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SIX MAN JURY STUDY

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REDUCING JURY SIZE IN THE COURTS OF COMMON PLEAS

INTRODUCTION

The Common Pleas and Municipal Courts of Philadelphia have been devoting a great deal of effort to meet or exceed the Standards and Goals as set forth by the National Advisory Commission on Criminal Justice in its publication on Courts and Criminal Justice System standards.

The present project evolved from an inquiry into the status of one particular standard: that of jury size. The standard maintains that juries in criminal prosecutions for offenses not punishable by life imprisonment should be composed of less than twelve (12) but of at least six (6) persons. All criminal jury trials in Pennsylvania are presently tried before juries of twelve members. Originally, the project was designed to discuss the situation in Philadelphia alone, but since the process of implementation will of necessity involve the entire state, the discussion has been expanded.

Since the standard calls for six persons in cases not involving punishment of life imprisonment, the present court system in Pennsylvania does not meet the standard. The project attempts to review the process of reduction of jury size by considering five essential areas of concern: 1) history, 2) benefits, 3) costs, 4) constitutionality, and 5) implementation.

Obviously, a fair trial is of primary importance, and this project not merely provides an argument for jury size reduction, but also tries to determine if the standard may be considered detrimental to the judicial process. Accordingly, the paper attempts to weigh the advantages and disadvantages of jury size reduction in order to determine: 1) if a reduction in jury size is beneficial and, if it is, 2) the ways in which the jury size can be reduced.

I

HISTORY OF THE TWELVE MEMBER JURY

In the discussion of jury size reduction, it becomes valuable to investigate the origin of the twelve-member jury and determine to what extent its continued existence is based upon rational forensic grounds and to what extent it is founded upon a blind adherence to tradition. Clearly, there are many objections to a reduction in jury size, and indeed, there stands the view that any change in the structure of the present jury would be totally unacceptable. This is exemplified in the reactions to the Williams v. Florida (399 U.S. 78 (1970)) decision where the Supreme Court held that a six-member jury in noncapital cases is valid under the Federal Constitution.

As the Supreme Court suggested, the results of an inquiry into jury history indicate that the twelve-man jury is the product of "little more than mystical or superstitious insights".[1] Since the Constitution does not give a specific number as to proper jury size, it thus becomes difficult to determine just when in history the requirement of twelve was declared to be essential to the achievement of a just result.

The history of the jury had its origins in jury-like institutions dating back to ancient Greece, Rome and Scandanavia. It has been suggested that there are twelve on a jury because court astrologers who had charge of choosing juries used to select one name for each of the signs of the Zodiac. This, it was thought, would bring every type of mind and temperament to consider the question, thus assuring the accused of a fair verdict.[2]

The common law jury was thought to consist of twelve numbers, fixed by the signing of the Magna Carta. It has also been observed that although the number of jurors was usually twelve, the number at first was not unvarying, but seemed to fluctuate according to convenience or local custom. However, it does appear evident that the number twelve became fixed as the size of the common law jury sometime by the fourteenth century.

It is also evident that the selection of this particular number rather than any other number cannot be attributed to any specific reason, but rather it "appears to have been a historical accident, unrelated to the great purposes which gave rise to the jury in the first place."[3]

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[1]Williams v. Florida, 399 U.S. 78 (1970), p. 88.
[2]Mathews, "The Jury - Old Wine in New Bottles", 39 Fla. Bar J. 94 (1965).
[3]Williams v. Florida, 399 U.S. 78 (1970), pp. 89 - 90.

Reason would seem to indicate that there is no particular merit, no "Divine Origin, no Holy Order"[4] in the number twelve. Indeed, if the common law jury had consisted of 9, 11, or 13 jurors at the time of the adoption of the Constitution, we would have adopted a jury of 9, 11 or 13 men and would defend that specific number as steadfastly, only because of its origin in tradition.

Objectively, then, we must be interested in the functions of the jury as a fundamental political and social institution which is important in that it assures the accused of a fair trial. If we can reduce jury size with no loss of effectiveness, it appears justifiable if there are advantages to be gained from doing so. It thus becomes necessary to examine the benefits to be gained from a reduction.

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[4]Edward Tamm, "The Five-Man Civil Jury; a Proposed Constitutional Amendment," 51 Georgetown L. J. 120 (1962 - 1963) P. 129.

II

BENEFITS OF A REDUCED JURY

The advantages that are to be gained by the reduction of the present jury size clearly depend upon the extent to which such a change can reduce the delays and the steadily increasing costs which characterize the present situation in the Court of Common Pleas. It is obvious that a reduction in size alone will not eliminate entirely the delays and costs that might in some way be connected to a jury trial. Obviously, some form of costs and delays are inherent in the jury system, and to the extent to which we wish to retain the advantages of the system, such costs are unavoidable. However, it is evident that if the costs and delays can be minimized, without affecting the efficiency and purpose of the jury system, it is irrational not to pursue alternatives and judicious to take advantage of potential benefits resulting from a reduction in jury size.

A great deal has been written about court delays and calendar congestion, and it continues to be a serious problem. A lengthy study commissioned by the University of Chicago Law School stated that the reasons why delay in the courts is considered so "unqualifiedly bad" is because it deprives citizens of a basic public service, and the lapse of time frequently causes deterioration of evidence and makes it less likely that justice will be done when the case is finally tried.[1]

In one survey, it was pointed out that the two primary stages of trial, where reduction in the size of the jury would make a difference, are the voir dire examination of jurors, and the time consumed in deliberations.[2] In terms of voir dire time, it was estimated in New Jersey, with the introduction of a six-man jury in civil cases, that six-member voir dires averaged approximately 45% shorter than twelve-member.[3] The Illinois Judicial Conference, in research conducted on the reduction of civil juries to six members and trial time saved, concluded that a benefit of trial by six-member juries was that it "required approximately 40% less judge and lawyer time to select a jury of six compared to a jury of twelve."[4] It is

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[1] H. Ziesel, Kalven & B. Bucholz, Delay in the Court, p. XXII, (1959).
[2] Comment, "With Love in Their Hearts, but Reform on Their Minds: How Trial Judges View the Civil Jury," 4 Colum. J. L. & Soc. Prob. 178, 192 (1968).
[3] Institute of Judicial Administration, Inc. "A Comparison of Six-and-Twelve-Member Civil Juries in New Jersey Superior and County Courts," 1972, P. 26.
[4] Ill. Jud. Conf. Exec. Comm., 1962 Ann. Rep., P. 64.

argued on the opposite side that any substantial saving of time in the voir dire examination would never be realized, since with a proportionately smaller jury each member becomes relatively more important and the attorneys for each litigant would most likely spend more time examining each one. However, in making this argument, these writers overlook one of the fundamental tenets of trial practice. Whether the jury is twelve or some lesser number, each attorney will do his utmost to secure the best possible jury. That greater care would be used if there was a smaller number assumes that lawyers exercise less than their utmost care in their present selection process.[5] This argument is also negated by the observations given above.

In terms of deliberations, the previously cited New Jersey study showed that six-member deliberations averaged 1.2 hours, and the twelve-member deliberations averaged 1.8 hours.[6] The greater length could reflect "better quality" deliberations in which twelve persons explore all the facts and issues more thoroughly than six. Alternately, the greater length could reflect "greater inefficiency" because it takes longer for twelve persons to have a turn to speak, which seems the more rational explanation. There is no reason to believe that a smaller jury would take their duties less seriously than a jury of twelve.

Other, less significant, time factors could be reduced by the use of six-member juries. Although each of these items would tend to be thought insignificant standing alone, totalled together they could represent the saving of much trial time. Among these factors are: the shorter roll call of only six jurors; the assembling, processing and supervision of the lesser number of jurors; the showing of exhibits and documents; and even the shorter amount of time it takes six jurors to move in and out of the jury box as opposed to twelve. Also, time outside of the actual trial is saved by the reduced jury size. With smaller juries to be selected, fewer notices would have to be sent to the prospective jurors, thus resulting in less paper work and a saving of administrative time.[7]

Money saved in terms of reduced jury size has been estimated in several contexts. For example, based on the 1970 fiscal year figures, the total expenditure for petit jurors in the Federal courts civil jury trials was $5,647,950. It is estimated that the use of six member juries would result in savings of

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5Edward A. Tamm, "The Five-Man Civil Jury: A Proposed Constitutional Amendment," 51 Georgetown L. J. 120 (1962), PP. 131-132.

