

JURIES AND POLITICS

JAMES P. LEVINE

Juries and Politics

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Brooklyn College
of The City University of New York



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To Al, Martha,
and the memory of Vivian

About the Author

James P. Levine, who received his Ph.D. from Northwestern University in 1967, is a Professor of Political Science at Brooklyn College. He also teaches at John Jay College of Criminal Justice as a member of the doctoral faculty of the Graduate Center of the City University of New York. Before his present appointments, he taught at Michigan State University and the University of Oregon.

Dr. Levine's specialties are the judicial process and crime policy, fields in which he has published over a score of articles. He has co-authored two textbooks on criminal justice: *Criminal Justice: A Public Policy Approach* (New York: Harcourt, Brace, Jovanovich, 1980) and *Criminal Justice in America: Law in Action* (New York: Wiley, 1986). In recent years he has done considerable empirical research on jury verdicts, resulting in articles in the *American Bar Foundation Research Journal*, *Crime and Delinquency*, *Judicature*, and *Trial Lawyers Quarterly*. He also does research on American politics. His most recent work is a book co-authored with David Abbott, entitled *Wrong Winner: The Coming Debacle in the Electoral College* (New York: Praeger, 1991).

Foreword

Through the Contemporary Issues in Crime and Justice Series, students are introduced to important topics relevant to criminal justice, criminology, law, political science, psychology, and sociology that until now have been neglected or inadequately covered. The authors address philosophical and theoretical issues and analyze the most recent research findings and their implications for practice. Consequently, each volume stimulates further thinking and debate on the topics it covers, in addition to providing direction for the development and implementation of policy.

Juries, in their role of “maintaining contemporary community values” through the determination of guilt or innocence, the handing down of sentences, and the awarding of damages, have a significant impact on our society and the criminal justice system. This impact is strongly influenced by the political nature of the American jury system. Contemporary scholars, however, have largely ignored the importance that politicality plays in jury decisions—until now. Levine’s work explores the jury process from this unique perspective, from the initial selection of jurors, through deliberation and decision making, to the impact of jury verdicts on society.

This examination of juries from a political perspective is an important contribution to the literature, because it forces us, as Levine suggests, to “search beyond the formal charges and the trial record to better understand what drives jurors to one conclusion rather than another.” Such an approach requires that we examine the underlying concerns that are often on the minds of the jurors—that is, the informal nature of what actually transpires in the jury’s quest for truth and justice. The author has contributed keen insights regarding the inner sanctum of the modern jury system by reviewing the different types of research utilized to study juries, including mock trials, statistical analysis, and interviews. Some of the more interesting findings include: (1) *who* jurors are has an effect on *what* they decide; (2) the political

climate of the time often affects the way jurors view cases, with the current political ethos making jurors more or less eager to convict; (3) *who* sits on the jury can be as important as the evidence in deciding outcomes; and (4) critical jury verdicts often serve as catalysts in producing significant changes in the political and economic system.

The author ends the text with the general conclusion that the jury's decision making processes are far from perfect. In order to improve the current state of affairs, Levine suggests that three goals need to be accomplished by altering the rules under which juries operate. He also offers several proposals that have important policy implications for improving jury verdicts. This work makes a significant contribution to the study of jury behavior and its impact on society; it should be read by all those—both students and policymakers—who have an interest in understanding and improving the American jury system.

Roy R. Roberg

Preface

A century ago Irish-American political satirist Finley Peter Dunne scathingly mocked the jury through the voice of one of his fictional characters, the straight-talking “Mr. Dooley.” Said Mr. Dooley (in his Irish brogue): “Whin th’ case is all over, the jury’ll pitch th’ testimony out iv th’ window, an’ consider three questions: ‘Did Lootgert look as though he’d kill his wife? Did his wife look as though she ought to be kilt? Isn’t it time we wint to supper?’” (*Mr. Dooley in Peace and War* [Boston: Small Maynard, 1898], pp. 141–145).

These cutting lines still get a good laugh, but they tell us nothing about the jury’s true nature. They leave unanswered a fundamental question: Are jurors objective or subjective in rendering verdicts—or something in between? It is this issue that law professor Harry Kalven and sociologist Hans Zeisel posed twenty-five years ago in the process of studying *thousands* of verdicts rendered throughout the United States. In their seminal and now classic book *The American Jury* (Boston: Little Brown, 1966), they stated their ultimate concern: “to trace the law in action, to see how juries . . . *really decide cases*” (p. 497, italics added). Their goal then was my goal now—to figure out how juries exercise the truly awesome discretion entrusted to them and to determine the extent to which, through their verdicts, they graft onto the law their own moral perspectives. In short, the key question I am asking boils down to this: What makes juries tick?

