

# Seeing Is Believing:

## The Impact of Jury Service on Attitudes Toward Legal Institutions and the Implications for International Jury Reform

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The United States jury system is unique in the world in the frequency of its use and its symbolic significance as a democratic institution.<sup>1</sup> As Neil Vidmar writes, the American jury “remains a strong and vibrant institution even as it suffers criticism and calls for reform.”<sup>2</sup> If the jury is “the lamp that shows that freedom lives,”<sup>3</sup> it is ironic that so little is known about what impact the jury system as a democratic institution has on the citizenry who serve as jurors.

Improving our understanding of the jury’s impact is vital, as many nations may choose to adopt or reject the jury based partly on beliefs about how jury service shapes the civic beliefs and actions of citizen-jurors. In particular, legal scholars Kent Anderson and Mark Nolan point out that the proponents of Japan’s new “quasi-jury” system marshaled two arguments in favor of greater public participation in the Japanese legal system—better and equitable legal outcomes<sup>4</sup> and “the belief that it promotes a more democratic society.”<sup>5</sup>

Do juries, in fact, have such impacts? One theoretical justification for believing juries can help to sustain democracy comes from the work of small-group-communication scholar

Ernest Bormann.<sup>6</sup> His Symbolic Convergence Theory has helped to demonstrate that repeated, salient cultural practices can establish habitual ways of communicating in groups. As Bormann explains, successions of otherwise unremarkable public and educational group meetings, along with instruction about effective group behavior, over the course of decades gradually built the “public-discussion model” that emerged in the United States in the 20th century (and persists to this day). For nearly a century, that cultural model has shaped how people talk and think about group problem solving in the U.S.

In a similar way, the cultural-institutional legacy of jury service may be public confidence in jury deliberation itself, as well as in the judges who oversee the process. Thus, we theorize that jury service promotes public support for the larger legal process in which citizens participate as jurors. If true, this finding would have tremendous significance for other nations—including Japan, Taiwan, and Mexico—that are considering implementing the all-citizen jury system, because the reforms they implement could be expected to bolster public faith and confidence in the legal system itself.<sup>7</sup>

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### Footnotes

1. VALERIE P. HANS & NEIL VIDMAR, *JUDGING THE JURY* (1986).
2. Neil Vidmar, *A Historical and Comparative Perspective on the Common Law Jury*, in *WORLD JURY SYSTEMS* 1, 7 (Neil Vidmar ed., 2000).
3. PATRICK DEVLIN, *TRIAL BY JURY* 164 (1956).
4. Given the fact that 99.9% of all indicted cases result in automatic convictions in Japan, the introduction of the lay participatory system in law is considered to inject the checks-and-balances mechanism into Japan’s bureaucratic criminal justice system. See J. Mark Ramseyer & Eric B. Rasmusen, *Why Is the Japanese Conviction Rate So High?* 30 *J. LEGAL STUD.* 53, 53 (2001) (“Conviction rates in Japan exceed 99 percent.”). If ordinary citizens are sufficiently unhappy with the government’s case or evidence presented, they can vote against defendants’ convictions.
5. Kent Anderson & Mark Nolan, *Lay Participation in the Japanese Justice System: A Few Preliminary Thoughts Regarding the Lay Assessor System (saiban-in seido) from Domestic Historical and International Psychological Perspectives*, 37 *VAND. J. TRANSNAT’L L.* 935, 943 (2004).
6. Ernest G. Bormann, *Symbolic Convergence Theory and Communication in Group Decision Making*, in *COMMUNICATION AND*

*GROUP DECISION-MAKING* 81 (Randy Y. Hirokawa & Marshall Scott Poole eds., 2d ed. 1996).

