Aspects of the Jury in Criminal Proceedings

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Abstract

Although a trial by jury happens in only a fraction of the total criminal cases, the jury is one of the most intriguing facets of criminal proceedings. This thesis intends to delve into the various aspects of the criminal jury's history, formulation, and processes. The different areas included are jury selection, elimination of bias, the jury's role in criminal trials, their deliberations, determining a verdict, and potential problems with the system that is currently in place. All trials can be expected to have foundational court procedures, readings of the law, opening statements and closing arguments, and testimonies, but it ultimately comes down to what the jury decides at the end that makes all of the aforementioned practices meaningful and necessary. While hysterical witnesses can sometimes bring unexpected occurrences to the trial, the unpredictability of the jury verdict can always leave both parties wondering which way the outcome could possibly go. This thesis intends to explore deeper into these concepts, explaining what goes into the jury process and its vital role in the pursuit for justice.

Keywords: law, jury, criminal, trial, duty, voir dire, deliberation

Aspects of the Jury in Criminal Proceedings

Introduction

An overwhelming amount of dismay typically resides in an everyday American citizen when they receive an envelope in the mail labeled Jury Summons notice. But, this should not be the case. All Americans want to feel safe and secure in their homes, and participating in required jury duty enables courts to ensure that such security is sought out, and done so fairly. A key component of the court system in the Anglo-American tradition is the jury trial (Grcic, 2008). The use of juries dates far back into history, and is still one of the most important structures of court today; however, in recent years, more and more criminal defendants have opted to or been coerced to enter into a plea bargain, being advised that the risk of going to trial is too great (Clarke, 2013). Although the percentage of criminal proceedings that go to trial with a jury has decreased, with many lawyers hoping for a quick plea bargain, the right to such a trial still remains and should be respected by all lawyers, regardless of their workload.

History of the Jury

The origins of a trial by jury go back to as far as ancient Greece and Rome, the Norman conquest of England in 1066, and the Magna Carta of 1215 (Grcic, 2008). In medieval times, it was customary for accused murderers and criminals to be burned at stake, stoned, drowned, or forced into battle with an opponent (Grcic, 2008). This outrageous and barbaric act of perceived justice must have persecuted countless, innocent people, since there was no third party or any unbiased people who had a part of the determining of guilt of these accused. All Americans would probably agree that the

aforementioned system of “justice” is not fair or just, but they still might groan at the notice of jury duty being required of them. The protocol and ways of the jury have much developed since then, including all races being allowed to serve, more interaction during trials with jury, allowing jurors to call their own witnesses, and specific jury members knowing the accused so they could provide relevant information towards the trial (Grcic, 2008). The Sixth Amendment provides for all of the accused the right to a speedy and public trial by an impartial jury (Orfield, 1962).

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense. (U.S. Constitution)

As stated earlier, a trial by jury has been traditionally one of the most important rights of the criminal defendant. Although there are some exceptions and further divisions of how cases get assigned certain kinds of juries, this paper will not go that far in depth. But, both in common law and today’s justice system, no jury trial is necessary on the plea of guilty, even in capital cases (Gilchrist, 2016).

Importance and Role of the Jury

Many view this task of jury service as a laboring chore, but the importance of this duty has a far-extending reach into the lives of not just attacked and victimized families,

but also innocent and accused people. The jury provides another form of checks and balances that goes between government and the public, giving Americans a sense of justice and direction. The jury trial places the real direction of society in the hands of the governed, or a portion of the governed, instead of leaving it solely under the authority of the Government, if the defendant so desires (Frampton, 2012). Barkow incorporates William Blackstone's words greatly when he states,

> Let it be again remembered, that delays, and little inconveniences in the forms of justice, are the price that all free nations must pay for their liberty in more substantial matter; that these inroads upon this sacred bulwark of the nation are fundamentally opposite to the spirit of our constitution; and that, though begun in trifles, the precedent may gradually increase and spread to the utter disuse of juries in questions of the utmost concern. (Barkow, 2003, p. 33)

Blackstone wanted to emphasize how important an impartial jury was in the design of our elaborate system of checks and balances, placing a check on the legislature and executive powers to ensure that no one received criminal punishment unless a group of ordinary citizens agreed (Barkow, 2003). The jury is important to this extent as they are to deliver a general verdict pronouncing whether the accused is guilty or not guilty (Barkow, 2003). They decide guilt on every issue, having to apply the law to the facts presented in the case (Barkow, 2003). Jury service, while not always desirable, should not be taken lightly and participants should always strive for impartiality, absent from all considerations of bias.

