



# THE WESTERN CRIMINOLOGIST

Fall 2014

THE OFFICIAL NEWSLETTER OF THE WESTERN SOCIETY OF CRIMINOLOGY

Editor: Dr. Paul Kaplan, School of Public Affairs, San Diego State University, 5500 Campanile Drive, San Diego, CA 92182-4505

## FROM THE PRESIDENT

Dr. Kimberly Richman  
University of San Francisco

Greetings and happy fall! I hope everyone's summer was the right combination of relaxing and productive, and that the transition into the fall semester has gone smoothly. With the start of the academic year comes a busy time in the WSC calendar- we are nominating and selecting annual award winners, planning and collecting submissions for the February 2015 conference in Phoenix, appointing and electing new board members, and working on the second issue of our newly rebranded journal, *Criminology, Criminal Justice, Law and Society*, now available online via Scholastica and archived on the WSC homepage. As always, I encourage you and your colleagues to submit your scholarship to this exciting new venue. Our editorial team of Hank Fradella, Christine Scott-Hayward, and Aili Malm are working hard to create a vibrant and innovative transdisciplinary venue for criminological and socio-legal research. In addition, should you wish to access back issues of the prior incarnation of our journal, the *Western Criminology Review*, those can also be found newly archived on the WSC homepage (thank you Hank Fradella and Stuart Henry!).

We have several exciting things in store for our 42<sup>nd</sup> annual conference February 19-21, 2015 in Phoenix, Arizona, at the beautiful Sheraton Phoenix Downtown. Program Co-Chairs Samantha Smith-Pritchard and Josh Chanin are hard at work collecting submissions and putting together panels, while Site Coordinators Hank Fradella and Mike White are on hand in Phoenix working with the hotel and facilities.

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For the second time, board member Stuart Henry and others will be working to arrange and integrate four Critical Criminology panels into the conference schedule, with two occurring on each day (Friday and Saturday). This year, in order to ensure flow and coherence, these special Critical Criminology panels will be scheduled back-to-back on each day. Last year these panels were among the most well attended, and we are confident that this year's will be equally stimulating and provocative.

In addition, we have a number of exciting plenary sessions and speakers planned. This year, there will be two special Presidential Plenaries. One will be a Presidential Panel on Immigration and Criminalization, or "Crimmigration", to highlight the ongoing issues at the intersection of

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immigration policy, experience, and the criminal justice system, locally and across the western region. We have several eminent immigration scholars lined up for this panel event. The second will be a special address by the nationally acclaimed activist and author of *Tattoos on the Heart*, Father Greg Boyle, founder and Executive Director of Homeboy Industries in Los Angeles. Homeboy Industries is one of the country's most innovative and successful reentry and gang intervention programs. We are excited to hear what he has to say. The plenary breakfast will feature a talk by Jonathan Simon, author of such groundbreaking work as *Governing Through Crime*, *Poor Discipline*, and, most recently, *Mass Incarceration on Trial*. Finally, renowned criminological and socio-legal scholar Malcolm Feeley, author of such seminal works as *The Process is the Punishment* and *Court Reform on Trial*, will deliver the Keynote Address at the brunch on Saturday. You will not want to miss this lineup of incredible speakers! Look for attendance information and register today at [www.westerncriminology.org/conference.htm](http://www.westerncriminology.org/conference.htm)

As we prepare to transition into 2015, I want to acknowledge the diligence and commitment of the members of the WSC Executive Board, both incoming and outgoing. First, I want to thank our inaugural Social Media Director, Rachel Quiseng, for bringing the WSC into the era of social media by establishing our presence on Facebook and Twitter. First conceived as an experiment by Past President Paul Kaplan, this presence has proved to be an asset to the organization and its visibility, and we're grateful to both Rachel and Paul. Equally, I wish to thank Lisa Dario, our current Social Media Director, for taking the reins from Rachel and making sure our Facebook feeds are filled with stimulating criminological developments. I am also grateful to Paul Kaplan who, fresh off a busy term as President, agreed to take on the role of Newsletter Editor after the conclusion of the long and productive term of past Newsletter Editor Yvette Farmer. Paul has continued the production of the newsletter without a single hiccup during the transition. I extend great thanks for the hard work of Vice President Ryan Fischer, Awards Committee members Keramet Reiter and Jennifer Sumner, Nominations Committee members Stuart Henry and Jennifer Sumner, Book Exhibit committee members Justin Ready and David McAlister, Membership and Publicity Committee members Erich Schellhammer and Sam Vickovic, Site Coordinator Mike White, Program Co-chairs Sam Smith-Pritchard and Josh Chanin, and of course the Publication Committee members, which include *CCJLS* Editors Hank Fradella (doing quadruple duty additionally as webmaster, Constitution Committee member, and Site Selection Committee/Site Coordinator), Christine Scott-Hayward, and

