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Jurors Judge Justice: A Survey of Criminal Jurors

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JURORS JUDGE JUSTICE: A SURVEY OF CRIMINAL JURORS*

Of the many aspects of the common law system of jurisprudence, perhaps the least understood by the legal profession is the jury. The jury is the roulette wheel of the legal system. No matter how well one has presented a case nor how clear the legal issues, few lawyers are not apprehensive when the jury retires to decide on a verdict. In today's system, the archetypal cagey old lawyer reigns supreme. Experience has taught such a person a considerable amount about the topic of this discussion—the attitudes and opinions of jurors. To know the jury is to be way ahead of the game.

Other jury surveys have been conducted. The results of most of those available are concerned with the value of the jury as a legal institution. As an example, Harry Kalven in *The Dignity of the Civil Jury*¹ compared, among other things, the results which were reached by jurors and the results which the judges would have reached in the same cases. The primary concern of such studies is not the jurors' attitudes nor the jurors' judgment of the legal system. It is the goal of this survey to provide better insight into juror attitudes and to present the jurors' judgment of the system of criminal justice in which they play so great a role.

THE SURVEY

The survey upon which this article is based was sent to over five hundred jurors throughout New Mexico who had served on criminal juries during the year 1972. Over fifty percent responded. The following is a percentage tabulation of the responses, presented in substantially the form as the original survey. The questions are the same; however, some brief definitions of such words as *voir dire* have been omitted. The figures in the first column are the statewide results. The figures in the second column isolate those responses from

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1. Kalven, *The Dignity of the Civil Jury*, 50 Va. L. Rev. 1055 (1964); see also, H. Kalven, Jr. and H. Zeisel, *The American Jury*, 1966.

Bernalillo County, the most densely populated area surveyed. The figures in the third column are the responses from areas other than Bernalillo County.

	State- wide %	Berna- lillo County %	Other Counties %
1. How long were you on jury duty?			
Six months or less.	96	100	95
More than six months but not more than twelve months.	3.5	0.0	4.4
More than twelve months.	0.5	0.0	0.6
2. How many criminal cases did you hear?			
Less than three.	63.2	26.8	72.5
Three or more but less than six.	27.4	46.3	22.5
Six or more.	9.5	26.9	5.0
3. Verdicts in the cases were			
All guilty.	43.8	17.9	50.3
All not guilty.	10.4	12.8	9.9
Mostly guilty.	13.0	28.2	9.2
Mostly not guilty.	6.3	15.4	3.9
Evenly split.	17.2	10.3	19.0
No final verdicts.	9.4	15.4	7.8
4. Did any of the cases in which you sat on the jury result in a hung jury?			
Yes.	24.9	37.5	21.7
No.	75.1	62.5	78.3
5. How often were you drawn and then dismissed after the voir dire?			
Never.	38.7	16.7	44.6
Seldom.	45.2	61.9	40.8
Often.	16.1	21.4	14.6
6. In how many of the cases which you heard did you feel that the questioning of the prospective jurors by the prosecution during the voir dire was			
Too long?	9.5	7.1	10.1
Too short?	4.5	7.1	3.8
About right?	86.0	85.7	86.1
7. In how many of the cases which you heard did you feel that the questioning of the prospective jurors by the defense during the voir dire was			
Too long?	10.2	14.3	9.0
Too short?	6.6	9.5	5.8
About right?	83.2	76.2	85.2

