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Stanley E. Sacks

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## PRESERVATION OF THE CIVIL JURY SYSTEM

By STANLEY E. SACKS\*

The civil jury, one of our most cherished democratic institutions, is being threatened with extinction. Long regarded as a valued part of our heritage, this system is currently under condemnation and attack. Voices are being raised in many parts of this country to abolish the system entirely, in spite of the fact that the civil jury is a basic part of our traditional judicial arrangement. It is apparent now that there are those who would scuttle the system with the misguided intention of finding a superior method of dispute resolution.

Admittedly, the civil jury system is not infallible, but it is truly the best method yet devised by our civilization for the orderly and effective settlement of controversies. Trial by jury long has been recognized as a most effective weapon in "democracy's arsenal to combat tyranny."<sup>1</sup>

The system may have its shortcomings. Perhaps it is in need of some revisions and strengthening; but, this is not to say that it is operating in such a manner that justifies anything like its total abolition. Such a drastic remedy would cut so deeply into our legal tradition that its mere suggestion demands the immediate attention of the entire citizenry. Foremost in the ranks of those who should acquaint themselves with such movements against the civil jury, and who should rally to its defense, are the members of the legal profession—both bench and bar.

Even a brief look at the evolution and history of the jury system serves as an effective reminder of the fact that it has proved itself as one of the best safeguards yet devised against tyranny and injustice. Its history teaches that it has earned well a permanent place in democratic forms of government.

While the origin of the jury may be obscure, it began in ancient Britain, probably as an adjunct to a royal inquest or investigation. Laymen at one time or another have been permitted in almost all civilizations to have a role in dispute resolution. So it was that in England, following the Norman Conquest, twelve men in each manor and village were conscripted to determine, under oath, what property

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<sup>1</sup>William Forsyth, *History of Trial by Jury* (new ed. 1875).

their neighbors possessed. The purpose of these oath-takers, or *juratories*, was actually to reveal their neighbor's property so that William the Conqueror could levy his taxes. These jurors made up England's first great tax roll, the Domesday Book of 1086.<sup>2</sup>

It was this participation of laymen in the process of fact-finding which ultimately became formalized in England, and the basis of the modern jury. It was introduced thereafter into the courts of England, in civil and criminal cases, to replace more ancient methods of trial, such as the ordeals by battle, fire, water and compurgation.<sup>3</sup>

In this country, the Federal Convention of 1787 confined the right to jury trial to criminal cases. This occurred in the waning moments of the convention when the circumstances were not conducive to long debate, and in last minute compromise it was provided that the trial of all *crimes* should be by jury, but there was a failure to include a similar requirement in civil matters. This omission became one of the principal stumbling blocks for ratification and it was only after assurances were made that Congress would promptly amend the Constitution to guarantee civil jury trials that ratification was obtained.

Thus, trial by jury not only became a matter of constitutional mandate, but it is the only civil right guaranteed in three separate places in the Constitution. Article III of the Federal Constitution assures jury trials in criminal prosecutions. The sixth amendment details this assurance and the seventh amendment refers to the civil jury and extends jury trials to all "suits at common law where the value in controversy shall exceed twenty dollars." Each of our fifty states has followed these guarantees, and in Virginia, the State Constitution provides that "in controversies respecting property and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred."<sup>4</sup>

The evolution of the jury in this country to the present day should be a matter of common knowledge. Its role as an independent fact-finding body, working along with the impartial judge constituting the jury trial, has come down through the years as an ingenious and cherished element of Anglo-American jurisprudence. Its own performance record has proved vividly its invaluable place as a bulwark of liberty and a cornerstone of democracy.

During this time criticism of the jury system was unknown. Cer-

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<sup>2</sup>Ibid.

<sup>3</sup>Green, *Juries and Justice—The Jury's role in Personal Injury Cases*, 1962 Ill. L. Rev. 157.

<sup>4</sup>Va. Const. art. 1, § 11.

tainly no suggestions to replace the system either partially or totally were forthcoming. On the contrary, enlightened opinion firmly and overwhelmingly supported the system.

