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The Vanishing Jury: An Examination of Its History

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Abstract:

Proponents of jury trials argue that limiting or abolishing jury trials would undermine the public's faith in the criminal justice system. Nevertheless, the court system has confirmed the existence of "the vanishing trial," a term used to describe the steadily declining role of trials (civil and criminal) in the American legal system. With respect to how cases are handled in the criminal justice system, jury trials are often considered the epitome of justice. Therefore, this paper seeks to examine the history of the jury trial and the great lengths that have been taken to improve the institution of the jury.

Introduction:

Jury trials are an essential part of the criminal justice system and play a pivotal role in dispensing justice. The right to a trial by jury is one of the fundamental rights guaranteed by the United States Constitution. It has been an essential part of our democracy since the Bill of Rights became law on December 15,1791 (Roberts & Hugh, 2008). The Constitution guarantees the right to a jury trial in order to limit government oppression (Mottley, Abrami, and Brown,2002). Specifically, the Founding Fathers envisioned the jury as an institution that fulfilled three related roles:"operating as a check against judicial and governmental overreaching, allowing for meaningful citizen participation in the democratic process, and acting as an essential figure in the administration of justice" (McClanahan, 2012, p.735).

Juries provide citizens the opportunity to directly participate in the system (McClanahan, 2012) by fulfilling the role of fact finder (Sudman,1999). This participation is recognized as a critical part of a democratic government as it is thought to enhance the legitimacy of the legal system (Appleman,2010). Juror participation is also thought to provide an educational benefit whereby citizens are aware of their rights and responsibilities (McClanahan,2012). Alexis de Tocqueville referred to the jury as "a gratuitous public school" that "invests each citizen with a kind of magistracy; it makes them all feel the duties which they are bound to discharge towards society; and the part which they take in the Government" (McClanahan, 2012, p. 736).

Jury trials not only educate the public about the law, legal processes, and their duties as citizens, but simultaneously reinforce their faith in the American justice system (Kassin, 1988). Proponents of trials argue that juries play a critical role in the American justice system by protecting the rights of criminal defendants while also promoting public trust and confidence in the courts (Mize, Hannaford-Agor, & Waters, 2007). Although many individuals complain about the inconvenience of jury service, post-trial surveys indicate the jury service results in more public support for the courts, legal system, and judges (Appleman, 2010; Gastil, Lingle, & Deess, 2010). Seemingly then, juries should connote justice within the criminal justice system.

Proponents of jury trials argue that limiting or abolishing jury trials would undermine the public's faith in the criminal justice system (Roberts & Hough, 2011). Nevertheless, in 2003, the American Bar Association supported the claim of the "the vanishing trial," a term used to describe the steadily declining role of trials (both civil and criminal) in the American legal system (Frampton, 2012). The trend of vanishing trials has largely been attributed to the increase in plea-bargaining (Frampton, 2012). Approximately 95% of all criminal indictments are disposed of through plea bargaining (Appleman, 2010).

Historical Overview of Jury Trials in England and the U.S.

The institution of the jury was created to play a pivotal role in the administration of justice. The Frankish Inquest is the likely origin of the English jury. Dating back to the 9th century, Frankish Kings used the inquest to help them govern and expose corruption. The inquest was comprised of the best and most trustworthy men of the district (Thomas, 2008).When the Normans invaded England, William the Conqueror introduced the notion of the Frankish inquest whereby inquisitors were sent to investigate property claim disputes. This process was used only to investigate property crimes until Henry II adapted its use for criminal offenses in the 13th century. Along with the Frankish Inquest, the Magna Carta of 1215 was another important event leading up the development of the jury trial.

The concept of being judged by a jury of one's peers is often traced back to the Magna Carta of 1215 (Elrod, 2009; Sudman,1999). The Magna Carta stated that "no free man shall be taken or imprisoned or disseised…exiled or in any way ruined, nor will we go or send against him, except by the lawful judgment of his peers of by the law of the land" (Elrod, 2009). Although the Magna Carta did not guarantee the right to a trial, it is viewed as an important document that is credited for the development of England's constitutional government. In addition, the rights to due process and an impartial jury are thought to have developed from it. The ideas brought forth from the Norman Invasion were slow to take effect, but were seen under Henry II's reign of England. Before discussing the process under Henry II, though, we must first look at the processes the English used to determine one's guilt: compurgation or wager of law, ordeals, and trial by combat (Anand, 2005).

Early English Processes Used to Determine Guilt

There are three methods for determining guilt that the English used prior to the development of jury trials. The first process, compurgation or wager of law, involved the accused swearing a not guilty oath while providing a number of compurgators (i.e., oath helpers) to affirm his/her oath (Anand, 2005). Compurgation or wager of law was a method established by King Henry II for resolving land and inheritance disputes. In this case, twelve "free and lawful" men of the neighborhood were assembled to provide testimony under oath to the rightful property owner or heir (American Bar Association Public Education Division, 2005). This process, however, was used also used for criminal offenses. The belief was that the compurgators would not commit perjury for fear of punishment (both physical and spiritual punishment. If the accused swore an oath and found the required number of compurgators, he/she was absolved of all crimes (Anand, 2005). The accused was found guilty in cases where compurgators were absent or in cases where oaths were not consistent across compurgators (Ho,2003).Compurgators were not required to have any personal knowledge of the facts in question; their purpose was strictly to swear to the credibility and purity of the oath (Ho, 2003).

Not all individuals accused of crimes were allowed to participate in the process of compurgation or wager of law. Foreigners and those suspected of previous or current criminality were forbidden to participate and instead went straight to trial by ordeal (Anand, 2005). Individuals also went straight to ordeal if they were

not free men (Forsyth, 1875). Individuals were subjected to immediate punishment if they were caught in the act of committing a crime or they confessed to their crimes. Compurgation was common throughout the 10th and 11th centuries. However, by the 12th century it was rarely used (Anand, 2005) although cases involving this method date as late as 1440 (Thayer, 1891).

The second process the English used to determine guilt was the ordeal, which was common in the 11th and 12th centuries (Olson, 2000). Ordeals were tests given to the accused that were thought to be under divine influence. Ordeals were often used as a last resort for those who were disabled or too old for fighting and thus could not partake in the third process of trial by battle. The ordeals were also used in cases where compurgators could not be located or could not agree on the facts (Ho, 2003; American Bar Association Public Education Division, 2005).

