

Inside the gangland murder that gave Oregon its unusual jury system

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Shane Dixon Kavanaugh | The Oregonian/OregonLive

By Shane Dixon Kavanaugh | The Oregonian/OregonLive

Oregon juries for decades **have been permitted to convict felony defendants — save for suspected murderers — with a 10-2 vote**, a system that only one other state in the U.S., Louisiana, employs. The federal government and all other states require a unanimous verdict for felony crimes, which include manslaughter, arson and rape.

So how did Oregon's jury system come to be? Criminal justice reform advocates and legal scholars say a sensational murder trial involving a Jewish suspect from Portland prompted voters to adopt the system in 1934. The case involving Jake Silverman enthralled — and later outraged — the public and was extensively covered in the pages of The Morning Oregonian.



Jimmy Walker & Edith McClain

The Morning Oregonian

The Killings: On April 22, 1933, a logger in Columbia County found two bodies along a remote mountain road near Scappoose — roughly 40 miles west of Portland. The deceased, Jimmy Walker, 37, a burglar recently released from prison, and Edith McClain, 38, were each shot twice and dumped in a ditch. Witnesses in the area told cops that they heard four gunshots the night before and later spotted a maroon Studebaker sedan driving away.

The Sunday Oregonian, in a front-page article, attributed the slayings to Portland's gangland criminals, which "meted out its own form of punishment Friday night when it took two of its own members for 'a ride in the country' and left their lifeless bodies besides the lonely and mountainous Dutch Canyon road."



Frank Kodat & Jake Silverman

The Morning Oregonian

The Beef: A former safecracker named “Shy” Frank Kodat ran a speakeasy and halfway house for ex-convicts on Water Street between the Morrison and Burnside bridges. That’s how he’d come to know Walker, who had just served a three-year stretch at the Oregon state penitentiary and was now living in Portland.

On the morning of the murders, a booze-fueled feud erupted between the two men over a watch Walker may have stolen from one of Kodat’s friends. Later that day, Walker shot Kodat in the back at the speakeasy, critically wounding him. Subsequent newspaper reports also hint that Walker may have been courting McClain, who had been Kodat’s lover.



The Suspect: Police determined that Walker and McClain's killings were in retaliation for the bullet taken by Kodat, who later recovered. They began rounding up dozens of people from Portland's underworld, including bartenders, ex-cons and taxicab drivers.

But the investigation quickly centered around 54-year-old Jake Silverman, who the paper identified as a onetime merchant turned hotel proprietor and occasional criminal. Silverman would also drink regularly at Kodat's speakeasy and thought the former safecracker was "a mighty fine fellow," according to The Morning Oregonian.

There's another reason why Silverman became a primary suspect in the murders: His wife owned a maroon Studebaker sedan (pictured above).



The Morning Oregonian

The Broadsheet: Over the next six months, The Morning Oregonian provided extensive coverage of the Walker and McClain murders, the investigation and subsequent trial, publishing more than 20 articles. Many of the stories appeared on the front page of the paper.

Archival photo

The Case: Prosecutors eventually charged Silverman, who was Jewish, with the murder of Walker and sought the death penalty. No charges were ever brought against him — or any other suspect — for McClain's death, however. The newspaper never explained why. Silverman's two-week trial began in early November at the Columbia County Courthouse in St. Helens. The Morning Oregonian described the defendant's demeanor as "mirthful" and one of "studied disinterest," even claiming at one point that Silverman "laughed off" his murder charge. During the trial, one of the jurors, a Spanish-American War veteran, committed suicide by stabbing himself in the heart near his home.

On Nov. 13, Silverman spent three hours “perched uncomfortably in the witness chair, alternately describing the peregrinations on the night of the killing or waxing indignant under the cross examination conducted by District Attorney John L. Storia,” The Morning Oregonian reported.

On the day of Walker and McClain’s murders, Silverman “said he visited one or more drinking establishments and consumed variously of beer and whisky,” the paper wrote. “It was brought out that he had been on what he facetiously termed ‘a little toot.’” The defendant later denied that he had any part in the killings.

The Morning Oregonian

The Controversy: Upon hearing the case in its entirety, 11 of the 12 jurors wanted to convict Silverman (pictured smiling above) of second-degree murder. However, a sole juror refused to support the majority view. After hours of deliberation, the jury came back with a compromise conviction of manslaughter. A judge later sentenced Silverman to three years in prison.