In 1898, Joseph H. Choate, then president of the American Bar Association, asserted the following typical praise:

"The truth is, however, that the jury system is so fixed as an essential part of our political institution; it has proved itself to be such an invaluable security for the enjoyment of life, liberty and property for so many centuries; it is so justly appreciated as the best and perhaps the only known means of admitting the people to a share, and maintaining their wholesome interest, in the administration of justice; it is such an indispensable factor in educating them in their personal and civil rights; it affords such a school in training in the law to the profession itself; and is so embodied in our constitutions which, as I have said, declare that it shall remain forever inviolate, requiring a convention or an amendment to alter it—*that there can be no substantial ground for fear that any of us will live to see the people consent to give it up.*"<sup>5</sup>

In spite of this accurate and fitting description of the jury system by such a distinguished trial lawyer and the fact that he feared little, if at all, for the future of the civil jury, its continuation cannot now be so taken for granted. There are at present alarmingly increasing numbers of those who see deficiencies and imperfections in the jury system, and who would destroy the entire system, for lack of ability to devise far more reasonable remedies. The course advocated by these persons is veritably a situation where the suggested cure is far worse than the illness.

Those who condemn the jury and advocate its demise, do so on two grounds: (a) it is alleged to be the cause of congestion and delay in the courts, and (b) it is incompetent to perform its assigned task.<sup>6</sup>

These, at least, are the surface reasons given by those who champion the destruction of the civil jury. Whether or not some of these advocates represent special interests who ill-advisedly espouse such a result, or whether those who lend their support to such a cause, are, in fact, representative of no special interest, but merely misguided in their beliefs, it would appear from empirical findings that both of these assigned reasons are, in fact, baseless. In short, court calendar

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<sup>5</sup>Address by Joseph H. Choate, American Bar Ass'n Annual Banquet, 1898. (Emphasis added.)

<sup>6</sup>1962 Ill. L. Rev. 159.

congestion and delay is not caused by reason of jury trials, and there is no factual basis for an indictment of the civil jury as being incapable of fulfilling its function.

While these assaults upon the jury system are not necessarily a new experience, the vigor with which they are now being perpetrated and the spread of the contagion, is cause for alarm. If allowed to proceed unchecked, such gradual chipping away of our democratic institutions is a threat to our very basic security.

Attacks against the jury in the past were short-lived and never really received sufficient encouragement to warrant fear for the continued preservation of the system.

In 1930 anti-jury ferment appeared with the advent of two books, both published in that year.<sup>7</sup> The conclusions of the authors were that the jury system deserved condemnation, not merely because of any delay caused, but because the jury was incompetent to perform the function assigned to it.

Shortly thereafter, Columbia University published a report of a study which advocated remedies even more drastic than the abolition of the jury in automobile accident personal injury litigation by providing for liability without fault and compulsory compensation insurance with an administrative board to make awards according to a fixed schedule of benefits.<sup>8</sup>

The Columbia Plan was, itself, the subject of attack<sup>9</sup> and neither it nor similar suggested reforms ever really gained momentum or support in the United States for a long time.

But recent years have witnessed a return of this sentiment. This situation is, perhaps, not as widely recognized as it should be. This lack of general knowledge and interest in the increasing spread of anti-jury argument can easily have the effect of actually adding momentum to the movements and rendering it impossible ultimately to stem the attack. The end result can be the destruction of the civil jury system in this country. As was so aptly stated by Professor Thomas F. Lambert, Jr.:

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<sup>7</sup>Frank, *Law and the Modern Mind* (1930); Green, *Judge and Jury* (1930).

<sup>8</sup>The Chairman of the Committee, Arthur A. Ballantine, discusses this report in 18 *A.B.A.J.* 221 (1932). See also French, *The Automobile Compensation Plan* (1933).

<sup>9</sup>Sherman, *Grounds for Opposing the Automobile Accident Compensation Plan*, 3 *Law & Contemp. Prob.* 598 (1936); McVay, *The Case Against Compulsory Automobile Insurance*, 15 *Ohio St. L. J.* 150 (1954); Flynn, *Answering Justice Hofstadter—Compensation Is No Solution*, 27 *N.Y.S.B. Bull.* 406 (1955); Ryan and Greene, *Pedestrianism: A Strange Philosophy*, 42 *A.B.A.J.* 117 (1956).

