NO. 21-1553

In the Supreme Court of the United States

RAMIN KHORRAMI,

Petitioner,

v.

STATE OF ARIZONA,

Respondent.

On Petition for a Writ of Certiorari to the Court of Appeals of Arizona, Division One

BRIEF OF AMICUS CURIAE UTAH ASSOCIATION OF CRIMINAL DEFENSE LAWYERS IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether the Sixth and Fourteenth Amendments guarantee the right to a trial by a 12-person jury when the defendant is charged with a felony.

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INTEREST OF THE AMICUS CURIAE[1]

The Utah Association of Criminal Defense Lawyers (UACDL) is a non-profit voluntary professional legal organization that brings together criminal defense attorneys to develop education, support, and advocacy for criminal defense in our respective states.

As a professional organization committed to the improvement of criminal defense, we are also committed to jury trials. Our members regularly try cases to juries. Many of our members have experience with both small juries of six or eight members as well as twelve-person juries through legal practice in other states and federal court.

Because the criminal legal system in Utah would be affected by a decision in this case (along with a handful of other states), we write in support of petitioner to advance the jury rights for criminal defendants in our states to be at the same position guaranteed by the vast majority of other states.

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[1] Pursuant to this Court's Rule 37, Amicus state that no counsel for any party authored this brief in whole or in part, and no person or entity other than Amicus made a monetary contribution to the preparation or submission of the brief. Counsel for both parties received a Notice of Intent to file this brief more than 10 days prior to filing and consented to this filing.

SUMMARY OF THE ARGUMENT

In this brief Amicus address what we believe is one of the central flaws of *Williams v. Florida*: its statement that juries with as few as six members are functionally equivalent to juries of twelve because the "purpose of the jury trial . . . is to prevent oppression by the Government," which the *Williams* Court thought could be accomplished just as well with six-person juries as twelve-person juries.[2]

In drawing that conclusion, the *Williams* Court missed three other critical purposes for which juries are designed, and in doing so missed what is lost when cases are decided by juries of six or eight members. These three additional purposes of the jury are to: (1) represent the community in the administration of justice, (2) protect defendants from the vindictiveness of the community, and (3) ensure popular respect on the outcome of cases.

The jury simultaneously serves both majoritarian and counter-majoritarian roles by representing the community and also serving as a check on the community. The balance of these competing roles tips when the jury is not appropriately comprised to serve its justice-serving function. As discussed below, juries of twelve members balance these roles better than smaller juries. Additionally, twelve-member juries matter because that is the kind of jury that the public anticipates as giving just verdicts.

We believe that when these three additional purposes are given their fair weight, a jury of twelve

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[2] 399 U.S. 78, 100, 90 S.Ct. 1893, 26 L.Ed.2d 446 (1970).

members achieves the purpose of the Sixth Amendment's right to a jury better than smaller juries can.

ARGUMENT

In *Williams v. Florida*, this Court determined that the historical purpose of why juries exist is to "prevent oppression by the Government."[3] From that position the Court concluded that a six-person jury can just as effectively accomplish that objective as a twelve-person jury.[4] Missing from the Court's analysis, however, were other reasons why juries exist and why trial by jury matters. Several of these other purposes factor into the strategic decision of why defense attorneys and their clients pick juries.[5] Moreover, these other purposes that the *Williams* Court missed are better accomplished through juries of twelve members over smaller juries. These purposes are:

1. To represent the community in the administration of justice.
2. To serve as a check on the community's proclivity for vindictiveness.

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[3] *Id.*

[4] *Id.*

[5] Of note, there are additional reasons for why juries exist. For example, juries have been recognized as a tool to education the public on civic matters. *Powers v. Ohio*, 499 U.S. 400, 407, 111 S.Ct. 1364, 1368 (1991). The more people serve on juries the more effective this is accomplished, which makes twelve-person juries superior to smaller ones. That said, defendants do not choose juries to help educate the populace, so this function is not explored further in this brief.

3. To satisfy society's, and the defendant's, interest that the case was decided fairly.

When considered in light of jury size, these three purposes show that juries of twelve are meaningfully different from, and superior to, smaller juries.

I. The Jury Represents the Community in the Administration of Justice; Small Juries are Less Likely to Reflect the Broader Community.

