

How Fair is Our Jury System?

by Daniel Savitz

The right to a trial by jury has been a guaranteed constitutional right in the United States of America since the Constitution was first written. Article III, Section 2, of the U.S. Constitution states that, "The trial of all Crimes, except in Cases of Impeachment, shall be by Jury," and the Sixth Amendment verifies that right.¹ Since the founding fathers found the need to include it twice in the Constitution, it must be extremely important to have this right in America. However, whether or not juries are really necessary to a trial has been much debated in recent years. Regardless of which side of this debate you're on, the major complaint seems to be about bias. It is argued, that although the whole point of our jury system is to be completely impartial and unbiased, the system still has noticeable flaws that cause these problems to arise. To what extent do these flaws defeat the purpose of the jury to be impartial? And do those flaws have a sizeable impact on case outcomes? This essay will explore the racial and gender bias in our jury system, the positive impact that jury nullification has on that system, and how those aspects can tie together to create fair and effective juries.

It is no secret that the jury selection process has been ridiculed as biased against minority groups on the basis of race, gender and sexual preference in the past. An article from *The New York Times* states that when blacks were excluded from the jury by prosecutors, some of the reasons given were "[they] were young or old, single or divorced, religious or not, failed to make eye contact, lived in a poor part of town, had served in the military, had a hyphenated last name, displayed bad posture, were sullen, disrespectful or talkative, had long hair, wore a beard." These reasons obviously range from normal to ridiculous; the latter is notably so for the long-haired and bearded jurors who were sent packing. However, in this day and age, reasons like those are still being given by prosecutors. What's worse, these jury exclusions are being granted

¹ *U.S. Constitution*. Art. III, Sec. 2

without giving thought to racial discrimination. Shari Diamond, an expert on juries from the Northwestern University School of Law in Chicago, Illinois, stated, "Stupid reasons are O.K.," and added that ones in bad faith are not.² But can a reason be stupid and in bad faith at the same time? As lawyers, their job during jury selection is to try and get the largest edge possible for their client, which they can do by removing jurors who they believe will be biased against their client, and it's absolutely legal. If someone who is African American has had several run-ins with the law, as the prosecutor it is not unreasonable to believe that that person might not help your case as a juror. A prosecutor can say directly that their reason for dismissing that particular juror is because he could be asympathetic to the police, and this would be grounds for removal. The same reason can be applied to jurors of all other races who have had the same situations with the law. However, it is an all-too-common assumption that prosecutors make, that a juror is made out to be sympathetic to the defendants in criminal trials, solely on the basis of their race. It is making a mockery of this country's jury system that prosecutors can give such vague reasons for dismissing jurors, without any other evidence supporting this broad assumption, and those reasons are accepted by judges.

The removal of jurors from the jury on the basis of race was made unconstitutional in the case of *Batson v. Kentucky* (1986), when the U.S. Supreme Court ruled that doing so violated the defendant's Sixth Amendment right to an impartial jury, and the Fourteenth Amendment's Equal Protection Clause.³ So how severely does race affect criminal court cases? A study done on felony trials in Florida (specifically Lake and Sarasota counties) from 2000 to 2010 shows that the differences between juries that have at least one Black juror and all-White juries are quite significant. The data shows that juries that have all-White jurors convict Black defendants 81 percent of the time and convict White defendants 66 percent of the time. On the other hand, juries that include at least one Black juror convict Black defendants 71 percent of the time and

² New York Times (2015)

³ 476 U.S. 79 (1986)

convict White defendants 73 percent of the time.⁴ Here, the numbers show that having even one Black juror in a trial significantly changes the conviction rate. From this study, it's no wonder prosecutors try to exclude as many minorities as possible. However, there is another conclusion to be made from this statistic. Juries with at least one Black juror convicted Black and White defendants almost equally, as opposed to all-White juries which were shown to convict Black defendants about 16 percent more than White defendants. The goal of the jury is to render an impartial decision based on the facts and the law provided by the judge. However, this study shows that juries that are all-White are severely unlikely to be impartial. With at least one minority on the jury, the jury can be as close to perfect impartiality as possible. This study shows that jury race does indeed have a large impact on conviction rates. Therefore, excluding jurors by race is unfair, no matter what reasons the prosecutors come up with.

The presence of female jurors also has an effect on case outcomes to an extent. Even in the early days of females being on juries, several judges have praised the presence of women jurors, and most have said that female jurors bring passion and fairness to the jury system. In the 1920s, one judge from the Fourth Judicial District of Oregon said, "The quality of the women jurors has been very good. While many men seek to be excused from jury service, the contrary is true of the women. They seem to want to serve." Another judge in Wisconsin debunked the notion that female jurors are less able to set aside their emotions in a trial than men, stating, "I have tried a great number of criminal cases where women have sat with men on the juries, and in some instances I have found women who had courage and backbone enough to stand up and say that they did not feel they could give the defendant and the state a fair trial." A third opinion, this time from a jurist in Ohio in favor of female jurors (albeit sexually biased in and of itself), states, "The women upon the jury understand the woman litigant better than the men and are seldom swayed in their judgement by the personal charm or attractiveness of a woman plaintiff

