Sixth Amendment

(1791)

WHAT IT SAYS

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

THE JURY AS A CROSS SECTION OF THE COMMUNITY

In the early 1980s, Daniel Holland went on trial in Illinois for a variety of charges that stemmed from the 1980 kidnapping, rape, and robbery of a stranded motorist. On the appointed day for jury selection, the prosecution and Holland's counsel were faced with a jury pool made up of twenty-eight whites and just two African Americans. After questioning the potential jurors, the attorneys were permitted to remove, or "strike," a certain number of jurors. Some were to be struck "for cause," meaning that they had expressed some bias or other sentiment that cast doubt on their ability to be fair. The attorneys were permitted to strike a smaller number for no stated reason at all, the so-called peremptory challenge. The prosecution used its peremptory challenges to strike both African American jurors. Holland's counsel objected on the grounds that Holland, who was white, had the Sixth Amendment right to "be tried by a representative cross section of the community"—words the U.S. Supreme Court had used in its ruling in *Taylor v. Louisiana* (1975). Holland's attorney argued that an all-white jury violated that right. The trial judge rejected the argument, an all-white jury was sworn in, and Holland was convicted of virtually all the charges. He was sentenced to sixty years in prison. Holland appealed the convictions. When the case of *Holland v. Illinois* (1990) reached the U.S. Supreme Court, the justices found no Sixth Amendment violation. The Court explained that the guarantee of a jury drawn from a "representative cross section of the community" referred only to the pool from which the jurors are picked, not the composition of the final jury itself. The guarantee was intended to ensure an impartial jury, not a diverse one.

WHAT IT MEANS

The Sixth Amendment further specifies the protections offered to people accused of committing crimes. It allows the accused to have their cases heard by an impartial jury made up of people from the surrounding community who have no connection to the case. In some instances when there has been a significant amount of news coverage of the crime, jury members may be picked from outside the place where the crime took place.

Without the Sixth Amendment's right to a speedy trial, criminal defendants could be held indefinitely, under a cloud of unproven accusations. A speedy trial is also critical to a fair trial, because if a trial takes too long to occur witnesses may die or leave the area, their memories may fade, and physical evidence may be lost. The public trial guarantee protects defendants from secret proceedings that might encourage abuse of the judicial system. Criminal defendants can voluntarily give up their right to a public proceeding—such a renunciation is called a waiver—and judges may limit public access to trials in certain circumstances, such as to protect witnesses' privacy or to keep order in the court.

A speedy, public trial heard by an impartial jury would be meaningless if a defendant did not know what crime he or she was being charged with and why. Criminal defendants further have the right to face their accusers, which requires that prosecutors put their witnesses on the stand to testify under oath. The defendant's counsel may then cross-examine the witnesses, which may reveal their testimony as unreliable.

The Sixth Amendment guarantees a criminal defendant the right to have an attorney. That right does not depend on the defendant's ability to pay an attorney. If a defendant cannot afford one, the government must provide one. The right to an effective defense does not guarantee a successful defense. A defendant can receive effective legal assistance and still be convicted.

"The right of a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances."

—Justice Joseph McKenna, majority opinion, *Beavers v. Haubert* (1905)

Sixth Amendment TIMELINE

Defendants can give up the right to a jury trial

1930

In *Patton v. United States*, the U.S. Supreme Court decides that defendants can give up their right to a jury trial, and choose to have the judge alone decide their guilt or innocence. This choice must be made with the understanding of what they are giving up (that is, it must be an "intelligent" or "knowing" choice). In the federal courts and in some state courts, the prosecution and the judge also must agree not to have a jury.

The Supreme Court reverses the conviction of the "Scottsboro Boys"

1932

In Scottsboro, Alabama, nine African Americans known as the "Scottsboro Boys" have been convicted of rape and sentenced to death. The U.S. Supreme Court overturns their convictions in *Powell v. Alabama* because their attorney had been appointed on the morning of the trial and had no opportunity to investigate the case or put on a meaningful defense. In a second trial, the nine men again are convicted, despite testimony by one of the alleged victims there has been no rape. Once again the Supreme Court reverses their convictions because of the exclusion of African Americans from the jury. At a third trial, four of the men are again convicted, while a fifth pleads guilty. Charges against the other four are dropped.