7. Japan implemented a mixed court system called a *saiban-in seido* in 2009. Rather than establishing the U.S.-style all-citizen jury trial, the Japanese government introduced the compromised judicial panel of six lay and three professional judges in criminal adjudication. See Hiroshi Fukurai, *The Rebirth of Japan’s Petit Quasi-Jury and Grand Jury Systems: Cross-National Analysis of Legal Consciousness and the Lay Participatory Experience in Japan and the U.S.*, 40 *CORNELL INT’L L.J.* 315 (2007). Japan still has a Jury Law, which was passed in 1923, but the Japanese military government suspended it in 1943 in the midst of World War II. The Japan Federation of Bar Associations (JFBA) and many civic activists long advocated the reintroduction of the all-citizen jury trial in Japan, but the Japanese government has failed to activate the Jury Law for the last 70 years. See CHIHIRO SAEKI, *BAISHIN SAIBAN NO FUKKATSU [THE RESURRECTION OF THE JURY TRIAL]* (1996); TAKEO ISHIMATSU, KOKEN TSUCHIYA & CHIHIRO ISA, *ENZAI O UMU SAIBAN-IN SEIDO: BAISHIN SAIBAN NO FUKKATSU NI MUKETE [WRONGFUL CONVICTIONS AND THE SAIBAN-IN SEIDO: THE RESURRECTION OF THE JURY TRIAL]* (2007). On Taiwan’s effort to implement the jury, see June Tsai, *Experts Debate Taiwan’s Proposed Quasi-Jury System*, *TAIWAN TODAY*, June 10, 2012, <http://taiwantoday.tw/ct.asp?xItem=191975&CtNode=428>. For Mexico’s effort to introduce the jury, see Hiroshi Fukurai & Richard Krooth, *The Establishment of All-Citizen Juries as a Key Component of Mexico’s Judicial Reform: Cross-National Analyses of Lay Judge Participation and the Search for Mexico’s Judicial Sovereignty*, 16 *TEX. HISP. J.L. & POL’Y* 37, 40 (2010) (“The 2001 Federal Initiative Reform Code of Criminal Procedure proposed the broader application of jury trials in criminal cases. . . . [T]his initiative was not implemented . . .”).

We begin this essay by offering a more complete justification for our project. In doing so, we explain why legal scholars and reformers should take note of the attitudinal impact of jury service. Next, we elaborate on the theoretical justification for predicting attitudinal changes resulting from jury service, and we review past research that bears on this question. After stating specific hypotheses, we test our claims using a longitudinal survey of jurors from a large county in the northwestern United States. After reviewing the results, we discuss their implications for jury reform in Asia and elsewhere.

### THE IMPORTANCE OF JUROR ATTITUDE CHANGE

It is important to know about the impact of juror service on jurors' attitudes for four reasons. First, in jurisdictions such as the U.S., where jurors are relatively free to discuss their experience as jurors—as the jurors in the Michael Jackson child-molestation trial promptly did following the verdict<sup>8</sup>—it is likely that many comments about the specific and general impact of jury service will be readily expressed in the posttrial media and that the jurors' opinions will carry both symbolic and educational meanings about the importance of jury service and civic responsibilities.

Second, in many jurisdictions that tolerate a reasonably wide range of exemptions from jury service, many jurors become repeat players in the system, and their legal and political attitudes may be shaped by repeated experience of jury service. Given the fact that nearly one million Americans participate in jury trials annually,<sup>9</sup> there are large numbers of repeated jury players, influencing their sense of civic responsibility and governmental legitimacy as well as their interest in future civic participation.<sup>10</sup>

A third important reason for measuring distal effects of jury service is that, like personal interactions with the police, jury service offers a potentially positive experience of firsthand, engaging, and personal contact with of the legal system. Measuring the impact of this experience on a wide range of beliefs and attitudes will give a more sensitive indication of public confidence in the courts, the judiciary, and the political system than may any generic opinion poll.

Finally, an Australian jury commissioner who manages jury

trials in the State of Victoria has pointed out that even reluctant jurors can become the court's strongest "ambassadors" for the political system.<sup>11</sup> For example, in an Australian study of jurors' reactions to prejudicial trial publicity, real jurors expressed disdain for ill-informed comments made by media representatives who were not involved as decision makers in the trial.<sup>12</sup> This

form of ownership over the integrity of the trial process translated not only into a willingness of jurors to defend the trial system but also into their being relatively immune from the negative effects of prejudicial publicity. Further research by Benesh and Howell<sup>13</sup> compared the perceived confidence in the courts of jurors and defendants, suggesting that it is not so much an acquired ownership of the court process that increases institutional confidence but that it is the low-stakes nature of the experience of jurors, in addition to some level of control over the experience, that increases jurors' confidence in jury trials in lower courts. Social commentators, policy makers, and political strategists alike should be interested in knowing more about how and why we create and release ambassadors with such pride in the legal system, and the political system that supports it, following a period of jury service.