"The threat to the civil jury is present and real. We recall Edmund Burke's warning: 'All that is necessary for the triumph of evil is for enough good men not to care.' We care. We are warned, and we are summoned. Let us be resolute and vigilant and, above all, let our voices be heard."<sup>10</sup>

Some of the attacks come in the form of proposals to abolish the civil jury in certain types of cases and replace juries with commissions and boards. In 1946 in the Province of Saskatchewan, Canada, a law that has attracted a great deal of attention, notoriety and criticism was enacted, providing for a system of compensation in automobile accident cases, without regard to fault or negligence.<sup>11</sup> The basic reason given by the Saskatchewan lawmakers concerned their belief that victims of automobile accidents were not being adequately compensated in many instances. Apparently, they found a situation in their province where uninsured drivers, uncertainty of damages, no recognizable criteria for pain and suffering, and difficulty for establishing fault were regularly incident to the negligence action. The legislators, therefore, attempted to enact a program which they believed would provide reasonable compensation for losses sustained on the highways by having a compensation system administered by a government insurance office. The Saskatchewan Plan is predicated upon a system of compensation, therefore, not dependent on anyone's fault. It is only necessary to establish that injury arose out of, or was caused by, a motor vehicle accident, to be eligible for benefits, but benefits are stipulated in amount in a schedule listing the injury and allowing recovery.

It should be noted, however, that the Saskatchewan Plan does not go as far as the Columbia Plan since the former also retains the negligence suit as an alternative course of action. Therefore, legal action can be commenced by an accident victim who has received benefits under the compensation aspects of the law, but the amount of compensation so received is deducted from any judgment awarded. In this respect, of course, the Saskatchewan Plan does not prescribe an upper limit on recoveries nor, actually, abolish common law liability for negligence. But, as a practical matter, it has just about sounded the death knell of civil juries in that province.<sup>12</sup>

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<sup>10</sup>Lambert, In Defense of the Civil Jury, 29 NACOA L.J. 27 (1963).

<sup>11</sup>Automobile Accident Insurance Act, Saskatchewan Stat. ch. 15, 68-106 (1947).

<sup>12</sup>The following interesting comments of a Canadian lawyer pertaining to the Saskatchewan and similar plans appear in the Preface to Joiner, Civil Justice and the Jury, at vii (1962): "In most of the Canadian provinces with the exception of Ontario, the civil jury has ceased to exist for practical purposes.... but we who

A similar plan, fashioned to some extent, on the Saskatchewan experiment, has been seriously advocated in the State of New York.<sup>13</sup> However, this suggested plan would eliminate civil juries in all instances of automobile accident trials since its suggested "solution" to the problem of calendar congestion, delayed justice and inadequately compensated accident victims, is the granting of compensation on a prearranged schedule regardless of fault, without the concurrent right of a common law negligence action against the wrongdoer for damages, such as exists in Saskatchewan.

In 1959, Governor Edmund G. Brown, of California, appointed a special committee, known as California Automobile Accident Commission, to study the advisability of adopting a compensation plan. The need for such a drastic remedy was stated to be the delay in the California Courts.<sup>14</sup> A preliminary report, known as the Weigel Report, has been made.<sup>15</sup> Although the legislature of the State of California has undertaken a study as suggested by the Governor and the Weigel Report, the commission has not actually been created. A California Senate Subcommittee recommended that no action be taken yet toward the establishment, or the furtherance of an Automobile Accident Commission, but did recommend that the committee continue its studies in the field and examine arguments which may be advanced in favor of the plan as well as to continue its studies for the better administration of justice within the present framework of court and jury procedures.<sup>16</sup>

Recently, Chief Justice Charles S. Desmond, of the New York Court of Appeals, argued that the jury is a major cause of congestion in the courts; that civil jury verdicts are often unsound and that people do not want to serve on juries.<sup>17</sup>

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have lost our civil juries can more readily appreciate that loss and sound a note of warning to our American brethren before the forces giving rise to the abandonment of the civil jury become overwhelming."

<sup>13</sup>Hofstadter, *A Proposed Automobile Accident Compensation Plan*, *Annals* 53 (1960).

<sup>14</sup>Inaugural address by Governor Brown, Jan. 5, 1959, wherein he stated: "There is a log jam in our California courts. In Los Angeles County alone, the backlog of civil cases climbed to nearly 16,000 in 1958. Each case has to wait in line well over a year after it is ready for trial. In other counties, the situation is even worse. Last October when Chief Justice Warren called attention to this crisis in the courts, we were forcefully reminded that justice delayed frequently is justice denied."

<sup>15</sup>Weigel, *Preliminary Report on Plans for Inquiry Into the Wisdom of a California Automobile Accident Commission*, 34 *Cal. S.B.J.* 393 (1959).

<sup>16</sup>Sixth Progress Report to the Legislature, Senate Fact-Finding Committee on Judiciary, Part 2, *Automobile Accident Litigation*, p. 248 (1959-1961).

