

# Are juries outdated?

“The jury system puts a ban upon intelligence and honesty, and a premium on ignorance, stupidity, and perjury,” concluded Mark Twain over 100 years ago.

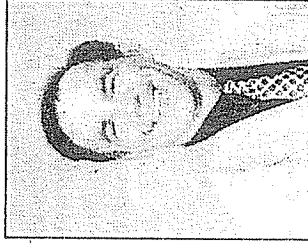
Today, many Americans believe Twain’s description and want to abolish juries in both civil and criminal trials. We borrowed the jury system from 18th Century England and wrote it into the Constitution — Article III and the 6th Amendment for criminal, and 7th Amendment for civil trials.

The unpredictability of civil juries already causes businesses, banks, mortgage lenders and landlords to eliminate them by contract in as many of their transactions as possible. “I hereby knowingly, intentionally, voluntarily and irrevocably waive my right to trial by jury in any suit or dispute arising under this document,” has become the standard boiler-plate language in most American notes, mortgages, leases and contracts. Why? Because American business judges who are bound by precedent are predictable, while decisions of jurors are totally unpredictable and therefore unacceptable. Apparently the English place a high value on predictability because they abolished juries in civil trials in 1939 with little opposition. The fact that there has been no public outcry or regret in England for over 50 years sup-

ports the abolitionists today in America.

The main problem with abolishing juries is it would take the almost impossible step of a constitutional amendment. It is therefore easier to modify than abolish. Two limitations on criminal jury trials have been recognized and upheld — 6 persons rather than 12 on juries, and majority rather than unanimous verdicts. Limiting rather than abolishing criminal juries is probably the most change that will occur because it is unlikely that to deprive a person of life or liberty, we will ever substitute a decision by a committee of judges as a substitute for the decision of a committee of citizens. Providing an accused with the right to be tried by a jury of his peers gives a safeguard against the corrupt or overzealous prosecutor and against biased, corrupt and eccentric judges. Given our inherent distrust of government power this is a right that is unlikely to be abolished.

## LAWYERS viewpoint



John Ritter

Civil juries seem less sacred and less worthy of preserving than criminal. It is surprising that the 7th Amendment elevates the civil jury to the rank of a constitutional right because it does not belong with protections against government power to take life and liberty. The Founding Fathers defended it as a check against judicial corruption while Alexis de Tocqueville praised it for its educational value to the citizen jurors who learned about law and legal rights while sharing duties with judges and lawyers

Today citizens complain about being called for jury duty and try every excuse possible to avoid serving. Our current flood of civil lawsuits undoubtedly cheapens the experience and lowers the importance of jury duty in most citizens’ estimation, leading more and more of us to avoid it. A majority of Americans as well as most businesses would prefer to see judges deciding civil litigation rather than juries. If the 7th Amendment were put to a vote today it would definitely go down to defeat.



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