Professional Jurors

NAME

CJ1130 Introduction to Criminal Justice

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July 27, 2011
The process to make a fair trial for the accused dates back long before the United States was formed. The United States adopted the process and guaranteed this right to all of its citizens through the Sixth Amendment in the U.S. Constitution. Juries are a pool of people selected to make a decision of guilt beyond a reasonable doubt. They are selected by the prosecution and defense through a series of questions, both wanting a jury that will better represent their side in the end. Once the jury has been decided upon, it is up to the prosecution to prove the defendant is guilty beyond a reasonable doubt. The jury will sit through opening statements, calling witness and the cross examination of witnesses, they will look at evidence, and then hear the closing arguments. After all this is over the judge will charge the jury in the form of jury instructions. These instructions will include an explanation of the role of the jury, the law, and what proof beyond reasonable doubt means. It will then be up to the jury to decide and interpret the law and apply it to the witness statements and evidence presented in order to find the defendant guilty or not guilty (Samaha, pg 329-338).

There is an ongoing debate pertaining to the introduction of professional jurors and keeping the current system in place. Those in favor of the implementation of a professional jury system argue that juries should be made up of people with in depth understanding of the laws and new technologies, they say that people bring their bias views into the courtroom and because both the defense and prosecution can dismiss a juror by challenges or cause they are able to stack the selection in their favor, were as professional juror would challenge this process greatly. Professional jurors may also be more representatives to the defendants peers they non professionals. Those that argue to keep the current system in place say that the short falls throughout history have been addressed and changes continue to be made. They argue that
professional jurors already exist today and that many studies past and present conclude that with
the system today, judges and juries both agree on verdicts for many of the cases they sit on.

The jury pool or selection is a topic of debate because the selection is pulled from a variety of
sources to include voter registry, voter lists, tax rolls, telephone directories and so forth. This list
excludes people that are recent residents, minors, and people who can’t speak or write English.
Some states go further and excuses even more people from jury duty such as the old and those in
poor health and economic hardships. Certain occupations will also exclude people from being
selected for jury duty these include such occupations as doctors, government workers and
military (Samaha, pg 331). Can the jury really be made up of peers if certain people are excused or
not even considered?

Once a jury pool is selected there are even more cuts as the lawyer’s ask questions to rid
bias jurors, but keep juror that will favor their views. Amar and Amar (1995) believe that the
preemptive challenges should be stopped or limited, making the first twelve people to be picked
sits on the jury. This is because the peremptory challenges allow lawyers to remove juror
without cause in turn stacking or manipulating the jury into certain demographics. Early on in the
nation’s history of juries, only the most educated citizens were considered to serve. Now the
current system allows for the educated to be dismissed from the jury pool (Amar R., Amar V., pg
41).

The peremptory challenges or voir dire processes like most things are influenced heavily
by money today. Wealthy lawyers can hire experts to maneuver the jury in their favor. This is
done by using consultants to survey community attitudes in order to determine the demographics
that will favorable for the jurors. Investigators interview neighbors and visit areas around jurors
to get the prospective of the juror. Psychologists are hired to complete complex questionnaires with invasive questions about the jurors’ attitude and beliefs as well as any memberships or habits they have. The jurors are forced to answer these invasive questions under the threat of perjury. The wealth may also hire shadow jurors, those with similar demographics to the jury. These people are hired to observe and report back aiding in the overall strategy. The introduction of professional juries will provide for a larger challenge when it comes to stacking or the swaying of the jury pool. Lawyers, firefighters, doctors, and nurses present a different demographic that is allowed today (Alschuler, 1996, pg 34-36).