<sup>17</sup>*New York Times Magazine*, Feb. 16, 1964.

Other proponents of the extreme plan to devastate the jury system advocate as the answer, a system of *arbitration* in the jury's place. Thus, even though it was only one month after the Declaration of Independence that the Commonwealth of Pennsylvania adopted a new Constitution guaranteeing jury trials in both criminal and civil cases, a proposal was on the agenda of the Pennsylvania State Bar Association in Pittsburgh in January, 1963, to abandon the State Constitution guarantee and to substitute arbitration processes instead. While this proposal was defeated, the incident is indicative of the anti-jury movement.

These arguments against the preservation of the civil jury are based on erroneous premises. Past history of the jury as well as recent studies and investigations readily demonstrate that neither delay in the courts nor ineptitude can be attributed justifiably to the civil jury system.

Perhaps the most comprehensive study of the American jury ever undertaken has recently been made at the University of Chicago Law School under the leadership and guidance of Professors Hans Zeisel and Harry Kalven, Jr., both of that institution. The study, made possible by a grant from the Ford Foundation, included a detailed computation for one of the country's busiest trial courts, the Supreme Court of New York County, in the Borough of Manhattan, in New York City. It was found that, if the jury were abolished in that court for personal injury trials, the court would save the equivalent of 1.6 judges annually. However, it was pointed out that this economy was to be gauged in its true context, because these 1.6 judges would be saved in a court which has some twenty-six judges, nineteen of whom sit in the law division. The study indicated that if each judge in the civil law division of the New York Court were to curtail his summer vacation by two weeks—an experiment the court actually made in 1956—court time equivalent to 1.5 judges per year would be saved, almost exactly the amount that would be saved by removing personal injury trials from the jury. While shortening judges' vacations is not advocated as the sole answer to the jury's opponents, it does demonstrate one of many possibilities for reform that are far short of drastic jury destruction.

Based on similar detailed study and inquiry, it was Professor Zeisel's considered opinion that the abolition of the jury in civil cases, though it would save some court time, would not save enough time to permit this to become a proper argument for its abolition. He also concluded that there was ample room for expediting the jury trial in its present form.



In this connection, Professor Charles W. Joiner, of the University of Michigan Law School, in his discussion of the question of delay and jury trials, wrote:

"Let us look at what others have said about this matter. A short time ago, as part of the Chicago jury study, the researchers Zeisel, Kalven and Buchholz attempted to find the chief cause of the delay in the courts. . . . They found that although it takes a little longer to try a case before a jury than a case before a judge in New York City, it does not take much longer. It does not take much longer to try a case before a judge in New York City than it takes to try a similar case in New Jersey. When one takes into consideration a factor not considered by these researchers—the time it takes a judge to deliberate and write his opinion—the time difference between a jury trial and a judge trial is very little indeed. In fact, the jury trial may be the shorter of the two. Whichever is less time consuming, the difference is negligible, particularly when one considers the advantages of the jury trial. Certainly the results of the Chicago study should controvert any serious contention that delay is inherent in the jury system."<sup>18</sup>

Similarly, authoritative voices challenge the reasoning indulged in by jury system adversaries regarding the circumstance of court delay.

Thus, as to the proposals to supplant a civil jury with an automobile commission such as espoused by Governor Brown, Professor Zeisel wrote:

"One general rule emerges with respect to any permanent reform designed to remedy court delay, be it abolishment of the jury, or the removal of automobile accident cases from the courts to a special commission, as recently aired by the Governor of California. No reform should be initiated that would not recommend itself also in a nondelayed court. The reason is obvious. Once such a reform has accomplished its purpose and delay is cured, the reform stays with us in the now nondelayed courts. And we better make sure that the price for bringing our courts up-to-date is not a lowering of the quality of our judicial process."<sup>19</sup>

In his extensive and impartial study of the civil jury, Dean Joiner, in a step-by-step analysis of a trial itself demonstrates that jury trials are actually, in his opinion, no more time consuming than in a trial by a judge alone.<sup>20</sup>

Dean Joiner shows that when the case is tried by a jury, the judge

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<sup>18</sup>Joiner, *Civil Justice and The Jury* 72 (1962).

<sup>19</sup>Zeisel, *The Jury and Court Delay*, *Annals* 52 (1960).

