

For life or death, Idaho trusts jurors

January 8, 2010

Moscow-Pullman Daily News

Any system of law that empowers 12 jurors to sentence a fellow citizen to death must have a tremendous amount of faith in its jurors.

Until just a few years ago, only Idaho district judges had the power to sentence a killer to death. However, in 2002 the United States Supreme Court held that the constitutional right to trial by jury was so important - so fundamental to our system of justice - that the life or death decision could not be made by a single judge, but only by a jury of unbiased citizens.

The Idaho Legislature then quickly amended the Idaho Constitution in 2003 to require jury sentencing in capital cases. In so doing, Idaho displayed supreme confidence in the wisdom of jurors.

Death penalty proponents contend that if a jury - on rare occasion - reaches an incorrect result, our law has numerous well-established "safety valves" to correct the error. For example, an improper death sentence can be corrected by a new trial, a reduction to life imprisonment, or other kinds of post-conviction relief.

In Idaho the death penalty is alive and well. When confronted with the notion that occasionally a silver-tongued prosecutor may induce jurors in an emotional murder case to inflict death, proponents will quickly add: "Do you think our jurors are that shallow? Besides, if the trial is too one-sided, the judge can grant a new one." In criminal cases, we entrust jurors with life or death decisions.

By contrast, the Idaho right to trial by jury in civil cases has been dealt a wicked blow. Civil jurors are now powerless to render a complete verdict. In 2003 the Idaho Legislature "capped" the amount of noneconomic damages a jury can award. Although the cap incrementally increases under a COLA-like formula, it is now approximately \$301,000. The cap limitation is artificial and arbitrary. Victims of dangerous conduct are robbed of complete justice. Juries are robbed of their community voice. How can Idaho trust jurors with a life or death decision in a criminal case, and at the same time disempower jurors if they want to award \$400,000 in pain and suffering to a child sentenced to a paraplegic future in a wheelchair by an inattentive, cell phone-talking, speeding interstate truck driver?

Jurors are excellent at dispatching justice. If they are not, we should abolish the death penalty. Ask the mother of every man in prison whether her son is innocent. Almost every mom will claim "prosecutorial misconduct." To every doctor sued for maiming a patient in haste to make a tee time, the ensuing malpractice action is invariably labeled "frivolous." Frivolity is in the eye of the beholder. Impartial jurors are best at discerning the difference. Jurors do not brainlessly find doctors liable for medical negligence. Jurors take their duty seriously and weigh the evidence. Like death cases in the criminal context, jurors in civil cases do not reach bad

decisions just because the stakes are high. Jurors have risen - and will continue to rise - to honor the importance of their role.

Professor Dennis Colson, in "Idaho's Constitution: The Tie that Binds," incisively details how our Constitution was written. When the framers of the Idaho Constitution gathered in 1889 to consider the parameters of the right to trial by jury, an intense debate ensued as to the propriety of unanimous verdicts. The framers were adamant, however, that the role of jurors be cemented in our justice system. The framers' first mention of that role in our Constitution endures verbatim to this day. It begins: "The right of trial by jury shall remain inviolate." Our framers were emphatic that jurors protect liberty and justice. They trusted jurors. We, too, should trust jurors - but not just selectively on death penalty cases. The caps must go.

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