

NYTimes

Of Juries and Defenders

To the Editor: OCT 18 1975

William M. Kunstler's article entitled "The Vanishing Jury" (Op-Ed Sept. 27) is a typically deceptive essay which ought not to go unchallenged. Mr. Kunstler claims that "for at least a generation, the onslaught on the American jury system has continued unabated." In support of this false proposition, he states that in misdemeanor cases defendants are entitled only to a jury of six and, if the potential maximum punishment is less than six months, to none at all.

The fact is that until 1968, when the Supreme Court decided the case of *Duncan v. Louisiana*, defendants in misdemeanor cases had no constitutional right to a jury trial. Right here in the City of New York, defendants were regularly being sentenced to prison for up to three years without benefit of a jury trial. They had a right to a trial before a three-judge bench, and a majority decision of two of the three judges was sufficient to convict.

The Supreme Court pointed out in its decision in *Duncan* that "so-called petty offenses were tried without juries both in England and in the Colonies and have always been held to be exempt from the otherwise comprehensive language of the Sixth Amendment's jury trial provisions. There is no substantial evidence that the Framers intended to depart from this established common-law practice..." Thus, rather than being "eroded," as Mr. Kunstler would have us believe, the right to trial by jury has been enhanced.

With respect to the "right" of defense attorneys to interrogate prospective jurors (with which I agree), lawyers such as Mr. Kunstler have only themselves to blame for the court-imposed restrictions which have been placed upon them. Interminable questioning of individual jurors was becoming so commonplace that the jury selection process frequently took longer than the trial.

It is common knowledge among trial attorneys that many prospective jurors, rather than subject themselves to an endless barrage of questions, resort to subterfuge by answering in such a way as to lead to their early excusal from service, thus further contributing to trial delay.

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New York, Oct. 3, 1975

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