PLRI Public Law Research Institute

Improving the Jury System

Reducing Jury Size

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Within the last several years there has been increasing concern over the rising costs of California's legal system. Many within and outside of the legal community have focused their attention on the issues of caseload volume, delay and congestion within California courts as a result of the rising number of civil and criminal cases. These mounting concerns have spawned a growing movement for court reform whose aim is to increase efficiency within the legal system, thereby reducing the costs of maintaining the system.

One area targeted for reform is the jury system, and, in particular, the size of civil and criminal juries. Currently, California permits the parties to agree to fewer than twelve jurors in civil cases. In criminal trials, felony trials are heard by a jury composed of twelve members; misdemeanor trials can be heard by fewer than twelve juries if the parties agree.

The proposal to reduce jury size is aimed at increasing efficiency within the jury system. Many scholars and experts within the legal community believe that a jury composed of fewer members will take less time to deliberate. As a result, trials will take less time and more cases can be heard. However, there is evidence that decreasing jury size may adversely affect jury deliberations and the quality of the verdicts they render.

I. Background and Function of the Traditional Rule

The twelve person jury dates to early English common law. Jury size in England was fixed at twelve persons by the middle of the fourteenth century. By the eighteenth century, the same was true of the American colonies. Although many theories have been advanced to explain the origin of the twelve person jury, it is still unclear how this requirement gained importance.

As the United States Supreme Court made clear in a series of cases beginning in 1970, the federal Constitution does not require juries to have twelve members in all cases. The practice of having twelve jurors was apparently an "historical accident unrelated to the great purposes which gave rise to the jury in the first place." [1] According to the Court, the real test of the constitutionality of jury size is whether jury size affects the essential function of the jury.

That essential function, according to the court, is to ensure that cases are resolved using the common sense judgment of the community through community participation. This means that the jury must be large enough to do the following: (1) Promote deliberation free from outside attempts of intimidation, and (2) Provide a fair possibility for obtaining a representative cross section of the community.

Thus, states are free to have juries as small as six, so far as the federal constitution is concerned. [2] Any number below six, however, would be unconstitutional, because the jury would then be too small to meet the requirement that there be a fair chance that a cross-section of the community will be represented on the jury. [3] Moreover, states cannot circumvent this limit by allowing six person juries to deliver non-unanimous verdicts in criminal cases. [4]

II. Reducing the Size of the Jury

A. Advantages of Reducing Jury Size

The main advantages of reducing the size of juries are as follows:

Smaller juries would cost less to maintain than larger juries.

The amount of time spent on the voir dire [5] process would decrease because fewer jurors would be needed.

Deliberation time would decrease, and as a result, the jury system would become more efficient because more cases could be heard.

B. Disadvantages of Smaller Juries

Even though it is constitutionally acceptable to reduce the jury's size to any number above six, opponents argue that this would result in the following adverse consequences:

Juries with less than twelve persons are less representative, and thus, fewer voices in the community are represented.

The quality of jury deliberations would be adversely affected by reducing the jury's size.

Jury awards will be more erratic.

C. Studies of Jury Size

Most of the empirical research on the effects of reducing jury size was completed during the 1970s. In fact, the Supreme Court relied heavily upon several of these studies in deciding a number of the jury size cases. However, many of these studies have been criticized for their failure to provide evidence about the quality and reliability of decisions by six-person juries.

Despite this, many researchers do agree that a reduction in jury size would reduce the time and expense of conducting jury trials, and therefore make them more efficient in the long run. In support of this conclusion, researchers agree that when all other factors are equal, smaller juries work faster and more efficiently than larger groups. Another positive result of using smaller juries is that they will help cure some the problems concerning large caseloads and backlogs. If jury size is reduced, the same jury pools which are now used to select juries for one trial could theoretically be used to seat juries for two trials. Many proponents also contend that the use of six-person juries would be less burdensome to potential jurors because quicker deliberation means less time taken off work.

Other research has challenged the idea that six-person juries are more efficient and less costly than twelve-person juries. Many studies have concluded that the amount of time used for voir dire for both sized juries is the same. Moreover, a 1971 study estimated that between 1.5 to 3% of the federal judiciary budget and an infinitely small fraction of the entire United States budget would be saved by reducing jury size to six.

In addition, many researchers argue that despite the possible benefits, six-person juries adversely affect the composition of the jury and the quality of jury deliberations. As a general rule of statistics, the smaller a sample size is, the less representative it will be. By analogy then, one could expect that a six-person jury would be less representative than a twelve person jury. Therefore, many argue that six-person juries fail to provide a representative cross-section of the community.

A 1974 statistical study found that in a community with a 10% minority population, one or more minorities would be represented on 72% of the twelve-person juries; however, on a six-person jury, only 47% of the juries could be expected to contain one or more minorities. [6] Studies have also shown that women may also be less represented on six-person juries. However, the representative cross-section requirement established by the Supreme Court has been held to only apply to the jury panel, and not the actual jury selected from the panel.

Many studies have also examined whether there is a qualitative difference between the jury deliberations of six- and twelve-person juries. First, several studies suggest that twelve-person juries have a better collective memory than six-person juries because a larger group size increases the chances that someone will remember a fact. As a result, the quality of decision-making may be improved. Second, many researchers agree that twelve-person juries communicate more, for longer periods of time, than six-person juries. Third, several researchers argue that a persuasive, uncompromising juror has a greater impact on a six-person jury than a larger jury, and he or she is able to exert more influence on a smaller jury. However, other researchers have found that there is no discernible difference between the influence of such a juror on either sized jury.