6Institute of Judicial Administration, Inc., "A Comparison of Six-and-Twelve-Member Civil Juries in New Jersey Superior and County Courts," 1972, PP. 28-29.

7Edward A. Tamm, "The Five-Man Civil Jury: A Proposed Constitutional Amendment," 51 Georgetown L. J. 120 (1962), P. 134.

$1,799,600.[8] Judge Richard H. Phillips for Connecticut as early as 1956 estimated substantial savings for the state if civil jurors were reduced.[9] The point to be made is evident, that substantial savings can be expected, and the obvious step is to determine how much.

In the determination of the optimal number of jurors utilized in the courts, it becomes necessary to be aware of two problems. One is having an adequate number of jurors available in order to minimize the possiblity of delay. The second problem is to keep the number small enough in order to minimize juror costs. The problem in maintaining a balance between these two priorities lies in the large fluctuation of jurors needed for trial duty.

Using data based on studies done by the Court Administrator's Office of the Philadelphia Courts it becomes possible to determine the savings resulting from utilization of a six-member jury. In the year covering 11/73 to 12/74, it was found that the probability of delay caused by an under supply of jurors was 6%. The present goal is 85% juror utilization, set in order to minimize cost without reducing the effectiveness of the existing system. The goal of using as many jurors as possible without causing a "critical period", that is, a situation in which not enough jurors are present to make up a panel requires the jury pool to maintain a reserve of about 30 jurors to be available at any given time. However, while the average number of jurors in the courtroom was 248, the actual numbers fluctuated between 80 and 440, again, making it difficult to predict optimal jury pool size. As an example of the costs of "excess" jurors, in a three month study, it was found that excess juror costs totalled $2,313 weekly, becoming $120,000 yearly in the Court of Common Pleas in Philadelphia alone.

The court presently pays its jurors $9 per day. With 13 holidays when the courts are not in session, the number of working days for the court approximate 247/year. Thus, the cost per juror per year can range from $1,800 to $2,200. (This approximation is due to the fact that jurors are dismissed early at times, and not paid the full $9/day rate.

Therefore, depending on the probability of a critical period arising, it is possible to determine what the present costs are, and what the probable savings could be. During the year studied, it was shown that 72% of the available jurors were on a jury panel or involved in a voir dire proceeding, which is less than the 85% goal. This led to an average number of jurors available to be 345. However, depending on the probability of a critical period arising the present costs may be computed as follows:

8Anthony Augelli, "Six-Member Juries in Civil Actions in the Federal Judicial System," 3 Seton Hall L. Rev. 281 Spring 1972, p. 91.

9Phillips, "A Jury of Six in All Cases," 30 Conn. B. J. 354, (1956), p. 357.

Prob. of Critical Period	# of Jurors Available	Daily Rate	# of Working Days/ Year	Cost/Year (Approximate)
1%	420	$9	247	757,302 - 933,660
2%	410	$9	247	739,271 - 911,430
3%	400	$9	247	721,240 - 889,200
4%	390	$9	247	703,209 - 866,970
5%	380	$9	247	685,178 - 844,740
6%	370	$9	247	667,147 - 822,510
9%	360	$9	247	649,116 - 800,280
11%	350	$9	247	631,085 - 778,050
15%	340	$9	247	613,054 - 755,820
18%	330	$9	247	595,023 - 733,590
22%	320	$9	247	576,992 - 711,360
27%	310	$9	247	558,961 - 689,130[10]

It should be noted that the use of a six-member jury would not necessarily cut these costs in half. Rather, the costs computed below would represent the maximum savings possible, with real savings somewhat less. Assuming, for example, a straight one-half reduction in jurors, the costs and savings become as follows:

One-Half Reduction:

Prob. of Critical Period	# of Jurors Available	Daily Rate	# of Working Days/ Year	Cost/Year & Savings/Year
1%	210	$9	247	378,651 - 466,830
2%	205	$9	247	369,635 - 455,715
3%	200	$9	247	360,620 - 444,600
4%	195	$9	247	351,604 - 433,485
5%	190	$9	247	342,589 - 422,370
6%	185	$9	247	333,573 - 411,255
9%	180	$9	247	324,558 - 400,140
11%	175	$9	247	315,542 - 389,025
15%	170	$9	247	306,527 - 377,910
18%	165	$9	247	297,511 - 366,795
22%	160	$9	247	288,496 - 355,680
27%	155	$9	247	279,480 - 344,565

Depending on the probability of a critical period desired, the range of savings is substantial, even if not half. There is presently a bill in the legislature which calls for jurors to be paid $20 per day, with the state paying half the cost and the city paying the other half. If this bill passes, Philadelphia will be paying $10 per day, instead of the $9 which covers the full cost at present. With rough figures, the cost to the city will increase:

345 x 247 x $10 = $852,150. With juror reduction, any amount deducted from that figure would result in substantial savings.

[10] Court Services and Operations, "Jury Use," City of Philadelphia 12/30/74, P. 4

If jury size were reduced, obviously Philadelphia would not benefit alone. The process which involves the reduction of jury size will, of necessity, involve the entire state. Even though Philadelphia maintains a substantial amount of criminal proceedings within its judicial district, the other districts would also benefit with a reduction.

As an example, consider the costs to the state. For the 59 judicial districts in Pennsylvania, out of 57,492 dispositions in the Courts of Common Pleas for 1973, 2,738 were criminal cases tried by a jury which is equal to almost 5% of the total dispositions. (Appendix I offers a complete breakdown of criminal dispositions by judicial districts.) 41% of the total were guilty pleas, 20% waived the jury, and the remaining 33% of the cases were disposed of by other means. The 1st Judicial District, Philadelphia County, accounted for 17% of the criminal dispositions tried by a jury. Thus, the cost to Philadelphia (345 jurors x 247 working days x $9/juror/day =) approximately $766,935 which represents about 17% of the total jury cost to the state as a whole. Therefore, the 58 other judicial districts pay approximately $3,744,400, with the total cost to the state approximating 4.5 million dollars ($766,935 + $3,744,400). Of course, depending on the juror utilization rate in other districts, the figure might be lower or higher.

If the proposal recently considered in the General Assembly comes to fruition, the total cost to the state in terms of money paid to jurors could be as much as 2.22 times the present figure.

The impact that a reduction could make in expenditures for jurors bears repeating. Obviously, any savings would be welcome, if not imperative, for the jury system to remain effective.

III.

PROBABLE COSTS OF REDUCED SIZE

Obviously, the main area of concern with the reduced jury is if it is as fair, or perhaps fairer in some sense than the twelve-member jury. The Court in Williams v. Florida devoted some discussion to this problem:

> "It might be suggested that the 12-man jury gives a defendant a greater advantage since he has more 'chances' of finding a juror who will insist on aquittal and thus prevent conviction. But the advantage might just as easily belong to the State, which also needs only one juror out of twelve insisting on guilt to prevent aquittal. What few experiments have occurred - usually in the civil area - indicate that there is no discernable difference between the results reached by the two different juries."[1]

It is necessary to delve deeper into this problem.

First of all, it is beneficial to review some of the psychological literature available on the subject. In 1962, C. W. Joiner wrote:

> "There is no real evidence, however, as to the exact size of the most effective group for the decision-making process. The evidence does indicate that a group larger than three is required and that it must be small enough to provide the give-and-take of group discussion. Perhaps, we are fortunate that juries number twelve, for this seems to be well within the limits for effective deliberation, although a smaller number, perhaps six, might be time-saving and less costly without hindering the decision-making process, ...(and) states should consider using juries of six."[2]

The acquisition of evidence to determine the optimum size of the jury is filled with difficulty. In the first place, actual juries are inaccessible to study; any evidence as to the process of deliberation must come from retrospective accounts of the jurors themselves. Examinations of the process can be and have been done using mock juries; however, mock juries lack one important element: the confrontation with the defendant, an individual whose life may be drastically altered by the verdict.

