Washington Law Review

Volume 48 | Number 3

5-1-1973

Outcomes of Six- and Twelve-Member Jury Trials: An Analysis of 128 Civil Cases in the State of Washington

Gordon Bermant

Rob Coppock

LAMPADEPHORIA†

OUTCOMES OF SIX- AND TWELVE-MEMBER JURY TRIALS: AN ANALYSIS OF 128 CIVIL CASES IN THE STATE OF WASHINGTON‡

Gordon Bermant* and Rob Coppock**

Support is growing for increased use of six-member juries in civil cases.[1] Presently, a jury with less than twelve members is available by stipulation in Washington superior courts,[2] and the possibility that a six-member panel will become compulsory in the future is enhanced by positive reports from those experimenting with a mandatory six-member jury.[3]

The administrative advantages of a smaller jury should be exploited if it can be established that the smaller juries are as likely to render just verdicts as larger panels. The bulk of modern opinion, including that of the United States Supreme Court,[4] rejects the idea that there is an inherent difference.[5] However, it appears that there have been few,

† The Lampadephoria section of the Washington Law Review was first established in 41 WASH. L. REV. 315 (1966). For an explanation of its meaning see the Editor's Notes *supra*.

‡ We wish to thank the Attorney General's Office of the State of Washington, in particular Assistant Attorney General Sonia Crow and Deputy Attorney General John Martin, and county clerks throughout the State of Washington for providing us with the information necessary to perform this study.

* Center Fellow, Battelle Seattle Research Center; Affiliate Professor of Psychology, University of Washington; B.A., U.C.L.A., 1957; M.A., Ph.D., Harvard, 1961.

** Research Assistant, Battelle Seattle Research Center; B.S., Washington State University, 1968; M.P.A., University of Washington, 1970.

1. *See, e.g.*, Devitt, *Six-Member Civil Juries Gain Backing*, 57 A.B.A.J. 1111 (1971).

2. WASH. SUPER. CT. (CIV.) R. 38, 48. Rule 38 provides that unless demand is made for a twelve-member jury, the case "shall be tried by a jury of six members with the concurrence of five being required to reach a verdict." Rule 48 provides that the parties may stipulate to less than twelve jurors, but KING CO. SUPER. CT. L.R. 48(a) requires that there be at least three jurors.

FED. DIST. CT. (W. WASH.) R. 39 requires that six-member juries be used in all civil cases.

3. *See* Devitt, *Six-Member Civil Juries Gain Backing*, 57 A.B.A.J. 1111 (1971). That article summarizes the positive consequences of the use of six-member juries in diversity, Federal Employers' Liability Act, and Jones Act cases in Minnesota.

4. Williams v. Florida, 399 U.S. 78 (1970).

5. *See* Devitt, *Six-Member Civil Juries Gain Backing*, 57 A.B.A.J. 1111 (1971);

if any, quantitative comparisons of the performances of six- and twelve-member juries in comparable cases.[6] Given the obvious administrative advantages of smaller panels, it would seem important to have clear data concerning their performance; in particular, we should like to know whether they tend to decide cases differently than the traditional, larger panel. This article provides such data collected from Workmen's Compensation Act cases heard in the superior courts of the State of Washington during the calendar year 1970.

Cases involving the Workmen's Compensation Act arrive in superior court only after a series of increasingly formal administrative hearings has failed to produce agreement between the injured worker and the state's Department of Labor and Industries (DLI). The last stages of the administrative process include a completely formal hearing in front of a hearing examiner from the Board of Industrial Insurance Appeals. The examiner issues a decision and an order which are adopted by the Board if not appealed within twenty days. In the event of an appeal the Board reviews the evidence and issues a final decision and order. Appeal from this action must be made to superior court within thirty days.