From its inception, the jury served as the voice of the community. "[I]n its origins the jury is of a representative character; the basis of its composition in the early days . . . was clearly the intention to make it representative of the community . . . ".[6]

The pluralist purpose of the jury was also recognized as a central feature in early America. As John Adams wrote in his diary,

> In the Administration of Justice too, the People have an important Share . . . [N]o Man can be condemned of Life, or Limb, or Property or Reputation, without the Concurrence of the Voice of the People.[7]

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6 Theodore Plucknett, A CONCISE HISTORY OF THE COMMON LAW, 127 (1956), https://tinyurl.com/2924e8hw.

7 John Adams, ADAMS PAPERS, DIARY AND AUTOBIOGRAPHY OF JOHN ADAMS FEBRUARY 1771, vol. 2, 1771-1781, ed. L.H. Butterfield (1961). https://founders.archives.gov/?q=important%20share&s=1511311112&r=8; *see also* Laura I. Appleman, *The Lost Meaning of the Jury Trial Right*, 84 IND. L.J. 397 (2009) (describing that the right of a jury trial was originally primarily a right of the people to be involved in the administration of justice).

Not only does the defendant enjoy a right to a jury as a protection against government,[8] but *the people themselves* have a right to act as jurors as a means to "prevent [the] arbitrary use or abuse" of judicial power.[9] The requirement of a unanimous jury gives the right to each juror, as an individual, to stop governmental oppression.[10]

In deciding that a six-person jury can accomplish this function as well as a twelve-person jury, the *Williams* Court brushed over the reasons why the jury protects individuals from the government.

Jurors do not adjudicate guilt or innocence simply as *non-lawyers* or *non-judges*; they reach these outcomes by being a diverse body of individuals, representing the community. As one early commentator wrote:

> If justice be done to the wheel by placing in it the most intelligent citizens of all occupations, every traverse jury of twelve men should possess an aggregate of practical information, that should be greater than the judge on the

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8 *Williams,* 399 U.S. at 100

9 *Powers v. Ohio*, 499 U.S. 400, 406, 111 S.Ct. 1364, 1364, 113 L.Ed.2d 411 (1991) (*quoting* Chief Justice Taft in *Balzac v. Porto Rico,* 258 U.S. 298 (1922)).

10 John Adams, *Adams' Diary Notes on the Right of Juries: 1771. Feby. 12,* THE ADAMS PAPERS, LEGAL PAPERS OF JOHN ADAMS, vol. 1 ed. L. Kinvin Wroth and Hiller B. Zobel. Cambridge, MA: Harvard University Press, 1965 *available at* https://founders.archives.gov/documents/Adams/05-01-02-0005-0005-0004 ("It is not only his right but his Duty in that Case to find the Verdict according to his own best Understanding, Judgment and Conscience, tho in Direct opposition to the Direction of the Court.").

> bench, however good his legal information. . . .[11]

Juries are valued for defendants because of their ability to apply "common-sense judgment."[12] That judgment stems from the jury's connection to "community values."[13] The "community's sense of justice" that flows from a jury brings "the quality of mercy" to the courts.[14] As the Kentucky Supreme Court noted over a century ago:

> The jury are drawn from the various walks of life, and their combined knowledge and experience afford the very best opportunity for safe and wise conclusions. Judge Dillon is quoted as saying, "twelve good and lawful men are better judges of disputed facts than twelve learned judges."[15]

Other commentators have made similar observations, praising "the judgment of 12 impartial (people), of the average of the community, applying their separate experiences of life to the solution of such doubts as

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[11] Eli Price, *Discourse on the Trial by Jury*, 9 (1863), *available at* https://tinyurl.com/2pavjym8.

[12] *Duncan v. Louisiana*, 391 U.S. 145, 156, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968).

[13] *Parkland Hosiery Co. v. Shore*, 439 U.S. 322, 355, 99 S.Ct. 645, 58 L.Ed.2d 552 (1979) (Rehnquist, J. Dissent).

[14] William O. Douglas, THE RIGHT OF THE PEOPLE, 183-84 (1958).