<sup>20</sup>Joiner, *Civil Justice and the Jury* 71 (1962).

usually rules more tightly on the admissibility of evidence, thereby shortening some of the proof. Secondly, there is less tendency to grant continuances from day-to-day, or week-to-week, a dilatory practice that is more prevalent in judge trials than otherwise. Thirdly, when not forced into determination of the cause by the presence of a jury, the judge may take a case under advisement for weeks or even months before preparing findings of fact and conclusions of law.<sup>21</sup>

Moreover, destroying the civil jury will have no effect on the great number of cases being filed, which is simply a consequence of modern life, and the basic cause of court congestion. Some delay in today's courts is inherent in the tremendous amount of litigation resulting from the mechanized tempo of today's living. For example, in 1961, there were 76,000,000 registered automobiles in the United States and 90,500,000 licensed drivers on the highways of this country. The result: 38,000 deaths and 1,400,000 injuries in a single year.<sup>22</sup> This vividly demonstrates the reason for record-breaking litigation in the courts of this country, and the resultant delay where it is experienced. Furthermore, the vast majority of courts were created on a basis of yesteryear's statistics rather than the increased pace of today's life; yet these same courts with a limited number of judges and facilities are expected to handle such increased litigation without any delay. Abolition of the civil jury will in no way reduce these statistics.

Similarly, the criticism that the jury is not equal to its task is not borne out by practical proof and experience.

Chief Justice Warren has recently stated:

"The men and women who are called upon to serve on juries in both our federal and state courts have maintained a standard of fairness and excellence throughout the history of our country. They have demonstrated a vision and a will toward the administration of justice that is a wellspring of inspiration."<sup>23</sup>

Certainly, the desirability of continuation and preservation of the system does not rest solely on the fact that there is no justification for the attacks upon it. Far more reasons for its existence are found in the basic strengths and advantages of the jury system and its excellence in its function, characteristics that are not found in any other substitute system.

An effective summary of these basic strengths and assets is found in Joiner's work, grouped under the following items:

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<sup>21</sup>Id. at 72.

<sup>22</sup>Nat'l Safety Council Ann. Rep. 40 (1962).

<sup>23</sup>Warren, Foreword, Joiner, *Civil Justice and the Jury* vi (1962).

(1) *The jury system's acceptance by the public.*

Jury decisions have been accorded wide public acceptance in this country. Thus, the Chicago jury project reported that 70 per cent of the public favored jury trial while only 9 per cent favored trial by the judge. Recently, when those who had participated in jury service were polled, 77 per cent favored jury trials.<sup>24</sup> The law must find much of its effective support in public opinion and greater public approval is found of jury verdicts than of single judge decisions. So, for the very simple but important reason of providing the public with that system with which they are familiar, in which they have faith and confidence, and which they prefer, all characterized as public acceptance, the civil jury is preferable to any other system.

(2) *The jury's ability to apply general standards.*

Juries are capable of and do apply general standards in individual cases in a way that is understood by the community. The law is replete with ambiguities or general language, the very purpose of which is to permit and allow interpretation by the community from which the jury is chosen. What is "reasonable" or what is "ordinary care" and such similar measurements of standards necessarily depend on standards prevalent in the community. The amendment to the recent Civil Rights legislation so as to provide for jury trials in situations involving contempt charges is eloquent proof of the general recognition that juries apply law according to the standards of the community.

(3) *The jury is less subject to background prejudice and pre-judging of facts than the single judge.*

A judge is far less qualified to know, recognize and apply community standards. As one man, as opposed to a jury of laymen from all walks of life, he cannot possess the ability to sense community standards as the cross-section representatives can. Thus, Justice Howard T. Hogan, of the Supreme Court of New York, Tenth Judicial District, Second Department, recently wrote:

"The abolition of juries would substitute the judgment of one individual for the collective judgment of twelve. These twelve are drawn from all walks of life. They bring with them their experiences and their prejudices, and from this amalgam comes a verdict. There is an averaging process—one juror may be a tight-fisted penny-pincher, another freely spends money

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<sup>24</sup>Kalven, "Report on the Chicago Jury Project," *Aims and Methods of Legal Research* (1955).

so long as it is not his own. We like to think that these extremists neutralize each other and that the end result, while it may be described as 'rough justice,' is the nearest approach to perfect justice that can be achieved by man.

"What happens when a judge is in power to decide questions both of law and fact?

