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TRIAL BY JURY IN CRIMINAL CASES

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The author discusses the historical basis for the right of trial by jury in the United States, as well as the significance of trial by jury in criminal cases in the U.S. judicial system. These issues are discussed from the perspectives of the defendant, the prosecutor, the jurors, the court and the public. The author states that trial by jury in criminal cases causes law enforcement agencies to work more competently and professionally, that the right of trial by jury serves as a buffer between the individual and the power of the state, and that service as jurors brings gives ordinary citizens a meaningful role in the administration of justice.

Keywords: Jury trial American criminal law Administration of justice U. S. legal system U.S. courts.

I sincerely thank my friends and colleagues for the warm welcome you have extended to me. It is an honor simply to be present at this gathering, and it is certainly an honor to have been invited to make this presentation. It is also a joy to once again visit this historic city of Nizhny Novgorod. This is my fifth visit to this great city, and I will say without hesitation that I consider the friends I have made here to be friends for life.

I welcome the opportunity to speak on a subject that is dear to my heart – the right of trial by jury and the role of jury trial in a free society. My purpose is not to suggest that the way we administer justice in the United States is the way justice should be administered here or in any other country. It is not my place to do that. My purpose, rather, is to briefly recount some history and to provide my personal comments on the virtues of trial by jury in the system of justice to which I have committed my professional life.

First, a bit of American history

America's Revolutionary War, in which we won our independence from England, was started when some brave American patriots put their lives at risk by signing their names to the Declaration of Independence on July 4, 1776. In that declaration these patriots wrote that the king of England, King George III, had "made Judges dependent on his Will alone" and had enacted laws "For depriving us in many cases, of the benefits of Trial by Jury".

Thus, it was against a backdrop of bitter experience that our Constitution was written 227 years ago. The U.S. constitution provides for the right of trial by jury so that the determination of the guilt or innocence of a person accused of a crime – a deci-

sion of surpassing importance to the individual as well as to the community – will be placed in the hands of a jury consisting of citizens from all walks of life, drawn from the community and charged with no duty other than to honestly find the facts and render a true verdict.

The virtues of trial by jury were summarized quite well by our Supreme Court in a decision handed down 141 years ago: "Twelve men of the average of the community, comprising men of education and men of little education, men of learning and men whose learning consists only in what they have themselves seen and heard, the merchant, the mechanic, the farmer, the laborer; these sit together, consult, apply their separate experience of the affairs of life to the facts proven, and draw a unanimous conclusion. This average judgment thus given it is the great effort of the law to obtain. It is assumed that twelve men know more of the common affairs of life than does one man, that they can draw wiser and safer conclusions from admitted facts thus occurring than can a single judge" [2].

I hasten to add, of course, that now, and for many years past, our juries have included women as well as men.

I do not come before you to suggest that trial by jury is a perfect system of determining guilt or innocence. Juries are made up of fallible human beings, just as judges are fallible human beings. Jury trials tend to be somewhat longer and consequently more expensive than non-jury trials. Jury duty is a major interruption in the daily lives of the citizens who are summoned to serve on juries. Jury duty can sometimes result in serious personal hardship, especially when the proprietor of a small business is summoned to report for jury duty.

So why do we consider the benefits of trial by jury to be worth the expense and inconvenience attendant to that method of trial?

I think the benefits of trial by jury in our system can best be understood by looking at jury trials from the perspectives of those who are most directly affected by the process. I will comment briefly on the benefits of trial by jury from the perspectives of the defendant, the prosecution, the judge, the jurors, and the public.

The perspective of the defendant

The public has a right to expect that individuals who are charged with criminal conduct will be charged only after competent and thoroughly professional investigators and prosecutors have reached an honest judgment that a criminal prosecution is well-warranted on the basis of the facts and the applicable law. But even though we have a right to expect competence and professionalism from our law enforcement authorities, we all know that some defendants facing criminal charges will be guilty and some will be innocent. Moreover, some may or may not be guilty, depending on subjective factors such as their state of mind or mental condition. It is true that in most cases, it will make no difference, in terms of outcome, whether the guilt or innocence is determined by a judge or by a jury. But I believe that there is much to be gained by having a jury of citizens representing a cross section of the community, and not just a judge, act as the conscience of the community in determining whether a defendant is guilty of committing a criminal offense. Quite simply, in the courtroom and in the wider community, the moral weight of a jury verdict will easily exceed the moral weight of a decision handed down by a judge.

If the defendant is convicted, then it is a jury composed of the defendant's fellow citizens, and not a judge, telling the defendant that he is guilty. If the defendant is acquitted, it is the jury, and not a judge, telling the state that it did not prove its case.

A defendant who has been convicted by the verdict of a jury will know that he has been convicted by fellow citizens who have determined the facts, and reached their verdict, free of institutional influences that can, in any judicial system in the world, affect the administration of justice in subtle ways. The defendant who has been convicted will know that he has not been convicted by a judge who may, for a variety of reasons, have a conscious or subconscious desire to please the government.

And let me emphasize one point here. Not a single judicial system in the world has succeeded in eliminating the possibility that subtle or not so subtle influences might affect the judgments of some

judges in some cases. Moreover, there is not a single national government anywhere that is completely immune from the temptation to exert undue influence on the judiciary. I make these last comments with such assurance because my comments are based, quite simply, on human nature. Because these challenges cannot be completely eliminated from any judicial system, our task is to keep them from influencing outcomes in individual cases. This is where, and why, trial by jury has an essential role to play in the administration of justice.