[15] *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 908 S.W.2d 104 (Ky. 1995) (quoting *Hudson v. Adams' Adm'r, Ky.*, 49 S.W. 192 (1899)).

may arise" as the model of justice,[16] and recognizing that the value of a jury is in its "composite intelligence, dedication, comprehension, evidence recall, and [] emotional balance . . . ".[17]

Not only do smaller juries decrease the power of the citizenry's right to serve as a check against government overreach, but they also diminish the ability of each individual juror to draw from the collective background of her peers in making just verdicts. A jury of six is less likely to reflect the broader community accurately than a jury of twelve. It has half the life experience. It has half the collective wisdom.

To that point, it should be noted that even those states that may be affected by the reversal of *Williams* tacitly acknowledge that something is lost when cases are decided by smaller juries. All of those states require a twelve-person jury in capital cases.[18] Some require a twelve-person jury for at least some non-capital felonies.[19] While the gravity of a capital case triggers

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16 *Travelers' Ins. Co. v. Selden*, 78 F. 285 (4th Cir. 1897)

17 Joseph T. Karcher, *The Case for the Jury System*, CHICAGO-KENT L. REV., 157, 168 (1968).

18 *See* ARIZ. CONST. art. 2, sec. 23; CONN. CONST. amend. art. IV; Fla. Rule Crim. Proc. § 3.270 (2019); Ind. Code § 35-37-1-1(b)(1); UTAH CONST. art. I, sec. 10. Louisiana requires twelve person juries for all cases except for those which "may" result in imprisonment at hard labor. *C.f.* LOUIS. CONST. of 1974 art. 1, § 17 (requiring twelve person juries for capital offenses) and LA Code Crim. Pro. 782 (allowing juries of six for cases which "may" result in imprisonment at hard labor); *see also* LA R.S. 14:2 § 2(A)(4) (defining felony as a crime that "may be sentenced to death or imprisonment at hard labor).

19 *See* ARIZ. CONST. art. 2, sec. 23 (requiring juries for felonies in which the term of imprisonment is thirty or more years).

several rights that do not necessarily exist in other cases, the fact that each state requires a twelve-person jury in capital cases acknowledges that there is something actually meaningfully different and better about a twelve-person jury, as compared to a smaller one.

Our experiences as criminal defense lawyers reflect these insights. One criminal defense attorney recently recounted a jury trial in federal court, where law enforcement officers claimed to have witnessed a drug deal occur among a group of people sitting at a park bench. The person on whom the officers focused their investigation and arrest had a face covered by tattoos, looking like a stereotypical drug-dealing gang member. At trial, the officers bolstered their claim that a drug deal occurred by embellishing inculpatory observations that were peculiarly absent from their reports. A jury of twelve saw through the officers' testimony and acquitted the defendant. The attorney credited the body of twelve jurors as having the diversity and composition to look past the superficial evidence to find law enforcement less credible than an apparent gangster. That attorney, along with Amicus (and our collective experience as trial attorneys), are less confident that a jury half as large would show the same level of insight as this jury did.

Massachusetts has abolished capital offenses, *see* MASS. CONST. art. XII. However, it requires twelve person juries for felony cases except for certain felonies tried before the district court. *C.f.* Mass. G. L. C. 218, § 26A and Mass. R. Crim. P. 19(c).

II. The Jury Serves a Counter-Majoritarian Function; a Smaller Jury Cannot Serve that Function as Well as a Jury of Twelve.

Not only do juries serve as the voice of the community, but commentators have also recognized the important role jurors serve as a counter-majoritarian check on the community's vindictiveness.

> [T]he trial by jury has been steadily regarded, from the earliest judicial history in England, as the great safeguard of the lives, liberty, and property of the subject against the abuses of arbitrary power, *as well as against undue excitements of popular feeling*.[20]

The jury's role as a counter-majoritarian body is critical to fair outcomes.

Jurors often serve as the gate through which the community expresses disapproval of a defendant's acts. As one Court pointed out, "Jury trials have historically served to vent community pressures and passions."[21] When the jury does this responsibly, it serves as "the lid of a tea kettle releas[ing] steam," allowing "peaceful expression of community outrage at arbitrary government or vicious criminal acts."[22] However, history is replete with examples where a jury too closely reflects the community's animosity against certain criminal defendants. It is well documented how in certain

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[20] William E. Chandler, STATE REPORTER, REPORTS OF CASES ARGUED AND DETERMINED IN THE SUPREME JUDICIAL COURT OF NEW HAMPSHIRE, vol. 41, 550 (1861) *available at* https://tinyurl.com/6nru7nzp.

