

PART III

LANDMARK RULINGS ON THE JURY

The Independence of the Jury: *Bushell's Case*

Imagine that you were locked up in a room without food and water and then fined and imprisoned because you refused, as a juror, to convict the defendants in a criminal case. This was the fate of Edward Bushell, a seventeenth-century resident of London, England.

The British Parliament had passed a law known as the Conventicle Act. This Act banned public assemblies of members of “nonconforming” religious groups. Nonconforming religions were those that differed from the doctrines of England’s established church, the Church of England.

William Penn (who later founded Pennsylvania) and William Mead organized an assembly of fellow Quakers in London to challenge the Conventicle Act. Penn and Mead were arrested and put on trial. At the conclusion of their trial, the jury refused to convict. The judge ordered the jurors locked in a room without food and water, and still they refused. Finally, the judge ordered the jurors fined for their contempt against the king. Those who refused to pay, including Edward Bushell, were imprisoned in Newgate Prison.

Bushell appealed to England’s Court of Common Pleas. He found relief in the opinion of the court’s Chief Justice, John Vaughan. Justice Vaughan’s opinion declared that trial by jury makes no sense if the jurors do not have the independence to reach their verdict, based upon their own understanding of the facts, free from coercion by the judge. *Bushell's Case*, decided in 1670, became a landmark decision affirming the independence of juries within the Anglo-American legal tradition.

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Questions

- In our legal system today, a party in a civil case can request a judgment notwithstanding the verdict (also known as a judgment as a matter of law) after the jury has delivered its verdict. The judge can reverse the jury’s verdict if the judge finds that the verdict had no factual basis. But if a jury acquits a defendant in a criminal case, the verdict cannot be reversed. Why is it important that a jury’s decision to acquit a criminal defendant be left undisturbed? Why is this less important in civil cases?
- Sometimes, as was apparently true in *Bushell's Case*, a juror might disagree with the law that he or she is instructed to apply. What do you think a juror should do in such a situation?

Juries and High-Profile Cases: *Sheppard v. Maxwell*

On the morning of July 4, 1954, Marilyn Sheppard, the pregnant wife of a prominent physician, was found bludgeoned to death in her suburban Cleveland home. The husband, Dr. Sam Sheppard, immediately became the prime suspect and a media frenzy erupted.

Sheppard was examined for hours, without counsel, in a televised inquest held in a school auditorium. Potential evidence and the question of Sheppard’s guilt received intense media scrutiny. Newspapers released the names and addresses of prospective jurors, who received letters and telephone calls from members of the public. All but one of the jurors selected to serve stated that they had followed coverage of the case in the local media.

At trial, a television station was allowed to set up broadcasting facilities in the room next to the jury deliberation room. Photographs were taken of the jury in their box at trial and were published in the newspapers while the trial was going

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Television cameramen line up outside the courthouse during the O.J. Simpson trial.

on. When the jury visited the murder scene at the Sheppard home, a representative of the news media was allowed to accompany them. Other members of the press, who received advance notice of the visit, surrounded the Sheppard home.

The jury was not sequestered during trial (sequestered juries are not allowed contact with the public). They received weak reminders from the judge to avoid media coverage of the case when they were away from the courtroom. When the jurors were finally sequestered for deliberations, they were still allowed to make outside phone calls. The day before deciding their verdict, the jurors took a break to pose for newspaper photographers.

Sheppard's trial was one of the first sensational trials of our modern television age. It brought into sharp conflict the First Amendment rights of the press to cover the trial and Sheppard's Sixth Amendment right to a fair trial by an impartial jury. In 1966, the circumstances of Sheppard's trial made their way to the U.S. Supreme Court, which held that Sheppard's constitutional rights had been violated. The Court's opinion cited the principle that "the jury's verdict be based on evidence received in open court, not from outside sources."

What can a court do to ensure an impartial jury in such cases? There are several options. The court might, at the defendant's request, approve a change of venue. This moves the trial to another jurisdiction where media attention may have been less intense. During voir dire, which is the process of examining prospective jurors, the court can ensure

that lawyers are given adequate opportunity to explore possible prejudices of the jurors resulting from exposure to media reports about the case. And during trial, the court can sequester the jurors so that they will not see or hear media accounts of the trial.

Media coverage of trials has raised new challenges since the *Sheppard* decision. In the 1990s, people across the United States were transfixed by the murder trial of football star O.J. Simpson. Television cameras broadcast the trial proceedings in their entirety, effectively inviting the television audience to reach its own verdict. Recently, the murder trial of Scott Peterson also dominated the national news.

Questions:

- In some other countries that provide for trial by jury—including the United Kingdom, Australia, and Canada—the press is subject to contempt laws that limit reporting on a criminal case once a suspect has been charged. Until the trial is over, the press can only report on issues unlikely to influence the outcome of the trial. The purpose of the laws is to protect the impartiality of potential jurors. First Amendment protections of freedom of the press would make such laws difficult to enforce in the United States. Nonetheless, do you think these laws are a good idea? What effect would they have on media coverage of high-profile cases?
- Do you think a defendant can receive a fair trial if jurors have read or heard something about the case in the media, but say they are confident that they can keep an open mind and base their verdict upon the evidence presented in court? Why or why not?
- Do you think criminal trials should be broadcast on television? Do you think television broadcasts of trials strengthen or weaken our system of trial by jury?

