

# The Professional Juror in Minnesota

By

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To the Memory of

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He was a familiar figure in the halls of the courthouses of St. Paul and Minneapolis from the late 1860s to the early 1900s; usually he was uneducated, poor and desperate to work; he maintained cordial relations with the sheriff's deputies and trial judges; he was maligned by the press; yet to a few observers he sometimes played an essential role in the operation of the urban jury system—he was the professional juror.

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The professional juror tried to make a living by serving on juries. Each had his own tales of woe, each was out for himself.<sup>1</sup> He hung around the courthouse when court was in session. When a jury was being empaneled and the number of selected jurors fell short of 12, he made himself conspicuous, hoping that the deputy sheriff or judge would select him to fill the vacant chair. His participation in jury deliberations was the subject of nasty rumors. An occupant of the lower social and economic classes, he was viewed with contempt by the bar, the bench and the press. He served only to make money. A juror received \$2.00 a day plus 10¢ a mile for travel in the 1870s, a fee increased to \$3.00 and mileage in 1909 for jurors in St. Paul and Minneapolis.<sup>2</sup>

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<sup>1</sup> E.g., item in the *Tribune* in 1895:

Harry B. Young, an old soldier and well known figure about the court house, was brought to the county jail yesterday to await an examination for insanity. Mr. Young has been a professional juror for several years, but of late has been repudiated by the Judges and he has brooded over that fact for some time, even going so far as to accost some of the Judges in the hallways and accuse them of unfairness in not getting him on the jury.

Physicians examined Young yesterday and refused to commit him to the asylum, although his wife said he treated her violently and that he was once seen carrying a lighted lamp down the street. He has been ill with neuralgia and the jury thought his trouble came from having no employment.

*Minneapolis Tribune*, September 24, 1895, at 8.

<sup>2</sup> Statutes, c. 70, §30, at 782 (1878); Statutes, c. 49, §2712, at 754 (1909 Supplement) (\$3.00 per day plus mileage in counties whose populations exceeded 200,000).

The number of professional jurors is not known, though at their peak in the 1870s-1890s, there perhaps were several dozen in St. Paul and Minneapolis.<sup>3</sup> Their numbers declined over the decades in the face of adverse legislation. Statistics of the frequency they served are also not available. One member of the jury in the Kelly-Lamb murder trial in St. Paul in April 1875 told a reporter that he had served on about 150 juries.<sup>4</sup> If statistics are not available, anecdotes are. Here are two tales from the courtroom.

Judge Robert Jamison deplored the professional juror, as reported in the *St. Paul Globe* in December 1893:

### THE PROFESSIONAL JUROR.

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He is Very Numerous — Here and  
Should Be Abated.

The court house is frequented by the usual number of professional jurors, who are continually pestering Clerk of Courts Dickey to put them on a jury.

Judge Jamison had this to say yesterday regarding the professional jurors:

"These men are a great nuisance. Some of them are good men and make good, honest jurors, but the large mass are vile and unjust, caring naught for the justice of the case, if they can only sell their vote to one of the contesting attorneys.

"A large number of the many disagreements can be traced directly to these men. It is understood that the

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<sup>3</sup> From the *Minneapolis Tribune*, June 28, 1891, at 6:

#### Professional Jurors.

Some of the attorneys complain of the great lack of professional jurors around the court house, and a proposition was discussed today to advertise for some. There are only now about a couple of dozen hanging around, and they rush like stampeded sheep when the jurors are ordered by the court to attend in another room, to get the front, alias bald-headed row.

<sup>4</sup> *Minneapolis Daily Tribune*, April 28, 1875, at 3.

grand jury may investigate some of these cases, and make some recommendations regarding the length of time and the frequency in the eligibility of men to sit as jurors." <sup>5</sup>

Contrary to Jamison's charge, there are no reports that professional jurors sold "their vote[s] to one of the contesting attorneys." <sup>6</sup> There were, however, suspicions. Two years after Jamison's diatribe, Judge Seagrave Smith barred a juror who had hung a jury in a negligence case from further service. Something about the juror's behavior—perhaps because he was reputed to be a professional juror who had sided with the defendant in two earlier cases—raised suspicions in the judge's mind. From *The Irish Standard*:

#### A FAILURE OF JUSTICE.

The curse of a majority of our courts is the professional juror. He either hangs about waiting to be employed for pittance when talesmen have to be secured or he worms himself into the jury box in some way to sit with the other eleven good men and true. Often it occurs that a man is in the secret employ of some corporation and it is astonishing to find how often he acts as a juryman. Nobody seems to know how he serves his country in that capacity so frequently.