### THEORIZING THE ATTITUDINAL IMPACT OF JURY SERVICE

It cannot be taken for granted, however, that jury service has a *positive* impact on attitudes toward the legal system. After all, mock-jury literature and many anecdotal reports from real jurors highlight both positive *and* negative consequences of jury service.<sup>14</sup> The negative stories range from juror complaints about their treatment to empirical measurements of jurors' poor understanding of judicial instructions<sup>15</sup> to the need for therapists to counsel jurors who suffer negative clinical conditions such as depression and post-traumatic stress disorder following participation in jury trials.<sup>16</sup> As if the need for post-juror-service

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8. See *Jackson Jurors: Evidence "Just Wasn't There": Pop Star Acquitted of All Charges in Molestation Case*, CNN.COM, June 15, 2005, <http://www.cnn.com/2005/LAW/06/14/jackson.trial/index.html>. See also *With Books for Sale, Jackson Jurors Say They Regret Verdict; Defense Lawyer Scoffs at Claims*, GRAND RAPIDS PRESS, Aug. 9, 2005, at A4.

9. Deborah T. Poritz, Chief Justice, New Jersey Supreme Court, Address at Law Day (May 1, 2005) (transcript available at <http://web.archive.org/web/20050524092222/http://www.judiciary.state.nj.us/lawday/lawday-cj05.pdf>) ("Nearly one million Americans serve on juries each year.")

10. See Hiroshi Fukurai & Richard Krooth, *What Brings People to the Courtroom? Comparative Analysis of People's Willingness to Serve as Jurors in Japan and the U.S.*, 38 INT'L J.L. CRIME & JUST. 198 (2010).

11. Rudy Monteleone, *Jurors as the Courts' Ambassadors to the Community*, Paper Presented at the Confidence in the Courts Conference Hosted by the National Judicial College of Australia, the ANU College of Law, and the National Institute of Social

Sciences and Law (Feb. 9-11, 2007), available at <http://njca.anu.edu.au/Professional%20Development/programs%20by%20year/2007/Confidence%20courts/papers/Monteleone.pdf>.

12. MICHAEL CHESTERMAN, JANET CHAN, & SHELLEY HAMPTON, *MANAGING PREJUDICIAL PUBLICITY: AN EMPIRICAL STUDY OF CRIMINAL JURY TRIALS IN NEW SOUTH WALES* (2001).

13. Sara C. Benesh & Susan E. Howell, *Confidence in the Courts: A Comparison of Users and Non-Users*, 19 BEHAV. SCI. & L. 199 (2001).

14. MALCOLM KNOX, *SECRETS OF THE JURY ROOM: INSIDE THE BLACK BOX OF CRIMINAL JUSTICE IN AUSTRALIA* (2005).

15. James R. P. Ogloff & V. Gordon Rose, *The Comprehension of Judicial Instructions*, in *PSYCHOLOGY AND LAW: AN EMPIRICAL PERSPECTIVE* 407 (Neil Brewer & Kipling D. Williams eds., 2005).

16. Theodore B. Feldmann & Roger A. Bell, *Juror Stress: Identification and Intervention*, 21 BULL. AM. ACAD. PSYCHIATRY & L. 409 (1993).

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counseling was not concerning enough, some mock-trial research highlights a link between gruesome evidence and conviction-prone juries, even when exculpatory evidence is held constant across gruesome-versus-non-gruesome evidence conditions in mock trials.<sup>17</sup>

**EVIDENCE FROM JAPAN**

There is not yet direct evidence of jury service having positive attitudinal effects on individual jurors' views of courts and other public institutions,<sup>18</sup> but there is indirect evidence to that effect. As mentioned above, the socio-political climate surrounding the reintroduction of a criminal jury to Japan has been rich with opinion polls, mock trials, and concerns over the impact of the jury system on jurors. Preliminary mock-trial research in Japan suggests that willingness to be involved in the Japanese jury system may increase *after* jury service, begging the question of whether this, in turn, may have wider-ranging attitudinal effects and social-belief changes of the type anticipated by the architects of the new Japanese jury.<sup>19</sup>