Juries and Capital Punishment: *Witherspoon v. Illinois*

Capital punishment is a controversial subject in the United States. Some people believe that the death penalty should be abolished. They argue that it is a "cruel and unusual punishment" forbidden by the Constitution. Others think it is an appropriate punishment for the most serious crimes. Should people who oppose the death penalty be allowed to serve on juries in capital cases?

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Illinois law used to provide that potential jurors who stated that they were generally opposed to the death penalty could be excluded from jury service in capital cases. In *Witherspoon v. Illinois* (1968), the U.S. Supreme Court ruled that general opposition to the death penalty was not a sufficient reason to exclude a person from service in a capital case. If a prospective juror states that he or she is able to set aside a personal belief against the death penalty and apply the rule of law, that person should be allowed to serve. But individuals who state that they would automatically reject the death penalty, no matter what the circumstances of the case, can be excluded from service.

The effect of the *Witherspoon* decision is that juries in capital cases can be “death qualified.” This means that jury service in capital cases can be limited to people who agree that they would be willing to consider the death penalty in a particular case, regardless of their personal beliefs. People who are adamant in their opposition to capital punishment can be excluded from service and are now known as “*Witherspoon* excludables.”

In 1980, the Supreme Court affirmed its *Witherspoon* decision in *Adams v. Texas*. The *Adams* decision stated that a juror’s views on capital punishment can be challenged only if those views would “prevent or substantially impair” the juror’s duty to consider the facts impartially and apply the law as instructed by the court.

Questions

- The Supreme Court’s decisions allow individuals who have reservations about the death penalty to serve on juries in capital cases if they are willing to follow their oath and apply the rule of law. Do you think this adequately protects the principle that juries should represent the conscience of the community?

- Some studies by social science researchers suggest that “death qualified” juries are more likely to convict a criminal defendant. Assuming that these studies are accurate, do you think this would violate a defendant’s right to a fair trial by an impartial jury?

Representing the Community: *Taylor v. Louisiana* and *Batson v. Kentucky*

Racial and sexual discrimination in the selection of juries lasted well into the twentieth century. Women faced an especially long fight to secure the basic right to be considered for jury service. Women received the right to vote in 1920 with ratification of the Nineteenth Amendment to the U.S. Constitution. But they remained subject to different standards for jury service. Not until 1975, in *Taylor v. Louisiana*, did the Supreme Court clearly hold against the systematic exclusion of women from jury service.

Louisiana state law had provided that women would be automatically excluded from calls for jury service unless they had filed a written declaration of their willingness to serve. A white male defendant charged that his conviction by a Louisiana jury made up of white males denied his right to be tried by a jury drawn from a representative cross section of his community. The Court agreed and ruled that exclusions or automatic exemptions from jury service based on sex were



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Through much of U.S. history, jury service was limited to white males.

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unconstitutional. In doing so, it affirmed that “the selection of a petit jury from a representative cross section of the community is an essential component of the Sixth Amendment right to a jury trial.”

Racial minorities won the right to be considered for jury service with the passage of the Fourteenth Amendment, but discriminatory practices often blocked their ability to actually serve. In 1986, the U.S. Supreme Court took a major step toward limiting these practices in *Batson v. Kentucky*.

Batson, a black man, was on trial in Kentucky for burglary and receipt of stolen goods. Four black persons were on the list of persons summoned as potential jurors in the trial. The prosecutor used peremptory challenges to eliminate all four of the black persons, resulting in an all-white jury. The jury convicted Batson of the crimes.

Peremptory challenges allow lawyers to dismiss potential jurors without giving a reason for the dismissal. Lawyers can also request that jurors be dismissed for cause, but they must provide a reason for the dismissal. Batson argued that the prosecutor had used his peremptory challenges to alter the racial make-up of the jury in violation of his constitutional rights to trial by a jury drawn from a cross section of the community and equal protection of the laws.

The U.S. Supreme Court agreed. The Court affirmed its earlier holdings that no one has a constitutional right to be tried, in whole or in part, by jurors of the same race. But it also held that jurors of a particular race cannot be purposefully excluded from jury service. Lawyers must now be prepared to prove that they had a neutral reason for peremptory challenges if it appears that they were trying to use the challenges to alter the racial make-up of the jury. In 1994, the Court extended its ruling in *Batson* to prohibit peremptory challenges of jurors based on their sex.

Questions:

- In 1988, the United Kingdom abolished the use of peremptory challenges. Do you think the abolition of peremptory challenges would make juries more representative of a cross section of the community? Can you think of any reasons why peremptory challenges are important?
- The Supreme Court has held that although no group can lawfully be excluded from service on a jury, no group is entitled to be represented on a particular jury. What is the significance of this distinction? How important do you think the diversity of a jury would be to the fairness of a trial in your community?