During the week a case has been concluded in Judge Jamison's court, which had been on trial for seven days. It was an action brought by Michael T. Leonard, through his attorneys, William Kennedy and Frank H. Morrill, against the Minneapolis Street Railway Company for \$11,350 for personal injuries and the destruction of a wagon sustained by the company's cars. The evidence, it is stated, was so clear that no

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<sup>5</sup> *St. Paul Daily Globe*, December 7, 1893, at 3.

<sup>6</sup> Bribery of a juror has been a felony since the territorial era. See Territorial Statutes, c. 103, §9, at 511 (1851).

doubt should have been left in the mind of any juror as to the liability of the company. The jury was out two days and during all that time the members of it stood practically 11 to 1 in favor of a verdict of \$3,000 although some were in favor of granting \$5,000.

One William F. Perkins, of Shingle Creek, stubbornly resisted the other eleven. When they finally came into court reporting that there was no hope of their agreeing, Judge Smith called Perkins to him, telling him he was discharged and that the court had no further use for him. It is alleged that the judge had heard there was one professional juror on the panel and from that cause two days were consumed in deliberation without a verdict having been reached.

It is said Perkins felt the sting of the judge's remarks and says he had not served in that capacity since last spring. It may be that Perkins was entirely honest in holding out for the company, but it is said that on two former occasions the company got the benefit of his doubts. He may not be a good judge of evidence but may be thoroughly well up in contributory negligence, but from whatever cause he seems to be inclined to think that a street car corporation, like a king, can do no wrong.

It should be said, however, that two boys, or very young men, finally voted with Perkins after holding out against him till the last hour, they afterwards explaining that they were convinced that the plaintiff was entitled to a verdict, but, as they were neighbors of Perkins they were afraid to offend the latter. That is one sample of justice.<sup>7</sup>

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<sup>7</sup> *The Irish Standard*, September 28, 1895, at 4. The story was also reported by the *Tribune*:

Judge Smith Tells Juryman He Has  
No Use for Him.

The judges of the district court of Hennepin county still keep up their warfare against the professional and the semi-professional juror. Yesterday a jury came in and was discharged, having failed to agree, after having been out two days. There were murmurs that a professional Juror was on the

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While it was never a crime for a man to serve on a jury multiple times in Minneapolis or St. Paul,<sup>8</sup> laws were enacted to restrict the frequency of juror service to alleviate hardships on businessmen called to duty and to curtail professional jurors. For example, in 1885 the 24th Legislature passed a special law for Hennepin County that barred any person from serving as a petit juror longer than two weeks during any general term of the district court; it was later extended to Ramsey County.<sup>9</sup> In 1889 a law was enacted that barred a grand or petit juror from serving at more than one term of the district court in any one year.<sup>10</sup> In 1897 the 30th Legislature responded to complaints about profess-

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panel and when the jury reported in the large court room. Judge Smith looked at the faithful twelve and then called William F. Perkins to the desk.

"Your name Perkins?" asked the court.

"Yes, sir."

"You are excused from further duty," said Judge Smith. "We have no further use for you."

Mr. Perkins felt very much grieved and reported the matter to his friends. He had not been on a jury since last spring and he thought it was very hard lies.

*Minneapolis Tribune*, September 26, 1895, at 10.

Rumors about jury bribery were not uncommon. The *Daily Globe* repeated these suspicions in an article about Judge James Eagan's dismissal of a juror who was under indictment for the same offense as the man on trial:

The professional juror has come to be as much a part of our judicial system as is the sheriff or the court itself; while the jury-fixer, like the legislative lobbyist, is the natural and spontaneous product of it. Related closely is the shyster lawyer, sometimes eminent, oftener degraded, but, high or low, shyster still, who does not scruple to "fix" a jury if on that thread hangs his client's chance of escape from justice.

*St. Paul Daily Globe*, May 23, 1895, at 4 ("Our Petit Jury System").

<sup>8</sup> Professional jurors were not a problem in counties outside Ramsey and Hennepin. Two terms of court were usually held in these counties, in the spring and in the fall/winter. These terms lasted from a few days to several weeks, not long enough for a man to make a living from jury service.