The Morning Oregonian

The Outrage: Silverman's light sentence elicited scorn from The Morning Oregonian, which railed against the juror in an editorial tinged with racist undertones and nativist fervor. "This newspaper's opinion is that the increased urbanization of American life ... 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," it wrote on Nov. 25, 1933.

The remarks weren't the first time The Morning Oregonian took aim at ethnic jurors. In previous editorials around that time, the paper bemoaned "mixed-blood" jurors and lamented the role that some immigrants played on juries, questioning their "sense of responsibility" and "views on crime and punishment."

State Library of Oregon

The Backlash: Responding to growing public backlash, the Oregon Legislature recommended a public vote to amend the state's constitution to allow 10-2 jury verdicts in non-murder felony cases. The amendment would also allow juries to acquit defendants on a 10-2 vote.

Proponents of the amendment, known as Measure 302-03, cited the Silverman trial in the [May 1934 Special Election voter pamphlet](#) and newspapers in Eugene and Portland urged readers to support it.

The amendment, which received no organized opposition, [passed with 58 percent of the vote](#), making Oregon only the second state in the U.S. to have a non-unanimous jury system.

The Associated Press

Apodaca v. Oregon: In 1972, the U.S. Supreme Court decided to hear the case of three men convicted of felonies by non-unanimous juries in Oregon. The men claimed the law violated the Sixth and 14th amendments of the Constitution. A four-justice plurality, led by Justice Lewis Powell, [held](#) that there is no constitutional right to a unanimous jury verdict in state-level criminal cases and that Oregon’s law doesn’t violate due process.



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ONE JUROR AGAINST ELEVEN.

Miss Weltz, who walked in upon her ex-employer, Francis J. M. Grace of Santa Cruz, Cal., and shot him dead, has been found not guilty of murder; Jake Silverman of Portland, held responsible for the killing of James Walker in Dutch canyon last April, has been found guilty only of manslaughter.

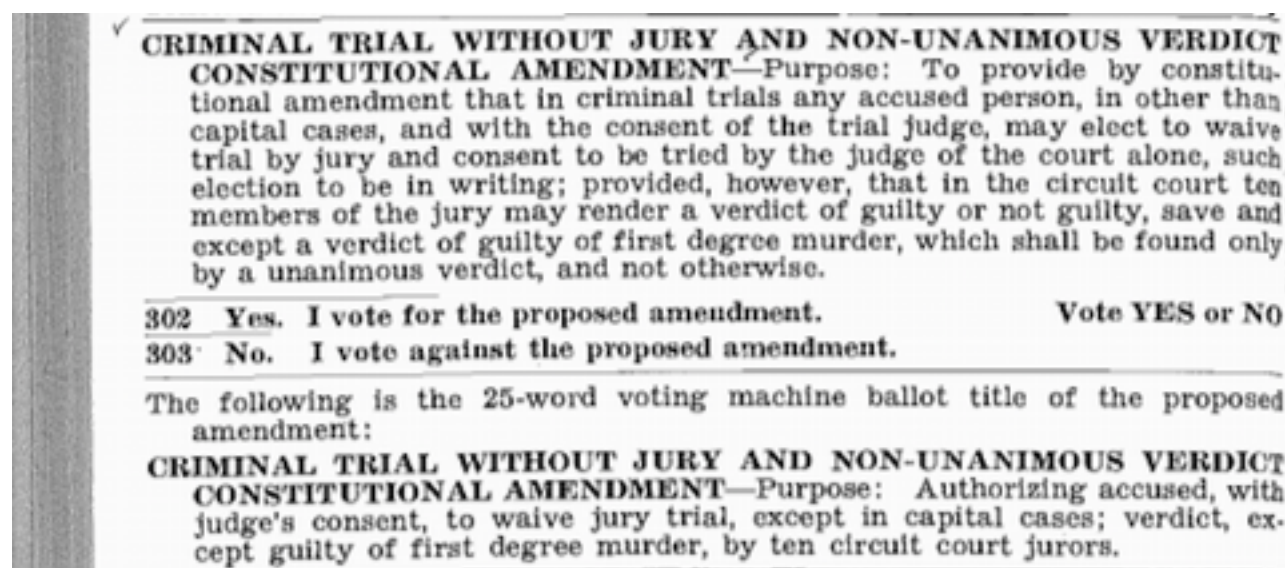
Such incidents always result in the accumulation of a new batch of letters on the editorial desk, complaining about the miscarriage of criminal justice under the jury system.