[21] *United States v. Lewis*, 638 F.Supp. 573, 580 (W. D. Mich. 1986).

[22] *Id.*

communities white juries would convict black defendants on thin evidence, while other juries acquit white residents accused of lynching black individuals.[23]

After Black citizens in the late 19th century began to sit on juries, West Virginia quickly moved to prohibit them from jury service.[24] This Court intervened in *Strauder v. West Virginia*, declaring the law unconstitutional.[25] In its ruling, the Court noted the problem of prosecutors "[p]acking juries."[26] As Justice Thomas has since remarked on reflection of *Strauder*, "We reasonably surmised, without direct evidence in any particular case, that all-white juries might judge black defendants unfairly."[27] As one justification for its decision, the *Strauder* Court noted that a defendant's right to change the venue of trial is an important aspect of making sure that the jury is not packed with hostile jurors.[28]

Three years after *Strauder*, Congress enacted the Civil Rights Act, protecting the rights of racial minorities to sit on juries.[29]

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[23] Arthur L. Rizer III, *The Race Effect on Wrongful Convictions*, WILLIAM MITCHELL L. REV. 29, 845, 850-52 (2003).

[24] Thomas Ward Frampton, *The Jim Crow Jury*, 71 VAND. L. REV. 1593, 1600-01 (2018).

[25] *Strauder v. West Virginia*, 100 U.S. 303, 25 L.Ed. 664 (1879).

[26] *Id.* at 309.

[27] *Georgia v. McCollum*, 505 U.S. 42, 61, 112 S.Ct. 2348, 2360 (1992).

[28] *Strauder*, 100 U.S. 303 at 309.

[29] Frampton, *The Jim Crow Jury*, at 1601.

> Integrating the jury box served several significant purposes from affirming the citizenship of those called to serve to countering impunity for white purveyors of racial violence —but securing fair treatment for black defendants was the predominant concern by the end of the nineteenth century.[30]

As Black Americans increasingly sat on juries, and refused to convict Black defendants on thin evidence, (white) community outrage boiled over.[31] "Black jurors frequently faced the accusation that they showed untoward leniency toward defendants,"[32] despite the historical record showing that Black jurors would also frequently convict.[33]

Well after *Strauder* was decided, white community members maintained concerns that Black jurors would not enforce the law against outrageous conduct. This Court has repeatedly found itself protecting the right of Black members of the community to meaningfully sit on juries as a way of moderating the pro-conviction desires of other community members. In *Norris v. Alabama*, this Court reversed the conviction of a Black defendant when it was presented with evidence that no Black member of the community had been selected for jury service in living memory.[34] In *Batson v. Kentucky*,

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[30] *Id*. at 1602.

[31] *Id*. at 1601-04.

[32] *Id*. at 1603.

[33] *Id*. at 1604, n. 62

[34] 294 U.S. 587, 55 S.Ct. 579 (1935).

this Court limited the prosecutor's peremptory challenges to racially-neutral justifications to prohibit prosecutors from packing juries with people who were presumed to be more likely to convict Black defendants.[35] Most recently, this Court intervened in *Ramos v. Lousiana* to strike a law that was designed to make it easier to convict Black defendants when a (presumably white) majority of the jury could overrule the dissenting votes of the jury's minority voices.[36]

Diverse juries temper the vindictiveness of the community. Their moderating influence goes beyond concerns about racial animus. In cases where the "court of popular opinion" has weighed in on a case before trial, jurors are screened for biases they may have acquired by having heard about the case and discussing it with others in the community.[37] A defendant's motion to change the venue of the trial is typically brought after public polling of community sentiment has occurred showing the community's bias is too pervasive to give a defendant an impartial jury.[38] While the public would have no trouble convicting a defendant after hearing about the defendant's criminal record, juries are frequently kept from hearing about the defendant's record so that they make measured decision that the public would not. To that end, popular sentiment may quickly decide a dispute on little evidence, whereas the jury

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[35] 476 U.S. 79, 106 S.Ct. 1712 (1986).

[36] 140 S.Ct. 1390 (2020).