<sup>9</sup> Special Laws 1885, c. 294, §6, at 533 (effective February 24, 1885); Statutes, c. 71, vol. 2, §5616, at 1525 (Hennepin County) (the two weeks could be extended for a "sufficient length of time to dispose of all the causes which are for trial at that term."); §5625, at 1527 (Ramsey County)(1894). The *Tribune*, however, found that the judges ignored the two week limitation. See *infra*, at 10.

<sup>10</sup> Laws 1889, c. 68, at 182 (effective March 20, 1889); Statutes, c.93, §6654, at 584 (1891) (same).

sional jurors by passing a law prohibiting any one from soliciting a place on a jury list.<sup>11</sup> At times the legislature increased the

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<sup>11</sup> The 1897 law provided:

Section 1. It shall be unlawful for any person, directly or indirectly, to solicit or request any officer charged with the duty of preparing any jury list in this state to put his name or the name of any other person on any jury list provided for under any law of this state.

Sec. 2. It shall be unlawful for any person or officer charged by any law of this state with the duty of preparing any jury list or list of names from which any juries are to be drawn, to place on said list any name at the request or solicitation, direct or indirect, of any person.

Sec. 3. Any person whose name shall have been placed on any list of jurors at the request, solicitation or suggestion, direct or indirect, of himself or any other person, except the officer or officers charged by law with the duty of preparing such jury list, shall be thereby disqualified from serving on any jury during the term or terms of court for which such list was prepared, and such disqualification may be inquired into on a challenge for cause, and if made to appear the challenge shall be allowed.

Sec. 4. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than ten (10) dollars nor exceeding one hundred (100) dollars, or by imprisonment in the county jail not less than ten (10) days nor more than ninety (90) days, or by both such fine or imprisonment.

Laws 1897, c. 352, at 619-620 (effective April 23, 1897). Recodified in 1905:

§4807. Juror placed on list by solicitation—Every person who shall directly or indirectly solicit or request any officer charged with the duty of preparing any jury list to put his name, or the name of any other person, on any such list, shall be guilty of a misdemeanor.

Revised Laws, c. 96, §4807, at 1020 (1905). The new law met with favor at the *Tribune*:

It is announced that the Hennepin County judges have a rod in pickle for the professional juror, and that any one who seeks to get on the panel is liable to be fined. This is as it should be. As a rule, the man who is anxious to do jury duty is precisely the man that ought not to take a seat in the box among the twelve "good and true."

*Minneapolis Tribune*, December 20, 1901, at 4. A warning to the professional juror appeared in the *Duluth Evening Herald*, quoting the *Anoka Herald*:

"It is against the laws of the State of Minnesota to solicit a position on a jury. The offense is punishable as contempt by a heavy fine and a term of imprisonment. This fact will perhaps be news to many people throughout the state. There is scarcely a term of court that some one of the county officers is not approached by someone who is anxious to serve the county as juror."

If a census of the men in Duluth who have solicited places on the jury were taken, the roll of those guilty of contempt of court would be a large one.



number of men called to serve during a term of court or granted district court judges latitude in setting that number; perhaps it was thought that if more jurors were available “deficiencies” on panels would be avoided.<sup>12</sup> While laudable these efforts were not entirely successful, as the press noted in blistering editorials.<sup>13</sup> The two-week limitation on jury service, for example, was frequently ignored.<sup>14</sup> In 1903 the *Tribune* published an interview with Michael Reilly, an irate businessman who complained that he was not paid mileage expenses to report for jury duty. After examining how judges administered the two-week limitation on jury service, the newspaper concluded:

Mr. Reilly's chief grievance is that the judges have gone back to an old habit of letting jurors serve more

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*Duluth Evening Herald*, February 20, 1904, at 9.

<sup>12</sup> In 1878 the board of commissioners of Hennepin County could select 135 grand jurors and 250 petit jurors. Statutes, c. 8, §197, at 137-138 (1878). In 1894 Hennepin County was allotted 100 grand jurors and 1,500 petit jurors. Statutes, c. 71, §5611, at 1524 (1894). In 1899 the judges had discretion as to the number of petit jurors to be called in counties with a population of more than 200,000 —i.e., Ramsey and Hennepin (“the names of as many persons as the court or judge shall direct, to serve as petit jurors for a period of two weeks in such term”) Laws 1899, c. 240, at 272-273 (effective April 17, 1899). In 1905 the County board of commissioners was granted the authority to select petit jurors. Statutes, c. 78, §4336, at 906 (1905). In 1907 the 35th Legislature returned authority to the district court judges. Laws 1907, c. 35, at 41-42 (effective March 13, 1907). If these laws were intended to avoid “deficiencies” on a jury panel, they did not succeed.