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[1] Williams v. Florida, 399 U. S. 78, at 101.

[2] C. W. Joiner, Civil Justice and the Jury, Englewood Cliffs, N. J.: Prentice Hall, 1962, P. 31.

Although the civil jury lends itself to quantitative comparisons through the size of damage awards, the substantially dichotomous nature of the criminal verdict precludes such study.

The most obvious advantage of a jury of twelve over a jury of six is the increase in the resources available for the determination of a just verdict. Each individual acts as a filter through which the trial testimony must pass before it can contribute to the reaching of a verdict. The greater number of individuals, the greater the likelihood that any given item of evidence will be examined by a juror and brought to bear upon the solution. On a purely statistical basis, the pooling of individual judgments reduces random error. This argument would lead one to advocate juries of 100 or more. However, this argument neglects the factors of group interaction.

Group interaction inhibits the contribution of individual members in some cases. It was found, for example, that interacting groups of nine members produce no more ideas than do interacting groups of five members although the pooled contribution of nine single individuals is greater than that of five working alone.[3] Moreover, some members monopolized the discussion; others said little. This study suggested that some point of diminishing returns may be reached by the addition of group members and that this point may be reached at some number less than twelve.

As the group size increase, so does the inequality among members and the difficulty of the group in coordinating participation. The group will show less consensus and will have a greater tendency to break into factions.

Strodtbeck, James and Hawkins (1958), studying mock civil juries, noted inequality of participation among jurors. Members of higher social status, and men, tended to contribute more than their share of participation than did persons of lower status and women. The inequality of participation was so great that half or more of the total acts (items of verbal or nonverbal communication) in 82 per cent of the juries could be accounted for by three persons of the twelve. One-fourth of the total acts were attributable to the foreman, who was usually a male of high status.[4]

Bales (1970) equated "leadership" or "domination" with the role of the "top participator". As group size increases, the

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[3] T. J. Bouchard and M. Hare, "Size Performance and Potential in Brainstorming Groups." Journal of Applied Psychology, 1970, 54, 51 - 55.

[4] F. Strodtbeck, R. James and R. Hawkins, "Socal Status in Jury Deliberations," American Sociological Review 1975, 22 713 - 719.

tendency for a "top participator" to emerge increases. As size increases, especially for groups larger than five, the difference between the top participator and the second-ranking participant increases.[5] Similarly, Bass and Norton found six to be the optimal group size. Perhaps this size was large enough to necessitate the emergence of leadership but small enough to allow participation for all members.[6] This suggests that six may be the cut-off point for the maintenance of one-to-one relationships among all the members of the groups. Beyond six, members tend to relate to each other in terms of factions or coalitions. Groups larger than six, then, may be more likely to produce verdicts based on the strength or dominance of factions of three or four members. If this indeed is the case, then a verdict of six will represent a greater consensus of the group than will a verdict of twelve.

The effects of factions have been observed by Hawkins (1960) in his study of mock civil juries. He isolated two strategies adopted by juries in their deliberations: deliberating in unity and in factions. The juries that adopted the latter strategy began with an immediate vote, thus identifying factions. The unity approach also dissolved into factions although they delayed the first vote until they had discussed the issues as individuals.[7]

The argument is given that the larger number of individuals drawn from the population, the larger will be the probability of that sample's containing one individual who will disagree with the other members of the jury. The evidence indicates, however, that a single juror who differs from all the others at the outset of the deliberations is unlikely to persist to the point of preventing a verdict. In a sample of over 200 cases in Chicago and Brooklyn courts, studied by the Chicago Jury Project, 30 per cent of the cases were decided by a unanimous first ballot. Obviously in these instances, no difference in justice would result no matter how much the jury were to be reduced in size. Of the remaining 70 per cent of the cases, the initial majority won in approximately 90 per cent. Of the remaining 10 per cent, 6 per cent were hung juries and 4 per cent were juries in which the initial minority prevailed.[8] Therefore, the existence of the lone dissenter will be more likely in the larger jury, but his influence less likely than ordinarily supposed.

In a statistical analysis of jury size, David F. Walbert devotes his attention to the probability of conviction with a

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[5]R. F. Bales, "Personality and Interpersonal Behavior," New York: Holt, Rinehart & Winston, 1970.
[6]B. M. Bass and F. T. Norton, "Group Size and Leaderless Discussion," Journal of Applied Psychology, 1951 35, 397 - 400.
[7]Julia Rosenblatt, "Jury Size in Criminal Cases: A Psychologist's Review," 167 N. Y. L. J. #92, at 1 (May 11, 1972), P. 5 (May 12).
[8]Ibid, P. 5.

jury of six and a jury of twelve. (Appendix II). His findings indicate that because six members are less representative of the community than twelve, a jury of six cannot perform its functions as well as a jury of twelve can. If the purposes of the jury are fulfilled, the verdict must be a function of the defendant's behavior and the representative opinions of the community. The statistical fluctuations in the selection of the petit jury render the defendant's fate more a matter of chance - and less the product of his behavior and community opinion - as the number of jurors is lowered.

In a similar type of analysis, Herbert Friedman points to the same conclusion. (Appendix III). However, his basic assumption is that the defendant affects each of the jurors equally and independently, which is an assumption based on false grounds. It is irrational to assume that the ordeal of a trial will affect jurors in the same manner, especially remembering the criticism of mock juries, when a verdict will significantly alter the life of the accused.

Both analyses neglect a large number of human factors (which are unquantifiable), especially ignoring group interaction and pressure to conform as cited in the psychological studies above, and tend to render questionable results. Obviously, any manipulation of numbers would lead one to the conclusion that twelve is better than six. Statistical analyses of this type only point to the inadequacies and lack of quantifiable evidence in this area.

It is not argued here that six-member juries are superior or even equal to the deliberative processes of the twelve member juries. Rather, it is argued that twelve-member juries cannot be shown to be significantly superior to the six-member jury when it comes to producing a fair verdict. If possible, more work needs to be done, in both directions, and it appears that the burden of proof is on the shoulders of the twelve-member advocates in light of Williams v. Florida to show that a change to six will drastically impair the judicial process.

IV

CONSTITUTIONAL QUESTIONS

Without the recent case of Williams v. Florida decided in 1971, there would be little basis upon which to promote a reduction in jury size in criminal cases. However, to summarize, Williams allowed the states to consider what size is best for their perception of a jury trial, holding that the Federal Constitution does not require a jury of twelve, at least in non-capital cases. To efficiently review these considerations, it is desirable to look at the present state of affairs both in the federal case and in the requirements of Pennsylvania.

The Federal Constituion sets out the authority for establishment of a judiciary system:

"Article III - 3. The Trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed...

Article V: No person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a grand jury...

Article VI: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed...

Article VII: In suits at common law where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preseved, and no fact tried by a jury shall otherwise be re-examined in any court of the United States, than according to the rules of common law."

As noted above, no specific number as to jury size is mentioned in the Constitution.

In Williams v. Florida, the Supreme Court had to consider whether the number twelve had been "immutably codified into our Constitution."[1] The Court held that the 12-man panel was not a necessary ingredient of "trial by jury", thereby sharply deviating from the former position of the Court, since earlier decisions had assumed an affirmative answer to this question.

Thompson v. Utah, 170 U. S. 343 (1898) was the leading case upholding a jury of twelve, stating that the jury referred to in the Sixth Amendment was a jury "constituted, as

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[1]399 U. S. 78, at 90.

it was at common law, of twelve persons, neither more nor less."[2] Absent from that decision was any discussion of the essential step in the argument that is, whether the jury could perform its essential functions if it were not composed of twelve. Other decisions reaffirmed Thompson solely by relying on the fact that the common-law jury consisted of twelve. ((Patton v. United States, 281 U. S. 276, 288 (1930); Rasmussen v. United States, 197 U. S. 516, 519 (1905); Maxwell v. Dow, 176 U. S. 581, 586 (1900)).

