# Information Obtained From Non-Procedural Sources of the Jury: The Impact of the Revision of the Sentence

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**ABSTRACT**
The article discusses the jury trial in America and Russia, their similarities and differences. The author shows how important it is in both countries to distinguish between obtaining information about a criminal case by a jury from non-procedural sources, such as social networks, electronic publications, television and the Internet. How they affect the quality of the jury's decision. The author also provides data on how many decisions made with a jury in Russia are further appealed and whether it is possible to make assumptions that the decisions that were changed were made by the jury under the pressure of external opinion.
***Keywords:*** *jury, verdict, appeal, digital technology, educational activities*

## 1. INTRODUCTION

When we talk about jury trials in Russia, we will compare it with the model adopted in the United States, where criminal cases are usually tried by a jury, and not the other way around, when this becomes an exception. And given that criminal proceedings are aimed at expanding the number of criminal cases considered by a jury, it is impossible to ignore the factors that hinder the adoption of a quality decision and because of which they can be canceled or changed after passing the appeal procedure.

"The theory of our legal system is that the conclusions formulated in the case are based only on evidence and arguments voiced in open court, and not on any external influence, whether private conversation or public publications"-this was the conclusion that underlies the position of the us Supreme Court in the case "Patterson V. Colorado" [1].

Such views, expressed in the presumption of subjective impartiality of the judge and the presumption of execution by the panel of the instructions of the presiding judge, are typical for all periods of the jury trial. Nevertheless, we cannot disagree with the well-known observation of the European Court of justice that "courts do not function in a vacuum" [2], since the mass media, as well as the modern development of Internet technologies, carry significant risks of influencing the jury.

## 2. DEVELOPMENT OF THE INSTITUTE OF TRIAL BY JURY

### *2.1. In the United States of America*

Trial by Jury has traditionally been seen as the cornerstone of democracy and the rule of law in this country. This led Lord Devlin to dramatically comment in 1956 that trial by jury is “the lamp which shows that freedom lives”. However, this cornerstone has only been cemented for a few centuries. The origins of Trial by Jury, and more generally the swearing of 12 men to account for facts, goes back much further and even pre-dates the Norman conquest of 1066.

A jury is a body of people that are sworn to account for facts and to furnish courts of law with true and honest information. This idea was not unique to England and was used across ancient empires and within England and Normandy long before the Norman conquest.

At this early time, these bodies were called inquests. Its long history is attributable to the fact that without it, there was no efficient way to collect information about the number of livestock in an area or who owned which piece of land and where the boundary of that land was.

An inquest could also be held where 12 knights were summoned to provide information concerning suspected criminals in their area. This process became known as the Grand Jury, as it was more general. The Petty Jury was a jury within a specific trial and will be discussed below.

The Petty Jury made its first proper appearance within 12th century criminal cases. It became more prominent due to the fact that the Church disallowed the practice in 1215 of the Water and Fire ordeals as methods of proving guilt or innocence. Trial by Battle remained at this point but was already out of favour and the Jury was primed and ready to take over. My blog post on the ordeals can be found here [3].

Following on from this in the later 1200s and 1300s, Trial by Jury became significantly more common in all trials of wrongdoing in the courts. Furthermore, there was also discussion concerning the nature of the Jury. Were the jurors to be treated like witnesses and individually examined or treated as a collective body? Case law in the 14th and 15th century cemented the idea of the Jury as a collective institution [4].

To prevent improper influences and to preserve the honesty of their information, it quickly became very serious to

 

communicate with a juror once they were sworn. The Jury was sequestered away from the influence of outside items or information. It was taken to the extreme and in a case of the late 1500s, 4 jurors were fined for possessing raisins and plums while sworn. It makes the modern day s.8 of the Contempt of Court Act 1981, which protects the confidentiality of Juries, seem mild.

In early Trial by Jury cases, if the jurors were not unanimous the judge could step in to decide one way or another. By 1367, case law strongly affirmed that unanimous verdicts were a necessity. This has eventually over the centuries gone back to majority verdicts being officially allowed, with the most recent law being contained in s.17 of the Juries Act 1974.