<sup>13</sup> *St. Paul Daily Globe*, December 2, 1888, at 13 (“A Blot on the Court”) (posted in the Appendix, at 19-22). The editors of *The Prison Mirror*, the newspaper of the State Prison in Stillwater, complained about professionals, preferring “educated” jurors. September 16, 1897, at 2 (posted in the Appendix, at 23).

<sup>14</sup> In 1895 the *Tribune* found that the judges ignored the two week limitation:

Hereafter the professional juror will have small pickings at the district court house. In the past he has been put upon the jury list, and by consent of the judges has been allowed to remain from week to week, after his term of two weeks has expired, some of them serving: as long as 10 weeks without intermission. Some time ago THE TRIBUNE called attention to the abuse of the jury system, but the judges were disposed at the time to treat it lightly. The matter was broached, however, and the attorneys kept it up, with the result that the judges had a meeting Monday, in which it was decided that it would be better policy to allow a man to serve only his two weeks. It was decided, in order to make up a deficiency that might occur, to draw lists of 100 names instead of 75, as has been heretofore done.

*Minneapolis Tribune*, April 4, 1895, at 8 (“Selected for Duty”).

than their two weeks, and don't give everyone a fair show. In the days gone by, the professional juror became such a nuisance that trials were but poor affairs, in results.

Then jurors served as long as they wanted to, and the result was a poor class of idle men as jurors. To cure this evil, a law was passed making a new system of drawing jurors, and, it was supposed, fixing things so that jurors would serve only two weeks at a time.

"Why, there are men here who are bragging around that they have served for six weeks," said Reilly. "I can prove it, too. If you have a lot of professional jurors who serve here all the time, what do you want to come up into the country and get us down here for? We come down for two weeks and you don't pay us only for the days we serve and our hotel bill eats it all up."

Mr. Reilly pointed out the law which says that jurors shall be paid \$2 a day while in attendance upon the court, and mileage to and from their homes. The court has never allowed mileage both ways but once.

. . . .

An investigation showed that it is a fact that the judges have begun allowing all jurors who so desire to remain over and serve as long as they please, in order that they may excuse business men who are summoned and do not want to serve. Attorneys are beginning to notice it, also, and are complaining that the juries are deteriorating.<sup>15</sup>

The *Tribune* alluded to but did not fully explain that when a jury was being empaneled in a case, 12 jurors were frequently not available because one or two had been excused—the number of talesmen or potential jurors had been “exhausted.” Put another way, chair 12 or chairs 11 and 12 were vacant. Facing this situation, the judge or the sheriff in charge of jury selection

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<sup>15</sup> *Minneapolis Tribune*, December 19, 1903, at 6 (“Irate Juror Asks Questions”).

was authorized by law to fill a deficiency on a jury panel by choosing a “bystander” to serve.<sup>16</sup> That bystander was likely a professional juror, who was loitering in the courtroom.

Deficiencies on a panel did not occur because men disregarded the summons to appear in court for jury duty; instead they resulted because men took advantage of the many legal exemptions from service. Here is the list of trades exempt from jury service in effect in 1891:

Section 6655. Exemption from.—The following persons are exempt from service as grand-jurors: All members and officers of the legislature while in session, all United States officers, all judges of courts of record, commissioners of public buildings, auditor and treasurer of state, state librarian, clerks of courts, registers of deeds, sheriffs and their deputies, coroners, constables, attorneys and counselors at law, ministers of the gospel, preceptors and teachers of incorporated academies, one teacher in each common school, practicing physicians and surgeons, one miller of each grist mill, one ferryman to each licensed ferry, all acting telegraph operators, all members of companies of firemen organized according to law, all persons of more than sixty years of age, all persons not of sound mind or discretion, persons subject to any bodily infirmity amounting to disability, all persons

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<sup>16</sup> From the 1866 Statutes:

SEC. 205. Jury, how impaneled. — When the action is called for trial by jury, the clerk shall draw from the jury box the ballots containing the names of jurors, until the jury is completed or the ballots are exhausted; if the ballots become exhausted before the jury is completed, the sheriff, under the direction of the court, shall summon from the bystanders, or the body of the county, so many qualified persons as are necessary to complete the jury.

