Instructions in Supreme Court Jury Trials

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The United States Supreme Court has, by virtue of Constitutional grant, original jurisdiction over all controversies in which a State or foreign emissary is a party.[1] Although the number of categories of cases in which the Court has exclusive jurisdiction is extensively limited by statute, the Court is still the court of first resort for all controversies between two or more States;[2] the Court also occasionally exercises its nonexclusive original jurisdiction.[3] The Seventh Amendment to the United States Constitution[4]

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1. U.S. CONST. art. III, § 2: "In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction."

The intent of the framers on this provision is thoroughly unascertainable. Professor Farrand has concluded that "surprisingly little [is] found in the records of the convention" regarding jurisdiction and the judicial branch in general. M. FARRAND, THE FRAMING OF THE CONSTITUTION 154 (1913). See, however, the speculation in Note, The Original Jurisdiction of the United States Supreme Court, 11 STAN. L. REV. 665, 665 & n.3 (1959) (purpose of clause to insure prestige of tribunal hearing claims involving sovereign or quasi-sovereign entities).

2. 28 U.S.C. § 1251(a) (Supp. IV 1980): "The Supreme Court shall have original and exclusive jurisdiction of all controversies between two or more States." Formerly, the exclusive original jurisdiction extended to suits brought against foreign emissaries, but jurisdiction with respect to these actions was made nonexclusive by the Diplomatic Relations Act of 1978, Pub. L. No. 95-393, 92 Stat. 809, 810, sec. 8(b)(1).

3. For a recent instance, see United States v. California, 449 U.S. 408 (1981).

Relatively few original cases have been heard in the Supreme Court's reported history. See Note, supra note 1, at 701-719 (123 reported original jurisdiction cases counted as of 1959); 17 C. WRIGHT, A. MILLER & E. COOPER, FEDERAL PRACTICE AND PROCEDURE 107 n.1 (1978) (hereinafter cited as WRIGHT & MILLER) (eight cases docketed in 1974, 1975, and 1976 Terms combined).

4. U.S. CONST. amend. VII: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

and a statutory enactment[5] guarantee the right to trial by jury in the resolution of cases at common law before the Court.[6] There have been very few jury trials in the Court's history,[7] but the assertion in an original jurisdiction action of a party's Seventh Amendment right "remains a theoretical possibility."[8] Once the possibility is acknowledged, a procedural problem becomes apparent: how is a multimember Court to deliver jury instructions where the Justices are not in agreement?

5. Judiciary Act of 1789, c. 20, 1 Stat. 73, 80-81, § 13, codified at 28 U.S.C. § 1872 (1976): "In all original actions at law in the Supreme Court against citizens of the United States, issues of fact shall be tried by a jury."

6. The right to trial by jury was addressed most recently in United States v. Louisiana, 339 U.S. 699 (1950). Mr. Justice Douglas for the Court held that the State of Louisiana was not entitled to a jury trial where it sought the equitable remedies of injunction and accounting: "The Seventh Amendment and the statute [28 U.S.C. § 1872], assuming they extend to cases under our jurisdiction, are applicable only to actions at law." Id. at 706 (footnote omitted).

Commentators have inferred from the conditional nature of Justice Douglas's discussion that the right to a Supreme Court jury trial may be in doubt. See WRIGHT & MILLER, supra note 3, at 197-98 & n.27. This inference gains no support from Justice Douglas's opinion or the relevant provisions. The language of 28 U.S.C. § 1872 is explicit in its assurance of the right in actions against citizens, see note 5 supra; the text of the Seventh Amendment, moreover, contains no limitation of the jury right to actions in district courts. See note 4 supra. It is apparent that governmental bodies, like all other parties, are entitled to assert the right, see United States v. Pfitsch, 256 U.S. 547, 553-54 (1921); Collins v. Gov't of Virgin Islands, 366 F.2d 279, 283 (5th Cir.), cert. denied, 386 U.S. 958 (1966), so the exclusive category of actions between States is not immune from the prospect of a jury demand. Furthermore, it is sound judicial practice to refrain from deciding more issues than the essential elements of the case at bar. See, e.g., Pennsylvania v. Wheeling & Belmont Bridge Co., 54 U.S. (13 How.) 518, 568 (1851); Rhode Island v. Massachusetts, 37 U.S. (12 Pet.) 657, 734 (1838) (where Court found original jurisdiction suit equitable in nature, no discussion of right to jury trial for legal actions).