Aili Malm as well as Newsletter Editor Paul Kaplan and Social Media Director Lisa Dario. Last but definitely not least, I want to offer a warm welcome and our deep gratitude to new Secretary-Treasurers Kelly Bradley and Cindy Parkhurst, both of La Sierra University, who took on a sometimes burdensome and often thankless job that includes so many invisible tasks and details that they would be impossible to list here. Both Kelly and Cindy have been hard at work ensuring the smooth functioning and continued vitality of the WSC, from day one. Likewise, I want to offer the society's undying gratitude to Past Presidents Hank Fradella and Paul Kaplan for graciously stepping in to fill these roles, adding to an already unwieldy work load for each, for the last few years. Their dedication is appreciated beyond measure!

Before closing, I want to bring your attention to what I consider to be one of the more important recent activities of the WSC. As most of you well know, recent months' headlines have been filled with the kinds of topics that we as criminologists dedicate our attention to: police brutality and use of force, domestic violence, and racial profiling, among others. One of the more noteworthy events here in California was the July 2014 ruling by U.S. District Court Judge Cormac Carney finding California's death penalty unconstitutional and a violation of the 8<sup>th</sup> Amendment. Realizing that this ruling would stand in California if not appealed, WSC board member Hank Fradella took swift action; he constructed and disseminated a proposed resolution calling on Attorney General Kamala Harris to not appeal the decision. Once the Executive Board members unanimously approved this resolution, I submitted it to AG Harris on behalf of the Society and the Board. Although AG Harris ultimately chose to appeal, it is this kind of commitment to social action and social justice that make me proud to be a member of the WSC. I am grateful to Hank and to my colleagues on the Board for taking this stand and for helping to fulfill our promise as criminological scholars dedicated to justice.



## FROM THE EDITOR

Dr. Paul Kaplan

San Diego State University

WSC President Kim Richman opens our Fall 2014 issue of *The Western Criminologist* with news and updates as well as an important note on the WSC's resolution to request that California Attorney General Kamala Harris not appeal the

recent federal district court ruling that California's death penalty is unconstitutional. On a personal note, I was very glad to see the Board of the WSC unanimously pass this resolution (the WSC Board also unanimously passed a resolution supporting the SAFE campaign of 2012 to abolish the death penalty in California). Prior to entering academics, I worked as a mitigation investigator in California, so the issue is near and dear. Although I, like Kim, was disappointed to see AG Harris appeal the decision, I am proud of our organization for taking a position.

The newsletter continues with the customary updates about the annual conference, solicitation of nominations to the Board, announcement of awards, and the like. Next—in what has become a bit of a tradition—Hank Fradella offers a fresh topical essay on something important in our field. In this case, Hank provides a fascinating historical and jurisprudential analysis of the phenomenon of six-person juries for felony trials in some southern states. Indeed, this installment is a sequel to Hank's previous essay on the George Zimmerman trial in Florida (one of the states which uses six-person juries for all felonies that are not capital cases). The gist of Hank's essay is: racism seems to lurk behind this phenomenon.

In *Miki's Reflections*, Miki Vohryzek-Bolden offers incisive and poignant commentary on the frequent failures of single-issue oriented policy initiatives, notably some gun control efforts; she concludes with some hopeful notes on potential changes in California's disproportionate enforcement of crack laws against persons of color. Following *Miki's Reflections*, you'll find the call for papers for *Criminology*, *Criminal Justice*, *Law & Society*.



### **RUN FOR ELECTION TO THE WSC EXECUTIVE BOARD**

Each year, the Western Society of Criminology elects two or three Executive Counselors to serve three-year terms. And, each year, the WSC also elects one person to serve three consecutive years in the offices of Vice President, President, and Immediate Past President, respectively.

#### Board Members:

- form the policies of the WSC;
- determine the date, location, and general program of the Annual Meeting;
- ratify the budget for the WSC;
- review the accounts and disbursements of the WSC;
- act on resolutions submitted by the Resolution Committee;
- coordinate a book exhibit to raise scholarship funds for students each year;
- select editors for our journal, the *Criminology*, *Criminal Justice*, *Law & Society*; and
- select award recipients from the slate of people nominated by the general membership of the Society.