Before the Courtroom

Before any jury member reaches the courtroom for selection for a trial, there are preliminary matters that precede such events. Commonly known, a letter is sent summoning a particular resident of an area to come serve as a juror on a given date, time, and location (Jury Service, 2017). On arrival, a juror is typically to check in at a holding room for all the jurors summoned there for that day, and on further instruction to be escorted to a courtroom that needs a pool of potential jurors (Jury Service, 2017). No juror is to miss this date and time listed on their summons, for the court is allowed to fine and, in some cases, put someone in jail for missing or foregoing a summons to come to their jury systems (Jury Service, 2017). Some courts will allow called jurors to defer their service to a later date or let the court know of a traveling issue, which again will defer their service to when they are able (Jury Service, 2017).

In a trial jury, commonly known as a petit jury, a jury that hears a lawsuit or criminal prosecution, jurors can make up to $40 a day in the federal system. If the trial lasts longer than ten days, jurors can possibly make $50 a day, if selected (Jury Service, 2017). Jurors are reimbursed for things such as parking fees, reasonable traveling expenses, or lodging if required to stay overnight (Jury Service, 2017). Most working individuals never see such compensation though, as their employer requires them not to receive their check, for they still get paid their regular salary while serving jury duty. While in the jury holding room, a group of jurors may never be called, while some have to stay for a possible courtroom if jury selection excuses many of the called potential jurors (Jury Service, 2017).

Jury Selection

From as far back as the twelfth century, trials were decided by juries of twelve, while some recent considerations have moved for a smaller jury size, possibly reducing the chances of outlier jurors who obstruct convergence around a unanimous verdict, although smaller juries are not too common in criminal cases (Luppi & Parisi, 2013). While decreasing the size of juries sounds like it would reduce the court expenses and save on time, surprisingly, there are statistics that indicate no decrease in hung-jury rates, jurors who cannot agree on a verdict, in criminal courts, but actually an increase from 5.5 to 6.2 percent (Luppi & Parisi, 2013).

Jury selection happens through a process called *voir dire*, which allows attorneys to focus on having a conversation with the jurors and inspecting their nonverbal behavior (Wilhoit, 2005). *Voir dire* can start as soon as jury members walk into the room, with little gestures or behaviors such as what type of book they are reading, making a notable and selective decision for an attorney. For example, if someone is reading a murder mystery novel, they might be more inclined to be looking for some minuscule piece of evidence to make their decision, or if a romance novel, the juror may potentially be more emotional in their deciding (Wilhoit, 2005). Influences past books being read, such as television and crime shows have brought about what is termed the “CSI effect,” allegedly affecting jury deliberations and outcomes (Cole & Dioso-Villa, 2009). Apart from direct observation of jurors, it is critical for the attorney to mold the line of questioning to be comfortable, sometimes compassionate if need be, giving the prospective jurors in question their undivided attention as the jurors discuss their answers (Wilhoit, 2005).

While this is a time for attorneys to lay the groundwork for their theme of how they will argue the case, the opponent's *voir dire* examination will be doing the same, often causing one side to frame their line of questioning to pick out which jurors they do not want the other side to strike (Wilhoit, 2005). To strike a juror means simply to "remove him or her from the jury before a case begins. Some courts use 'remove' or another term instead of the word 'strike'" (Rottenstein, n.d.). There are potential issues to be found in this process, which will be discussed later, but it is understated when said that *voir dire* is one of the most important components of a jury trial- one that could make or break a desired outcome. Not asking the right questions could disguise a potential bias that a juror may have, which may result in a verdict an attorney might not want rendered.

The judge may begin *voir dire* with questions such as name, spouse, job, and location of residence, with this time allowing a judge to hear why a potential juror may not be able to serve (Losh, Wasserman, & Wasserman, 2000). This can pose as a time of much disheartenment as jurors hear that their excuse of missing work or lack of childcare will not be adequate to excuse them from their service (Losh, Wasserman, & Wasserman, 2000). While these decisions can be tough calls, some still try to take advantage of a judge's graciousness and inform the judge of different philosophical views they may have on imprisonment, government, and other related topics for being excused.

The prosecution and defense will evaluate details of the case and form questioning that will hopefully reveal any potential biases toward the victim or family represented, or even toward the government and prosecutor. During jury selection, many refer to it as *deselection* instead, as counsel will attempt to get to know each member of

the jury as well as possible, trying to get them to give honest information about themselves to maximize the effectiveness of challenges for cause and peremptory strikes, excusing a juror without offering reason (Blue, Hirschhorn, Leone, & Talton, 2007). These strikes are sacred to most attorneys, sometimes allowing "hunches" to dictate if they believe there is a hidden bias. This differs from a challenge for cause, in which a juror is dismissed for a specific reason to why they are unable to be fair, potentially for reasons such as relationships to either parties' persons, prior knowledge of the case, and other prejudices that are discovered (Morrison, 2014). An objection to such a peremptory challenge is allowed, commonly known as a Batson challenge in preventing jurors to be excused because of their race and color of skin, which is discussed later.

