

available the common sense judgment of the community as a hedge against the overzealous or mistaken prosecutor or in preference to the profession or perhaps overconditioned biased response of the judge. In other words, a jury and a juror, an individual jury and a jury collectively is not a group of super intelligent human beings who have studied the law and have great knowledge about our legal system. They are a hedge against the professionals. They are a hedge against the Chris Beutlers and the Peter Hoaglands and the Vard Johnsons. What we say is we have on one hand all of these legal experts presenting the material but as a hedge against their getting too far astray in legal terminology and the legal intricacies, we have a group of common sense citizens, individuals that are representative of the population, making the final judgment on guilt or innocence or on liability in the case of a civil case. Basically, this gets to the very essence of democracy, democracy trust the people. For voting we don't have literacy tests. We don't have poll tax. We don't have property qualifications. We say that the theory of our country is that the common people once every two years, in the case of a President, once every four years, have the qualities to examine the individuals running for office and make good faith, intelligent judgments on the direction which our country moves. We are asking you to do the same thing with the juries. We are asking you to say that, no, we don't need, as the Lincoln Journal or Governor Kerrey would have you believe, a qualification for serving on a jury other than citizenship. What we ask you to do is say that a common individual has the ability to make these sort of decisions about guilt or innocence, about criminal liability. What happens when we don't use a representative list? Let me again quote from U. S. Census and the ABA House of Delegates. The U. S. Census says when we use only voter registration lists we exclude...

SPEAKER NICHOL: One minute.

SENATOR WITHEM: ...we exclude blacks, Hispanics, young people under 35 years of age, older Americans who do not complete elementary school education. Unskilled laborers are excluded. The ABA House of Delegates says when these people are excluded, when large identifiable segments of the community are excluded from jury service, the effect is to remove from the jury rooms qualities of human nature and varieties of human experience a range of which is unknown