The title of this book, *Juries and Politics*, reveals the gist of my answer: jurors and juries in large measure act politically. The interdisciplinary research I assembled and the case studies I compiled for the purpose of drawing an accurate portrait of the jury in action indicate that jurors rely to a considerable degree on their own values, ideologies, and biases in the process of coping with facts that are uncertain and laws that are ambiguous. They work hard to ascertain the truth in the face of trial inconclusiveness, and they make the

utmost attempt to act rationally in reaching proper verdicts; but in reality they are influenced by all kinds of extralegal considerations. Having been selected from the public-at-large, they mirror many public sentiments and popular feelings. Jurors are partisans who, like everyone else invested with governmental responsibility, are incapable of being totally neutral.

These are strong words. The rest of this book is devoted to backing them up with scores of specific cases, extensive experimental research, reflections of jurors themselves, and analyses of verdict statistics. It is an attempt to review systematically the myriad influences on jurors' behavior: trial evidence and arguments, the demands of justice, assessments of the law, the nature of the political climate, and personal biases. I also explore the impact of jurors on one another—the politicking during jury deliberations that has much in common with other kinds of collective decision making. Finally, I explain the repercussions of jury verdicts: the ways in which what juries do has an impact on the workings of the legal system, on the larger political process, and on society.

This book is germane to many kinds of law-oriented undergraduate and graduate courses. It is suitable for introductory or advanced criminal justice courses focusing on the judiciary, for judicial process courses taught in political science departments, and for courses dealing with the sociology or psychology of law. Because the book draws on ideas and sources from a variety of fields, it is ideal for interdisciplinary courses on law and society.

Beyond the classroom, anyone having either a professional interest in juries, such as attorneys, or a personal curiosity about how juries work should find the book accessible. I have written it for a general audience, including anyone who at one time or another may have been captivated, perplexed, or angered by trials they followed. It is my hope that I have been able to demystify the jury's functioning while at the same time communicating the sense of excitement that jury trials and jury decision making generate.

Just as jurors have biases, so do authors, and here is mine: *I love juries!* My fascination with juries began when I first served on a criminal jury in 1977 and I was struck by the seriousness and the passion of my co-jurors. This budding affection for the jury surfaced two years later during my co-authorship of an introductory criminal justice text, prompting the copyeditor to tell me that I was both more spirited and less cynical in my treatment of jurors than in my descriptions of other participants in the judicial process. Concurring in this assessment, I found myself driven to learn more about the jury, and I spent a good part of the 1980s doing a series of original empirical studies of jury behavior. This research confirmed how much the jury reflects the political culture and gave me an even greater appreciation of its role in making the legal system accountable to the public.

So, although I have tried to be as objective as I could in my discussion of the jury, I must admit that I remain a great admirer. Much of the research that I report reveals shortcomings about the jury, and some of the verdicts described are in my opinion nothing less than horrifying. But for all its

weaknesses, the jury in my mind contributes a blessedly democratic element to the legal system.

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I was most fortunate in receiving enormously helpful criticisms and suggestions from series editor Roy Roberg and from the following reviewers selected by the publisher to critique earlier drafts of the manuscript: Theodore Becker of Auburn University, Valerie P. Hans of the University of Delaware, Martha A. Myers of the University of Georgia, David Neubauer of the University of New Orleans, and Neil Vidmar of Duke University School of Law. I would also like to thank John Beatty, Dan Claster, Philippa Strum, and Vera Tarr, who are colleagues of mine at Brooklyn College, and Jo Dixon of New York University for reading parts of the manuscript and offering sound advice. Also deserving of thanks is Lynn Mather of Dartmouth College for her support of my jury research at an early stage. Finally, I express my appreciation to Michael Musheno and Dennis Palumbo of Arizona State University, to David Abbott and Robert Abrams of Brooklyn College, and to Victor Rosenblum of Northwestern University for their moral support over the years.

My family has been behind me all the way during the writing of this book, putting up with the long and sometimes odd hours that I devoted to it. I thank them for their backing, which has meant so much to me.

James P. Levine

The jury is, above all, a political institution,
and it must be regarded in this light
in order to be duly appreciated.

Alexis de Tocqueville, *Democracy in America* (1835)

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Jury Politics in Microcosm: The Bernhard Goetz Case

(Question) What Happened?

(Answer) Who Knows?

They called him the subway vigilante. From the moment the fragmented story first emerged, sides were formed. Four young men were seriously wounded by gunshots fired at them while they were riding a crowded New York City subway train. The assailant at first fled but later turned himself in to a New Hampshire police station where he confessed to the shooting. His reason? He was surrounded by a bunch of hoodlums who were demanding his money. His name? Bernhard Goetz.

Goetz soon became a household word, not just in New York but nationwide, as his face adorned the covers of the major news magazines. The reaction of the legal system was confused and contradictory: the district attorney first charged him with (among other things) attempted murder; the grand jury threw the charges out, refusing to indict Goetz; a new grand jury was formed, hearing the case anew (presumably on the basis of new evidence); the second grand jury reversed the actions of the first one and charged Bernhard Goetz with a series of very serious felonies. Goetz pleaded not guilty on the basis of self-defense, saying that when the youths demanded five dollars from him, "I was acting out of goddamn fear." The prosecution, noting that two of the victims were unarmed and a third was cowering when shot, argued that Goetz had

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