The Court in Williams, however, assumed not to interpret precisely what the word "jury" meant to the Framers, the First Congress, or the States in 1789. "...there is absolutely no indication in the 'intent of the Framers' of an explicit decision to equate the constitutional and common-law characteristics of the jury."[3] The relevant inquiry, as the Court saw it, was the function that twelve men perform and their relation to the purposes of the jury trial. "Measured by this standard, the 12-man requirement cannot be regarded as an indispensable component of the Sixth Amendment."[4]

The purpose of the jury trial, the Court said, is to prevent oppression by the Government. The essential feature lies in the "interposition between the accused and his accuser"[5] and the judgment of his peers, and in the community participation and shared responsibility resulting from that group's determination of guilty or innocence. The Court continues:

> "To be sure, the number should probably be large enough to promote group deliberation, free from outside attempts at intimidation, and to provide a fair possibility for obtaining a representative cross-section of the community... We find little reason to think that these goals are in any meaningful sense less likely to be achieved when the jury numbers six, than when it numbers twelve..."[6]

The Court concludes with the fact that legislatures may have their own views about the relative value of the larger and smaller jury and that the holdings of the Court leaves that consideration up to the Congress and the States, "unrestrained by an interpretation of the Sixth Amendment that would forever dictate the precise number that can constitute a jury."[7]

2U. S. at 349.
3399 U. S. 78 at 99.
4399 U. S. 78, at 100.
5399 U. S. 78, at 100.
6399 U. S. 78, at 100.
7399 U. S. 78, at 103.

It must be noted that the Court found no reason calling for the removal of what had previously been a Constitutional requirement, but rather, found no reason preventing the removal. Clearly, however, the door has been opened in terms of reduced jury size, and it is evident that the six-member jury has been sanctioned by the Court.

PENNSYLVANIA:

The Pennsylvania Constituion of 1776 provided that "trials shall be by as heretofore", and in the Declaration of Rights, Clause 11, provided that in controversies respecting property and "in suits between man and man the parties have a right to trial which ought to be held sacred." The Constitutions of 1790 and 1838 contained provisions identical to the provision cited above.

Until 1971, Article 1, Section 6 of the Constitution held that "Trial by jury shall be as heretofore, and the right thereof remain inviolate." This was amended in 1971 to: "Trial by jury shall be as heretofore, and the right thereof remain inviolate. The General Assembly may provide, however, by law, that a verdict may be rendered by not less than five-sixths of the jury in any civil case."

This was the amendment that called for the reduction of jury size to six in civil cases. The criminal jury size was left untouched, and remained at twelve.

The Court cases in Pennsylvania uphold the twelve-member jury in criminal cases. In Com. v. Petrillo, 16 A. 2d, 50, 340 PA. 33, 1940, the Court decided that a defendant in a capital case cannot consent to be tried by fewer than 12 jurors or that anything short of unanimity will support a verdict of guilty.

In the Com. V. Frigmann, 198 A. 99, 330 PA. 4, 1938, it was decided that the essentials of a trial by jury in a crimnal case as known at the common law were a jury composed of twelve eligible persons duly summoned, sworn and impaneled for the trial of the issue, a plea entered, an ample right of challenge both for cause and peremptorily, a full, fair and public trial, and unanimity of the vote supporting the verdict.

However, it was found in Lavery v. Com., 101 PA. 560, 1882, and the Act of 1861, May 1, P. L. 682 (42 P. S. Section 725) that the legislature may authorize an accused to waive a jury of twelve, providing that in certain counties certain offenses may, at the election of the defendant, be tried by a Justice of the Peace and six jurors is not in conflict with this section.

Further, concerning misdemeanors in a criminal trial, it was found that where one of the jurors becomes ill, and by agreement of the Commonwealth and defendant, the trial is continued with eleven jurors only, who return a verdict of guilty, without objection or exception taken at the time, and without

any motion in arrest of judgment, the appellate court will not set aside the verdict because it was rendered by eleven jurors instead of twelve. (Com. v. Beard, 48 Pa. Super. 319, 1911: Com. v. Hawman, 48 PA. Super. 343, 344, 1911).

However, in a criminal case, a defendant cannot be tried by a jury of eleven persons, even with his consent, Com. v. Shaw, 1 Pitts. Rep. 492, 1859; Com. v. Byers, 5 C. C. 295, 1888; and it is error, if it does not appear by the record of the trial of an indictment, that the defendant was tried by twelve jurors, lawfully sworn, Doebler v. Com., 3 S. & R. 237, 1817.

Where a juror became ill during the trial for a felony, counsel stipulated in presence of defendant that trial might proceed and defendant would accept the verdict of the remaining eleven jurors, the defendant's constitutional right to a trial by twelve jurors was not denied and was properly waived, Com. v. Adams, 6 Lebanon 401, 1959.

Finally, under the Constitution of Pennsylvania, a jury in a criminal case must consist of twelve persons, neither more nor less: Doebler v. Com., 3 S. & R. 237, 1817; Com. v. Shaw, 1 Pitts. Rep. 492, 1859; Com. v. Saal, 10 Phila. 496, 30 L. I. 194, 5 Leg. Op. 21, 21 Pitts. 5, 1873.

It appears that the present state of jury size is unequivocal, that although the Pennsylvania Constitution, like the Federal Constitution, does not stipulate a specific number, common law tradition has firmly declared a trial by jury to consist of twelve persons.

We have observed that a civil reduction required a constitutional amendment. With the action as precedent it appears that only a constitutional amendment will provide for a reduction in jury size for criminal cases. In effect, Williams v. Florida merely allowed states to institute whatever changes were deemed necessary. The next important consideration is how changes could be made.

V.

IMPLEMENTATION

Variations of the twelve-member jury are widespread. The accompanying analysis (Appendix IV) emphasizes the fact, and while it is a rough summary and does not attempt to be definitive, it does offer a substantial look at other states. Almost every state in the union provides for some alteration of the twelve-member jury, either civil or criminal.

The significance of the Williams decision lies in the fact that it was held that the Federal Constitution provides no obstacles for states to utilize a jury of less than twelve members. In essence, there is nothing in the Federal Constitution that prohibits states from reducing the jury, be it civil or criminal. Therefore, in light of this, it becomes necessary to turn to the state constitution in order to institute changes.

Since the Constitution of 1776, trial by jury in Pennsylvania has consisted of a jury of twelve-members. Court cases have upheld the twelve-member jury, and in view of the civil reduction which required a constitutional amendment, it appears that a criminal reduction would require nothing less than the same process. (Appendix V provides the constitutional requirements for an amendment to be adopted.) The Courts of Common Pleas certainly do not have the authority to institute such a change. Even though the Williams decision removed the obstacles to a reduction in jury size, it is up to the states to institute whatever changes are deemed desirable.

Therefore, the civil reduction in jury size provides a precedent for whatever reductions in criminal jury size may be implemented. The civil amendment was sponsored by several representatives and referred to the House Judiciary Committee on February 11, 1969. (For a detailed legislative history of the civil amendment, see Appendix VI.) The proposal passed the House (149 - 46) and was referred to the Constitutional changes and Federal Relations Committee of the Senate on April 29, 1969, passed the Senate and was signed in the House and Senate on February 3, 1970, thus becoming Pamphlet Laws Resolution Number 2 for 1970.

The process was repeated for 1971, and became Pamphlet Laws Resolution Number 1 on February 15, 1971. By passing the two Legislative Sessions, the proposed constitutional amendment was submitted for approval by the voters. The electorate approved the proposal on May 18, 1971, thereby adopting the new constitutional amendment.

As shown in Appendix V, the constitutional amendment involves a lengthy process. Indeed, as shown by the civil amendment (Appendix VI), the process can take over two years. We can see that implementation of the six-member jury would be a substantial undertaking, involving a great deal of time and support. Because it appears that the amendment route is the only one that can be taken, a very strong case must be made for the beneficial effects of such a reduction.