⁴ The Quarterly Journal of Economics (2012)

or defendant, which often affects the verdict of male juries."⁵ This shows that women have historically been a positive influence on the outcome of cases, even when sexism in America was thriving. More recently, having women on juries has been shown to be very important with regard to specific cases, such as with a victim of Battered Women Syndrome, acts of self-defense against abusive partners or spouses, rape cases and murder cases. Having mixed-gender juries can significantly affect the outcome of cases – for the better. One account of a jury with six men and six women reads, ". . . jurors split evenly down the middle on the basis of sex in the 1994 murder trial of Erik Menendez for killing his parents, with the six men voting to convict the defendant of murder, while the six women wanted to convict the defendant of manslaughter. At trial, the defendant had testified that his father sexually abused both him and his older brother, causing them to fear for their lives."⁶ These arguments from past and present show that the presence of female jurors brings a perspective that is necessary for juries to be fair and impartial.

While there are unfair aspects of American juries and the jury selection process, there is one particular aspect of juries that is essential to promote fairness in the courtroom, and that is jury nullification. This is arguably the most powerful tool that juries can have, because it can allow the jury to put fairness and justice above the law and choose not to convict someone that, even though the law says they should be convicted, frankly, does not deserve it. The most well-known case of jury nullification was *Crown vs. John Peter Zenger* (1735). Zenger was being tried for writing seditious libel against then Governor of the Colony of New York, William Cosby, in the *New-York Weekly Journal*. Although Zenger was guilty of libel, the jury still delivered a non-guilty verdict, because they knew that Zenger had done nothing inherently wrong and did not deserve to be jailed.⁷ Another popular instance of jury nullification happened

⁵ Women Lawyer's Journal (1927)

⁶ William & Mary Journal of Women and the Law (2014)

⁷ *Crown v. John Peter Zenger* (1735)

in 1994, in the case against Jack Kevorkian for his assisted suicides (or "mercy killings").⁸ The jury was sympathetic to Kevorkian, because they knew that he was only doing what was best for his terminally ill patients by peacefully ending their lives. Even though it was against the law, the jury disregarded it, and justice was still served. The whole point of having the right to a trial by jury in the first place was so that the defendant would be able to have an impartial jury of his or her peers. In doing so, the jury was also given the right to judge both the facts and the law as it applies to criminal cases. Many juries are not instructed of this right today, and some juries are advised against it. However, all juries have this right, and it's one of the most important rights to have as jurors. Even though jury nullification was often used to obstruct justice, such as cases against white supremacists in southern states who have committed crimes against African Americans in the 1950s and 1960s (with all white juries), it has also been used for good, in many cases where the law seemed frivolous to the general public.⁹ It is, therefore, essential to combine jury nullification with even racial and gender inclusion to have true fairness in our jury system. The power that juries have is what distinguishes it from the judge; the judge's concern is with the law, what the law says, and how to interpret it. That is the job of the judge. On the other hand, the jury's job is to serve justice by rendering a fair, impartial verdict on the proceedings. If a law is unjust, a judge without a jury would most likely rule by the law, and there would be no justice served because someone who should not have been jailed was sentenced. In contrast, a jury of peers will be more sympathetic to the common man, and are more likely to identify that law as being unjust and unfair, resulting in a fair and just acquittal. On juries that are more diverse in race and gender, the right of jury nullification has the highest potential to do good for the American legal system. As a jury that is bestowed with a high standard of responsibility, we must ensure that unjust laws are put to rest. Therefore, it is essential that the United States holds on to this right, as it is one of only a few true powers that the common people possess.

⁸ *People v. Kevorkian* (1994)

⁹ Linder, D. (2001)

Overall, the jury system plays an extremely important role in our democracy. Just like voters decide the fate of political nominees, juries give ordinary people the power to decide an accused criminal's fate, to decide what is right and wrong, and the power to override the law in the name of doing good for society. The system, however, is in no way perfect. The American people must recognize these flaws and strive to fix them, either with stricter guidelines for who can be removed or perhaps removing peremptory challenges altogether. However, the jury system is extremely important and must be preserved for the sake of humanity. We must fully eliminate racial and gender exclusion from juries, while preserving and spreading knowledge of the right of jury nullification, to create a more efficient and fair jury system. It is a system that the United States of America cannot live without.

Works Cited

- Anwar, S., Bayer, P. and Hjalmarsson, R. "The Impact of Jury Race on Criminal Trials." *The Quarterly Journal of Economics* (Apr. 17, 2012).
- Batson v. Kentucky*, 476 U.S. 79 (1986).
- The Constitution of the United States, Article III, Section 2.
- Crown v. John Peter Zenger* (1735).
- King, C. "Procedurally Criminal: How Peremptory Challenges Create Unfair and Unrepresentative Single-Gender Juries." *William & Mary Journal of Women and the Law*. Vol. 21, Issue 1 (2014).
- Linder, D. "Jury Nullification." *University of Missouri at Kansas City* (2001).
- Liptak, A. "Exclusion of Blacks from Juries Raises Renewed Scrutiny." *The New York Times*. (Aug. 16, 2015)
- Matthews, B. "The Woman Juror." *Women Lawyer's Journal*. Vol. 15, No. 2 (Jan. 1927).
- People v. Kevorkian*, 22 Ill.447 Mich. 436, 527 N.W.2d 714 (1994).