The two most common types of ordeals were the cold water ordeal and the hot iron ordeal (Ho, 2003). In a cold water ordeal, the accused was immersed in a body of water that had been blessed by the clergy (Anand, 2005). If the priest overseeing the ordeal believed the accused was sinking, the individual was presumed innocent and an attempt to retrieve him/her was made. If the accused floated, however, he/she was presumed guilty. In a hot iron ordeal, the accused was given a piece of iron that had been held in a fire and blessed by the priest. The accused was required to hold the iron while walking a predetermined number of paces (Anand, 2005). The accused's hand was then bound and inspected by the clergy days later. Healing was a sign of innocence, so in cases where there did not appear to be an infection, the clergy determined it was God's way of conveying the accused was innocent (Ho, 2003).

Eventually there were concerns about the clergy's involvement in determinations of guilt or innocence. As a result, the 4th Lateran Council convened by Pope Innocent III in the 13th century prohibited clergy from participating in ordeals, in part because of the belief that ordeals tempted God (Anand, 2005). After the prohibition, the Council gave instructions stating that ordeals had been abolished and how to proceed. According to Anand (2005), "the instructions provided that those accused of major crimes about which there was strong suspicion of guilt should be committed to prison for safekeeping; that those accused of medium crimes, for which the ordeal would have been appropriate, should be permitted to be exiled from the realm; and that those accused of minor crimes about which there was no strong suspicion should be placed under good conduct pledges" (p. 412). Judges used their discretion to handle cases outside of these situations.

The third process the English used to determine guilt was the trial by battle. These trials were available only to able-bodied men, while women, the disabled, and the elderly often were put to an ordeal (Anand, 2005). The earliest reference to a trial by battle dates back to 1077 (American Bar Association Public Education Division, 2005). In a trial by battle, court officials would accompany the accused and the accuser into a field drawn for battle. Prior to battle, the accused swore an oath maintaining his innocence, while the accuser swore an oath that the accused was guilty of committing the crime in question. Both the accused and the accuser wore suits of armor, but part of their legs and arms were exposed. Batons were used as weapons during the battle. The battle lasted until the accused or the accuser died, until one yielded by crying "craven," or until evening when the stars appeared (Leeson, 2011; Anand, 2005). The accused was declared innocent if he could survive until the stars appeared Trials by battle were viewed as entertainment and not all trials resulted in death (Leeson, 2011).

Trials by battle, like ordeals, were believed to reflect God's judgment and therefore yielded inscrutable verdicts (Thayer, 1891; American Bar Association Public Education Division, 2005). By the 16th century, people began to have reservations about the verdicts being ordained by God. There were also concerns about the fact that the strength of the individuals involved in the battle influenced the verdict (Anand, 2005). The

trial by battle remained the primary method for resolving land disputes until 1179 (Leeson, 2011). It was abolished completely in 1819 (Anand, 2005).

Jury Trials in England

When the Normans invaded England in 1066, they brought with them the idea of the Frankish inquest to investigate property crimes. This was a method of using the most trustworthy men of the district to expose crimes was used during Henry II's reign. This method gained approval by those opposing the idea that God ordained the final outcome of the ordeals. The Assize of Clarendon was enacted by Henry II in 1166 and is viewed as an important event in the shift from the use of compurgation, ordeals, and trial by battle to jury trials. Based on the Frankish inquest, the Assize of Clarendon called for an official inquiry from the oath of twelve men, known as a presentment jury, on individuals suspected of robbery, murder, or theft (Helmholz, 1983). After the Assize of Clarendon was enacted, presentment juries were periodically assembled from each community. Presentment jurors swore an oath and reported any fellow neighbors they suspected had committed a crime. The assumption was that a jury comprised of one's neighbors would already possess information about crimes in the area or could easily find out if they did not.

Henry II expanded the usage of local participation for adjudicating disputes and adapted the inquest for use in the criminal jurisdiction of the King's Court in addition to property disputes (Nemeth, 1981). Under Henry II, justices ordered sheriffs to arrest those who had been accused by the presentment jury (Green, 1976). The accused's guilt was originally determined by the ordeal (Langbein,1987). Later, the accused would stand trial by a jury. As such, The Assize of Clarendon did not lead to immediate changes as the other methods previously described were still being used. However, this act is considered a forerunner to the jury and gained wider acceptance into the 13th century as trials replaced the previous methods for determining guilt. This shift from the previous methods for determining guilt to the use of individuals in the community represented the forerunner to the standard criminal jury (American Bar Association Public Education Division, 2005).

The first true criminal juries in England occurred in the 13th century (Anand, 2005). At that time, the courts relied on panels of free and lawful men, rather than clergy, for determining guilt or innocence. Early English juries were considered self informing because jurors came to trial with knowledge of the facts, were responsible for investigating crimes,(Langbein,1987)and gathering facts (Green,1976).After jurors investigated crime allegations, they reported their findings at trial (Anand, 2005). This strategy was beneficial because juries were comprised of men from the immediate area where the crime occurred or from the defendant's township (Olson, 2000). Friends and relatives of victims were permitted to sit on the jury during this period. However, the practice of allowing friends and relatives to sit on the jury began to decrease in the 14th century (Myrsiades, 2008). This was an important change to the structure of the jury. Although it was originally deemed beneficial for jurors to have firsthand knowledge of the case in question, courts began to allow objections to certain persons being seated on the jury. In addition, the self informing aspect of juries began to disappear in the 15th century when reliance on witness testimony emerged (Anand, 2005). Although greater reliance on witnesses eroded the self informing aspect of the jury (Anand, 2005), jurors continued to actively participate by questioning witnesses or summoning new ones (Myrsiades, 2008). By the 17th century, jurors were precluded from relying on evidence procured from outside the court. Instead, the investigative role of the jurors ceased and they relied solely on evidence presented in court.

Even when juries were considered self-informing and contained an investigative element, judges exerted tremendous influence over juries. Throughout the 17th century, Early English trials allowed for a writ of attaint, which allowed for the punishment of juries that reached an "untrue" verdict. A twenty four juror

panel would examine the original verdict. If overturned, the original jurors could be imprisoned or forced to forfeit their land and property (American Bar Association Public Education Division, 2005).

The Bushell Case (1670) 124 E.R.1006 was instrumental in establishing the right of English juries to deliver a verdict free from judicial coercion and ended writ of attaints. The defendants in this case were William Penn and William Mead, who were arrested and prosecuted after congregating and discussing a religion other than the Church of England. Their actions were illegal because the British Parliament had passed the Conventicles Act in 1664, which banned members of nonconforming religious groups from assembling (McClanahan, 2012; American Bar Association Public Education Division, 2005). The jury found the two defendants not guilty. The court disagreed with the jury's verdict and responded that "[Y]ou shall not be dismissed till we have a verdict that the court will accept; and you shall be locked up, without meat, drink, fire, and tobacco. You shall not think thus to abuse the court; we will have a verdict, by the help of God, or you shall starve for it"(McClanahan, 2012, p.731). Nevertheless, the jury again rendered a not guilty verdict. The court responded by holding the jurors in contempt of court. They were then fined for their not verdict guilty.Jurors who were unable to pay the fine were then imprisoned. Juror Edward Bushell petitioned for a writ of habeas corpus. Judge Vaughan, who presided over the petition, ruled that judges could not punish jurors for rendering a verdict contrary to the court's opinion (McClanahan, 2012). Vaughan noted that "the judge and jury might honestly differ in the result from the evidence, as well as two judges may, which often happens" (McClanahan, 2012, p.731). This case was important to curbing judicial coercion while also giving juries the power to nullify unjust laws.