7. There have apparently been only three such trials, all in the eighteenth century. Only one is officially reported, that in Georgia v. Brailsford, 3 U.S. (3 Dall.) 1 (1794), discussed in the text accompanying notes 9-12 infra. Two others are evidenced by other Court records, and are discussed in 1 H. CARSON, THE HISTORY OF THE SUPREME COURT OF THE UNITED STATES 169 n.1 (rev. ed. 1902), and in The Supreme Court--Its Homes Past and Present, 27 A.B.A. J. 283, 286 & n.3 (1941). In Oswald v. New York (U.S. Feb. 6, 1795), a jury verdict for $5,315.06 was entered; in Cutting v. South Carolina (U.S. Aug. 8, 1797), the jury found $5,502.84 in damages. See also Casey v. Galli, 94 U.S. 673, 681 (1876) (parties waived "intervention of a jury").

8. WRIGHT & MILLER, supra note 3, at 197. Of course, the Supreme Court may avoid such a jury trial in nonexclusive cases by redirecting proceedings to the appropriate district court. Even in exclusive cases, the Court typically encourages parties to pursue factual disputes before a special master. See, e.g., Maryland v. Louisiana, 451 U.S. 725, 734 (1981).

In Georgia v. Brailsford,[9] the only reported Supreme Court jury trial, the Justices were able to agree on the charge. Mr. Chief Justice Jay for the Court remarked: "It is fortunate on the present, as it must be on every occasion, to find the opinion of the court unanimous . . . ."[10] When the jurors returned to ask additional questions, the Court was also unanimous in its responses;[11] the jury then rendered its decision.[12] In the future, however, the Court may not be fortunate enough to agree on the form and content of jury instructions.

Jury charges, unlike other judicial actions, require more than an affirmative or negative response to a motion; the body vested with interpretive authority must present a single algorithm, a single formulation of logical argument, to guide the jury in rendering a decision on factual issues. Where the Justices cannot come to agreement upon a single jury instruction, a decision rule must be adopted to determine which of alternative charges is to be delivered.[13] Several potential decision rules may be summarily dismissed. A "pure race" rule, under which the first instruction presented by a Justice would be adopted,[14] is clearly unjust and unworkable in this context. A rule under which the Chief Justice's proposal wins is also unacceptable, as it would appear to place more power in that position than is contemplated by the judicial system.

A plurality rule, one which recognizes the jury instruction endorsed by the largest number of Justices, appears to represent the sound and just resolution of the problem. Although opportunities for negotiation and strategy may be present,[15] and the

9. 3 U.S. (3 Dall.) 1 (1794). The case involved the postwar effect on various creditors of a State's wartime sequestration of debts.

10. Id. at 4.

11. Id. at 5.

12. Id.; the jury found that property in the debts revested in the creditors after the wartime sequestration was nullified by the treaty of peace.

13. The jury instruction issue is therefore inextricably intertwined with the problems addressed by modern social choice theory. See K. ARROW, SOCIAL CHOICE AND INDIVIDUAL VALUES (2d ed. 1963).

14. Cf. UNIFORM COMMERCIAL CODE § 9-312(5)(a) (1978) ("pure race" rule for priorities among secured creditors).

15. Cf. J. VON NEUMANN & O. MORGENSTERN, THEORY OF GAMES AND ECONOMIC BEHAVIOR (3d ed. 1953).

possibility of a tie would have to be addressed,[16] incentives would be placed on the Justices to subscribe to the charge which most closely approximates their own views of the legal issue. The result under the plurality rule test would be the adoption of a single jury instruction which commands the widest support among the members of the Court and which is consistent with the unarticulated yet powerful principle of equality among Justices of the Supreme Court.[17]

16. Perhaps the Chief Justice Rule could here be profitably used; this situation requires a thorough analysis. Indeed, the problem of the equally divided court is one long neglected by commentators and courts alike. Cf. United States v. Barnett, 330 F.2d 369 (5th Cir. 1963) (en banc), certified question answered, 376 U.S. 681 (1964) (Court of Appeals equally divided in contempt proceeding against state governor).

17. It is not incomprehensible to imagine the guarantee of "one person, one vote" applied generally to the entire federal judiciary. Cf. Reynolds v. Sims, 377 U.S. 533 (1964) (principle of one person, one vote in state legislature apportionment); Bolling v. Sharpe, 347 U.S. 97 (1954) (Fifth Amendment Due Process Clause contains equal protection component).