[37] *Mu'Min v. Virginia*, 500 U.S. 415, 425-26, 111 S.Ct. 1899, 1905 (1991).

[38] *See generally*, *Irvin v. Dowd*, 366 U.S. 717, 81 S.Ct. 1639 (1961).

inhabits a microcosm of evidentiary rules, legal instructions, and procedural presentations of the case. Put simply, the jury—which represents the community—also serves a counter-majoritarian or moderating function against public vindictiveness.

Jury size directly affects the counter-majoritarian function of a jury. If a jury is too large, it may too greatly reflect the community's outrage. However, when juries are too small, there is an increased risk that the jury will be composed of a uniform, biased set of the community.

For example, researchers have identified that over a third of Americans have authoritarian biases, which have been tied to a bias towards conviction.[39] Decades of research have shown that those jurors who have a legal authoritarian biases predictably and reliably choose to convict defendants when others would not.[40] By contrast, researchers have never been able to identify an inverse demographic in society with a reliable pro-acquittal bias.[41] The prevalence of pro-conviction-biased

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[39] *C.f.* Matthew C. MacWilliams, *Trump Is an Authoritarian. So Are Millions of Americans*, POLITICO 9/23/2020) *available at* https://www.politico.com/news/magazine/2020/09/23/trump-america-authoritarianism-420681 (indicting the prevalence of authoritarianism in America) *with* David Ferguson & Len Lecci, *Coaxing Authoritarians out of the Jury Pool*, 5 UTAH J. CRIM. L. 26 (2021) (discussing how authoritarian biases result in a pro-conviction bias among jurors).

[40] Ferguson and Lecci, Coaxing Authoritarians out of the Jury Pool, supra, generally.

[41] However many people there are in society that tend to acquit defendants in the face of substantial incriminating evidence, they either lack common predictable traits or are too few to statistically find. *See e.g.*, David A. Kravitz, et. al., *Reliability*

members of society can have a sizeable impact on small juries—greater than the impact of juries of twelve members.

To illustrate, if a given jury pool is truly a "fair cross-section of the community" and adequately reflects the proportional biases of that community, about a third of the jury pool would exhibit a pro-conviction, authoritarian bias while the remainder would be more-or-less open-minded to both sides. [42] Under that

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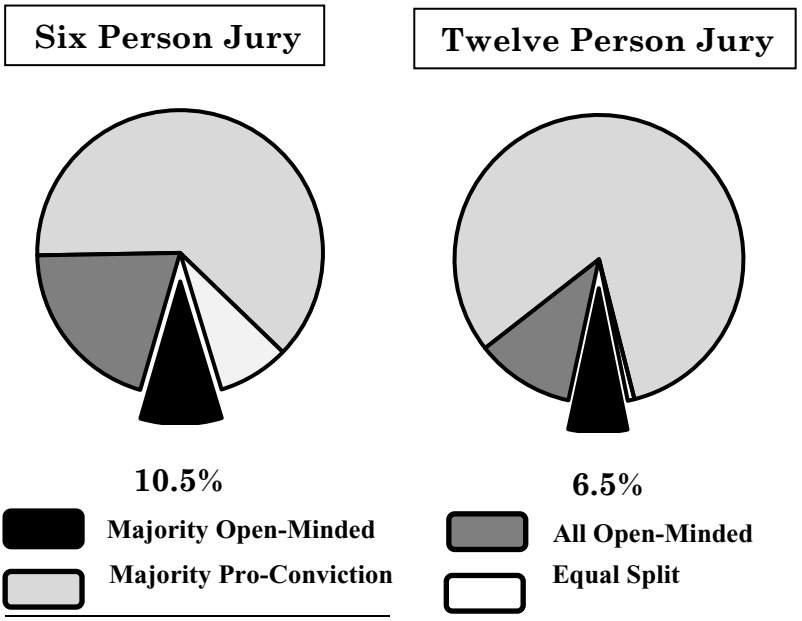
and Validity of the Original and Revised Legal Attitudes Questionnaire, 17 LAW AND HUMAN BEHAVIOR 661 (1993); *see also* Len Lecci and Bryan Myers, *Individual Differences in Attitudes Relevant to Juror Decision Making: Development and Validation of the Pretrial Juror Attitude Questionnaire (PJAQ),* 38 J. APPLIED SOC. PSYCH., 2010, 2019 (2008) (noting that under certain conditions, jurors with a social justice bias may exhibit a pro-acquittal bias).

