

The Unanimity Rule in Jury Trials

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In a project originally designed to evaluate the impact of a controversial innovation involving procedures in jury trials (Diamond et al. (2003) *Jury Discussions During Civil Trials: Studying an Arizona Innovation*, 45 *U. of Arizona Law Rev.* 1), we obtained the permission of the Arizona courts to videotape the deliberations of 50 real civil juries. The Arizona Filming Project has allowed us to examine directly how juries reach their decisions.

Here we focus on the non-unanimous decision rule. Forty-eight of the 50 states require unanimous jury verdicts in criminal cases. In contrast, only 17 states require unanimous verdicts in civil cases and 16, including Arizona, require the agreement of no more than 3/4s of the jurors for a verdict. In the United States Supreme Court in *Duncan v. Louisiana*,¹ holding that non-unanimous (9 out of 12) verdicts in state criminal cases are constitutional, the justices made a number of conflicting claims about how a non-unanimity rule would affect jury deliberations. Justice Powell, concurring with the majority, claimed that jurors would continue to deliberate after they had a majority large enough to deliver a verdict. Justice Douglas, in dissent, worried that a majority operating under a non-unanimity rule would simply ignore the positions of their fellow jurors. The deliberations from the Arizona Filming Project allow us to test these assumptions, and to evaluate the nature of the positions taken and the arguments offered by jurors holding minority positions. The deliberations and the post-trial juror questionnaires also provide insights about how juries rely on normative as well as informational influence to reach their verdicts.

In this talk I will describe the preliminary results from these analyses, including (1) the extent to which minority jurors tend to represent extreme positions or unusual viewpoints or make ungrounded arguments; (2) the extent to which jurors agree to endorse a majority verdict preference while continuing to privately prefer another verdict (i.e., if you were a one person jury, how would you decide the case?); (3) the role played by a juror who does not agree with the liability decision of the majority when the jury must also decide on damages; and (4) the perceptions of majority and minority jurors about the open-mindedness of their fellow jurors and the thoroughness of deliberations when unanimity is not achieved.

¹406 U.S. 356 (1972)