Another reason for the setup of a professional jury system is that currently juries hear the case and then receive a lesson about the law through jury instructions as one of the last steps, and then have to interpret it and decide. Ellsworth, Gusick, Reifman, (1992) pointed out social scientists that have studied jury decisions and came to the conclusion that although jurors might be capable of sorting out the facts, they have a hard time understanding the judge’s instructions and miss critical points. Studies have shown that jurors do not understand the law in which they are to decide on (Ellsworth, Gusick, Reifman, 1992 pg 540). In deliberations, Ellsworth (1998) found that jurors spend twenty percent the time discussing the law and only about half of their statements were correct with one fifth being in serious error. Some of the errors were corrected by other juror, however an equal number of corrections were thrown out in favor of mistaken statements about the law they must interpret (as sited in Ellsworth, Gusick, Reifman, 1992 pg 540).

The process of jury selection has been a topic of concern throughout the last century, it has been addressed and many changes have been made thus far. These changes included new
demographics introduced through career or professional people now allowed to serve on a jury. The start of occupational exemptions has dated back to the 1930’s (Mushlin, 2007 pg 247). In 1993 New York took the lead and initiated the Jury Project which included a group of thirty people from judges and attorneys to educators and journalist. They were tasked with three goals: to find jury pools truly representative of the community, a jury system that operates efficiently, and give the ones who serve a positive jury service experience. The Jury Project’s conclusion on occupational exemptions “placed a disproportionate burden on those not exempt by allowing professions to be “free riders” and fostering public discontent with the jury system” (as cited in Mushlin, 2007 pg 249). This sparked change which added one million people to the state of New York’s jury pool. The elimination of occupational exemptions have not been in New York alone, currently 25 states have already eliminated exemptions and others have limited the exemptions to include elected officials, judicial officers, active military members, law enforcement, and firefighters. With the limited exemptions in place the prosecutions and defense have two tools to eliminate potentially biased jurors from the panel: peremptory challenge and the challenge for cause (Mushlin, 2007 pg 247-257).

In the 1950’s Kalven and Zeisel’s conducted a classic study and reported their findings in The American Jury. They concluded that after researching 2000 criminal trials and over 4000 civil trial cases that when the judge presiding over the case was asked for their “verdict” and rate the difficulty of the case, eighty percent of the time it was in agreement with the jury’s verdict. Out of the remaining twenty percent when jury and judge disagreed, it was not related to the difficulty but to different perspectives (as cited by Vidmar, 2005 pg. S138). More recent studies conclude similar findings with the 1950 study. A study of 300 criminal jury cases that occurred in four different locations conducted in 2000 and 2001 by Eisenberg and
reported in the Empire Legal Study conclude like results (as cited by Vidmar, 2005 pg. S138). They also concluded that legal and evidentiary complexity had little to do with disagreements between judge and jury (Vidmar, 2005 pg. S138).

The use of professional juror occurs today in many states when speaking of people who are experts in their field of study or work even though there are still many occupational exemptions within the system. The introduction of professional jurors will allow for no restrictions from certain professions or certain demographics, allowing for them to serve on a jury. Like all systems if one part is changed or altered it will create changes throughout the whole, the introduction of professional jurors will affect all the components of the criminal justice system but the courts will be affected the most.

How a case is tried and strategies used will matter greatly on the new pool of professional jurors, both the defense and the prosecution will have to make sure that subjected evidence, arguments and expert witnesses will match up to the collective knowledge of the jury pool over their case. If there are professional jurors on a panel, decisions may be swayed either way depending on their personal experiences with careers or professions. Using experts to read the jury pool will no longer be necessary because there should be a larger range of classes of the people within the selection.

Police, if ever they do serve on a jury and are not released due to the preemptive challenges will be subjected to an entire different portion of the judicial system and will get to see how things operate from the time of the arrest all the way through to the sentencing portion. Another way the introduction of professional jurors will affect police work is by ensuring police are following proper procedure at all times, if they make an arrest and it goes to court, they don’t
want an acquittal because there is a lawyer in the jury that believes proper procedure was not followed during collection of evidence or during the arrest. Within the corrections department if there is an introduction of professional juror convicts may decide to appeal their convictions on the grounds of they were not tried by a jury of their true peers.
References