Other research conducted in Japan has also produced evidence of how lay participation in the justice system can increase public faith and confidence in the entire legal system. Japan's Prosecutorial Review Commission (PRC) system is similar to that of America's civil grand jury in that it examines the functioning of local public offices, including the district attorney's office. A PRC is comprised of eleven citizens randomly selected from an electoral register, is appointed to a six-month term, and has the power to review whether or not the disposition of non-prosecution made by public prosecutors is appropriate.<sup>20</sup>

From September to December 2005, eleven prefectural offices of the Japanese Prosecutorial Review Commission Society were contacted, and their members were asked to fill out additional questionnaires (23% of 47 PRC prefectural offices in Japan). The study found that PRC members were more willing to serve on quasi-juries, were less concerned

about obstacles to serving on juries, and had more confidence in the system of popular legal participation. Further, the civic legal experience helped lay citizens develop greater confidence in their capacity to make a fair and just decision, and they were less concerned about a threat of possible retaliation from defendants in criminal trials. Almost all of the PRC members indicated that their PRC experience was positive (99%), and the great majority of them indicated that they were willing to serve again (94%).<sup>21</sup> PRC members showed a high level of confidence in the system of government and justice administration, including criminal justice managers such as judges, prosecutors, defense attorneys, police, and jurors. However, the study also found that the importance of quasi-jury duty has not been widely advocated, and the system of civilian legal participation, including the PRC, still remained relatively unknown in Japanese communities.<sup>22</sup>

**EVIDENCE FROM THE U.S.**

In addition, a pair of studies have examined how jury service is linked to voting in the U.S. The initial study looked at a single locale—Thurston County, Washington.<sup>23</sup> Working with many research colleagues, the first author of this essay collected court and voting records for a period of years and merged them by matching jurors' full names with unique records in the voter database. This study found, after controlling for other trial features and past voting frequency, that citizens who served on a criminal jury that reached a verdict were more likely to vote in subsequent elections than were those jurors who deadlocked, were dismissed during trial, or served as alternates. The effect was augmented by the number of charges against the defendant, with trials including more charges yielding greater increases in jurors' voting rates.

An extensive follow-up of jurors from jurisdictions across the United States yielded two related findings.<sup>24</sup> First, in-depth interviews with a small sample of jurors revealed that citizens typically recognize jury service as a basic civic duty, and two-thirds, without further prompting, compared it to voting. In other words, jurors drew a cognitive connection between jury service and voting. Second, another dataset gathered from Colorado, Louisiana, Nebraska, North Carolina, Ohio, and

17. David A. Bright & Jane Goodman-Delahunty, *The Influence of Gruesome Verbal Evidence on Mock Juror Verdicts*, 11 PSYCHIATRY PSYCHOL. & L. 154 (2004). See also Saul M. Kassin & David A. Garfield, *Blood and Guts: General and Trial-Specific Effects of Videotaped Crime Scenes on Mock Jurors*, 21 J. APPLIED SOC. PSYCHOL. 1459 (1991).

18. The major exception is the book related to the research in this article. See JOHN GASTIL, E. PIERRE DEESS, PHILIP J. WEISER, & CINDY SIMMONS, *THE JURY AND DEMOCRACY: HOW JURY DELIBERATION PROMOTES CIVIC ENGAGEMENT AND POLITICAL PARTICIPATION* (2010).

19. Masahiro Fujita, *Can Japanese Citizens Play Active Roles in "Saiban-in Seido"?* Survey Research with Mock Mixed Juries, Poster Presented at the Psychology and Law International, Interdisciplinary Conference (July 7-12, 2003); Anderson & Nolan, *supra* note 5; Hiroshi Fukurai, *Japan's Quasi-Jury and Grand Jury Systems as Deliberative Agents of Social Change: De-Colonial Strategies and Deliberative Participatory Democracy*, 86 CHI.-KENT L. REV. 789 (2011).