The state of affairs outlined above lasted for several centuries. There were a string of Juries Acts, prominent among them: 1825, 1850, 1949, and 1974, the latter being the most recent and currently in force edition. The general thrust of this string of legislation was to codify and make amendments to the law surrounding Juries which until that point was mainly contained within case law.

By the time the U.S. Constitution was written, jury trials in criminal cases had been in existence in England for several centuries. This legal principle was transferred to the American colonies and later written into the Constitution. The pivotal role that the right to trial by jury plays in American law is underscored by the number of times it is mentioned in the Constitution. Article III, Section 2, provides that "the trial of all crimes, except cases of impeachment shall be by jury and such trial shall be held in the state where the said crimes shall have been committed." This section not only guarantees the right to a trial by jury to persons accused by the national government of a crime but also specifies that such trials shall be held near the place of the offense. This prevents the government from harassing defendants by trying them far from home.

The Sixth Amendment guarantees that "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury." The requirement of a public trial prohibits secret trials, a device commonly used by dictators to silence their opponents. The Seventh Amendment provides: "In suits at common law … the right to trial by jury shall be preserved." This provision is a historical testament to the fact that the framers of the Constitution greatly distrusted the judges of the day [5, p. 377].

Now the primary purpose of the jury is to prevent oppression by the government and provide the accused a "safeguard against the corrupt or over-zealous prosecutor and against the compliant, biased, or eccentric judge". Ideally, juries are made up of fair-minded citizens who represent a cross section of the local community. Once selected, their role is to judge the facts of the case. During trial, the judge rules on questions of law, but the jury decides the weight of the evidence and the credibility to give to the testimony of witnesses. Trial juries are also called petit juries, to differentiate them from grand juries. The jury system represents a commitment to the role of laypeople in the administration of justice. The views and actions of judges and lawyers are constrained by a group of average citizens who are amateurs in the ways of the law [5, p. 380].

## *2.2. In Russia*

Jury trial in our country has undergone many changes, but, in fact, it is a younger model of criminal cases than in Europe or America. In tsarist Russia, it was introduced in 1864 (although some of its prototypes can be found in common law, for example, "courts of verbal violence" among a number of indigenous peoples of Siberia, which included the most authoritative representatives of the genus, and who administered justice on the principle of justice [6]) and operated until the Revolution of 1917. Further, in 1993, as an experiment, it was introduced in a number of regions, after the adoption of the Constitution, and then it was distributed and strengthened as an institution throughout the Russian Federation [7].

The classic composition of the jury is 12 jurors and 1 professional judge. In this form, in modern Russia, it was used in a number of criminal cases for serious and especially serious crimes, except for articles on terrorism excluded from jurisdiction. This court acted until the last reform, which was initiated by the President of the Russian Federation in 2015 [8], where he in his speech at the Congress of judges of the Russian Federation noted the inefficiency of the judicial system in terms of the use of juries, securing it with statistical data showing that the number of cases considered by a jury in 2014, was 1.5 times less than in 2013. As a result, the President proposed expanding a number of criminal articles that can be considered in a jury trial, which allowed the introduction of a jury in district city courts.

In this regard, in 2016, a Federal law was signed that expanded the use of the Institute of jurors [9].

Here it is worth noting the economic component of the issue of using a jury trial. The halls of our district courts are not equipped to accommodate the jury, and when carrying out the reform, considerable funds are needed for re-equipment, as well as we should not forget that each juror should be provided with housing, protection and compensation for the time spent on the trial. All this, when implementing the new law, has already led to significant costs (not to mention new trends in changing the criminal process, which will also affect the jury, for example, the digitalization of criminal proceedings [10]). Therefore, in district courts, the panel of jurors is formed not from 12, but from 8 people, which reduces economic costs, but does not detract from the possibility of making decisions collectively by "people's judges".

These were all legal issues on the part of the state, but what about society? Is such a court even necessary in modern society? Everything is ambiguous here.

