

You, The Juror: What Role Does Jury Service Play In Our Democracy?

by Ashlee Dow

Throughout history, the American jury system has played an extraordinarily important role in cases across the nation. The sole function of a jury is to take into consideration the evidence presented to them, the arguments of both the prosecution and the defense, and to use those to decide whether or not there is reasonable doubt in the case. The jury does not interpret the law, or decide which laws apply to the case. The jury is arguably one of the most important pieces of the United States justice system; it convicts or acquits defendants, decides if the death penalty is an appropriate punishment for capital murder cases, among many other important duties.

Trials by one's peers have been a part of justice systems around the globe for many years, and much of the influence on American juries came from those in Europe. As far back as 1166, during the reign of Henry II in England, groups of selected individuals would observe others and report suspected crimes to officials. Much like the jury system we use now, these groups did not interpret the laws; they served the people.¹ During this time, trials were not what they are now, and one of the most popular ways of deciding if an accused citizen was guilty was trial by ordeal. This was a set scenario in which someone accused of a crime would be tried, by going through an ordeal, and the outcome either meant they were guilty or innocent. Such trials included tying the arms and legs of someone together, throwing them in a body of water, and waiting to see if they sink or float. If the person sunk to the bottom, they were innocent and were allowed to live, but if they floated, they were found guilty and were often killed. Surely, there was a better way to decide the fate of the accused, and Pope Innocent III knew this. Under his rule, the use of ordeals in trials was outlawed in 1215, and a trial by jury took its place. Also during this time, it

¹ Albert Alschuler, "Jury: Legal Aspects," Encyclopedia of Crime and Justice, <http://www.encyclopedia.com/doc/1G2-3403000150.html>, accessed March 31, 2016.

was established that the common law jury must contain only twelve individuals, and a jury had the ability to either acquit or convict an individual, but only with a unanimous vote.² These rules set by Pope Innocent III would later pave the way for the use of juries in the American justice system.

Even before the Declaration of Independence was written in 1776, the use of a jury in American trials was standard procedure. The First Continental Congress, held in 1774, had proclaimed in their Declaration of Rights that all accused individuals had the right to trial by jury. Prior to the Constitutional Convention, twelve different states had written their own constitutions, all of which contained the right to trial by jury.³

One of the most famous colonial cases that dealt with a jury took place in New York, in 1733. John Peter Zenger was a German immigrant who worked as a printer for the *New York Journal*. A few of his publications spoke negatively about Governor William S. Cosby and pointed out his corrupt actions – something punishable by law. In 1733, Zenger was accused of libel, publishing information that was opposing of the government. The matter of whether or not the information was true was irrelevant, and Zenger did not deny the printing of the paper, so the judge was sure of Zenger's guilt.⁴ The jury, however, wasn't so sure on the verdict. Zenger's case went before three grand juries, all of which refused to indict him. Despite this, New York's Attorney General ordered for Zenger to be put in prison, with a bail set at four hundred pounds sterling, roughly one-hundred and forty-three dollars in today's currency. Not long before the trial was to begin, Zenger's lawyers tried their hardest to get Chief Justice James DeLancey removed from office. Rejecting this, DeLancey disbarred all lawyers who took part, leaving Zenger without representation. Appointed to the position was John Chambers, a Cosby

² Ibid.

³ Albert Alschuler and Andrew Deiss, "A Brief History of the Criminal Jury in the United States," 61 *University of Chicago Law Review* (1994): 870-873, < http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2010&context=journal_articles>.

⁴ "7c. The Trial of John Peter Zenger," U.S. History Pre-Columbian to the New Millennium, <http://www.ushistory.org/us/7c.asp>, accessed March 31, 2016.

supporter. After Chambers' opening statement, Andrew Hamilton, an esteemed lawyer from Pennsylvania, rose from his chair and announced that he would take over Zenger's defense. Hamilton argued that Zenger's reason for the publications was just. He also argued that the outcome of the case was not to be decided by DeLancey, but rather by the jury. Hamilton said, "... leaving it to the judgment of the Court whether the words are libelous or not in effect renders juries useless."⁵ Hamilton then spoke directly to the jury, telling them that their job was not small or of little importance, as it may affect every free man under British rule. Despite being instructed by DeLancey to decide only whether or not Zenger had published the papers, the jury came back from deliberation and announced Zenger not guilty of seditious libel.⁶

The outcome of this early case had many effects on the use of juries in trials; it set precedent. The Zenger case not only established a baseline for freedom of the press, but also reinforced how important the jury is in checking the power of executives.⁷ During this time, if there were no juries and every case was left up to a judge, there would not necessarily have been a way to check the power of judges. The use of juries in the American justice system increased the likelihood that an accused citizen would receive the verdict they deserved, because a diverse jury of one's peers was much more effective and impartial than a defendant's fate being left up to one person of authority. This no longer holds true today, as judges are criminal justice professionals whom are expected to be fair, impartial, and to uphold the laws of their state and country. Also, jury service today is seen as an important civic duty, which is in direct contrast to how the majority of people saw it during colonial times.

Given that a jury holds such a high level of importance when it comes to the outcome of a case, the issue of juror bias is a constant battle. Many minority groups, such as African Americans, are deliberately excluded from jury service. Although it's been illegal to exclude

⁵ Alschuler and Deiss, "Brief History," 870-873.