We hope that you will choose to get more involved with the WSC by running for election to the Board! Nominations, including self-nominations, are welcome. Please contact Dr. Stuart Henry, Chairperson of the Nominations Committee, for more information.

#### **Stuart Henry, Ph.D.**

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<https://www.facebook.com/westernsocietyofcriminology>



<http://www.twitter.com/wscriminology>

Come Join Us!  
WESTERN SOCIETY OF CRIMINOLOGY  
42<sup>ND</sup> ANNUAL CONFERENCE  
PHOENIX, ARIZONA

February 19, 2015 through February 21, 2015

We encourage you to mark your calendar  
for the 42nd Annual Conference of the WSC!



**Hotel:** Sheraton Phoenix Downtown Hotel

340 North 3<sup>rd</sup> Street  
Phoenix, AZ 85004  
(602) 262-2500

**Rate:** \$199 per night for the first 180 room nights reserved. Thereafter, the room rate increases by \$30 per night to \$229 per night. So reserve your room early to get the lowest possible rate!

**Book:** <https://www.starwoodmeeting.com/Book/Annualconference>

The Program Chairs are:

- Dr. Samantha Smith-Pritchard, The Leidos Company, sam.smith.phd@gmail.com; and
- Dr. Joshua Chanin, San Diego State University, 5500 Campanile Drive, San Diego, CA 92182-4505, jchanin@mail.sdsu.edu

The Call for Participation appears on page 6 of this issue, but you may also want to contact Dr. Smith-Pritchard, Dr. Chanin, or check out our website for additional information about the conference:

<http://www.westerncriminology.org/conference.htm>.



**WSC AWARD RECIPIENTS FOR 2014**



June Morrison – Tom Gitchoff Founders Award:  
**Father Greg Boyle**



Paul Tappan Award:  
**Malcolm Feeley**



Joseph D. Lohman Award:  
**Stuart Henry**



Western Society of Criminology Fellows Award:  
**Jonathan Simon**



President's Award:  
**Valerie Jenness**



W.E.B Dubois Award:  
**Michelle Alexander**



Richard Tewksbury Award:  
**Dana Peterson**



Meda Chesney-Lind Award:  
**Jill Rosenbaum**

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## Student Award Announcements:

### Miki Vohryzek-Bolden Student Paper Competition:

Students are invited to compete in the Miki Vohryzek-Bolden Student Paper Competition sponsored by WSC each year.

Appropriate types of papers include, but are not limited to, policy analyses, original research, literature reviews, position papers, theoretical papers, and scholarly commentaries.

Please note that papers co-authored by faculty will not be considered.

- **Eligibility:** Any student currently enrolled full-time or part-time in an academic degree program at either the undergraduate or graduate level is eligible to submit a paper. Students from all majors are eligible, however, all entries must be related to criminology, criminal justice, or criminal law and society. Papers must not exceed 30 pages, including abstract, text, references, tables and figures, notes, etc. Papers exceeding this limit will not be considered. Papers must be double-spaced, typed in 12-point font on pages using one-inch margins, and conform to a standard format for the organization of papers and citation (e.g. APA, ASA, Bluebook). The WSC Awards Committee is responsible for evaluating papers meeting the guidelines described above.
- **Award Prize:** Students selected for this award will be recognized at the WSC's annual conference; will receive a reimbursement of student conference fees (less membership dues); and will receive a cash award of between \$125 and \$250 for first place, depending on whether the paper was sole-authored or co-authored. Additionally, if the award recipient desires, the best paper will be submitted for review to the journal of *Criminology*, *Criminal Justice*, *Law & Society*. In rare circumstances, a cash award of up to \$100 may be awarded to a second place paper.
- **Please Note:** The paper that students submit to compete in Miki Vohryzek-Bolden Student Paper Competition need not be the same paper that they present at the conference. We recognize that conference presentations may be works in progress or may be a result of joint efforts with faculty mentors. In contrast, papers submitted for the Student Paper Competition must be completed papers that were written by a student (or co-authored by two or more students) without the assistance of faculty.

