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Revolutionary American Jury: A Case Study of the 1778-1779 Philadelphia Treason Trials, The

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ABSTRACT

Between September 1778 and April 1779, twenty-three men were tried in Philadelphia for high treason against the state of Pennsylvania. These trials were aggressively prosecuted by the state in an atmosphere of widespread popular hostility to opponents of the American Revolution. Philadelphia juries, however, convicted only four of these men, a low conviction rate even in an age of widespread jury lenity; moreover, in three of these four cases, the juries petitioned Pennsylvania's executive authority for clemency. Since it is unlikely that most of the defendants were factually innocent, these low conviction rates must be explained by other factors.

This Article offers such an explanation, and, in the process, uses these trials as a case study of jury service in late eighteenth-century America. We know surprisingly little about this important subject, as legal historians have focused primarily on the more visible role of judges. Drawing on a wide variety of sources, this Article seeks to remedy this imbalance by providing the most thorough study yet written of a group of eighteenth-century American jurors.

This Article demonstrates, for the first time, how eighteenth-century American defense counsel creatively used peremptory challenges deployed along religious, political, and economic lines to create favorable juries, composed almost entirely of men who had previously served in treason cases. Through careful study of demographic records, this Article reconstructs the Philadelphia jury box and allows us to identify not only the

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social status of the jurors, but also the intricate network of connections linking the grand jurors, the trial jurors, and the defendants. It explains how Philadelphia jurors repeatedly balked at the death penalty, effectively nullifying Pennsylvania's capital law of treason. It also examines the subsequent attacks on jury independence triggered by these acquittals, ranging from strident newspaper criticism to a deadly militia attack on the home of James Wilson, signatory to the Declaration of Independence and defense counsel in many of the treason trials. By examining the actions of juries in a convulsive, violent civil war, the Article also illuminates the jury's historical role in balancing liberty and national security, an issue that continues to confront America today.

As United States Supreme Court Justice James Wilson walked through the streets of Philadelphia on December 15, 1790, he confronted a cold, biting wind and a gray, cloudy sky. But the weather could hardly have marred Wilson's spirits; for all intents and purposes, this may have been the sunniest day of his life. At six p.m. that evening, Wilson was scheduled to deliver his inaugural lecture on law at a large hall at the College of Philadelphia.

For Wilson, who had never entirely lost the brogue of his native Scotland, this moment was likely the crowning achievement of his professional career. He had achieved much in his forty-eight years—he was one of only six men who had signed both the Declaration of Independence and the United States Constitution, and he was now serving on the United States Supreme Court. But nothing could quite compare to this moment. Looking out into the hall, Wilson would see President George Washington, First Lady Martha Washington, Vice President John Adams, and numerous members of the United States Congress and the Pennsylvania legislature. They were all there to hear Wilson, perhaps the most erudite legal mind in America, embark on his most ambitious intellectual project—a comprehensive overview of American law that bid fair to establish Wilson as the American Blackstone.

The most distinctive procedural aspect of Anglo-American law, of course, was the jury system. To the audience that night, Wilson explained:

The rights and duties of jurors, in the United States, are great and extensive. No punishment can be inflicted without the intervention

1. CHARLES PAGE SMITH, JAMES WILSON 310 (1956).
2. Id.
3. Id. at 1, 310.
of one. . . . Is it not, then, of immense consequence to [the public and individuals], . . . that jurors should possess the spirit of just discernment, to discriminate between the innocent and the guilty?\(^7\)

The jury system would be one of Wilson's persistent themes; indeed the published version of Wilson's lectures contains forty-six pages on juries (and only three on judges).\(^8\) As he would put it in a later lecture, "to be tried only by men of one's own condition, is one of the greatest blessings—to know that one can be tried only by such men, is one of the greatest securities—which can be enjoyed under any government."\(^9\) The jury was "the most excellent method for the investigation and discovery of truth; and the best guardian of both public and private liberty, which has hitherto been devised by the ingenuity of man."\(^10\)

Wilson consistently lectured in the detached voice of the scholar and never referred to the particulars of individual cases or to his own experiences. When speaking of the jury, however, Wilson almost certainly had a particular set of trials in mind. Twelve years earlier, in this very room at the College of Philadelphia, Wilson had argued before Philadelphia juries in the most high stakes cases of his career. Between September 1778 and April 1779, twenty-three men were tried for treason against the state of Pennsylvania by assisting the British occupation of Philadelphia. Although these men were charged with attempting to undo the very Revolution to which Wilson had pledged his life, his fortune, and his sacred honor, Wilson appeared in court not to prosecute them, but to defend them. And from the defense perspective, the results had been spectacular; Philadelphia juries acquitted nineteen of the twenty-three men, a high acquittal rate even in an age known for widespread jury leniency.\(^11\) Even the judges who presided at the trials were surprised, attrib-


\(^9\) Wilson, supra note 7, at 332.

\(^10\) Id.

Wilson’s success in the treason trials infuriated many of his fellow Philadelphians. Indeed, the repeated pattern of jury acquittals contributed to one of the most notorious episodes of internal violence of the American Revolution. In October 1779, a large group of armed militiamen marched to Wilson’s house, where an ensuing gun battle erupted, leaving six or seven men dead, and numerous others severely wounded. Wilson’s house was breached by the militiamen, and one of his friends was bayoneted shortly before the Philadelphia cavalry arrived to restore order. The militiamen later cited “the exceeding lenity which has been shown to persons notoriously disaffected to the Independence of the United States” as one of the reasons for the attack on Wilson’s house. Although one would not know it from the dry text of the Law Lectures, Wilson’s commitment to jury trial was rooted in searing, near-death experiences that he would never forget.

The Philadelphia treason trials defended by Wilson provide a unique window into the American criminal jury during the Revolution. In 1975, historians Harold Hyman and Catherine Tarrant lamented the “very thin body of American legal history concerning juries,” and argued that “[f]ew areas of legal history need attention more.” Jury trials have received some attention in the intervening thirty-three years, but it is safe to say that we still know very little about how criminal juries actually

12. Petition of Judges in Case of George Hardy, in 7 PA. ARCHIVES 326, 327 (Samuel Hazard ed., 1853) [hereinafter 7 PA. ARCHIVES].


14. SMITH, supra note 1, at 135.

15. The Memorial and Representation of a Deputation from the Several Battalions of Militia of the City and Liberties of Philadelphia (Oct. 8, 1779) (on file with Historical Society of Pennsylvania (HSP), IX Stauffer Collection 633).

16. The legal issues raised by the cases are relatively accessible. Indeed, several months before Wilson’s Law Lectures, Alexander James Dallas published his first volume of Pennsylvania Reports. This volume included two of the treason cases, Respublica v. Carlisle, 1 U.S. (1 Dall.) 35 (Pa. 1778) and Respublica v. Roberts, 1 U.S. (1 Dall.) 39 (Pa. 1778), and the volume would eventually find its way into nearly every law library in the United States under the title 1 United States Reports, despite containing no decisions of the United States Supreme Court.


functioned in late eighteenth-century America. It has been relatively straightforward to document what learned contemporaries said about juries, but it is much harder to determine what juries actually did. This is unfortunate because, as historian J.R. Pole pointed out in 1993, trial by jury "is of the highest importance for understanding the character of American history in its colonial period and beyond."19

For a number of reasons, the 1778-1779 Philadelphia treason trials were the most significant jury trials of the American Revolution. First, they took place in Philadelphia, the seat of the Continental Congress and thus the effective national capital, as well as America's largest city and busiest port.20 Philadelphia was the "political, economic, and cultural center of the colonies and the new nation."21 What happened there had nationwide implications. Second, the trials involved some of the most prominent figures of the Revolution. They were presided over by one signer of the Declaration of Independence, defended by another signer, and involved participants who played a major role in the creation of the United States Constitution. Third, the trials raised issues that spoke dramatically to the violent and disruptive nature of the Revolution itself—the severance of ties to Great Britain and the imposition of mandatory allegiance to the new states of the American union. Despite the serious nature of the criminal allegations and the potential danger to the state, these trials were conducted according to customary rules of procedure even in the middle of a divisive civil war. Finally, they were more controversial than any other series of trials, resulting in extensive newspaper discussions about the proper role of juries and, ultimately, in violent confrontation and bloodshed. Jury trial itself was on trial in Philadelphia in 1779, and it was not at all obvious that it would survive.

The bitter response to these jury verdicts points to a fundamental mystery that has never been adequately explained: Why were Philadelphia juries so willing to acquit defendants of treason in the middle of a convulsive civil war, the most violent and disruptive event any of them would ever know? If the revolution failed, the jurors themselves risked being hanged for treason against Great Britain.22 As this Article will explain, it is most unlikely that the acquitted defendants were all factually innocent.23 Yet when faced with the ultimate power of life and death, Philadelphia juries displayed extraordinary moderation. Even in three of the four cases in which they voted for conviction, they petitioned Pennsylvania's executive authority for clemency.

22. See, e.g., PA. EVENING POST, April 8, 1777, at 191 (reporting that England planned to prosecute the leaders of the American Revolution for high treason in England).
23. See infra Part IV.
This Article seeks to solve this mystery and, in the process, uncover the actual functioning, at a detailed level, of American criminal juries during the Revolution. To do this, we must carefully examine the jurors themselves. It has been far too easy for legal historians to focus almost entirely on judges and to speak only generically about "juries," without paying any attention to individual jurors. Yet jury lists survive for twenty-two of the twenty-three treason trials, and, combined with other contemporary sources, yield significant insights into jury behavior. What is perhaps most startling is how few trial jurors there really were. Although the twenty-two trials created 264 juror positions, only fifty-eight men served on these juries. Nineteen of those men served only once. The remaining thirty-nine jurors filled the remaining 243 jury positions, for an average service of 6.23 trials per juror. And these jurors did not serve by accident; as this Article explains, they were carefully selected by the adroit use of peremptory challenges under a common law regime that awarded thirty-five peremptory challenges to the defense—and none to the prosecution. Uncovering information about these jurors is not easy, but it can be done. From tax records, court records, genealogical materials, manuscript sources, newspapers, and printed materials, I have gathered what I believe is the most extensive set of data ever assembled about a particular set of eighteenth-century American jurors.

These data yield a number of significant findings. First, with respect to jury composition, they provide the first clear evidence of eighteenth-century American defense counsel using peremptory challenges along religious, economic, and political lines to shape the jury in ways favorable to the defense. They also demonstrate the powerful effects of serial jury service on deliberation and jury independence. Moreover, the data reveal that although the trial jurors were drawn from a broader segment of the population than were their English counterparts, there were significant class divisions between the grand jurors and the trial jurors. Second, the data demonstrate that the verdicts were driven in part by strong dissatisfaction with the death penalty as a mandatory punishment for treason. Jurors repeatedly sought to mitigate the effects of the death penalty, even in those cases in which they convicted. The experienced trial jurors had much in common with the defendants they tried, and it was doubtless easy for them to imagine themselves in the defendants' shoes. Third, juries functioned as independent deliberative bodies that took their obliga-

24. Murrin, supra note 18, at 197 ("Any direct study of jurors would require enormous time and effort."). Eighteenth-century records provide numerous stumbling blocks to a project of this sort. First, the jury records contain the names of the jurors and no other identifying information. This makes it particularly difficult to identify jurors when there are multiple individuals in Philadelphia with the same name, a problem that is compounded by the large number of sons who bore the same name as their fathers. Second, many names appear to have been spelled phonetically in court records and tax records and do not always conform to other spellings. Identification of particular jurors thus becomes a painstaking operation in detective work, in which multiple possibilities must be considered and eliminated before definitive identification can take place. I have erred on the side of caution, providing identifying information only in cases of reasonable certainty.
tions seriously, even in the face of strong community pressure, and it was precisely this independence that subjected them to repeated attacks.\textsuperscript{25}

This Article begins with the historical background and context that led to the 1778-1779 Philadelphia treason trials. Part I discusses the origin of Pennsylvania's treason law, the difficulty of establishing functioning courts, the disruption caused by the British invasion, and the much-delayed initiation of treason prosecutions in 1778.

Part II discusses the composition and role of the grand jury in issuing indictments for treason. Overall, the grand jury indicted a lower percentage of individuals than did most eighteenth-century Pennsylvania grand juries. This indictment rate is surprising, since the grand jury was composed of many of Philadelphia's most prominent revolutionaries, including some who had suffered significantly during the British occupation. They would not seem to be obviously sympathetic to suspected traitors. Part II also analyzes the demographic characteristics of the grand jurors, noting in particular the extraordinary wealth that set them far apart from their fellow Philadelphians.

Part III discusses the selection and composition of the trial juries. Although the panel was selected by Philadelphia's sheriff, each individual jury was shaped significantly by defense counsel exercising the right to thirty-five peremptory challenges. This Part explains how the peremptory challenge process led to a small number of jurors serving repeatedly on the juries and to highly experienced jurors serving in the later trials. Demographic data on the jurors provide further insights into the peremptory challenge process. Defendants seem to have favored Anglican jurors, wealthy jurors, and jurors who had not personally performed their militia duties. The trial jurors were much less politically prominent than the grand jurors and were less involved in revolutionary activity; indeed, their overall record of militia service was far from impressive. Demographic data also show the large number of occupations from which jurors were drawn, as well as the standing of the jurors within Philadelphia's larger social structure. These data show that Philadelphia's juries were more broadly based than their English counterparts.

Part IV analyzes the trials themselves. Although several defendants may have been factually innocent, most were acquitted because of a confluence of other factors. Many jurors appear to have had personal connections to the defendants or to other persons suspected of disloyal

\textsuperscript{25} Without similar research into other trial juries, it is impossible to know just how typical these trials were. Treason cases were highly unusual and presented a number of complexities absent from more run-of-the-mill criminal cases. Moreover, Pennsylvania's experience with treason juries may have differed from that of other colonies. \textit{See, e.g.,} \textsc{Harry M. Ward, The War for Independence & The Transformation of American Society} 56 (1999) (stating that in November 1777, thirty-five men were convicted of treason and sentenced to death at a court of oyer and terminer in Morristown, New Jersey; two of the men were executed, while the others received a pardon conditional upon enlistment in the Continental Army). Details of procedure varied from state to state, as did the wartime experiences that brought treason issues to the fore. If not necessarily typical, the Philadelphia trials were nonetheless highly significant, for the reasons stated above.
activity. The defendants themselves were not from significantly different social strata than the jurors, and many of them had participated in early revolutionary activity. Their crimes were not those of incorrigible criminals, but of friends and neighbors who had made a political miscalculation. Several defendants successfully claimed they had been coerced by the British and that they had acted leniently toward their fellow Americans. The death penalty also played a significant role in jury decision-making, since the jurors viewed the death penalty as disproportionate to many of the alleged offenses. The possibility of judicial imposition of an onerous bond on acquitted defendants also inclined juries toward acquittal. Moreover, modern psychological research suggests that serial jury service may have disposed the jurors to acquittal if stronger cases were presented first.

Part V discusses the aftermath of the treason trials in 1779, including the growing dissatisfaction with jury verdicts in treason cases. This dissatisfaction manifested itself in three episodes of escalating significance. First, the juries came under fierce attack from anonymous critics in Philadelphia newspapers, forcing several jurors to respond with defenses of their decisions and of jury independence more generally. Second, radical critics of the jury verdicts sought to intimidate and manipulate a jury in the Philadelphia Mayor’s Court. Finally, discontent with the jury verdicts combined with other grievances to produce the attack on James Wilson’s house in October 1779. The quelling of that disorder significantly diminished the criticism of trial juries.

Part VI concludes and reflects on the significance of the account related in this Article. Although this Article is a work of legal history and is not intended to resolve any particular issue in modern American law, the United States Supreme Court has repeatedly examined eighteenth-century practices in interpreting the scope of the jury trial right and other criminal procedure protections of the Bill of Rights.26 By offering the most complete portrait ever attempted of an eighteenth-century American jury, this Article can inform a number of debates over the role of the jury in modern American life.

I. THE HISTORICAL CONTEXT OF THE PHILADELPHIA TREASON TRIALS

On July 4, 1776, the Declaration of Independence severed all remaining legal ties between the American colonies and the King of Great Britain.\(^{27}\) This final breach had momentous consequences for the law of treason. As a Massachusetts man explained, "Our Tories . . . knew very well the absurdity of punishing as high treason any acts or deeds in favor of the government of the King of Great Britain, so long as we allowed him to be King of the colonies."\(^{28}\) Indeed, "[n]o one thing made the Declaration of Independence indispensably necessary more than cutting off traitors."\(^{29}\)

Eight days prior to the Declaration, the Continental Congress had declared that all persons owing allegiance to their colony who shall "be adherent to the King of Great Britain . . . giving to him . . . aid and comfort, are guilty of treason against such colony."\(^{30}\) The Congress recommended that each state “pass laws for punishing . . . such persons before described, as shall be proveably attainted of open deed, by people of their own condition.”\(^{31}\)

By the time of the Declaration, war had been raging for over a year, and Pennsylvanians had taken strong actions to ensure that their fellow citizens did not provide support to the British. The “disaffected,” as they were called, had been subject to rump proceedings before revolutionary committees, often resulting in imprisonment or a variety of other sanctions.\(^{32}\) But there had been no formal convictions for treason in a civilian court pursuant to a jury trial. With independence finally achieved, punishment of those Americans who remained loyal to Britain could finally proceed through the ordinary course of the criminal law.

Three significant delays, however, combined to prevent Pennsylvania from holding any treason trials until 1778: (1) a delay in passing a treason statute; (2) a delay in implementing the state’s new court system; and (3) a delay resulting from the British invasion of Pennsylvania. The statutory problem was solved first. In the fall of 1776, a radical and controversial state constitution was adopted, which provided for a unicameral legislature and a plural executive known as the Supreme Executive Council (SEC). When the new Pennsylvania Assembly convened in early 1777, it enacted the treason statute that would remain in effect throughout the


\(^{28}\) Letter from Joseph Hawley to Elbridge Gerry, July 17, 1776, in The American Tory 73 (Morten Borden & Penn Borden eds., 1972).

\(^{29}\) Id.


\(^{31}\) Id.

revolutionary period. The statute specified seven offenses that would constitute high treason: (1) receiving a commission from the King of Great Britain; (2) levying war against the state or its government; (3) aiding or assisting enemies at war with the state by joining their armies, or persuading others to join their armies; (4) furnishing enemies with arms, ammunition, or other provisions, for their aid and comfort; (5) carrying on a traitorous correspondence with the enemy; (6) conspiring to betray the state or the United States of America to a foreign enemy; and (7) sending intelligence to the enemy. Two witnesses were required for conviction, and trials were to be held in courts of oyer and terminer. Pennsylvania had traditionally tried felonies before the justices of the Pennsylvania Supreme Court, acting under a commission of oyer and terminer, and this practice would continue under the new state constitution. The statute also defined misprision of treason, which included a variety of lesser offenses, such as discouraging enlistment in the armed forces. Misprision cases also required two witnesses and were cognizable before the justices of the peace in the courts of quarter sessions.

Trials for treason thus required a functioning Supreme Court, and this was the second major cause of delay. The Supreme Executive Council initially offered the position of Chief Justice to Joseph Reed in March 1777. The thirty-five-year-old Reed had studied at Middle Temple and had served both as President of Pennsylvania’s 1775 Provincial Convention and as adjutant-general of the Continental Army. When Reed finally declined the position four months later, the Council offered it to Thomas McKean, who accepted. McKean was a signer of the Declaration of Independence who represented Delaware in the Continental Congress. He would later serve as President of the Continental Congress,
as a prominent delegate to Pennsylvania's 1787 ratification convention, and as governor of Pennsylvania. McKean took the oath of office on September 1, 1777, along with two associate justices: John Evans and William Augustus Atlee. Although the Supreme Court accomplished some minor tasks in 1777, its judicial functions were completely disrupted by the war, the third major delay.

The British occupation of Philadelphia was the seminal event of the War for Independence in Pennsylvania. Following Washington's defeat at Brandywine Creek, the British army entered Philadelphia on September 26, 1777. The Continental Congress and the Pennsylvania state government had already fled the city, and Washington would eventually withdraw his army to Valley Forge for the winter. Historians estimate that about one-third of Philadelphia's population, some 12,000 people, had fled the city in advance of the invasion.

The state government, in exile in Lancaster, soon began hearing reports of Pennsylvanians who were actively aiding or joining the British army. In March 1778, the Assembly, with assistance from Chief Justice McKean, passed a law entitled "An Act for the attainder of divers traitors." The law named twelve prominent individuals who had sided with the British and required them to appear for trial by April 20, 1778. If they failed to appear, they would be deemed "convicted and attainted of high treason, to all intents and purposes whatsoever." The Act also authorized the Supreme Executive Council to issue additional proclamations naming persons who had joined the British army. Any such persons who failed to appear for trial would also be attainted of high treason. Although such conditional bills of attainder would soon be prohibited by the U.S. Constitution, Pennsylvania did not seek primarily to hang people without trials, but to seize promptly the abandoned estates of loyalists who had fled to the British. The law accordingly set forth various procedures for seizing the estates of those persons who failed to report for trial. The Supreme Executive Council took full advantage of its power to issue proclamations of attainder. Between May 8, 1778 and June 15, 1778, it issued three separate proclamations, totaling

43. See John M. Coleman, Thomas McKean: Forgotten Leader of the Revolution xii-xiii (1975); Rowe, supra note 42, at xii-xiii.
44. Embattled Bench, supra note 39, at 132.
45. Id. at 136.
47. Id. at 148-56.
48. Rosswurm, supra note 13, at 149.
49. Rowe, supra note 42, at 135.
50. An Act for the Attainder of Divers Traitors if They Render not Themselves by a Certain Day, and for Vesting Their Estates in this Commonwealth, and for More Effectually Discovering the Same and for Ascertaining and Satisfying the Lawful Debts and Claims Thereupon, 9 Pa. Stat. 201 (1778).
51. Id. at 201-02.
52. Id.
53. Id. at 202-03.
54. Id.
55. Id. at 203-15.
332 people, including 139 from the city and county of Philadelphia.\textsuperscript{56} When the British army finally evacuated Philadelphia on June 18, 1778,\textsuperscript{57} approximately 3,000 Americans fled with them, while many others who had aided the British remained behind, nervously awaiting the arrival of their countrymen.\textsuperscript{58} British officials had done little to help the Philadelphia loyalists and had advised them to "make the best deal they could with the rebels."\textsuperscript{59} When the exiled Philadelphians returned, they were greeted by a devastated city.\textsuperscript{60} The streets were littered with filth and debris.\textsuperscript{61} Approximately 600 houses had been completely destroyed.\textsuperscript{62} Most other houses had been stripped of their personal possessions.\textsuperscript{63} The stench from dead horses and human corpses was so strong at the State House that the Continental Congress was forced to hold its meetings at the College of Philadelphia.\textsuperscript{64} Stores had been vandalized, and most boats in the harbor had been burned.\textsuperscript{65} Even churches suffered tens of thousands of pounds in damages.\textsuperscript{66}

The initial mood appears to have been one of shock and resignation. Charles Willson Peale noted that people reunited with their former friends were now "fearful and distrustful lest they should take one by the hand who had played the traitor's part."\textsuperscript{67} Yet there were no immediate acts of vengeance. Peale observed, "I have often heard those exiled say how they will use those who had been active on the enemy's taking possession of the city, and I have often feared what might be the effect of that resentment, but now to my surprise, I have not seen or heard of one rude encounter."\textsuperscript{68} Indeed, in early July, the Supreme Executive Council noted, "there is a great unwillingness in the People of the City to give the necessary information against the disaffected."\textsuperscript{69}

This mood, however, quickly turned to anger and vengeance. Peter Deshong, one of the men named in the attainder proclamations, found "his House surrounded by a Party of Men, armed with Clubs, who were in search of him for [the] avowed Purpose of Revenge."\textsuperscript{70} Deshong's attorney complained that "this is not the only Instance by Many of taking Revenge out of the Course of regular Proceedings."\textsuperscript{71}

\begin{enumerate}
\item[56.] 3 Pa. Archives (4th Ser.) 669-72, 676-88 (1900).
\item[57.] Taffe, supra note 46, at 195.
\item[58.] John W. Jackson, With the British Army in Philadelphia 259-60 (1979).
\item[59.] Taffe, supra note 46, at 192.
\item[60.] Jackson, supra note 58, at 265.
\item[61.] \textit{Id.}
\item[62.] \textit{Id.} at 266.
\item[63.] \textit{Id.} at 270.
\item[64.] \textit{Id.} at 267.
\item[65.] \textit{Id.} at 267-68.
\item[66.] \textit{Id.} at 273.
\item[67.] Diary of Charles Willson Peale (June 17, 1778) (on file with American Philosophical Society, Charles Willson Peale Papers).
\item[68.] \textit{Id.}
\item[69.] Rosswurm, supra note 13, at 153.
\item[70.] Letter from William Lewis to Timothy Matlack (July 14, 1778), in 6 Pa. Archives 641 (Samuel Hazard ed., 1853).
\item[71.] \textit{Id.}
\end{enumerate}
an anonymous submission to the Pennsylvania Evening Post warned,

A Hint to the Traitors and those Tories who have taken an active part with the enemy, during their stay in this city. You are desired, before it is too late, to lower your heads, and not stare down your betters with angry faces. For you may be assured the day of trial is close at hand when you shall be called upon, to answer for your impertinence to the Whigs, and your treachery to this country.72

By late July, complaints were being made that persons “notoriously disaffected to the American cause, and others of suspicious characters, presuming upon the indulgence and lenity of their virtuous and forebearing countrymen, have lately manifested an unbecoming and insolent spirit.”73 In particular, they had “endeavoured to suppress all evidence and discovery of the oppression of the friends of America, and other misdoings before and during the enemy’s possession of this city, by intimidating and discouraging the good people of this State from appearing against them.”74 Nearly 200 men formed a “Patriotic Society” and resolved to disclose all “facts within [their] knowledge tending to bring such offenders to proper trial.”75 These men would play a prominent role in the fall treason trials. Its members included four grand jurors76 and eighteen trial jurors.77 Historian Steven Rosswurm argues, “[e]xcept for its few moderates and conservatives, the roll reads like a who’s who of the Philadelphia radical leadership from 1775 to 1780.”78

By this time, Pennsylvania finally had a functioning Supreme Court that could conduct the business of the oyer and terminer courts.79 It first sat in Lancaster County in April 1778, and then heard cases in York and Cumberland Counties.80 The Philadelphia Court of Oyer and Terminer was scheduled to begin in September 1778, and a number of cases of treason were likely to be heard.81

In late eighteenth-century England, most felony cases were prosecuted by private parties, generally the victims.82 Treason cases, by contrast, were generally prosecuted by professional attorneys working for the crown such as the attorney general or solicitor general.83 Pennsylvania followed England’s lead with respect to treason trials, entrusting all of the

72. PA. EVENING POST, July 16, 1778, at 241.
73. PA. EVENING POST, July 25, 1778, at 256.
74. Id.
75. Id.; see also Rosswurm, supra note 13, at 154-55.
76. PA. EVENING POST, July 25, 1778, at 256 (listing Dean, Hasenclever, Loxley, and Pryor).
77. Id. (listing Adcock, Alberson, Barnhill, Beach, Campbell, Dickinson, Goucher, Gray, Hale, Humphreys, McLean, J. Palmer, Pancoast, Roush, Simpson, Skinner, G. Wilson, and Zantzinger).
78. Rosswurm, supra note 13, at 155.
79. Rowe, supra note 39.
80. Id. at 138-39.
81. Id.
83. Id. at 98-99.
cases to the state's attorney general, Jonathan Dickinson Sergeant. On August 7, 1778, the SEC informed the Assembly that as "the professors of law are supposed to be making great sums of money by espousing the cause of the disaffected," it would be necessary to increase Sergeant's funding and to provide him with at least one assistant. This was the "more necessary, as there is every reason to suppose that some of the persons charged with treasonable practices will endeavour to obtain, at any expense, the most experienced council in this and the neighboring states." The SEC warned, "[t]he bringing of Traitors to justice is at all times an object of great importance, and more especially so in our present circumstances." The Assembly acquiesced, and the SEC offered the assistantship to Joseph Reed, a member of the Patriotic Society, noting the "important trials of traitors, which would employ the Supreme Court during the next winter.