[42] For purposes of demonstration, it is assumed that the jury pool is made up of 100 individuals with 66 of those individuals having neither a pro-prosecution nor pro-defense bias ("open-minded"). While jury pools of 100 individuals are not normal, the number is useful for illustrative purposes because of its simplicity; the analysis here has to do with percentages, not sample size making the actual number irrelevant. It is assumed that whatever size a normal jury pool might be in an actual case that the jury pool is a "fair cross-section of the community" and therefore reflects standard community biases. It is also assumed that peremptory challenges by the two parties are exercised in a way that would cancel each other's out. While research has shown that authoritarianism correlates strongly with pro-conviction bias, researchers have found no statistically validated method for reliably identifying pro-defense biased jurors except in some possibly atypical cases, which is why the only two variables are "pro-conviction" (meaning pro-conviction bias) and "open-minded" (meaning open to the evidence). *See* n. 41, *supra*. Note also that this model does not account for peremptory challenges or for-cause strikes. However, we can think of no reason why adding those variables into the model would improve it so long as we

baseline assumption, random chance harms defendants who must contend with smaller juries. As the following table and pie charts illustrate there's a greater chance that a jury of six members has a majority of pro-conviction members on it than a jury of twelve.

Probability of Composition in a Hypothetical Jury Pool of 100 Individuals (Percent)	**With 6 Jurors**	**With 12 Jurors**
No Open-Minded Jurors	0.14 %	0.00 %
All Open-Minded Jurors	8.78 %	0.77 %
Majority Open-Minded Jurors	68.04 %	82.23 %
Majority Pro-Conviction Jurors	*10.01 %*	*6.64 %*
Equal Split of Jurors	21.95 %	11.13 %



assume that courts and litigants in *e.g.* Florida take approximately the same level of care in jury selection as courts and litigants in *e.g.,* Virginia do (where juries consist of twelve members).

Put differently, it's more likely that *four members* of a six-person jury have pro-conviction attitudes than *seven members* of a twelve-person jury (10% v. 6.5%).[43] That's because small samples of a population run a greater risk of containing atypical members than larger samples do.[44]

The attorneys of our organizations worry about the fairness of juries because in no small measure cases are won and lost during jury selection. While jury biases can be teased out to some extent in voir dire, biased jurors get past good attorneys. Indeed, there is only so much an attorney can learn about a juror's world view, even if she is granted substantial latitude on voir dire, which is often not the case in any event. Defendants are always better served by a diverse body of jurors.

Put simply, twelve members have a greater moderating force over jury decision-making than smaller juries. Better judicial outcomes are more likely to be achieved when the jury appropriately reflects community values.

III. The Jury System Is Designed to Satisfy Society's, as Well as the Defendant's Interest, that Justice Is Done; a Small Jury Does Not Symbolize the Justice-Serving Role of a Jury.

The jury serves a symbolic purpose. It provides the community with assurance that a just outcome was

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[43] *Id.*

[44] Chittaranjan Andrade, *Sample Size and its Importance in Research*, INDIAN J. PSYCH. MED. 42, 102-103 (2020) *available at* https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6970301/.

reached. While a defendant has a limited right to challenge a jury that erroneously convicts,[45] the integrity of a jury's verdict is otherwise unassailable: a judge may not direct a criminal jury to convict nor may a jury's decision to acquit be appealed.[46] The finality of a jury's verdict is an important feature of the legal system.[47]

The public's ability to identify with juries, over judges, is an important part of its perception that juries get things right. Reflecting on the English jury system in 1883, one historian noted:

> The public at large feel more sympathy with jury-men than they do with judges, and accept their verdicts with much less hesitation and distrust than they would feel towards judgments however ably written or expressed.[48]

Perception matters in the legal system. "It is not merely of some importance but is of fundamental importance

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[45] *Jackson v. Virginia*, 443 U.S. 307, 317, 99 S.Ct. 2781, 2788 (1979).

[46] Albert W. Alschuler & Andrew G. Deiss, *A Brief History of the Criminal Jury in the United States,* 61 U. CHI. L. REV. 867, 912-13 (1994).