**Deadline: A completed, final paper should be emailed to the chairperson of the Awards Committee, Dr. Keramet Reiter, by 12:00 noon on Friday, October 10, 2014. Award winners will be notified in writing by December 5, 2014.**

**June Morrison Scholarship Fund:** Using money raised from the Book Exhibit, the June Morrison Scholarship Fund provides supplemental funds to help defray the cost of student members' participation at the annual meeting, provided that they are presenting papers at the conference. Typically, one or two awards are made to students attending the annual meeting of the WSC. The amount of the awards varies by year (usually between \$200 and \$300), depending on the sales of books at the Book Exhibit the prior year. Please note that this scholarship is not related to the Student Paper Competition. All students attending the annual meeting are encouraged to apply.

- **Eligibility:** Any student currently enrolled full-time or part-time in an academic degree program at either the undergraduate or graduate level is eligible to apply for this award, provided that they are presenting a paper at the annual conference. Conference registration and student membership dues must be paid prior to the scholarship being awarded.
- **Submission Requirements:**
  - A résumé or curriculum vitae
  - A cover letter, indicating your intent to apply for the award, including the following information:
    1. your full contact information, including your name, address, phone number, and email address;
    2. the name of your school, department, and whether you are a graduate or undergraduate student;
    3. the title of your paper presentation;
    4. a summary of other funding sources available to you, if any;
    5. a brief explanation of how conference attendance will be valuable to your career development (including how it will relate to future career plans); and
    6. a brief summary of how your presentation fits into your larger research trajectory (i.e., what, if any, are your plans for the project you plan to present at the conference, such as use in project, thesis, or dissertation; submission for publication to a specific journal; etc.).
  - An e-mail message from a faculty sponsor from your school to the chairperson of the Awards Committee indicating his/her support of your request for travel funds.

**Deadline: Email the information above to the chairperson of the Awards Committee, Dr. Keramet Reiter, by 12:00 noon on Friday, October 10, 2014. Award winners will be notified in writing by December 5, 2014.**



# CALL FOR PARTICIPATION

## WESTERN SOCIETY OF CRIMINOLOGY 42<sup>ND</sup> ANNUAL CONFERENCE FEBRUARY 19-21, 2015 • PHOENIX, AZ

❖ Please note that the deadline to submit abstracts is October 3, 2014 ❖

### PANEL TOPICS

- COURTS AND JUDICIAL PROCESSES  
(INCLUDING SENTENCING)
- CORRECTIONS
- CRIME ANALYSIS  
(INCLUDING GEOGRAPHY & CRIME AND  
SOCIAL NETWORKS & CRIME)
- CRIMINOLOGICAL THEORY
- CYBERCRIME
- DRUGS/SUBSTANCE ABUSE & CRIME
- FORENSIC SCIENCE
- GENDER, SEXUALITY, & CRIME
- JUVENILE JUSTICE
- LEGAL ISSUES IN CRIMINAL JUSTICE  
(CRIMINAL LAW, CRIMINAL PROCEDURE, & EVIDENCE)
- ORGANIZED CRIME & GANGS
- PEACEMAKING CRIMINOLOGY
- POLICING
- SEX CRIMES
- TEACHING  
(PEDAGOGY & ASSESSMENT IN JUSTICE EDUCATION)
- TERRORISM
- WHITE COLLAR CRIME

*All proposals must be electronically submitted through the WSC's online Abstract Submission System:*

[http://www.westerncriminology.org/abstract\\_submission\\_gateway.htm](http://www.westerncriminology.org/abstract_submission_gateway.htm)

In deciding the most appropriate topic area for your abstract, think about the main focus of your paper and how it might fit within a panel organized around a larger topical theme. For example, if your paper examines both race and juvenile issues, think about whether you would like to be placed on a panel with other papers discussing race issues or other papers dealing with juvenile issues and then submit it to the topic area in which you think it fits best.

All presenters are asked to submit an abstract of 1,100 characters or fewer to only one of the panel topics listed above (on or before October 3, 2014). In addition to the abstract, please include the name, mailing address, email address, and phone number for all authors on the submission for the participant directory. Note that all presenters must pre-register for the conference by Monday, January 5, 2015.

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## CRITICAL CRIMINOLOGY AND SOCIAL JUSTICE

### Special Sessions at the Arizona WSC Meetings

As mentioned by President Kim Richman, critical criminology and social justice panels will be highlighted in the annual conference. If you are interested in participating, simply follow the normal paper proposal submission process and submit an abstract by October 3, 2014 through our online submission system:

[http://westerncriminology.org/abstract\\_submission\\_gateway.htm](http://westerncriminology.org/abstract_submission_gateway.htm)

Then send the same title/abstract/contact email to [stuart.henry2@gmail.com](mailto:stuart.henry2@gmail.com) indicating that you want to be on one of the critical criminology and social justice panels.