Statutes, c. 66, Title 15, §205, at 479 (1866); Statutes, c. 66, Title 15, §223, at 742 (1878); Statutes, c. 67, §5059, at 279 (1891); Revised Laws, c. 78, §4335, at 906 (1905); Revised Laws, c. 77, § 4169, at 882 (1909 Supplement). Resort to “bystanders” to complete a jury remained on the books decades after the demise of the professional juror. See Mason’s Minnesota Statues, c. 77, §9293, at 1834 (1927).

unable to speak and understand the English language; all persons are disqualified from serving as grand-jurors who have been convicted of any infamous crime.<sup>17</sup>

In the 1890s another exemption was available to a man who could persuade the trial judge that he will “probably” lose his job if he serves as a juror:

That no person shall be excused from service as a grand juror or petit juror in said court on account of the necessities of his business or employment, unless he shall satisfy the court that he is a clerk or employe, and will probably lose his situation or employment if required to serve as such juror.<sup>18</sup>

While statistics are lacking on how frequently this escape hatch was used, judges must have been sympathetic to the plight of the “clerk or employe” whose livelihood was at risk.<sup>19</sup> Thus the much

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<sup>17</sup> Statutes, c.93, §6655, at 584 (1891). By 1905 the following exemptions were added:

all persons whose names have been placed on any jury list at the request or suggestion, direct or indirect, of any person other than the officer charged with preparing such list, and all persons who shall have been convicted of any infamous crime, shall be disqualified from serving as grand jurors.

Revised Laws, c.104, §5263, at 1106 (1905).

<sup>18</sup> Statutes, c. 71, §14g, at 749 & §14o, at 751 (Ramsey County) (1888 Supplement); Statutes, c. 71, §5617, at 1525 (1894). Curiously this provision is not in the 1891 Statutes.

Instead of complaining about the breadth of exemptions, some newspapers argued that the legislature should have expanded it by including “professional jurors” on the list. From the *Princeton Union*:

The legislature when it passed the law exempting certain persons from jury service, should have included the professional juror who hangs around the seats of justice in our large cities looking for “sits” in the jury box. He is there for revenue only and very often raises trouble in the jury room.

*Princeton Union* (Mille Lacs County), September 12, 1901, at 4 (reprinted in the *Windom Reporter* (Cottonwood County), September 19, 1901, at 4).

<sup>19</sup> It was not until 1977 that a law protecting jurors’ employment was enacted in Minnesota. Laws 1977, c. 286, §20, at 503-504 (effective May 26, 1977); Statutes, c. 593, §593.50, at 896 (1977 Supplement). This was one section of the Uniform Juror Selection and Service Act passed that year.

maligned professional jurors found work, in part, because respected, educated businessmen took advantage of generous statutory exemptions to avoid jury duty.

Imagine a case set for trial in the 1890s: A note of issue has been filed and the case placed on the jury calendar; the judge is on the bench; the lawyers and their clients are ready; the witnesses are too; the jury is selected one-by-one but because of challenges and exemptions is deficient by two. Rather than stop or delay the proceedings, the judge or sheriff looks for bystander-professionals to fill the deficiency. Once seated, the trial continues. Those professional jurors enabled the system to function, at least in this hypothetical case.<sup>20</sup>

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In 1902 the *Minneapolis Tribune* appealed to employers to not sack employees who reported for jury duty:

One of the perils of the Jury system comes from the professional Juror—the man who is out of a job and hangs around the court for a chance to be taken on the panel. Other things being equal, any honest litigant would prefer to have a Jury made up of men not seeking such service. The theory is that Juries shall be drawn from the whole body of citizens, and not exclusively from the loafers or leisure class. Busy men are expected to submit to some inconvenience to perform this duty. Now if a man dependent upon his labor for his support must risk the loss at his job because he is compelled to do jury duty, he will resort to every shift and device and "pull" within his power to escape it.

The employer owes a duty to the community in the matter. He must be content to submit to some inconvenience in temporarily losing the services of a valued employe, as he would to lose his own time if he were drawn himself. The injustice of punishing a man by discharge for something he cannot help, is obvious.

*Minneapolis Tribune*, November 15, 1902, at 6.

<sup>20</sup> The *Dayton Journal* noted this in 1871:

Complaints about juries, as they are often made up, are common, and the professional juror, the hanger on about the court house, waiting for a job, is considered a nuisance, while, in reality, he is a necessity under the present circumstances; the courts couldn't get along without him. Business would be delayed, and the cause of justice impeded, if the professional were not ready to the hand of the Sheriff when wanted. This much should be said in fairness, when the merits of the professional juror are canvassed.

