

Friday, July 6, 2007

When jurors cave into pressure from fellow jurors.

Photo from website of U.S. District Court (W.D. Mi.). In so many ways, American jurors are fish out of water. They arrive for jury duty asked to train on the job, with a low-paying daily stipend at that. Jurors assigned to criminal trials are required to make lasting judgments about defendants' lives and liberty. Imagine the pressure and fear that jurors feel in criminal cases. Earlier this week, a capital murder juror revealed that two weeks ago he let juror peer pressure improperly lead him to agree to convict Alfredo R. Prieto of murder even when he did not believe the prosecutor had proven his guilt of murder. This issue is critical, because the law required a unanimous jury verdict beyond a reasonable doubt to convict. The juror did not reveal this peer pressure problem until the second of three phases of Mr. Prieto's trial in Fairfax County, Virginia, where I frequently defend clients. The first trial phase was to decide guilt-innocence. The second phase was to determine whether Mr. Prieto was mentally retarded, which would have precluded a death sentence, based on a recent Supreme Court decision. If Mr. Prieto were not found to have been mentally retarded, the third phase would have determined whether he should have been sentenced to death. During the second phase of jury deliberations, the dissenting juror sent the judge a note that his decision was "firm and final and deliberation has crossed the line into peer pressure. Please end this deliberation." The judge told the jury to go to lunch and to resume deliberations. However, the dissenting juror responded with another note saying that the other jurors were "a pack of lions protecting their kill." He said there was "absolutely no evidence provided or proven beyond a reasonable doubt" that Mr. Prieto was guilty of murder. The dissenting juror's revelations are remarkable in and of themselves, and are even more remarkable when considering that the dissenting juror waited two weeks to reveal any unfair pressure in the jury room. In some instances -- perhaps the vast majority of instances -- jurors never reveal such impropriety. In this instance, the dissenting juror's revelation of the peer pressure in trial phase one seemed only to come about because he felt peer pressure in trial phase two. Because non-capital trials ordinarily involve only one trial phase (plus a second phase for recommending a sentence in states like Virginia, where juries recommend criminal sentences), one is left to wonder if, in a one-phase trial, juror psychology would make jurors less likely to reveal improprieties in jury deliberations with increased passage of time. The answer likely is yes. One factor that might make jurors fearful to reveal jury room improprieties post-verdict is fear of penalties for not speaking up before entering a guilty verdict, let alone fears about harsh words from friends, family, the press and fellow community members. Jurors need to be protected from legal penalties for revealing such jury room improprieties (jury deliberations are neither recorded nor observed by non-jurors) and be reassured that they will not be so penalized. In this instance, Mr. Prieto's trial judge said the dissenting juror committed juror misconduct for voting for a murder conviction when he did not believe murder had been proven. The trial judge ordered a mistrial in the entire case, and ordered the trial to start anew with phase one, beginning with the selection of an entirely new jury. In so doing, the trial judge rejected the prosecutor's recommendation to re-start phase two of the trial with a jury alternate replacing the dissenting juror, or else to return the jury to deliberations in phase one, with an alternate replacing the dissenting juror in that instance. The trial judge also rejected the suggestion of Mr. Prieto's very capable and experienced defense lawyer Peter Greenspun that Mr. Prieto be sentenced to life in prison, seeing that the jury had failed to rule unanimously in phase two of the trial. Dr. Sunwolf -- one of my key criminal defense and personal teachers -- writes and teaches extensively about how lawyers can help empower jurors to act independently, to resist peer pressure, and to reach the best verdict they can. She focuses at all times on empathizing with jurors, loving them, and not fearing them. She underlines the importance of lawyer-directed jury selection/voir dire. Sunwolf's groundbreaking treatises convincingly show that harmful juror biases and susceptibility to peer pressure are more likely to be revealed through lawyer-directed voir dire than judge-directed voir dire. Potential jurors are less likely to admit an inability to follow a judge's instructions when speaking to the authority-figure judge, sitting in a literally and figuratively elevated position in a black robe, than making such admissions to a mere mortal lawyer in a suit. Echoing Sunwolf's concerns, defense lawyer Peter Greenspun said: "I think this shows what pressure regular people are under when they're in the unknown world of the jury system. It's a people process, and therefore it's going to suffer from the frailties we all have." Imagine if the dissenting juror had remained silent up to now, enabled a death sentence, and only come forward after the execution date. The irreversibility of the death penalty is one of the compelling reasons to eliminate capital punishment. Jon Katz. ADDENDUM I: Defense lawyer Peter Greenspun is a class act. A colleague referred me to Peter to brainstorm on a few very fact-specific questions for an upcoming felony trial I had in Fairfax, one that had plenty of evidence to shock the jury. With full kindness, no ego, and patience, Peter nailed each issue on the head, with his opinions having been right on the money. I do my best to replicate Peter's approach whenever fellow criminal defense lawyers come to me for brainstorming. ADDENDUM II: Thanks to Arbitrary and Capricious for blogging about this juror who proudly blogs that she joined ten of her other jurors in pushing the remaining juror to convict a murder defendant: "This being Idaho we were all for sending the guy up the river except this one older lady that was in tears because she kept personalizing the guy like he was her own kid. Eventually the 11 of us cowed her into voting him guilty." The blogging juror, named Kristen, proclaims: "It's a scary amount of power we put

in our citizens." To blogging juror Kristen, I reply: It's scary that you were not stricken from the jury, that you did not answer jury selection questions in a way that would have gotten you stricken, and that you did not follow your juror oath, by having contravened the judge's instructions that the jury must presume innocence unless and until proven guilty beyond a reasonable doubt and that each juror must vote independently (and, by corollary, must not "cow" other jurors to convict). Your blog does not seem to provide enough information about where your trial took place. Therefore, I implore you to let the applicable court and opposing lawyers know the contents of your blogpost and the case to which it relates.

Posted by Jon Katz in Criminal Defense at 00:11