BLIND JUSTICE: JURIES DECIDING LIFE AND DEATH WITH ONLY HALF THE TRUTH

Executive Summary

[Jury selection in death penalty cases] creates an atmosphere in which jurors are likely to assume that their primary task is to determine the penalty for a presumptively guilty defendant.

-Justice John Paul Stevens, 2005

Blind Justice, the most recent report to be released by the Death Penalty Information Center (DPIC), is the first to focus on the problems of the death penalty from the perspective of jurors. While jurors have always occupied an esteemed position in the broader criminal justice system in the United States, in capital cases the responsibility of jurors is even more critical as they decide whether defendants should live or die. Even with this unique authority in capital cases, they are treated less than respectfully. Frequently, they are kept in the dark regarding key information about the case and are often barred from serving based on their beliefs or their race.

Deciding guilt beyond a reasonable doubt is not easy. But there is clarity in that task and 225 years of tradition to support it. Judging whether a person should be condemned to die is far more daunting and the difficulty is compounded by a complex formula that even many lawyers and judges do not understand. The modern death sentencing system was adopted by the Supreme Court in 1976, and the results have been disturbing.

This report examines the ways in which the death penalty fails jurors and, in turn, fails as a system of justice. It looks at the distorted way jurors are selected in capital cases. It describes how critical information is often withheld from jurors, and how the evidence they do hear is often unreliable. It describes how the complex rules of death sentencing procedures ensure a sense of frustration and emotional pain as jurors are asked to make one of the most difficult choices of their lives.

As ***Blind Justice*** discusses in detail, jurors are manipulated in capital cases in many ways:

- Their deeply held personal views on capital punishment are picked apart and used as a litmus test of their ability to serve as member of the jury. Those adhering to beliefs preventing a death sentence will be rejected, even though those beliefs are well within the mainstream of public opinion.

- Jurors' color and gender will often play a key role in whether they are chosen for a death penalty trial. In recent Gallup Polls, far more blacks and women oppose the death penalty than white males, making it more likely that they will be excluded from capital juries. Similar considerations work against those with certain religious beliefs.

- Jurors in capital cases are not representative of the population as a whole. Those allowed to serve will be more pro-prosecution and conviction-prone than those who are excluded.

- Those jurors who are selected might expect a high-quality pursuit of justice on a level playing field, but the truth will often be hidden from them: prosecutors may withhold critical evidence and defense attorneys may fail to investigate basic facts. Junk science, jailhouse informants and overly confident eyewitnesses will be offered as if they reliably established the defendant's guilt.

- Since 2000, 37 people have been freed from death row after they were exonerated. In 62 percent (23) of these cases, state misconduct in misinforming the juries played a significant role in the wrongful convictions.

- Far beyond their traditional role of determining guilt and innocence, jurors are instructed to weigh the terrible aspects of the crime against any redeeming qualities of the defendant. From such an abstract comparison they are expected to arrive at a decision with life and death consequences.

- Jurors' emotions will be acutely played upon as the most gruesome aspects of the crime are displayed in graphic detail, and as the victim's family is pitted against the defendant and his family. They will be told nothing about more heinous cases in the same jurisdiction where the death penalty was not even sought, much less imposed.

- Once their decision is made, jurors will be largely ignored. If they have second thoughts after learning new facts, it will be too late. In many cases, their work will be for nothing – their decisions overturned because of errors by others beyond their control.

Slowly, jurors are beginning to react to the flagrant flaws in this system. Some have offered affidavits to judges and governors about what they would have done had they known the whole truth. In increasing numbers, they are voting for life sentences, given what they have seen and heard about abuses in the system. As one juror in Louisiana said after sentencing someone to death who was later exonerated, "I don't think many jurors feel comfortable playing Russian Roulette with people's lives. Jurors are recognizing that life in prison is perhaps the only responsible way to vote."

Death sentences have dropped by over 50 percent in the past five years in the wake of so many inmates being exonerated of their crimes. The fundamental questions of whether the death penalty can be made to fit within our principles of equality, the protection of the innocent, and the appropriate limitation of governmental power are being openly raised by many judges, legislators, and the broader public.

Yet, the system continues with many of the same problems that have plagued it in the past. Those most likely to see the flaws in this system are the least likely to be chosen for the next capital case. Death sentences are handed down in isolation with little chance to explore the larger issues. Once imposed, the presumptions in favor of death become even stronger and harder to reverse.

The costs in terms of mistakes, the conviction and even execution of innocent people, are exceedingly great. But there is also a cost to the respect afforded our system of justice. Jurors are not the problem—rather the problem is in the failed attempt to twist a system designed to identify the clearly guilty into a system for weighing life and death. The stakes in these cases encourage bending the truth and the elimination of jurors who might question the process. There is much to emulate in our tradition of citizen participation in the criminal justice system, but its application to the death penalty has not served us well.