### DID RACISM MOTIVATE THE CREATION OF SIX-PERSON FELONY JURIES?

Henry F. Fradella

*Arizona State University*

A year ago, I wrote an essay sharing some thoughts on verdict in the criminal case against George Zimmerman for the shooting death of Trayvon Martin that was published in the fall 2013 edition of the [Western Criminologist](#). In response to that essay, a colleague at John Jay College of Criminal Justice in New York City contacted me and posed an interesting question: “How did Florida end up with a six-person jury in a serious felony case?” I write the current essay in response to that question because I think it is important to contextualize *when* the change in the size of felony juries occurred in Florida because, in my opinion, the timing sheds light on *why* six-person juries in felony cases were adopted in Florida and a handful of other states.

#### A Brief Overview of the Right to Trial by Jury

Jury trials in criminal cases have been in a staple of Western civilization for centuries. After being used by the ancient Greeks and Romans, jury trials in Europe reemerged in 9<sup>th</sup>

century France (Neubauer & Fradella, 2013). They had become so important by the 13<sup>th</sup> century that the Magna Carta formalized the right to a jury trial in 1215, at least for nobility. The right was subsequently extended to average citizens, although the early English juries more resembled contemporary grand juries than guilt-determining deliberative bodies until the reign of Henry II, when he approved the Constitution of Clarendon in 1164 (Miller, 1998). As the English system of justice evolved, unanimous verdicts by twelve jurors had become the norm by the time of Edward III in 1377. This practice carried over to the American colonies.

The Sixth Amendment to the U.S. guarantees that “in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury.” Because this right is so “fundamental to the American scheme of justice,” in *Duncan v. Louisiana* (1968, p. 149), the U.S. Supreme Court held it applied to the states via the Due Process Clause of the Fourteenth Amendment. But the use of the word “all” in the Sixth Amendment is a little misleading in light of the U.S. Supreme Court’s decision in *Baldwin v. New York* (1970). That case held that defendants accused of petty offenses do not have the right to a trial by jury. In this context, “no offense can be deemed ‘petty’ for the purposes of the right to trial by jury where imprisonment for more than six months is authorized” (*Baldwin v. New York*, 1970, p. 69). In other words, the Sixth Amendment does not guarantee the right to a trial by jury for offenses punishable by a fine, a license revocation, or less than six months in jail.<sup>1</sup> Some state constitutions, however, guarantee a jury trial to anyone facing any criminal charge whatsoever, including traffic offenses.

The Sixth Amendment is silent with respect to jury size. A few scholars attribute the significance of twelve-person juries to mythical trial of “Ares, god of War, for the murder of Halirrhothius, the son of Poseidon, god of the Sea,” which was tried before a panel of twelve gods (see Miller, 1998). Other scholars tie the number twelve to biblical significance: twelve apostles, twelve stones, twelve tribes, and so on (see Miller, 1998). Whatever its true origins, by the time the U.S. Constitution was drafted, twelve-person, unanimous juries in criminal cases had a nearly 400-year tradition in English common law that

was brought over and immediately integrated, unchanged, into pre-Revolutionary War America. Thus, it seems clear that to most of the delegates to the Constitutional Convention in 1787, trial by jury in criminal cases meant trial by a body of twelve persons

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<sup>1</sup> I don’t know about you, but if I were facing a four-month jail sentence, I would not think of that as being “petty”!

all of whom agreed to the verdict. (Miller, 1998, p. 643, internal citations omitted)

Moreover, that understanding remained common practice in the United States until a time that suspiciously aligns with newfound rights of Blacks. And Florida was at the forefront of this dubious change.

### Changes to the Twelve-Person Jury in Florida

After the U.S. Civil War, Florida made several unsuccessful attempts to enact a post-reconstruction constitution. The state remained under “radical reconstruction”—in other words, federal military control, until 1868, when a new constitution was approved and civil control of Florida resumed. This so-called “carpetbag constitution” vested the governor with the power to appoint county officials, implemented a public school system, and established a state prison. And Section 3 of the 1868 Florida constitution provided, “The right of trial by jury shall be secured to all and remain inviolate forever; but in all civil cases a jury trial may be waived by the parties in the manner to be prescribed by law.”