In spite of the obstacles, the benefits to be gained from reduction of jury size are important enough to warrant the initiation of the process which will provide for criminal jury size reduction. Therefore, a proposal is offered: a six-member jury in all non-capital criminal cases should be made mandatory, with a unanimous verdict required for conviction. This proposal is made in view of the removal of any constitutional barriers from the Williams v. Florida decision, the substantial savings offered in terms of time and money by a reduction; the reduction of civil juries, both in Pennsylvania and in other states; and in the absence of any substantial material concerning the disadvantages to the present jury system as it now exists - both in the essential functions of the jury, and the ill effects a reduction would have on the accused. Unanimity is retained to insure safeguards within the system. Capital cases should maintain a jury of twelve, mainly because no other state has deemed it beneficial to reduce the jury when a question of such substantial seriousness of the crime is involved.

The reason for requiring a six-member jury is simple. States that offer the option of stipulation as to jury size have found that most trials end up with juries of twelve members. That is, given the option of jury size, most defendants will choose the twelve-member jury. Without requiring a reduced jury, the point of the reduction is then lost.

To counter the argument that if a jury can be reduced from twelve to six, then there is nothing to prevent its similarly being reduced to four or two or zero, thus dispensing with the jury altogether; it is offered that one can stop any reduction when desired. A reduction does not open the door to further reductions automatically, rather, it is an attempt to provide the judicial system with the jury as an essential foundation no longer hindered by gratuitous costs and delays.

Hopefully, it has been shown that a jury reduction can provide substantial benefits without impairing the essential function of the jury. At this juncture, it appears that if reduction is deemed desirable, then implementation will require a process similar to civil jury reduction, that is, a constitutional amendment to the Pennsylvania Constitution. No other means appear to be justified. With unanimity retained, and capital cases still requiring twelve, there is no substantial counter-argument to the belief that the jury would still continue to operate in the best interests of those connected with the criminal justice system.

CONCLUSION

The question of jury size reduction involves many factors. Since our heritage provides for a jury of twelve, change is often viewed as detrimental to our system of justice, but in this case it is felt that progress, rather than change, is the key factor.

The problems of court costs and delays have increasingly threatened the jury system, to the point of serious consideration by some observers that the jury system, particularly in civil cases, is becoming obsolete as an instrument of justice. Reductions in jury size in the civil arena, and the increased efficiency in the civil system have not only stilled some critics, but have also provided new interest in the jury system as a major force in the courts.

Delays and costs are also rising in the criminal courts. While these problems ought to be endured if there are no ways to reduce these costs effectively, it is maintained that these problems can be relieved at no expence to the criminal justice system.

The benefits are obvious, and have been outlined within the text of the inquiry. The costs involved are not as clearly defined, however, and although it cannot be stated that a six-member jury is fairer than the twelve-member jury, there is no substantial evidence that a six-member jury will not provide the accused with a fair trial.

Therefore, the standard is felt to be a worthwhile aim to strive for. Although the process involved remains lengthy, it is hoped that the project has provided a basis for support for implementing the desired standard and help to make the court system not only more efficient, but also more effective.

APPENDIX I

Compiled from:

Fourth Annual Report on Judicial Case Volume, Administrative Office of Pennsylvania Courts, as reported by the Courts of Common Pleas for 1973.

TOTAL CRIMINAL CASES DISPOSED	57,492
TOTAL TRIED BY JURY	2,738

BY DISTRICT:

District Number	(County) District	Number of Criminal Cases Disposed	Number Tried by Jury	% of Total Criminal Cases	% of Tried by Jury
1	Phila.	10,721	462	18.6	16.9
2	Lancaster	2,030	133	3.5	4.9
3	Northampton	856	58	1.5	2.1
4	Tioga	213	5	.37	.18
5	Allegheny	11,150	205	19.4	7.5
6	Erie	1,124	80	1.95	2.9
7	Bucks	2,347	80	4	2.9
8	Northumberland	340	11	.59	.4
9	Cumberland	750	43	1.3	1.6
10	Westmoreland	1,066	44	1.9	1.6
11	Luzerne	738	12	1.3	.44
12	Dauphin	1,631	86	2.8	3.1
13	Greene	167	11	.29	.4
14	Fayette	529	50	.9	1.8
15	Chester	972	79	1.7	2.9
16	Somerset	235	24	.4	.88
17	Snyder - Union	179	7	.3	.25
18	Clarion	148	1	.25	.03
19	York	1,273	140	2.2	5.1
20	Huntingdon	175	10	.3	.37
21	Schuylkill	503	37	.87	1.4
22	Wayne	159	1	.28	.03
23	Berks	797	60	1.4	2.2
24	Blair	520	27	.9	.99
25	Clinton	186	8	.32	.3
26	Columbia - Montour	248	9	.43	.33
27	Washington	738	22	1.3	.80
28	Venango	307	12	.53	.44
29	Lycoming	492	59	.86	2.2
30	Crawford	374	32	.65	1.17

District Number	(County) District	Number of Criminal Cases Disposed	Number Tried by Jury	% of Total Criminal Cases	% of Tried by Jury
31	Lehigh	908	88	1.58	3.2
32	Delaware	1,776	85	3.1	3.1
33	Armstrong	286	26	.49	.94
34	Susque-hanna	89	2	.15	.07
35	Mercer	486	78	.85	2.8
36	Beaver	780	127	1.4	4.6
37	Forest - Warren	290	19	.5	.69
38	Montgom-ery	2,778	156	4.8	5.69
39	Franklin-Fulton	533	26	.92	.94
40	Indiana	299	25	.52	.91
41	Juniata - Perry	162	6	.28	.22
42	Bradford	227	1	.39	.03
43	Monroe - Pike	214	17	.37	.62
44	Sullivan-Wyoming	124	11	.22	.4
45	Lackawanna	318	25	.55	.91
46	Clearfield	335	21	.58	.77
47	Cambria	785	45	1.4	1.6
48	McKean	142	7	.25	.25
49	Centre	475	17	.83	.62
50	Butler	422	31	.73	1.1
51	Adams	207	26	.36	.95
52	Lebanon	318	27	.55	.99
53	Lawrence	255	20	.44	.73
54	Jefferson	135	4	.23	.15
55	Potter	78	14	.14	.51
56	Carbon	94	15	.16	.55
57	Bedford	230	2	.4	.07
58	Mifflin	172	6	.3	.22
59	Cameron - Elk	152	3	.26	.11
TOTALS		57,492	2,738	100%	100%

APPENDIX II

SUMMARIZED FROM:

David I. Walbert, "The Effect of Jury Size and the Probability of Conviction: An Evaluation of Williams v. Florida, "22 Case Western Reserve L. R. 529, 1971, PP. 540 - 547.

Walbert sets up a model: a criminal trial takes place and two questions are asked: What would be the outcome if a jury of six had sat in judgment? And what would be the outcome if a jury of 12 had sat in judgment? To emphasize that specific trials are being examined initially, the subscript "t" is used with each variable.

If each potential juror had actually observed the trial, a certain fraction of them would be inclined to consider the defendant guilty at the conclusion of the courtroom proceedings, just prior to deliberation. This fraction is denoted by ft. 1 - ft is the fraction of the entire pool that would be inclined to believe the defendant innocent just before deliberation begins.

Because a particular jury is merely a randomly drawn subset of all the potential jurors, the probabilities of obtaining juries with various fractions of conviction-prone members can be calculated. One fact is known about each juror as he leaves the trial to begin deliberations: the probability that he believes the defendant to be guilty is exactly equal to the value of ft.