	State- wide %	Berna- lillo County %	Other Counties %
8. In how many cases did you feel that the questions asked of the prospective jurors by the prosecution during the voir dire were			
Too personal?	6.5	14.3	4.5
Not personal enough?	11.1	9.5	11.5
About right?	82.4	76.2	84.1
9. In how many cases did you feel that the questions asked of the prospective jurors by the defense during the voir dire were			
Too personal?	6.2	14.3	3.9
Not personal enough?	11.3	11.9	11.1
About right?	82.6	73.8	85.0
10. Do you feel that jurors are perfectly honest in answering questions during the voir dire?			
Always.	17.8	23.8	16.3
Usually.	70.3	61.9	72.5
Sometimes.	11.9	14.3	11.3
Never.	0.0	0.0	0.0
11. Do you feel that the voir dire helps both parties obtain fair and impartial jurors?			
Always.	13.9	7.1	15.6
Usually.	67.3	64.3	68.1
Sometimes.	18.3	28.6	15.6
Never.	0.5	0.0	0.6
12. When jurors were dismissed from the jury, were you able to determine why they were dismissed?			
Always.	7.9	4.8	8.7
Usually.	26.7	21.4	28.1
Sometimes.	47.5	45.2	48.1
Never.	7.4	16.7	5.0
Did not attempt to make such a determination.	10.4	11.9	10.0
13. When jurors were dismissed from the jury, were you able to determine who had them eliminated?			
Always.	7.5	2.4	8.7
Usually.	24.9	19.5	26.3
Sometimes.	32.8	36.6	31.9
Never.	16.4	19.5	15.6
Did not attempt to make such a determination.	18.4	22.0	17.5

	State- wide %	Berna- lillo County %	Other Counties %
14. Do you feel that some of the jurors made an effort to have themselves dismissed by their answers during voir dire?			
Always.	0.5	0.0	0.6
Usually.	6.5	2.4	7.6
Sometimes.	77.5	73.8	78.5
Never.	15.5	23.8	13.3
15. Do you feel that some of the jurors made an effort to have themselves retained by their answers during voir dire?			
Always.	1.5	0.0	1.9
Usually.	9.2	12.5	8.4
Sometimes.	44.6	57.5	41.3
Never.	44.6	30.0	48.4
16. Do you feel that it is helpful to the jury to hear the opening statements?			
Always.	60.7	45.2	64.8
Usually.	31.8	47.6	27.7
Sometimes.	7.5	7.1	7.5
Never.	0.0	0.0	0.0
17. Are your feelings in regard to the opening statement the same if the case is relatively short and not complicated?			
Yes.	88.8	85.7	89.7
No.	11.2	14.3	10.3
18. Were you swayed by the opening statements?			
Always.	1.0	0.0	1.3
Usually.	1.5	0.0	1.9
Sometimes.	19.6	26.2	17.8
Never.	77.9	73.8	79.0
19. Please indicate the number of cases in which you feel the prosecuting attorney's presentation of his case was			
Excellent.	17.2	11.3	18.7
Good.	42.8	30.0	46.1
Average.	26.4	41.3	22.6
Poor.	13.6	17.5	12.6
20. Please indicate the number of cases in which you feel the defense attorney's presentation of his case was			
Excellent.	19.3	20.0	19.2
Good.	47.4	51.3	46.4
Average.	23.2	18.8	24.4
Poor.	10.1	10.0	10.1

	State- wide %	Berna- lillo County %	Other Counties %
21. Did you generally feel that the investigation by the law enforcement agency was fair and objective?			
Always.	24.1	9.5	28.0
Usually.	61.3	71.4	58.6
Sometimes.	13.1	19.1	11.5
Never.	1.5	0.0	1.9
22. Were the investigating officers good witnesses?			
Always.	27.5	19.1	29.7
Usually.	51.0	57.1	49.4
Sometimes.	20.0	23.8	19.0
Never.	1.5	0.0	1.9
23. Did you have the feeling that there was additional evidence pertaining to the case that could have or should have been presented to you?			
Always.	16.5	21.4	15.1
Usually.	19.1	28.6	15.4
Sometimes.	46.4	47.6	46.1
Never.	18.0	2.4	22.4
24. If so, who did you feel was usually responsible for not presenting this evidence?			
The judge.	8.5	6.3	9.2
The prosecution.	38.2	52.5	33.3
The defense.	24.0	28.8	22.5
No one in particular.	29.3	12.5	35.0
25. Did you feel that the evidence usually was			
Intentionally withheld.	56.1	52.8	57.3
Not presented through mistake.	43.9	47.2	42.7
26. Did you feel that evidence which was ruled inadmissible on legal grounds should have been allowed in order to help you make a decision?			
Always.	7.0	7.9	6.8
Usually.	18.1	18.4	18.0
Sometimes.	50.3	57.9	48.1
Never.	24.6	15.8	27.1
27. Were there delays during the trial?			
Always.	16.2	24.4	14.0
Usually.	16.7	26.8	14.0
Sometimes.	49.0	48.8	49.0
Never.	18.2	0.0	22.9