And thus the wheels of English criminal procedure, rusty from several years of disuse, again began to turn on the banks of the Delaware. The common law criminal jury, developed over hundreds of years in an island kingdom 3000 miles away, would be deployed in a way Englishmen could never have imagined—to try as traitors those men who had remained loyal to their English king. The process began on August 21, 1778, when the three justices of the Supreme Court issued a precept to Philadelphia County Sheriff James Claypoole for holding a Court of Oyer and Terminer and General Gaol Delivery at the State House, beginning on Monday, September 21. The next day, Claypoole issued a proclamation announcing the court's sitting. Claypoole presumably selected and summoned the grand jury and the panel of trial jurors sometime between August 21 and September 21.

The State House, now known as Independence Hall, was the most natural location for the trials, as it held the courtroom where the Pennsylvania Supreme Court had sat since 1743. This courtroom was
directly opposite the Assembly Room where the Continental Congress had approved the Declaration of Independence. Despite the highly symbolic significance of this location, it appears that the trials were instead conducted at the College of Philadelphia. Between August 21 and September 21, someone—it is unclear who—decided that the trials should be moved. The decision may have turned on delays in restoring the State House courtroom after damage during the British occupation, or perhaps the college simply offered more ample facilities for large public events. "College Hall," located on the second floor of the college’s New Building, would have been well suited to public trials. Over ninety feet long, it had a raised platform on the north end, where the judges could have sat, and additional seating galleries on the south end. College Hall had become a major part of Philadelphia’s cultural life, and was used for plays, concerts, lectures, and organ recitals. Now the hall would have to serve the very different purpose of trying the most contentious capital cases in Pennsylvania’s history.

II. THE GRAND JURY

The institution of the grand jury, is, at least in the present times, the peculiar boast of the common law. In the annals of the world, there cannot be found an institution so well fitted for avoiding abuses, which might otherwise arise from malice, from rigour, from negligence, or from partiality, in the prosecution of crimes.

—James Wilson

When the Court of Oyer and Terminer convened on September 21, 1778, the first order of business was the seating of the grand jury. Sheriff James Claypoole returned an eighteen-person grand jury, which was duly sworn in. Pennsylvania grand juries varied in size, and James Wilson would later point out that the number of grand jurors ranged between twelve and twenty-three members. Section A of this part ana-
alyzes the indictments issued by the Philadelphia grand jury. Section B examines the composition of the grand jury.

A. INDICTMENTS

The grand jury initially met from September 21 to October 16. The grand jurors petitioned the Pennsylvania Assembly for additional payments, noting that this “unusual length of time” had caused them to incur significant expenses, which ought to be borne by the public. It appears that all of the treason indictments were issued during this meeting of the grand jury. We know nothing about where the grand jury physically met or what type of evidence was presented to it.

Over the course of its term, the grand jury considered at least forty-one separate cases. Thirty-nine of the forty-one identifiable cases involved charges of treason and the grand jury issued indictments in twenty-five of these cases. This indictment rate—64.1%—was somewhat lower than the average indictment rate of 80% for Pennsylvania grand juries in the 1770s. Without detailed information of the grand jury proceedings, it is hard to know why indictments were issued in some cases and not others. One hint comes from analysis of the attainder proclamations.

105. Id.
106. The Assembly minutes indicate that a grand jury met again from November 9 to November 25 and again petitioned the Assembly for additional payments. Id. at 21. The Assembly minutes refer to a “memorial from the (Second) Grand Jury for the Court of Oyer and Terminer for the County of Philadelphia,” which suggests that this grand jury was composed of different people. This possibility is supported by a record showing a Philadelphia Oyer and Terminer grand jury indicting two individuals for highway robbery on November 9, 1778. Record of Case of James O’Bryan and John Beard (on file with Pa. State Archives, Clemency File, RG-27). Only two of these grand jurors, James Young and John Dorsey, were on the first grand jury. This case is omitted from the cases listed in the Court’s official docket book under the first grand jury, although it is mentioned in a newspaper account, along with an otherwise undocumented manslaughter case. PA. PACKET, Dec. 12, 1778. A record from April 1779 confirms that the first grand jury indicted George Harding for treason, which strongly suggests that the first grand jury heard all of the treason cases, and that the second grand jury heard other cases. Record of Case of George Hardy [sic] (on file with Pa. State Archives, Clemency File, RG-27). A grand jury also met at some point in December. See PA. PACKET, Dec. 12, 1778 (reporting grand jury’s refusal to indict David Franks for treason). This may have been a third grand jury, or it may have reflected a continuation of either the first or second grand jury.
107. Cf. JULIUS GOEBEL JR. & T. RAYMOND NAUGHTON, LAW ENFORCEMENT IN COLONIAL NEW YORK 347 (1944) (“We are badly informed as to how the work of the grand jury was managed when there were cases pending.”).
108. O&T Docket, supra note 100, at 1-11. Further precision is impossible, as the court’s surviving docket book appears to be partially incomplete. For example, the treason trial of James Stevens in April 1779 is amply documented in contemporary sources, but is omitted from the docket book. Philadelphia, PA. GAZETTE, Apr. 14, 1779; 1 THE DIARY OF ELIZABETH DRINKER 343 (Elaine Forman Crane ed., 1991) [hereinafter DRINKER DIARY]. The docket book may have been compiled at a later time, with the result that these cases were inadvertently omitted. Cf. Blinka, Trial by Jury, supra note 18, at 543 n.76 (discussing practice of compiling docket books at a later date).
110. MARIETTA & ROWE, supra note 11, at 46.
The grand jury was more willing to indict when the defendant had been previously named in an attainder proclamation. Twelve of the thirty-nine treason cases involved such defendants, and the grand jury issued indictments in ten of these cases, for an indictment rate of 83.3%. Of the twenty-seven treason cases that reached the grand jury through processes other than the attainder mechanism, fifteen resulted in indictments, for an indictment rate of only 55.5%.

In short, the grand jury returned treason indictments at a lower rate than for other crimes. Was there something distinctive about the grand jurors that made them particularly sympathetic to persons accused of treason? As the next Section demonstrates, the answer is clearly "no."

**B. Composition**

William Blackstone memorably described English grand jurors as "gentlemen of the best figure in the county." James Wilson agreed, stating in a 1790 grand jury charge that grand juries should be "composed of men distinguished by their talents and their virtues—of men, entitled to the first grade of character in the country or state. It is the duty of the returning officer, that such men be returned." These descriptions are fully applicable to the Philadelphia grand jurors. They were wealthy, prominent individuals, with sterling revolutionary credentials. The names, ages, occupations, religious affiliations, and ethnicities of the grand jurors, where known, are set forth in Appendix A.

1. **Demographic Data**

The grand jurors were neither particularly young nor particularly old. Ages can be determined with some precision for only 10 of the 18 grand jurors, who ranged in age from 32 to 65. The average age was 50.4 and the median age was 50.

Occupations can be identified for eleven of the grand jurors. Five were merchants, and one was a shopkeeper. Historian Thomas Doerflinger has emphasized that the terms "merchant" and "shopkeeper" had relatively precise meanings in the eighteenth century: "Merchants were

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111. 3 PA. ARCHIVES, supra note 56, at 669-70, 676-77, 681 (stating that Garrigues, Carlisle, Deshong, John Roberts, Stevens, Hathe, Ming, Huntsman, Bolton, and Hugh Henry, were all indicted); id. at 683 (stating that John Supple was not indicted).
112. O&T Docket, supra note 100, at 1-11.
113. BLACKSTONE, supra note 36, at *299.
115. See infra app. A.
116. Id.; cf. RICHARD ALAN RYERSON, THE REVOLUTION IS NOW BEGUN 71 (1978) ("It is harder to determine the age of Philadelphia's resistance leaders than any other simple fact about them."); Robert Gough, Notes on the Pennsylvania Revolutionaries of 1776, 96 PA. MAG. HIST. & BIOGRAPHY 89, 91 (1972) (finding an average age of 44.7 for Pennsylvania's revolutionary leaders).
117. Infra app. A.
wholesalers who—in America, at least—were typically active in foreign markets; shopkeepers were general retailers who obtained their goods from merchants.\textsuperscript{118} Doerflinger argues that most of Philadelphia’s merchants “were part of the city’s large middle stratum” and included many “upwardly mobile strivers.”\textsuperscript{119}

Four of the grand jurors were skilled artisans, and another was a baker and flour inspector.\textsuperscript{120} “Artisans,” or as they were often called, “mechanics,” were self-employed craftsmen and constituted approximately half of Philadelphia’s male residents in the early 1770s.\textsuperscript{121} Although artisans were considered of lower social status than merchants, many artisans were economically successful.\textsuperscript{122} Eric Foner points out that the typical artisan of revolutionary Philadelphia was “literate, self-educated, and often interested in science.”\textsuperscript{123} Moreover, the artisans had played a leading role in pre-independence Philadelphia politics, and were often among the most ardent revolutionaries.\textsuperscript{124}

Five of the eighteen grand jurors were currently serving as justices of the peace, and were denominated as “Esq.” in the court’s docket book.\textsuperscript{125} Another was serving as a tax assessor.\textsuperscript{126}

The grand jurors were wealthy—significantly wealthier than their fellow Philadelphians. In 1779, the average assessed wealth in the City of Philadelphia was £29.19, and the median was £5.\textsuperscript{127} By contrast, the seventeen grand jurors identifiable in the tax records had an average as-

\begin{footnotes}
\item[118] THOMAS M. DOERFLINGER, A VIGOROUS SPIRIT OF ENTERPRISE: MERCHANTS AND ECONOMIC DEVELOPMENT IN REVOLUTIONARY PHILADELPHIA 17 (1986).
\item[119] Id. at 16.
\item[120] See infra app. A.
\item[122] FONER, supra note 20, at 28-29.
\item[123] Id. at 38.
\item[124] Id. at 60-63.
\item[125] Justices of the peace played a similar role in English grand juries. As historian J.M. Beattie points out, in Surrey and Sussex “the grand jury at the assizes was by [the late seventeenth century] the preserve of the gentry and even included a significant number of justices of the peace.” J.M. Beattie, London Juries in the 1690s, in TWELVE MEN, supra note 11, at 214, 234; see also NORMA LANDAU, THE JUSTICES OF THE PEACE, 1679-1760, at 57 (1984) (showing domination of the assize grand jury by the county justices of the peace).
\item[126] Tax and Exoneration Lists, 1779, at 1 (Jacob Laughlin) (on file with Pa. State Archives, Reel 225, RG-4).
\item[127] These data derive from statistical analysis of the tax data printed as Effective Supply Tax of the City of Philadelphia, 1779, in 14 PA. ARCHIVES (3d Ser.) 469-838 (1897) [hereinafter 1779 Tax]. I have checked the published version against the originals in the Pennsylvania State Archives. What appears in the published version as “amount of tax” appears to reflect a wealth assessment in the originals. Unfortunately, the published data for the county of Philadelphia appear to be unreliable. Thus, it is slightly misleading to compare the grand juror averages, which include several county grand jurors, against only city taxpayers. On the other hand, as a rough proxy for wealth, it is fully adequate. The tax data should also be read with the caveat that Philadelphia’s wealth assessments were biased in favor of land and excluded “most forms of commercial wealth, including business inventories, vessels, notes and bonds, cash, and book debts.” DOERFLINGER, supra note
\end{footnotes}
sessed wealth of £2262.47 and a median wealth of £450. Only two grand jurors had an assessed wealth below the 80th percentile and ten were in the 90th percentile or higher.

The grand jurors were a relatively diverse group with respect to religious affiliation. The twelve grand jurors whose affiliation can be identified include three Presbyterians, three Anglicans, two Baptists, two Quakers, one Dutch Reformed, and one German Reformed. Ethnicity is more difficult to determine. A majority were probably of English descent, but there were at least two grand jurors of German descent and one of Irish descent.129

2. Political Experience

As a group, the grand jurors played a significant role in Pennsylvania's revolutionary politics. Although grand juror Plunket Fleeson had been elected to the Pennsylvania Assembly in 1762,130 most grand jurors rose to political prominence during the Revolution itself. By late 1774, fully a third of the grand jurors had assumed positions of leadership in the resistance movement. Two were named to an early committee of mechanics formed in June 1774 to "convince the world Americans were born and determined to live free, and that they will never be slaves; that liberty is their birthright—they cannot, they will not give it up."131 Five were elected in the fall of 1774 to serve on the Philadelphia City Committee132 and one was elected to the Philadelphia County Committee.133 Six were also named in December 1774 to the city's Committee of Inspection and Observation, formed to enforce the resolutions of the First Continental Congress.134

In the months prior to independence, grand juror political involvement increased significantly. Eight of the grand jurors served as delegates to the Pennsylvania Provincial Convention that met in January 1775.135 The convention resolved that if Great Britain "should determine by force to effect a submission to the late arbitrary acts of the British Parliament, in such a situation we hold it our indispensable duty to resist such force, and

118, at 64-65. Thus, the tax assessments probably understate the overall wealth of many of Philadelphia's merchants.
128. See infra app. A.
129. Id.; cf. Gough, supra note 116, at 93 (finding that approximately 60% of Pennsylvania's revolutionary leadership was of English descent).
130. PA. GAZETTE, Oct. 7, 1762. Fleeson had also provided the curtains and chair coverings for Independence Hall. ETTING, supra note 92, at 24.
131. PA. GAZETTE, June 15, 1774 (listing Fleeson and Pryor). Juror William Rush was also a member of this committee. Id. On this committee, see Ryerson, supra note 116, at 46, 267.
132. PA. GAZETTE, Nov. 16, 1774 (listing Cuthbert, Dean, Hasenclever, Loxley, and Purviance).
133. PA. GAZETTE, Nov. 30, 1774 (listing Moore).
at every hazard to defend the rights and liberties of America."  In the August 1775 elections for the Philadelphia Committee of Inspection, three "tickets" were pitted against each other: a radical "mechanics" ticket, a "moderate" ticket, and a "conservative" ticket, although many men were named on all three tickets. Five of the grand jurors were named on the "mechanics" ticket, six on the "moderate" ticket, and four on the "conservative" ticket. Of the seven grand jurors standing for election, all five named on the mechanics ticket were elected. These five were re-elected in February 1776, along with grand juror Joseph Dean. They served alongside Benjamin Franklin, future Assistant Attorney General Joseph Reed, and future Chief Justice Thomas McKean. In June 1776, grand jurors Joseph Dean and Benjamin Loxley were delegates to a provincial conference that called for a state constitutional convention.

What accounts for the grand jurors' enthusiastic embrace of revolutionary activity? Unfortunately, only master carpenter Benjamin Loxley left a clear explanation for his actions. He later recalled that in 1775, "the inhabitants of America found that the Parliament of England was determined to oppress and chain down Americans to their arbitrary will." Loxley was concerned about taking up revolutionary activities "on account of the oaths I had taken to King George at the three times when I had received commissions under him (that I should be perjured)." But Loxley met with his fellow committee members and they determined that "King George had broken his coronation oath with us, wherein he engaged to protect all his subjects in free liberty of conscience and lawful rights, and now he had broken that promise." Loxley's concerns reflected those facing all Americans in the difficult years prior to independence and his decisional calculus likely reflected that of many of his fellow grand jurors.

In the years following independence, the grand jurors continued to take a leading role in state and city affairs. Five of the grand jurors were

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136. Id.
137. Rosswurm, supra note 13, at 272-74.
138. Id. at 272 (listing Ball, Cuthbert, Loxley, Pryor, and Purviance).
139. Id. at 273 (listing Cuthbert, Dean, Hasenclever, Loxley, Pryor, and Purviance).
140. Id. at 274 (listing Dean, Cuthbert, Hasenclever, and Pryor).
143. Id.
144. I Scharf & Westcott, supra note 40, at 312. At least three of the grand jurors provided military supplies to the revolutionary government between 1775 and 1776. State of the Accounts of John Nixon, Esquire, from the 26th of October 1775, till the 7th of August, 1776, at 16-17, 31, 95-96 (1786) (listing Cuthbert, Ball, and Potts) [hereinafter Nixon Accounts]. Thomas Pryor was paid for his expenses in examining letters on board a ship. Id. at 14.
146. Id. at 8.
147. Id.
named as justices of the peace for the City and County of Philadelphia by the Pennsylvania Assembly in September 1776 and one was named a justice of the peace for the state of Pennsylvania. Joseph Dean was named an assistant to the state’s Council of Safety in December 1776 and later served as a member of the state’s Board of War. James Young was one of six men named by the Pennsylvania Assembly to discharge prisoners from the Philadelphia jail in August 1776. John Purviance was named by the Continental Congress as a manager of the United States Lottery in November 1776 and served on a committee to arrest “such persons as are deemed inimical to the cause of American Liberty.” Robert Curry and Jacob Laughlin were elected as Philadelphia City Commissioners in 1777. John Moore was elected a delegate to the Pennsylvania Assembly for Philadelphia County in 1777, although he resigned his seat later that year to take office as a Philadelphia County justice of the peace. Moore was also an agent for disposing of the confiscated estates of attainted and convicted traitors. James Young and Plunket Fleeson were appointed as judges of the Philadelphia City Court in June 1777.

Despite their embrace of revolutionary activity, the grand jurors had a mixed military record. Seven were fined at some point during the Revolution for failing to perform militia duties, a failure that was widespread among the Philadelphia population. By contrast, three were named as militia officers in May 1775, when the Philadelphia militia was first formed. Another three were appointed officers by Philadelphia County in July 1776 for the “Flying Camp,” a “strategic reserve of militia troops for the Continental Army drawn from the Middle Atlantic

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148. An Ordinance for the Appointment of Justices of the Peace for the State of Pennsylvania, PA. GAZETTE, Sept. 4, 1776 (listing Ball, Cuthbert, Hasenclever, Quee, and Young). Benjamin Franklin was also named. Id.
149. Id. (listing Moore).
152. PA. GAZETTE, Aug. 7, 1776.
153. 6 JOURNALS OF THE CONTINENTAL CONGRESS 968 (1906).
155. PA. GAZETTE, Feb. 26, 1777.
156. 3 LAWMAKING AND LEGISLATORS IN PENNSYLVANIA: A BIOGRAPHICAL DIRECTORY 919-20 (2005) [hereinafter PA. LAWMAKING].
157. See id.
158. Minutes of the SEC, June 11, 1777, in 11 COL. RECORDS, supra note 88, at 220.
160. See RYERSON, supra note 116, at 252-63.
161. Id. at 120 (listing Hasenclever (Captain), Pryor (Captain), and Loxley (Artillery Officer)).
162. PA. EVENING POST, July 16, 1776, at 353 (listing Moore (Major), Laughlin (Captain), and Neff (Captain)).
States in 1776." Grand jurors John Moore and Robert Curry were colonels of their respective battalions of Philadelphia County militia in 1777. Moore also served as wagon master for Philadelphia County, as a commissioner of purchase, and as an agent for the forfeited estates of traitors. James Young was wagon master for the state of Pennsylvania. David Snyder was a lieutenant of the Light Dragoons, and Benjamin Loxley was captain of an artillery company.

The grand jurors were significantly affected by the British invasion. It is likely that most fled Philadelphia, although at least two, William Ball and Thomas Pryor, remained. Pryor may have remained behind as a spy, as he appears to have been arrested by the British for sending intelligence to Washington's army. Many suffered significant deprivations at the hands of the British army. Benjamin Loxley, for example, had let his house in Philadelphia to Carey Brown, "second-captain of one of our gondolas." But, as Loxley explained, Brown "proved a villain, joined the British with his boat and crew, broke open my rooms where my furniture etc. were locked up, robbed me of them all, and assisted the enemy to destroy and damage sundry buildings and property of mine to a very great amount." William Ball would later report damage to his estate of £1385. Such individuals would have had every reason to be bitter and resentful to those Philadelphians who had assisted the British army during the occupation.

Everything in the backgrounds of the grand jurors suggests they would take a very dim view of persons accused of treasonable activity. In light of the grand jurors' involvement in revolutionary activities, it is no surprise that they indicted more individuals than were ultimately convicted. What is surprising is that the indictment rates were lower than for other crimes. This willingness to treat treason cases differently was amplified even further by the trial jurors.

164. Philadelphia County Associators—1777, in 13 PA. ARCHIVES (2d Ser.) 588-90 (1890).
166. Minutes of the SEC, July 23, 1778, in 11 COL. RECORDS, supra note 88, at 538.
169. Captain Benjamin Loxley's Company—1776, in 13 PA. ARCHIVES, supra note 164, at 559.
170. See, e.g., Letter from James Young to George Bryan (June 24, 1778), James Young Folder, Society Collection, HSP.
171. PA. EVENING POST, Nov. 6, 1777, at 529-30.
172. DRINKER DIARY, supra note 108, at 247 ("Tom Prior").
173. Loxley, supra note 145, at 12.
174. Id.
175. 1 SCHARF & WESTCOTT, supra note 40, at 386 n.2.
III. THE TRIAL JURORS

Each indicted defendant would ultimately face a trial jury of twelve men. In June 1778, a Vermonter had been saved from imminent execution for treason when a Connecticut lawyer dramatically appeared “with Blackstone’s commentaries in his saddlebags” and demonstrated that no person could be convicted of a capital crime with fewer than twelve jurors. This Part examines how those twelve were selected and who ultimately served.