Within two decades, another state constitutional convention was called, largely in response to executive abuses of power. Shortly thereafter, the Florida State Constitution of 1885 was ratified. It created an elected executive cabinet and added a requirement that most government officials be elected. In most other respects, this constitution mirrored many of the provisions of the 1868 constitution, with one notable difference: The state constitution of 1885 enshrined racial discrimination into several provisions of the state’s highest law:

- Article VI, Section 8 imposed the nation’s first poll tax: “The Legislature shall have power to make the payment of the capitation tax a prerequisite for voting, and all such taxes received shall go into the school fund.”
- Article VII, Section 12 mandated that “White and colored children shall not be taught in the same school.”
- Article XVI, Section 24 barred miscegenation by providing, “All marriages between a white person and a negro, or between a white person and a person of negro descent to the fourth generation, inclusive, are hereby forever prohibited.”

Florida poll taxes had its intended effect quite rapidly. In the presidential election of 1888, a record 62% of Black males voted; four years later, that figured had dropped to 11% (HistoryEngine.com, n.d.).

With respect to trial by jury, Section 3 of the Declaration of Rights contained in Florida’s constitution of 1885 provided, “The right of trial by jury shall be secured to all, and remain inviolate forever.” Unlike its predecessor, it was silent as to trial rights in civil cases. But, like its parallel provision in the

1868 state constitution, the provision remained silent with regard to jury size and unanimity in criminal case. Florida, however, like nearly all other U.S. states and territories, had employed twelve-person juries until that time and continued to do so through the 1960s. But the Florida constitution underwent a massive overhaul in 1968. Article I, Section 22 of the 1968 version of the Florida constitution provides, “The right of trial by jury shall be secure to all and remain inviolate. The qualifications and the number of jurors, not fewer than six, shall be fixed by law.” Pursuant to this grant of statutory authority, Florida Statutes Annotated § 913.10 states, “Twelve persons shall constitute a jury to try all capital cases, and six persons shall constitute a jury to try all other criminal cases.”

This departure from hundreds of years of common law history employing twelve-person juries occurred during a period of great social upheaval in the United States. It strikes me as more than coincidental that the size of criminal juries began to shrink in Florida shortly after the adoption of the Civil Rights Act of 1964. Indeed, Florida’s constitutional change regarding jury sizes came only one year after the National Advisory Commission on Civil Disorders (also known as the Kerner Commission) decried racial inequalities in the United States. But because Florida did not begin keeping an archive of legislative materials until 1969, it is quite difficult to investigate the legislative history of the evolution of felony jury sizes in that state.

### The Constitutionality of Criminal Juries with Fewer than Twelve People

In *Williams v. Florida* (1970), the U.S. Supreme Court upheld Florida Statute Annotated § 913.10, ruling that the Sixth Amendment’s guarantee to trial by jury did not require states to empanel twelve-member petit juries. In subsequent cases, the Court made clear that six is the minimum jury size in state criminal trials that is acceptable under the U.S. constitution because “the purpose and functioning of the jury in a criminal trial is seriously impaired, and to a constitutional degree, by a reduction in size to below six members” (*Ballew v. Georgia*, 1978, p. 239). If a six-person jury is used, the verdict in a criminal case must be unanimous (*Burch v. Louisiana*, 1979). If, however, a larger jury is empanelled in a state criminal trial, the verdict need not be unanimous. Indeed, the Court has upheld state court convictions by juries whose members voted for guilty verdicts by margins of 10 to 2 (*Apodaca v. Oregon*, 1972) and even 9 to 3 (*Johnson v. Louisiana*, 1972).

### A Short Synopsis of the Social Science Examining Smaller Juries

The decision in *Williams* and cases in its progeny have been widely criticized by psychologists who critiqued the Court’s misunderstanding of the social scientific evidence on jury size. As Saks (1974) pointed out shortly after *Williams* was decided, the Court “ignored what is obvious to every social scientist: that when sampling from heterogeneous

populations, sample size determines how well minority groups in the population will be represented” (p. 19). Saks subsequently conducted a series of controlled experiments and found that “the actual difference in minority representation on twelve- and six-member juries was even more pronounced than the sampling theory had suggested. Few researchers, Saks concluded, would consider this difference to be, in the words of the *Williams* Court, ‘negligible’” (as quoted in Miller, 1988, pp. 655-665).

