by the Lincoln, and [if so] how would the plaintiff move to the right and forward?

Recorded deliberations of other juries in the study showed similar attention to detail.

American Bar Association Picks

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To Kill a Mockingbird (1962) – Defying his white community, lawyer Atticus Finch (played by Gregory Peck, left) defends a poor African-American man falsely accused of raping a white woman in a small Alabama town in the 1930s. The story, based on a novel by Harper Lee, is told through the viewpoint of Finch's six-year-old daughter, who begins to learn "a sense of social right and wrong, justice and injustice, the cruelty of the world, and how to be courageous in the face of it all," the ABA says.

Collective Wisdom

There are many logical reasons to believe that, under the guidance of a judge who explains the law to them, a group of 12 laypersons can do a better job sifting the factual evidence and deciding a case than a judge can alone.

Trials ordinarily involve a host of issues about human behavior. For instance, date-rape cases generally concern whether sexual intercourse was consensual, not whether it occurred. A murder trial will often have clear evidence of a killing, but turn on whether it was premeditated, committed on the spur of the moment, committed in self-defense, or committed by a mentally ill defendant.

Why should we assume that judges are better than juries at determining the credibility of a witness who claims the defendant uttered death threats, or that she was running a sophisticated scheme to inflate stock prices?

Cultural variables abound in any trial verdict, by judge or jury. Thus, in a murder case involving an African-American victim and defendant, would a jury composed of at least some African-American jurors be better able to understand the spoken insult that led the defendant to claim that his life was in danger than a white judge who grew up in a white suburb?

In one of the Arizona jury trials involving a Hispanic plaintiff injured in an auto accident, a Hispanic juror told the other jurors that Hispanic people tend to prefer chiropractors over medical doctors, thereby possibly explaining why the plaintiff did not follow a recommendation that she seek follow-up care by a physician.

In another trial, two jurors who had backgrounds familiar with car repairs were able to explain how a truck caught fire and burned down a house.

In short, the varied backgrounds jurors bring to their task can give juries an intuitively better understanding of the facts than the trial judge, who may have little actual experience with the specific setting in which the contested events occurred.

Addressing Critics

Critics of jury trials often point to some iconic cases. One is a notorious 1994 product liability lawsuit brought by a 79-year-old woman who burned herself by spilling hot coffee served at a McDonald's chain restaurant. The jury's award of $2.7 million in punitive damages to the woman created debate about what some people considered frivolous lawsuits.

Yet most people probably don't know the evidence the jurors had to consider about that case:

- McDonald's sold its coffee 20 degrees hotter than recommended by the manufacturer to satisfy customer preference.
- The woman sustained second- and third-degree burns to her genital area, requiring extensive surgery and skin grafts.
- McDonald's had had more than 700 prior complaints about its coffee but never consulted a burn specialist.
- Testimony by McDonald's executives at trial allegedly projected arrogance and expressed resistance to changing their marketing strategy (though after the verdict McDonald's did lower the coffee temperature).
- The jury punitive award of $2.7 million was equivalent to just two days of McDonald's overall coffee sales. Moreover, the judge reduced the punitive award to $480,000.

The McDonald's case also serves as a reminder that trial by jury is really "trial by judge and jury," and that the judge supervises the evidence the jury hears, instructs the jurors on the law, and scrutinizes their verdict before it is entered as a judgment of the court.

Many other criticisms of criminal and civil jury verdicts that appear in newspapers and Web sites likewise fail to withstand close scrutiny. Juries can make mistakes, as can judges or any other decision makers, but hard evidence indicates that, on the whole, juries perform exceedingly well. And surveys of American judges who preside over trials indicate their overwhelming and enthusiastic support for the jury system.

Crime, Negligence, and Community

Trials concern events that affect the community in which they occur. Having members of the community decide who is guilty or innocent, or who has been negligent or not, provides legitimacy to the verdict, especially when the case is controversial.

In the many surveys that I have conducted over the past four decades, prospective jurors consistently say that they would be inclined to accept the verdict of a jury who heard the evidence at trial, even when that verdict is inconsistent with their own views derived from newspaper and television reporting of the case.

Recent research also has demonstrated quite convincingly that after people have served on a jury, they not only have a better appreciation of the legal system but also become more engaged in civic affairs and more inclined to volunteer for community service.