A. SELECTION

The initial responsibility for selecting the trial juries rested with the sheriff of Philadelphia County. The sheriff was obligated to return a panel of potential jurors, from whom the jurors in each case would be selected. This was a significant power. As James Wilson later noted, “[t]he selection and return of jurors is a most momentous part of the power and duty of a sheriff. It is that part[ ] in which abuses are most fatal[;] it is that part[ ] in which there is the greatest opportunity and temptation to commit them.” This power may have been even more significant than the power to return the grand jury; the grand jury functioned by majority vote, but a single trial juror could force a hung jury.

The identity and motivations of Philadelphia’s sheriff are therefore of considerable interest. The sheriff during the treason trials was James Claypoole, a fifty-seven year old Anglican house painter and glazier. His 1779 tax assessment of £35 placed him in the top 20% of Philadelphia taxpayers, but he was significantly less wealthy than most of the grand jurors. He appears to have been a serial office-seeker, having previously sought the office of coroner in 1773 and recorder of deeds in 1776. In February 1777, he was elected a Philadelphia City Commissioner, where he served alongside grand jurors Robert Curry and Jacob Laughlin. Claypoole was appointed to the vacant office of sheriff of Philadelphia County in June 1777. In the fall of 1777, Claypoole

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176. ZADOCK THOMPSON, HISTORY OF VERMONT 121-22 (1842).
177. Wilson, supra note 7, at 553.
179. See PA. MERCURY & UNIVERSAL ADVERTISER, Sept. 24, 1784, at 3.
182. 1779 Tax, supra note 127, at 469, 476.
183. PA. PACKET, Sept. 20, 1773, at 4.
184. JOURNAL AND PROCEEDINGS OF THE GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA 31 (1777) [hereinafter ASSEMBLY JOURNAL].
185. PA. GAZETTE, Feb. 26, 1777.
was elected sheriff, and he served in that office until 1780.187

Nothing in Claypoole's background suggests that he was likely to stack the panel with certain types of jurors, and no defendant appears to have offered a challenge to the panel as a whole.188 Like most sheriffs, Claypoole probably returned individuals who were known to him personally or by reputation. Blair McClenachan, for example, had offered the financial bond for Claypoole's performance in office, both in 1777 and in 1778, in the middle of the trials.189

It is not entirely clear what qualifications were necessary to serve as a juror in Pennsylvania in 1778. No statute squarely addresses the issue, other than a 1777 statute excluding from jury service any person who had not taken the oath of allegiance to the state.190 The Pennsylvania constitution granted voting rights to all free males twenty-one years and older who had paid taxes in the previous year, and this requirement likely applied to jurors as well.191 Certain traditional common law requirements may also have applied.

The panel list unfortunately does not survive in its entirety; nonetheless, it can be largely reconstructed from information in the court's docket book. In addition to the fifty-eight jurors who served in treason cases, the panel must have included an additional five members who served on a murder trial and an additional thirteen who were fined for failure to appear.192 The panel therefore included at least seventy-six members.193

In an earlier decision from Chester County, the Pennsylvania Supreme Court justices had ruled that the defendant was entitled to "a copy of the panel of the jurors who are to try him, duly returned by the sheriff, and delivered to him[ ] or his counsel, a reasonable time, not less than one day[ ] before his trial."194 This was not an especially generous decision. Since the 1696 Treason Trials Act, English law had required the provision

187. Sellers, supra note 180, at 106; PA. GAZETTE, Aug. 30, 1780; PA. GAZETTE, Sept. 3, 1777. The Pennsylvania Constitution provided that no person could serve as sheriff for "more than three successive years." PA. CONST. of 1776, § 31.
188. Such challenges were widely recognized. See, e.g., THE CONDUCTOR GENERALIS 211-12 (Philadelphia, Robert Campbell 1792).
190. An Act Obliging the Male White Inhabitants of this State to Give Assurances of Allegiance to the Same and for Other Purposes Therein Mentioned, § 3, 9 Pa. Stat. 110, 112 (1777).
192. See O&T Docket, supra note 100, at 1-11.
194. Respublica v. Molder, 1 U.S. (1 Dall.) 33 (Pa. 1778). The Dallas reports incorrectly state that this case was held in the Court of Oyer and Terminer for Philadelphia County, whereas contemporary evidence establishes that it was held in the earlier Court of Oyer and Terminer for Chester County. See Letter from Edward Burd to Jasper Yeates (Sept. 19, 1778) (on file with HSP, Yeates Papers). A similar error affects the Dallas report of Respublica v. Molin, 1 U.S. (1 Dall.) 33 (Pa. 1778).
The Revolutionary American Jury

of the panel list at least two days before trial. Nonetheless, it gave the defendant at least some advance notice to begin preparing challenges, and the panel list may have been routinely provided earlier than the law required. When sentencing Abijah Wright to death, Chief Justice McKean stated, "[a] copy of your indictment, and of the panel of the jury who were to try you, was delivered to you many days before your trial, that you might be prepared in the best manner for your defen[s]e and challenges." Challenges played a major role in the shaping of the Philadelphia trial juries. Both the state and the defendant were entitled to unlimited challenges for cause. The defendant was also entitled to an additional thirty-five peremptory challenges. As Blackstone pointed out, the law "wills not that he should be tried by any one man against whom he has conceived a prejudice, even without being able to assign a reason for such his dislike." James Wilson later stated, "when on the voice of the jurors the prisoner's life is suspended, is it unnatural to suppose, that his mind, fluctuating, trembling, and solicitous, should conceive prejudices, even unaccountable ones, on the view of some, who are called, and appear to pronounce his fate." Wilson's language suggests his personal experience, likely in the treason trials themselves. He continued, "tender indulgence is shewn to human nature in that trying hour; and he, who has so many other embarrassments surrounding and pressing him, is relieved from the very excruciating one, however unfounded—an unfavorable opinion of his jury." As he explained in his Law Lectures, "when [a juror] comes to the bar and looks upon the prisoner, a single supercilious look will produce a peremptory rejection." Significantly, the prosecution was given no peremptory challenges.

The actual mechanics of the challenges are not entirely clear. Under English practice, the names of panel members were written on tickets and placed in a box or glass and then drawn at random. After each name was drawn, the defendant had the option of challenging for cause or offering a peremptory challenge. This procedure appears to have been followed in Pennsylvania. A 1746 English decision permitted the

195. LANGBEIN, supra note 82, at 95-96.
196. PA. PACKET, Dec. 8, 1778.
198. BLACKSTONE, supra note 36, at *347.
199. Wilson Charge, supra note 114, at 38.
200. Id.
201. Wilson, supra note 7, at 548.
202. For James Wilson's defense of this distinction, see id. at 701.
203. WILLIAM BLACKSTONE, 3 COMMENTARIES ON THE LAW OF ENGLAND *358 (Univ. of Chi. Press 1979) (1765-1769).
204. See CONDUCTOR GENERALIS, supra note 188, at 413; 3 JOHN REED, PENNSYLVANIA BLACKSTONE 325-26, 330 (photo. reprint 2006) (1831).
defendant to view the entire panel in order to know which panel members had actually appeared, and it is possible that this procedure was used in Philadelphia, although there is no evidence one way or the other.

Most defendants made extensive use of their right to peremptory challenges. When sentencing John Roberts to death, Chief Justice McKean stated, “though the law gives you a liberty to challenge thirty-five, you have challenged but thirty-three, so you allowed the rest to be an indifferent jury to pass between the state and you.” More than any other factor, the right of peremptory challenges shaped the composition of the Philadelphia treason juries. The twenty-two trials for which jurors can be identified provided the opportunity to seat 264 jurors. Since the panel was significantly smaller than this, it is not surprising that some jurors served multiple times. Nonetheless, the scope of that multiple service is striking. Only fifty-eight men served, and nineteen of these served only once. The thirty-nine other jurors filled the remaining 243 positions, for an average service of 6.23 juries.

The effect is even more pronounced with the later juries. For example, when Joseph Bolton was tried on November 28, 1778, every member of the jury had previously served on a treason jury. Andrew Hathe’s trial on December 4, 1778 included two jurors with no prior service, but the remaining ten jurors had combined experience of seventy-two trials. Several jurors had significant prior service. Juror John Drinker had served on sixteen prior juries, Isaac Powell on fifteen, Thomas Palmer on thirteen, and Cadwalader Dickinson on eleven. Jurors who repeatedly served on Philadelphia treason juries must have consistently escaped peremptory challenges by defendants, and thus the presence of these repeat jurors suggests considerable care in the exercise of the challenges.

As the trials proceeded, defense attorneys could exercise their peremptory challenges with greater precision. The one-time jurors predominated in the earliest trials. Nine of the eighteen one-timers served in the first four trials. Moreover, two trials, Wright and Huntsman, account for six of the remaining nine one-timers, suggesting that something distinctive occurred with jury selection in those trials. A full half of the one-time jurors served on juries that convicted, suggesting that defense attorneys were especially cautious with respect to those jurors.

Membership in the 185-man Patriotic Society provides another useful gauge with respect to the peremptory challenges. Defense attorneys might reasonably assume that members of this group would not be partic-

205. Mr. Townly’s Case, 168 Eng. Rep. 4 (Fost. 7) (1746).
206. PA. PACKET, Nov. 7, 1778. McKean’s handwritten notes of the Roberts trial show him marking down each challenge to the total of 33. Notes of Chief Justice McKean in Respublica v. Roberts (on file with Morristown National Historic Park, Morristown, NJ, LWS Collection) [hereinafter Roberts Notes].
207. Occasionally, jurors failed to appear. The most impressive failure occurred on April 6, 1779, at the trial of Samuel Garrigues, when forty jurors failed to appear and were fined ten pounds each. O&T Docket, supra note 100, at 11. This was the first trial in over four months, so there may have been notification problems.
ularly favorable jurors. At least twenty-five Society members were included in the panel; they constituted 38.8% of the known panel members who never served, but only 31% of the jurors who served, and only 25% of the jurors who served in ten or more trials.

The use of challenges may have been one of the most distinctive features of the Philadelphia treason trials. P.J.R. King, for example, studied trial records from eighteenth-century Essex and concluded that the "right of jury challenge was rarely used."208 Similarly, James D. Rice found that in eighteenth-century Maryland "challenges were rather unusual . . ., and voir dire proceedings took up little or no time."209 These findings are not replicated in Philadelphia. The jurors, particularly in the later trials, brought substantial experience in treason cases to the jury box. Although each jury was uniquely composed, many of the jurors would have been familiar with each other from prior cases and would have had considerable common experience upon which to draw.

Serial jury service, of course, has been identified by other scholars, particularly in the English context, although it appears to vary considerably with time and place. In Hertfordshire in the late sixteenth and early seventeenth centuries, jurors rarely sat on more than one jury.210 Repeat jury service was rare in Kent prior to 1650, but increased dramatically thereafter, a change that markedly increased the speed and efficiency of jury selection.211 At the Old Bailey in the late seventeenth century, it was common for the same twelve men to serve on repeated juries, and many of these men served repeatedly in multiple sessions.212 By contrast, in Staffordshire in the 1780s, there were a "large number of apparently wholly inexperienced jurors who served only once."213 Scholars of early American law have found multiple jury service in Virginia,214 Maryland,215 and New York federal courts.216 Eighteenth-century jurors in Chester County, Pennsylvania, typically served on either one or two juries,217 which is not particularly frequent in comparison with the Philadelphia treason trials.

B. COMPOSITION

The names, ages, occupations, religious affiliations, and ethnicities of the trial jurors, where known, are set forth in Appendix C. Unfortu-
nately, not all of the jurors can be identified with precision, since there are often multiple people with the same name, and the trial court records provide us with no identifying information other than the name. It is particularly regrettable that these identification problems plague several of the most frequent jurors.

Consider, for example, the case of the juror named John Drinker. Since he served on twenty juries, more than any other juror, information on his identity would be particularly valuable. Unfortunately, there are three John Drinkers in the 1775 tax records: a bricklayer, a shipwright, and a merchant.218 These three appear in the 1779 records, along with a fourth, who may be the 103 year-old cabinet maker who died in 1782.219 This cabinet maker would have significantly exceeded the common law’s age requirement for jurors, and can thus be eliminated from consideration. Similarly, the merchant can be eliminated, as he was a well-known opponent of the Revolution. A staunch Quaker, he had been publicly denounced as an “enemy to [his] country” in February 1776 by the Philadelphia Committee of Inspection and Observation for refusing to accept Continental bills of currency.220 Moreover, he was one of the men sent by the Philadelphia Quaker Monthly Meeting in 1779 to persuade Cadwalader Dickinson of “the Evil of his conduct” in serving as a juror in the Carlisle case.221 Thus, the juror is either the bricklayer or the shipwright, both of whom were among the wealthiest men in Philadelphia.222 The bricklayer possibility is particularly intriguing, because the bricklayer was the merchant’s uncle.223 He was also the uncle of Henry Drinker, who had been exiled to Virginia by the revolutionary government in 1777.224 Was the bricklayer particularly sympathetic to treason defendants because of his nephews’ political difficulties? This family connection to prominent Tories might well explain why he would be a desirable juror for defendants. On the other hand, there appears to be no mention of the bricklayer in Henry’s wife’s extensive diaries,225 so it is possible that the families were estranged. Indeed, Quaker records indicate that a “John Drinker, the elder” was disowned in October 1772.226 Conclusive identification, regretfully, remains impossible.

Equally troublesome are Thomas Palmer, who served on seventeen juries, and John Palmer, who served on ten. There are five entries for

218. Philadelphia County Tax Duplicate, 1775, at 15, 69, 195 (on file with Philadelphia City Archives, RG-1) [hereinafter PCTD].
222. Tax and Exoneration Lists, supra note 126, at 17, 165. The possibility that both were included on the panel and served as jurors seems highly unlikely.
223. HENRY D. BIDDLE, THE DRINKER FAMILY IN AMERICA 8-10 (1893).
225. See generally DRINKER DIARY, supra note 108.
"Thomas Palmer" in the 1775 tax records, and four in the 1779 tax records. He was most likely a gunsmith, but conclusive identification is impossible. The most prominent John Palmer in Philadelphia was a bricklayer who had helped to build the State House steeple and the Christ Church steeple. This man, however, had been hired to supervise the construction of the defenses of British-occupied Philadelphia. He was named in the attainder proclamation of June 15, 1778, and was not discharged until December 1778. It is most unlikely that a person named in an attainder proclamation would be serving as a juror on treason cases, so he can be removed from consideration. There are two other John Palmers in the 1775 tax records, and three others in the 1779 records. It is impossible to determine whether these entries reflect multiple people or simply multiple properties. The juror was quite likely the signatory to the agreement on providing information against suspected traitors, but further identification is impossible. Similar identification problems plague nine-time juror John Piles, seven-time juror George Wilson, and four-time juror John Campbell.

Despite these omissions, considerable information on the trial jurors exists. This Section examines demographic data, as well as biographical data relating to juror political activity.

1. Demographic Data

a. Age

As with the grand jurors, the age of the trial jurors is particularly difficult to determine. I have been able to determine ages for nineteen of the fifty-eight jurors. The common law prohibited jurors under the age of twenty-one and over the age of seventy, and all of the identified jurors fall comfortably within that range. The youngest identifiable juror, Anthony Wilkinson, was twenty-seven. The oldest identifiable juror, blacksmith William Rush, was sixty-one. As a group, the trial jurors were just slightly younger than the grand jurors, with a median age of forty-

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227. See, e.g., PA. GAZETTE, Mar. 6, 1776 (advertising for journeyman gunsmiths).
228. PA. GAZETTE, Feb. 27, 1753.
230. JACKSON, supra note 58, at 22.
231. PA. GAZETTE, June 17, 1778.
232. PA. PACKET, Dec. 12, 1778.
233. PCTD, supra note 218, at 164, 189.
234. Tax and Exoneration Lists, supra note 126, at 84, 194, 225.
235. PA. PACKET, July 25, 1778.
236. In most cases it has not been possible to determine precise birthdates, so the ages stated in the appendix should be assumed to be accurate within one year.
237. CONDUCTOR GENERALIS, supra note 188, at 208.
nine, and a mean of 47.5.\textsuperscript{239} Defendants do not appear to have used age as a factor in peremptory challenges, as there are few differences in age between the one-time jurors and the multiple jurors.

b. Residence

Geographically, the trial jurors were drawn heavily from the city of Philadelphia. Fifty-two of the jurors can be identified by their tax ward. Thirty-eight of the jurors came from three central Philadelphia wards: Dock, Mulberry, and Middle. Only four came from wards outside of the City of Philadelphia, and even these, Southwark and Northern Liberties, were immediately adjacent to the city.\textsuperscript{240} No juror came from the outlying county wards. This pattern differs strikingly from that of the grand jurors, at least a third of whom were drawn from the County of Philadelphia.\textsuperscript{241}

c. Religion

Pennsylvania was a religiously pluralistic state, but the leading role in the American Revolution fell to the Presbyterians.\textsuperscript{242} Their number included Chief Justice Thomas McKean, Assistant Attorney General and later state President Joseph Reed,\textsuperscript{243} Vice President George Bryan,\textsuperscript{244} and Attorney General Jonathan Dickinson Sergeant.\textsuperscript{245} Indeed, historian Owen Ireland argues that by 1778 Pennsylvania politics had been polarized along religious lines, with Scotch-Irish Presbyterians and other Calvinists aligned against Anglicans, Quakers, and Lutherans.\textsuperscript{246} These groups differed significantly with respect to issues such as the acts of attainder and the treatment of loyalists, with the former group favoring harsh measures and the latter inclined to tolerance.\textsuperscript{247} Disagreement focused most heavily on Pennsylvania’s controversial 1776 Constitution, which most Presbyterians supported, but which most Quakers and Anglicans opposed.\textsuperscript{248} Quakers were also far less likely to support the Revolu-

\textsuperscript{239} These data parallel eighteenth-century Essex data found by P.J.R. King. See King, supra note 11, at 261 ("Throughout the period 1734-1815, between half and two-thirds of the eligible jurors were in their forties or fifties.").

\textsuperscript{240} For a map of Philadelphia’s tax wards, see Doerflinger, supra note 118, at 34-35.

\textsuperscript{241} Cf. J.M. Beattie, Crime and the Courts in England, 1660-1800, at 382 (1986) (noting that English assize jurors tended to be drawn from close proximity to where the court was sitting).

\textsuperscript{242} Foner, supra note 20, at 112. Quaker-Presbyterian hostility in Pennsylvania dated to the early 1760s, when armed Presbyterian frontiersmen known as the Paxton Boys marched on Philadelphia. See Nash, supra note 121, at 284.

\textsuperscript{243} Foner, supra note 20, at 112.


\textsuperscript{245} Id. at 88.


\textsuperscript{247} Id. at 455-56; see generally Owen S. Ireland, The Ethnic-Religious Dimension of Pennsylvania Politics, 1778-1779, 30 Wm. & Mary Q. 423 (1973).

\textsuperscript{248} Foner, supra note 20, at 135.
The Revolutionary American Jury

The jury data provide an opportunity to test these theories. I have been able to determine religious affiliations for twenty-four of the fifty-eight jurors. These include six Anglicans, five Presbyterians, four Lutherans, three Baptists, three German Reformed, and three current or former Quakers. Sixteen of these served on multiple juries, and eight served only once. This is a small sample size, and too much should not be made of these data. Nonetheless, it is striking that of the six known Anglican jurors, five served on multiple juries. This at least suggests a preference by defense counsel for Anglican jurors. Similarly, these 24 jurors filled 100 jury seats. Overall, sixty-eight of these seats were filled by Anglicans, Quakers, Lutherans, and Baptists. Only thirty-two were filled by Presbyterians and German Reformeds. Thus, the identifiable jury seats were filled over two-to-one by jurors of religions generally viewed as more tolerant of loyalists.

There are no reliable estimates for the proportions of different religious groups in Philadelphia in 1778. The best estimates for 1775 suggest that Anglicans constituted 17.8% of the population, Quakers 12.9%, German Lutherans 16%, German Reformed 6.7%, Baptists 1.2%, and Presbyterians 12.3%. From this perspective, Presbyterians and German Reformeds were actually overrepresented on the juries, and this may reflect the composition of the underlying jury pool itself.

d. Ethnicity

Juror ethnicity is at once both easy and difficult to determine. It is easy if one succumbs to the strong temptation to identify juror ethnicity solely by last name. It is much more difficult if one looks for independent identification. Appendix C identifies the twenty-one jurors whose ethnicities can be conclusively determined by independent evidence. This group numbers ten Germans, five English, three Irish, and three Scots. These numbers are almost certainly skewed against the English, since there were simply fewer independent reasons for English ethnicity to be noted in contemporary documents. Nonetheless, it is interesting that at least 17% of the trial jurors were of German descent. There are no obvious ethnic divisions between the multiple and the one-time jurors. For example, five of the German jurors served in multiple trials, and five served only once.

There were several family connections among the jurors. John Stein-
metz's and Adam Zantzinger's wives were sisters, but the two men never served on the same jury. By contrast, brothers John and Isaac Roush both served on Jacob Ming's jury.

e. Occupation

Occupationally, the trial jurors were a diverse lot. The fifty-eight jurors represented twenty-four different occupations. Merchants and shopkeepers represented the largest number, with six jurors each; cordwainers were next, with four jurors. The remaining occupations all had three or fewer jurors. At least thirty-one of the fifty-eight jurors were artisans. The artisan jurors included carpenters, painters, cooperers, cordwainers, blacksmiths, silversmiths, joiners, skinners, a potter, a coachmaker, a stone-cutter, a cutler, a stocking weaver, a baker, and a brewer. Artisans were well-represented on the juries, as at least twenty-three of the thirty-nine multiple jurors were artisans. There were no clergymen jurors, as they were excluded from jury service under the common law. There were also no lawyers, no "gentlemen," and no farmers. Nor were there any identifiable jurors who were "laborers," a large group of men generally found at the bottom of Philadelphia's social structure.

f. Wealth

The occupational portrait of the jurors is complemented by analysis of the jurors' wealth. Composite data from the 1779 tax returns are presented in Table One. Several points are worth noting.

### TABLE ONE

<table>
<thead>
<tr>
<th></th>
<th>Mean Assessed Wealth (£)</th>
<th>Median Assessed Wealth (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Philadelphia City (n=3885)</td>
<td>29.15</td>
<td>5</td>
</tr>
<tr>
<td>Identifiable Jurors (n=45)</td>
<td>521.24</td>
<td>10</td>
</tr>
<tr>
<td>w/o outliers (n=42)</td>
<td>35.79</td>
<td>8.5</td>
</tr>
<tr>
<td>One-Time Jurors (n=15)</td>
<td>42.33</td>
<td>6</td>
</tr>
<tr>
<td>w/o outliers (n=13)</td>
<td>8.85</td>
<td>6</td>
</tr>
<tr>
<td>Multiple Jurors (n=30)</td>
<td>760.7</td>
<td>13</td>
</tr>
<tr>
<td>w/o outliers (n=27)</td>
<td>32.15</td>
<td>10</td>
</tr>
<tr>
<td>Grand Jurors (n=17)</td>
<td>2262.47</td>
<td>450</td>
</tr>
</tbody>
</table>

First, on average, the trial jurors were wealthier than the average Philadelphian. The mean wealth of the jurors was over seventeen times that of the city as a whole. The median wealth was £10, the sixtieth percentile of Philadelphia taxpayers. These data are slightly distorted, however, by the presence of three exceptionally wealthy jurors with estates valued at £11,060, £6893, and £4000. With those outliers removed, the mean wealth drops to £35.79, which is slightly higher than the city average. Similarly, the median drops to £8.5, which is still comfortably above the city median of £5.257

Second, the multiple jurors were wealthier than the one-time jurors. The mean wealth of the multiple jurors was nearly eighteen times that of the one-time jurors. Even with outliers removed, the multiple jurors still have a mean wealth nearly four times that of the one-time jurors. The median wealth of the one-time jurors was £6, slightly above the city average, but the median wealth of the multiple jurors was £13. This discrepancy suggests at least some preference by defense counsel for wealthier jurors over poorer jurors. This pattern breaks down slightly when one focuses on the eight jurors who served in ten or more trials. The five of these ten jurors who can be conclusively identified had tax assessments of £3, £3, £5, £6, and £24, reflecting a mean of £8.2 and a median of £5, exactly in line with the median for the city as a whole. However, it is likely the remaining three jurors in this category were quite wealthy, with estates reaching into the hundreds, if not thousands, of pounds. Their absence is thus the likely explanation for the apparent dip in wealth for the most frequently serving jurors.