Thus:

$$M_{t,6} = \sum_{i=4}^{6} \left\{ (f_t)^i (1-f_t)^{6-i} \times \frac{6!}{i!(6-i)!} \right\}, \text{ and}$$

$$M_{t,12} = \sum_{i=7}^{12} \left\{ (f_t)^i (1-f_t)^{12-i} \times \frac{12!}{i!(12-i)!} \right\}$$

Mt, 6 and Mt, 12 denote the probability that a majority of the jurors that are drawn will be conviction-prone prior to deliberations. This does not say anything about the verdicts yet. To predict the verdicts on the bases of Mt, a connection must be found between the initial position of the majority and the final unanimous verdict that evolves through the deliberation. Walbert believes that majority persuasion is the rule in terms of jury deliberations. Therefore, in any case where majority persuasion holds true, the pre-deliberation jury (characterized by Mt) can be directly related to the final verdict, because the majority position before deliberation evolves into the final, unanimous verdict. Consequently, the probabilities of conviction for the

two sizes of jury, Pt, 6 and Pt, 12 are exactly the same as Mt, 6 and Mt, 12 if a correction is first made for those juries where the members initially are equally split between conviction and aquittal.

$$P_{t,6} = \sum_{i=4}^{6} \left\{ (f_t)^i (1-f_t)^{6-i} \times \frac{6!}{i!(6-i)!} \right\} + \frac{6!}{2 \times 3!3!} (f_t)^3 (1-f_t)^3, \text{ and}$$

$$P_{t,12} = \sum_{i=7}^{12} \left\{ (f_t)^i (1-f_t)^{12-i} \times \frac{12!}{i!(12-i)!} \right\} + \frac{12!}{2 \times 6!6!} (f_t)^6 (1-f_t)^6$$

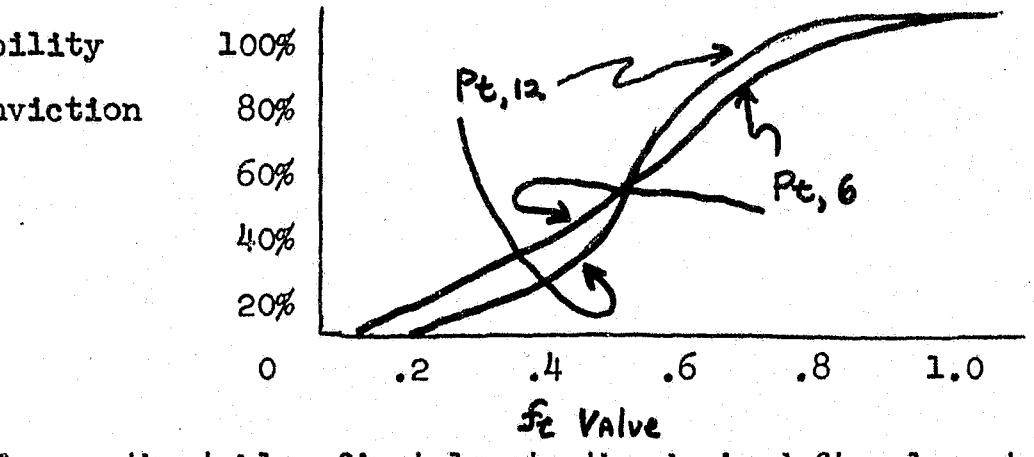
Walbert declares the model complete at this point, and obtains quantitative results by calculating the formulas:

FIGURE 1:

Probability of Conviction (%)

	f_t Values										
	0	.1	.2	.3	.4	.5	.6	.7	.8	.9	1.0
Pt, 6	0	1	6	16	32	50	68	84	94	99	100
Pt, 12	0	0	1	8	25	50	75	92	99	100	100

FIGURE 2:



To use the table, first locate the desired ft value at the top. This measures what fraction of all the potential jurors would be guilty-prone if each one were to observe the trial. The probability of convicting the defendant (expressed in per cent) with either size jury is located in the respective box below the ft value. The graph is interpreted by first locating the ft value on the horizontal axis. The conviction probability for either jury is found by seeing what value on the vertical axis corresponds to the desired ft point on the appropriate curve.

Walbert emphasizes the fact that for nearly all values of ft, the size of the jury is substantially related to the probability of conviction. If ft is larger than .5, the defendant has a greater chance of acquittal with a six-man jury; if it is less than .5, the six-man jury increases the likelihood of conviction.

APPENDIX III

SUMMARIZED FROM:

Herbert Friedman, "Trial by Jury: Criteria for Convictions, Jury Size and Type I and Type II Errors," The American Statistician, April 1972, PP. 21-23.

Friedman makes a few simplifying assumptions in order to examine statistically the effects of a change from a 12-member jury to a reduction in jury size to 6. The analysis is not based on whether or not a person is actually guilty, (since this is unknown), but to the degree to which he appears to be legally guilty, or the inverse, the degree to which he can defend himself. The appearance of guilt is assumed to be equivalent to the probability that an individual juror would consider the defendant guilty. Further, Friedman assumes that the defendant affects each of the jurors equally and independently.

At one extreme, when the defendant appears to be absolutely innocent, he has no likelihood of being convicted, and all jurors agree on his innocence. At the other extreme, when the defendant is unquestionably guilty, all jurors would agree on conviction. Calculations by Freidman lead to the curves shown in Figure 1:

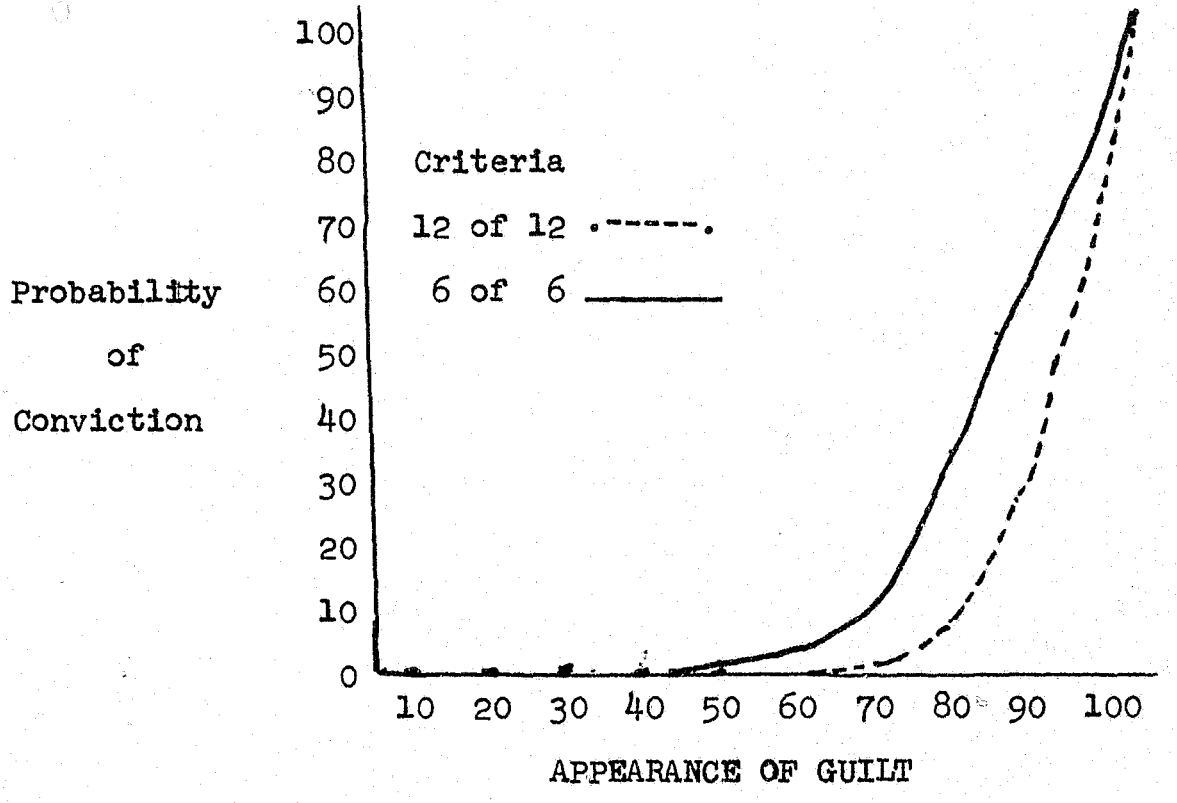


FIGURE 1

The probability of conviction is shown as a function of apparent degree of guilt or of the ability to defend. It is clear that when a defendant has less than a 50% guilt appearance, the probability of conviction under both conditions is very, very low. In effect, when the defendant appears to be more innocent than guilty, the weakening of the criteria for conviction has a negligible effect on the chance of conviction. However, the picture becomes vastly different as the defendant increasingly appears to be guilty.

