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EDITORIAL

A FREEMAN AND HIS PEERS

Discussions of trial by jury usually arouse emotional overtones tinged with dramatic grace notes of constitutional rights. Despite its ancient, exclusive protection for noblemen, no less majestic authority than the Magna Charta is frequently brought in to furnish the tympanies. Yet respectable authorities, barely audible over the din, have voiced criticisms of the jury system and have laid bare its inadequacies. Because such strains are more often unremembered, we think it worth while to speak out upon problems concerning juries participating in the administration of criminal justice and to point them up.

There are no strictures in pertinent constitutional mandates upon intelligent administration of the jury system. The "right to trial by jury" is too frequently employed simply as a catch phrase with which to bludgeon critics of the system. Those who challenge such critics seldom chart a straight course between treating juries as political institutions or components of the judiciary—dual points of view long ago noted by de Tocqueville. But whether jurors are intended as representatives *of* or *from* the people situated in some particular area, is another facet requiring consideration. Indeed, modern statistical principles, viz., probability sampling, offers a reservoir of techniques, as yet untapped in the legal field as methodology for use in connection with drawing panels from which trial jurors are subsequently selected.

Today's jury is a highly complex aggregation, drawn, for example, from a sprawling urban hodge-podge of humanity, and shaped, in part, by counsels' challenges. What twelve jurors in and of the community actually represent defies identification, eludes evaluation and captivates the imagination. A quick mental inventory will demonstrate the conglomeration of family backgrounds, environments, intellectual, social, sexual and functional developments, occupations, religious and educational factors present in twelve jurors. They may have, for example, uncultured experiences. Their thinking may be largely done for them at all times other than this one episode in their lives. Those who have successfully refused to face facts during their full chronological adult lives are now suddenly called upon to exercise mental processes long since atrophied. Mechanically selected from areas of conglomerate populations, prospective jurors, in order to qualify for service, in some areas, need only display minimum manifestations of life—discernible respiration and locomotion. All else is purely coincidental, if not surprising. Of course, if credentials of antiquity are indispensable criteria for measuring current practices, "wager of battel" and its emphasis on muscle could be cited. Though long since unhorsed, it must be admitted, some

champions were selected for their capabilities. Where once a compact social unit sponsored comparatively reliable, informed and representative jurors, possessing some modicum of the common standard of behavior, ethics and morals, current panels display diverse and conflicting interests drained from myriad social, racial and nationality backgrounds. Mass communication facilities currently mold any loose opinions floundering in shifting sands of indecision, or foundering on shoals of the desire to become accepted members of the "group." Complacent conformity has superseded independent thinking. Contemporary jurors come to the box with "built-in responses," and conditioned mental attitudes. It is probably the first time some jurors are confronted with a problem on which he (or she) must make a decision. Up to this point intellectual laziness has been nurtured by diverse influences. Newspapers analyze news, slant it delicately; magazines predigest sentences for consumption and both order the acceptable attitude which a prospective juror must adopt. Radio and television programs have instructed him in things to say and do—in short, what society expects of him. He is prone to measure guilt or innocence by synthetic, prefabricated judgments. Religion, clubs, lodges and gossip have all exerted influences on the raw material for jury service. If a juror wants to "belong" he must follow the pattern. Anonymous *they say* holds sway today. Requiring unanimity of verdict stimulates hasty compromise for unlatching jury room doors and expediting return to personal pursuits, private life and television sets. Blocs, cliques, sects, schisms, groups within groups and concentric circles of influence spawn verdicts. Save in perfunctory or ritualistic fashion, jurors are rarely instructed upon their actual functions. Indeed, beyond a sprinkling of capsuled automatic utterances, i.e., *triers of facts*, *weighers of evidence* and *testers of credibility*, their participation in the contest between prosecution and defense remains as mysterious to members of the jury as some of their verdicts are.

Instructions on applicable law are threaded on archaic phraseology, strung together by esoteric terms draped on weary sentence structures. Speaking realistically, jurors, though they cannot be compelled to follow and apply propositions of law with which they are charged prior to retiring for deliberation, conceivably ignore all unintelligible passages. Just how many times jurors have simply written their own predilections into verdicts is unknown, though not beyond peradventure.

Existence of semantic problems pervading trials also demands recognition and treatment. It may be said that questioning of witnesses, during trials, are efforts to produce multi-communications. Thus, direct and cross examinations are attempts at communicating thoughts of counsel to the minds of judges, jurors, witnesses, client and adversary. But question framework frequently contains emotive terms. Words then correspond with sentiments, *not* things. For here is that correlation and interplay between language and experience. Words may refer to experience, perhaps substitute for experience, then again mold experience.

If juries constitute a bulwark, and mitigating agency, then improve methods of selection—educate prospective jurors in their functions and duties. If jurors are to ascertain whether facts adduced during trials fit within the framework of a certain social proscription, then let the pertinent law be communicated to them in understandable form.

Too frequently, personal ambitions of prosecutor and defense counsel have dissipated all semblance of fair play in modern criminal trials. Current prosecutions tend toward contests, rather than pursuits of truth. These environments are conducive to discontent with administration of justice, causing it to spread and flourish with the luxuriousness of weeds. Respect for law and order is cultivated, not forced.

—MELVIN F. WINGERSKY.