The Supreme Court rejects secret trials

1948

A Michigan law allows judges to hold secret grand jury proceedings. Grand jury proceedings historically have been conducted in private, but a grand jury only has the power to indict someone to stand trial. However, in this case, the grand jury goes further, deciding the defendant's guilt, and sending him to jail. The U.S. Supreme Court in *In re Oliver*, overturns the conviction of a Michigan man who has been convicted and sentenced after such a secret hearing.

The exclusion of jurors based on race is unconstitutional

1965

In Swain v. Alabama, the U.S. Supreme Court holds that prosecutors cannot use peremptory challenges to exclude jurors of a particular race (as it had ruled earlier about ethnic groups). The Court sets rules for proving that jurors have been stricken because of their race. Having few or no minority jurors is not proof enough. It is necessary to show that minority jurors in a certain community have been excluded over a series of trials or over a period of years before a constitutional violation can be found. The Court's ruling in *J.E.B v. Alabama* (1994) extends this provision to gender as well as race.

Reservations about the death penalty should not bar one from a jury

1968

A person who expresses reservations about the death penalty is not necessarily unfit to serve on a jury, the Supreme Court rules in *Witherspoon v. Illinois*. The Court holds that a prosecutor can "strike" a person from the jury "for cause" (that is, because of indications that the person cannot be fair) only if the potential juror cannot make an impartial decision about imposing the death penalty.

The Supreme Court relaxes the requirement of a twelve-member jury

1970

Although it is not specified in the Constitution, the Supreme Court in *Thompson v. Utah* (1898) rules that, just as in England, a jury must have twelve people when trying someone charged with a serious crime. However in *Williams v. Florida* (1970), the Supreme Court calls a twelve-member jury a "historical accident" and decides that what matters is if the jury's size will allow it to reach a fair decision. The Court finds that it makes sense to determine the jury's size by the seriousness of the crime.

Exclusion of ethnic groups from a jury is unconstitutional

1954

In *Hernandez v. Texas,* the U.S. Supreme Court rules that the exclusion of Mexican Americans from a jury, through the prosecutor's use of peremptory challenges (objections to certain potential jurors serving on a jury without any specific reason), violates the Fourteenth Amendment's requirement that all people be treated equally.

Pretrial publicity can jeopardize the right to an impartial jury

1961

If there has been an excessive amount of press coverage or other publicity before a defendant goes to trial, it may not be possible to find people to serve on a jury who have not prejudged the case. In Irwin v. Dowd, the U.S. Supreme Court rules that a criminal defendant is entitled to have a trial relocated to another community to make sure that the jury will be impartial.

The right to counsel is not dependent on the ability to pay

1963

Since 1938 the Supreme Court has ruled that the government has to provide counsel for defendants in federal court trials who cannot afford to pay for one. But the court does not extend this right to state trials until the landmark case of *Gideon v. Wainwright.* In *Argersinger v. Hamlin* (1972) the Court extends its Gideon ruling by specifying that a defendant found guilty, whether of a misdemeanor or a felony, cannot be sentenced to jail time unless offered an attorney at trial.

Jury trials are not required for juvenile offenders

1971

Although previous U.S. Supreme Court decisions afforded juvenile defendants many of the same constitutional protections as adults, in McKeiver v. Pennsylvania, the Court rules that juveniles do not have a Sixth Amendment right to a jury if tried in juvenile court.

Information in public court documents may be published

1975

In *Cox Broadcasting Corp. v. Cohn,* the U.S. Supreme Court rules that a state cannot prevent the news media from publishing or broadcasting the name of a rape victim in a criminal case, when the name has already been included in a court document available to the public.

Presidential order permits military trials of suspected terrorists

2001

Following the terrorist attacks on September 11, 2001, President George W. Bush signs a military order authorizing the government to detain noncitizens suspected of terrorism, and to try them before military tribunals. Civil liberties groups criticize the order, fearing that the accused might be held indefinitely without receiving a trial, and that trials could be held in secret, without the usual rules about the kind of evidence that is admissible.