By the 18th century, all cases of serious crimes were tried by the jury (Langbein, 1987). English courts did not allow defendants to waive a jury trial. Prior to 1772, defendants were tortured if they did not consent to a jury trial. The courts considered it a guilty plea if the defendant still refused to consent after being tortured (McClanahan, 2012). It was common throughout the 18th century for one criminal jury to sit for numerous cases. The jury originally decided all verdicts at one time and did not adjourn from the courtroom unless the deliberation was lengthy. It was not until the 1730s that juries began deciding verdicts after each individual case (Nemeth, 1981).

The English jury system provided a model for the early colonies in America and had undergone numerous changes before the jury developed in America. The framers of the U.S. Constitution knew from England's history that the right to a jury trial was essential and a better method compared to England's previous methods of guilt determination. It was deemed vital that one's peers should fulfill the role of fact finders to help resolve legal issues that were brought before the court (Sudman, 1999). The next section focuses on juries in early America.

Jury Trials in the U.S.

As previously discussed, two defining events for the evolution of the trial were the Norman Invasion of Britain in 1066 and the reign of Henry II (1154-1189). Although variations of the trial have existed throughout various parts of the world, America's conception of the jury trial most resembles the one of that practiced during Henry II's reign (Nemeth, 1981). The right to a jury trial is documented in several of America's most important documents: the Declaration of Independence, the United States Constitution, and the Bill of Rights (McClanahan, 2012). By the time our Constitution was written, the jury trial had existed in England for several centuries (Sudman,1999). The Constitution guarantees the right to a jury trial and maintains that protections should be established to limit government oppression (Mottley, Abrami, and Brown, 2002) by maintaining checks and balances on political authorities (McCoun & Tyler, 1988). The rationale behind these protections stemmed from problems in England regarding corruption and the

inadequacies of compurgation, ordeals, and trial by battle. The Founders envisioned the jury as an institution that would allow citizens to directly participate in the system (McClanahan, 2012). It was also thought to provide an educational benefit whereby citizens would be aware of their rights and responsibilities (McClanahan, 2012). Alexis de Tocqueville referred to the jury as "a gratuitous public school" that "invests each citizen with a kind of magistracy; it makes them all feel the duties which they are bound to discharge towards society; and the part which they take in the Government" (McClanahan, 2012, p. 736).

As in England, the colonies adopted the practice of choosing jurors from the neighborhood in which the crime occurred. However, as McClanahan (2012) asserted, judges in colonial America normally had less control over trials compared to their contemporary counterparts. Jury instructions, for example, were not routinely provided by judges in all colonies and colonial jurors did not have to provide an explanation for their verdict (Gertner, 2010). The Founding Fathers of the United States envisioned the jury as an institution that fulfilled three related roles: "operating as a check against judicial and governmental overreaching, allowing for meaningful citizen participation in the democratic process, and acting as an essential figure in the administration of justice" (McClanahan, 2012, p.735). As such, the role of the American jury extended beyond its fact finding capacity to include the power to occasionally defy their jury instructions by acquitting a defendant they believed was guilty (Barkow, 2003). The concept of jury nullification allowed the jury to ignore the law in cases where an unjust application of the law was recognized. This decision may stem from the jury's belief that a law was too broad, too harsh (Barkow,2003), or simply unjust (Lippke, 2012) or in cases where misconduct was suspected (Lippke, 2012).

"Depriving [the colonists] in many cases, of the benefits of Trial by Jury" and "transporting [colonists] beyond Seas to be tried for pretended offences" was an explicit complaint in the Declaration of Independence (McClanahan, 2012, p.734). One specific issue revolved around the British Navigation Acts. These Acts were used to secure British control over the American colonies with respect to trade by requiring that goods moving to and from the colonies be carried on British ships (American Bar Association Public Education Division,2005). Juries during this time often refused to convict individuals charged with violating these laws because of their disagreement with the Act as it was seen as harmful to their economy (American Bar Association Public Education Division, 2005).

With respect to sentencing, the colonial jury played a great role in determining punishment (McClanahan, 2012). Many criminal codes during the colonial period mandated death for a variety of offenses, including murder, treason, piracy, arson, rape, robbery, sodomy, and burglary(McClanahan, 2012). Juries during this time often acquitted defendants because they knew death was the mandatory punishment. Eventually, the codes were modified so that fewer crimes were death penalty eligible. Murder was also classified into varying degrees. These changes allowed for more judicial discretion with regard to punishment (McClanahan, 2012) and helped to decrease incidents of nullification.

Jury nullification is an important concept in that it allows juries the ability to dismiss the law to ensure their idea of justice is carried out. Examples of jury nullification that have been used throughout history include southern juries refusing to convict defendants accused of committing crimes against African Americans and Prohibition-era juries refusing to convict liquor law violators. More modern examples of jury nullification include Vietnam War era acquitting draft dodgers and acquittals of those accused in assisting suicide (King, 1999). Although juries are afforded this right, the courts do not always explicitly inform jurors of this power (Lippke, 2012). Moreover, this practice is highly controversial and potential jurors who admit to weighing their consciences over jury instructions can be excused during the voir dire (i.e., pretrial interview for potential jurors) (Rubenstein, 2006).

Although jury nullification is controversial and may result in unpopular verdicts, the Double Jeopardy Clause of the United States Constitution prohibits defendants from being prosecuted again for the same offense after the jury has acquitted them (Barkow, 2003). The main purpose of this clause was to protect the innocent from the harms (i.e., shame, expense) associated with trial (Lippke, 2012). Moreover, defendants should not be subjected to harassment after they were found not guilty. It has also been argued that retrying a defendant would essentially take away the final decision making power the jury holds. In other words, their verdicts should not be questioned as they are vested with the final authority in determining the guilt or innocence of a defendant.

Critics of double jeopardy argue that the state should be afforded the opportunity to retry defendants in specific cases (Lippke, 2012). They maintain that not all individuals who are acquitted are actually innocent. Instead, acquittals may be the result of a particularly good defense, a successful crime cover up, or missing or destroyed evidence (Lippke, 2012). Critics also assert that juries may make errors and that the discovery of new evidence may shed new light on the guilt of the defendant. They maintain that this is especially true for major crimes such as murder and rape.Proponents of double jeopardy emphasize that wrongful acquittals thwart justice for victims and their families, put the public's safety at risk, and affect the public's confidence in the criminal justice system (Lippke, 2012). Since a brief overview of the history of the jury trial has been established, the next section will shift to the literature on the various aspects of the jury trial that have scrutinized and reformed over time.