Third, the trial jury data place in bold relief the extraordinary wealth of the grand jurors. The median wealth of the grand jurors was forty-five times the median wealth of the trial jurors. As in England, grand jurors and trial jurors seem to have been drawn from significantly different economic strata.258

Finally, the typical Philadelphia juror was by no means poor, but he was not especially wealthy or prominent either. In this respect, he resembled the English juror. As Thomas Green concludes with respect to eighteenth-century English juries, "[t]he middling groups...constituted the trial jury class."259 There was "a firm upper limit on the status of persons eligible (in social, not legal, terms) for trial jury service."260 Blackstone himself had described the English jury as "chosen by lot from among those of the middle rank."261 Similarly, Staffordshire juries in the

257. Cf. Marietta & Rowe, supra note 11, at 54, 59, 104 (showing that eighteenth-century Chester County jurors were generally in the 70th to 80th percentile of wealth distribution).
258. This distinction between grand jurors and jurors did not last. In 1805, Pennsylvania began selecting its grand jurors and jurors at random from the same lists. Reed, supra note 204, at 326-27.
259. Thomas A. Green, A Retrospective, in Twelve Men, supra note 11, at 358, 397.
260. Id.
1780s were composed largely of craftsmen and farmers. Philadelphia juries were nonetheless open to a broader range of wealth than their English counterparts. For example, P.J.R. King found that in eighteenth-century Essex, "jurors were drawn exclusively from the top half of the spectrum of wealth and social status." Douglas Hay concluded that English legislation effectively excluded "three-quarters of the adult males of England outside London from jury service." By contrast, fourteen of the fifty-eight Philadelphia jurors had tax assessments below the fiftieth percentile. Low wealth was not an insuperable barrier to jury service.

2. Juror Political Activity

As a group, the trial jurors displayed little early revolutionary activity. In contrast to the eight grand jurors, only two trial jurors can be documented as active before early 1775. Ricloff Alberson, a carpenter, and William Rush, a blacksmith, were elected to the Philadelphia City Committee in November 1774, and to the Pennsylvania Provincial Convention in January 1775. Rush had previously served on the Philadelphia City Council in the 1750s, and he was a Philadelphia representative to a provincial meeting of deputies in July 1774.

Two jurors, William Adcock and Samuel Simpson, played prominent roles on the Committee of Privates, an association of rank-and-file militiamen formed in September 1775. Adcock served as president of the committee, and issued an address in October 1775 to the Pennsylvania General Assembly, arguing that Quakers should not be exempt from contributing to the defense of the province. The address concluded that the privates were "determined, to the utmost of our power, to support the liberties of America." In early 1776, Adcock served as a member of the Committee of Correspondence for the Committee of Privates. Adcock was later a member of the Patriotic Association, and would serve on five treason juries, supporting acquittal in four cases and conviction in one. Cordwainer Samuel Simpson took over the chairmanship of the

263. King, supra note 11, at 266; cf. Beattie, supra note 125, at 240 (noting that late seventeenth-century London juries "were drawn overwhelmingly from the upper third of the ratepaying population").
265. See 1779 Tax, supra note 127.
266. PCTD, supra note 218, at 215.
267. PA. GAZETTE, Mar. 19, 1767.
268. PA. GAZETTE, Nov. 16, 1774.
269. PA. GAZETTE, Feb. 1, 1775.
270. See PA. GAZETTE, Oct. 6, 1757.
272. The Committee is described in ROSSWURM, supra note 13, at 66-72.
273. PA. GAZETTE, Nov. 15, 1775.
274. Id.
276. PA. PACKET, July 25, 1778.
Committee of Privates in 1776. In an address to the Pennsylvania Assembly, Simpson warned that "the Importance and Necessity of defending our Country against the Ravages of a cruel and desolating Enemy are so obvious, no Arguments can be necessary to show it to be the Duty of every good Citizen to bear an equitable and proportional Part of the public [burden]."

He was appointed in November 1776 by the Council of Safety to a committee to enforce the state's salt regulations, and was elected a justice of the peace in February 1777. In April 1778, his wife was ordered out of occupied Philadelphia by General Howe.

Only a handful of other jurors held significant elective positions prior to independence. William Rush and John Linnington were elected to the Philadelphia Committee of Inspection in August 1775. Rush appeared on all three "tickets" that summer, although Linnington appeared only on the "Mechanics' Ticket." They were re-elected along with James Barnes and Samuel Simpson in February 1776. That same month, all four were appointed to sub-committees to superintend various districts of the city. Juror James Skinner was also appointed to a sub-committee.

At least fifteen of the jurors provided military supplies or services to Pennsylvania's revolutionary government in the critical years of 1775 and 1776. Thomas Goucher, for example, was paid "a premium for making public the art of grinding gun barrels." Jacob Ritter provided work as a gunsmith and Blair McClenachan produced nitre (sodium) for gunpowder. William Rush provided blacksmith services. Adam Zantzinger provided wagon services to the Continental Congress. John Barnhill and John Wilson were appointed to purchase blankets and stockings. David Pancoast submitted a proposal to Joseph Dean regarding

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277. PA. GAZETTE, March 6, 1776.
278. Id.
279. Minutes of SEC, Nov. 26, 1776, in 11 COL. RECORDS, supra note 88, at 16-17. Grand juror Thomas Cuthbert also served on this committee. Id.
280. ASSEMBLY JOURNAL, supra note 184, at 30.
281. PA. GAZETTE, Nov. 28, 1778.
283. RYERSON, supra note 116, at 272-74.
284. PA. GAZETTE, Feb. 21, 1776.
286. Id.
287. See, e.g., NIXON ACCOUNTS, supra note 144, at 9, 16, 18, 19, 44, 45, 55 (listing Beach, Corgee, Eckhart, Forsberg, Goucher, Hood, Pringle, Rigden, Zantzinger).
288. Id. at 44.
290. 1 SCHARF & WESTCOTT, supra note 40, at 301.
292. 6 JOURNALS OF THE CONTINENTAL CONGRESS, supra note 30, at 888.
storage of artillery,\textsuperscript{294} and he was also directed to purchase wheels for gun carriages.\textsuperscript{295} John Barnhill was one of four men who had established a relay stage line to New York known as “The Flying Machine.”\textsuperscript{296} It is quite likely that Barnhill, the great-great grandfather of President Theodore Roosevelt,\textsuperscript{297} used this stage during the Revolution to provide espionage services to General Washington.\textsuperscript{298}

Like the grand jurors, the trial jurors had a mixed record of military service. Only two jurors appear to have served in the Continental Army. Philip Clumberg, a surgeon,\textsuperscript{299} was an ensign in 1775,\textsuperscript{300} and David Pancoast commanded a company in the Continental Army’s Regiment of Artillery Artificers from February 1777 to April 1778.\textsuperscript{301} Three jurors also held officer positions in their respective companies of City Guards.\textsuperscript{302} At least eleven of the jurors held officer positions in the Philadelphia militia; six of the militia officers served on multiple juries, whereas five served only once.\textsuperscript{303}

The overall militia record of the jurors was far from impressive. Seven were noted in December 1776 for failing to join their respective militia companies.\textsuperscript{304} John McNeal was listed as having deserted his militia com-

\textsuperscript{294}. Letter from David Pancoast to Joseph Dean (n.d.) (on file with HSP, Society Miscellaneous Collection, Box 15B).

\textsuperscript{295}. Minutes of SEC, Dec. 11, 1776, in 11 Col. Records, supra note 88, at 44.

\textsuperscript{296}. A. Virgil Barnhill, Jr., Some Descendants of Robert Barnhill I, at 18 (1994); see also Pa. Gazette, June 26, 1766.


\textsuperscript{298}. Barnhill, supra note 296, at 20-21.

\textsuperscript{299}. Pa. Gazette, May 5, 1773.

\textsuperscript{300}. 1 Scharf & Westcott, supra note 40, at 301.


\textsuperscript{303}. See Minutes of SEC, Dec. 19, 1776, in 11 Col. Records, supra note 88, at 56 (listing Alberson as lieutenant); Philadelphia City Return—1777, in 13 Pa. Archives, supra note 164, at 582 (listing Merriam as Ensign); Third Battalion, Col. Morgan, in 13 Pa. Archives, supra note 164, at 599, 600 (listing Merriam as First Lieutenant; Linnington as Captain; and Burkhard as Second Lieutenant); Fourth Battalion, Col. Bayard, in 13 Pa. Archives, supra note 164, at 601-02 (listing Wilkinson as Captain); Sixth Battalion, Col. Knox, in 13 Pa. Archives, supra note 164, at 602-03 (listing Skinner as First Lieutenant and Beach as Ensign); Officers of Battalions, in 13 Pa. Archives, supra note 164, at 603, 605 (listing McLean as Captain); Captain James Hood’s Company, in 13 Pa. Archives, supra note 164, at 690 (listing Hood as Captain); Minutes of the Convention, in 13 Pa. Archives, supra note 164, at 260, 261 (listing Bitting as Captain); Philadelphia Brigade—1777, in 13 Pa. Archives, supra note 164, at 585, 586 (listing Reese as Lieutenant).

\textsuperscript{304}. Absent Associators—1776, in 13 Pa. Archives, supra note 164, at 565, 569-70 (listing Clumberg, Forsyth, Gray, Linnington, Powell, Roop, and J. Roush). Clumberg’s absence may be explained by his service in the Continental Army. See 1 Scharf & Westcott, supra note 40, at 301.
pany on September 12, 1777.305 Henry Esler was listed as "can't be found."306 A similar entry may refer to James Gottier.307 At least six of the jurors hired substitutes to perform their militia duties for them.308 Interestingly, three of these six served on nine or more juries. Over the course of the war, at least twenty-four of the jurors also paid fines rather than perform their militia service.309 Fifteen of these twenty-four served on multiple juries.

In the years following the Declaration of Independence, several of the jurors continued to be politically active, although a majority of them were relatively obscure. In December 1776, Cadwalader Dickinson and Samuel Simpson were appointed, along with forty-one others, including future grand juror Thomas Cuthbert, to collect coats in Philadelphia to give to the soldiers.310 In April 1777, the Pennsylvania War Office appointed a Committee of Fifty “to have the direction and superintendence of the removal of all Provisions and other [s]tores . . . that will be useful to our enemies, should they get possession of them, or that may be necessary to the Army of the United States.”311 Future jurors John Barnhill, Isaac Roush, Samuel Simpson, and Samuel McLean served on this committee.312 William Gray signed an address to the Supreme Executive Council in May 1777 warning that “[t]he emissaries of the enemy are busily employed in spreading the seeds and principles of disaffection to the American cause. . . . There is no regular administration of justice, whereby the enemies of our country may be punished, and its friends protected.”313 In September 1777, during the British invasion, Ricloff Alberson was appointed to a committee to collect boats on the Delaware River.314

305. Captain Jacob Weidman’s Company, in 13 PA. ARCHIVES, supra note 164, at 657, 659.
307. Id. at 138 (“James Gutier . . . can’t be found.”).
308. See Returns of Capt'n John Linton's Compy., in 1 PA. ARCHIVES, supra note 302, at 56 (listing Dickinson); A General Return of the Third Battalion, in 1 PA. ARCHIVES, supra note 302, at 188, 194-95 (listing Forsyth, I. Roush, J. Roush, and Rush); Fourth Battalion, supra note 159, at 294 (listing Reese).
309. LIEUT. ACCOUNTS, supra note 159, at 24-25, 28-30, 33, 35-36, 38, 44, 56, 69, 74, 79, 83, 85, 122 (listing Adcock, Beach, Bidding, Corgee, Dickinson, Forsyth, Eckhart, Goucher, Gray, Grove, Hitel, Humphreys, January, McLean, Merion, Pancoast, Pringle, Rigden, Ritter, Rush, Shields, Steinmetz, and Zantzinger); A General Return of the Third Battalion, in 1 PA. ARCHIVES, supra note 302, at 188, 195 (listing Roop). The lists of fines also include persons named John Drinker, Thomas Palmer, John Piles, George Wilson, and John Wilson, any of whom might have been a juror. See, e.g., LIEUT. ACCOUNTS, supra note 159, at 27, 30, 40, 50, 117. George Dowig’s failure to pay was excused. Fourth Battalion, supra note 159, at 292. Steven Rosswurm points out that wealthier individuals were far more likely to pay the militia fine than poorer individuals. RossWURM, supra note 13, at 142.
310. COUNCIL OF SAFETY, IN COUNCIL OF SAFETY (1776).
311. PA. GAZETTE, April 23, 1777.
312. Id.
313. PA. GAZETTE, May 21, 1777.
The British occupation of Philadelphia was undoubtedly the major event of the Revolution for the vast majority of the jurors. It is impossible to determine how many of the jurors fled the city, although at least five, including seventeen-time juror Isaac Powell, can be confirmed as remaining in the city.\(^{315}\) John Steinmetz remained, but one of his merchant ships was condemned by the British as a prize and taken to Halifax.\(^ {316}\) John Barnhill, who likely assisted in espionage activities for General Washington,\(^{317}\) appears to have been arrested by the British shortly after the occupation.\(^ {318}\)

Several of the jurors suffered significant economic loss from the occupation. After the British evacuation, Whitehead Humphreys advertised for the return of four tons of steel, stolen by "a certain Joseph Fox, a noted traitor."\(^{319}\) Fifteen-time juror Cadwalader Dickinson apparently "lost everything during the economic dislocation of the Revolutionary War."\(^{320}\) Three-time juror Adam Zantzinger reported damage of £1280, and nine-time juror William Rush reported damage of £2261.\(^ {321}\)

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The data explored in this Part offers some initial answers to the puzzle of high acquittal rates in the Philadelphia treason cases. Defense counsel was able to shape the jury in ways favorable to the defense, seemingly on political, religious, and economic lines, rather than by age, occupation, or ethnicity. Wealthy jurors were preferred over poorer jurors, Anglican jurors over non-Anglicans, and jurors who had paid fines or hired substitutes to perform their militia duties over jurors who had performed the duties themselves. The juries that decided the cases were thus at least marginally more likely to acquit than juries that had been selected without the extensive use of peremptory challenges. But the results were certainly not foreordained when the jury was seated. The trials themselves mattered—the defendants, the witnesses, and the lawyers all played an important role. It is to those issues that this Article now turns.

IV. THE TRIALS AND THE DEFENDANTS: EXPLANATIONS FOR JURY BEHAVIOR

This Part brings the defendants and the trials front and center, with a particular emphasis on possible explanations for juror behavior. The

\(^{315}\) PA. EVENING POST, Nov. 6, 1777, at 529-30 (also listing Eckhart, Gottier, Powell, and Rigden).

\(^{316}\) Letter from John Steinmetz and Henry Keppele to John Whitmore, Sen. (Apr. 9, 1778) (on file with HSP, Papers of John Steinmetz, Jasper Yeates Brinton Collection, Box 6, Folder 8).

\(^{317}\) BARNHILL, supra note 296, at 20-21.

\(^{318}\) See DRINKER DIARY, supra note 108, at 236 ("I understand that Barnhill, Hysham, and some others, are taken up.").

\(^{319}\) PA. EVENING POST, July 6, 1778.

\(^{320}\) SMITH, supra note 256, at 138.

\(^{321}\) 1 SCHARF & WESTCOTT, supra note 40, at 386 n.2; see also PA. PACKET, Dec. 12, 1778.
methods used are frequently indirect; as historian P.J.R. King has aptly pointed out, "[e]ighteenth century jurors have left virtually no records of their opinions."322 Section A examines the defendants, exploring their backgrounds and their potential connections with the jurors—connections that may well have influenced jury decision-making in ways favorable to the defense. Section B examines the important role played by defense counsel in ensuring a fair trial. Section C analyzes the facts alleged at trial, considers the possibility of factual innocence, and examines the witnesses offered by each side. Section D addresses the judges' charges to the juries and the role of deliberation. Section E considers how the death penalty loomed over all of the trials in ways that pushed the jurors toward acquittal. Section F explains how the court's practice of imposing peace bonds on acquitted defendants may have increased the likelihood of acquittals. Finally, Section G examines psychological literature on the effects of serial jury service, and concludes that serial service itself may have contributed to the acquittal rate.

A. THE DEFENDANTS

What sort of person was tried for assisting the British during the occupation of Philadelphia? A particular stereotype comes readily to mind: a wealthy, prominent Tory who had stubbornly opposed all resistance activities and who welcomed the British army with open arms. Such people certainly existed, but they fled the city along with the British army. The treason defendants of 1778-1779 were of a different stripe. For the most part, they were ordinary Philadelphians who had much in common with the jurors who were to decide their fate. Indeed, if anything they were lower in the social and economic hierarchy than the jurors. Historian Ronald Hoffman found similar results in Maryland, where most people tried for treason, insurrection, or riotous behavior came from the lower echelons of society.323 Known demographic information about the Philadelphia defendants is set forth in Appendix B, along with the results of their trials and the identity of the trial jurors.

Occupations can be identified for seventeen of the twenty-three defendants. This group is heavily dominated by artisans and includes no merchants or shopkeepers. The defendants included three millers, two blacksmiths, two joiners, two innkeepers, a carpenter, a wheelwright, a yeoman, a carter, a waggoner, a baker, a trader, and a gentleman. At least seven were from townships outside the core city of Philadelphia.

Religious affiliations are known for eight defendants: five Quakers, two Anglicans, and one German Reformed, a finding that lends some support to the theories of religious division in revolutionary Pennsylvania and may explain the apparent defense preference for Anglican jurors. The absence of any identifiable Presbyterian defendants is striking, but with

322. King, supra note 11, at 289.
sixteen unidentified defendants, it is suggestive rather than conclusive.324 Age can be identified for seven defendants, hardly a meaningful sample. Nonetheless, this data, with a mean of 45.7, are just slightly lower than the mean ages for the trial jurors as a whole. Ethnicity data are even scarcer; the four identifiable defendants were English, French, German, and Irish. Similarly, tax data are non-existent or inconclusive for most of the defendants.

Although most of the defendants are largely lost to history, two of the defendants, William Hamilton and John Roberts, were prominent in their day. Hamilton, age thirty-three, was one of the wealthiest men in the state.325 His grandfather, lawyer Andrew Hamilton, had argued the famous Zenger case in New York,326 and had played a prominent role in the design and creation of Independence Hall.327 His uncle, James Hamilton, served as Lieutenant Governor of Pennsylvania.328 William graduated from the College of Philadelphia in 1762,329 and had inherited a large country estate known as “The Woodlands.”330 He was a colonel of the Philadelphia County Associated Battalion in 1775,331 and was elected chairman of the Committee of Inspection and Observation for the County of Philadelphia in March 1776.332 In that role, he issued an address denouncing “the arbitrary and oppressive measures of the British ministry,” but argued that reconciliation with Britain was the only course “which can possibly give us happiness and security.”333 He also served as a representative of the Philadelphia County Committee at the Provincial Conference of Committees in June 1776.334 It is unclear what exactly led to Hamilton’s charge for treason, although it seems likely that he did not leave his home after the British invasion and may have provided hospitality to British officers.335

324. Supreme Court Justice John Marshall Harlan later queried, “Did you ever hear of such a thing as a Presbyterian Tory? I never did, and I have searched history carefully. If there was one, he kept well out of view.” LINDA PRZYBYSZEWSKI, THE REPUBLIC ACCORDING TO JOHN MARSHALL HARLAN 53 (1999).
327. CHARLENE MIRES, INDEPENDENCE HALL IN AMERICAN MEMORY 4-8 (2002).
328. Jacobs, supra note 325, at 185.
329. PA. GAZETTE, May 27, 1762.
332. PA. GAZETTE, Mar. 27, 1776.
333. VOTES OF THE HOUSE OF REPRESENTATIVES 247 (1774-1776).
334. PROCEEDINGS OF THE PROVINCIAL CONFERENCE OF COMMITTEES 4 (1776).
335. Hamilton was a friend and regular correspondent of Thomas Jefferson. Jefferson took no umbrage at Hamilton’s behavior during the Revolution, noting: “During the whole of the last war, which was trying enough, I never deserted a friend because he had taken an opposite side...” Letter from Thomas Jefferson to William Hamilton, Apr. 22, 1800, in 7 THE WRITINGS OF THOMAS JEFFERSON 440, 441 (Paul Leicester Ford ed., 1896). Jefferson added, “[t]hose of my own state who joined the British government can attest my unremitting zeal in saving their property, & can point out the laws in our statute book which I drew, & carried through in their favor.” Id. Hamilton’s extensive botanical collection was of particular interest to Jefferson, and Jefferson forwarded specimens from the Lewis and Clark expedition to Hamilton in Philadelphia. CATHERINE P. FUSSELL & TIMOTHY PRESTON
Defendant John Roberts was operating as a miller in Merion Township by at least 1740, and he contributed financially in 1755 to the establishment of the Pennsylvania Hospital. He may have been a co-founder of the Library Company of Philadelphia along with Benjamin Franklin and other prominent citizens. In 1762, he was named by the Pennsylvania Assembly to assist in improving public roads. In 1773, he was named by the Pennsylvania Assembly as a commissioner for making the Schuylkill River navigable. In June 1774, he was selected as a member of Philadelphia's Committee of Correspondence, formed to protest the closure of the port of Boston. The next month, he was one of Philadelphia County's representatives to a colony-wide meeting of deputies. In November 1774, he was elected to the Philadelphia County Committee. In December 1774, he was named to represent Philadelphia County at the Provincial Convention that met in January 1775; at the Convention, he served alongside eight of the future grand jurors who indicted him for treason. Roberts was thus a prominent citizen, fully engaged in the resistance activities of Pennsylvania's nascent revolutionary government.

Participation in resistance activities was not limited to Hamilton and Roberts. At least four defendants had provided provisions or services to Pennsylvania's revolutionary government prior to the British occupation. Many were enrolled in the militia, although at least eight of

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337. PA. GAZETTE, May 29, 1755.
338. CHARTER, LAWS, AND CATALOGUE OF BOOKS OF THE LIBRARY COMPANY OF PHILADELPHIA 3 (1757) (listing "John Roberts" as a founder).
339. PA. GAZETTE, Feb. 25, 1762.
341. See PA. GAZETTE, June 22, 1774.
342. PA. GAZETTE, July 27, 1774. Future juror William Rush was also a member, as was future Assistant Attorney General Joseph Reed. Id.
343. PA. GAZETTE, Nov. 30, 1774.
344. PA. GAZETTE, Dec. 21, 1774; PA. GAZETTE, Feb. 1, 1775.
345. See PA. GAZETTE, Feb. 1, 1775.
346. STATE OF THE ACCOUNTS OF JOHN M. NESBITT, ESQ. 55, 87 (1786) (listing Guion); 4 JOURNALS OF THE CONTINENTAL CONGRESS, supra note 30, at 292 (listing Ming); Journal of Benjamin Loxley, 1771-1785, at 231 (on file with HSP) (listing Deshong); Minutes of SEC, Jan. 4, 1777, in 11 COL. RECORDS, supra note 88, at 75 (listing Woolfall); Minutes of SEC, Aug. 7, 1777, in 11 COL. RECORDS, supra note 88, at 262 (listing Stricker).
347. See, e.g., A General Return of the Sixth Battalion, in 1 PA. ARCHIVES, supra note 302, at 404, 420 (noting Piles as "past age"); A General Return of the Fifth Battalion, in 1 PA. ARCHIVES, supra note 302, at 335, 336 (listing Guion). Guion is noted as having "left the state" in August 1779. Id. at 360. See Southwark Associators—1776, in 13 PA. ARCHIVES, supra note 164, at 572, 573 (listing Woolfall). The James Roberts listed in this division may be the defendant. See id.
them paid a fine to avoid militia service, as did many of the trial jurors. Although George Harding was later an ensign in the First Battalion of Pennsylvania Loyalists, he probably originally served as a corporal in the Philadelphia militia.

Philadelphia was a city of approximately 30,000 people, and it would therefore be surprising if there were no prior connections between the defendants and the grand jurors and trial jurors. Although the law excluded jurors who were directly related to the defendant, every juror must have known at least one person who had come under suspicion for treasonable activities. These connections are difficult to document, but there are a few hints.

Consider, for example, the Carpenters' Company. This Company, under the leadership of grand juror Benjamin Loxley, built a headquarters known as Carpenters' Hall, which later served as the meeting place of the First Continental Congress. Loxley maintained a list of financial subscribers to the Hall, and this list included future defendants Abraham Carlisle, Charles Woolfall, and John Roberts, all of whom Loxley must have known personally. Juror Adam Zantzinger was also a member of the Carpenters' Company, and he must have known these defendants as well.

The recognizance file in the Pennsylvania State Archives for defendant Samuel Piles shows that his recognizance was paid in part by "John Pyles, carpenter." The similarity in last names strongly suggests that the two were brothers, or at least male relatives of some sort. A juror named John Piles served nine times, supporting acquittal in each case. This juror is almost certainly the carpenter, but because a second Piles appears in the Philadelphia tax records, conclusive identification is impossible. If the carpenter was the juror, he would have had good reasons for holding the government to a high standard of proof in treason cases.