	State- wide %	Berna- lillo County %	Other Counties %
28. If so, did you feel that such delays were necessary?			
Always.	7.1	2.5	8.5
Usually.	35.9	35.0	36.2
Sometimes.	42.9	55.0	39.2
Never.	14.1	7.5	16.2
29. Who did you usually feel was responsible for the delays?			
The defense.	23.6	24.4	23.3
The judge.	20.5	20.7	20.4
The prosecution.	16.8	23.2	14.6
No one in particular.	39.1	31.7	41.7
30. Do you feel that the closing arguments were helpful?			
Always.	41.9	41.0	42.1
Usually.	31.9	23.1	34.2
Sometimes.	22.5	28.2	21.1
Never.	3.7	7.7	2.6
31. Are your feelings in regard to the closing arguments the same if the case is relatively short and not complicated?			
Yes.	92.4	97.4	91.2
No.	7.6	2.6	8.8
32. Were you swayed by the closing arguments?			
Always.	1.1	0.0	1.4
Usually.	3.7	2.5	4.1
Sometimes.	31.0	47.4	26.5
Never.	64.2	50.0	68.0
33. At any time during the trial or deliberations, did you feel that any of the jurors considered evidence which was not presented or was withheld during the trial?			
Always.	5.2	7.5	4.6
Usually.	7.9	7.5	7.9
Sometimes.	51.8	67.5	47.7
Never.	35.1	17.5	39.7
34. At any time during the trial or deliberations, did you feel that any of the jurors considered reports of the news media?			
Always.	0.0	0.0	0.0
Usually.	3.1	2.5	3.3
Sometimes.	19.9	7.5	23.2
Never.	77.0	90.0	73.5

	State- wide %	Berna- lillo County %	Other Counties %
35. At any time during the trial itself did you feel that any of the jurors discussed the case among themselves or with others?			
Always.	3.8	5.0	3.4
Usually.	3.8	5.0	3.4
Sometimes.	36.6	35.0	37.0
Never.	55.9	55.0	56.2
36. Do you feel that the instructions given to you by the judge were clear?			
Always.	62.9	47.6	67.1
Usually.	29.4	45.2	25.2
Sometimes.	6.1	7.1	5.8
Never.	1.5	0.0	1.9
37. Do you feel that the instructions given to you by the judge were unnecessary?			
Always.	11.7	11.9	11.6
Usually.	3.6	2.4	3.9
Sometimes.	12.7	16.7	11.6
Never.	72.1	69.0	72.9
38. Was there any expert testimony given at a trial in which you were a juror?			
Yes.	71.1	63.4	73.2
No.	28.9	36.6	26.8
39. If so, do you feel that the expert testimony aided you in your decision?			
Always.	31.7	29.6	32.2
Usually.	33.1	37.0	32.2
Sometimes.	25.5	22.2	26.3
Never.	9.7	11.1	9.3
40. Please indicate when you felt you made up your mind in the cases you heard. (Indicate number of times, if possible.)			
After the prosecution presented its case.	4.0	1.5	4.6
After the defense presented its case.	14.7	11.5	15.6
After the closing arguments of the attorneys.	38.7	40.0	38.4
During the deliberations.	42.5	46.5	41.4
Other.	0.1	0.5	0.0
41. Were you required to decide between different penalties in any case (such as first degree			