Many aspects of *voir dire* are related heavily to psychology and its concepts to get people to open up and talk about past experiences and character traits life has imprinted on them. Many people are not sure quite what to expect and are very intimidated by this process; thus, a good lawyer attempts to convey an attitude of acceptance and faith in their ability to handle the situation, starting the process just like a therapy session to get them to open up and talk about their feelings and life experiences (Blue, Hirschhorn, Leone, & Talton, 2007). Another psychology concept is that of reading body language. This might not always be a dependable way of deciphering honest answers from jury member prospects, but the constant struggling while answering questions, or shifting physical positions constantly with awkward voice fluctuations, might all be signs of lying or deceptive answers (Blue, Hirschhorn, Leone, & Talton, 2007). Authors of "Ferreting

Out the Lying Juror" speak to the whole *voir dire* process and psychological aspects when they end their article as follows:

> Psychology underlies all aspects of *voir dire*, just as it does life and relationships. Psychological factors influence the judge, lawyers, and jurors and determine how they will interact with one another. You can be more effective during *voir dire* by using psychology to predict each juror's reaction to your case and interactions with the other jurors. The most important psychological technique is to set up the *voir dire* environment so that jurors feel comfortable volunteering their true thoughts and feelings. Make no mistake about it: Judges who prohibit conduct that lets jurors speak freely, and lawyers who lack the skill to elicit honest answers, will find out how jurors really feel when they hear the verdict. (Blue, Hirschhorn, Leone, & Talton, 2007, p. 46)

Potential jury members should begin to feel at ease if the attorneys are doing their jobs correctly. These potential jury members should feel the impulses to give open and honest answers, not afraid of judgment or any repercussion for stating the way they feel towards a certain issue that is brought up. Part of their duty to protect the impartial system is to volunteer any information that might make them biased towards either party, actually serving the court more patriotically by *not* being a juror (Blue, Hirschhorn, Leone, & Talton, 2007).

Jury selection can last so long that lawyers may "drop their guard" in a sense, and not be as thorough, forgetting certain key questions they asked other jurors. This can allow partial and biased jurors to be admitted into the final jury selection, because the

attorneys simply just want to get on with the case and commence the trial. It is sufficient to say that this definitely can pose as an issue as the time and days spent questioning all of the other jurors could be wasted if just one biased jury member was not delved out by the questioning counsel and removed.

Jury Instructions

Once asked by the judge, counsel states that they are satisfied with the selected jury members, along with any alternate jurors that they may add in the case that something happens to one of the initial twelve jurors (Grcic, 2008). The judge then instructs the jury what they are to do, how they are to listen to the case, and what they shall do with their findings. The judge relays to them that the judge is the instructor of the law, and they are the finders of fact (Rubenstein, 2006). As previously mentioned, the jury used to have a much more interactive role in the trial process, but they have now been reduced to "fact-finding" and determining guilt, rather than deciding whether the defendant deserves a certain degree of punishment in most cases (Rubenstein, 2006). The judge will typically state that their duties in a criminal trial are to decide the facts by examining evidence and testimony presented during trial, then to apply the law, as received through instructions from the judge, reaching a verdict of guilty or not guilty (Hoffman, 2003).

Many who have served on a jury can attest to how confusing some jury instructions can be if the judge does not clearly state them. This can pose a major problem not just for the jury, but also the criminal defendant (Hoffman, 2003). Even if the judge is not speaking too quickly, many jury members do not actually hear and

understand what jury instructions consist of and are too afraid to ask for further clarification. These misunderstandings may arise from the syntax of the instructions, the way they are presented, and legal terminology, not the lack of competency in jurors (Kane, 1982). While legal terminology may seem like second nature to most lawyers and judges, it is quite difficult and foreign for many adults, even if they have obtained higher education and multiple degrees. A jury member should never be afraid to ask any questions regarding a rule, instruction, or statement and reading of law, ensuring they are being both fair and just in the decision they make regarding one's guilt. To guarantee this confusion does not happen, each side of counsel gets to submit what they believe the instructions should be as read to the jury, while the judge receives and makes the final decision of how to read and instruct the law to the jury, which is strategically used sometimes by telling the jury what must be proved (Kane, 2010).

It is common for a judge to inform the jury during jury instructions that they should use their everyday common sense in determining the validity of what is presented during witness testimony and the attorney's line of questioning. Jurors are the sole judges of credibility, and they must do a good job in lie detecting throughout the entirety of the trial (Fisher, 1997). No judge or expert witness is to say whether a witness has lied on the stand, so this recognition is the job of the jurors alone (Fisher, 1997). This task of detecting truthfulness from witnesses ties in to the fact-finding job they are ordered to accomplish, ensuring that the facts they are finding are truthful, reliable, and worthy of making the decision beyond any reasonable doubt.