*The Dayton Journal*, reprinted in *Fayette County Herald* (Ohio), April 6, 1871, at 4. The full editorial is posted in the Appendix, at 28-29.

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By the end of the first decade of the twentieth century, professional jurors were absent from the courthouses in St. Paul and Minneapolis.<sup>21</sup> The most telling explanation for this lies in the reformist rhetoric of the Progressive Era (that there was a divide between the rhetoric and the tactics and achievements of the progressives has long been recognized). During this period, every aspect of American life, except race relations, was examined and critiqued. The court system was not exempt.<sup>22</sup> Urban reform became almost a crusade as people wrested control of city hall from corrupt political machines and tried to make government more efficient and officials more accountable to “the people.”<sup>23</sup> The belief that citizens had a responsibility to participate in civic affairs became widely shared. The professional juror, who had long been viewed as a bad influence, a malignant presence in the jury room, was the inevitable casualty of this environment as district court judges strictly enforced laws restricting frequent jury service and resisted excusing educated, working men from jury duty. Businessmen, when summoned to serve, did so. ■

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<sup>21</sup> This conclusion is based, in part, on the lack of newspaper articles mentioning professional jurors in this state after 1906 (the date of the article in the *Minneapolis Tribune* posted on pages 17-18) in the Minnesota Digital Newspaper Hub website. The *Tribune* published criticisms of professional juries as late as November 15, 1902 (note 19) and December 19, 1903 (pages 9-10). A stray reference appeared in the *Minneapolis Morning Tribune*, January 14, 1919, at 1 (article on proposed law on jury selection) but that is all.

<sup>22</sup> At the annual meeting of the American Bar Association in St. Paul on August 29, 1906, Roscoe Pound delivered a controversial and influential criticism of the legal system, “The Causes of Popular Dissatisfaction with the Administration of Justice.”

<sup>23</sup> For the story about how a few responsible citizens took control of Minneapolis from corrupt political bosses, see Lincoln Steffens, “The Shame of Minneapolis: The Ruin and Redemption of a City that was Sold Out,” *McClure’s Magazine* (January 1903) (MLHP, 2011).

## APPENDIX

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Part 1.  
Two Methods of Selecting Jurors in Hennepin County.

During the last few decades of the nineteenth century and the early 1900s the Minnesota Legislature transferred the power to select lists of jurors in Hennepin County from the district court judges to the county commissioners and back again.<sup>24</sup> Judges were trusted with this responsibility more than county commissioners even though they did not always enforce the prohibition against jurors serving more than once during a court term, thereby letting professionals flourish. In early 1902 the following story was reprinted in newspapers around the state:

A Good Example by Hennepin.

In Hennepin county the judges of the district court select the grand and petit juries. As a result the professional juror is done away with and sheriffs and county commissioners no longer use the jury system as a means of paying political debts. In the grand jury just drawn for Hennepin county are a dozen men who are at the head of the largest business concerns, many of whom would prefer to pay \$50 a day than serve, but the judges are insistent that good citizens shall not shirk jury duty, and no one is excused because he is too busy to serve.<sup>25</sup>

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<sup>24</sup> In 1878 the board of commissioners of Hennepin County could select 135 grand jurors and 250 petit jurors. Statutes, c. 8, §107, at 137-138 (1878). The situation in 1894 is puzzling: In Chapter 8 of the 1894 Statutes, the Hennepin County Board is given authority to select 135 grand jurors and 250 petit jurors while in Chapter 71 the district court judges have the authority to select 100 grand jurors and 1,500 petit jurors. Compare Statutes, c. 8, Vol 1, Title 3, c. 8, §673, at 178-179, with c. 71, §5611, at 1524 (1894). In 1899 the judges had discretion as to the number of petit jurors to be called in counties with a population of more than 200,000 —i.e., Ramsey and Hennepin (“the names of as many persons as the court or judge shall direct, to serve as petit jurors for a period of two weeks in such term”) Laws 1899, c. 240, at 272-273 (effective April 17, 1899). In 1905 the board of county commissioners had the authority to select petit jurors. Revised Laws, c. 78, §4336, at 906 (1905). In 1907 the 35th Legislature returned authority to the district court judges. See Laws 1907, c. 35, at 41-42 (effective March 13, 1907); and this was unchanged in 1909. Statutes, c. 78, §4329, at 892-893 (1909 Supplement).