The probability of conviction for the 12 out of 12 verdict stays relatively low throughout a wide range of apparent guilt (first reaching 50% at about 95% apparent guilt) approximating the ideal condition of no conviction as long as there is a reasonable doubt of the individual's guilt. However, society runs a great risk that many individuals who are indeed guilty are unlikely to be convicted with this system.

The main point of Friedman's argument is that while the innocent-appearing defendant is unlikely to be convicted under any circumstance, the individual who appears to be nearly guilty or can present only a weak defense runs a much greater risk of conviction with the smaller jury.

APPENDIX IV

COMPILED FROM:

The U. S. Jury System, "The Question of Revising the Jury System," Congressional Digest 193 - 225, (August/September 1971), PP. 205 - 207.

The following analysis of existing jury provisions of State constitutional and statutory law enumerates important provisions as they affect the use of less than twelve-man juries. Because of the large number of revisionary proposals currently under consideration, the following is offered as an illustrative rather than definitive review of such provisions:

ALASKA: Parties in civil and criminal cases may stipulate a jury less than twelve, with court permission required in criminal cases. Juries in district magistrate courts consist of six persons; such courts have jurisdiction over civil cases where amount in controversy does not exceed $3,000, and over misdemeanor offenses. Five-sixths verdict required in all civil cases.

ARIZONA: Six-man juries provided in civil and criminal actions in courts of limited jurisdiction (courts not-of-record). Verdict of nine or more required in all civil actions.

ARKANSAS: In misdemeanor cases, defendant may be tried by a jury of less than twelve persons upon agreement of the parties. Cases tried before justices of the peace (who have criminal jurisdiction over all nonfelonious offenses) have jury of six. Verdict of nine or more persons required in all civil cases.

CALIFORNIA: In civil actions and misdemeanor cases, parties may stipulate that the jury consist of less than twelve persons. 3/4 verdict required in all civil cases.

COLORADO: In all civil cases, juries consist of six persons unless the parties agree to a lesser number or unless one of the parties demands a jury of twelve. Juries of not more than six nor fewer than three in any action in police magistrate, police or municipal courts.

CONNECTICUT: All noncapital criminal cases are tried by a jury of six unless accused requests trial by judge or a jury of twelve. Civil cases are tried by a jury of six unless a panel of twelve is requested.

DELAWARE: Under both civil and criminal procedure, the parties may stipulate trial by a jury of less than twelve persons.

FLORIDA: All civil and noncapital criminal offenses are tried by a jury of six.

GEORGIA: County courts vary in practice, State constitution authorizes juries of not less than five persons, which has been adopted by many county courts in misdemeanor cases.

HAWAII: Under both civil and criminal procedure, the parties may stipulate trial by a jury of less than twelve persons.

IDAHO: In all civil actions, the parties may stipulate a jury less than twelve. In civil cases where the amount in controversy is less than $500 and in criminal misdemeanors, the jury consists of not more than six persons. 3/4 verdict in all civil actions, 5/6 verdict in misdemeanors.

ILLINOIS: Defendant in a criminal case may agree to trial by a jury of less than twelve persons. Juries in civil cases where amount is less than $10,000 consists of six, unless one party demands twelve.

INDIANA: Parties in civil may agree to less than twelve. Civil cases before justice of the peace with amounts less than $500 are heard by six-man juries unless the parties stipulate a smaller number.

KANSAS: Juries consist of six persons where amount is less than $3,000 or if the offense charged is a misdemeanor, unless the defendant in a criminal case demands a jury of twelve or the parties may stipulate that the jury shall consist of a number less than twelve.

KENTUCKY: In all civil and misdemeanor cases (where amount in civil is less than $500, or where the offense charged is punishable by not more than a fine of $500 and/or imprisonment for one year); in all felony case parties may stipulate a jury less than twelve.

LOUISIANA: In civil cases, parties may stipulate less than twelve. In criminal cases, juries are of five persons where offense is not punishable by hard labor; all other criminal cases require twelve. Verdict of nine or more in all civil cases and where punishment is hard labor.

MAINE: Under civil and criminal procedure, the parties may stipulate a jury less than twelve. Verdict of 9 or more required in civil suits in Superior Court.

MARYLAND: Under civil and criminal procedure, the parties may stipulate a jury less than twelve.

MASSACHUSETTS: Six-man jury for a trial de novo in certain district courts after a conviction for offenses less than felonies, except for libel.

MICHIGAN: Under criminal procedure, the parties may stipulate a jury less than twelve. Juries in trials before justices of the peace consist of six persons. Six-man juries are required in all civil cases, with verdict of five jurors required.

MINNESOTA: All civil cases are heard before juries of six in counties with a population of over 40,000, unless one party demands twelve. Six-man juries in trials before justices of the peace involving civil cases, by consent of the parties involved. 5/6 verdict in any civil action in any court of record after six hours of deliberation.

MISSISSIPPI: Six-man juries in both civil and criminal cases before a justice of the peace (where amount in controversy is less than $200, and criminal cases where offense is punishable by imprisonment in the county jail).

MISSOURI: In civil cases before courts of limited jurisdiction, parties may agree to trial before jury of between six and twelve members. 2/3 verdict in courts not-of-record, 3/4 verdict required in others.

MONTANA: In all civil cases, parties may stipulate a jury of less than twelve. Juries in cases tried before justices of the peace or police courts consist of six persons unless parties agree to a smaller number. 2/3 verdict required in all civil actions and all criminal cases not amounting to felonies.

NEBRASKA: Juries in trials in offenses punishable by not more than six months' imprisonment or where amount is less than $2,000 have juries of six. 5/6 verdict required for all civil actions in any court, provided the jury has deliberated over six hours.

NEVADA: In criminal cases, parties may stipulate that the jury is to consist of less than twelve persons. In most civil cases, parties may agree to a jury consisting of four to eight persons. In civil cases before justices of the peace, parties may stipulate a jury of more than four and less than twelve persons. 3/4 verdict for all civil cases.

NEW JERSEY: Juries in all but capital criminal cases may consist of any number of persons less than twelve upon stipulation of the parties. Legislature authorized civil trials before six-man juries unless a specific request for a jury of twelve is made.

NEW MEXICO: Six-man juries in limited jurisdiction courts, including criminal cases punishable by less than six-month's imprisonment. Verdict of ten or more in civil cases.

NEW YORK: Either party may demand a jury of six or twelve persons, where there is disagreement, the jury consists of twelve. All civil cases require six-man juries. Misdemenaor cases require six-man juries. 5/6 verdict required in civil cases.

NORTH CAROLINA: Six-man juries in courts of limited jurisdiction. Constitution authorizes provision of trial by other than unanimous verdict with the right of appeal reserved for trial de novo (new trial in court of general jurisdiction, without reference to previous proceedings).

NORTH DAKOTA: Parties in civil actions may stipulate a jury of less than twelve. Juries in trials before justice of the peace, where jurisdiction is limited to civil cases involving not more than $200, consist of six persons.

OHIO: Juries in civil cases tried in municipal and county courts consist of six persons. 3/4 verdict required in all civil cases tried in Court of Common Pleas.

OKLAHOMA: Six-man juries in trial of misdemeanors and in civil cases involving amounts less than $2,500. 3/4 verdict required in all civil cases and criminal cases less than felonies; verdict of 5 or more in Municipal Courts.

OREGON: In all civil and criminal cases, the parties may stipulate a jury less than twelve. Six-man juries in civil and criminal cases (not involving more than one-year of imprisonment) in District and Justices' Courts. Verdict of ten or more for criminal cases (except first degree murder); 3/4 verdict in all civil cases.

PENNSYLVANIA: Six-member jury in all civil cases. Defendant with approval of his attorney and the court may stipulate that the jury shall consist of between twelve and six.

RHODE ISLAND: In all civil cases, the parties may stipulate that the jury shall consist of less than twelve.