The Commencement of Trial

The judge typically gives a layout of how the trial will go so the jury knows what is going on, along with the typical protocol. Once the trial initiates, counsel will begin with their opening statements. Opening statements are a persuasive monologue directed to the jury; it should not be considered as evidence, but rather what the attorney plans to present and prove to the jury during the trial (Chaemsaithong, 2014). Jurors can expect to have the lawyers grasp their attention by some histrionics and techniques to compel jurors to emotionally become attached to their side of the case, crafting the story from their point of view of what transpired in the case. Lawyers will want to convey passion and persuasion for their client, making eye contact and creating a narrative to follow as they take the jurors through what they will strive to prove (Chaemsaithong, 2014). Many lawyers starting out new in their career often use typed out statements and read their opening statements word for word, but memorizing and straying from paper or a tablet will prove to be a more desirable method and skill, while substantiating passion for the content of what they are presenting (McElhaney, 1990).

Especially in murder and rape trials, compassion and sympathy will be the emotions that the prosecution will try to evoke, using voice fluctuation, drawing analogies between the distraught families' feelings and their own if a similar situation were to happen to them and their children (McElhaney, 1990). This is not unethical by any means, but rather a way for the prosecution to try to put the jury members in the victim's shoes, tugging on their heartstrings as they take the jury through the horrific and traumatic events.

In some jurisdictions, jury members are sometimes allowed to take notes if the trial is projected to last a lengthy time period or have many details that are essential for remembering in deriving a correct verdict (Horowitz & ForsterLee, 2001). There have been controversial studies that prove that note taking both helps retention, recollection, and comprehension of what was said during the trial, but also showed that it can be a distraction by jurors taking too copious notes, not paying attention to the witnesses' expressions and nonverbal cues (Horowitz & ForsterLee, 2001). Studies have shown that note-taking juries did appear to function at a higher level with respect to recognition, but some missed key information while they were notetaking (Horowitz & ForsterLee, 2001). Another advantage of jury notetaking was that of increased juror satisfaction with the trial and the verdict post-trial (Heuer & Penrod, 1994).

Some disadvantages definitely can materialize with notetaking, such as overemphasizing the evidence that made it onto paper, at the expense of evidence that they did not record and reproduce, resulting in a distorted view of the case (Heuer & Penrod, 1994). Additionally, some jurors cannot keep pace with the trial, being more likely to miss what is said while recording what has already been heard (Heuer & Penrod, 1994). Jurors' notetaking has also been proven to distract other jurors, observing that a juror hurriedly scribbling notes, likely diverting the attention of other jurors, possibly causing another to take more heavily a point that they otherwise would not have taken into such great account (Heuer & Penrod, 1994). As mentioned before, notetaking can be essential in some criminal trials, especially lengthy and information-heavy cases, but it

will be evaluated and either advised, discouraged, or prohibited by the judge's case-by-case analytical decision of its necessity (Horowitz & ForsterLee, 2001).

Witnesses and Evidence

Witnesses are called to the stand to testify for both the prosecution and defense. Both counsels call their own witnesses, then are able to cross-examine the other party's witnesses. As stated before, the jury is instructed to use their common sense to decipher what one thinks to be truth or deceit. Oftentimes, lawyers may prepare their called witnesses to use persuasion techniques, avoiding any use of answers with a bare monotone voice or lack of sympathy (Cooper, Bennett, & Sukel, 1996). Research done on persuasion in the courtroom has suggested that jurors, while hearing evidence, may rely on peripheral cues and engage in heuristic processing when they might not understand the background of what is being discussed (Cooper, Bennett, & Sukel, 1996). If the evidence is scientifically complex, jurors might also rely on the credentials of the expert to determine the validity of this testimony, rather than the content of the message (Cooper, Bennett, & Sukel, 1996). This could serve as a disadvantage or quite the opposite, depending on which attorney's evidence is misunderstood. A witness's testimony will not seem as valid if the witness is constantly stuttering and rephrasing their answers, confusing answers they previously stated. Therefore, lawyers will most likely try to go over their line of questioning with each witness before the trial starts, so they will be prepared, knowing that the confusion of just one answer can make the jury abrogate their entire testimony (Lewis, 2010). Jury members also will need to pay close attention to how both counsel cross-examine the other's witnesses, trying to make them

contradict themselves. They know if they can get the witness to confuse their answers, they can undermine what that person will say in the future and invalidate everything they have said up to that point (Lewis, 2010).