348. Lieut. Accounts, supra note 159, at 33, 40, 42, 52, 62, 72, 126 (listing Bolton, Deshong, Garrigues, Hamilton, Huntsman, Ming, Stricker, and Woolfall).
349. A List of the General and Staff Officers, and of the Officers in the Several Regiments Serving in North-America 68 (1778).
352. See, e.g., Minutes of SEC, Oct. 23, 1778, in 11 Col. Records, supra note 88, at 602 (describing a jury composed of people "of no affinity to the said John Roberts" in the Carlisle trial).
354. Id.
355. Id. at 25.
358. See infra note 743.
Perhaps the most startling connection is between nine-time juror William Rush and defendant Abraham Carlisle, who had been elected a city tax assessor in 1767. Rush was Carlisle's brother-in-law; he was married to Carlisle's sister Esther, and the Carlisles and the Rushes lived in adjacent houses. On October 26, 1778, Rush personally appeared before the Supreme Executive Council to lobby for clemency in Carlisle's case. Rush served on his first treason jury on November 11, 1778, one week after Carlisle's controversial execution. Rush served on the next eight consecutive juries, supporting acquittal in each case. Indeed, his sudden appearance in the jury after the execution suggests that defense attorneys now realized he might be a valuable juror for the defense. He eventually served alongside seven of the twelve men who had voted to convict Carlisle, and in many cases was on a jury with five of them. The interpersonal dynamics of men in such a situation is impossible to reconstruct, but Rush's family relationship with an executed treason defendant must have affected his decision-making as a juror.

A similar connection existed between juror Cadwalader Dickinson and defendant Abijah Wright. Two of Dickinson's brothers were married to two of Wright's sisters; indeed Cadwalader Dickinson and Abijah Wright both appear as witnesses on the marriage certificate between Benjamin Dickinson and Isabel Wright. Dickinson appeared on every jury between November 21, 1778, and April 8, 1779 with one exception—the trial of Abijah Wright; his family connection almost certainly disqualified him from service.

Other defendants had connections with prominent revolutionary leaders. Defendant James Roberts wrote to wealthy financier Robert Morris from the Philadelphia jail in October 1778, seeking Morris's help, based on his "Former Friendship," to "Extricate me from this Confinement, or Bring on my Tryal." Roberts stated, curiously, that he was "Confin'd again in the same Circumstances as Once before (which you where [sic] acquainted with)." In August 1778, Elias Boudinot, a New Jersey delegate to the Continental Congress, appeared at a bail hearing on behalf of

359. PA. GAZETTE, Oct. 8, 1767.
365. Id.
defendant John Roberts. Defendant Samuel Garrigues had named one of his sons after Benjamin Franklin, which suggests some relationship between Franklin and Garrigues.

B. THE ROLE OF DEFENSE COUNSEL

In England, adversary criminal trial, with a prominent role played by defense attorneys, developed slowly over the eighteenth century. As John Langbein has persuasively demonstrated, the introduction of defense counsel in treason cases in 1696 was followed by the appearance of defense attorneys in ordinary felony cases at the Old Bailey in the 1730s. This "lawyerization" of the criminal trial transformed the older model of an "accused speaks" trial into the modern trial in which the defense tests the prosecution's case.

We know very little about the origins of adversary criminal trial in America, but it is quite possible that America independently developed "lawyerized" criminal trials earlier than England. Pennsylvania in particular may have taken the lead. This is a subject in desperate need of further research, and it can only be touched on briefly here. The colony's 1718 criminal justice statute provided for appointed defense counsel in all capital cases. The statute defined twelve crimes as capital, including treason, misprision of treason, murder, robbery, burglary, and witchcraft.

Defense lawyers played a prominent role in the Philadelphia treason trials. The Pennsylvania constitution of 1776 guaranteed to each criminal defendant "a right to be heard by himself and his council," thereby guaranteeing the right of defense counsel to directly address the jury. In the 1778-1779 treason trials, the court appointed two defense attorneys to each defendant who could not afford his own counsel. As Chief Justice McKean pointed out when sentencing Abijah Wright to death, "Upon your trial, you have had two able Counsels assigned you by the Court to render you every possible assistance." James Wilson applauded Pennsylvania's practices with respect to defense counsel, noting in his Law Lectures that the English common law rule was a "hard one, and not... very consonant to the rest of the humane treatment of prisoners by the

366. PA. PACKET, Aug. 27, 1778. This appearance on behalf of "an infamous tory" was denounced by an anonymous correspondent to the paper. Id.
368. See LANGBEIN, supra note 82, at 171.
369. See id. at 177.
371. MARIETTA & ROWE, supra note 11, at 22.
373. PA. PACKET, Dec. 8, 1778.
374. Id.
English law.”

The extant court records, regrettably, do not list the names of defense counsel, so their identities have to be pieced together from other sources. Attorney Jacob Rush wrote on October 10, 1778, “Our Court of Oyer and Terminer has been sitting these two weeks for the trial of Tories, and I apprehend will continue to sit for three or four weeks to come.” Rush continued, “the gentlemen of the bar (myself among them) are so entirely engaged in that way” it would impossible for any other legal business to be heard for at least a month. Abraham Carlisle was represented by James Wilson, George Ross, and William Lewis, John Roberts by Wilson and Ross, William Hamilton by Wilson, and Peter Deshong by Ross. It is likely that Wilson, Ross, Lewis, and Rush handled the majority of the treason cases.

These lawyers were among the best attorneys in America, and they fought the cases ferociously, with challenges to indictments, challenges to the introduction of evidence, and motions in arrest of judgment. Lewis was only twenty-seven at the time, but was already a formidable lawyer; he later served as defense counsel in the Whiskey Rebellion cases and was appointed to the federal bench. Rush was a graduate of Princeton and was later named to the Pennsylvania Supreme Court. As a brother of Benjamin Rush, the signer of the Declaration of Independence, he was also a cousin to juror William Rush. Overall, the quality of the attorneys provided to men accused of capital crimes in the midst of the Revolution seems significantly higher than that provided to capital defendants in twenty-first-century America.

375. Wilson, supra note 7, at 702. Wilson also argued that American practice was consistent with “the ancient common law” that was subsequently displaced in England. Id.
376. Letter from Jacob Rush to John Hancock (Oct. 10, 1778) (on file with HSP, Dreer Collection—American Lawyers).
377. Id.
378. See Notes of C.J. McKean in case of Ab’m Carlisle, 1778, in 7 PA. ARCHIVES, supra note 12, at 44, 44 [hereinafter Carlisle Notes].
381. Notes of Testimony in Respublica v. Deshong, at 5 (photostat of unpublished manuscript, on file with Stephen Corson, Philadelphia, Pa. and with author) [hereinafter Deshong Notes]. I am grateful to Stephen Corson for bringing this source to my attention.
382. See, e.g., Respublica v. Carlisle, 1 U.S. (1 Dall.) 35, 36-38 (Pa. 1778); Carlisle Notes, supra note 378, at 50-52.
384. 2 SCHARF & WESTCOTT, supra note 40, at 1531.
This Article has already suggested some reasons for the repeated acquittals of treason defendants by Philadelphia jurors. But we have not yet examined the factual bases for the criminal charges. Perhaps the defendants were factually innocent of treason, and the jury functioned properly as an accurate fact-finding mechanism. Although possible, this scenario is highly unlikely and would require us to accept an almost complete breakdown of criminal justice in revolutionary Philadelphia. These defendants survived two significant sifting mechanisms—the state’s initial decision to prosecute and the grand jury’s decision to indict. If this pool of people was almost entirely factually innocent, it would suggest serious defects both in the charging decisions and in the grand jury process. It is much more likely that many of the persons tried for treason in fact committed acts that brought them within the scope of Pennsylvania’s treason laws. Yet information about what happened at trial is generally lacking. As juror John Steinmetz joined others in noting, “[b]y trials in the courts of law, we have only the result of their determination, without knowing the proofs before them, or the ground work of their determination in acquitting or convicting.”

We have detailed factual information for only three of the trials—those of Abraham Carlisle and John Roberts, both of whom were convicted and executed, and Peter Deshong, who was acquitted. The indictments and Chief Justice McKean’s detailed notes of the trials, with extensive summaries of the witnesses’ testimony, have been preserved for the Carlisle and Roberts cases. Carlisle’s indictment alleged that he had accepted a commission from the King of Great Britain to serve as a gatekeeper of the occupied City of Philadelphia; that he had levied war against the State of Pennsylvania; and that he had aided and assisted the enemy by joining his armies, by conspiring to betray the State of Pennsylvania, and by sending intelligence to the enemy. The indictment was hardly a model of legal precision, as Carlisle’s attorneys pointed out. It failed to identify distinct overt acts, and the three separate charges led to considerable confusion as to what evidence was admissible with respect to each. The trial testimony was devoted almost entirely to the first charge. The prosecution witnesses testified that Carlisle had served as gatekeeper of the City of Philadelphia during the British occupation, and issued the passes that were required for individuals to depart or enter the city. The defense witnesses did not deny that Carlisle had issued passes, but they testified that he had granted passes to almost everybody, that he was tired of his position, and that he was al-

386. Pa. Gazette, April 2, 1783.
387. Carlisle, 1 U.S. (1 Dall.) at 35-36.
388. Id. at 38.
389. Id. at 36-37.
390. Id. at 35-37.
most removed from office on account of his lenity. The defense counsel argued that Carlisle's power to grant passes did not technically show that he had accepted a commission. They must also have hoped to persuade the jury that Carlisle deserved sympathy.

John Roberts's indictment alleged that he had levied war against the state and aided the state's enemies by joining the British army, serving as a guide to the army, persuading others to enlist in the army, and sending intelligence to the enemy. The state presented seven witnesses, who testified that Roberts had been seen in the company of the British Army, that he had committed depredations on American citizens, that he had sought to enlist people in the British Army, that he had influence with the British Army with respect to prisoners, and that he had sought to rescue Pennsylvania prisoners exiled to Virginia. The defense introduced at least twenty-nine witnesses who testified Roberts had desired to remain neutral, had been compelled by the British to serve as a guide, had been under guard when seen with the British, and had revealed to the Americans that the Journals of the Continental Congress were hidden at his farm, which allowed them to be saved. Numerous defense witnesses also testified that certain prosecution witnesses were of bad character and unreliable. Overall, the Roberts defense seems much stronger than the Carlisle defense, and it is easy to see why "those people who attended thought no evidence produced would authorize the jury to bring him in guilty."

Trial notes, likely taken by court prothonotary Edward Burd, also survive for the case of Peter Deshong. Like Abraham Carlisle, Deshong had acted as a gatekeeper of the city during the British occupation. Deshong was charged with "(1) granting passes in virtue of a commission to watch the gate; (2) disarming inhabitants; [and] (3) forming a plan to sup-

392. Id. at 48-49.
393. Carlisle, 1 U.S. (1 Dall.) at 36. A slightly different version of these notes is preserved in the records of the Quaker Meeting for Sufferers. See Miscellaneous Papers, Meeting for Sufferings (on file with Friends Historical Library, Swarthmore College, MR-PH 507). These notes largely track the published version of McKean's notes, but they convert the fragments and abbreviations into full sentences. They also include certain details that are not included in the published version, but there are no material differences.
395. Roberts Notes, supra note 206, at 1-6. Roberts's attorneys vehemently objected to the introduction of Roberts's statements about his attempt to rescue the prisoners. Republica v. Roberts, 1 U.S. (1 Dall.) 39, 40 (Pa. 1778) ("[T]he evidence given respecting his declarations, or confessions, was altogether illegal, and ought not to have been allowed.").
396. Chief Justice McKean's notes show twenty-nine witnesses; the court's docket book lists thirty-two. See generally Roberts Notes, supra note 206.
397. Id. at 6-10.
398. Id. The day after the British evacuation of Philadelphia, Roberts took the oath of allegiance to Pennsylvania before grand juror Zebulon Potts. John Roberts Oath of Allegiance (June 19, 1778) (on file with HSP, Zebulon Potts Folder, Society Collection).
399. Letter from Thomas Franklin to Elias Boudinot (Oct. 4, 1778) (on file with HSP, 2 Elias Boudinot Papers 50) [hereinafter Franklin Letter]. Diarist Elizabeth Drinker similarly noted surprise at the guilty verdict, "as they did not expect it." Drinker Diary, supra note 108, at 329.
ply the enemy with provisions." Prosecution witnesses testified that Deshong issued passes to leave the city and had required various Philadelphians to surrender their guns. Defense witnesses testified that Deshong had sought to convey valuable military information to General Washington, that he had taken his post solely to assist poor people, and that he was generally friendly to the American cause. These arguments were successful; according to a newspaper account, Deshong was acquitted because he "accepted the office with reluctance" and "was broke for his indulgence and lenity to the inhabitants."

Although no testimony survives in full for any other trials, there are scattered references to the charges and defenses raised in other trials. The record book of Justice of the Peace Benjamin Paschall reveals that Joseph Turner, Samuel Piles, George Harding, and Charles Woolfall were charged with "collecting arms from the inhabitants of Southwark for the use of the enemy." The recognizance records of the Court of Oyer and Terminer reveal that John Huntsman was charged with "having been a guide to the British Army," David Copeland with "recruiting men for the King of Great Britain," Aubrey Harry with "having been a Wagon Master to the British Army," and Lewis Guion with being a "Conductor of Wagons for the English Army." The prison diary of Samuel Rowland Fisher records that James Stevens and Samuel Garrigues were charged with serving as bridge keepers, and George Harding and William Whitefield were charged with "going about with the British Soldiery to collect the Fire Arms of the Inhabitants."

Several defendants repeated Roberts's claim of compulsion. As Blackstone had explained, "in the time of war or rebellion, a man may be justified in doing many treasonable acts by compulsion of the enemy or rebels, which would admit of no excuse in the time of peace." A Philadelphia newspaper reported that George Cook, who had acted as a guide to the British, and Jacob Ming were acquitted because they had been compelled. A Philadelphia woman in February 1779 claimed that many treason defendants had been acquitted "because they appeared to have acted a humane part, altho' submitting for a time, out of necessity, to the command of the enemy." Others followed Deshong in arguing a hidden attachment to the American cause. Samuel Garrigues produced "[e]vidences in his behalf of things not consistent with the Trust reposed

401. Deshong Notes, supra note 381, at 1.
402. Id. at 1-5.
403. Id. at 5-8.
404. PA. EVENING POST, Oct. 9, 1778, at 370.
405. Record Book of Benjamin Paschall, Esq. (on file with HSP).
407. SRF Journal, supra note 95, at 152.
408. BLACKSTONE, 4 COMMENTARIES, supra note 36, at *30.
409. PA. EVENING POST, Oct. 9, 1778, at 370.
410. Memorial and Petition of Elizabeth Ferguson, Feb. 7, 1779, in THIRD ASSEMBLY MINUTES, supra note 104, at 37, 38.
in him by the British."\(^{411}\)

The surviving witness lists provide another approach to the testimony offered at trial. In his Law Lectures, James Wilson placed considerable emphasis on the jury's role in assessing the credibility of witnesses: "Truth will be estimated by the character, and not by the number, of those, who give their testimony. . . . These advantages of a trial by jury are important in all causes: in criminal causes, they are of peculiar importance."\(^{412}\) The jury, Wilson believed, was the "fittest to make the proper comparison and estimate" of the "character and conduct of the witnesses" and the "character and conduct of the prisoner."\(^{413}\) The court's docket book lists both prosecution and defense witnesses and indicates whether the witness swore an oath or, as was customary practice for Quakers, offered an affirmation.

Witness lists survive for twenty-two of the twenty-three trials. In general, the defense called more witnesses. Overall, 174 witnesses testified for the prosecution and 262 witnesses for the defense.\(^{414}\) The prosecution's mean number of witnesses per trial was 7.9, compared to 11.9 for the defense; medians were 6.5 for the prosecution and 11 for the defense. These statistics, however, are slightly skewed by several trials with high numbers of defense witnesses. If we look at individual trials, defense witnesses outnumbered prosecution witnesses in twelve of the twenty-two trials, prosecution witnesses predominated in eight trials, and two of the trials were equally matched. There appears to be no correlation between the predominance of defense witnesses and the likelihood of conviction. The number of prosecution witnesses ranged from eighteen, at the trial of Samuel Garrigues, to two, at the trial of William Hamilton. The number of defense witnesses ranged from thirty-one, at the trial of Peter De-shong, to zero, at the trials of Abijah Wright and Adam Stricker.\(^ {415}\)

The prosecution and defense witnesses differ most strikingly with respect to gender and religion. Women constitute 12.8% of the prosecution witnesses whose gender can be determined, but 36.5% of the comparable witnesses for the defense. Overall, over four times as many women testified for the defense as for the prosecution. For its part, the state may have been reluctant to rely on female witnesses to prove a capital crime. Defendants, on the other hand, may have used female witnesses to testify

\(^{411}\) SRF Journal, supra note 95, at 152.

\(^{412}\) Wilson, supra note 7, at 332; see also id. at 383 ("The jury retain an indisputable, unquestionable right to acquit the person accused, if, in their private opinions, they disbelieve the accusers.").

\(^{413}\) Wilson Charge, supra note 114, at 39.

\(^{414}\) O&T Docket, supra note 100, at 1-10. It is possible that not all the witnesses actually testified. Some may have been sworn but then proffered testimony that was disallowed by the court. For example, the docket book lists several sworn witnesses in the Roberts and Carlisle trials who do not appear in Chief Justice McKean's notes.

\(^{415}\) Stricker later served as an agent for the forfeited estates of traitors, 13 PA. ARCHIVES 325 (Thomas Lynch Montgomery ed., 6th ed. 1907), and as deputy sheriff of Philadelphia, PA. GAZETTE, April 7, 1790.
to the defendant's acts of kindness, or to their general character and family responsibilities.

Religious data are slightly less reliable because in several trials the docket book does not indicate whether the witnesses were sworn or affirmed. Data on this point exist for 141 prosecution witnesses and 182 defense witnesses. Only four of the 141 prosecution witnesses were affirmed, a staggeringly small proportion given the large number of Quakers in Philadelphia. By contrast, fifty-seven of the 182 defense witnesses, approximately 31.3%, were affirmed. These data give some support to the theories of religious divisiveness underlying the trials.

A large number of witnesses appeared in multiple trials. Nine witnesses testified for the prosecution in more than one trial, not counting the identical witness list for the trials of George Harding and William Whitefield. The most frequent prosecution witnesses were cordwainer and Patriotic Society member Peter Cooper and Alexander Hamilton, who both testified five times. Defense witnesses were even more likely to be repeaters. The defense witnesses were identical in the trials of Charles Woolfall and Samuel Piles and in the trials of George Harding and William Whitefield. The most frequent defense witness was Richard Footman, who testified five times. Footman, a merchant, had been appointed vendue master (auctioneer) of Philadelphia during the British occupation.

The witness lists include several of the grand jurors and trial jurors. For example, grand juror James Young testified against Lewis Guion, John Huntsman, Aubrey Harry, and Abijah Wright. Grand juror Benjamin Loxley testified against Peter Deshong. Trial juror Thomas Hale testified against Abijah Wright, and trial juror William Gamble testified against James Roberts. Cadwalader Dickinson testified on behalf of John Huntsman while simultaneously serving as a juror in Huntsman's case.

No defendant offered sworn testimony on his own behalf. Defendants were not permitted to offer sworn testimony in most American states

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416. PA. PACKET, July 25, 1778, at 1; Oyer & Terminer Papers, Roll 5 (on file with Pennsylvania State Archives).

417. This does not appear to be the famous Alexander Hamilton, who seems to have been in New York at the time of the testimony. See, e.g., Letter from Alexander Hamilton to Major John Bigelow (Oct. 9, 1778), in 1 THE PAPERS OF ALEXANDER HAMILTON 560 (Harold C. Syrett ed., 1961).

418. PA. EVENING POST, Feb. 3, 1778, at 55.

419. See generally O&T Docket, supra note 100. Juror William Gray may also have testified for Lewis Guion, but the Gray listed as a witness may not be the same person. Id.


421. It is possible that some defendants offered unsworn testimony, although if so, the court records do not reveal it. Cf. LANGBEIN, supra note 82, at 52 (noting English practice of unsworn testimony by defendants).
The Revolutionary American Jury

until the mid-nineteenth century. A Pennsylvania lawyer stated the conventional view in 1831: "[T]o confer a right upon a party to become a witness in his own cause, or in any way to legalize his oath, would only 'lead men into temptation,' without affording any additional advantages or security in the search after truth." But defendants could testify at the trials of others. Adam Stricker, for example, testified on behalf of Andrew Hathe. Defendants also appear to have enlisted their relatives to testify on behalf of themselves or other defendants. For example, Elizabeth Deshong testified for Peter Deshong, Samuel Garrigues's son testified for Jacob Ming, and Susanna Ming testified for George Cook and Andrew Hathe. Former Pennsylvania Lieutenant Governor James Hamilton testified on behalf of his nephew, William Hamilton.

Individuals of Hamilton's prominence were rare on the witness lists. Perhaps the most famous were Philip Syng and General John Cadwalader. Syng, who testified for John Roberts, made the silver inkstand used for the signing of the Declaration of Independence and the Constitution. Cadwalader, who testified for William Hamilton, was one of the most prominent American generals and one of the wealthiest men in Philadelphia.

In sum, most of the defendants likely committed acts that brought them within the technical scope of Pennsylvania's treason laws. Defenses of factual innocence to the specific charges were unlikely to be successful, and defendants were forced to rely on compulsion defenses or on a parade of witnesses who could testify to the defendants' acts of kindness and lenity to Americans.

D. CHARGES AND DELIBERATIONS

At the close of the evidence, the judges charged the jury, with each judge possibly providing a separate charge. None of these charges have survived, although there is some indirect evidence of their content. A contemporary described McKean's charge in the Carlisle case as "favorable" to the defense. Joseph Reed stated on October 23, 1778, that "[t]he Court began to think its charges give too much countenance to acquittals—I have thought so from the beginning, tho it is an error on the favorable side."

422. Id. at 52-53.
423. Reed, supra note 204, at 385.
424. See Stephen G.C. ENSKO, AMERICAN SILVERSMITHS AND THEIR MARKS 127 (1983). This inkstand is now on display at Independence Hall. Id. at 127-28.
427. Franklin Letter, supra note 399, at 50.
428. Letter from Joseph Reed to Unknown (Oct. 23, 1778) (on file with N.Y. Historical Society, Joseph Reed Papers, Reel 2).
After being charged, the jury began its deliberations, often very late at night. Court prothonotary Edward Burd wrote to a friend that the Carlisle trial had lasted "all night" and that the Roberts trial would likely do the same. He noted, "I expect we shall look like stewed witches before the Court is over." John Roberts's trial took over two days, an extremely long trial for the eighteenth century. William Hamilton's trial lasted twelve hours, but the jury took only two minutes to acquit him.

As James Wilson explained in his Law Lectures, "When the jury retire, a bailiff is sworn to keep them together till they be agreed of their verdict." He pointed out that it was common to see a jury "worn down by thirst, and hunger, and want of sleep, distracted by altercations and debates" and "pale, anxious, [and] dejected." A juror in an April 1779 trial in the Philadelphia county court reported that "after it was dark we could do nothing, as we were deprived of candle by order of the Court."

Ultimately, the jurors convicted four defendants and acquitted the rest. The first two convictions, that of carpenter Abraham Carlisle and miller John Roberts, both Quakers, came in the first three trials. The third conviction came in December, when Abijah Wright was convicted of burglary for forcibly entering the house of Andrew Knox with six other armed men; the court records are silent as to whether he was acquitted on his treason charge or whether the jury simply failed to reach that issue. The fourth conviction came in April 1779, when George Harding was convicted of treason.

The only surviving account of deliberations in these trials comes from a somewhat questionable source. In the late 1780s, Frenchman J.P. Brissot de Warville spent considerable time with the Philadelphia Quaker community. He was told that in the Roberts and Carlisle trials, only two of the jurors thought Roberts and Carlisle guilty, and the ten others wished to acquit them. The two succeeded in persuading the other ten to change their votes only by promising that a pardon would be granted and by persuading the others of the necessity of a conspicuous example.