The Juror Selection Process

The Federal Judicial Act of 1789 granted the determination of juror qualifications in the Federal courts to the States. Most states enacted juror qualifications that mirrored those of voting qualifications. In addition, many states added requirements such as intelligence and good character (Alschuler & Deiss,1994). In the 19th century, states started to move away from the property, gender, and race restrictions (Gertner, 2010). In the 19th century, it was also common for states to have statutes dictating that if jurors failed to appear, court clerks or sheriffs could impanel unqualified bystanders.

Juries are expected to be representative of the communities from which they are drawn. Rose (2005) noted that although the concept of a trial by jury is a central tenant of our criminal justice system, the concept of what a trial by one's "peers" is could be interpreted in a number of ways. Moreover, the term peer is not reflected in the Constitution (Weddell, 2013). Instead, we find "impartial jury," which has been interpreted by the Supreme Court as a fair cross section of the community. Specifically, the Supreme Court defines an impartial juror as one who is, a priori, indifferent to the outcome of the case, and conscientiously applies the law and finds the facts solely on the evidence before the court (Villiers, 2010). Nonetheless, it is essential that juries be comprised of individuals from a diverse array of backgrounds and experiences, as this aspect is deemed the greatest strength of the American jury system (Rose, 2008).

Ensuring a cross section of the community at trial allows for the views of the community to be brought in to the criminal justice system (Barkow, 2003). Race, gender, and class diversity is thought to balance out any individual biases or prejudices an individual juror may have. Achieving impartiality, then, is thought to be achieved through the interaction of the diverse beliefs and values of the jurors (Villiers, 2010). Furthermore, the assumption is that this composition boosts the public's confidence about fairness (Kassin,1988) and respect for the government (Weddell, 2013).

The jury selection process is intended to expose any prejudice or bias that may inhibit potential jurors from being impartial fact finders (Smith,2005). Potential jurors must be able to evaluate evidence and reach

decisions with an unbiased and open mind. Drawing the venire and conducting the voir dire are the two components of selecting impartial jurors for trial (Neubauer, 2005). The venire is the master list from which potential jurors will be selected to participate in the voir dire, or the pretrial interview for juror selection.

Venire

The first step in the juror selection process consists of compiling a master jury list (i.e., venire) from which potential jurors will be chosen (Neubauer, 2005). Once the venire or jury pool is determined, the clerk of courts or a jury commissioner determines the exact number of jurors needed for the particular case and then randomly selects individuals from the master jury list. These individuals are then summoned to the courthouse for the voir dire.

Historically, there has been no uniform way of compiling a venire, which usually consists of thirty to sixty people. The venire was originally run via a "key-man system" whereby prominent individuals recommended certain people in the community to take part. Another common method was to call on people who happened to be near the courthouse at the time of question. Early on, jurors were individuals in the community that had some firsthand knowledge of the events in question. Kurland (1993) noted that in these cases the jurors were as much fact gatherers as they were fact finders. This was reflected through the self-informing aspect of juries that was previously discussed.

In 1961, the U.S. Department of Justice reported that federal district courts used more than 92 different methods, none of which produced an adequately represented jury from the population (Kassin, 1988). Seven years later, Congress passed the Jury Selection and Service Act. This stipulated that the jury pool must consist of at least all eligible voters and that jurors be selected on a random basis. Specifically, this act stated that jurors should be "selected at random from a fair cross section of the community and that no citizen should be excluded on account of race, color, religion, sex, national origin, or economic status" (Kassin, 1988, p. 23). The justification for this act was the belief that a diversified panel of jurors is the best safeguard against prejudicial case outcomes (Cox, 2006).

U. S. courts have historically relied on voter registration rolls to compile the venire. The second most common method was to compile driver registration records. Unfortunately, these lists rarely met the goals of including every eligible citizen and representing all segments of the community (Mottley, Abrami & Brown, 2002). Although not in widespread use, other sources such as pubic benefit records, property tax records, and annual local census data have been used.

Munsterman (1996) proposed that courts consider the following factors when deciding on what sources to use:

1. *Availability.* Available lists (e.g., Social Security lists, federal censuses, and federal income tax lists)

2. *Efficiency*. Combining lists can be costly, especially if the lists are updated at different times, in which case the combined lists should be recompiled each time one of the lists is revised. It is also very inefficient to generate a large, non duplicative master list when only a very small number of names are required (e.g., 10,000 selected out of 1,000,000).

3. *Bias.* Some lists are heavily biased. For example, property tax and utility lists are biased toward property holders.

4. *Duplications*. Because of the difficulties associated with eliminating duplicate names, individuals on multiple lists have a greater probability of being selected than those named on only one list. Courts confronted with this problem accept some level of duplication rather than risk excluding a qualified citizen. The best method for removing duplicates is to use a unique identifier in each list, such as a Social Security number.

The jury yield refers to the number of individuals summoned who are deemed qualified and available for jury service. The jury yield is expressed as a percentage of the total number of summonses mailed (Mize, Hannaford-Agor, & Waters, 2007). The National Center for State Courts reports that out of the estimated 32 million people summoned, approximately three million are excused for financial or medical reasons, while three million fail to appear to court (Denver, 2011). State courts mail an estimated 31.8 million jury summonses annually, which equates to approximately 15% of the adult population receiving a summons. However, less than one percent of the adult population, approximately 1.5 million individuals, are actually impaneled for jury service annually (Mize, Hannaford-Agor, & Waters, 2007).

Many citizens ignore summonses or fail to appear in court. Denver (2011) posits that approximately ten percent of those summoned for jury duty do not respond, although some studies have cited higher rates. Some potential jurors may be disqualified due to citizenship status, state residency, a past felony conviction, or the inability to understand and speak English (Mize, Hannaford-Agor, & Waters, 2007). In addition, many people may not want to serve on juries because they find it time-consuming and costly. Complaints about the inconvenience of jury service are common, but research has found that jury participation seems to increase public support for the courts and the legal system by allowing community involvement. This involvement ensures community values enter into the criminal justice process as individuals decide on punishment while simultaneously giving participants a deeper understanding of the criminal justice system (Appleman, 2010).