When evidence is presented at a trial, it will sometimes be allowed to be passed around by the jury if there are pictures or paper for visual aid. Both parties will present evidence that is helpful to make their case more convincing. The jury hears and weighs the evidence to determine and conclude if it truly satisfies the charged criminal offenses beyond a reasonable doubt (Grcic, 2008). Throughout the trial, the jury will hear phrases uttered by opposing counsel, such as "Objection!" These statements challenge the questions asked or evidence offered, and are directed toward the judge, who will decide if the challenge is sustained, prohibiting the evidence, which follows the jury being told to disregard what they have heard. If the judge overrules the objection, the question or evidence many proceed (Wistrich, Guthrie, & Rachlinski, 2005). For a jury that is typically unaware and unfamiliar with the trial process, the attorneys can purposely misstate questions and statements that are not allowed in court, knowing that the opposing counsel will object, and the jury might still remember what was said (Wistrich, Guthrie, & Rachlinski, 2005). Although the jury is to disregard the statements, the attorneys know that such statements and objections actually emphasize the point further, intriguing the jury to essentially take whatever was said into more consideration (Wistrich, Guthrie, & Rachlinski, 2005). This can be a question of ethical practices for a lawyer, but some are willing to act in such ways, risking that the jury will fall into the trap of questioning if what the lawyer said was accurate, even though there might not

have been enough evidence or grounds to state the question (Wistrich, Guthrie, & Rachlinski, 2005). This may be dangerous ground to tread on for lawyers ignoring the rules of court, but the opposing counsel can only hope that such actions will result in a distasteful view of that lawyer from the jury and judge as well.

Jury Deliberation

After all of the evidence is presented and the last witness is called, the attorneys will then deliver closing arguments, attempting to craftily synthesize trial information and remind jurors of evidence deemed important to an advocate's case with more animation and intense speech (Spiecker & Worthington, 2003). Closing arguments can be very helpful in reminding and putting into context everything the jury has heard while analyzing the trial's evidence in order to reach a "just and reasonable conclusion based on evidence alone," as the judge will instruct (Spiecker & Worthington, 2003). Attorneys view closings as their final opportunity to convince the jury, matching the evidence and the law in such a way that they, and their clients, win the case (Spiecker & Worthington, 2003). After closing arguments are completed, it then all lies with the jury to determine the guilt of the defendant. Jury members have sat through hours to potentially weeks of evidence and witness testimonies, and now are responsible for jury deliberation.

The jury's goal, as mentioned before, is fact-finding, fully reflecting key American values of equality, opportunity, and fair treatment for all citizens (Cornwell & Hans, 2011). Full jury participation is required for good deliberation, using life's personal and social experiences, partnered with knowledge from the variety of minds in the jury from all segments of a community (Cornwell & Hans, 2011). Fully participative juries

are important in ensuring that relevant facts and thoughts are exchanged, making verdicts more accurate reflections of the evidence presented along with the community's knowledge and perspectives, free from any rising biases (Cornwell & Hans, 2011). Successful juries are diverse jurors who are all participating, leading to more accurate fact-finding and instilling public confidence in the legal system (Cornwell & Hans, 2011).

One way to assist in juror participation is by having a good foreperson, who is essentially the leader of the jury group. The job of the foreperson, or any other juror who wants to acknowledge an issue, is to ensure the quieter members are speaking up with their opinion, while the dominating jurors are listening as well (Marder, 1987). Jurors are allowed to call out and report a juror acting with bias or demeaning of other jurors, whether based on gender, race, or opinion (Marder, 1987). Each jury member, especially the foreperson, should ensure that the deliberation is not verdict-driven (Marder, 1987). While this may sound desirable, evidence shows quite the opposite. Verdict-driven deliberations involve fewer participants, each side- guilty or not guilty, rather than every individual, articulating their view (Marder, 1987). This style of deliberating often results in both sides unwilling to relent, ending with hung juries (Marder, 1987). The contrasting and correct kind of deliberating is evidence-driven deliberation, which relies on open communication so that all members of the jury feel that they have had a fair chance to influence the decision and weigh their opinions (Marder, 1987).

In today's technologically advanced generation, technology has seemingly permeated every single industry and facet of culture. Technology innovations are steadily

being introduced and proposed for judicial operations; however, the sacred jury deliberation process has remained untouched, for the most part, in the past for the fear that it might cause unfair weight on evidence visibly shown for recollection to the jury, disregarding other cues remembered (Tait & Rossner, 2016). Juries are tasked with absorbing weeks, sometimes months of testimony, which they have no means of recording or assimilating, except for what they can recall; therefore, the argument for more technology in the jury room could greatly benefit the thoroughness of the deliberation (Tait & Rossner, 2016). Many argue that jury members could benefit from a structured process facilitated by technology in the jury deliberation room, but there are also many naysayers who feel that there could be input of bias even within a pre-set technological system, again overemphasizing the technology's displays (Tait & Rossner, 2016). This development of technology in the deliberation room might never be addressed to the point of full support and implementation for the years of tests, research, and developments that would have to take place, but technology is greatly apart of our current society, which would most likely be helpful for jury recollection and deliberation.