Much of Warville's subsequent account is inaccurate, as it asserts that Joseph Reed was President of the Supreme Executive Council that de-

430. Id.
431. See 1 DRINKER DIARY, supra note 108, at 329.
432. PA. PACKET, Apr. 29, 1779, at 3.
433. 2 Wilson, supra note 7, at 523.
434. Id. at 532.
435. PA. PACKET, May 1, 1779, at 3.
436. Recognizance Papers, supra note 406; PA. PACKET, Dec. 8, 1778.
nied the men’s petitions for clemency.\textsuperscript{438} Moreover, Carlisle’s and Roberts’s juries were composed of different people. Nonetheless, there may be a kernel of truth to this story, as it would explain why the jury in these cases both convicted and petitioned the Council for clemency. In particular, it may explain why two jurors in Roberts’s case did not sign the clemency petition; perhaps they were playing the other jurors for fools. An unsavory episode of this sort may also partially explain James Wilson’s forceful arguments in his Law Lectures for granting acquittals in cases in which only one juror supported acquittal.\textsuperscript{439}

\section*{E. The Death Penalty}

The death penalty loomed in the background of every treason trial. In England, juries often mitigated capital felonies by finding defendants guilty of lesser offenses or by valuing stolen goods below the capital threshold. Such techniques seem to have been unavailable to Philadelphia treason juries. Pennsylvania law recognized a lesser offense of misprision of treason, but treason juries did not convict under that charge, perhaps because jurisdiction over misprision was vested in the courts of quarter sessions. Also, unlike in theft cases, there was no option of deliberately undervaluing particular goods. Juries were thus presented with the stark choice of conviction or acquittal, and conviction meant death. The only alternative was clemency from Pennsylvania’s Supreme Executive Council, which “in cases of treason and murder” had the “power to grant reprieves, but not to pardon, until the end of the next sessions of assembly.”\textsuperscript{440}

Jurors undoubtedly considered the death penalty when deciding on guilt or innocence. Even if technical guilt had been established, the particular facts may not have seemed to warrant the death penalty. In a grand jury charge delivered in Virginia in 1791, James Wilson argued against overly severe punishments. In such cases, “the jury will probably find, or think they find, some decent ground, on which they may be justified, or at least excused, in giving a verdict of acquittal.”\textsuperscript{441}

Juror discomfort with the death penalty is readily apparent in the cases of Abraham Carlisle and John Roberts. Eleven of the eighteen grand jurors petitioned the SEC for clemency, stating that, “all circumstances considered,” the men were “suitable objects of mercy.”\textsuperscript{442} Ten of the jurors in Roberts’s trial petitioned for clemency, stating “it appears to

\begin{itemize}
\item \textsuperscript{438} See id.
\item \textsuperscript{439} Wilson, supra note 7, at 528-31.
\item \textsuperscript{440} \textit{P.A. Const.} of 1776, § 20. For a contemporary analysis of this provision, see \textit{P.A. Packet}, Oct. 31, 1778.
\item \textsuperscript{441} James Wilson, A Charge Delivered to the Grand Jury in the Circuit Court of the United States, for the District of Virginia, in \textit{2 The Works of James Wilson}, supra note 7, at 803-04. On similar English jury hostility to harsh capital laws, see generally \textit{Beattie}, supra note 243.
\item \textsuperscript{442} \textit{Memorial of Grand Jurors in Favor of Roberts and Carlisle}, 1778, in \textit{7 P.A. Archives}, supra note 12, at 23.
\end{itemize}
us, ... Roberts was under the influence of fear, when he took the imprudent step of leaving his family and coming to reside among the enemy, while they had possession of this city.”

Although the jurors were obliged by their oath “to pronounce him [guilty],” they knew that “[j]uries are but fallible [m]en,” and the evidence “was of a very complicated nature, and some parts of it [were] not reconcileable with his general conduct.”

Even juror Andrew Burkhard, who named his newborn son after Assistant Attorney General Joseph Reed shortly after the Roberts trial (an action that guaranteed his exclusion from future juries), joined in this petition. The petition was transmitted to the SEC under the signatures of Chief Justice McKean and Justice Evans, who recommended it for “favorable acceptance.” Similarly, Abraham Carlisle’s jury unanimously petitioned for clemency, stating:

[By the Oath we had taken, and upon the whole of the Evidence before us, we were constrained to give our Verdict against him, agreeable to the Laws of our Country, yet from the knowledge we have of his former blameless character, the consideration of his advanced age, and our sympathy with his distressed Family and reputable connexions, our sentiments of Humanity lead us to wish that the Rigor of the Law may be abated in his case.]

Chief Justice McKean and Justice Evans also recommended this petition favorably to the SEC.

Joseph Reed stated that he had “always expected” such a petition from the jurors in both cases, but he was surprised by the actions of the justices. McKean’s actions were perhaps most surprising, as he had sentenced Roberts to death only one day before recommending the petitions. McKean’s sentence was a bombastic piece of theater which accused Roberts of “endeavour[ing] the total destruction of the lives, liberties, and property of all his fellow citizens” and supporting a cause “which has been complicated with the horrid and crying sin of murdering thousands, who were not only innocent, but meritorious; and aggravated by burning some of them alive and starving others to death.”

McKean further observed that Roberts’s acts of kindness to Americans could “by

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443. Petition of the Jury in Case of John Roberts, in 7 Pa. Archives, supra note 12, at 24-25. The only jurors who did not sign were James Hood and James Burns.
444. Id. at 24 (emphasis omitted).
446. Petition of the Jury in Case of John Roberts, 1788, supra note 443, at 25.
448. Id. at 53.
449. Letter from Joseph Reed to Unknown, supra note 428. Grand jurors Thomas Cuthbert and John Purviance and trial jurors Thomas Shields, William Rush, and Whitehead Humphreys had previously signed a petition urging clemency for four individuals sentenced to death under military authority for desertion. See Petition re: Samuel Lyons et al. (on file with Pa. State Archives, Clemency File, RG-27). On these military cases, see 1 Scharf & Westcott, supra note 40, at 394.
450. Pa. Packet, Nov. 7, 1778. Presumably a similar sentence was delivered to Abraham Carlisle, but no record of it has survived.
no means compensate for treason." 451 McKean undoubtedly saw a distinction between those factors that were material to culpability and those that were material to clemency. His sentence, however, was far more widely publicized than his subsequent petition for mercy, and he was widely reviled as a hanging judge. 452

Similar petitions were signed by hundreds of other Philadelphians, including numerous jurors from other treason trials. 453 Jurors Whitehead Humphreys, William Gray, and Anthony Wilkinson signed a petition stating that the British were unlikely to return to Pennsylvania and the executions would serve little deterrent value. 454 Cadwalader Dickinson, who served on Carlisle’s jury, signed a separate petition on behalf of John Roberts. 455 Jurors Samuel Simpson, William Rush, and Adam Zantzinger signed a petition on behalf of John Roberts, stating that “however justly his conduct in legal Construction may amount to that horrid Crime,” it did not “proceed from Malevolence and a wicked Disposition” but from “Prejudices [and] Attachments to the late Government.” 456 Another petition, signed by over seven hundred people on behalf of John Roberts, included jurors Thomas Shields, John Pringle, and David Reese, and grand juror Thomas Pryor. 457 Three other petitions for Abraham Carlisle were signed by grand juror Thomas Pryor and at least sixteen trial jurors. 458 All told, at least thirty of the fifty-eight trial jurors signed a petition for Roberts, Carlisle, or both.

This outpouring of support for the two convicted men led many people to believe that the SEC would grant a reprieve. Thomas Franklin initially

451. Id.
453. See generally 7 PA. ARCHIVES, supra note 12, at 21-44, 52-58. An anonymous 1784 newspaper statement claimed that over 7,000 individuals signed petitions on behalf of the two men, but I have found no independent verification of this claim. See Anecdotes of George Bryan, IND. GAZETTEER, Sept. 4, 1784, at 2. For an analysis of the controversy over the decision to execute Carlisle and Roberts, see generally Peter C. Messer, “A Species of Treason & Not the Least Dangerous Kind”: The Treason Trials of Abraham Carlisle and John Roberts, 123 PA. MAG. HIST. & BIOGRAPHY 304 (1999). The article’s title is somewhat misleading, as it focuses almost entirely on the post-conviction controversy rather than on the trials themselves.
454. Memorials in Favor of John Roberts and Ab’m Carlisle, 1778, in 7 PA. ARCHIVES, supra note 12, at 21, 22.
455. To the Honourable, the Supreme Executive Council of the Commonwealth of Pennsylvania, in 7 PA. ARCHIVES, supra note 12, at 27.
456. To the Honourable, the Supreme Executive Council of the State of Pennsylvania, in 7 PA. ARCHIVES, supra note 12, at 28-29.
458. Memorial in Favor of Abr’m Carlisle, in 7 PA. ARCHIVES, supra note 12, at 55-56 (Barnhill, Campbell, Forsyth, Pickering, Rush, Wilkinson, Zantzinger); Memorial in Favor of Abr’m Carlisle, in 7 PA. ARCHIVES, supra note 12, at 56-57 (Bitting, Burkhart, Humphreys, Steinmetz); Memorial in Favor of Abr’m Carlisle, in 7 PA. ARCHIVES, supra note 12, at 57-58 (Adcock, McClenachan, Pancoast, Pringle, Pryor, Uttree).
doubted whether the executions would actually happen, as “their crimes is [sic] not so enormous or the evidence so full as was expected would appear against them.”459 The SEC had issued death warrants for the two men on October 23, 1778,460 but Elizabeth Drinker noted in her diary on October 28 that “tis [hoped] and believed that their Lives will be spar[e]d, it would be terriable [sic] indeed should it happen otherwise.”461 The SEC denied a reprieve on November 3, 1778,462 but Drinker still believed “that they will not be permitted, to carry this matter to the last extremity.”463

The subsequent executions of Carlisle and Roberts on November 4, 1778, were among the most divisive events of the American Revolution in Pennsylvania, and led to considerable outcry against Pennsylvania’s government under the 1776 constitution. As late as 1857, a Philadelphian could claim that the executions “created a feeling in the community that is not yet worn out.”464 Over four thousand people participated in Carlisle’s funeral procession,465 making it one of the largest public events in Philadelphia’s history. Joseph Reed, however, had no doubts. A day after the executions he wrote bitterly, “Treason, disaffection to the interests of America, and even assistance to the British interest, is called openly only error of judgment, which candour and liberality of sentiment will overlook.”466 Earlier, he had pointedly claimed that “popular humanity (tho not mentioned in our Treason Law) is a Species of Treason of not the least dangerous kind.”467 The significant public support for Carlisle and Roberts was surely known to the jurors as they deliberated in future trials, and they now knew there were no guarantees of pardons.

The jury’s actions in the George Harding trial echoed those of the Carlisle and Roberts juries. Harding was convicted on April 8, 1779, but the entire jury petitioned the SEC for clemency, as did a number of other citizens.468 The jury stated that it had “heard the testimony with candor, weighed it without partiality, and decided on it without prejudice.”469 The jurors were constrained to convict by the law and by the evidence, but “they did unanimously at the time of agreeing on the verdict, and still do think, the said George Hardy a fit object of Mercy,” and thus “with humility, but with fervor” recommended a pardon.470 All three justices

459. Franklin Letter, supra note 399, at 50.
461. 1 Drinker Diary, supra note 108, at 333.
463. 1 Drinker Diary, supra note 108, at 333.
466. Letter from Joseph Reed to Nathaniel Greene (Nov. 5, 1778), in 2 Life & Correspondence of Joseph Reed 38 (William B. Reed ed., 1847) [hereinafter Reed Correspondence].
467. Letter from Joseph Reed to Unknown, supra note 428.
470. Id.
of the Pennsylvania Supreme Court endorsed the petitions. They observed that Harding's character was good, his prospects for reformation high, and "[h]is death (being a man of small note or consideration) would afford little benefit by the example."\textsuperscript{471} They also stated that "more than one, at least equally criminal with this man, has been tried before us, and acquitted by the extreme lenity and tenderness of the Juries."\textsuperscript{472} Harding later claimed, in papers filed with the British government, that he "was led to the place of execution, bound like a Malefactor, and after being forty minutes under the gallows, was reprieved."\textsuperscript{473} Indeed, it is likely the SEC deliberately delayed the reprieve for maximum effect. Harding's jailmate Samuel Rowland Fisher was informed shortly after the conviction that Harding would be reprieved, but Fisher was told to be prudent and not to inform Harding of this fact.\textsuperscript{474}

The jurors' desire for clemency for convicted defendants did not stem from any general aversion to the death penalty. Pennsylvania executed more people in 1779 and 1780 than in any year prior to the nineteenth century.\textsuperscript{475} More death warrants were issued in 1778 than in any previous year in Pennsylvania history.\textsuperscript{476} Juries were more than willing to convict in capital cases. Indeed, none of the jurors from Abijah Wright's trial petitioned on his behalf, and only one of the fifty-eight jurors from any trial, Cadwalader Dickinson, Wright's relation through marriage, signed the meager petition circulated on Wright's behalf.\textsuperscript{477} His crime, breaking into a private dwelling with the intent to kidnap, was unmistakably morally blameworthy.

These treason cases thus severely tested the law's traditional assumption that treason was the highest crime, worse even than murder. The jurors simply refused to believe that the allegations of aiding the British rose to the level of murder, or even of burglary. The lack of any intermediate measure between outright acquittal and conviction for a capital crime forced jurors either to effectively nullify Pennsylvania's treason laws or to expose large numbers of individuals to the possibility of execution.\textsuperscript{478} For many jurors (and grand jurors as well), individuals who made the wrong choice of allegiance in a convulsive civil war were not incorrigible criminals, but friends and neighbors who had a high possibility of redemption. Hanging them in large numbers would have done little to

\textsuperscript{471} Hardy Petition, in 7 PA. ARCHIVES, supra note 12, at 326-27.
\textsuperscript{472} Id. at 327.
\textsuperscript{473} KNouFF, supra note 163, at 209.
\textsuperscript{474} SRF Journal, supra note 95, at 152.
\textsuperscript{475} EMBATTLED BENCH, supra note 39, at 162.
\textsuperscript{476} See Marietta & Rowe, supra note 11, at 76-77.
\textsuperscript{477} Petition re: Abijah Wright (on file with Pa. State Archives, Clemency Papers, RG-27).
encourage loyalty to Pennsylvania’s fledgling government or to advance the overall war effort.479

F. IMPOSITION OF BONDS

The death penalty intersected with another feature of Pennsylvania criminal procedure, a mechanism that ensured acquitted defendants did not necessarily simply walk away from court. Eleven of the acquitted defendants were ordered to pay bonds.480 Ten of these bound the defendants to good behavior during the present war, or, in one case, for the next twelve months. Eight of these also bound the defendant to keep the peace.481 Seven of these defendants were also ordered to pay the costs of prosecution. The bonds ranged in value from £500 to £2000, and the defendants were also obligated to provide two sureties who would collectively provide an amount equal to the defendant’s obligation. These financial obligations were extremely burdensome, and many eighteenth-century Pennsylvanians denounced the bonds as unjust when levied on acquitted defendants.482 Nonetheless, the court’s widespread use of these bonds may have made some of the jurors more willing to acquit in treason cases. Indeed, two of the jurors in John Huntsman’s trial, John Drinker and William Eckhart, were the sureties on Huntsman’s bond.483 Jurors could acquit marginal defendants secure in the belief that acquitted defendants might still incur some form of monetary penalty.

G. THE EFFECTS OF SERIAL SERVICE

From a modern perspective, one of the most striking aspects of the Philadelphia treason trials is the large number of repeat jurors. What effect did serving on multiple trials have on the jurors? Modern empirical research suggests several answers. The first is that jurors with prior service in criminal cases are more likely to convict.484 This correlates with conventional wisdom among trial lawyers that “inexperienced jurors


480. See O&T Docket, supra note 100, at 1-11; PA. GAZETTE, Apr. 14, 1779 (noting that a bond was required for James Stevens).

481. On the distinction between good behavior bonds and peace bonds in English law, see Landau, supra note 125, at 24.


483. O&T Docket, supra note 100, at 7.

484. See, e.g., Ronald C. Dillehay & Michael T. Nietzel, Juror Experience and Jury Verdicts, in 9 LAW & HUMAN BEHAVIOR 179, 185 (1985); Cookie Stephan, Selective Characteristics of Jurors and Litigants: Their Influences on Juries’ Verdicts, in THE JURY SYSTEM IN AMERICA: A CRITICAL OVERVIEW 97, 112-13 (Rita James Simon ed., 1975); see also Hay, supra note 213, at 348 (suggesting that more experienced eighteenth-century English jurors were more inclined to convict).
are better defense jurors."\textsuperscript{485} Several studies, however, have found this effect to be relatively slight.\textsuperscript{486} One study clarified that "experience does tend to make jurors more likely to convict, but the bias seems to be suppressed unless experienced jurors are in the majority in the group."\textsuperscript{487} The Philadelphia trials provide no support for this effect. Inexperienced juries convicted in two of the first three trials, and juries composed entirely of experienced jurors repeatedly acquitted.

A second, more promising, theory is that "jurors' initial trial experience [is] most strongly linked to later behavior."\textsuperscript{488} The idea here is that jurors use their initial case as a sort of "anchor" by which to evaluate subsequent cases.\textsuperscript{489} Jurors who initially convicted in the face of a strong prosecution case will demand similarly strong cases in the future.\textsuperscript{490} Similarly, jurors who initially confronted a weak prosecution case will be more impressed with stronger cases in the future.\textsuperscript{491} This theory fits better with the Philadelphia trials. If Sergeant and Reed led off with their strongest case, that against Abraham Carlisle, the jurors may have expected similar evidence in subsequent cases. Even jurors who did not serve on Carlisle's jury may have been present in the courtroom, or heard about it in subsequent deliberations from jurors who were. The evidence in subsequent cases may well have seemed weaker than that against Carlisle, and perhaps that against Roberts as well. This would dispose experienced jurors in favor of acquittal.

This Part has identified a number of reasons for the high acquittal rates, in addition to possible factual innocence and successful compulsion defenses. The defendants had excellent defense counsel and many had personal connections to some of the jurors, who had been selected through a peremptory challenge process that favored the defense. Perhaps most importantly, jurors were simply uncomfortable with the death penalty as a sentence for treason, and were unwilling to expose defendants to the risk of being hanged. The likelihood that bonds might be imposed on acquitted defendants meant defendants would not necessarily escape completely. Serial jury service may have encouraged many jurors to compare later cases with earlier, stronger cases, and likely contributed to greater jury independence and autonomy. The jurors were undoubtedly satisfied with their verdicts. Many of their fellow citizens, however,
were not, and the verdicts provoked a poisonous and violent reaction from those who were convinced that justice had not been done.

V. AFTERMATH OF THE TREASON TRIALS: THE TRIAL JURY UNDER ATTACK

Initially, the grand jurors and the trial jurors suffered few repercussions for their jury service. In the Philadelphia city elections during the fall of the trials, grand juror John Dorsey and juror David Pancoast were elected street commissioners, juror Isaac Roush was elected a city assessor, and juror William Adcock was elected a warden.492 In January 1779, grand juror William Ball and juror William Adcock were elected as justices of the peace for the city of Philadelphia.493 Juror William Rush was elected a justice of the peace in May 1779.494 In April 1779, grand juror Thomas Cuthbert was appointed an agent for forfeited estates,495 but was replaced by juror Thomas Hale a few days later.496 Indeed, the Pennsylvania Assembly recognized the importance of jury service by quadrupling the fees paid to jurors, "as the wages allowed them by the said laws were by no means adequate to their necessary expenses while they were attending on their respective business and duties."497

The one exception was juror Cadwalader Dickinson. Dickinson, a Quaker shoemaker who served on the jury that convicted Abraham Carllisle, was expelled from the Philadelphia Quaker community as a result of his jury service.498 Several leading Quakers initially met "with him on the painful subject of his case," but "found little satisfaction therein," as Dickinson "continued in a disposition to vindicate his conduct."499 Since he had "served as a juryman in the trial and condemnation of a fellow member in religious profession" and had acted in "a spirit of war," he was "separated . . . from religious fellowship with [the Philadelphia Quakers]."500 Later that summer, Dickinson visited Quaker Samuel Rowland Fisher who had been convicted of misprision of treason, and observed "what a pity it was that there should be such a difference amongst Neighbours & fellow Citizens in sentiment, [and] how happy we should

492. See PA. PACKET, Oct. 15, 1778.
494. Id. at 770.
495. Id. at 758.
496. Id. at 767. Less than a year later, Hale was removed from office by the SEC for "speculation" with public funds. PA. GAZETTE, March 1, 1780. Shortly thereafter, he was imprisoned pending repayment of the funds. Thomas Hale, To the Freemen of Pennsylvania, INDEP. GAZETTEER, June 8, 1782, at 1. In an angry letter to a Philadelphia newspaper, Hale argued that he had been deprived of "the grand bulwark of liberty and the bane of despotism, trial by jury; [which] has always been an eyesore to tyrants." Id.
497. An Act to Increase the Fines and Penalties on Public Officers for Refusal of Neglect of Duty; And Also to Augment the Fees of the Several Officers Hereinafter Mentioned, § 4, 9 Pa. Stat. 320, 322 (1779).
499. Id.
500. Id.
be if we could all unite with one Mind."501

Yet as Philadelphia drifted into increasingly worse economic times in 1779, the endless pattern of acquittals in treason cases began to infuriate many people. Diarist Christopher Marshall noted in April 1779 that "the honest inhabitants in Philadelphia were much displeased at the acquittal of G[arrigues] and S[tevens] as their behavior had been so atrocious while the enemy were in the city."502 Joseph Reed, now president of the SEC, wrote to Chief Justice McKean, stating that "too easy an Ear has been given by the Ministers of Justice to the Applications of those who are disaffected to their Country."503

Resentment over the trials soon found new outlets of increasing intensity. First, the jurors came under severe attack in a vitriolic set of exchanges in The Pennsylvania Packet over the role of the jury in a democratic society. Second, a jury in a misprision of treason case was physically intimidated by Philadelphia militiamen. Finally, in the worst outbreak of internal violence in Philadelphia during the Revolution, a gun battle erupted at the home of defense attorney James Wilson, killing a number of people. This Part explores these attacks on the jury, and the corresponding fight for jury independence.

A. THE NEWSPAPER EXCHANGES

The newspaper exchanges were triggered by the trial of David Franks in the Court of Oyer and Terminator for sending intelligence to the enemy. This trial is curiously omitted from the court's docket book, but other contemporary sources allow us to piece together the basic facts. Attorney General Sergeant had sought to indict Franks for either treason or misprision of treason in December 1778, but the grand jury refused to indict.504 In response, Sergeant adopted the novel course of pursuing the case as a common law misdemeanor. The trial was held in the Court of Oyer and Terminator on Saturday, April 24, 1779, and almost certainly drew on the same pool of jurors who served in the treason cases.505 Franks was likely defended by James Wilson and William Lewis.506 The jury sat until eight o'clock the next morning before issuing a verdict of acquittal.507

This acquittal unleashed a furious response, and the long pattern of acquittals in other trials certainly played a part in the exchange that followed. In response to the jury's acquittal, an anonymous writer in the
The Pennsylvania Packet on April 29 asserted that a “juryman . . . is a public character” and the conduct of jurors “upon such interesting and important occasions” must be “open to the public eye.”\textsuperscript{508} He argued that the lists of the jury members should be widely published, so that if “there are any upon this occasion whose public conduct has suddenly altered to a very favourable turn towards these offenders, let them be known to their country.”\textsuperscript{509}

The April 29 article provoked two members of Franks’s jury to respond with a defense of juries. Davis Bevan argued that juries “are and ever have been esteemed as the bulwark of Justice and Liberty.”\textsuperscript{510} Whitehead Humphreys published a blistering attack on Attorney General Sergeant,\textsuperscript{511} whom he accused of writing the April 29 attack on the jury and of “officiously listening at the window where the Jury sat.”\textsuperscript{512} “Do you really think,” Humphreys asked, “because YOU are ATTORNEY GENERAL, that you have a right to insult in the public newspapers, the freemen of this state, especially those who are upon oath to do justice between the commonwealth of Pennsylvania and a person whom you thought proper to prosecute?”\textsuperscript{513} Humphreys pointed out that the grand jury had refused to indict Franks for treason or misprision of treason, despite Sergeant’s fervent efforts.\textsuperscript{514}

Attacks on the jury quickly multiplied. “Diogenes” argued that juries had always been the subject of “free discussion and examination” and threatened that the “writ of attaint, which lies at common law against Jurors for a false verdict, is not yet forgotten.”\textsuperscript{515} “X” asserted:

[J]uries have been in some instances sent out of Court again to amend and alter their verdict; that in other cases new Juries have been ordered to try causes again; and that the law not only supposed Jurors may be under undue influence or error, but provided punishments for corrupt, partial, and influenced Jurors.\textsuperscript{516}

“X” was concerned that “two or three artful men, haughty in their sentiments, and loquacious loud and turbulent of tongue” could hijack a jury such that “confidence in the verdict of that Jury [would] be abated.”\textsuperscript{517} He also stated that the judges in Franks’s case had clearly directed the

\textsuperscript{508} Id.
\textsuperscript{509} Id.
\textsuperscript{510} PA. PACKET, May 1, 1779, at 3.
\textsuperscript{511} On Humphreys’ authorship, see PA. PACKET, May 18, 1779, at 2.
\textsuperscript{512} PA. PACKET, May 6, 1779, at 3.
\textsuperscript{513} Id.
\textsuperscript{514} Id. Humphreys may have had personal reasons for resentment of the attorney general; in April 1779, Humphreys paid a bond for a writ of certiorari on behalf of Charles Humphreys (almost certainly a relative), who had been indicted for misprision of treason in the Philadelphia Quarter Sessions Court. See Recognizance sur Certiorari, Respublica v. Charles Humphreys (April 21, 1779) (on file with Pa. State Archives, High Court of Error and Appeal Papers).
\textsuperscript{515} PA. PACKET, May 6, 1779, at 3.
\textsuperscript{516} PA. PACKET, May 13, 1779, at 2.
\textsuperscript{517} Id.
jury to convict.518 "X"s arguments were backed by "Cato," who argued, "There is no magic in the letters which compose the word Jury, that should charm or awe men into silence. Jurymen must expect like all other men, acting on public occasions, to stand or fall in the public opinion, by the rectitude and wisdom of their decisions."519 On May 18, 1779, Timothy Matlack admitted in the Packet that he was the primary author of the April 29 attack on the jury, and that Attorney General Sergeant had nothing to do with it.520 Matlack reiterated his arguments, however, and claimed, "as the continuance of this inestimable mode of trial must depend on the wise and upright conduct of jurors—the importance and value of this mode of trial is the strongest possible reason why the conduct of jurors ought to be strictly enquired into."521

These attacks provoked several additional defenses of juries. "A.B." published a lengthy response, stating "the base attacks which I complain of . . . are leveled with a wicked intent, against the bulwark of our liberties, Trial by Jury, as well as against the safety of every citizen, who may hereafter be acquitted by the laws of his country, and the judgement of his peers."522 "What security," he asked, can any freeman have in the due administration of wholesome laws, if it is in the power of prejudice to raise the resentment of the people, against both him and the jury who acquitted him, by publishing to the world such parts of the evidence only, as operated against him, and suppressing whatever made in his favour?523

The trial, "A.B." reported, "was had by a struck Jury of reputable citizens, several of whom had faced the enemy in the hour of danger, and whose characters are too well-established to be hurt by the feeble efforts of narrow-minded men."524 "Wherein does the excellency of trial by Jury consist, if by practices of this kind, Jurors are to be intimidated into convictions against both law and evidence, in order to support the character of Whigs?"525 Whitehead Humphreys joined the argument again, noting that a "Jury is composed of twelve Freemen, and they have a right to determine for themselves, according to law and evidence, and are not answerable for the blunders of men in office, who, God knows, are too often fond of ridiculously displaying the insolence of office."526 He continued:

"[That there is] more danger to be apprehended from the violence and partiality of Judges and the prejudices of State Officers than from a Jury legally impannelled and sworn, will be readily granted by

518. Id.
520. PA. PACKET, May 18, 1779, at 2.
521. Id.
522. PA. PACKET, May 13, 1779, at 1.
523. Id.
524. Id.
525. Id.
526. PA. PACKET, May 18, 1779, at 2.
every man of common understanding; and when once an Attorney General, or even the Judge can influence and direct the verdict of a Jury, according to their will and pleasure, we may then take leave of our liberty . . . .527

On May 20 "A True Whig" stated that he had been a member of Franks's jury and that the judges had not directed the jury to convict.528 He concluded, "Since these unhappy times, I have been in actual service for this my country, and am still willing, whenever called, to do what I can. And for all those low insinuations that have been hinted against the disaffection of the Jury pass by me like the wind, unregarded."529

At the heart of these exchanges lay disagreements over the character of the jury—disagreements that would parallel later disputes over the character of judges. Was the jury an independent decision-making body that was intended to be free from public pressure? Or was it at least partly a representative body, owing certain duties to the community at large? The members of the jury feared that legitimate criticism of jury verdicts could easily devolve into improper pressure to issue particular verdicts—and that is exactly what happened next.

