

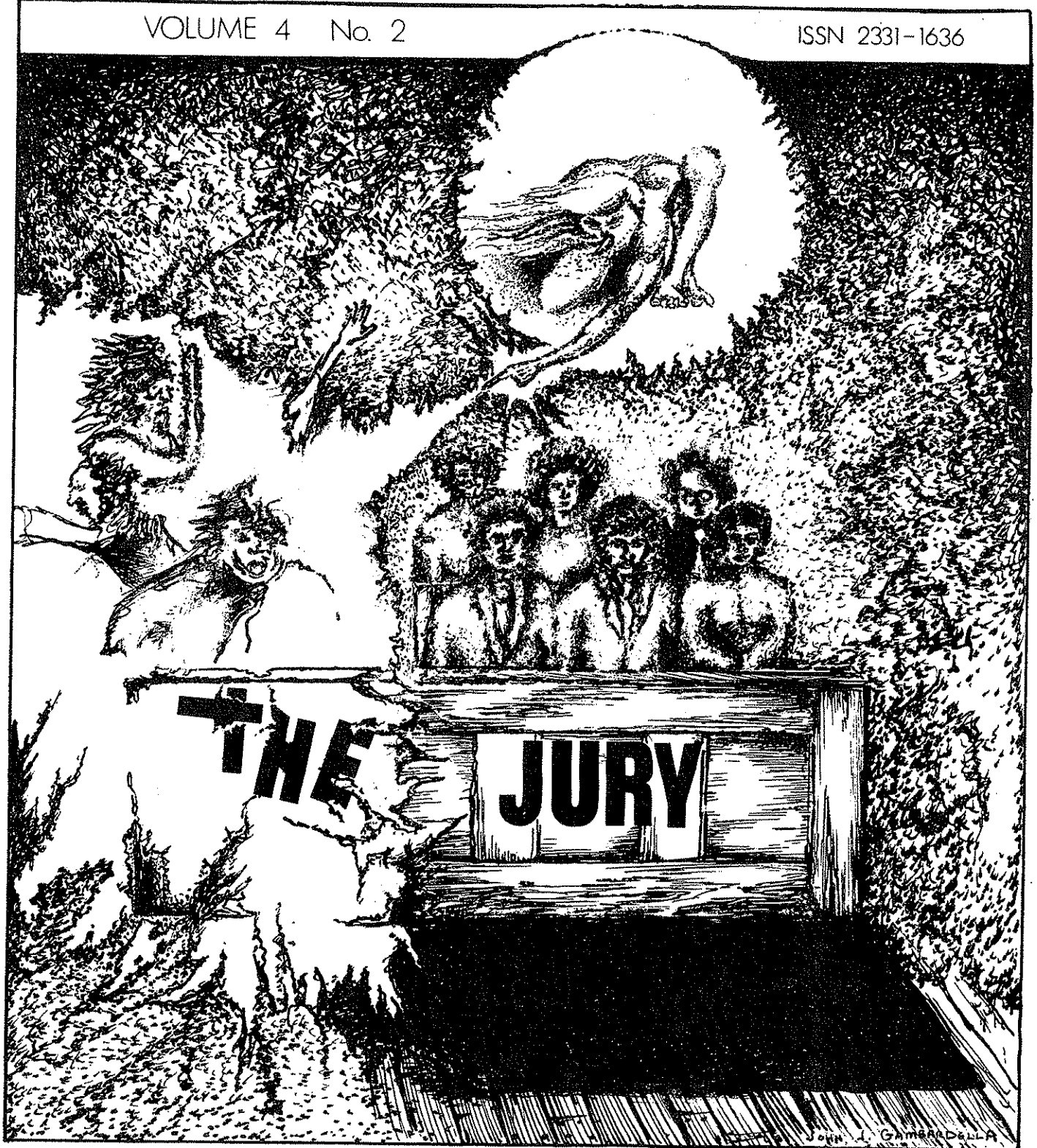
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SLOPPY SAMPLING