Although states used to exempt whole classes of citizens from jury service based on their professional or civic obligation to their community, this practice has been reduced or eliminated in more recent times (Mize, Hannaford-Agor, & Waters, 2007). The National Center for State Courts (NCSC) identified ten categories of exemptions. The most common exemption, found in 47 states, was the exemption of "previous jury service." This exemption was typically used to exempt individuals who had served on a jury within the last 12-24 months. Another leading category was age, which was typically used to exempt elderly individuals. Other categories were based on various occupational roles such as political officeholder, law enforcement, judicial officers, healthcare professionals, sole caregivers, licensed attorneys, and active military personnel (Mize, Hannaford-Agor, & Waters, 2007). Florida listed the most exemptions (nine out of ten), while Louisiana listed none (Mize, Hannaford-Agor, & Waters, 2007).

Follow up notices may be sent to individuals who do not respond to their summonses. In some cases, sheriffs may be sent to locate the individuals to bring them to court (Denver, 2011). Courts have the discretion to allow jurors to postpone or defer their jury duty on the basis of personal or financial reasons (Denver, 2011). Judges will generally impanel one or more alternate jurors in case jurors unexpectedly are unable to fulfill their role throughout the trial (Denver, 2011).

Voir Dire

After the venire is compiled, the second step is the voir dire, which is the process by which potential jurors are questioned. Left to the discretion of the judge, the potential jurors may by questioned by the judge only, attorneys only, or a combination of the judge and attorneys. The voir dire, which is French for "to speak the truth," is the pretrial interview whereby the judge or attorneys seek to eliminate jurors suspected of bias. Its

main purpose is to elicit information from potential jurors that would be viewed as grounds for removal. These interviews are an important part of securing a representative jury.

The methods used to question jurors during the voir dire may vary. For example, questions may be poised to the full jury panel and answered by show of hands or posed on an individual basis. In other cases, jurors may be provided with written questionnaires. The questions posed usually focus on the potential juror's background, life experiences, and attitudes toward certain facts of the case that may arise during trial (Neubauer, 2005). Some questions may include information such as whether the potential juror has ever been the victim of a similar crime or has a relationship with the defendant or victim. Attitudes toward the death penalty are also relevant if the outcome includes a possible death sentence (Rose, 2008). When judge and attorney directed questioning are compared, research has found that jurors are less intimated by attorneys and therefore more likely to provide truthful answers. Judges, however, have maintained that attorneys are more likely to waste time and invade juror privacy (Mize, Hannaford-Agor, & Waters, 2007).

Critics argue that attorneys more often than not strive for a sympathetic jury rather than an impartial jury. The questioning of potential jurors may work in such a way to actually create bias rather than detect and remove it (Kassin,1988). For example, individuals who appear perceptive well educated, or independent minded may be more likely to be struck (Lilly, 2011). Furthermore, attorneys may look for attitudes or values that may work in their clients' favor. Many critics argue that the voir dire process provides only a limited amount of information to attorneys and therefore may lead attorneys to rely on negative stereotypes or gut feelings (Smith, 2005).

The purpose of juror selection is to develop a case strategy and a profile of individual jurors that may prove favorable or unfavorable to the prosecution or to the defense team (Seltzer, 2006). The process is important because many attorneys believe it determines whether or not trials are won. To assist in selecting jurors favorable to their case, attorneys often hire jury consultants for the voir dire process. Jury consultants are responsible for determining whether individuals are predisposed to acquit or to convict (Sudman,1999). This process of scientific jury selection does not attempt to predict a verdict, but rather to provide a profile of potential jurors. Although the use of jury consultants has grown tremendously over the years, verdicts cannot always be adequately predicted just by knowing the makeup of the jury (Seltzer, 2006). As a result, most research finds that the effects of scientific jury selection are modest at best (Cox, 2006).

All fifty states and the District of Columbia provide compensation for jurors (Mize, Hannaford-Agor, & Waters, 2007) once they are selected. The rationale behind juror compensation is that it helps with out of pockets expenses and serves to recognize the juror's service. Although federal and state jurors are compensated for their time, the compensation is low. The pay generally ranges from five to forty dollars per day, with a possible additional allowance for millage (Lilly, 2011). Mileage rates vary from .02 cents to .49 cents per mile and are permitted in over half of the states (Mize, Hannaford-Agor, & Waters, 2007). Eight states and the District of Columbia require that employers compensate their employees for a limited period of time while serving. For example, A Lengthy Trial Fund was implemented in Arizona that allows jurors to be compensated up to $300 a day for lost income (Mize, Hannaford-Agor, & Waters, 2007).

The juror selection process has undergone a variety of changes and has been thoroughly analyzed to ensure an impartial jury. However, there are two ways (challenges for cause and peremptory challenges) to excuse specific individuals from jury service.

Challenges for Cause and Peremptory Challenges

Individuals may be excused from jury service in one of two ways: challenges for cause and peremptory challenges. It has been argued that these two types of challenges enable the prosecution, the defense, and the jurors to have faith in the system (Cox, 2006). Challenges for cause are used when jurors have demonstrated some type of conflict with the case. Common challenges for cause include financial hardships, the juror having a financial or special interest in the outcome, or a stated unwillingness to be impartial (Rose, 2005). In exercising a challenge for cause, the attorney must demonstrate a specific reason the potential juror may be biased or impartial during trial. In other words, the attorney must give a specific reason for why the potential juror would be unable to evaluate the facts of the case fairly and impartially. The judge is responsible for determining whether the reason for the challenge warrants dismissal from the jury selection process. Challenges for cause are a constitutionally protected requirement for jury selection; they are an essential element of an unbiased jury and are unlimited in number (Cox, 2006; Childs, 1999).

Peremptory challenges, on the other hand, allow attorneys to excuse a limited number of jurors without having to provide a reason for their dismissal. The original justification for peremptory challenges was that individuals on trial should not be subjected to the judgment of an individual who was biased or prejudiced against them, even if a specific reason could not be given as to why they believed the person was biased (Cox, 2006). In the U. S., peremptory challenges were first recognized by Congress in 1790. By 1870, most states allowed peremptory challenges because attorneys considered them necessary in the jury selection process.

The number of peremptory challenges allotted to the prosecution and to the defense varies from state to state. In non capital felony trials, the number of peremptory challenges ranges from a low of three per side in Hawaii and New Hampshire to a high of twenty per side in New Jersey (Mize, Hannaford-Agor, & Waters, 2007). In California, attorneys are allotted twenty challenges for capital felony cases and ten challenges for all other cases. Massachusetts, on the other hand, allows twelve challenges for felony cases and four challenges for all others (Smith, 2005).

Peremptory challenges are usually based on intuition or on first impressions believed to be relevant to the legal proceedings (e.g., occupation, religious affiliation). Attorneys often rely on instincts, past experiences, and even stereotypes to assist in their use of peremptory challenges (Kassin, 1988). Peremptory challenges are often used to eliminate potential jurors based on their demographic characteristics or other socio-psychological factors attorneys deem appropriate. These factors may include marital status, occupation, physical attractiveness, or the fact that potential jurors may seem distracted, angry, frustrated, hostile, or unhappy (Enriquez & Clark, 2007).

