



Crime & Punishment

James Alan Fox on criminal behavior and the justice system

Time and place for professional jurors

Posted by James Alan Fox, Crime and Punishment April 12, 2010

John Odgren, accused of murdering classmate James Alenson at Lincoln-Sudbury High in January of 2007, sat with his head down on the defense table, motionless if not emotionless. Like a statue, he appeared oblivious as prospective juror after prospective juror came before Judge S. Jane Haggerty in a frigid courtroom of Woburn Superior Court.

Dozens upon dozens of men and women randomly drawn to do their civic duty were excused following a brief interrogation--some relieved to have been spared the anticipated prolonged trial and others disappointed not to have been witness to the kind of legal drama they have only seen on television. The reasons for their inappropriateness as jurors varied widely: difficulty with the English language, difficulty in managing the time away from young children or new jobs, difficulty in putting aside prejudices about the criminal justice system. Some truly talented individuals--citizens with master's degrees, lawyers and scientists--were routinely excused from service to attend to their busy schedules and important responsibilities.

After four days of courtroom "show and tell," 16 satisfactory individuals, 9 women and 7 men, successfully passed the judicial gauntlet. These were the ones who apparently aren't indispensable as caregivers or managers, and who had heard or read very little about the widely publicized case. These are the ones who will be empowered to make weighty determinations about the mental state and ultimate fate of the young man who appeared unengaged in the proceedings around him that have everything to do with his future.

Ordinarily, a jury of average Joes and Joans is quite able to evaluate eyewitness testimony, crime scene photos, and even some scientific evidence about fingerprints or DNA if couched in simple terms. But whenever a plea of insanity is raised, the trial's emphasis shifts from "did he do it?" to "why did he?" And the task before the jurors becomes significantly more challenging, maybe even beyond the abilities of some Joes and Joans.

It is often noted that, given the tremendous weight of responsibility, jurors typically rise to the occasion, putting aside whatever preconceptions and biases they may have to keep an open mind. That may be true, but an open mind may not be enough to evaluate psychiatrists and psychologists from both sides of the bar debate over medical diagnoses and the extent to which these conditions impact on the defendant's capacity for understanding the wrongfulness of his deed or conforming his actions to the requirements of law. As research has shown, the deciding factor often comes down to which expert appears more authoritative, not necessarily which is correct.

For decades, there have been occasional proposals for professional juries, especially for the most demanding cases. A professional jury would be comprised of talented doctors, lawyers, psychiatrists, criminologists and other scientists whose job (literally so, with compensation) is to make judgments about psychiatric, medical, scientific or other technical evidence. If not a complete replacement of the American jury system, a professional panel could be a supplement to the usual "jury of peers" employed specifically to assess certain types of evidence.

For one thing, a professional panel of arbiters would overcome the difficulties that citizens often have in setting aside their distrust of the insanity defense. During jury selections in the Odgren trial, several prospective jurors admitted that they thought insanity was essentially a legal loophole for criminals to avoid responsibility. Others may very well have thought the same, but dared not articulate their beliefs for fear of being seen in a negative light before the judge, attorneys, the press, and other onlookers in the gallery.

Even in the strongest of cases, the insanity defense is a hard road for the defense. Not only is the definition of legal insanity somewhat misaligned with the medical definition of mental illness, but average Joes and Joans deliberate under a grossly distorted perception of the ramifications of an insanity verdict. Despite the facts that suggest otherwise, jurors may suspect that some seemingly dangerous defendant can "beat the system" and "get off" on an insanity claim, soon to be free to prey upon future innocent victims.

There is no wonder that rather few defendants are successful in their plea of insanity. And those extreme cases in which a defendant is determined to be "not guilty by reason of insanity," typically come to that through a negotiated agreement between prosecution and defense, not the result of jury deliberation.

The list of Massachusetts defendants who, despite obvious signs of mental illness, failed to convince a jury of their mental state is rather long--names like antiabortion terrorist John Salvi, Wakefield mass murderer Michael McDermott, and many more. Given the tremendous talent in this state in medicine, science, law, and academics, maybe it's time to reconsider exploiting this resource to produce a more level playing field for insanity claims.