20. The law for the Prosecutorial Review Commission was originally created in 1948 during the Allied Occupation of Japan that followed World War II. Because of the Allied influence, the PRC became a hybrid institution resulting from the adaptation of the American civil and criminal grand-jury systems into the Japanese cultural and legal context. After group deliberations on each case, the commission submits one of the following three recommendations: (1) non-indictment is proper, (2) non-indictment is improper, and (3) indictment is proper. A majority vote is needed for the first two options, while the special majority with at least eight votes is needed for the third option. See Hiroshi Fukurai, *Japan's Prosecutorial Review Commissions: Lay Oversight of the Government's Discretion of Prosecution*, 6 E. ASIA L. REV. 1 (2011).

21. Fukurai, *supra* note 7, at 336, table 1.

22. *Id.* at 342.

23. GASTIL ET AL., *supra* note 18, at 32-39.

24. *Id.* at 39-49.

Washington<sup>25</sup> found the similar pattern of increasing voting rates, except that this larger dataset revealed that the critical distinction was between those who deliberated (*including* hung juries) and those who did not. Once again, the number of criminal charges against the defendant had an additional, significant effect on post-service voting rates. This analysis also found that the increased voting effects were apparent only for previously infrequent voters (voting less than 50% of the time) who served on criminal trials. Frequent voters and all of those who served on civil juries did not have a significant increase in voting after deliberative experience in jury trials.

## HYPOTHESES AND RESEARCH DESIGN

Based on findings such as these, we came to believe it likely that popular legal participation can significantly alter individual jurors' perceptions of the jury system, as well as of other courts and judges and even other branches of government. We tested these hypotheses by interviewing jurors before and several months after serving on fully empanelled juries to see if their attitudes and opinions changed. By way of comparison, we also collected data on people who reported for jury service but never sat on a jury, as well as a control group of voters drawn from the same jurisdiction who were not summoned to jury service.

Though we will spare the reader the statistical details, if one wishes to know the analytic technique, we used a regression analysis to test the hypothesis that serving on a jury (versus reporting for service but not being seated on a jury) predicted post-service attitudes even after taking into account a wide range of "statistical controls," including demographics and background variables, along with the corresponding pre-jury-service attitudes. We also expected no statistically significant difference between our un-summoned control group of registered voters and those who reported for jury service but never sat in the jury box. Finally, we predicted that the effect of jury service, including jurors' deliberative experience, is strongest the first time one serves on a jury; thus, after conducting our main analyses, we split the sample to test whether the effects of jury service are consistent for both first-time and veteran jurors.

## DATA-COLLECTION METHOD

This study focused on three different samples, each from King County, Washington: people summoned to jury service who did not sit on a jury, a.k.a. "non-jurors" ( $N = 1,579$ ), empanelled jurors ( $N = 1,088$ ), and voters never called to jury duty ( $N = 205$ ).<sup>26</sup> All jurors reported for jury service at the

King County Courthouse, the Kent Regional Justice Center, and the Seattle Municipal Court. Seventy-nine percent of these jurors served on criminal trials, ranging from murder to misdemeanors, with the remainder sitting in an equally diverse set of civil trials.

The surveys used in this study were conducted at two points in time. The Wave 1 juror survey was administered via pen-and-paper surveys during the initial jury-orientation period (February to July 2004), before the jurors were called to a courtroom for jury service. This Wave 1 juror survey yielded a response rate of 78% (with a cooperation rate of approximately 81%, as 4% of those reporting to service were sent to courtrooms before research staff could administer the survey). All empanelled jurors (and a subsample of those reporting but never empanelled) were then re-contacted online and by mail to complete Wave 2 from November to December 2004 (response rate = 73%).

The voter group followed a parallel schedule for the two data-collection periods but was assembled in a different manner. A random sample of registered voters was extracted from a January 2004 copy of the King County voter database, and these individuals received their surveys by mail. The response rate for Wave 1 was 20% ( $N = 270$ ), with 79% of the Wave 1 respondents also completing the Wave 2 survey ( $N = 205$ ). To augment the Wave 2 control group, a replacement sample was also drawn from the same voter database, and it had a response rate of 20% ( $N = 134$ ).

