

PART II

ISSUES CONFRONTING THE JURY TODAY

Unanimous Verdicts

Should someone be convicted of a crime if the jury cannot reach a unanimous verdict? Traditionally, juries had to reach a unanimous verdict to convict the defendant in a criminal trial. If the jurors were unable to reach a unanimous verdict, the judge would declare a mistrial due to a “hung jury.” But in 1972, the U.S. Supreme Court held that a defendant could be convicted if as few as nine of twelve jurors voted for a guilty verdict.

Although the Court’s decision opened the possibility for less-than-unanimous verdicts, most states still require unanimous verdicts to convict a criminal defendant. Only Louisiana and Oregon permit non-unanimous verdicts in felony trials, and Oklahoma permits them only in misdemeanor trials. All states require unanimous verdicts for capital crimes—those punishable by death. Federal law requires unanimous verdicts for all criminal trials, but there is no constitutional right to unanimity.

Questions:

- The Supreme Court has reasoned that the primary purpose of a jury is to prevent government oppression of the accused. In other words, the government must submit its decision to prosecute someone for a crime to the commonsense judgment of a jury chosen from the community. Do you think this purpose has been served if most, but not all, jurors agree with the government’s decision to prosecute? How many jurors do you think need to agree on a verdict to adequately protect the accused’s interests?
- One objection to the Court’s ruling on nonunanimous verdicts is that it enables a majority of jurors to ignore the voice of a minority. In response, the Court has said that the right to participate on a jury is only a right to participate in the overall legal process. No single representative of a minority group should have the right to block a conviction with a dissenting vote. Do you agree or disagree?

Exemptions from Service

Many courts today are trying to eliminate exemptions from service to ensure that juries are drawn from a truly representative cross section of the community. Courts realize that serving on a jury can pose unique hardships for some individuals. Primary caregivers for young children, for example, might face real difficulties if called to serve on a trial jury, especially if the trial lasts more than a few days. The goal of universal jury service, however, means that no one is automatically exempted from service. Instead, someone seeking to be excused must convince the court that his or her service as a juror will create a unique hardship.



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Should all jurors have to agree on a guilty verdict?

DIALOGUE ON THE AMERICAN JURY: WE THE PEOPLE IN ACTION

The goal of universal jury service means that no one is automatically exempted from service.

Questions:

Consider the following groups. Some courts have exempted members of these groups from jury service. What do you think justifies the exemption for members of these groups? Do you think any of these exemptions should be maintained? Why or why not?

- Lawyers and judges
- Students currently enrolled in high school or college courses and their teachers
- Persons caring for young children
- Persons over 70 years of age
- Law enforcement officers (police officers, prison guards, parole officers)
- Persons who have been convicted of a felony
- Doctors, nurses, and other medical practitioners

Terrorism and Trial by Jury

The threat of terrorism in our society today has put a new twist on the old problem of providing trial by jury for individuals suspected of crimes that truly threaten a community. Although legislation passed since September 11, 2001, permits the trial of certain suspected terrorists in special tribunals, other terrorism cases have and will continue to be tried in our regular criminal court system.

Some jurors who have already participated in terrorism trials, both in the United States and the United Kingdom, have reported that they felt threatened and fearful of retaliation by terrorist groups. Such fears could make a juror less likely to convict, even if the juror believed the charges against the defendant had been proven.

In the past, cases involving organized crime or particularly dangerous criminals have also raised fears of retaliation. These fears have been at least partially addressed by adding security for jurors at the courthouse and by having the jurors serve anonymously. When jurors serve anonymously,

general information such as their ages and occupations is disclosed, but not specific information such as names and addresses.

Some have argued that measures to increase jurors' security might have a negative effect on the defendant's right to a fair trial by an impartial jury. Defendants have the right, for example, to challenge potential jurors who might be biased against them. How effectively can the suspect challenge potential jurors if their identities are not fully known to the defendant? And might the use of these security measures adversely affect the jury's perception of the defendant?

Defendants in terrorism trials have additional concerns. In a recent trial, four Muslim defendants requested a waiver of their constitutional right to trial by jury. They argued that they could not get a fair trial from a northern Virginia jury. A lawyer representing one of the defendants said that the impact of the September 11 attack on the Pentagon, also located in northern Virginia, would bias any local jury against the defendants. Law professor Neil Vidmar has argued that "after September 11, all Americans are victims or potential victims of terrorists." Typically, of course, the victim of a crime does not sit in judgment of the suspected criminal.



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A figure representing organized crime intimidates a 19th-century jury in New Orleans.

DIALOGUE ON THE AMERICAN JURY: WE THE PEOPLE IN ACTION

Questions:

- Do you think the fears associated with a terrorism trial are different from those that might be associated with the trial of an organized crime leader or dangerous criminal? Why or why not? What impact do you think measures similar to those described above (tight courtroom security and juror anonymity) would have on a suspected terrorist's right to a fair and impartial trial? How much information about a potential juror is necessary to determine whether he or she might be biased?
- Do you agree with the statement that all Americans are victims or potential victims of terrorists? Why or why not? Do you think that the feeling of potential victimization would unfairly prejudice a juror against the defendant in a terrorism trial?
- Do you think a criminal defendant should be able to waive a jury and have his or her case heard only by a judge, without the consent of the prosecutor?

Punitive Damages

In a civil trial, the jury's role is often to decide whether a plaintiff deserves damages for an injury caused by a defendant's actions. If the jury finds that damages are due, it will award the plaintiff compensatory damages. The purpose of compensatory damages is to compensate, or make up, for the injury that the defendant caused. Damages are typically a monetary award that the defendant must pay to the plaintiff.

Punitive damages are meant to punish the defendant's wrongdoing and set an example to deter the same conduct by others in the future.

In most cases, a defendant does not mean to cause an injury. The injury results from a mistake or carelessness, not from a desire to harm someone else. But sometimes a plaintiff also claims that the defendant's conduct is reprehensible—in other words, that the defendant has acted with reckless disregard of others. In these cases, a jury is asked

to decide whether the defendant's conduct was in fact reprehensible and, if so, to award punitive damages in addition to compensatory damages. Punitive damages (also known as exemplary damages) are meant to punish the defendant's wrongdoing and set an example to deter the same conduct by others in the future.

When awarded by juries, punitive damage amounts are often very high. They have occasionally been many times greater than the amount of compensatory damages. In recent years, the U.S. Supreme Court has made several rulings that rejected what it decided were excessive punitive damage awards. In these cases, the Court has defined some guidelines for evaluating punitive damage awards. These include:

- The "degree of reprehensibility" of the defendant's wrongdoing. In other words, the jury should consider how irresponsible or mean-spirited the defendant was in causing the injury.
- The difference between the plaintiff's actual injury and the amount of the punitive damages award. As the ratio of punitive damages to compensatory damages increases, so too does the possibility that the punitive damage award is excessive.
- The difference between the punitive damage award in a particular case and the penalty that is typically imposed in similar cases. For example, if the defendant's conduct was also potentially subject to a fine, what would have been the amount of the fine?

Questions

- If a jury awards punitive damages, those damages are paid to the plaintiff. If the plaintiff has already received damages to compensate for an injury, why should the plaintiff receive an additional award? Should punitive damages go to the state instead?
- The Supreme Court has provided some guidelines for evaluating whether punitive damages are excessive. If you were on a jury that was asked to consider punitive damages, what other factors do you think would influence your decision on the amount of damages you would make the defendant pay?