Oftentimes in jury deliberations, jurors may have questions that they are allowed to ask for further instruction from the judge (ABA, n.d.). Judges are allowed to choose their own method of communication with the jurors, but it is typically in presence of the lawyers (ABA, n.d.). Along with raising questions, some jurors may be approached by others not in the jury pool for questions or even small talk. The bailiff is required to maintain the absence of communication with all jury members, although this problem may arise outside the courtroom as well. Jury sequestering is also a common practice

when trying to prevent outside influences and communication, which is especially crucial, in which the jury sequestered for the entire trial (Antonio, 2008).

The Verdict

The court usually provides the jury with written forms of all possible verdicts, so when a decision is reached, the jury has to only choose the proper verdict form (ABA, n.d.). In criminal cases, the verdict is required to be unanimous, meaning every single juror must agree to the verdict, free from pressures of other aggravated or impatient jury members, reducing the likelihood of convicting an innocent person (Coughlan, 2000). If the jury cannot come to a decision by the end of the day, the jurors may be sequestered, or housed in a hotel and secluded from all contact with other people, newspapers, and media of any sort (ABA, n.d.). As tempting as it might seem, jurors are instructed not to look up news reports or any other information that was not presented in trial, nor discuss the case further outside the deliberation room (ABA, n.d.). After all the time spent during the trial and deliberation, sometimes the jury still cannot come to a conclusive agreement for the verdict. This disagreement among jurors results in what is called a hung jury, leading to a mistrial (ABA, n.d.). In this instance, the case will be tried again at a later date in front of a new jury, or the government or state may choose not to pursue the case further with no subsequent trial. (ABA, n.d.).

After reaching a decision, the jury notifies the bailiff, who then notifies the judge (ABA, n.d.). As all of the participants reconvene in the courtroom, the decision is announced by either the foreperson of the jury or the court clerk (ABA, n.d.). For criminal cases, the verdict can only be guilty or not guilty, sometimes followed with a

lawyer calling for a poll of the jury. This request of polling typically ensues from the losing party, in which each juror will be asked if he or she agreed with the decision that was announced (ABA, n.d.). This allows the court to know that this was the actual verdict of the jury and not just the pressures of the more forceful and dominating jurors. After this decision is read and accepted by the court, the jury is dismissed, and the trial is over (ABA, n.d.).

In some instances, juries still acquit a defendant even when the evidence indicates that the defendant has violated the law, a highly controversial phenomenon called jury nullification (Rubenstein, 2006). This debated topic and occurrence continues to rise in popularity and discussion as prosecutors especially desire and expect a conviction when they have fully proven their case, regardless of the jurors' opinions of seemingly unjust laws (McKnight, 2013). Federal courts universally condemn jury nullification, relying on precedent that nullification exceeds the authority of the jury (Rubenstein, 2006). When this occurs, the jury is believing that the application of the law to a certain case is unjust in some way. There are typically three classifications of jury nullification, giving reason to the jurors' decision. Rubenstein quotes those three types of nullification as follows:

> "Classical" jury nullification is when the jury believes that the law is unjust, such as when a jury refuses to convict defendants for minor drug offenses. Classical nullification can also occur where the jury believes the law is just, but the punishment is excessive. "As applied" jury nullification happens when the jury does not object to the law on its face, but acquits because it believes it is being unjustly applied- for instance, when a jury refuses to convict campus protestors of

> trespass. “Symbolic” nullification occurs when the jury does not object to the law or its application, but acquits to send a political message to the executive or legislative apparatus or to society. (Rubenstein, 2006, p. 962)

While some argue that jury nullification protects the core principles embodied by the right to a jury trial, others believe that not all juries are capable of being accurate and fair representatives of all Americans who believe the executive power should maintain that right to acquit such defendants. The jury’s true role is to essentially take away discretion and political opinions, which jury nullification fully embraces and would serve as a caveat to express such desires. Regardless of someone’s thinking that one or more laws are unjust, it is still outside the purview of the jury (Rubenstein, 2006).

The sad truth is that many juries become distressed with the hours of deliberating, overcome with hunger, impatience, and frustration. This atmosphere becomes a hostile environment, especially for differing opinions and disagreement over content and interpretation of evidence and testimony heard. All of this culminates in jury members going against the instructions given to them, bringing in outside evidence, completely demeaning the whole premise of jury duty (Radhakant & Diskin, 2013). This can make the conflicting opinions about the verdict change to a unanimous decision, possibly being persuaded by biased news or information, unfair to the losing side of the case (Radhakant & Diskin, 2013). Media with the various outlets of newspapers, TV, and social media blasts can get facts wrong based on a “reliable” source, when people tweeting or posting are just doing so to add to the chaos and draw attention to themselves (Radhakant & Diskin, 2013). Other outside research or information shared with the jury will influence

their decision, whether or not it was intentional. Some members of the public may try to get in comments to jurors during jury breaks, approaching them in parking lots, adding them on social media, or trying to influence their decision (Radhakant & Diskin, 2013). In the case that this happens, and it is proved that a jury's verdict has been affected by improper influences, the juror may be excused or the verdict can be impeached, meaning that it cannot be trusted and is set aside (Lawsky 1994).