The Wave 1 survey included six items measuring attitudes toward the jury, judges, and other public institutions.<sup>27</sup> Additional items measured previous experience with jury service and a broad range of control variables (sex, age, education, employment, political knowledge, etc.). The Wave 2 survey repeated the attitude items and also measured partisanship, a variable the King County judges were reluctant to measure immediately prior to jury service. The Wave 1 and Wave 2 measures were spaced a minimum of four months apart to ensure that we captured *long-term* attitude changes, as opposed to those that might fade a few days or weeks after jury service.<sup>28</sup>

**We tested these hypotheses by interviewing jurors before and several months after serving on . . . juries to see if their attitudes and opinions changed.**

25. *Id.*

26. These comparisons were made using dummy codings that treated the unused jurors as the "reference group." The choice of reference group is somewhat arbitrary, but the reasoning for this arrangement was to highlight the contrast between jurors and non-jurors, with a secondary test of whether the non-jurors were different from the control group. See JACOB COHEN ET AL., APPLIED MULTIPLE REGRESSION/CORRELATION ANALYSIS FOR THE BEHAVIORAL SCIENCES 312-17 (3d ed. 2003).

27. Confidence ratings were given using a five-point scale from "very low" to "very high." Respondents rated the following institutions: "U.S. Congress," "U.S. Supreme Court," "State and local judges,"

and "the jury system." In addition, respondents used a four-point scale (1 = Strongly disagree; 2 = Disagree; 3 = Agree; 4 = Strongly agree) to state their views on these two items: "The criminal jury system is the fairest way to determine the guilt or innocence of a person accused of a crime," and, "The civil jury system is a good way to settle many civil lawsuits."

28. Also, because jurors were recruited for this study over a period of five months, there was considerable variance in lag time between Wave 1 and Wave 2 surveys across participants (average lag time was 221 days ( $SD = 47$ )). This permitted testing for a potential lag effect—with attitude changes either weakening or strengthening over time. For this purpose, the same regression equations shown

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**RESULTS AND DISCUSSION**

Once again, for the sake of simplicity, we present the main results of our analyses without burying our findings in the details of our statistical regression analyses.<sup>29</sup> To clear away some underbrush, let us note that across all our analyses, the non-juror-versus-voter contrast never reached significance. In other words, there was no evidence that reporting for jury service without sitting on a jury changed anyone’s attitudes

beyond the same shifts that occurred in the general voting population during the same period.

By contrast, there were important and statistically significant differences in attitude changes between jurors and non-jurors for three of the six attitude measures. Relative to non-jurors, jurors became more confident in the jury system, perceived greater criminal-jury fairness, and developed more confidence in state and local judges.<sup>30</sup> They did not, however, differ from non-jurors in their ratings of the quality of the civil jury nor in their confidence in the U.S. Supreme Court or U.S. Congress.

Though the correlations of statistical controls with the attitude measures were not the central focus of this study, it is worthwhile to note one particular set of findings. The same three attitude measures on which jury service failed to yield changes were the only ones on which the Conservative ideological measure had a significant independent effect. Relative to their more liberal/Democratic peers, Conservative/Republican respondents lost some confidence in the quality of civil juries but gained confidence in the U.S. Supreme Court and U.S. Congress.<sup>31</sup> To observers of American politics, these findings are no surprise, as this study coincided with the 2004 election year, in which the conservative Republican Party sought to keep control of Congress and the Presidency, as well as to solidify its influence over the U.S. Supreme Court. At the same time, Republicans continued an ongoing campaign to plead for “tort reform,” claiming that civil lawyers and juries alike were unfriendly to business.<sup>32</sup>

Finally, we investigated the possibility that the main atti-

tude changes demonstrated in the contrast between empanelled jurors and voters might have occurred primarily for those people serving on a jury for the first time. To test this hypothesis, we split the juror sample into two halves—one group having sat on one or more juries in the past (a.k.a. “veterans”) and the other being assigned to a jury for the first time during their present appearance at the courthouse. The same six regression equations were then run for each of the two samples.

Using this approach, we found that the change in overall confidence in the jury system was roughly equivalent for first-time jurors.<sup>33</sup> On the other hand, first-time jurors ended up with increases in the perceived fairness of the criminal jury and heightened confidence in state and local judges, whereas the corresponding attitudes did not show statistical change for the veteran jurors.<sup>34</sup> In sum, the results supported the hypothesis by showing that first-time jurors experience greater attitude change as a result of their service relative to veteran jurors. Table 1 summarizes these and the other main findings of our study.