<sup>25</sup> *Wabasha County Herald*, January 2, 1902, at 8. This article was reprinted in the *Mantorville Express*, January 3, 1902, at 5 (quoting the *Fergus Falls Journal*).



When the Hennepin County Commissioners had authority over the jury selection process they were said to sometimes favor constituents who were down-and-out and had many of the characteristics of the despised professional juror.<sup>26</sup> Worse, the politically-selected juror would owe a favor to the commissioner who influenced his selection. This came to a head in 1905 when, under the Revised Laws, the County Board was granted the power to select lists of grand and petit jurors.<sup>27</sup> The bar did not approve, as reported by the *Minneapolis Tribune*:

MISTAKE IN TAKING JURY-MAKING  
AWAY FROM JUDGES.

Attorneys Uphold Old Law That Has  
Been Supplanted by One Putting New  
Power in County Commissioners'  
Hands.

It is believed by attorneys and men familiar with municipal conditions in Hennepin county that a serious mistake has been made by the code revisers in taking the selection of petit jurors but of the hands of the district judges. The revised code provides for the selection of petit jurors by the county commissioners, which will result, in the opinion of many, in lowering the standard of men who will serve as jurors.

Under the old state law, when juries were drawn by the county officers, it was found that men who had nothing to do often asked for and secured places as

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<sup>26</sup> County board did not draw a particular jury. It selected a larger list of names from which the jury was subsequently drawn—but on that list were designees of a commissioner.

<sup>27</sup> Revised Laws, c. 78, §4336, at 906 (1905), provided:

4336. Jurors, when and how selected—The county board, at its annual session in January, shall select, from the qualified voters of the county, seventy-two persons to serve as grand jurors, and seventy-two persons to serve as petit jurors, and make separate lists thereof, which shall be certified and signed by the chairman, attested by the auditor, and forthwith delivered to the clerk of the district court.

jurors. They were, as a rule, men incompetent to sit in judgment, often proving to be loafers and men unwilling to work. Many of these Jurors secured their places in return for some small political favor or through their acquaintance with some county official.

When the selection of jurors was placed into the hands of the district judges an immediate improvement in the class of men was manifested. The jurors were selected from the best class of business men and farmers, in taking the juries out of the hands of small politics and doing away with the professional juror. The revised code provides for the selection of the 1,500 names, of men to serve as jurors by the five county commissioners, 300 names being allowed to each commissioner.

In expressing his opinion of the result of the new provisions, a well known Minneapolis attorney said:

"The selection of jurors by the county commissioners is liable to mix politics in a matter that should be entirely free of it. Men who do not like to work find serving as jurors a job to their liking and this class of juror is an evil of the system of selecting petit jurors by county officials."

There are rumors that legislative action will be taken this winter, for some return to the old system which was defeated of its object by the code revisers.<sup>28</sup>

At its next session, the Legislature returned power to the judiciary.<sup>29</sup>

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<sup>28</sup> *Minneapolis Tribune*, October 20, 1906, at 6. The law allocating 300 juror selections to each county commissioner referred to in this article has not been located.

<sup>29</sup> Laws 1907, c. 35, at 41-42 (effective March 13, 1907); amended by Laws 1909, c. 200, at 226-227 (effective April 17, 1909); Revised Laws, c. 78. §4329, at 892-893 (Supplement 1909).

Part 2  
Editorials from Minnesota Newspapers.

From the *St. Paul Daily Globe*, December 2, 1888:

A BLOT ON THE COURTS.

The Professional Juror Should Be  
Relegated to the Rear.

GAMBLING FOR A VERDICT.

Why So Many Minneapolis Verdicts  
Defy the Law and the  
Evidence.

The last jury case of the September term of court was tried last Wednesday, and the professional jurors who have been earning a livelihood during the last three months by serving on juries, are again out of a job. The most of these gentlemen are men who have no other ambition than to earn a living as easily as possible, and to them the sitting on a jury at \$2 a day is like finding money. Consequently after one of them secures a position as a juror for an entire term of court, he considers that he is in heaven. He enters the jury box with the idea that nothing is expected of him except to sleep through a trial, and after the jury has retired, to agree on a verdict. He never cares what the verdict is, or whom it is for, and as he never pays any attention to the testimony introduced during the trial, and knows nothing about the merits of the case.