Although a handful of studies reported only minor differences in the jury deliberation processes and outcomes (e.g., Pabst, 1973; Roper, 1979), other studies have found significant differences (e.g., Hastie, Penrod, & Pennington, 1983; Saks & Marti, 1997). Smith and Saks (2008) conducted a review of the empirical literature on juries and concluded the following:

- racial, ethnic, religious, and sexual minorities are represented in a smaller percentage of six-person as compared to twelve-person juries;
- larger juries deliberate longer than smaller juries;
- talking time is more evenly divided among members of smaller juries, allowing for less domination by a strong voice or two as compared with larger juries;
- members of larger juries more accurately recall evidence both during deliberation and in individual recall afterward;
- twelve-person juries recall more probative information and rely on evaluative statements and nonprobative evidence less than six-person juries . . . ; and
- jurors report more satisfaction in the deliberation process with twelve-person juries than with smaller ones (Neubauer & Fradella, 2013, p. 337)

Research also demonstrates that hung juries—juries unable to reach a unanimous verdict—occur more frequently with twelve-person juries than with six-person juries (Hannaford-Agor, Hans, Mott, & Munsterman, 2002; Kalven & Zeisel, 1966). In light of the empirical data on jury size, “there is little doubt that twelve-person juries are more likely to approach the idea of jury performance positively and thus

should be used whenever financial considerations allow” (Devine, Clayton, Dunford, Seying, & Pryce, 2001, p. 708).

### A Racial Connection?

At the time *Williams v. Florida* was decided, a number of states allowed smaller juries to adjudicate misdemeanors offenses, ostensibly for the purposes of efficiency and economy. But only four other states had authorized juries of fewer than twelve members to adjudicate felony cases by the late 1960s: Louisiana, South Carolina, Texas, and Utah.<sup>2</sup> When considered alongside the timing of these changes, the geography of these particular locales gives one pause to question whether something other than efficiency and economy drove the decisions to allow felony convictions with criminal juries comprised of only six members.

Three of these jurisdictions (Florida, Louisiana, and Texas) were members of the Confederate States of America. And although Utah was not a state at the time of the U.S. Civil War, it has an arguably unique history of racism stemming, in part, from the state’s ties to the Jesus Christ Church of Latter Day Saints (see Bringhurst, 1981; Eskridge, 2011). Consider that the *Book of Mormon* states that dark skin is a “mark which was set upon their fathers, which was a curse upon them because of their transgression . . .” (Alma 3:6). Accordingly, it was official church doctrine that “Negroes [were] not entitled to the full blessings of the Gospel” (Stewart & Berrett, 1960, pp. 46-47). As a result, Blacks were not only banned from Mormon ministry, but also were banned from entering Mormon temples until the church officially changed its doctrine in 1978 (see Bringhurst, 1981).

When the conclusions from empirical research on smaller juries are juxtaposed geographically and temporally against the abandoned the use of twelve-person juries in felony cases, one must seriously consider the question of whether the change was motivated, at least in part, by a desire to secure easier convictions against African-Americans and Caribbean Islanders. Of course, much of the research on jury size and jury decision-making occurred after *Williams* was decided. But that begs yet another question. Given what we now know about the differences between six-person and twelve-person juries—especially with regard to their racial composition, a factor that is linked to race-based conviction rates (e.g., Williams & Burek, 2008), why do we still use them?

<sup>2</sup> Today, Florida, Louisiana, and Utah continue to allow juries of fewer than twelve people to adjudicate felony cases, as do Arizona, Connecticut, and Indiana (Strickland, Schauffler, LaFountain, & Holt, 2014). South Carolina and Texas abandoned this approach and became two of the 34 U.S. states (and the District of Columbia) that currently require twelve-person juries in felony cases (Strickland et al., 2014). In addition, eighteen U.S. jurisdictions also require twelve-person juries in

misdemeanor cases: Alabama, Arkansas, California, Delaware, the District of Columbia, Hawaii, Illinois, Maine, Maryland, New Hampshire, New Jersey, Pennsylvania, Puerto Rico, Rhode Island, South Dakota, Tennessee, Vermont, West Virginia, and Wisconsin (Strickland et al., 2014).

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## MIKI'S REFLECTIONS

Miki Vohryzek-Bolden

I am a long-suffering policy-wonker and proud of it. My professional start in the policy world began at The Rand Corporation, then with the Assembly Office of Research and in a twist of fate, to the California State Association of Counties where I had the opportunity to apply my skills as the criminal and civil justice lobbyist. There are several issues that became abundantly clear to me through these and other related experiences: our decision-makers often focus on 'policy by exception' rather than the totality of a problem – e.g., one thing happens and we adopt a law to address that single issue; the language we use to describe a problem influences our perceptions and potential solutions; and partisan politics endangers the adoption of policies and procedures that address significant problems.