The perspective of the prosecution

When I refer to the prosecution, I refer not only to the prosecutor who might actually present the case to the jury, but also to the investigative agencies that are responsible for investigating suspected criminal activity and bringing the evidence to the prosecutor. When the prosecutor knows that the case will be decided by a jury, he or she knows that the case will be decided by twelve citizens who will take a fresh look at the quality of the evidence, rather than by a judge who may have seen dozens or maybe hundreds of these cases in the last few months. For these reasons, trial by jury provides a powerful incentive for prosecutors and investigative agencies to do their job competently, professionally and thoroughly. Juries can be very unforgiving if they detect a careless or biased investigation. In our system, an acquittal by a jury is the end of the matter. The state does not have the right to appeal an acquittal. Prosecutors and investigators know that they must get it right the first time, because there will be no second chance.

The perspective of the court and the judge

From the perspective of the court, it must be said that trial by jury does have an impact on court budgets. Jurors must be compensated. It requires court staff, and consequently costs money, to summon jurors and to attend to their needs while they are serving as jurors. On the other hand, the court benefits from trial by jury in that the court staff has an opportunity to introduce the jurors to their local court and to earn the respect of the jurors. We would hope that the jurors will complete their service as jurors with an appreciation of the work of the court and its staff and of the treatment they received while they were at the courthouse doing their civic duty.

Likewise, for the judge, jury trials present an opportunity to extend a welcoming hand to the citizens who serve on juries and to see to it that their service as jurors is a satisfying civic experience. I can safely say that U.S. judges who preside over

jury trials welcome the jurors as full partners in the administration of justice.

The perspective of the jurors and the public

Trial by jury serves both as a bridge between the citizenry and the judicial system and as a buffer between the individual and the power of the state. For that reason, it comes as no surprise that, almost without exception, our jurors come away from their service as jurors with increased understanding of, and confidence in, their judicial system. Our jurors typically tell us that even though the summons to jury duty was initially unwelcome, and even though serving on a jury represented a major interruption, they found jury service to be a most satisfying civic experience – an experience that gave them a sense of ownership in their system of justice. Our jurors' experiences play an exceptionally important role in engendering public confidence in our judicial system. To illustrate my point, let me refer to no less an authority than President Valery Zorkin of your Constitutional Court. President Zorkin has said that: “[T]he rule of law resides not in the statutes, but in the minds. By saying ‘minds,’ we mean not only these of legislators and representatives of other branches of state power, but those of the whole nation, that is mass public legal awareness” [3]. I agree wholeheartedly with President Zorkin, and I can say without hesitation that, in my country, that essential mass public legal awareness is immeasurably enhanced by our system of trial by jury.

From a wider public perspective, it is also true that public acceptance of the outcome of a criminal case – acquittal or conviction – is enhanced by the public's understanding that the decision was made by a jury composed of citizens representing a cross

section of the community, applying their collective wisdom, experience and common sense, rather than by a single individual.

Conclusion

In conclusion, let me say once again that my comments are based entirely on my own experience in my country. As I said at the beginning, I did not come here to preach to you. But perhaps you will forgive me for saying that, in my opinion, November, 1864 and December, 1993 were great years in the juridical history of Russia, because those were the years in which trial by jury was instituted and reinstated in this great nation.

In any society, the accountability of individuals and, no less, of governmental institutions, is an essential ingredient of the rule of law. My submission to you is that juries play a unique role in preserving that delicate balance between the interests of the individual and the interests of society.

References

1. The views expressed here do not necessarily represent the views or policies of the United States government, any agency thereof, or any judicial organization.
2. *Railroad Company v. Stout*, 84 U.S. 657, at 664 (1873).
3. Speech delivered by Valery Zorkin, President of the Constitutional Court of the Russian Federation, at a symposium on the rule of law sponsored by the International Bar Association together with the Constitutional Court of the Russian Federation, the Federal Chamber of Lawyers of the Russian Federation, the Moscow City Chamber of Advocates and the International Union (Commonwealth) of Advocates on July 6, 2007.

СУДЕБНОЕ РАЗБИРАТЕЛЬСТВО ПО УГОЛОВНЫМ ДЕЛАМ С УЧАСТИЕМ ПРИСЯЖНЫХ ЗАСЕДАТЕЛЕЙ

Стивен П. Фрайот

Автор рассматривает исторические предпосылки становления права на рассмотрение дела с участием присяжных заседателей, а также значение института присяжных при рассмотрении уголовных дел в судах США. Данное значение оценивается с позиций обвиняемого, прокурора, самих присяжных, суда и общества в целом. По мнению автора, рассмотрение уголовных дел с участием присяжных заседателей способствует более грамотной и профессиональной работе правоохранительных органов, а само право на рассмотрение дела с участием присяжных создает своеобразный буфер между государственными и частными интересами. Кроме того, автор отмечает, что выполнение функций присяжных дает возможность рядовым гражданам играть определенную роль в отправлении правосудия.

Ключевые слова: суд присяжных, уголовное право США, отправление правосудия, судебная система США, суды США.