Sadly, sometimes these unfair prejudices and rule breaks are not uncovered, even after the verdict results in a guilty or not-guilty outcome. This has occurred before when a jury member lied during jury selection about a past experience of being abused as a child, but revealed the experience during jury deliberation, along with another jury member bringing in a magazine article on pedophilia, which coincided with the charges against defendant, none of which was part of evidence presented at trial (Lawsky, 1994). The interviewing of jurors afterward is sometimes not allowed, depending on jurisdiction, making this improper conduct never discovered, possibly sending an innocent person to prison (Lawsky, 1994). There are many limits on interviewing jury members post-trial; therefore, impeachment can be extremely difficult to prove for attorneys (Lawsky, 1994). This has historically been undesirable for courts to pursue, but the following requirements must be in place for impeachment to be considered:

> In order to impeach a verdict, the motion for a new trial must establish that some extraneous information tainted the jury deliberations or that some improper juror conduct took place. This threshold showing can be a formidable barrier. Many courts require that the evidence shown be at least "strong," "substantial," and

> "specific." Once this threshold has been made, the defendant is entitled to a hearing to determine whether the alleged impropriety prejudiced the jury. At the hearing, the defendant generally has the burden of proving prejudice. However, in extreme cases, prejudice is presumed and the burden shifts to the government to show that the impropriety constituted harmless error. (Lawsky, 1994, p. 1953)

Protecting the secrecy of jury deliberations is very important, but only to the extent that obstruction of justice and jury misconduct does not occur. This should always have limitations, and the harassment of jurors should always be avoided with their protection guaranteed post-trial (Lawsky, 1994).

Post Trial

Along with the aforementioned limitations on how much contact can be made to the jurors after a trial, it is not always as tranquil as each juror going home and picking up where they left off. Many jurors post-trial may struggle with anxiety, depression, night terrors, and other stressful, post-traumatic psychological problems. This has been shown evident in many jurors experiencing significant stress and suffering from extreme emotional setbacks (Antonio, 2008). There is also evidence that shows differences in these experiences based on gender differences, along with whether these post-service jurors lived alone, especially those who served on a capital punishment, kidnapping, or sexual assault case (Antonio, 2008). Specific findings in research showed that "females specifically mentioned crying and relational problems more than males overall, while female jurors from death cases noted suffering adverse long-term effects, including often dreaming about the defendant seeking revenge on them," (Antonio, 2008, p. 288).

Regardless of these differentiating results, it is still proved that both genders experience some post-trial effects and emotional setbacks (Antonio, 2008).

Another unfortunate and saddening finding was that of loneliness and isolation discovered from the juror's narratives post-trial. Oftentimes in a trial, jurors have to be sequestered, put up in a hotel during the trial, including not being able to see family and friends, absent from communication with anyone (Antonio, 2008). They often get put with random roommates and only have newspapers with most of the clippings cut out of it, no TV, praying they get along with their new temporary roommate (Antonio, 2008). Some more extreme cases involved not just depressing thoughts or nightmares, but elevated uses of prescription drugs, alcohol, or smoking more after the trial is over (Antonio, 2008).

Problems with Jury and its Process

As necessary and common as jury service is, just like everything else in this world, it has its faults. Abuses of its true functions and faults in its administration have crept in, and little to nothing has been done to remedy some of them. A negotiated and controversial issue of the jury is in its passivity. Many argue that the jury should not only be able to ask questions from the witnesses during the trial at appropriate times, but also call its own witnesses, as they relish on the information presented to them (Grcic, 2008). This has not been attempted to be pursued due to the overwhelmingly amount of research and strategizing this would take. The orchestration of such involvement of jury members could have very negative side effects financially, logistically, and timely. Jury members' constant questions, even if just allowed one per member, could extend the time in the

courtroom, substantially prolonging the trial, therefore rising the financial obligations of the court, which could be hundreds to thousands of dollars (Staff, 2010). With this implementation of a system, there is a lot of subjectivity that would have to be a key driving factor, like who would determine adequate need for the proper timing of a question or the relevance to such questions? It would take years to develop and modify such a system, which when used in an actual trial, would reveal even more changes to be made (Staff, 2010).