B. THE FISHER TRIAL

As prices continued to rise that summer, a citizens' committee met in the State House Yard to denounce "monopolizers and forestallers."530 Among other things, the committee resolved that "no person, who by sufficient testimony can be proved inimical to the interest and independence of the United States, be suffered to remain among us."531 Grand juror Joseph Dean and petit jurors Cadwalader Dickinson and James Skinner were appointed to a committee to carry these "resolves into execution."532

In July 1779, Quaker Samuel Rowland Fisher was charged with misprision of treason for sending intelligence to the enemy by writing a letter to his brother Jabez in British-occupied New York.533 The trial was held before three justices of the peace in the Philadelphia Mayor's Court.534 Attorney General Sergeant appeared as prosecutor, but Fisher obsti-

527. Id. Several months later, Humphreys, under the pseudonym "Cato," published a blistering attack on Thomas Paine in The Pennsylvania Evening Post, insinuating that Paine amounted to a British agent. PA. EVENING POST, July 9, 1779, at 179-180. A large group of men subsequently seized the newspaper's printer and demanded the anonymous author's name. Dwight L. Teeter, Jr., From Revision to Orthodoxy, 13 REV. AM. HIST. 518, 521 (1985). They then marched on Humphrey's home, attacked his sister, and repeatedly threatened him with violence. Whitehead Humphreys, To the Citizens of America, PA. EVENING POST, Aug. 2, 1779, at 192. Humphreys responded by threatening to shoot anyone who crossed the threshold of his door, and eventually the men dispersed. Id.
528. PA. PACKET, May 20, 1779.
529. Id.
530. PA. GAZETTE, June 2, 1779.
531. Id.
532. Id.
533. SRF Journal, supra note 95, at 145, 155-56.
534. Id. at 159.
nately refused to have anything to do with the trial, and refused to make any challenges to the jurors.\footnote{535} William Lewis volunteered to serve as Fisher’s counsel, but Fisher refused his assistance.\footnote{536} Sergeant called several witnesses, including Chief Justice McKean, who testified that Fisher had confessed the crime to him.\footnote{537}

The jury deliberated all evening “without Meat or Drink,” but did not reach a verdict until the next morning.\footnote{538} By that time a “great number of the violent party” (Fisher’s term for radical militia members) had arrived in the courtroom.\footnote{539} The jury announced its verdict of acquittal, but “Sergeant would by no means admit of its’ being received.”\footnote{540} The jury was sent back, but it again returned with a verdict of acquittal.\footnote{541} Fisher then argued that the verdict must stand, and Fisher’s brother argued that “by legal usage” Fisher had been properly cleared of the charge.\footnote{542} Sergeant then “tried [to see] if he could get some of the 12 Men to dissent from the Judgment, when one or two of them drew back a little,” and the jury was again sent out, although one juror claimed “you may as well keep us here, for if we are kept six days & nights more I can never agree to any thing else without wronging my Conscience.”\footnote{543} Fisher noted that by this time, “the spirit of rage & violence appeared” and it was likely that “threats were made use of to the 12 Men,” because they now returned with a guilty verdict.\footnote{544} This suspicion was confirmed when Fisher was sentenced. The jailer pointed to a “Mr. Burns,” who he insisted would not permit Fisher to go home.\footnote{545} “[I]t was evident [to Fisher] that Burns had been sent by the [Mob] party to make their Wills be put into execution,” by intimidating both the jury and the justices of the peace.\footnote{546}

Who was this mysterious Mr. Burns? We cannot know for sure, but a strong possibility is that he was the juror James Barnes who had served on Roberts’s jury but had refused to support the jury petition for clemency (in eighteenth-century handwriting “Barnes” can look much like “Burns”).

Fisher later learned that “nine of them were of the judgment they gave the first & second time & some of them had said if they knew as much then as they do now of the rights of Jury Men, they would not have al-

\footnotesize{\begin{itemize}
\item 535. Id.
\item 536. Id. at 161.
\item 537. Id. at 160.
\item 538. Id. at 164.
\item 539. Id. at 164.
\item 540. Id.
\item 541. Id. at 164.
\item 542. Id. at 164-65. William Hawkins’s treatise on criminal law noted the practice of ordering juries to reconsider verdicts before they were recorded, but stated “this is by many thought hard, and seems not of late years to have been so frequently practiced as formerly.” 2 WILLIAM HAWKINS, A TREATISE ON PLEAS OF THE CROWN 442 (2d ed., 1726); see also John H. Langbein, The Criminal Trial Before the Lawyers, 45 U. CHI. L. REV. 263, 291-96 (1978).
\item 543. SRF Journal, supra note 95, at 165.
\item 544. Id.
\item 545. Id. at 166.
\item 546. Id.
\end{itemize}}
tered their verdict."

"[V]ery few, if any of at all of them had ever served under the character of Jury Men at any court before." Unfortunately, the Mayor’s Court docket book does not survive for the summer of 1779, so we do not know who served on the jury. It is most unlikely that they included the same men that served in the Court of Oyer and Terminer.

Fisher’s trial indicates the degree to which some Philadelphians were willing to intimidate juries in treason cases. The physical presence of militia members at court hearings might easily sway weak jurors to vote in particular ways. Such intimidation was undoubtedly easier at the Mayor’s Court, presided over by the justices of the peace, than in the Court of Oyer and Terminer, presided over by the prickly Chief Justice McKean.

Nonetheless, there were still no obvious political repercussions for jury service. In the summer of 1779, ten of the jurors were elected to the City Committee “by the most respectable majority that this city ever was witness of.” Although four had served only on one jury, James Skinner had served on two, George Pickering and Thomas Shields had served on three, James Hood and David Pancoast on four, and Cadwalader Dickinson on fifteen. On the other hand, it is not entirely clear how well publicized the names of the jurors had been, and Dickinson in particular made efforts to ingratiate himself with all sides.

C. Fort Wilson

On August 5, “A Whig” published a blistering attack on Tories in The Pennsylvania Packet. He began, “Among the many errors America has been guilty of during her contest with Great Britain, few have been greater, or attended with more fatal consequences to these States than her lenity to the Tories.” Posterity, he argued, “will curse the memory of their forefathers for their shameful lenity.” It was time “to rid ourselves of these bosom vipers” and “perpetual banishment should be their lot.”

In late September, Samuel Rowland Fisher overheard a militia man state the “Militia were about to take up all the Tories & Quakers & would certainly create a most dreadful scene in the City.”

On the morning of October 4, 1779, a crowd composed primarily of Philadelphia militiamen began to form. A handbill had circulated that morning urging a meeting “to drive from the city, all disaffected persons, and those who supported them.” By noon, the militia was ready to

547. Id. at 196.
548. Id.
549. The extant docket starts in October 1779. Mayor’s Court Docket Book, 1779-1783, at 1 (on file with Philadelphia City Archives).
551. PA. PACKET, Aug. 5, 1779, at 1.
552. Id.
553. Id.
554. SRF Journal, supra note 95, at 168-69.
555. Id. at 169.
556. Alexander, supra note 13, at 601.
march and began taking prisoners.\footnote{Id. at 601-02.} Shortly thereafter between twenty and forty men, many of whom may have been named in the handbill, gathered at the home of James Wilson.\footnote{Id. at 604.} One of these men was William Lewis, who had served as Wilson’s co-counsel in the treason trials.\footnote{Smith, supra note 1, at 120, 134.} Eventually, the militia arrived in front of Wilson’s house. One witness described seeing “a number of desperate-looking men in their shirt sleeves, . . . moving towards Wilson’s house, armed with bars of iron, and large hammers.”\footnote{Journal of Captain M’Lane, in Reed Correspondence, supra note 466, at 152.} Another saw the militia bringing up pieces of artillery.\footnote{SRF Journal, supra note 95, at 171.} At that point, someone fired a shot, although it is unknown whether the shot came from inside or outside the house.\footnote{Alexander, supra note 13, at 604-06.} A gun battle erupted, which left six or seven people dead and between seventeen and nineteen seriously wounded.\footnote{Id. at 589.} The fighting was quelled when Joseph Reed arrived with a Philadelphia cavalry unit. As one witness described it, Reed, Timothy Matlack, and James Claypoole, “not without many strokes of their swords,” succeeded in forcing many of the militia members into jail.\footnote{SRF Journal, supra note 95, at 171.} Jurors Blair McClenachan and Adam Zantzinger were members of this cavalry troop and likely assisted in ending the riot.\footnote{Pay Roll of the Troop of Philadelphia Light Horse, in 1 PA. ARCHIVES 981 (Thomas Lynch Montgomery ed., 6th Series 1906).}

The Fort Wilson incident had many causes, both economic and political. But numerous contemporary observers pointed to the treason trials as having played a prominent role. Both juries and defense attorneys were singled out for criticism. Two days after the incident, the SEC issued a proclamation stating, “The undue Countenance and Encouragement which has been shewn [sic] to persons disaffected to the Liberty and Independence of America, by some, whose rank and character in other respects gave weight to their conduct, has been the principal cause of the present Commotion.”\footnote{Minutes of the SEC, Oct. 6, 1779, in 12 COL. RECORDS OF PA. 121, 122 (1853); see also Rosswurm, supra note 13, at 222 (quoting 1782 statement referring to “that damned Wilson that defended the Tory Hamilton” and stating that “[w]e were near breaking in and making short work of them”).} A group of militiamen offered their own version of events, arguing:

The exceeding lenity which has been shown to persons notoriously disaffected to the Independence of the United States has rather tended to encourage them in their misconduct than to convert them to reason and sound Policy and although for the sake of order and good Government we cannot but disapprove every attempt to punish them otherwise than by the Laws of the State yet we humbly beg leave to represent in behalf of those of our fellow Citizens who lately assembled on the Commons for the purpose of removing such Ob-
noxious persons that their intended Conduct proceeded from an Attachment to the cause of their suffering Country, from a remembrance of the hardships they have endured in defense thereof and the numerous Grievances they at present undergo.\textsuperscript{567}

This memorial was signed by jurors Thomas Hale and Cadwalader Dickinson.\textsuperscript{568}

Nonetheless, the SEC ordered both the militia members and the defenders of Wilson’s home to surrender themselves to the sheriff or a justice of the peace.\textsuperscript{569} James Wilson subsequently paid a ten thousand pound bond to appear before the next Court of Oyer and Terminer.\textsuperscript{570} American general Arthur St. Clair wrote to Joseph Reed, stating James Wilson’s “advocating the causes of the accused persons should certainly not have been considered as a crime, as it is both a part and a consequence of that liberty we have been struggling to establish.”\textsuperscript{571} The SEC subsequently proposed an act of oblivion, exempting all participants in the Fort Wilson affair from criminal punishment, which the Assembly later passed.\textsuperscript{572} The SEC noted that such an act would “prove more beneficial to the Publick [sic] interests, than a rigorous pursuit of legal measures.”\textsuperscript{573}

The quelling of the Fort Wilson riot has been aptly described as a “major turning point in the history of popular radicalism in revolutionary Philadelphia.”\textsuperscript{574} It permanently divided radical leaders such as Joseph Reed and Timothy Matlack from the mass crowd activities favored by lower class members of the Philadelphia militia.\textsuperscript{575} Although both Reed and Matlack were willing to criticize juries extensively, they were unwilling to condone violent attacks upon participants in the trials. Equally important, after Fort Wilson, attacks on juries ceased almost entirely in Pennsylvania. The jury system had survived the first major challenge to its independence and would never again come under such sustained attack.

VI. CONCLUSION

When James Wilson repeatedly praised the jury system in his inaugural law lecture on that cold, blustery day in December 1790, he was drawing

\textsuperscript{567} The Memorial and Representation of a Deputation from the Several Battalions of Militia of the City and Liberties of Philadelphia, Oct. 8, 1779 (on file with HSP, 9 Stauffer Collection 633).
\textsuperscript{568} Id.
\textsuperscript{569} Minutes of the SEC, Oct. 6, 1779, \textit{in} 12 \textsc{Col. Records of Pa.}, \textit{supra} note 566, at 121-22.
\textsuperscript{570} Id. at 137.
\textsuperscript{571} Letter from Arthur St. Clair to Joseph Reed (Oct. 1779), \textit{in} \textsc{Reed Correspondence}, \textit{supra} note 466, at 153.
\textsuperscript{572} \textsc{Rosswurm}, \textit{supra} note 13, at 221.
\textsuperscript{573} Minutes of the SEC, Nov. 13, 1779, \textit{in} 12 \textsc{Col. Records of Pa.}, \textit{supra} note 566, at 167-68.
\textsuperscript{574} \textsc{Foner}, \textit{supra} note 20, at 178.
\textsuperscript{575} \textsc{Rosswurm}, \textit{supra} note 13, at 223.
on a rich vein of personal experience. The jury system with which Wilson was familiar had a number of distinctive features.

First, juries were significant, independent, deliberative bodies that played a major role in shaping the administration of criminal justice. It has been entirely too easy for scholars to focus on the more easily visible role of judges. It is hardly accurate to claim, as one scholar does, that Chief Justice McKean "held in his hands the power to determine in large measure the scope and tempo of the repression in his state."576 Nor is it plausible to claim that "[t]he personality of Chief Justice Thomas McKean combined with the political interests of the state explain why only Abraham Carlisle and John Roberts suffered the hangman's noose."577

Juries mattered significantly in the outcomes of particular trials; all the evidence indicates that jurors took their responsibilities seriously and were perfectly willing to make unpopular decisions. As the democratic branch of the judicial department, juries reflected community values, but they did not mindlessly yield to the passions of the moment. In short, they worked as they should have.

Second, although the all-white, all-male juries were hardly representative of Philadelphia's population as a whole, they seem to have been more representative than their English counterparts. Jury service was open to a relatively wide range of white men, obscure for the most part, and only occasionally making a memorable imprint in the historical record.

Third, it is almost impossible to overstate the importance of peremptory challenges in the shaping of the trial juries. The law provided a significant benefit to defendants in these cases, which they exploited extensively. Peremptory challenges enabled certain jurors to serve repeatedly and to draw on significant prior experience when making decisions in particular cases. The jurors did not operate in a vacuum, but against the informative backdrop of numerous similar cases.

Fourth, defense counsel played a prominent role in the trials. These trials were as "lawyerized" as they could possibly have been, even in cases involving indigent defendants. Any hangings that resulted from the trials could not be blamed on incompetent defense counsel.

Fifth, the jury verdicts demonstrate the significance of the death penalty. Philadelphia jurors undoubtedly viewed treasonable acts as morally and legally blameworthy, but they were not convinced that particular acts of treason necessarily warranted capital punishment. As a result, many jurors were willing to acquit rather than expose defendants to the risk of execution. Juror knowledge of possible sentences made a difference, and juries were quite willing to take sentencing considerations into account when deciding on guilt or innocence.

Finally, and most importantly, the Philadelphia treason trials demonstrate a profound commitment to the rule of law, even in times of military crisis and war. Civilians suspected of crimes against the state were given a public jury trial, with the full protections of the common law and the assistance of vigorous, competent defense counsel. The terror and fear felt by many Americans as the British army rampaged through the country were very real. The Philadelphians who served on the treason trials had seen their city violently invaded, and the threat of future invasion had never completely disappeared. But the fate of suspected disloyal Americans did not rest with the military or with the Supreme Executive Council of Pennsylvania; it rested with ordinary Americans serving on juries. It was a lesson James Wilson took deeply to heart, and which can still speak to us over two centuries later, when jury trial rights are again imperiled by the shadows of terror and fear.
# Appendix A: Grand Jurors, Philadelphia Court of Oyer & Terminer, 1778-1779

<table>
<thead>
<tr>
<th>Name</th>
<th>Age</th>
<th>Occupation</th>
<th>Religion</th>
<th>Ethnicity</th>
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<tbody>
<tr>
<td>Ball, William</td>
<td>49</td>
<td>silversmith</td>
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<tr>
<td>Curry, Robert</td>
<td>65</td>
<td>retired master-maker</td>
<td>Presbyterian</td>
<td>English</td>
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<td>Cuthbert, Thomas</td>
<td></td>
<td>merchant</td>
<td>Anglican</td>
<td></td>
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<tr>
<td>Dean, Joseph</td>
<td>40</td>
<td>justice of the peace (JP)</td>
<td>Presbyterian</td>
<td></td>
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<tr>
<td>Dorsey, John</td>
<td></td>
<td>upholsterer;</td>
<td>Anglican</td>
<td>Irish</td>
</tr>
<tr>
<td>Fleeson, Plunket</td>
<td>-64</td>
<td>merchant</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hasenclever, Francis</td>
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<td>merchant</td>
<td>Presbyterian</td>
<td>German</td>
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<tr>
<td>Hunter, James</td>
<td>65</td>
<td>merchant</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Laughlin, Jacob</td>
<td></td>
<td>assessor</td>
<td></td>
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</table>

578. As of September 21, 1778.
579. Poulsom's Am. Daily Advertiser, June 1, 1810, at 3.
583. 1 Colonial and Revolutionary Families of Pennsylvania 466-67 (John W. Jordan ed., Genealogical Publ'g Co., Inc. 1978) (1911).
585. 1 Colonial and Revolutionary Families of Pennsylvania, supra note 583, at 466-67.
586. Id.
587. Ryerson, supra note 116, at 269.
588. Id.
589. Id.
590. PCTD, supra note 218, at 85. Dorsey was manufacturing and selling chocolate in 1765. Pa. Gazette, May 2, 1765.
595. Id. at 501.
598. There are at least four James Hunters listed in the 1779 Philadelphia tax records. The most prominent is the merchant on High Street who was involved in revolutionary activities; given his social and political prominence, he is almost certainly the grand juror. See, e.g., Letter from James Hunter to Michael Gratz (June 24, 1776) (on file with HSP, Etting Collection, Box 38, Folder 50) ("I am much hurried at present with the Colony's affairs."); Pa. Gazette, March 2, 1796 (death notice). One should note, however, that in August 1779, a James Hunter, tallow chandler, was elected to the Philadelphia City Committee, alongside grand juror Thomas Cuthbert and four petit jurors. Pa. Gazette, Aug. 4, 1779. This election suggests that at least one other James Hunter was politically prominent. This Hunter's designation as "tallow chandler" in a document that generally does not list occupations suggests that the designation was added to distinguish him from the more well-known merchant.
601. See supra note 128.
<table>
<thead>
<tr>
<th>Name</th>
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<th>Occupation</th>
<th>Religion</th>
<th>Notes</th>
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<td>Loxley, Benjamin</td>
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<td>Carpenter</td>
<td>Baptist</td>
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<td>Moore, John</td>
<td>1730</td>
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<td>English</td>
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<td>Neff, Rudolph</td>
<td>1725</td>
<td></td>
<td>Dutch</td>
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<td>Potts, Zebulon</td>
<td>1720</td>
<td></td>
<td>German Reformed</td>
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<td>Pryor, Thomas</td>
<td>1720</td>
<td>Baker/Flour</td>
<td>Quaker</td>
<td></td>
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<tr>
<td>Purviance, John</td>
<td>1725</td>
<td>Merchant</td>
<td>Quaker</td>
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<td>Quee, Seth</td>
<td>1720</td>
<td>Farmer</td>
<td>Welsh/English</td>
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<tr>
<td>Snyder, David</td>
<td>1720</td>
<td>Merchant</td>
<td>Anglican</td>
<td></td>
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<tr>
<td>Young, James</td>
<td>1720</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

603. *Id.*
607. Moore was an innkeeper by 1786, but there is no evidence of this for 1778. *Id.* at 922.
608. *Id.* at 917.
610. 2 Scharf & Westcott, *supra* note 40, at 1414.
611. *Id.*
612. See FamilySearch.org (search for “Zebulon Potts”) (last visited Aug. 27, 2008).
616. Gaines’s Universal Register 87 (1775); *Pa. Gazette,* July 17, 1776.
619. Seth Quee is noted as a minor in his father’s will of 1755. Will of Alexander Quee, (1755), http://home.att.net/~littlehouseantiques/queewill.html. This suggests that Seth must have been born no earlier than 1734, and was therefore no older than 44 at the time of the treason trials.
620. Seth Quee’s illiterate father is described as a “yeoman” in his will of 1755. *Id.* Seth inherited the entire property in Horsham, which consisted of 151 acres, including timber land, meadows, cleared land, and an apple orchard, as well as a stone house and barn. *Pa. Gazette,* Nov. 9, 1785. Since Quee still held this property at his death, and no other properties are known for him, it seems reasonable to conclude that he continued farming on his father’s land.
621. James Young Folder, Society Collection, HSP.
APPENDIX B: THE TRIALS, THE DEFENDANTS, AND THE JURIES

1. Sept. 25, 1778, Abraham Carlisle, carpenter, Quaker, Guilty
   Jury: Clumberg, Dickinson, Drinker, Goucher, Jackson, Lynn, J. Palmer, T. Palmer, Powell, Reese, Shields, Uttree

2. Sept. 28, 1778, Jacob Ming, wheelwright, Not Guilty

3. Sept. 30, 1778, John Roberts, miller, Quaker, Guilty
   Jury: Adcock, Burns, Burkhard, Corgee, Drinker, Forsyth, Hood, McNeal, Pancoast, Powell, Rigden, Steinmetz

4. Oct. 3, 1778, Joseph Turner, Jr., Not Guilty
   Jury: Drinker, Falconer, Forsberg, Gamble, Gray, Humphreys, Merion, J. Palmer, T. Palmer, Powell, Pringle, Reese

5. Oct. 7, 1778, Peter Deshong, miller, German Reformed, Not Guilty

6. Oct. 9, 1778, George Cook, Jr., Not Guilty
   Jury: Dowig, Drinker, Esler, Falconer, Gottier, Gray, J. Palmer, T. Palmer, Piles, Reese, Shields, Simpson

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624. Trial dates and juror lists are from O&T Docket, supra note 100. This account corrects the misdatings and erroneous inclusion of Chester County cases in OUSTERHOUT, supra note 32, at 189; ROWE, supra note 39, at 115-16; and SMITH, supra note 1, at 121.

