

# The Social History of Crime and Punishment in America: An Encyclopedia

## Citizen Participation on Juries

Contributors: Neil Guzy

Editors: Wilbur R. Miller

Book Title: The Social History of Crime and Punishment in America: An Encyclopedia

Chapter Title: "Citizen Participation on Juries"

Pub. Date: 2012

Access Date: December 09, 2014

Publishing Company: SAGE Publications, Inc.

City: Thousand Oaks

Print ISBN: 9781412988766

Online ISBN: 9781452218427

DOI: <http://dx.doi.org/10.4135/9781452218427.n111>

Print pages: 256-258

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<http://dx.doi.org/10.4135/9781452218427.n111>

In the United States, citizen participation on petit, or trial, juries is a cornerstone of the judicial system. Members of a jury deliberate and attempt to agree upon a verdict. If summoned, unless exempted or excused, all American citizens have a legal duty to serve on juries. However, the extent and manner of citizen participation on juries has varied and continues to evolve because of a myriad of both social and legal developments.

While the Sixth Amendment affirms the right to a jury and explicitly states that the jury be an impartial body drawn from a district where an alleged crime took place, the right to a jury trial was extended to all civil cases involving a dispute of \$20 or more via the Seventh Amendment. In *Duncan v. Louisiana* (1968), the Supreme Court held that the Fourteenth Amendment afforded the right to a jury trial in criminal cases to any defendant tried in state court who, if tried in federal court, would require a jury. Later decisions established that any individual facing at least a six-month incarceration has a right to a jury trial. However, a state's constitution governs the right to jury trial in civil cases. Thus, states are able to determine the degree to which defendants being sued civilly must be provided a jury. As a result, in some states, citizen participation on juries involving civil disputes may be more limited.

## Jury Qualification

Historically and even into the 20th century, citizen participation on juries was limited because early jury selection relied on the “key man” system. Techniques utilized under this system were heavily influenced and controlled by individual jury commissioners. As a result, jurors included only those citizens who the jury commissioner believed were of the appropriate intellect and character. Additionally, prior to the ratification of the Fourteenth Amendment, as well as the Supreme Court's decision in *Strauder v. West Virginia* (1880), only white men who owned a certain amount of property were eligible for jury service. With the passage of the United States Jury Selection and Service Act of 1968, voting lists replaced the “key man” system and were used to randomly generate jury lists in federal cases. However, this method also limited citizen participation by neglecting certain segments of the citizenry who were not registered to vote. Recently, efforts have been focused on selecting initial jury panels that reflect

a more representative sample of the relevant citizenry population. Therefore, instead of relying on voting lists alone, tax rolls, records of welfare recipients, and rosters of licensed drivers are also used in attempts to gain a representative sample of the relevant population. Today, the vast majority of states utilize protocols similar to the federal act to generate jury lists.

Additionally, at one time, categorical exemptions were employed to keep certain citizens off juries. For example, citizens working in certain professions such as medicine or law were automatically excluded. Moreover, the exclusion [p. 256 ↓] of parents with primary child care obligations greatly limited the participation of female citizens on juries. The majority of these exemptions are no longer in place in most states. However, citizens under 18 or citizens convicted of felonies are not permitted to serve on juries.

During the jury selection process in both state and federal court, biased citizens who might decide cases subjectively must be excluded from serving on a jury. The ideal is a jury comprising citizens who are capable of being objective in regard to the parties and issues of a particular case. If a citizen demonstrates a bias, both sides have a right to prevent that citizen from serving on the jury. The general process of voir dire is utilized to identify and exclude partial citizens. Specifically, lawyers and/or the judge, by asking questions, work to identify and disqualify those citizens who have a bias and exclude these individuals for cause. Both sides may eliminate citizens from sitting on a jury via peremptory challenges. Although limited in number, peremptory challenges may be used in either civil or criminal matters and allow either side to exclude a citizen for any reason except race or gender. In *Batson v. Kentucky*, the Supreme Court created a new process for evaluating the use of peremptory challenges against racial minorities.

*These women took part in the first all-woman jury in California. On November 2, 1911, in Los Angeles, they acquitted the editor of the Watts News of printing indecent language. The inclusion of women was part of a trend toward making juries more and more representative of the general public in the 20th century.*



Additionally, although a completely random jury is not constitutionally mandated, a jury must be drawn from a fair cross-section of the community. According to *Duren v. Missouri*, to establish a prima facie violation of the Sixth Amendment fair cross-section requirement, a defendant must satisfy a three-pronged test. Specifically, the defendant must show (1) a group is distinctive in the community, (2) the group is underrepresented on the jury in comparison to its numbers in the community, and (3) that the underrepresentation is the result of the group's systematic exclusion during jury selection. Thus, this requirement, in [p. 257 ↓] theory, further increases citizen participation on juries. Depending on the state, the size of a jury in both civil and criminal trials may vary between six and 12 members. Additionally, the vast majority of states require unanimous verdicts in criminal cases. However, a majority of states allow for less than unanimity in civil cases.

## Jury Instructions

At the federal level and in most states, judges instruct the jury on the law at the end of the trial. Additionally, a judge may determine the length of time a jury is required to deliberate. Citizens participating on a jury are primarily finders of fact that apply the law as explained by the judge through his or her charge to the jury. Moreover, by participating on juries, citizens have the final word and do not have to explicitly state the reasons for their verdict. Jury nullification occurs when citizens on a jury acquit an individual who they believe based on the facts is guilty, because the jury believes the law or the application of the law is wrong. Jury nullification is relatively rare. In most

states, citizens participating on a jury have a limited role, if any, in the punishment process. However, juries do participate in the punishment phase of capital cases. Additionally, in most states, the jury's decision concerning the imposition of the death penalty is conclusive. In civil cases, the citizens comprising a jury decide liability and award damages.

However, judges may have the right to reduce excessive damage awards or increase damages, though the latter is rarely utilized. Additionally, some states have placed limits on the amount of certain types of damages, such as punitive damages. Unlike a conviction, which may be overturned on appeal, a jury acquittal in a criminal matter is final.

In sum, jury service is an opportunity for citizens to learn about the law and participate in government. However, it should be noted that the percentage of both civil and criminal jury trials has steadily declined in recent years.

Neil Guzy *University of Pittsburgh at Greensburg*

<http://dx.doi.org/10.4135/9781452218427.n111>

See Also:

- 1941 to 1960 Primary Documents
- [Appeals](#)
- [Duren v. Missouri](#)
- [Juries](#)
- [Trials](#)

#### Further Readings

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