The use of peremptory challenges is not without criticism, however. Proponents argue that peremptory challenges are essential to the impartiality of the trial process because they allow for the removal of biased or hostile jurors. Furthermore, peremptory challenges may be useful in eliminating potential jurors who are worrisome to the prosecution or to the defense and who were not targeted or eligible for challenges for cause (Childs, 1999). It is important, however, that peremptory challenges not be used in a manner that violates the Equal Protection Clause of the Fourteenth Amendment (Sudman, 1999). Although parties may generally use their peremptory challenges as they see fit, the U.S. Constitution has prohibited their use to eliminate all jurors of a particular race or gender from a particular jury. Peremptory challenges are not considered a constitutional right, but they are present in all state statutes (Childs, 1999). In other words, all states have recognized their importance in the jury selection process.

In contrast, critics argue that peremptory challenges may be racially motivated and thus compromise the representativeness of the jury in cases where attorneys strictly use them to exclude certain segments of the population. As such, it is argued that criminal defendants are denied equal protection from juries when individuals of their own race are excluded from the process. Another problem is the discrimination against individual jurors that are excluded because of their race. Therefore, the use of peremptory challenges can potentially negatively affect two distinct groups in the criminal justice system (Stoltz, 2007). As Justice Marshall noted, "The inherent potential of peremptory challenges to distort the jury process by permitting the exclusion of jurors on racial grounds should ideally lead the court to ban them entirely from the system" (Enriquez& Clark, 2007).

One of the first landmark cases surrounding the jury selection process and race occurred with *Strauder v. West Virginia*, 100 U.S. 202 (1965). The case challenged a West Virginia statute that allowed only white male persons at least twenty-one years of age to serve as jurors. The United States Supreme Court held that the statue infringed upon African Americans' rights by precluding African Americans from the jury venire. The Supreme Court overturned the murder conviction of an African American man who had been tried by an all-White jury.

Swain v. Alabama, 380 U.S. 2002 (1965) was a landmark case concerning the use of peremptory challenges in the jury selection process. Swain, an African American who was convicted of rape, claimed that his equal protection rights had been violated because the prosecutor struck all of the African Americans off his jury. The Equal Protection Clause of the 14th Amendment provides that "no state shall deny to any person within its jurisdiction the equal protection of the laws" (Devermen, 1995). This clause essentially guaranteed equal protection by the government for all individuals. The U.S. Supreme Court ruled that Swain's Equal Protection Rights had not been violated. Furthermore, the Court ruled that defendants who claim their protection rights have been violated must prove the attorney's discriminatory pattern over time (Enriquez& Clark, 2007).

Years later, in *Batson v. Kentucky*, 476 U.S. 79 (1986), Batson, an African American convicted of burglary by an all-White jury also claimed that his 14th Amendment rights had been violated. This time, however, the U.S. Supreme Court overruled its earlier decision in Swain and concluded that the use of discriminatory peremptory challenges is detrimental to the defendant and the community as a whole. The rationale behind the U. S. Supreme Court's decision in Batson was that it protected the rights of the defendant, the rights of the potential juror, and the overall integrity of the criminal justice system (Enriquez& Clark, 2007). In 1991, the Baston ruling was extended to include civil cases as well as criminal cases (Denton, 1997). In Powers v. Ohio, 449 U.S. 400 (1991), the court ruled that a defendant does not have to be of the same race as the struck jurors to object to the use of peremptory challenges. The Supreme Court contended that this was a further extension of the rights afforded to the defendant.

In addition to race, the courts have also dealt with the issue of gender. Although the first woman to serve jury duty occurred in the Wyoming Territory in 1870, the norm was that women were most often excluded from jury service. The U.S. Supreme Court has intervened in the jury selection process to ensure the fair representation of the jury. In *Taylor v. Louisiana*, 419 U.S. 522, 530 (1975), the U.S. Supreme Court ruled that excluding women from jury duty was unconstitutional. It also concluded that the systematic exclusion of women from jury panels violated a defendant's (male or female) fundamental right to a jury drawn from a representative cross section of the community. Essentially, the court found that the "systematic and intentional exclusion of women, like the exclusion of a racial group or an economic or social class, deprives the jury system of the broad base it was designed by Congress to have in our democratic society" (Deverman, 1995, p.1036); this exclusion harmful to the individual on trial, as well as to the community as a

whole. In *J.E.B. v. Alabama*, 511 U.S. 127 (1994) ruled that it was unconstitutional to use peremptory challenges to exclude perspective jurors on the basis of gender (Alschuler & Deiss, 1994).

Even though the courts have addressed these issues, there is a three-step process for determining if peremptory challenges are used in a discriminatory manner. First, the defendant must establish a prima facie case. A prima facie case is a case established by evidence that is sufficient enough to establish the fact in question unless otherwise rebutted. Once established, the attorney must provide a race neutral explanation for why they struck a particular juror. The prosecutor's explanation must meet each element of a three-part test. The explanation must be a clear and reasonably specific explanation of a legitimate cause for concern. The explanation must also be related to the case and be race-neutral (Denton, 1997).

The last step includes the trial court's ruling on whether or not the peremptory challenge was deemed discriminatory. However, many contend that it is difficult to recognize discrimination and it can easily be masked or covered up by attorneys (Denton, 1997) and as one critic claimed, any attorney with a little imagination can come up with a race-neutral explanation for striking a juror (Velmen,1997). Essentially, the Supreme Court did not adequately clarify what constitutes a sufficient race-neutral explanation or address the issue of whether evidence must be provided to support their race-neutral explanations.

In conclusion, the jury selection process strives to select a representative jury from the community that it is drawn from. Representativeness is thought to be the best way to protect the defendant from exposure to any prejudices or biases jurors may have. The courts have addressed various issues that have arisen during the jury selection process that may inhibit representativeness of the jury. Jury size, jury unanimity, and juror understanding are three issues that may arise after juror selection. These issues have also been examined and addressed so they do not interfere with defendants receiving a fair trial.

Jury Size

Although juries were traditionally comprised of twelve people, in 1970 the United States Supreme Court upheld the use of a six-person jury for criminal trials in state courts. Most states require twelve members for felony trials, although Connecticut and Florida allow six member trials while Arizona allows eight (Mottley, Abrami, & Brown, 2002). Over half the states use six member juries for misdemeanor trials.