"He is presumably learned in the law through education and experience in dealing with legal problems. He is guided, controlled and limited by statutes and decisions of higher tribunals. But, when confronted with issues of fact in deciding, for example, issues of negligence, contributory negligence, damages or the veracity of a witness, we judges must use the same means as jurors—our experience, our native intelligence and our judgment. And, like jurors, we are the products of our individual environments and experiences. Moreover, each of us carries within him, unrecognized and unknown to him, but perhaps not to others, certain prejudices and predilections. In a word, we are human beings."<sup>25</sup>

The judge, therefore, is a professional, presiding at and hearing trials daily. Such repetitive function often makes for prejudices and leanings. The jury, on the other hand, consists of diverse persons from different walks of life so that there is less possibility of prejudice, bias or preconceived attitudes. Moreover, the individual juror is a non-professional. He does not sit in cases day in and day out, and, of course, is far less likely to develop any sort of prejudice or preconceived notion about any type or kind of case. As G. K. Chesterton once put it, "I would trust eleven ordinary men, but I cannot trust one ordinary man."

The group character of the jury also provides the invaluable feature of group deliberation. This exchange of ideas is the fundamental reason for superiority of dispute resolution by such a group. Decisions may not be expected from any such group unless and until argument, discussion and deliberation are utilized. Superiority of group decisions because of its deliberative character is well recognized. In this regard Joiner writes:

"This is documented by a number of psychological studies carried on during the past twenty or thirty years. Most of these studies involve not juries but other small groups with decision-making tasks. They shed light on the soundness of intuitive judgment in the deliberative process of decision-making. The studies indicate that group decisions are fairer, more efficient, and more accurate and fact-finding than are the decisions of an individual. The give and take of group deliberation screens out

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<sup>25</sup>Hogan, *Some Thoughts on Juries in Civil Cases*, 50 A.B.A.J. 752 (1964).

errors, negates biases, and eliminates erroneous hypotheses to a far greater extent than individual deliberation. It was found that the interaction during deliberation was the crucial difference that made group decisions more than just a pooling of individuals without the give and take of deliberation."<sup>26</sup>

(4) *The jury provides opportunity for citizen participation in government.*

Every year almost 1,500,000 Americans respond to a call to jury duty. In most instances this is the only civic or governmental involvement that these persons will ever have. The jury, thus, has been responsible for injecting more people directly into government than any other institution. Not only does this bring home to that individual an appreciation of the difficulties of decision-making in the government, but this is itself education in the governmental process and is a valuable characteristic of the system.

(5) *The jury is a necessary portion of a system of checks and balances in a trial presided over by a judge.*

A jury trial necessarily involves both judge and jury. It requires a verdict under instructions from the court which has the power to set aside a verdict if it is, in fact, erroneous. In no other method of trial are these checks and balances so carefully developed, for the jury is actually the fact-finder, which facts are then applied to the law as declared by the judge. The result is a composite verdict. At the same time, the judge exercises a check on the jury, with rulings upon admissible evidence, instructions on the law and, finally, the entering of judgment based upon the jury's verdict.

Thus, in numerous respects, the civil jury system provides salutary and practical advantages that have proven its superiority over any other method either tried or suggested. To heed the exhortations of those prone to destroy this time-tested system for the sake of trying some new arrangement would be folly. But, even worse, clear and present danger to our entire judicial system would be the result of any such alleged panacea. In these words the great Blackstone long ago warned of the very peril that confronts our jury system today:

"So that the liberties of England cannot but subsist so long as this palladium remains sacred and inviolate; not only from all open attacks (which none will be so hardy as to make), but also from all secret machinations, which may sap and undermine it; by introducing new and arbitrary methods of trial; by justices of the peace, commissioners of the revenue, and courts of con-

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<sup>26</sup>Joiner, *Civil Justice and the Jury* 26 (1962).

science. And, however convenient these may appear at first (as doubtless all arbitrary powers, well executed, are the most convenient), yet let it be again remembered, that delays and little inconveniences in the forms of justice, are the price that all free nations must pay for their liberty in more substantial matters; that these inroads upon this sacred bulwark of the nation are fundamentally opposite to the spirit of our constitution; and that, though begun in trifles, the precedent may gradually increase and spread, to the utter disuse of juries in questions of the most momentous concern."<sup>27</sup>

Let us hope that we of the legal profession today will be vigilant and determined in defense of our jury system to insure its preservation in the years ahead.

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<sup>27</sup>3 Blackstone, *Commentaries on the Laws of England* (Adaptation by John L. Wendell 1854).

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