During the existence of the jury trial, many sociological surveys were conducted aimed at investigating the public's satisfaction with the jury trial and the results of its work. The results in different focus groups were different. After studying some of them [11], we came to the following:

1. The main argument of society in favor of a jury trial is its potentially less corruption, greater fairness in terms of" truth", and not the law. The fact that these ideas have become the center of reflection of both participants of the mass survey and participants of focus groups, speaks first of all about dissatisfaction with the work of professional judges and ideas about the discrepancy between existing judicial procedures and the law with the principles of justice. Judgments about the greatest justice of the jury are only advances, hopes based on the assumption that "ordinary people" are capable of compassion, while people in uniform and robes are guided only by the law when making a decision.
2. Negative attitude to the jury is based on arguments that have been constantly present during the last fifteen years when discussing this topic. Opponents of jury trials argue that, first, ordinary people are guided by emotions, not the law. Secondly, Russian society is currently experiencing a moral crisis, and immoral society cannot be trusted to function as a court. At focus groups, statements about the decline of morals were often used as an argument against a jury trial. Indeed, the literature repeatedly raises the problem of personality as such (in its various aspects-psychological, informational, socio-philosophical [12], etc.) and notes a number of problems of modern society – psychological and pedagogical, philosophical, economic, legal, etc. [13].
Psychologists have long known the phenomenon of negativity – people tend to evaluate other people and situations the worse the longer the social distance (for example, relationships in the family-excellent; between neighbors-good, between people in our city-normal; between people in general – terrible). Corruption scandals also support the thesis of universal immorality. All this is not the best background for the institution of trial by jury. But, if we keep in mind only this aspect, it is worth saying that ordinary Russians treat ordinary courts even worse.
However, at the moment, the jury is one of the constants-the components of a modern democratic state, it exists, develops and decides the fate of people. Therefore, special attention should be paid to legal education of candidates for jurors to improve the quality and effectiveness of criminal proceedings using modern tools offered in scientific research [14].

## 3. ON THE IMPACT OF DIGITAL TECHNOLOGIES ON THE JURY'S OPINION

In the modern world, people conduct not only real social activity, but also virtual – in the digital world. Accordingly, you can influence a person's opinion not only through personal contact with them, but also through digital technologies, in their virtual life – through social networks, various messengers, and information portals. If, during a high-profile criminal case, a juror wants to examine the opinions and evidence presented in the digital world rather than in a courtroom, will they be considered impartial? And if the case is widely covered by the media and it is impossible to "Dodge" such information?
"Jurors should not independently search the Internet for anything related to the process, send requests for "friendship" or otherwise contact participants in the process, write messages, post online photos or videos, blog or tweet anything related to the process," the New York bar Association said in a report on the behavior of jurors in social networks [15].
It is not uncommon for jurors to discuss the details of a criminal case at home with their family or friends, and if the juror has an authoritative relative or friend, they are likely to listen to their opinion. In the United States, defense lawyers often use not only their oratorical skills, but also the search for influence on a certain circle of jurors, which, in most cases, helps them to win the panel to their side. And, if earlier, such actions required personal acquaintance and personal meetings with a person, now it can be done casually, through social networks or messengers.
In Russia, the question of how responsibly jurors approach the process seems to be less concerned than in America. The legal community is more concerned with the question whether there will be an effective institution of juries in the country at all. Answering a question from journalists about its prospects, the Chairman of the Supreme Council Vyacheslav Lebedev noted: "I agree that the jury should be in a broader category of cases. If human rights activists believe that it is necessary to introduce jury trials in all absolutely categories of cases – for God's sake, why should I object?" [16]. However, despite the apparent lack of objections from the authorities, the jury trial in Russia is not used too often: according to the results of the 1st half of 2018, 740 cases were considered by jury courts, 4% of cases were acquitted. In 2014 there were 308 criminal cases and 14 % of acquittals [17] in the hope of the defendants. That the "people's judges" will be able to understand and understand the case is not justified.
When a high-profile criminal crime is committed in Russia, investigators often have to deal with journalists who, in their desire to raise the rating of their news publication or personal blog, often cover the investigation and then the trial from their own angle of understanding what happened and who is responsible for it. And, when considering such a criminal case by a jury, jurors often have to face information that does not relate to the criminal investigation, but bears a bright emotional color on the facts set out in the criminal case.
According to the same article 333, jurors are prohibited from collecting information about a criminal case outside the court session, including by using social networks or any media. However, in practice, it is very difficult to control the behavior of jurors outside the courthouse, so in practice, it is not uncommon for them to collect information on the vast digital network. Some experts cite cases of cancellation of sentences due to excessive activity of jurors in social networks. "The Supreme Court of the Russian Federation overturned the acquittal in the case of O., because it was established that nine jurors created a group in social networks, uniting the jurors in the case of O., in which they discussed issues related to the consideration of this case. In