To refute the complications that would arise, the argument that freedom implies equality relates to the jurors' apparent representation of the community, which is what would constitute such undesired passive role of the current jury (Grcic, 2008). Also, with the jury being from such diverse backgrounds and social statuses, the argument for the right of juries to ask questions would increase the intelligibility of the trial to the jury and others involved in the trial, such as the accused and the public (Grcic, 2008). While the proponents of more jury participation believe that a more active jury would improve society in general, becoming more knowledgeable and active in civic affairs, there is still strong evidence as to why such a new system would cause confusion and chaos in the courtroom (Grcic, 2008).

Another problem with today's jury is that of politics reigning supreme over impartiality. Including political agendas and opinions in a trial is not only a rising problem, but also supported by many (Frampton, 2012). It is argued that the jury can change the course and direction of society in the hands of the governed, instead of leaving it solely under the authority of the government (Frampton, 2012). While this may

be accurate, this would put government in the hands of the judiciary, also possibly allowing a jury member to disguise a political agenda during jury selection, then reveal and push it on to the verdict, changing the entire outcome of the trial, for example, one who thinks it is unfathomable and despicable to give someone the death sentence, or sentence them to life in prison. Unfortunately, other biases can be revealed, such as discrimination of race, color, gender, and beliefs of a certain defendant, witness, or even prosecutor.

Discrimination for and against minorities in court has overwhelming data to not only prove its existence, but also explain its rationale for that which is done on purpose and by default (Stevenson, 2010). In Batson v. Kentucky, 476 U.S. 79 (1986), the Supreme Court ruled that jurors cannot be excluded on the basis of race (Stevenson, 2010). Minorities have much attention in criminal trials, not only as defendant or prosecutor, but in the jury box. If a defendant is of African-American descent, some defense lawyers will make sure that there is a variety of minorities included in the jury selection process (Stevenson, 2010). While *voir dire* attempts to eliminate any obvious or subtle innuendoes of discrimination or racism, sometimes it is not detected (Stevenson, 2010). Research shows that minority representation in the jury box is not necessary for impartiality, but there is unfortunately still evidence of racial bias in jury selection (Stevenson, 2010).

While it has been discussed that both parties' lawyers are attempting to rule out unfair bias in the jury selection process, it can be observed in *voir dire* that lawyers themselves can be sometimes be secretly quite biased in seeking potential jurors (Wilhoit,

2005). Simple and keen observations of jurors is not bias, but rather a tactic to ensure a lawyer does not select someone who is unfairly prejudiced for or against something. Unfortunately, some lawyers may use this opportunity to unjustly seek out jurors who do hold an unfair bias, yet a bias that would assist in their desired verdict (Nolan, 1990). In this situation, it is not ethical or appropriate that any lawyer should strive to find jury members who would not try the defendant fairly. This is not only true for the defense lawyers, but also for the prosecution. They should never attempt to find a biased juror in their favor as well, showing signs of racism towards the defendant's color or even factors like their occupation (Nolan, 1990). While all bias cannot be detected and eliminated, lawyers should still remain ethical and moral in their *voir dire* and selection of jurors, being careful of crossing that line of finding jurors who may unjustly decide their verdict.

Conclusion

Lawyers observe the jury members from the moment they walk into the room, what they're wearing, who they sit and talk to, and any other cues that could illuminate a piece of information about who that potential juror is as a person. Many jurors are intimidated by this process and certain strategies, but they should rest assured that there are no wrong answers to the questions they are asked, but rather just a favorability of which type of person each lawyer is looking for in their particular trial. It is stated, "In the ultimate analysis, only the jury can strip a man of his liberty of life" (Rubenstein, 2006, p. 959). Lawyers are not scared of potentially offending someone by excusing someone from the jury box, because they know the previous quote to hold such

sustenance. The wrong juror could potentially give their client the least desirable outcome possible.

While there can be many negotiations during a criminal trial and deliberation among jury members, it is a juror's responsibility to find the facts, listen to their instructions from the judge, take the law they are given, and apply the law to the facts they find, to render a fair, impartial, and earnest verdict. While many leave with a heavy heart from the happenings outlined in the trial in general, or with anxiety from the heat of dispute, discussion, and sometimes bad blood between some lawyers, they can leave knowing they served their state or nation well and fulfilled their duty as citizens of this great country, proud that they sought out justice and closure for the families involved. This paper hopefully not just sheds light on the jury process, but also encourages and convicts future potential jurors to take their duty seriously and satisfactorily, not begrudgingly because of the time it takes to serve. All information heard by the jury has been screened and poured over long before it ever reaches their ears, but all of the case is directed toward those twelve people, as the fate of someone's life is often at hand. Phillip Finch (1992) once said,

> A criminal trial is not a search for truth. It is much too circumscribed for that. Rather, a trial is a formalized contest for the hearts and minds of a panel of twelve. It is a quest for a verdict in which information is selected and screened before it is allowed to reach jurors. (Finch, 1992, p. 13)

This is a service and duty not to be taken lightly.

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