⁶ "Crown V. John Peter Zenger," n.d, Historical Society of the New York Courts, < <http://www.nycourts.gov/history/legal-history-new-york/legal-history-eras-01/history-new-york-legal-eras-crown-zenger.html>>, accessed March 31 2016,

⁷ Ibid.

jurors based on race since 1875, this is still a common problem. The number one reason behind this is the fact that prosecutors can eliminate whomever they choose, give any reason behind their choice, and are very seldom challenged for their decision. A 2010 study, done by Bryan Stevenson of the Equal Justice Initiative, found that discriminatory jury selection is more likely to occur in death penalty cases and other serious criminal cases. In some of the counties studied, they found that eighty percent of the African Americans who had qualified for jury service had been excluded. In an interview with National Public Radio (NPR), Stevenson reported, "We've had African American jurors excluded because they're too old at 43, because they're too young at 28, while other white jurors much older are being accepted, and other white jurors much younger are being accepted." Because there's such a high rate of exclusion of African American jurors, many cases with a black defendant end up with a completely white jury. In a criminal case where the jury's verdict must be unanimous, this could cause a few problems. Naturally, racism is not going to occur in every jury; however, when there's a primarily Caucasian jury sitting for a case against an African American defendant, the likelihood of either a hung jury or a majority rule not in favor of the defendant increases.⁸

Along with the issue of juror discrimination on the basis of race, the exclusion of jurors based on sexual orientation is an evolving problem. Currently, the United States prohibits juror discrimination based on sex, race, color, religion, economic status and national origin, but fails to include sexual orientation or gender identity. In 2015, U.S. Representative Susan Davis of California introduced a bill to prohibit the exclusion of a juror on the basis of sexual orientation and gender identity at the federal level. This bill was called the Juror Non-Discrimination Act. Davis is quoted as saying: "Serving on a jury is one of America's most cherished civic duties It is unjust to exclude a particular group of people from participating in civil society

⁸ "Study: Blacks Routinely Excluded from Juries," NPR, 2010, <<http://www.npr.org/templates/story/story.php?storyId=127969511>>, accessed March 31, 2016.

because of whom they love"⁹ As of right now, only five of the fifty states protect members of the LGBT community from being excluded from jury service based on their sexual orientation. These states are California, Colorado, Oregon, Minnesota and Rhode Island, all of which extended the federal protections previously set in place to include sexual orientation but not gender identity.¹⁰

Jury service in the American justice system plays a very important role in the checks and balances of power, the participation of regular citizens in government, and the right of defendants to receive an impartial trial. By serving on a jury, citizens with diverse backgrounds are able to have direct involvement with the justice system. Nowadays, serving on a jury is seen as a civic duty with many responsibilities. Citizens are also able to ensure that individuals in authoritative positions do not abuse their power, much like those involved in the Zenger case.¹¹ When diverse individuals serve as jurors on a trial, they are protecting the rights of a defendant to have a fair and impartial jury. If there were no limits placed on whom the prosecution can and cannot exclude from the jury, the decreased level of diversity may negatively impact the verdict of a trial, thus jeopardizing the defendant's rights.

⁹ "Rep. Susan Davis Introduces Bill to Stop LGBT Discrimination for Jury Service," Congresswoman Susan Davis, 2015, < <https://susandavis.house.gov/media-center/press-releases/rep-susan-davis-introduces-bill-to-stop-lgbt-discrimination-for-jury>>, accessed March 31, 2016.

¹⁰ Schmuell Bushwick, "Excluding Gay Jurors after Windsor," American Bar Association, 2013, <<http://apps.americanbar.org/litigation/committees/lgbt/articles/fall2013-1113-excluding-gay-jurors-after-windsor.html>>, accessed March 31, 2016.

¹¹ "*Crown v. John Peter Zenger*."

Works Cited

- "7c. The Trial of John Peter Zenger." U.S. History Pre-Columbian to the New Millennium. Accessed March 31, 2016. <http://www.ushistory.org/us/7c.asp>.
- Alschuler, Albert, and Andrew G. Deiss. "A Brief History of the Criminal Jury in the United States." 61 *University of Chicago Law Review* (1994): 870-873. http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2010&context=journal_articles.
- Alschuler, Albert W. "Jury: Legal Aspects." *Encyclopedia of Crime and Justice*. N.p., n.d. Web. 31 Mar. 2016. <http://www.encyclopedia.com/doc/1G2-3403000150.html>.
- Bushwick, Schmuell. "Excluding Gay Jurors after Windsor." American Bar Association. 2013. Accessed March 31, 2016. <http://apps.americanbar.org/litigation/committees/lgbt/articles/fall2013-1113-excluding-gay-jurors-after-windsor.html>.
- "Crown V. John Peter Zenger." n.d. Historical Society of the New York Courts. Accessed March 31, 2016. <http://www.nycourts.gov/history/legal-history-new-york/legal-history-eras-01/history-new-york-legal-eras-crown-zenger.html>.
- "Rep. Susan Davis Introduces Bill to Stop LGBT Discrimination for Jury Service." Congresswoman Susan Davis. 2015. Accessed March 31, 2016. <https://susandavis.house.gov/media-center/press-releases/rep-susan-davis-introduces-bill-to-stop-lgbt-discrimination-for-jury>.
- "Study: Blacks Routinely Excluded from Juries." NPR. 2010. Accessed March 31 2016. <http://www.npr.org/templates/story/story.php?storyId=127969511>.