another case, the verdict was overturned by the Supreme Court of the Russian Federation, because "...the provision of the law was violated by the foreman of the jury, who... considered it his civil duty to conduct the investigation himself, for which he repeatedly went to the scene of the crime ... " – Sergey Nasonov, adviser to the Federal chamber of lawyers of Russia, said [18].

Let's look at the statistics of reviewing criminal cases in the appellate instance for sentences handed down by a jury, a total of 201 of them were considered:

- changed without changing the qualification 12, which is equal to 6 %;
- the acquittal was canceled with the transfer to a new trial 13, which is equal to 6.5 %.

And these statistics tell us that 12.5 % of the earlier decisions made by the jury were of poor quality. It is possible that this happened due to the fact that the jury, instead of making an impartial decision on the facts that were obtained by the investigation and announced during the trial, were influenced by information obtained through digital technologies, which we mentioned above [19].

How do they save themselves in America in this difficult situation? The laws of each state solve this in different ways, but as a rule, all contain such a measure as the removal of the juror. If there was recorded activity juror in finding new evidence in a pending criminal case or if a juror or jurors spend discussing the criminal case out of court, it is necessary to consider the discharge of such juror or jurors, so as not to subject the defendant to undue condemnation or justification.

The author's opinion on the problem of wide coverage of criminal cases in the media

For many ordinary residents of developed countries, various types of media, social networks are the main source of information about the state of law and order, crime and measures to counter it, so the media have an undeniable influence on people's minds and their awareness that there is a crime, a criminal and a crime.

Recently, no TV channel is complete without a criminal news program. In social networks and on the Internet, there are many public sites, groups, and sites with criminal news. We must pay special attention to publications that contain materials about the practice of internal affairs bodies in order to prevent incorrect, erroneous, and perverse interpretation of their work, and resolutely prevent attempts to influence the emotions of viewers and readers by incorrect methods. And here it is useful to remember the words of N. A. Shchelokova: "We are well aware that the authority of the police is primarily the work of its hands. But the role of the press is also very important. Who better to know than journalists that even one careless phrase in the press can erase the work of many years" [20].

The jury is formed from ordinary citizens, and during the performance of a person's duty to be a juror, he is not protected from the imformational flow. A juror cannot be excluded from society, from his family, and is not prohibited from watching TV or using social networks. Willingly or unwittingly, they will be faced with information on the criminal case being considered by the panel, especially if the case has a wide public response.

In order to prevent the harmful impact of information about criminal cases in court on society in general, and on the juror in particular, we suggest the following:

1. It is necessary to improve the legislation: to develop real mechanisms of responsibility, to eliminate contradictions existing between various normative acts, as well as gaps in the legal regulation of relations in the field of mass media.
2. It is necessary to improve the activities of the Prosecutor's office when supervising the legality in the field of information law and when investigating crimes incriminated to journalists and the media when they cover crime problems.
3. It is necessary to strengthen cooperation between the prosecution bodies and other law enforcement agencies with the media to ensure objective, professional and legally competent lighting state of law and order and activity structures to support the legality, safety, to protect the rights and interests of citizens, including from criminal attacks [21].
4. It is necessary to resist the abuse of mass media and violations of information security of society and the state in the process of cooperation and interaction with the media.