Reducing the jury size may provide benefits to the court with respect to money, time, and resources. For example, it may reduce time spent on conducting the voir dire, trial, and deliberations. A smaller jury size may also enhance the jury's ability to reach group consensus and augment the likelihood of positive group interactions (Waters,2004). Nonetheless, critics emphasize that these benefits may be at the expense of justice being carried out as it decreases the jury's ability to render just verdicts. Research has found that a smaller jury size alters the dynamics present in the deliberation room. For example, research has found that six person juries perform worse at recalling evidence and considering the minority viewpoint. Smaller juries are also likely to represent the larger community's viewpoints. This disruption in community representation may lead to a decrease in public trust and confidence (Waters, 2004). Representation, then, ensures that the community conscience is reflected within the courtroom.

Another issue related to jury size deals with jury unanimity. Jury unanimity is required in all federal criminal trials under the Sixth Amendment (Mottley, Abrami, & Brown, 2002). Although the United States Supreme Court held that unanimous jury verdicts in state courts are not required, unanimous verdicts *are* required in states that allow six-member juries in their criminal cases (Mottley et al, 2002).With respect to deliberations, sequestering juries and requiring a unanimous verdict have both been associated with a decrease in

deliberation time. With respect to deliberations, there is no minimum or maximum allotted time that has been specified. Judges may declare a mistrial if jurors decide they are unable to reach a unanimous decision. In these cases, the state has the option to retry the defendant at a later date (Mottley, 2002). Jury size and jury unanimity were analyzed to ensure justice was not compromised by ensuring the community values and beliefs were reflected in deliberations and the resulting verdicts.

Juror Understanding

It has been argued that jurors are incapable of comprehending the factual and legal complexity that encompasses some trials (MaCoun and Tyler, 1988). The tasks assigned to juries are becoming increasingly complex (Lilly, 2011) as technological advances have been made with regard to evidence (Sudman, 1999). For example, forensic evidence is a commonly used tool in the apprehension and conviction of criminals. Some commonly used evidence includes fingerprint analysis, hair and fiber analysis, and deoxyribonucleic acid (DNA) analysis, and matching shells, bullets, and calibers to specific weapons (Goehner, 2004). These types of analysis have progressed tremendously with technological advances in lasers, complex computer software programs, and genetic engineering (Stolzenberg & Alessio, 1999).

As such, jurors may have trouble understanding the complex language and terminology associated with specific types of evidence such as DNA, ballistics, or medical evidence. Therefore, the possibility of misunderstanding scientific evidence is seen as a significant problem for juries. Critics have long questioned whether a jury of untrained and inexperienced people can make competent decisions in trials that have complex evidence such as DNA analysis and fingerprint analysis (Myers, Reinstein, &Griller, 1999).

The ability of juries to distinguish between experts with contradictory opinions has also been called into question (Myers et al, 1999). One issue surrounding the debate regarding expert testimony stems from the fact that the experts may have negative effects on the jury. The jury may become confused or skeptical of complex evidence or conflicting evidence by different experts (Cutler, Dexter, & Penrod, 1989; Myers et al, 1999). Many juries believe that science is quick and always accurate, which is not always the case (Roane, 2005).

In addition, there are concerns about whether juries can understand and remember the court's instructions with regard to forensic evidence and/or the law (Vidmar, 1995). Jury instructions were first articulated by the U.S. Supreme Court in 1895 as a way to inform the jury of laws relevant to their duty (Kassin,1988). Jury instructions may be given prior to trial, during trial, or at the close of the presentation of evidence. The timing, as well as the wording of instructions, is often left to the discretion of the individual judge (Mottley, Abrami,&Brown,2002).In theory, "instructions should be simple, impartial, clear, and concise representations of the governing law of the jurisdiction concerning the legal issues raised by sufficient evidence in the cases of both the prosecution and defense" (Mottley et al, 2002, p. 4). Informing the jury of its responsibilities, the law, and court procedures helps to "constrain its decision making power, ensure procedural fairness and promote the uniform application of the laws across trials" (Kassin, 1988, p. 141).

Instructing the jury before closing arguments along with providing written copies of the instructions have been found to improve juror comprehension of the law (Mize, Hannaford-Agor, & Waters, 2007). Since jury instructions can be quite lengthy, providing written copies allows jurors to not have to rely on their memory alone. Jurors can consult the written copies for clarification or to reread portions that they may have forgotten. Mize, Hannaford-Agor, & Waters (2007) reported that at least one copy of written instructions was provided for the jury in more than two thirds of state jury trials. For federal jury trials, they were provided in almost three fourths of trials. They also found that state judges were more likely to provide instructions prior to closing arguments compared to federal judges. Federal judges, however, were more

likely to provide written instructions to jurors (Mize, Hannaford-Agor, & Waters, 2007). Juries that were instructed prior to closing arguments deliberated for shorter periods, giving credence to the notion that the act of providing instructions may enhance juror understanding.

Yet another jury related issue deals with the ability of jurors to take notes during trial. Although note taking may improve comprehension, not all jurisdictions permit it. This opposition is based on the idea that notes taking may be a distraction for jurors (Longhofer, 1999). For example, juror attention may be focused on the note taking rather than listening to the information being presented. Nonetheless, studies performed in Arizona and Wisconsin found that note taking did not distract jurors. Furthermore, these studies found that the notes taken by jurors contained accurate information and thus did not negatively influence the verdict (Longhofer, 1999).

Although it is left to the judge's discretion, Mize, Hannaford-Agor, and Waters (2007) found that more than two-thirds of trials in state and federal courts permit juror note taking. Some of these courts may even provide the materials for the note taking. The basis for the decision to allow jurors to take notes may be based on the complexity of the case. Other important factors affecting the decision to allow note taking may include whether or not there was a statute, court rule, or case law that had previously addressed the issue. Arizona, Colorado, Indiana, and Wyoming mandate that judges allow juries to take notes, while South Carolina and Pennsylvania prohibit it (Mize, Hannaford-Agor, & Waters, 2007). Research has found that jurors who were permitted to take notes, given notebooks by the court, and those that were given at least one copy of written jury instructions all tended to deliberate for longer periods. This finding may give credence to the notion that these tools allow jurors to have a more thorough deliberation (Mize, Hannaford-Agor, & Waters, 2007).

In order to help jurors deal with complex scientific evidence some courts have promoted an active learning environment within the courtroom. This new classroom-like approach began in 1995 in Arizona. A classroom environment allows jurors to discuss evidence and take effective and useful notes during the trial. The goal of the new approach enabled jurors to improve their recall and comprehend complex data and concepts. The classroom environment also allowed the jury to keep track of the parties, witnesses, testimony, and evidence (Myers et al, 1999). By improving the decision-making environment in the courtroom, the court can improve jury comprehension, jury performance, and overall satisfaction with the trial experience (Myers et al, 1999). Further suggestions to improve jury comprehension include giving jury members a comprehensive notebook including jury instructions, layout of the courtroom with locations of attorneys and parties, a glossary of scientific terms, diagrams, and photographs of evidence (Myers et al, 1999).