Objections have been especially pointed in the Silverman case, since it has been alleged, and apparently with authority, that a few hours after the case went to the jury, the vote stood eleven for conviction on second degree charges and one opposed. The one opposition vote is said to have remained unchanged during the remaining eighteen hours that the jury was out, finally forcing the compromise verdict of manslaughter. Obviously, Silverman was not guilty of manslaughter. Either he murdered Walker or he was not involved. But the eleven who stood for second degree either had to give way, or the state had to pay the expenses of a second trial following disagreement.

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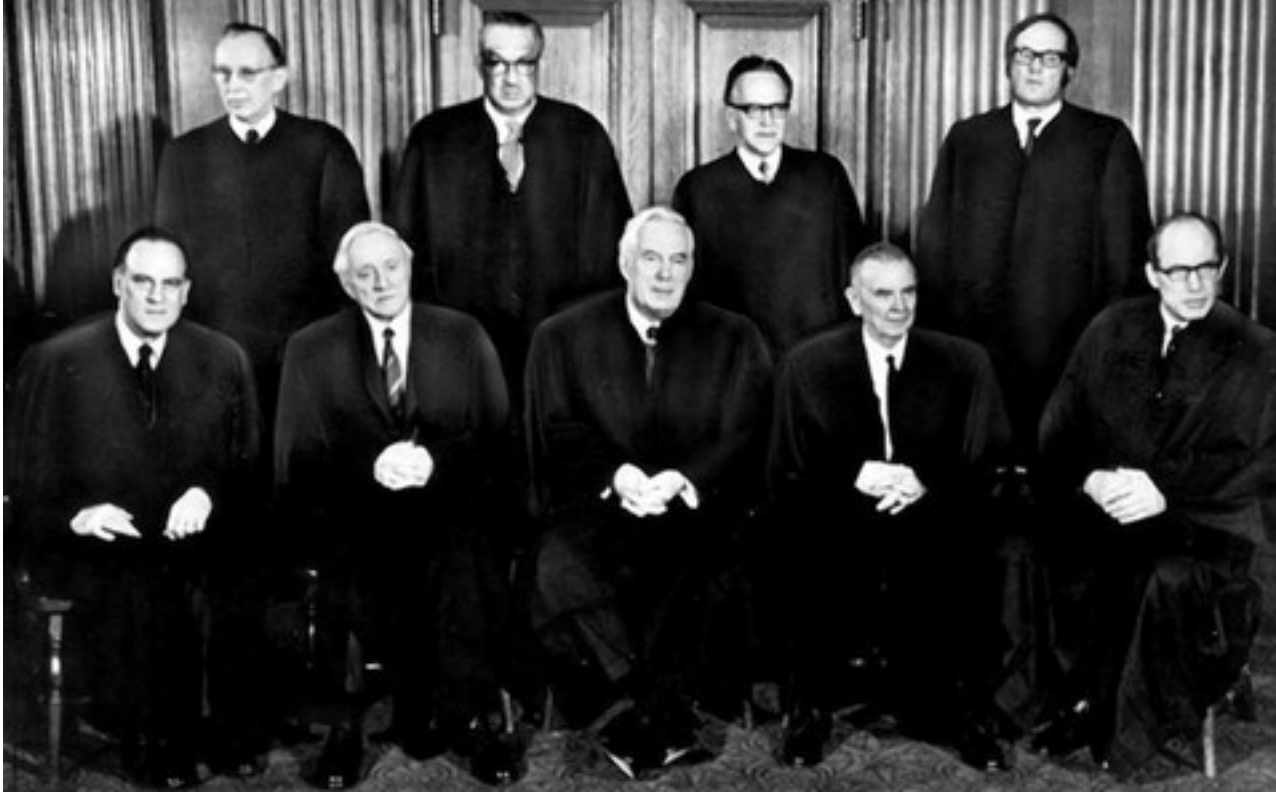


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