	State- wide %	Berna- lillo County %	Other Counties %
murder, second degree murder, and manslaughter)?			
Yes.	24.2	4.8	29.6
No.	75.8	95.2	70.4
42. If so, do you feel that any of the verdicts reached in these cases were compromises among the jury members?			
Yes.	41.5	50.0	41.9
No.	58.5	50.0	58.1
43. Were you ever on a jury which reported that they were unable to reach a verdict and were then given an additional instruction about the duties of jurors?			
Yes.	31.3	56.1	24.7
No.	68.7	43.9	75.3
44. If so, do you feel that this additional instruction aided the jury in reaching a ver- dict?			
Yes.	54.7	52.2	55.8
No.	45.3	47.8	44.2
45. On the first vote for a ver- dict during deliberations, did the way the foreman voted end up as the final verdict?			
Always.	13.5	2.4	16.7
Usually.	4.2	2.4	4.7
Sometimes.	12.5	23.8	9.3
Never.	9.9	7.1	10.7
Do not remember.	12.0	7.1	13.3
Could not determine because of secret ballot.	47.9	57.1	43.5
46. Were there times during the trials when the judge asked you to leave when you felt that it might have been beneficial to your decision to remain?			
Always.	3.7	2.4	4.1
Usually.	7.0	7.3	6.8
Sometimes.	37.0	39.0	36.3
Never.	52.4	51.2	52.7
47. Do you feel that the jury should be allowed to take notes during the trial?			
Yes.	54.9	50.0	56.2
No.	45.1	50.0	43.8

	State- wide %	Berna- lillo County %	Other Counties %
48. Do you feel that the jury should be sequestered during a trial which lasts over one day?			
Always.	13.5	9.5	14.7
Usually.	6.8	9.5	6.0
Sometimes.	56.2	61.9	54.7
Never.	23.4	19.1	24.7
49. Amount of written comment by the jurors answering the survey (this is a determination made by the authors).			
None.	28.7	16.7	31.9
Some.	34.2	21.4	37.5
Moderate.	20.8	21.4	19.4
Much.	17.3	40.5	11.3

THE RESULTS

The authors believe that any attempted detailed analysis of the results will not serve the original purposes of the survey. It is suggested that each individual draw his own conclusions from the results and provide his own interpretation of the whys and wherefores of such results.

Nevertheless, certain results which the authors deem significant will be discussed. Additionally, some comment may be necessary to explain the reasoning behind the choice of questions in the survey. The results discussed will be treated essentially in order of the questions in the survey.

The average criminal juror in New Mexico serves on jury duty for six months or less and hears five or fewer cases. Such jurors have nonetheless developed certain strong opinions about the legal profession and the system of criminal justice.

Noteworthy in the first instance is a general comparison of Bernalillo County (Albuquerque) jurors to those in the smaller less populous counties. In Bernalillo County fewer jurors returned all guilty verdicts (17.9-50.3%); more were involved in hung juries (37.5-21.7%); and more were involved in cases with no final verdicts (*i.e.* directed verdict, mistrial, etc., 15.4-7.8%). The jurors in Bernalillo County responded in a significantly different fashion in some areas than their out-of-county counterparts. Comparisons in questions 11, 19, 21, 23, 26, and 33 demonstrate some of the differences. Almost 30% of jurors in Bernalillo County felt that voir dire only sometimes helps obtain impartial jurors (versus 16% outside); 59% felt the

prosecuting attorney was no better than average (versus 37% outside); only 9.5% thought the police investigation was always fair and objective (versus 28% outside); only 2.4% felt all the evidence which could have or should have been presented actually was presented (versus 22.4% outside); only 15.8% felt that evidence ruled inadmissible on legal grounds should never have been allowed in to aid the jury in reaching a decision (versus 27.1% outside); finally, only 17.5% felt that jurors never considered evidence withheld at trial (versus 39.7% outside).

Of major significance to practicing attorneys is the overall juror reaction to the concept of *voir dire*. Traditionally handled with "kid gloves," the selection of jurors has long been a source of concern for the attorneys involved. Fear of offending or alienating jurors has been foremost on the attorney's mind. As the survey indicates, however, the jurors are not so easily offended or alienated (questions 6 through 9). In addition to the percentage results indicated, numerous jurors added written comments saying, in essence, that while the *voir dire* was somewhat offensive to them they felt it was necessary for the criminal justice system to work as it should. Numerous cross comparisons substantiated this result. Even those jurors who admitted having been dismissed often (question 5) after *voir dire* were only slightly more offended at the techniques and questions used.