In short, hard evidence indicates not only that juries are competent decision makers, but also that the jury system is an important democratic institution. ■

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American Bar Association Picks

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Paths of Glory (1958) – Kirk Douglas (left) plays Colonel Dax, a front-line French army officer during World War I who defends three of his men charged at court-martial with cowardice. The three men are scapegoats selected by generals for public execution as an example to others who retreated from a suicidal mission against a German position. "The geometrical arrangement of the courtroom shows the hierarchy of power and provides an appropriate arena for Dax's condemnation of a legal system that is itself a crime," the ABA says.

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physician-jury, and that holds for almost all professionals. So a first question is: Is decision-making or fact-finding in criminal cases such that it can be done by laypersons? In order to answer that question, let me dissect the problem that faces the jury in a criminal trial. A jury must make a decision about the truth. American lawyers reply immediately that criminal trials are not about the truth, but about a certain version of the truth: Which party has the better argument about the truth?

Either way, the work to be done by a jury does not differ much from what any scientist has to do. A scientist has to make inferences about states of affairs that cannot be observed directly, inferring from evidence that can be observed. And that is precisely what a jury has to do: make a decision about the guilt of the defendant based on the evidence presented at trial. That is a scientific enterprise that surpasses the intellectual aptitude of most laypersons who are called to jury duty.

Proponents of the jury tend to use the seminal study by Harry Kalven and Hans Zeisel from 1966 here. In a large number of cases, Kalven and Zeisel, while the jury was in the jury room deliberating, asked the single judge presiding over a trial what he would decide. They found that in most cases the judges would have rendered the same verdict as the jury somewhat later returned.

Training Matters

That study warrants some comments. As with the example of the physician, the professional judge and the jury may agree most of the time, but that does not mean that they agree in the most important cases, the cases where decision making on the facts of the case is in some way difficult and where knowledge and training would matter.

Why would we turn to the judge to assess the quality of jury decisions? That assumes two things: that the judges are so good that they can be used as a criterion for the evaluation of the jury, and that law matters for the decision problem faced by the jury. The latter point is a common misconception. The jury decision is a purely factual decision that takes the form of a scientific decision. Most important, the law has nothing to do with that decision. The decision may be embedded in all kinds of legal rules — for instance about what evidence can be presented to the jury or can enter the decision — but that does not make the decision itself a legal decision. Jury proponents then would argue that the standard of decision making in criminal trials, beyond a reasonable doubt, is a legal rule. That is not so. It is the same kind of decision rule that is applied widely in science, just with a different name. In psychology, for instance, the same decision rule is called significance level.

And single judges are indeed the wrong kind of people to use as a criterion for scientific decision making. First of all, a panel of judges would be a fairer comparison. In most countries, cases without a jury are decided by panels of three or five judges. But, secondly, aren't judges as much laypersons on factual decision making as juries? Those who enter law school usually do that because they do not like scientific thinking or hate math or detest doing experiments. And surely legal thinking considerably departs from scientific thinking.

Judges, as such, thus are not better qualified than jurors for fact-finding unless they are trained. And in countries with professional judges, the judges are trained. In fact, when I serve as an expert witness in my small country, I often encounter courts in which one or more judges have been in my class where I taught them about witness statement, identification, and evaluation of evidence. How could proponents of jury trials argue that training does not matter in solving the kind of complicated problems in some criminal cases? Why do they ignore that there are more known miscarriages of justice in jury countries such as the United States and Great Britain than in continental nonjury countries?

Other Disadvantages

A system with jury trials has some additional disadvantages that are seldom discussed. First, a jury trial is more complicated than a bench trial (a trial where a judge or panel of judges reaches a verdict). That places higher demands on the defense attorney. Jury trials require better lawyers, but most defendants in the United States are too poor to hire a good-quality attorney. In countries with bench trials, a not-very-good attorney is a lesser disadvantage for the defendant.

The jury trial also is very time consuming and labor intensive. In fact, it is so expensive that a jury system can only be maintained if the vast majority of cases are dealt with differently. In the United States that occurs through plea bargaining, a negotiated agreement between prosecution and defense with a marginal check by a judge. In practice this is a system where most cases end in a way that nobody really has evaluated the evidence, without public scrutiny and with disproportionate power for the prosecution.

In short: In the jury system most cases are handled in secret, and a minute number of cases are decided by little groups of people who apply their common-sense ideas to complicated problems beyond their training. ■

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