The usual effect of these 'policies by exception' is that we adopt piece-meal responses to a problem rather than a holistic approach – e.g., The Cleveland School massacre, where five children were killed and 29 other injured, occurred on January 17, 1989 in Stockton; one immediate outcome was the introduction of legislation to define and then ban assault weapons, resulting in the Roberti-Ross Assault Weapons Control Act of 1989. The problems that led to the incident were more complex – alleged killer was an alcoholic with a criminal record of selling weapons and attempted robbery, which did not prohibit him from purchasing these weapons. We are continually tinkering with firearms legislation and one must question, to what effect?

The War on Drugs involves people of all demographics but as many studies have demonstrated, disproportionately affect communities of Color. Even though Blacks and Latinos use and sell drugs at similar rates to whites, they are more often targeted for arrest and receive more lengthy prison sentences. SB 1010, the California Fair Sentencing Act authored by Senator Holly Mitchell [D-Los Angeles] is on the Assembly floor for its final legislative vote. The bill is designed to address the disparity in sentencing, probation, and asset forfeiture guidelines for possession of crack cocaine for sale versus the same crime involving powder cocaine that has resulted in a pattern of racial discrimination in sentencing and incarceration in California. While the two forms of the drug have nearly identical effects on the human body, people of color account for the vast majority of persons sent to prison for possession of crack cocaine for sale. Whether possessed or sold as crack or powder, it is the same drug and violators

should get the same treatment under the law. This legislation is a step in the right direction. One question is why it took so long to reach this stage.

In 2011, Governor Jerry Brown signed Assembly Bill 109, commonly referred to as 'prison realignment,' which shifted to counties the responsibility for monitoring, tracking, and incarcerating lower-level offenders previously sent to state prison. Partisan politics surround the debate on prison realignment – e.g., fear that we would experience an increase in street crimes, including serious felonies. While the research on prison realignment is still evolving, it is clear that along with the many challenges facing counties across the state, there have been multiple positives, such as increased collaboration at all levels of the criminal justice system and a more holistic view of offender management. These policy shifts should be based on research-based evidence rather than fear-mongering.

You may be asking yourself what prompted this discussion. Over the past several weeks, there has been extensive media coverage of the 'illegal immigrants', primarily children, crossing the border into the United States. In the past, we might have called these individuals 'refugees' but the use of the term 'illegal immigrants' frames the story in a whole different light and suggests different alternatives to address the 'problem.'

My father, Frantisek Benno Vohryzek, left Czechoslovakia on February 18, 1939, two weeks before Hitler closed down Prague, where my Dad and his family were sheltered after being forced off their farm in Hrdlovka, Czechoslovakia. There were many countries, including the United States, who set quotas on the number of Jews who could emigrate, especially from Eastern Europe. My Dad eventually made his way to Guayaquil, Ecuador where he met and married my American mother, Mary McCabe Lynch and came to the United States. My Dad was a 'refugee' in the true sense of the word. Would he now be labeled an 'illegal immigrant'? It is something to ponder.

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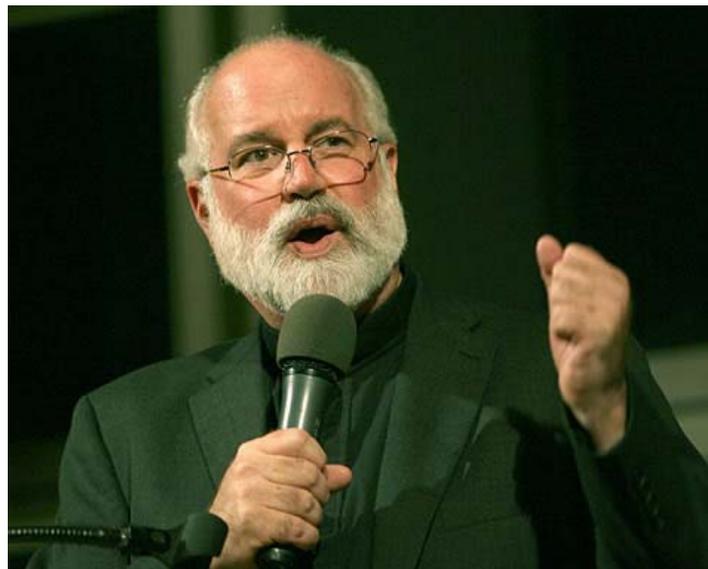
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