Social science researchers have also attempted to document the differences in outcomes and verdicts between six- and twelve-person juries. Most researchers agree that the jury awards of six-person juries are more likely to be erratic because as is true in the field of statistics, the margin of error increases as the sample size decreases. However, there basic agreement ends. There is a lack of consensus on whether the outcomes of verdicts reached by six- and twelve-person juries differ. Several studies have concluded that there is no significant difference in the outcomes reached by six- and twelve- person juries. In contrast, other studies have shown that criminal defendants are more likely to be convicted by a six-person jury than a twelve-person jury.

1. The Federal Judicial Conference Study

On December 13, 1994 the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States issued a report surveying the literature on jury size. The Conference recommended that Congress amend Federal Rule of Civil Procedure 48 which permits federal district courts to use six-person juries in federal civil cases. The Committee made the following findings:

Twelve person juries are more stable and deliberative.

Larger juries were more representative of the interests of minorities than six-person juries.

Although the monetary savings of using smaller juries were significant, these savings were small when compared to the overall judiciary budget.

The reduction in court time from using six-person juries was not that substantial.

As a result of these findings, the Committee concluded that the savings did not compensate for the decrease in stability and the affects on jury community representation.

2. National Center for State Courts Study of Los Angeles County

In April of 1990 the National Center for State Courts produced a study for the Judicial Council of California comparing the performance of eight- and twelve-person juries based on data from four municipal court within Los Angeles County. The study examined the effects of jury size on a variety of areas, including: cross-sectional representation of the community; whether verdicts tended to favor plaintiffs or defendants; size of awards; accuracy, consistency and reliability of awards; time required for impanelment, trial and deliberation; and public and private costs of the jury. The following results were found:

Smaller juries were more likely to be less representative of African Americans. Otherwise, all of the juries were very representative of the jury panels from which they were chosen, including Hispanics. That is, forty-three percent of the eight-person juries contained no African-Americans, or only one, but only 17 percent of the twelve-person juries had none or one African-American. Although several causes were examined, the main factors affecting minority representation were jury size and the number of African-Americans on the panels from which the jurors were selected. No real difference was found between the verdicts reached by eight- and twelve-person juries. However, the same was not true for jury awards. The awards of eight-person juries were higher than the twelve-person jury awards. The study found several factors, in addition to jury size, that explain this difference. As a result, the study could not verify that jury size caused this difference in the size of awards. The data revealed no difference in terms of the accuracy of the verdict/award between eight- and twelve-person juries. Accuracy was based on the judge's assessment of the strength of the evidence presented. Moreover, no real difference was found in terms of reliability. Differences were found for the time required for jury impanelment, trial and deliberations; however, with the exception of the amount of time required for jury selection, these differences were the result of case characteristics and not jury size. The use of the eight-person jury did result in savings. These savings are the result of having fewer persons involved. Moreover, the study found that the smaller juries resulted in projected savings of $120 in juror fees per trial. Smaller juries also resulted in employer savings of $2,000 per trial.

III. Jury Size in Other Jurisdictions

Statistics compiled by the Conference of State Court Administrators and the National Center for State Courts based on state court organization reveal that as of 1993, eleven states allow the use of juries composed of less than twelve in felony trials to some extent.

Arizona: Permits the use of eight person juries except in capital cases or when the

possible sentence is 30 years or more.

Connecticut: Permits the use of six-person juries, except in capital cases which require twelve-person juries unless the defendant agrees otherwise.

Florida: Permits six-person juries to hear felonies, except in capital cases which require a twelve-person jury.

Indiana: Permits six-person juries to hear felonies in municipal and county court, but not at the circuit or superior court levels.

Kansas: Felony trials must start with a twelve-member jury.

Kentucky: Permits six-person juries to hear felonies at the district level, but not the circuit level.

Louisiana: Requires the use of twelve-person juries when punishment necessarily is confinement at hard labor, but uses six jurors if the possible punishment may be confinement at hard labor.

Massachusetts: Permits six juries at the Boston Municipal court and the district court levels.

Utah: Requires eight person juries and makes no exception for capital cases.

Washington: Allow for a jury of less than twelve but with different restrictions: In

Wisconsin: Washington, a defendant may elect to have the case tried before a six-member jury, except in capital cases. In Wisconsin, both parties may agree to any number less than twelve.

The remaining states and the District of Columbia require juries of twelve-members for felony trials. In criminal misdemeanor trials and civil trials, more states permit juries of less than twelve members.

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Notes

[1] Williams v. Florida, 399 U.S. 78 (1970). In 1973, the Court held that juries in civil cases in federal court could also consist of as few as six jurors. Colgrove v. Battin, 413 U.S. 149 (1973). (return to text)

[2] Williams v. Florida 399 U.S. 78 (1970). (return to text)

[3] Ballew v. Georgia, 435 U.S. 223 (1978). (return to text)

[4] Burch v. Louisiana, 441 U.S. 130 (1979). (return to text)

[]5 Voir dire is the process by which the court, or counsel, ask questions of potential jurors in order to determine if the juror is capable of judging the evidence objectively and impartially. (return to text)

[6] Michael J. Saks, "Ignorance of Science is No Excuse," Trial, Nov.-Dec. 1974, at 19; Hans Zeisel, "The Waning of the American Jury," 58 A.B.A. J. 367, 368 (1972). (return to text)