Public Opinion about Juries

Juries have faced criticism from their very conception. Kassin (1988) contends that juries are often viewed as bleeding hearts or prejudicial. Researchers argue that jurors may be swayed by prejudice, anger, or pity rather than fact-based evidence alone. Elrod (2009) notes that some have referred to the jury as "a dozen dimwits gathered at random" (p. 4). Although prone to errors, juries provide an easy target for those not agreeing with verdicts. Research has found that a lack of public support leads to a willingness to destroy the law and engage in anti-system behaviors (Tyler, 1984). As such, it is important to address any issues (such as the aforementioned reforms) that may increase public satisfaction. MacCoun and Tyler (1988) point out those jury trials have been abolished in Continental Europe and severely restricted in Great Britain. Critics to jury trials similarly argue for restrictions and/or abolishment in the United States.

Proponents of the jury trial, however, argue that the abolition of the jury trial would undermine the public's confidence in the criminal justice system (Roberts & Hough, 2011). In examining the importance of the right to a trial by jury, respondents to the British Social Attitudes Survey of 2005 were asked to rate the importance of six rights in a democratic society. Researchers found that the right to a trial by jury was rated as more important the right to protest against the government, the right not to be detained for longer than a week before being charged, the right to privacy, the right not to be exposed to offensive views in public, and the right to free speech in public (Roberts & Hough, 2011). MacCoun and Tyler (1988) found that there was strong public support for the jury system even with the awareness that erroneous verdicts are sometimes reached by juries.

Cole (1992) points out that although most Americans never visit the criminal courts, many have firsthand experience as defendants, witnesses, and jurors or learn about court processes and trial through the media. These individuals are greatly influenced by their perceptions of the quality of justice within the system and these perceptions contribute to citizen education, legitimacy of the criminal justice system, and even willingness to abide by the law. The main way citizens are incorporated in to the legal process in the United States is via jury service (Appleman, 2010). In 1999, 1,826 Americans were asked to express their opinions concerning the courts in their community in order to gather evidence of how the public perceived state and local court performance, including issues of justice, timeliness, fairness, and equality (Bennack,1999). Slightly over half of respondents indicated some personal involvement in the court system. A little less than half of those indicated the involvement was through jury service. Approximately 40% of respondents indicated they had multiple involvements with courts.

Past research has found that jury participation tends to increase the public's confidence in judges and the overall justice system (Gastil, Lingle, & Deess, 2010) while promoting democracy and enhancing the legitimacy of the legal system (Appleman, 2010). Furthermore, research has found that jury participation promotes democracy and citizenship more than any voluntary association. Those who participate have also been found more likely to vote (Appelman, 2010).

In 2004, the American Bar Association asked respondents if they agreed with the statement "If I were a participant in a trial I would want a jury to decide my case, rather than a judge." Three-quarters of the sample agreed. Similar findings emerged in Australia (Roberts & Hough, 2011). The American Bar Association also reported that 84% of respondents believed that serving on a jury is an important civic duty. In addition, 75% of respondents indicated they do not believe it was a burden and would prefer a jury trial to a bench trial if they were a defendant (Denver, 2011).

Respondents to the 2002 Bar Council survey in England found that only one quarter of the sample expressed support for reducing trials in order to strictly save money. Roberts and Hough (2011) note that there has not been enough research to establish whether the "public's enthusiasm for a trial by jury reflects this abstract attraction rather than concrete evidence relating to the effectiveness of the jury" (p. 259).

Regardless of positive support for the institution of the jury, Elrod (2009) reports that despite the steady increase of cases filed in the criminal justice system between 1970 and 1999, statistics show a decline in the number of jury trials. The percentage of trials in criminal cases between 1962 and 1991 remained steady at approximately 13 to 15 percent. However, the percentage of trials in criminal cases has steadily decreased since 1991 (with the exception of a .06 increase in 2001) (Galanter, 2004).

In examining nineteen states, the total for criminal dispositions increased seven percent between 1993 and 2002. Jury trials decreased during this time period by 20%, while bench trials fell by 14% (Strickland, 2005). Long-term trends show that the number and rate of trials in state courts have declined for four case

type categories (criminal, civil, felony, and general civil) for both jury and bench trials. Even so, Frampton (2012) points out that the literature has nonetheless largely ignored state to state differences with respect to trial rates. This is unfortunate since state courts may have the greatest effect on the public's perception of the justice system given the number of cases they handle. For example, in 2004, there were a reported total of 100 million incoming cases (traffic, criminal, civil, domestic, and juvenile) in state courts (Moog, 2009).

The decline in the jury trial has been accompanied by a shift in non-trial dispositions (Strickland, 2005). Criminal non trial dispositions can fall into the categories of guilty pleas, dismissals, and nolle prosequi. Although charges can be dismissed by a judge, the entry made by a prosecutor on the record of a case and announced in court that indicates the charges specified will not be prosecuted is termed a nolle prosequi. Guilty pleas account for the most common type of non-trial disposition (60%) followed by dismissal (21%). The remaining dispositions are classified as "other" and may include the following: nolle prosequi, deferred judgments, transfers, cases placed on inactive status, and post judgment activity (Strickland,2005). Interestingly, guilty pleas accounted for 63% of total dispositions in 1993, but decreased to 61% in 2002. Strickland (2005) emphasizes that although criminal trials compromise a small part of the overall disposition activity, they nonetheless consume a significant amount of the court's resources.

Frampton (2012) argues that in jurisdictions where trials are seemingly rare, it is purportedly from "conscious efforts by state legislators and judiciaries to limit the defendant's right to be tried by a jury of their peers" (p. 186) by instead relying on plea bargaining. Therefore, we will now turn to plea bargaining, which is responsible for disposing of the majority of criminal indictments in the United States.

Summary

In sum, the American jury trial was modeled after that of England's. The English originally used three processes (compurgation, ordeals, and trial by combat) to determine guilt before turning to the jury trial. The 13th century is credited for having the first true criminal juries in England. Since then, in England and America, numerous changes have occurred to the institution of the jury with the notion that each change improves the institution and thus its efficiency and fairness. Changes to the institution of the jury have been implemented from the juror selection process (e.g., venire, *voir dire*) to the final deliberations (e.g., verdict unanimity). The hope is that improving some of the issues associated with the jury will encourage jurors to deliberate more carefully, lead to a speedier trial time, and encourage greater juror participation (King, 1999). The vanishing trial has largely been attributed to plea bargaining. Critics of plea bargaining argue that this practice often focuses on fulfilling an administrative need rather than ensuring justice prevails. Nonetheless, the jury continues to garner widespread support and remains a cherish right in society.

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