The rules of the court allow for either jury or bench trials. Jury size may be less than twelve if attorneys for both sides agree.[7] The trial consists of the reading of the transcript of the formal administrative hearing; the attorneys play all the roles in this reading. (Whatever the legal advantages or disadvantages of this procedure may be, its scientific advantage is substantial, for it reduces the social and psychological complexity of the trial and hence reduces the number of variables potentially influencing trial outcome.) The jury renders its decision by responding to an interrogatory. Typically, the first question is of the following form: "Was the Department of Labor and Industries correct in its decision of (date) concerning . . .?" If the answer is yes, DLI is not subject to additional liability. If the answer is no, further interrogatories determine the extent of additional liability.

During the calendar year 1970, 128 jury trials in this format were

Tamm, *The Five-Man Civil Jury: A Proposed Constitutional Amendment*, 51 GEO. L. J. 120, 134-36 (1962); Wiehl, *The Six Man Jury*, 4 GONZAGA L. REV. 35 (1968).

6. *See* Cronin, *Six-Member Juries in District Courts*, 2 BOSTON B.J. 27 (No. 4, April 1958); Phillips, *A Jury of Six in All Cases*, 30 CONN. B.J. 354 (1956); *New Jersey Experiments with Six-Man Jury*, 9 ABA SECT. JUD. ADMIN. BULL. 6 (1966).

7. WASH. SUPER. CT. (CIV.) R. 48. For the pertinent text of that rule, *see* note 2 *supra*.

conducted in the State of Washington. Ninety-five of these trials used twelve-person juries and thirty-three used six-person juries. For each class of jury size the number of cases in which DLI prevailed was separated from the number of cases in which the plaintiff prevailed, regardless of the amount of the additional award granted in the latter cases. The resulting four-cell table was analyzed using the Chi-Square Test for independent samples.[8]

TABLE I

JURY SIZE	PREVAILING PARTY		TOTAL
	DLI	PLAINTIFF	
SIX	15	18	33
TWELVE	44	51	95
TOTAL	59	69	128

The function of this analysis was to allow a quantitative estimate of the congruence or overlap of decisions made by six- and twelve-member juries. Specifically, we asked whether juries of six made a significantly larger proportion of findings for the plaintiff (or DLI) than did juries of twelve. The answer was clear and obvious: the distribution of decisions for plaintiff and defendant were virtually identical in six- and twelve-person juries. Thus, for the total sample of 128 cases, 46 percent were decided for DLI, and 54 percent for the plaintiff. This proportion is reflected virtually identically in both the six- and twelve-person juries: 45 percent and 46 percent, respectively, found for DLI. The Chi-Square score for the table was 0.014, a value far smaller than would be required in order to reject the hypothesis of no difference between the two classes of juries.

A justifiable and conservative conclusion is as follows: if we may properly assume that the assignment of jury size was essentially random in respect to the merits of the cases under consideration, then we may conclude that the use of the smaller jury introduced no systematic bias into the trial outcomes. Hence, given the additional advantages of the smaller jury, its increased use is to be recommended.

8. SIEGEL, NON-PARAMETRIC STATISTICS (1956).

Of course we cannot provide assurance that there was no systematic interaction between particular kinds of cases and the agreement between attorneys to use the small jury, but our survey of the records reveals no obvious interaction of this sort.

Finally, we should point out that the close similarity of performance by these juries of different sizes does not imply that identical social and psychological processes were operating in both cases. Juries of different sizes come to similar conclusions through the operation of different processes. For example, as Wiehl and others have suggested, members of small panels may feel greater individual responsibility than members of large panels.[9] The appropriate answer to this and related conjectures will come from experiments in social psychology directed specifically at the process of decision-making in juries.[10] These caveats and reservations ought not to obscure the primary finding: six- and twelve-member juries behaved identically in the cases under consideration.

9. Wiehl, *The Six Man Jury*, 4 GONZAGA L. REV. 35, 40 (1968).
10. *See* Jurow, *New Data on the Effect of a "Death Qualified" Jury on the Guilt Determination Process*, 84 HARV. L. REV. 567 (1971).