625. PA. PACKET, May 13, 1778.


627. The court’s docket book appears to be in error with respect to Carlisle’s jury. The court clerk likely erroneously copied the jury list for Peter Deshong into the court’s docket book under Carlisle’s name. For the accurate jury list, see Carlisle Notes, supra note 361, at 44; Memorial of Jurors and Judges in Favor of Abraham Carlisle, Oct. 18, 1778, in 7 PA. ARCHIVES, supra note 12, at 52, 53; Record of the Case of Abraham Carlisle, in 11 COL. RECORDS, supra note 88, at 605.

628. Peace Bond for Jacob Ming (on file with Pa. State Archives, Recognizance File, RG-33). Ming was operating as a coach-maker by 1781. PA. PACKET, Sept. 13, 1781, at 3.

629. RYERSON, supra note 116, at 85.

630. PA. PACKET, May 13, 1778.

631. Virtually nothing is known about Turner. He may be a son of the prominent merchant, Joseph Turner, but I have found no other source referring to a “Joseph Turner, Jr.”

632. E-mail from Stephen Corson, Deshong family historian, to Carlton Larson (May 3, 2008) (on file with author).

633. PA. PACKET, May 13, 1778.

634. E-mail from Stephen Corson, supra note 632.

635. Id.
7. Oct. 18, 1778, William Hamilton, 33,\textsuperscript{636} Gentleman,\textsuperscript{637} Not Guilty
Jury: Drinker, Esler, Falconer, McClenachan, McNeal, J. Palmer, T. Palmer, Pancoast, Piles, Powell, Pringle, Simpson

8. Nov. 11, 1778, Charles Woolfall, blacksmith,\textsuperscript{638} Anglican,\textsuperscript{639} Not Guilty

9. Nov. 11, 1778, Samuel Piles, ship-joiner,\textsuperscript{640} Not Guilty

10. Nov. 13, 1778, James Roberts, Not Guilty
Jury: Dickinson, Drinker, Esler, Hood, McNeal, Merion, T. Palmer, Piles, Powell, Pringle, Rush, Zantzinger

11. Nov. 16, 1778, Lewis Guion, 55,\textsuperscript{641} carter,\textsuperscript{642} Not Guilty
Jury: Corgee, Dickinson, Drinker, Falconer, Gottier, Merion, T. Palmer, Piles, Powell, Reese, Rush, Steinmetz

12. Nov. 18, 1778, Abijah Wright, Indicted for Treason and Burglary, Tried for Burglary, Guilty

13. Nov. 21, 1778, David Copeland, Not Guilty
Jury: Alberson, Dickinson, Dowig, Drinker, Hale, McLane, Merion, T. Palmer, Powell, Pringle, Reese, Rush

14. Nov. 24, 1778, George Devenderfer, Not Guilty

15. Nov. 25, 1778, John Huntsman, miller,\textsuperscript{643} Not Guilty
Jury: Bitting, Dickinson, Drinker, Eckhart, Goucher, Grove, T. Palmer, Piles, Reese, Rush, G. Wilson, J. Wilson

\textsuperscript{636} Jacobs, supra note 325, at 184.
\textsuperscript{637} Id. at 181.
\textsuperscript{638} PCTD, supra note 218, at 216.
\textsuperscript{639} Marriage Record of Christ Church, Philadelphia, in 8 PA. ARCHIVES (John B. Linn & Wm. H. Egle, eds., 2d series 1896) [hereinafter MRCC].
\textsuperscript{641} PA. EVENING POST, Feb. 27, 1812, at 3.
\textsuperscript{642} Recognizance of Lewis Guyon, Oct. 18, 1778 (on file with Pa. State Archives, Recognizance File, RG-33).
\textsuperscript{643} PA. PACKET, June 3, 1778.
16. Nov. 27, 1778, Adam Stricker, blacksmith, Not Guilty
   Jury: Adcock, Campbell, Dickinson, Dowig, Drinker, Esler, Falconer, Merion, T. Palmer, Powell, Reese, Rush

17. Nov. 28, 1778, Joseph Bolton, 41, Quaker (disowned), English, Joiner, Not Guilty
   Jury: Campbell, Dickinson, Dowig, Drinker, Eckhart, Falconer, Merion, T. Palmer, Piles, Powell, Pringle, Reese

18. Nov. 30, 1778, Aubrey Harry, Quaker, waggoner, Not Guilty
   Jury: Campbell, Dickinson, Drinker, Esler, Falconer, Jackson, T. Palmer, Pancoast, Powell, Shields, Steinmetz, G. Wilson

19. Dec. 4, 1778, Andrew Hathe, innkeeper, Not Guilty

20. Apr. 6, 1779, Samuel Garrigues, former clerk of the market and trader, French, Quaker, Not Guilty

21. Apr. 8, 1779, William Whitefield, yeoman, Not Guilty

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646. Id. at 89; HINSHAW, supra note 226, at 467.
649. HINSHAW, supra note 226, at 371.
652. Garrigues's son, Samuel Garrigues, Jr., was named in an attainder proclamation of June 15, 1778. Pa. Packet, June 17, 1778. The prime witness against Garrigues, Jr. later realized that he had witnessed someone else claiming to be Garrigues, Jr., 7 Pa. Packet, Aug. 29, 1778, and the charges against Garrigues, Jr., were dropped, Pa. Packet, Dec. 12, 1778, at 3.
653. HINSHAW, supra note 226, at 365.
656. HINSHAW, supra note 226, at 365.
22. Apr. 8, 1779, George Harding,\textsuperscript{658} 34\textsuperscript{,659} innkeeper,\textsuperscript{660} Anglican,\textsuperscript{661} Irish,\textsuperscript{662} Guilty


23. Apr. ?, 1779, James Stevens,\textsuperscript{663} baker,\textsuperscript{664} Not Guilty

Jury: Unknown

\textsuperscript{658} Harding's name was sometimes listed as "Hardy." 7 Pa. Archives, \textit{supra} note 12, at 326.

\textsuperscript{659} William White Bronson, \textit{The Inscriptions in St. Peter's Church Yard} 368 (1879).

\textsuperscript{660} Record of Case of George Hardy (on file with Pa. State Archives, Clemency File, RG-27).

\textsuperscript{661} Bronson, \textit{supra} note 659, at 368.

\textsuperscript{662} Knouff, \textit{supra} note 163, at 199, 209.

\textsuperscript{663} This trial, which is omitted from the official court records, is documented in the sources cited \textit{supra} note 108.

\textsuperscript{664} Proclamation of May 21, 1778, \textit{in 3 Pa. Archives, supra} note 56, at 676.
APPENDIX C: THE TRIAL JURORS

1. William Adcock, 47, shopkeeper, Anglican, English
   Juries (5): John Roberts, Woolfall, Piles, Stricker, Hathe

2. Ricloff Alberson, carpenter
   Juries (4): Woolfall, Piles, Copeland, Devenderfer

3. James Barnes, painter
   Juries (1): John Roberts

4. John Barnhill, merchant, Irish
   Juries (4): Woolfall, Piles, Devenderfer, Hathe

5. Edmund Beach, cooper, Presbyterian
   Juries (1): Wright

6. Lewis Bitting, inn-keeper, German
   Juries (1): Huntsman

7. Andrew Burkhard, cordwainer, Lutheran, German
   Juries (1): John Roberts

8. John Campbell

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665. POULSON'S AMERICAN DAILY ADVERTISER, Mar. 4, 1817, at 3.
666. PA. EVENING POST, Jan. 28, 1777, at 46.
667. PA. GAZETTE, Dec. 4, 1782.
669. PCTD, supra note 218, at 215.
670. RYERSON, supra note 116, at 275.
671. BARNHILL, supra note 296, at 17.
672. Id. at 21.
673. Id. at 17.
675. PCTD, supra note 218, at 215; PA. GAZETTE, March 7, 1765.
676. PA. GAZETTE, Feb. 28, 1787.
679. PA. LAWMAKING, supra note 156, at 351.
680. POULSON'S AMERICAN DAILY ADVERTISER, July 14, 1812, at 3.
681. PCTD, supra note 218, at 106 ("Andrew Burket").
682. An Act for confirming and Amending the Charter of the German Lutheran Congregation in and Near the City of Philadelphia in the State of Pennsylvania, § 4, 10 Pa. Stat. 82, 84 (1780) [hereinafter Lutheran Charter Act].
683. PA. GAZETTE, Jan. 12, 1780.
684. This juror cannot be identified conclusively because of multiple persons of that name in the Philadelphia tax records. He is most likely the grocer identified as a merchant in the Philadelphia County Tax Duplicate, supra note 208, and who advertised his goods in the Pennsylvania Packet, Nov. 17, 1778. This Campbell was Anglican, and would have
Juries (4): Devenderfer, Stricker, Bolton, Harry

9. Philip Clumberg, surgeon, German, Lutheran

Juries (1): Carlisle

10. Thomas Corgée, blacksmith

Juries (5): John Roberts, Guion, Hathe, Whitefield, Harding

11. Cadwalader Dickinson, cordwainer, English, Quaker

Juries (15): Carlisle, Woolfall, Piles, James Roberts, Guion, Copeland, Devenderfer, Huntsman, Stricker, Bolton, Harry, Hathe, Garrigues, Whitefield, Harding

12. George Dowig, Silversmith/Goldsmith, German

Juries (6): Deshong, Cook, Copeland, Stricker, Bolton, Garrigues

13. John Drinker


14. William Eckhart, baker, German

Juries (5): Deshong, Huntsman, Bolton, Hathe, Garrigues

15. Henry Esler, coachmaker

Juries (9): Ming, Cook, Hamilton, James Roberts, Wright, Devenderfer, Stricker, Harry, Garrigues

been fifty-two at the time of the trials. Inscriptions in Saint Paul's Church and Churchyard, in 3 PA. VITAL RECORDS 540, 544 (1983).

685. PA. GAZETTE, May 5, 1773.
689. HinsHaw, supra note 226, at 354.
691. Dickinson, supra note 362.
692. Id.
693. "Dowig" is named as "Doig" in the court records, but I have found no other reference to any "George Doig" in Philadelphia in the eighteenth century. "Doig" is likely a clerk's transcription of the oral "Dowig."
695. PA. EVENING POST, Apr. 30, 1776, at 216; PA. PACKET, Oct. 17, 1778.
696. PA. GAZETTE, Jan. 12, 1780.
697. See supra text accompanying notes 225-26.
698. PA. GAZETTE, Nov. 10, 1773.
699. Id.
700. PA. EVENING POST, Aug. 1, 1778.
16. William Falconer,\textsuperscript{701} tavern-keeper,\textsuperscript{702} Presbyterian\textsuperscript{703}
Juries (12): Turner, Cook, Hamilton, Woolfall, Piles, Guion, Devenderfer, Stricker, Bolton, Harry, Whitefield, Harding

17. Nicholas Forsberg, 58,\textsuperscript{704} painter\textsuperscript{705}
Juries (3): Turner, Whitefield, Harding

18. Andrew Forsyth, merchant,\textsuperscript{706} Scottish\textsuperscript{707}
Juries (1): John Roberts

19. William Gamble, shopkeeper,\textsuperscript{708} Presbyterian\textsuperscript{709}
Juries (1): Turner

20. James Gottier, Lutheran\textsuperscript{710}
Juries (2): Cook, Guion

21. Thomas Goucher, cutler,\textsuperscript{711} Anglican\textsuperscript{712}
Juries (3): Carlisle, Huntsman, Garrigues

22. William Gray, brewer\textsuperscript{713}
Juries (3): Turner, Deshong, Cook

23. Samuel Grove, shopkeeper\textsuperscript{714}
Juries (1): Huntsman

24. Thomas Hale, carpenter/bell-hanger,\textsuperscript{715} English\textsuperscript{716}
Juries (1): Copeland

\textsuperscript{701} Falconer's name was sometimes spelled "Faulkner." Compare \textit{PA. Packet}, July 30, 1778 ("Falconer"), with \textit{PA. Packet}, Aug. 8, 1778 ("Faulkner").

\textsuperscript{702} PCTD, supra note 218, at 44; cf. \textit{PA. Packet}, July 30, 1778 (beer sales).

\textsuperscript{703} \textit{Pa. Gazette}, Aug. 20, 1761.

\textsuperscript{704} \textit{Matthew Carey, A Short Account of the Malignant Fever} 100 (1793).

\textsuperscript{705} PCTD, supra note 218, at 117.

\textsuperscript{706} 1780 Tax, supra note 678, at 335.

\textsuperscript{707} 4 Colonial \& Revolutionary Families of Pennsylvania 893 (Wilfred Jordan ed., 1982).

\textsuperscript{708} PCTD, supra note 218, at 16.

\textsuperscript{709} Register of Baptisms, supra note 674, at 76-96.


\textsuperscript{712} MRCC, supra note 639, at 112.

\textsuperscript{713} PCTD, supra note 218, at 52. On Gray's brewery, see 3 Scharf \& Westcott, supra note 40, at 2278-79.

\textsuperscript{714} PCTD, supra note 218, at 103. Grove may have been involved in upholstery. \textit{See Philadelphia: Three Centuries of American Art} 109-10 (1976).

\textsuperscript{715} \textit{Pa. Gazette}, Feb. 12, 1767.

\textsuperscript{716} Id.
25. George Hitel, skinner,\textsuperscript{717} German,\textsuperscript{718} Lutheran\textsuperscript{719}
   Juries (3): Woolfall, Piles, Wright
26. James Hood, cooper\textsuperscript{720}
   Juries (4): John Roberts, Woolfall, Piles, James Roberts
27. Whitehead Humphreys, 45,\textsuperscript{721} steel manufacturer,\textsuperscript{722} Quaker (disowned)\textsuperscript{723}
   Juries (1): Turner
28. Matthew Jackson, shopkeeper\textsuperscript{724}
   Juries (3): Carlisle, Harry, Hathe
29. Peter January, 53,\textsuperscript{725} shoemaker,\textsuperscript{726} Scottish,\textsuperscript{727} Presbyterian\textsuperscript{728}
   Juries (2): Whitefield, Harding
30. John Linnington, grocer,\textsuperscript{729} Baptist\textsuperscript{730}
   Juries (1): Wright
31. John Lynn, 60,\textsuperscript{731} shopkeeper\textsuperscript{732}
   Juries (1): Carlisle
32. Blair McClenachan, merchant,\textsuperscript{733} Irish,\textsuperscript{734} Anglican\textsuperscript{735}
   Juries (1): Hamilton

\textsuperscript{717} 1774 Tax, supra note 644, at 261. Hitel's name is recorded as "Heidel" in these records.
\textsuperscript{718} Pa. Gazette, Jan. 12, 1780.
\textsuperscript{719} Lutheran Charter Act, § 4, 10 Pa. Stat. 82, 84 (1780).
\textsuperscript{720} Pa. Evening Post, July 17, 1777, at 380.
\textsuperscript{721} Independent Gazetteer, Sept. 9, 1786, at 3.
\textsuperscript{723} Independent Gazetteer, Sept. 9, 1786, at 3; Hinshaw, supra note 226, at 559.
\textsuperscript{724} PCTD, supra note 218, at 6.
\textsuperscript{725} Peter January Genealogical Index, http://www.familysearch.org/eng/default.asp (search for "Peter January") (last visited Oct. 21, 2008).
\textsuperscript{727} Rosswurm, supra note 13, at 26.
\textsuperscript{728} Id.
\textsuperscript{729} 1780 Tax, supra note 678, at 334.
\textsuperscript{730} 2 Scharf & Westcott, supra note 40, at 1307.
\textsuperscript{731} Philadelphia Gazette, Feb. 20, 1802, at 3.
\textsuperscript{732} PCTD, supra note 218, at 66.
\textsuperscript{733} Blair McClenachan, Biographical Directory of the United States Congress, http://bioguide.congress.gov/scripts/biodisplay.pl?index=M000336. McClenachan was later elected to the United States House of Representatives as a Republican and served from 1797 to 1799. Id. By this time he was one of the richest men in America. Stanley Elkins & Eric McKitrick, The Age of Federalism 459 (1993).
\textsuperscript{734} McClenachan, supra note 733.
33. Samuel McLane, leather dresser/breeches maker/glover

Juries (1): Copeland

34. John McNeal, shopkeeper


35. Ezekiel Merion, cordwainer

Juries (11): Turner, Deshong, Woolfall, Piles, James Roberts, Guion, Wright, Copeland, Devenderfer, Stricker, Bolton

36. John Palmer

Juries (10): Carlisle, Turner, Deshong, Cook, Hamilton, James Roberts, Wright, Garrigues, Whitefield, Harding

37. Thomas Palmer

Juries (17): Carlisle, Ming, Turner, Deshong, Cook, Hamilton, Guion, Copeland, Devenderfer, Hunstman, Stricker, Bolton, Harry, Hathe, Garrigues, Whitefield, Harding

38. David Pancoast, 50, carpenter, Quaker (disowned)

Juries (4): Ming, John Roberts, Hamilton, Harry

39. George Pickering, joiner

Juries (3): Hathe, Whitefield, Harding

40. John Piles

Juries (9): Deshong, Cook, Hamilton, James Roberts, Guion, Devenderfer, Huntsman, Bolton, Garrigues

41. Isaac Powell, joiner, Baptist

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736. PA. PACKET, Aug. 4, 1778.
737. Tax and Exoneration Lists, supra note 126, at 19.
738. PCTD, supra note 218, at 58.
739. See discussion supra notes 217-24, and accompanying text.
740. See id.
742. PCTD, supra note 218, at 118.
743. PANCOAST, supra note 741, at 38.
744. PA. EVENING POST, Feb. 29, 1776, at 105. Steven Rosswurm asserts that Pickering was "taken off by the British when he left Philadelphia in 1778." ROSSWURM, supra note 13, at 350 n.40. If so, Pickering must have returned by December 1778, when he served on the Hathe jury.
745. The 1775 and 1779 tax records contain two men named John Piles, and it is impossible to determine which one was the juror. See PCTD, supra note 218, at 15, 213; Tax and Exoneration Lists, supra note 126, at 24, 240.
746. PCTD, supra note 218, at 112.
747. 2 SCHARF & WESTCOTT, supra note 40, at 1307.
Juries (17): Carlisle, Ming, John Roberts, Turner, Deshong, Hamilton, Woolfall, Piles, James Roberts, Guion, Wright, Copeland, Stricker, Bolton, Harry, Hathe, Garrigues

42. John Pringle, merchant,\textsuperscript{748} Anglican,\textsuperscript{749} Irish\textsuperscript{750}


43. David Reese, hatter\textsuperscript{751}

Juries (11): Carlisle, Ming, Turner, Cook, Guion, Copeland, Huntsman, Stricker, Bolton, Whitefield, Harding

44. William Rigden, painter,\textsuperscript{752} English\textsuperscript{753}

Juries (1): John Roberts

45. Jacob Ritter, blacksmith\textsuperscript{754}

Juries (1): Hathe

46. John Roop\textsuperscript{755}

Juries (1): Wright

47. Isaac Roush, 46 or 47,\textsuperscript{756} stocking weaver,\textsuperscript{757} German,\textsuperscript{758} German Reformed Church\textsuperscript{759}

Juries (2): Ming, Wright

48. John Roush, 37,\textsuperscript{760} skinner,\textsuperscript{761} German,\textsuperscript{762} German Reformed Church\textsuperscript{763}

Juries (1): Ming

\textsuperscript{748} Tax and Exoneration Lists, \textit{supra} note 126, at 4.

\textsuperscript{749} \textsc{Edward L. Clark, A Record of the Inscriptions on the Tablets and Gravestones in the Burial Grounds of Christ Church, Philadelphia} 102 (1864).

\textsuperscript{750} \textit{Id.}

\textsuperscript{751} PCTD, \textit{supra} note 218, at 107.

\textsuperscript{752} \textsc{Pa. Gazette}, Aug. 24, 1774.

\textsuperscript{753} \textsc{Pa. Gazette}, June 29, 1749 (Rigden's father).

\textsuperscript{754} 1774 Tax, \textit{supra} note 644, at 247.

\textsuperscript{755} There are two John Roops in the Philadelphia tax records, a shoemaker in the Mulberry Ward and a much wealthier individual in Germantown. Tax and Exoneration Lists, \textit{supra} note 126, at 64, 176. It is possible that they are the same person with multiple properties, but conclusive identification is impossible.

\textsuperscript{756} \textsc{O'Melia}, \textit{supra} note 253, at 45. Roush's name is sometimes spelled Raush, or Rausch.

\textsuperscript{757} PCTD, \textit{supra} note 218, at 107.

\textsuperscript{758} \textsc{O'Melia}, \textit{supra} note 253, at 45.

\textsuperscript{759} \textit{Id.}

\textsuperscript{760} \textsc{Poulson's Am. Daily Advertiser}, Feb. 13, 1815, at 3. The Roush family historian gives an age of 45 for 1778. \textsc{O'Melia}, \textit{supra} note 253, at 45.

\textsuperscript{761} 1780 Tax, \textit{supra} note 678, at 490.

\textsuperscript{762} \textsc{O'Melia}, \textit{supra} note 253, at 45.

\textsuperscript{763} \textit{Id.}
49. William Rush, 61,64 blacksmith,65 Presbyterian66

Juries (9): Woolfall, Piles, James Roberts, Guion, Wright, Copeland, Devenderfer, Huntsman, Stricker

50. Thomas Shields, 36,67 goldsmith,68 Baptist69

Juries (3): Carlisle, Cook, Harry

51. Samuel Simpson, 58,70 cordwainer,71 Anglican,72 English73

Juries (3): Deshong, Cook, Hamilton

52. James Skinner, grocer,74 Scottish75

Juries (2): Wright, Devenderfer

53. John Steinmetz, 38,76 merchant,77 German78

Juries (4): John Roberts, Guion, Wright, Harry

54. Jacob Uttree, potter,79 German Reformed80

Juries (4): Carlisle, Ming, Whitefield, Harding

55. Anthony Wilkinson, 27,81 stone cutter,82 Anglican83

Juries (2): Ming, Deshong

765. PA. GAZETTE, Mar. 19, 1767.
766. PA. GAZETTE, Dec. 7, 1791.
767. POULSON’S AM. DAILY ADVERTISER, Dec. 10, 1819, at 3.
768. PA. GAZETTE, Dec. 7, 1774.
769. 2 SCHARF & WESTCOTT, supra note 40, at 1307.
770. ROSSWURM, supra note 13, at 260.
771. RYERSON, supra note 116, at 269.
774. 1780 Tax, supra note 678, at 259.
775. THE CONSTITUTION & RULES OF THE ST. ANDREW’S SOCIETY IN PHILADELPHIA 17 (1769).
777. PA. GAZETTE, Dec. 20, 1775.
778. PA. GAZETTE, Jan. 12, 1780. Steinmetz’s great-grandson was Union General George McClellan, the Democratic nominee for President in 1864. Joseph Allen Steinmetz, Steinmetz Genealogical Chart (1893) (on file with HSP).
779. 1774 Tax, supra note 644, at 287. Historian Harrold Gillingham argued that Uttree’s low 1774 tax assessment indicated he was a worker in, rather than a proprietor of, a Philadelphia pottery works. Harrold Gillingham, Pottery, China, and Glass Making in Philadelphia, 54 PA. MAG. HIST. & BIOGRAPHY 97, 115 (1930). By 1780, however, Uttree is listed as a “gentleman” in the tax records. 1780 Tax, supra note 678, at 340.
780. Record of Pennsylvania Marriages Prior to 1810, in 8 PA. ARCHIVES (2d Ser.) 663, 685 (Harrisburg, 1895).
781. Ullman, supra note 238, at 308.
782. PCTD, supra note 218, at 134.
783. Ullman, supra note 238, at 308.
56. George Wilson\textsuperscript{784}

Juries (7): Devenderfer, Huntsman, Harry, Hathe, Garrigues, Whitefield, Harding

57. John Wilson\textsuperscript{785}

Juries (1): Huntsman

58. Adam Zantzinger, merchant,\textsuperscript{786} German\textsuperscript{787}

Juries (3): Ming, Deshong, James Roberts

\textsuperscript{784} This juror cannot be identified conclusively because of multiple persons of that name in the Philadelphia militia records.

\textsuperscript{785} This juror cannot be identified conclusively because of multiple persons of that name in the Philadelphia tax records.

\textsuperscript{786} \textit{PA. GAZETTE}, Dec. 3, 1778.

\textsuperscript{787} \textit{PA. GAZETTE}, Jan. 12, 1780.