



## Why Juries?

**The founders of our country considered trial by jury an indispensable right; the right to jury trial was one of the issues over which the American Revolution was fought.**

- The right to jury trial in *criminal* cases is written directly into the main body of the U.S. Constitution; for *civil* cases, the right to trial by jury is found in the Seventh Amendment.
- Nearly every state constitution secures the right to trial by jury as well.

**A chief function of the jury system is to provide a check on official or arbitrary power.**

- Civil juries are charged with deciding cases involving official misconduct, standards of justice, or public health and safety. Chief Justice Rehnquist once wrote, “[T]hose who oppose the use of juries in civil trials seem to ignore [that] the founders of our Nation considered the right of trial by jury in civil cases an important bulwark against tyranny and corruption.”<sup>i</sup>
- Jurors have no interest in the outcome of a case except to see that justice is done, protecting all of us from the possibility of corruption, overzealousness, and an array of other risks. The very temporariness of juries – selected for one case and then fading anonymously back into the community - helps make this possible.

**There is a significant body of evidence demonstrating that civil juries are competent, responsible, and rational, even in complex cases, and that their decisions are not arbitrary or emotional.**

- Because the deliberative process allows jurors to pool their collective intellects, they are able to more completely recall and more critically analyze the evidence and the law.<sup>ii</sup>
- Huge awards are infrequent and often are reduced when they occur.<sup>iii</sup>
- Studies comparing the liability and damages decisions of juries and judges in civil cases have found a considerable degree of agreement.<sup>iv</sup>
- Typically, jurors scrutinize plaintiffs’ motives for bringing suit. Malpractice trial jurors often worry about what effect a plaintiff verdict will have on the doctor, both financially and emotionally.<sup>v</sup>
- Trial by jury can sharpen the lawyers’ presentation of their cases, allowing not only the jurors, but also the judge to understand them better. Without juries, trials would become over-professionalized dialogues incomprehensible to anyone but lawyers.<sup>vi</sup>

**Juries can be more accurate and more fair than judges.**

- Juries, unlike judges, bring a variety of perspectives and community values to their decisions. Jurors also bring a range of background knowledge from a variety of fields and occupations, while any one judge has far more limited knowledge.

- Jurors are drawn from the whole community, not just from those who are trained in the law or from any other elite segment.
- Juries are screened for bias before a case; judges are not.
- Juries can apply a measure of fairness and equity to a case that a judge, more constrained by fine points of law, may ignore.
- Particularly when damages involve intangible kinds of injuries (e.g., physical pain, mental suffering, disability, and disfigurement from injuries such as blindness, quadriplegia, sterility, etc.), the value of the particular loss to a victim can be assessed only by the judgment of human beings. The range of life experience and knowledge brought together within juries has long been regarded as a particularly good basis for making those difficult judgments.

**On those occasions when judges conclude that the jury’s verdict cannot be supported by the evidence, the law already allows judges to set aside the jury’s verdict.**

- Trial judges have the power to set aside a jury’s verdict (except an acquittal in a criminal case).
- In every jurisdiction, if a judge believes that an award is too large the judge can lower it. In some jurisdictions, if the judge thinks an award is too low the judge can raise it. One major study found that judges reduced jury awards about 15% of the time and increased them about 3% of the time. Defendants paid an average of 71% of what juries awarded.<sup>vii</sup>

**Legislative caps on what a judge or jury can award in a case is a particularly cruel policy idea.**

- Caps allow the least seriously injured to receive full compensation while requiring the most seriously injured to accept the most severe under-compensation. (In effect, the most seriously injured people are the ones drafted to protect the wealth of the very people who injured them.)
- Another irony is that under a “cap” regime, jurors tend to give *larger* awards to the great many smaller injuries (because of the psychological phenomenon of “anchoring”).<sup>viii</sup>

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## Endnotes

<sup>i</sup> *Parklane Hosiery Co. v. Shore*, 439 U.S. 322 (1979).

<sup>ii</sup> Phoebe Ellsworth, *Are Twelve Heads Better than One?*, 52 LAW & CONTEMP. PROBS. 205 (Autumn 1989).

<sup>iii</sup> Thomas H. Cohen & Steven K. Smith, *Civil Trial Cases and Verdicts in Large Counties, 2001*, Bureau of Justice Statistics Bulletin (April 2004); Theodore Eisenberg et al., *Juries, Judges, and Punitive Damages: An Empirical Study*, 87 CORNELL L. REV. 743 (2002); NEIL VIDMAR, *MEDICAL MALPRACTICE AND THE AMERICAN JURY* (1995); Eleanor Kinney & William Gronfein, *Indiana’s Malpractice System: No-Fault by Accident?*, 54 LAW & CONTEMP. PROBS. 169 (Winter & Spring 1991).

<sup>iv</sup> Eisenberg, *Juries, Judges, and Punitive Damages*; Roselle Wissler et al., *Decisionmaking about General Damages: A Comparison of Jurors, Judges, and Lawyers*, 98 MICH. L. REV. 751 (1999); HARRY KALVEN & HANS ZEISEL, *THE AMERICAN JURY* (1966).

<sup>v</sup> VALERIE P. HANS, *BUSINESS ON TRIAL: THE CIVIL JURY AND CORPORATE RESPONSIBILITY* (2000); Valerie P. Hans, *The Illusions and Realities of Jurors’ Treatment of Corporate Defendants*, 48 DE PAUL LAW REVIEW 327 (1998); VIDMAR, *MEDICAL MALPRACTICE AND THE AMERICAN JURY*.

<sup>vi</sup> KALVEN & ZEISEL, *THE AMERICAN JURY*.

<sup>vii</sup> MICHAEL SHANLEY & MARK PETERSON, RAND INSTITUTE FOR CIVIL JUSTICE, *Posttrial Adjustments to Jury Awards* (1987).

<sup>viii</sup> Michael Saks, et al., *Reducing Variability in Civil Jury Awards*, 21 LAW & HUMAN BEHAVIOR 243 (1997).