SOUTH CAROLINA: Juries in criminal and civil cases tried before county courts consist of six. County courts handle misdemeanors and in cases where amount in controversy is less than $1,000.

SOUTH DAKOTA: In all civil cases, the parties may stipulate that the jury shall consist of less than twelve persons. Six-man juries for both civil and criminal in cases before justices of the peace. Verdict of ten or more in all civil cases, except 3/4 verdict in the Circuit and County courts.

TENNESSEE: Six-man juries for misdemeanor cases.

TEXAS: Juries in civil and criminal cases in courts of limited jurisdiction consist of six persons. Verdict of nine or more required in the District Courts for all civil cases and criminal cases below felonies.

UTAH: All non-capital cases in courts of general jurisdiction are tried before juries of eight persons; in courts of inferior jurisdiction, four persons. 3/4 verdict in all civil cases.

VERMONT: Six-man juries provided in Justices' Courts.

VIRGINIA: In civil cases, parties have the right to demand a jury trial; jury consists of five persons where the amount in controversy does not exceed $500. In other cases, the jury consists of seven persons. Juries in misdemeanor cases consist of five persons.

WASHINGTON: Juries in civil and criminal cases tried before justices of the peace. ($300 maximum amount in civil suits, six months maximum imprisonment in criminal cases) consist of six persons. Verdict of ten or more required in the Superior Courts for all civil trials.

WEST VIRGINIA: In all civil cases and in criminal cases where certain misdemeanors are charged, the parties may stipulate that the jury shall consist of less than twelve persons. Juries in civil cases before justices of the peace consist of six persons.

WISCONSIN: In all civil and criminal cases, the parties may stipulate that the jury shall consist of less than twelve persons. 5/6 verdict required in all civil actions.

WYOMING: In all civil cases, the parties may stipulate that the jury shall consist of less than twelve persons. Juries in cases tried before justices of the peace consist of six persons.

APPENDIX V

Pennsylvania Constitution:
ARTICLE XI
Section 1. Proposal of Amendments by the General Assembly and their adoption.

Amendments to this Constitution may be proposed in the Senate or House of Representatives; and if the same shall be agreed to by a majority of the members elected to each House, such proposed amendment or amendments shall be entered on their journals with the yeas and nays taken thereon, and the Secretary of the Commonwealth shall cause the same to be published three months before the next general election, in at least two newspapers in every county in which such newspapers shall be published; and if, in the General Assembly next afterwards chosen, such proposed amendment or amendments shall be agreed to by a majority of the members elected to each House, the Secretary of the Commonwealth shall cause the same again to be published in the manner aforesaid; and such proposed amendment or amendments shall be submitted to the qualified electors of the state in such manner, and at such time at least three months after being so agreed to by the two Houses, as the General Assembly shall prescribe; and if such amendment or amendments shall be approved by a majority of those voting thereon, such amendment or amendments shall become a part of the Constitution; but no amendment or amendments shall be submitted oftener than once in five years. When two or more amendments shall be submitted they shall be voted upon separately.

(a) In the event a major emergency threatens or is about to threaten the Commonwealth and if the safety or welfare of the Commonwealth requires prompt amendment of this Constitution, such amendments to the Constitution may be proposed in the Senate or House of Representatives at any regular or special sessions of the General Assembly, and if agreed to by at least two-thirds of the members elected to each House, a proposed amendment shall be entered on the journal of each House with the yeas and nays taken thereon and the official in charge of statewide elections shall promptly publish such proposed amenment in at least two newspapers in every county in which such newspapers are published. Such amendment shall then be submitted to the qualified electors of the Commonwealth in such manner, and at such time, at least one month after being agreed to by both Houses as the General Assembly prescribes.

(b) If an emergency amendment is approved by a majority of the qualified electors voting thereon, it shall become part of this Constitution. When two or more emergency amendments are submitted they shall be voted on separately.

APPENDIX VI

LEGISLATIVE HISTORY OF THE CIVIL REDUCTION:

HB 272 By Representatives Gross, Manderino, DeMedio, Greenfield, Stone, Murphy and Silverman.

A Joint Resolution proposing an amendment to Article One, Section Six of the Constitution of the Commonwealth of Pennsylvnia, authorizing the General Assembly to provide by law, that a verdict may be rendered by not less than five-sixths of the jury in any civil case.

Referred to Judiciary, February 11, 1969
Reported as committed, April 15, 1969
First Consideration, April 15, 1969
Second Consideration, April 21, 1969
Third Consideration and final passage, April 28, 1969
(149 - 46)

In the Senate

Referred to Constitutional Changes and Federal Relations, April 29, 1969
Reported as committed, December 9, 1969
First Consideration, December 9, 1969
Second Consideration, January 26, 1970
Third Consideration and final passage, January 27, 1970
(31 - 13)
Signed in House, February 3, 1970
Signed in Senate, February 3, 1970
Filed in Office of the Secretary of the Commonwealth, February 4, 1970
Pamphlet Laws Resolution No. 2
Passed Sessions of 1970

968 Laws of Pennsylvania, Session of 1970
No. 2
A Joint Resolution

HB 272

Proposing an amendment to Article One, Section Six of the Constitution of the Commonwealth of Pennsylvania, authorizing the General Assembly to provide, by law, that a verdict may be rendered by not less than five-sixths of the jury in any civil case.

The General Assembly of the Commonwealth of Pennsylvania hereby resolves as follows:

Section 1. The following amendment to the Constitution of the Commonwealth of Pennsylvania is proposed in accordance with the provisions of the eleventh article thereof:

That section six, article one of the Constitution of the Commonwealth of Pennsylvania be amended to read;

Section 6. Trial by Jury - Trial by jury shall be as heretofore, and the right thereof remain inviolate. The General Assembly may provide, however, by law, that a verdict may be rendered by not less than five-sixths of the jury in any civil case.

HB 93 By Representatives Manderino, Berkes, Glefson, Greenfield, Briag, DeMedio, Brunner, Stone and Englehart.

A Joint Resolution proposing an amendment to article one, section six of the Constitution of the Commonwealth of Pennsylvania, authorizing the General Assembly to provide, by law, that a verdict may be rendered by not less than five-sixths of the jury in any civil case.

Referred to Rules, January 26, 1971
Reported as committed, January 26, 1971
First Consideration, January 26, 1971
Second Consideration, February 1, 1971
Third Consideration and final passage, February 3, 1971
(167 - 29)

In the Senate

Referred to Rules, February 8, 1971
Reported as committed, February 8, 1971
First Consideration, February 8, 1971
Second Consideration, February 9, 1971
Third Consideration and final passage, February 15, 1971
(44-1)

Signed in House, February 15, 1971
Signed in Senate, February 15, 1981
Filed in Office of the Secretary of the Commonwealth, February 15, 1971
Pamphlet Laws Resolution No. 1
Passed Sessions of 1970 and 1971

965 Laws of Pennsylvania, Session of 1971
No. 1
A Joint Resolution

HB 93

Proposing an amendment to article one, section six of the Constitution of the Commonwealth of Pennsylvania, authorizing the General Assembly to provide, by law, that a verdict may be rendered by not less than five-sixths of the jury in any civil case.

The General Assembly of the Commonwealth of Pennsylvania hereby resolves as follows:

Section 1. The following amendment to the Constitution of the Commonwealth of Pennsylvania is proposed in accordance with the provisions of the eleventh article thereof:

That section six, article one of the Constitution of the Commonwealth of Pennsylvania be amended to read:

Section 6. Trial by Jury - Trial by Jury shall be as heretofore, and the right thereof remain inviolate. The General Assembly may provide, however, by law, that a verdict may be rendered by not less than five-sixths of the jury in any civil case.

Section 2. This proposed amendment shall be submitted by the Secretary of the Commonwealth to the qualified electors of the State, at the primary election next held after the advertising requirements of article eleven, section one of the Constitution of the Commonwealth of Pennsylvania have been satisfied.

Submitted for approval by the qualified electors of the Commonwealth of an election held on May 18, 1971, approved by the electorate on that day, and thus adopted by a majority of the electors voting on May 18, 1971..

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