It is worth adding a note about the size of the effects

**TABLE 1: SUMMARY OF MAIN FINDINGS FROM STATISTICAL ANALYSES**

	OVERALL JURY-BOX EFFECT VERSUS REGISTERED VOTERS	IMPACT ON THOSE WITH NO PRIOR JURY EXPERIENCE	IMPACT ON THOSE WHO HAD RENDERED VERDICTS BEFORE
OVERALL CONFIDENCE IN JURY SYSTEM	+	+	+
PERCEIVED FAIRNESS OF CRIMINAL JURY	+	+	0
PERCEIVED QUALITY OF CIVIL JURY	0	0	0
CONFIDENCE IN STATE/LOCAL JUDGES	+	+	0
CONFIDENCE IN U.S. SUPREME COURT	0	0	0
CONFIDENCE IN U.S. CONGRESS	0	0	0
MINIMUM SAMPLE SIZE (N)	2,665	1,783	882

below were also run with this lag measure entered as a main effect and an interactive term with jury service, but neither produced significant coefficients. In other words, the results shown below were consistent regardless of the number of months that elapsed between the completion of one’s jury service and the follow-up survey.

29. When assessing longitudinal attitude change with panel data, one approach is to treat the Wave 2 measure as the dependent variable and use the Wave 1 measure as a control. STEVEN E. FINKEL, CAUSAL ANALYSIS WITH PANEL DATA (1995). Using this approach, a comparable regression equation was calculated for each of the five Wave 1-2 attitude measures, with each equation estimating the effect of jury service on a Wave 2 attitude after controlling for the Wave 1

attitude, plus the full set of control variables in the dataset.

30. Semi-partial correlations for these effects were  $sr = .083$  ( $p < .01$ ),  $.036$  ( $p < .05$ ), and  $.055$  ( $p < .01$ ), respectively.

31. Semi-partial correlations were  $sr = -.052$ ,  $.044$ , and  $.166$ , respectively (all  $p < .01$ ).

32. Peter H. Stone, *Trial Lawyers on Trial*, 35 NAT’L J. 2250 (2003). For a contrary view of the evidence, see VALERIE P. HANS, BUSINESS ON TRIAL: THE CIVIL JURY AND CORPORATE RESPONSIBILITY (2000).

33. Semi-partial correlations were  $sr = .86$  for first-time jurors and  $sr = .72$  for veterans (both  $p < .01$ ).

34. For first-time jurors,  $sr = .44$  ( $p < .05$ ) for perceived fairness of criminal jury and  $sr = .75$  ( $p < .01$ ) for confidence in state and local judges.

observed. All of the effects reported herein are “small” ones,<sup>35</sup> and one might ask whether these attitudinal changes, though detectable, may ever lead to widespread societal impact. First of all, as a matter of principle, it is important to remember that small statistical effect sizes can be illusory in that they may still reflect considerable cognitive and behavioral change. This case may meet Prentice and Miller’s criteria for a small effect being impressive,<sup>36</sup> since the relatively brief experience of jury service on a single case still managed to create long-term change in relatively stable attitudes about all juries and judges. In technical terms, a small manipulation of the independent variable caused substantial change in a difficult-to-influence dependent variable.

Second, it appears that a few days of jury service can produce attitude changes *comparable in effect size to those yielded by a full-throttle national presidential campaign*.<sup>37</sup> The results of this study suggest that the jury experience may be unable to generate such changes when the attitude-object is also the focus of intense partisan debate, but the fact remains that jury service’s effect on overall confidence in the jury, trust in criminal juries, and confidence in state and local judges was comparable to the observed effects of conservative partisanship or ideology on attitudes toward the civil jury and the U.S. Supreme Court during the same time period.

## CONCLUSION

This study found evidence of persistent, long-term (greater than four months) attitude change flowing from juror service, particularly for those people serving for the first time. Many of the empanelled jurors in our sample became more confident in the jury system, perceived the criminal jury to be fairer, and indicated a greater confidence in state and local court judges than they did before serving, and those changes contrasted with the experience of those who had not served on juries as well as those registered voters who had not even been called to serve.