Of course, there are certain positive features inherent in the media when they cover aspects of crime. This is manifested in the constant attention of newspapers, magazines, radio, television, and the Internet to the problems of crime; the breadth of information coverage; and the regularity of appearances in the media by law enforcement officials.

## 4. CONCLUSION

The issue of influence on jurors by officially registered media is a complex issue of confrontation between two generally recognized rights: the right to a fair trial and the right to freedom of speech (press). The search for a balance between the two rights under consideration leads to the creation of a different legal regulation, which focuses on determining the significance of the first of the rights under consideration in the national system.

The emphasis on finding a balance between freedom of the press and the right to a fair trial was put in the United States: the consolidation of media rights in the first amendment to the Constitution predetermined their almost unlimited nature, which is expressed in a wide, often excessive coverage of trials [22, p. 108]. But even with appropriate regulation, the control of Internet publications is a significant problem due to the speed of duplication and placement of information on the Internet, including on private resources. US judicial practice shows that it is difficult to withdraw and block such publications, but there are also examples of jurors ignoring critical publications: passing acquittal verdicts in the presence of hostile campaigns [22, p. 110].

A separate problem remains the purposeful use of Internet resources by the parties to the case. Thus, the ability to place important information for protection that cannot be announced to the jury in accordance with the law is often used by the defendants themselves. The most famous case is the posting on Youtube of the treatment of Michael

Jackson's doctor, addressed to the public, and in particular to the jury [23, p. 2].

Jurors may be exposed to information in the media not only as a result of their unintentional perception before or during the trial, but also as a result of their purposeful search. An analysis of U.S. judicial practice from 1999 to 2010 showed that at least 90 jury verdicts were appealed because the jury conducted an independent search of information on the Internet; 28 convictions were overturned [24, p. 2].

Scientific articles devoted to the topic under consideration contain multiple examples of information of interest to the jury: this may be information about the punishment facing the defendant, the meaning of legal terms, information that represents special knowledge (for example, about weapons, drugs, injuries), information about the defendant [23, p. 4]. Such conduct is prohibited in all countries where jury courts operate, and, moreover, in some jurisdictions it also constitutes an offence that results in a fine, correctional labor, or prison sentence. The second common violation related to the use of the Internet by jurors is its use as a resource for communication: correspondence with participants in the trial, discussion of the case with any third parties or jurors, publication of information about the process or expression of opinions on the merits of the case. American researchers have identified the social networks Facebook and Twitter as the most used resources for these purposes [25].

All the types of media space influence on jury proceedings that we have considered are traditionally neutralized by a similar system of mechanisms that is common to most legislation. Thus, various works of foreign authors devoted to the problems of independent search for information by jurors, as well as its passive perception and even the "CSI effect", give the same methods of neutralizing this impact. Among the most systematic studies, we should note the work of Robbie Manhase [26, pp. 809-831], who classified methods for preventing independent jury investigations into three systems: a system of negative, positive, and external mechanisms.

The system of negative measures is a set of rules that prevents investigation, or leveling their influence on the verdict: seizure at the time of the hearing, the sequestration (isolation) of the jury, use of pre-recorded video, the instructions of the judge, imposing sanctions for failure to comply and declaring the proceedings invalid in violation. The external mechanisms include exclusion of candidates who may be potential violators, as well as the sides posted on the Internet materials when determining the tactics of the process. As part of the system of positive measures, the scientist believes it is possible to allow jurors to ask questions during the process [27] and view in the conference room a video recording of the proceedings, officially compiled by the court. The most radical method of negative measures is sequestration, which implies complete isolation of the panel during the hearing, settling the jury in special hotels with blocking Internet connections. Despite the negative features of isolation, such as the use of strict restrictions on juries (which means that participation in the administration of justice is less attractive to citizens) and the economic cost, it has become somewhat widespread.

