

Editor

NY Times

Re: Juries Must Determine Punishment for Some Citizens,  
BUT Not for Others???

Gentlemen:

I am troubled by a fundamental problem with the article by Liptak in your paper today. Although more of a journalistic piece than op-ed, Mr. Liptak nonetheless suggested that the pending appeal of a products liability, punitive damages case in California raises questions which are "part of a debate about whether jurors, rather than judges or regulators, should be entrusted with punishing corporate wrongdoing."

Let me frankly declare my bias and my interest. I represent the little people in our society who are victimized by "corporate wrongdoing." As you can see from my website, [www.justiceseekers.com](http://www.justiceseekers.com), my practice mainly consists of pursuing justice for families who have lost a loved one to the tragedy of suicide as a result of Prozac, Zoloft, Paxil, and similar psychoactive drugs. I am also a member of the American Board of Trial Advocates, an invitation only group of lawyers from both sides of the bar who believe, more than anything else, that justice is done better by juries than judges. Therefore, I confess that I come to the issue from a particular viewpoint.

However, here is how I see the problem. In every jurisdiction that I know, when the time comes to instruct the jury, lawyers for the big corporations insist that the judge always tell them that "a corporation is entitled to the same respect and consideration as any other person," or similar such instructions. So. If that is the case, then what is the consideration due to all "other persons" with regard to the imposition of punishment on them for their "personal wrongdoing"?

The Supreme Court of the United States answered the question resoundingly on June 24th when it handed down its opinion in *Ring v. Arizona*. Only juries, it held, could impose the ultimate punishment for such wrongdoing, i.e. death. Various arguments in favor of judge sentencing included the potential arbitrariness of jury verdicts and the efficiency with which a judge could dispense punishment. Justice Ginsburg, writing for a 7:2 majority of the Court, answered as follows:

"Arizona suggests that judicial authority over the finding of aggravating factors "may ... be a better way to guarantee against the arbitrary imposition of the death penalty." The Sixth Amendment jury trial right, however, does not turn on the relative rationality, fairness, or efficiency of potential factfinders. Entrusting to a judge the finding of facts necessary to support a death sentence might be 'an admirably fair and efficient scheme of criminal justice designed for a society that is prepared to leave criminal justice to the State . . . The founders of the American Republic were not prepared to leave it to the State, which is why the jury-trial guarantee was one of the least controversial provisions of the Bill of Rights. It has never been efficient; but it has always been free.'"

I don't know about the New York Times, but I opt for freedom. If we can trust juries with life and death decisions regarding the little people of our society, then surely, surely, they can make non-terminal financial decisions to punish "corporate wrongdoing."

Sincerely,

Andy Vickery

Houston, Texas