Additional insights into *voir dire* may be found in questions 12 through 15. Only 10% of those surveyed did not attempt to determine *why* jurors were dismissed after *voir dire*. However, about 20% did not attempt to determine *who* was responsible for the dismissals. It should be noted that most participants felt that less than 10% of all jurors usually made an effort to have themselves retained or dismissed during *voir dire*. Most questions were phrased in such a way that the respondent could refer to jurors in general rather than himself in particular. This technique was designed to obtain more candid responses.

Other significant results concerned opening and closing statements. In this area a degree of planned deception was used in the questionnaire. Initially, the juror was asked if he felt opening and closing statements were helpful (question 16 and 30). More than 90% felt strongly that opening statements were helpful and over 75% felt that closing statements were helpful. Questions 18 and 32 then employed a loaded word. Jurors were asked if they were *swayed* by opening and closing statements. Almost 20% admitted they were sometimes swayed by opening statements while 31% admitted they were sometimes swayed by closing statements. While most admitted opening and closing statements were helpful, a significant percentage

actually admitted they were influenced by opening and closing arguments. These results can also be compared with question 40 asking when the juror made up his mind in the case. A very significant percentage apparently decided after the closing arguments were presented. The criminal specialist should carefully consider these facts.

Also of note is the almost universal agreement by jurors that the same situation as above is present even when the case is short and uncomplicated (questions 17 and 31). In the short, uncomplicated case attorneys frequently waive opening argument and sometimes tend to be somewhat cursory in the closing. Such tactics should perhaps be reconsidered in view of the survey results.

Contrary to popular belief most jurors felt the instructions given by the judge were clear (62.9%—always; 29.4%—usually). No more than 15% felt that instructions were always or usually unnecessary (question 37). Correlation of this result is obtained in question 34. In Bernalillo County a specific jury instruction is usually given cautioning jurors against listening to news media reports of the cases. Some 90% of those polled indicated that they felt jurors understood and obeyed this instruction and never listened to such reports.

Deliberations by the jurors provided other interesting insights. Some 10% felt that expert testimony never aided them in their decisions (question 39); about 20% decided the case as soon as the defense finished its presentation (question 40); and better than 58% felt that compromise verdicts were obtained in those cases where the jury was required to decide between different crimes (question 42).

An attempt was made to determine the use and effect of the so-called Allen Charge. Questions 43 and 44 indicated that the Allen Charge, when used, aided the jury in reaching a decision at least half the time.

Response 45 was designed to give some insight into the psychology of juries. Since it is a common conception that a strong personality will dominate a jury, an attempt was made to determine whether this phenomenon would surface in the votes of the jury foreman. Presumably, a very strong personality would not only influence the jury but would also be elected foreman. Many of those polled recognized our attempt to gain this information and in written comments discredited the foreman's influence. The percentage results also seem to indicate that this phenomenon is not as widespread as believed (this appears to be especially true in Bernalillo County). Also interesting is the large percentage of jurors who decided to vote by secret ballot (approximately 50%), although they received no instruc-

tions or suggestions from the court or elsewhere about using such a method.

Finally, juror opinions on questions long debated by legal reformers might prove useful. Only 50% felt that jurors should be allowed to take notes during trial, and some 25% felt they should never be sequestered (questions 47 through 48).

CONCLUSION

In the final analysis, the results of the survey are left to the individual practitioner. A very subjective approach to both questions and answers has been used. Such an approach means that many variables may enter each answer. The interpretation of such answers is left to those who look at the survey results. Certain significant results were alluded to above, especially those concerning juror reactions to voir dire, opening, and closing arguments. It is also clear that significant differences in attitudes exist between Albuquerque jurors and those in other counties. Many cross comparisons have been analyzed by the authors and, of course, such cross comparisons could be endless. In general, most comparisons follow predictable trends—those who sat on all guilty juries thought the prosecuting attorney and police officers more competent, etc.²

The survey was simply an attempt to gauge attitudes—attitudes of those most important to and yet least familiar with the system of criminal justice. Perhaps the attitudes of others concerned with the criminal justice system will be affected by the results.

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2. Survey breakdown by individual judicial district, as well as other specific cross comparisons between questions, is available upon request from the authors.