A comment on
six-member juries
in the
federal courts¹

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In two recent decisions permitting six-member juries, Williams vs. Florida (1970) 399 U.S. 78, which dealt with state criminal trials, and Colgrove vs. Battin (1973) 413 U.S. 149, which dealt with federal civil trials, the U.S. Supreme Court claimed that the reduction in jury size would not affect trial results and cited empirical data as proof for this claim. Zeisel (1971) and Zeisel and Diamond (1974) have, in my view, clearly shown that the Court was wrong -- the studies cited by the Court neither singly nor in toto substantiate the conclusion (reiterated by the Court in Colgrove, 413 U.S. at 149, n. 15) that "there is no discernible difference between the results reached by the two different sized juries." They do not allow us, however, to draw the opposite conclusion, either. The archival studies cited were marred by noncomparability of cases due to factors such as variations in procedures across jury size, differential costs which may affect the jury size opted for, differences in case complexity and amount of damages at issue, etc. The experimental studies cited either did not directly deal with the issue at hand or were marred by choice of a case so strongly biased in favor of one side as to be expected to produce no differences in verdict whatever the jury size/rule.

One recent study which, contrary to the court's new claims to find significant differences in verdicts between juries of twelve and juries of six, is also marred by severe methodological problems. Basing their findings on a before and after study of aggregated data from four Federal District Courts in the First Circuit, Beiser and Varrin (1975) have argued for a pro-plaintiff bias in larger sized civil juries. In particular, they find 76.9 percent of cases in twelve-member juries and only 47.5 percent of cases in six-member juries finding in favor of the plaintiff. However, this conclusion appears to be based on only ninety-two of their 180 jury cases (cf. Tables 3 and 4, pp. 429-430 with Tables 1 and 2; pp. 427-428), and the N reported elsewhere varies considerably from Table to Table giving us considerable concern about the comparability of six and twelve-member cases in their data base.

In a Letter to the Editor (Judicature, Volume 59, No. 2, August-September, 1975, p. 59, 95), Professor Lawrence Mills (1975) has challenged the conclusions of Professor Beiser and Varrin (1975) that juries of twelve were more likely to decide cases in favor of the plaintiff than juries of size six and that the "mean and median percentages of initial requests granted by twelve-member juries are larger than those granted by six-member juries." Professor Mills challenges the sample size of the Beiser and Varrin study as being inadequate for statistical significance and poses the possibility of other changes during the time period of the study which could vitiate Beiser and Varrin's before and after comparisons of six- and twelve-member juries.

While we share Professor Mills' concerns, we like him are well aware that it is "much easier to criticize a jury study than to perform a good one." Nonetheless, it is important to alert readers of the Beiser and Varrin article to some even more severe methodological problems with this study than were cited by Mills -- problems which raise considerable concern about their sampling process and render their conclusions almost totally suspect.

We are deeply indebted to Professor Beiser (personal communication, 1976) for a prompt reply to our inquiry about the data discrepancies we had noticed and for informing us that "Tables 5 and 6 [in Beiser and Varrin (page 431)] are not based entirely on the same cases." (See also Beiser and Varrin, p. 427.) In fact, the data reported in Table 5 are at variance with the somewhat different data set (Table 6) on which Beiser and Varrin base their chief conclusions. Furthermore, the sample sizes in these two tables (N=49, 56 and 33) are well below the sample size of 92 (Table 4, p. 430) already suggested by Professor Mills to be inadequate, and the reasons for variations in sample size are not clear.

Beiser and Varrin (p. 428) report that "the sums requested by plaintiffs were greater during the period of twelve-member juries than they were during [the period] of six-member juries," and that "the medians differed by \$7,000" and go on to suggest that while this difference does not appear to be very substantial, it could conceivably be an indication that "the cases heard by the larger juries were more complex." In Table 5, however, they report a considerably more substantial difference of \$17,500. Similarly, their assertion that "juries of size twelve granted larger awards than did juries of six" (p. 431) is true (for the data reported in Table 5) for the median award, but not for the mean award. Most importantly, their assertion (p. 431) that "the mean and median percentages of initial requests granted by twelve-member juries are larger than granted by six-member juries [mean 43% vs. 31%, median 26% vs. 15%] is flatly contradicted by their own data in Table 5 which suggest no significant difference between six- and twelve-member juries in median percentage of amount requested actually granted [24% vs. 23%] and actually show a higher mean percentage granted by six-member juries [17% vs. 44%].

While data on means might be expected to be somewhat sensitive to sampling variations, this should be less true for data on medians. The puzzling discrepancies between some of the data reported by Beiser and Varrin and the authors' findings based on a somewhat different data base, combined with the variations in sample size across their tables, lead us to reject this study as unsatisfactory. □

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