Given the significant impact of civic legal participation on the development of civic confidence in the criminal justice system, many countries in the world are currently trying to create or have recently reinstated their own system of lay participation in law. Bodies ranging from mixed tribunals to all-citizen juries have been implemented or debated in Japan, South Korea, Taiwan, Thailand, and the People’s Republic of China in East Asia; Kyrgyzstan, Kazakhstan, Georgia, Ukraine, and Latvia in the former Soviet Union; and Venezuela and Argentina in South America, among many others.<sup>38</sup>

Similarly, in Japan a new quasi-jury system has been created specifically relying on a rationale confirmed by the results seen

in this project. The quasi-jury system, or *saiban-in seido*, was enacted in 2004 and began quasi-jury trials in 2009. The system is a hybrid, jury-mixed court where a judicial panel of three professional and six lay judges decide both guilt and sentence in serious criminal cases. Japan’s expectation was made expressly in the legislation, which provided the legislative rationale for the new quasi-jury system, stating, “In light of the fact that having lay assessors selected from among the people participating along with judges in the criminal litigation process will contribute to raising the public’s trust in and increasing their understanding of the judicial system, it is necessary to . . . achieve lay assessors’ participation in criminal trials.”<sup>39</sup> The results obtained in this study suggest that Japan’s quasi-jury system may reap some of the very rewards its proponents imagined.

Lest this sound too optimistic, we acknowledge that there is also a history of juries being abused by those in political power, and those proposing the introduction of the jury abroad should be aware of that danger. In the first half of the 20th century, for example, the judicial system of civic participation had been converted into a weapon of oppression by totalitarian political regimes, such as the Bolsheviks’ mixed courts with Communist Party assessors, the Nazi *Volksgerichten* with Nazi Party assessors, and the Popular Tribunals during the Spanish Civil War.<sup>40</sup>

The modern U.S. jury has overcome or mitigated many of its shortcomings, but to maintain its independence from political abuse and corruption, the institution of the jury must base its foundation on egalitarian and representative principles of democracy. Our analysis suggests that politically partisan beliefs exerted significant influence in shaping opinions and attitudes toward jury duty and participation. One of the most important rationales for the institution of lay participation in governance is that it provides an important check on political and judicial power, particularly in societies with clear ideological divisions in which judges often belong to the dominant political group. Hopefully, the establishment of new systems of civic legal participation in many nations can ensure energetic participation from their diverse populations, thereby preserving the democratic character and principles of their larger political systems.

**[I]t appears that a few days of jury service can produce attitude changes comparable . . . to those yielded by a full-throttle national presidential campaign.**

35. Effect-size terminology conventions come from JACOB COHEN, *STATISTICAL POWER ANALYSIS FOR THE BEHAVIORAL SCIENCES* (2d ed. 1988).

36. Deborah A. Prentice & Dale T. Miller, *When Small Effects Are Impressive*, 112 *PSYCHOL. BULL.* 160 (1992).

37. The comparison here is with the 2003-2004 presidential campaign designed to dampen public support for the civil jury, as discussed in note 32.

38. See Hiroshi Fukurai, Kay-Wah Chan, & Setsuo Miyazawa, *Introduction to the Special Issue: The Future of Lay Adjudication and Theorizing Today’s Resurgence of Civic, Legal Participatory Systems*

*in East and Central Asia*, 38 *INT’L J.L. CRIME & JUST.* 141, 143-45 (2010).

39. Kent Anderson & Emma Saint, *Japan’s Quasi-Jury (Saiban-in) Law: An Annotated Translation of the Act Concerning Participation of Lay Assessors in Criminal Trials*, 6 *ASIAN-PAC. L. & POL’Y J.* 233, 283 (2005) (emphasis added).

40. The use of all-white juries from the pre-Civil War to the anti-war and civil-rights movements in the late 1960s provides another example of the social control of the lay participatory system in making legal decisions. See HIROSHI FUKURAI & RICHARD KROOTH, *RACE IN THE JURY BOX: AFFIRMATIVE ACTION IN JURY SELECTION.*



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