The second negative method, the seizure of mobile phones, is applied differently in a number of jurisdictions and may mean their removal for the duration of the entire court day, or with a return in short breaks allowed during it, or only during the meeting when the verdict is delivered. However, this measure is not highly effective: by limiting to a certain extent the ability to search for information directly during meetings, it does not exclude such a search outside the courthouse.

To improve the effectiveness of smartphone seizures and reduce the negative features of sequestration in the US, the possibility of conducting proceedings using pre-recorded video materials is being discussed [26, pp. 817-820]. This method involves making a complete video recording of the evidence process and showing it to the jury instead of conducting a direct trial in their presence; it was first proposed in the 70s of the last century. Despite all the discussion of this idea and the complexity of its implementation in the Russian criminal process, in which the jury not only monitors the provision of evidence, but also can formulate questions, this method significantly reduces the length of proceedings. It is obvious that if the trial lasts only one day, then the seizure of equipment becomes extremely important to prevent the search for information, and with the duration of the process in two or three days, sequestration becomes much more feasible.

Along with the mechanisms that have not found application in the Russian practice of jury proceedings, we should focus on the method that has received undisputed implementation in Russian courts — the appeal of the presiding judge to the panel. Both the Supreme Court of the Russian Federation and the European Court of human rights and foreign judicial practice rely on the presumption that jurors follow the instructions of a professional judge. According to the apt remark of one of the foreign researchers, "justice in a jury trial is based on effective communication" [28, p. 625].

To improve the quality of interaction between the presiding judge and the panel, a number of countries have long used the so-called standard instructions for jurors, which are collections of standard appeals from the judge to the panel, applicable to various situations. This practice has been successfully tested in the courts of the United Kingdom and has been introduced in the United States since the 1960s. About seven years ago, state courts began including appeals in collections of standard instructions aimed at preventing self-search of information on the Internet. For example, the common regulations prohibiting discussion of the case with others were added the words "...through electronic mail, correspondence, of any resource to communicate on the Internet, blog, web site or application, including but not limited to: Facebook, YouTube, Twitter, Instagram, LinkedIn, Snapchat, or any other forms of social media" [29]. The results of a survey of American judges showed active use of the new instructions, with the majority of the surveyed judges uttering them both at the beginning of the trial and before the jury retired to the deliberation room for the verdict [30].

Turning to other preventive measures, we note the importance of identifying and excluding candidates who are particularly susceptible to possible influences. This technique is universally suitable for excluding persons who have already received some information about the case, as well as potential violators of the judge's instructions. However, the changes made in part 8 of art. 328 of the criminal procedure code, which restrict the content of the questions in the procedure of formation of the Board of the "finding-out of circumstances that prevent participation of a person as a juror in a criminal case," has significantly weakened the value of selection procedures to ensure fairness of process, including in the context of considered issues.

As mentioned earlier, foreign researchers of the Anglo-Saxon model of trial by jury noted that increasing the cognitive accessibility of the process can prevent independent searches for certain types of information. This thesis is confirmed by empirical studies: for example, on the results of a US survey revealed that the most common search term is the value of legal terms (44 %) and case information (26 %) [24, p. 5], that is, the relevant information is not sufficiently represented in the trial. Russian law allows jurors to ask questions through the presiding judge when examining evidence.

This circumstance increases the cognitive accessibility of the process, but it seems that other measures may be introduced into Russian legislation on jury trials aimed at creating conditions that provide the panel with all the necessary resources to reach a verdict. If proper provision of the jury with all the information necessary for understanding the process can reduce the risks of their own search [28, p. 633], it should be implemented as fully as possible, including by transmitting additional materials to the conference room (a summary of the circumstances of the case — as a separate document and as part of a written text of instructions; memos, other significant information in writing).

The adoption of these measures, the strengthening of the quality of judges ' instructions, including through their possible unification, the introduction of comprehensive regulation of media activities in the coverage of trials, and the study and analysis of the effectiveness of other considered methods of media influence on jurors can be significantly reduced.

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