

“Juries are also only as good as the information and guidance they receive”

To be sure, juries don't always get it right. Jurors are human and fallible. The past month also saw a wave of innocent people exonerated after false convictions by juries. These include Kevin Strickland, a black man wrongfully imprisoned in Missouri for more than 40 years after being convicted by an all-white jury, and two of the Muslim men convicted of killing Malcolm X, potentially as cover for misconduct by the federal government.

Juries are also only as good as the information and guidance they receive. In the rare cases that go to trial, prosecutors too frequently withhold evidence favorable to the defense, manipulate witnesses,

and make improper arguments to the jury. Unfortunately, some judges—many of whom served as prosecutors before taking the bench—aren't as vigilant as they should be.

Juries are also to some extent stuck with the law they're given. Those dismayed by the Rittenhouse verdict, for instance, should consider focusing their ire on Wisconsin's self-defense law rather than the jury that enforced it. On the flip side, two of Ahmaud Arbery's pursuers were convicted of a crime called "felony murder," whereby a defendant is guilty of murder when a death occurs in the commission of some other felony, even if the death was both unintended and unforeseeable. While both of us believe those defendants should never have followed Arbery in the first place and that his killing was a terrible wrong, we also believe felony murder is illegitimate and potentially unconstitutional.

WSJ Opinion's Paul Gigot, Allysia Finley and Kyle Peterson with legal scholar Ilya Shapiro discuss the new Court's first full term.

Yet despite the drawbacks of trial by jury, the alternative—the ad hoc practice called plea bargaining—is far worse. In particular, coercive plea bargaining artificially lowers the cost of obtaining a criminal conviction. Prosecutors can induce defendants to plead guilty by bringing more—and more-serious—charges than are truly

warranted, particularly when combined with pretrial detention. Many of these charges would implode spectacularly if tested in the crucible of an adversarial proceeding, and plea bargains protect prosecutors from having to go through the hard, constitutionally mandated work of building a case for guilt beyond a reasonable doubt. This vastly increases the number of prosecutions the government can pursue and facilitates mass incarceration.

Plea bargaining can also hide police misconduct from public scrutiny by ensuring that rights-violating officers rarely take the stand. Then there's the horrifying reality that innocent people are sometimes pressured into pleading guilty to crimes. While it is impossible to say exactly how often this happens, scholars place it between 1.6% and 8% of all felony convictions.

More jury trials won't solve all the problems in our criminal-justice system. But they would bring more misconduct to light and thereby make courts and prosecutions fairer. Potential reforms include curbing the misuse of pretrial detention and mandatory minimum sentences to exert plea leverage; capping how much prosecutors can offer to lower charges in plea bargains; creating watchdogs inside and outside the justice system to scrutinize the validity of a guilty plea before a conviction is entered; and giving sentencing information to jurors so they understand the full consequences of a conviction for the defendant.

We need more jury trials because they prevent the government from unilaterally convicting those it has accused of crimes and ensure that ordinary citizens get to make the call about who deserves to be punished. There's nothing more American than that.

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