Mail Tribune

Editorial: Addressing Oregon's legacy of injustice

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Oregon's sordid history of racial and ethnic discrimination is well known. Here in the Rogue Valley, a photo of the Ku Klux Klan parading through Ashland in the 1920s has been reprinted over and over when the issue of race relations comes up. What is less well known is that the state's criminal justice system still contains a relic of that intolerance. This month, the U.S. Supreme Court will decide whether to take up a challenge to that relic.

Today, in 2017, Oregon is one of only two states that allow criminal defendants to be convicted with a less-than-unanimous jury verdict. The other is Louisiana.

Why does it matter whether all 12 jurors in a felony case vote to convict, or only 10 of 12?

For starters, a unanimous jury verdict has been presumed to be the standard for criminal conviction since before the U.S. Constitution was written. The Sixth Amendment guarantees the right to a trial by jury, although it does not mention a unanimous verdict. But the Supreme Court has held that a unanimous verdict is included in that guarantee — in federal trials. State trials, the court has held, are a different matter, and the court has declined to impose that constitutional requirement on the states based on the equal protection clause of the 14th Amendment, although it has done so for other rights guaranteed in the U.S. Constitution, including the Second Amendment right to keep and bear arms.

Secondly, both Oregon's and Louisiana's non-unanimous verdict rules originated in attempts to limit the ability of minority viewpoints to sway jury verdicts.

Louisiana changed its constitution to permit non-unanimous verdicts in 1898, after the 14th Amendment permitted black Americans to serve on juries. By allowing non-unanimous verdicts, Louisiana saw to it that one or two black jurors could be overruled by a majority of white jurors. The amendment was adopted at the Constitutional Convention of the state of Louisiana, which was held, according to the journal of its proceedings, to "establish the supremacy of the white race."

In Oregon, a Jewish man was accused of killing a Protestant man in Portland in 1934. The jury could not reach a unanimous verdict on second-degree murder and convicted the defendant of manslaughter instead. The public outcry — fueled by editorials in the Morning Oregonian — led the Legislature one month later to propose a constitutional amendment allowing non-unanimous verdicts for everything except first-degree murder. The voters approved.

The Morning Oregonian wrote: "This newspaper's opinion is that the increased urbanization of American life, the natural boredom of human beings with rights once won at great cost, and the vast immigration into America from southern and eastern Europe, of people untrained in the jury system, have combined to make the jury of twelve increasingly unwieldy and unsatisfactory."

And yet, 83 years later, it is still considered satisfactory — everywhere but in Oregon and Louisiana.

Beyond the consideration of racial and ethnic bigotry, non-unanimous verdicts make it easier for prosecutors to win convictions in Oregon than in other states. A 12-member jury that takes a poll at the beginning of deliberations and comes up 10-2 for conviction is unlikely to take the time to deliberate and persuade the two dissenters to change their minds when that isn't necessary.

On Sept. 25, the Supreme Court is scheduled to consider whether to take up the case of Dale Lambert of Louisiana, who is serving a life sentence without parole for second-degree murder although two of the 12 jurors in his trial were not convinced of his guilt beyond a reasonable doubt.

The court should take the case, and erase once and for all this legacy of injustice.

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