[47] *United States v. Scott*, 437 U.S. 82, 92, 98 S.Ct. 2187, 2194 (1978) (explaining the reasoning for why that finality may be challenged when the result is a conviction).

[48] Sir James Fitzjames Stephen, A HISTORY OF THE CRIMINAL LAW OF ENGLAND, Vol. 1, 573 (1883).

that justice should not only be done, but should manifestly and undoubtedly be seen to be done."[49] When juries do not conform to the public's perception of a just jury, it shakes confidence in the system. The manipulative jury selection scene in the blockbuster film RUNAWAY JURY—in which a gun manufacturer appears to spend enormous sums of money to select its ideal jury—helps the audience to see that the manufacturer is the story's villain.[50] And in Harper Lee's TO KILL A MOCKINGBIRD, the reader knows that the jury will inevitably convict the innocent Tom Robinson because the author tells the reader that the jury "seemed to be all farmers," pointing out that "townsfolk rarely sat on juries, they were either struck or excused."[51] As Justice Frankfurter pointed out, a jury's "broad representative character" of the community is meant to be an "assurance of diffused impartiality."[52]

Juries depicted in popular culture reflect twelve individuals.[53] When described in media, they are shown

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[49] *The King v. Sussex Justices, Ex Parte McCarthy*, [1924] 1 KB 256, [1923] EWHC KB 1, [1924] KB 256, *available at* https://tinyurl.com/bdd5bumr.

[50] RUNAWAY JURY (Regency Enterprises 2003).

[51] Judge Royal Furgeson, *The Jury in To Kill A Mockingbird: What Went Wrong?*, TEX. BAR. J. 488 (2010) *available at* https://tinyurl.com/2p8ztxfm.

[52] *Thiel v. S. Pac. Co.*, 328 U.S. 217, 227, 66 S.Ct. 984, 989 (1946) (Frankfurter, J. dissenting).

[53] 12 ANGRY MEN (Orion-Nova Productions 1957); MARVEL'S DAREDEVIL, se. 2, ep. 8 (Marvel Television 2016) (showing a twelve person jury) https://www.youtube.com/watch?v=vSg0mNAgx4s; THE UNTOUCHABLES (Paramount Pictures 1987) (same) https://www.youtube.com/watch?v=peie8WvkKP0.

as twelve people.[54] As criminal defense attorneys, we see in close detail just how important the jury's composition is to our clients. When our clients are fairly convicted by a jury, it is important for the client to be able to recognize the legitimacy of the jury's verdict. We have repeatedly seen that defendants who see their convictions as fair do much better complying with their sentence than defendants who witness injustices in their trials. The justice system has worse results when it does not appear to be just.

As attorneys who handle jury trials before juries of six or eight members, we often find ourselves explaining to clients why they do not get a jury of twelve like they expect. They do not expect our state systems to be out of step with those expectations. They are dismayed when they do not see twelve people sitting in the jury box on their case.

For both the public and defendants, the jury system carries symbolic power that ensures right outcomes are reached. For that reason, it is not only important for the jury to be just, but it also must be seen to be just. Integral to that purpose is the public's, and the defendant's, expectation that the jury is constituted of twelve members.

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[54] *See e.g.*, Charlie Savage, *Michael Sussmann Is Acquitted in Case Brought by Trump-Era Prosecutor*, N.Y. TIMES (May 31, 2002) (noting 12 jurors) *available at* https://www.nytimes.com/2022/05/31/us/politics/michael-sussmann-durham-fbi.html.

CONCLUSION

The *Williams* Court was too dismissive of the importance of a twelve-person jury. It considered one reason for why juries matter but missed out on a number of other crucial reasons why criminal defendants pick juries over judges. A jury that is too small does not adequately reflect the community. A jury that is too large would not serve the counter-majoritarian purpose of the jury since it would reflect the community too greatly. A jury of twelve has withstood the test of time in managing this tension. Moreover, its broad recognition in American culture has the symbolic value of representing justice. Accordingly, we urge this Court to grant the petition for a writ of certiorari and rule for Petitioner, so that our states can join the vast majority of others in guaranteeing defendants the right to a twelve-person jury.

Respectfully submitted,

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