One can easily realize how much justice there is in a verdict rendered by a jury composed largely of professional jury men. The "modus operandi" of agreeing on a verdict by one of these juries, is as follows: After retiring to the jury room, the old stagers get out their

pipes and tobacco and indulge in a smoke. By proceeding in this way to agree on a verdict, the veterans give the court plenty of time to empanel the jury for the next case on the calendar, so that when they finally render their verdict they can be excused for the balance of the day. At the same time they ascertain, as nearly as possible, how each juror intends to vote on the first ballot, and by acting with the larger number cause the minority, who are often in the right, to change their votes and agree to the verdict suggested by the majority.

It may appear a little strange to some people that a juror who believes that he is right should change his vote on a verdict where thousands of dollars are involved, simply because he is with the minority, but such cases are very common, especially among people who have been raised in cities and larger towns; and who are in consequence nearly always of a negative disposition. The next step taken is to proceed to a ballot. If the case under consideration is for the recovery of money, each juror writes on his ballot the amount he thinks the party bringing the action should recover, and these amounts are then added together and divided by twelve, the result being the verdict rendered.

In many cases where damages are sought to be recovered for personal injuries sustained jurors will write on their ballots amounts greatly in excess of the damages claimed, so as to offset any small amounts voted by other jurors, and in consequence, after the addition and division process has been gone through, with, the verdict is often so large that the court is compelled to set it aside as being excessive. In % some cases where jurors have failed to agree on a verdict, after taking several ballots, they have decided the matter by a game of cards, by drawing straws, or by pitching pennies. These methods became so common in the jury rooms a few years ago that people lost all

confidence in trials by jury, and the matter was finally investigated by a committee of lawyers.

They soon discovered that the whole trouble arose from the fact that the juries were composed largely of professional jurymen. At this time the lists from which the jurors were drawn were prepared by the board of county commissioners, and the charge was made that these lists were filled with the names of political heelers and professional jurymen.

At the earnest solicitation of the members of the bar the matter of preparing these lists was taken from the county board and given into the hands of the judges by an act of the legislature. It was thought that the judges would make up these lists regardless of the claims of politicians and ward bummers, but such has not been the case.

As an additional safeguard the term of service of petit jurors was limited to two weeks, so that business men could be drawn for jury service without endangering their business interests. An exemption clause was also made, so that any person who had served as a regular juror for two weeks was exempt from further service for one year. This limitation of the length of service as a juror, it was thought, would rid the courts of the professional jurymen, for by allowing them but two weeks' service in a year it would compel them to seek some other employment in order to earn a livelihood. This law for a time had the desired effect, and the familiar faces of the professionals were seldom seen in the jury box, and both attorneys and litigants were exceedingly happy, and the professionals were correspondingly miserable. But, strange to relate, this condition of affairs was but short lived. Again the professional jurymen were to be seen in the jury box, and seen often. In fact some of them were on deck nearly every time a jury was empaneled. An investigation was ordered, and it was then discovered that the judges on the bench were but men and as men that

their views were about the same as the members of the board of county commissioners. It was found that one of the judges had discovered a flaw in the law governing the drawing of jurors, and that instead of it making a man ineligible for jury duty for one year after serving on a jury, it only allowed him the right of exemption in case he wished to escape such service.

The judge further held that the court had the right to fill a vacancy on a jury by appointment and to continue the term of service of such appointee throughout the entire term of court, unless the juror claimed his right of exemption after serving two weeks.

This construction of the law was a Godsend to the professional jurymen, and they lost no time in taking advantage of it. The consequence has been that so many of the professionals have secured such appointments that the juries are in about the same condition as they were when they were made up by the county commissioners.

It is also said that the same old methods of deciding cases in the jury room by games of chance are again in the same favor with the twelve good men and true, as they were in former times.

The members of the bar are, however, wide-awake on this matter, and the legislature will be asked to remedy the defects in the law so that a person who has served as a petit juror for two weeks, shall not again be eligible for jury duty during the two years following such service. If such a law is passed, the professional jurymen will soon be a thing of the past.<sup>30</sup>

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<sup>30</sup> *St. Paul Daily Globe*, December 2, 1888, at 13.

From *The Prison Mirror* (Minnesota State Prison, Stillwater),  
September 16, 1897:

In selecting a jury it would appear that a premium is placed on ignorance as the greatest essential to the modern juror. And the "professional" juryman should be entirely ignored by officers in drawing a panel. In all large cities the "professional" juryman abounds in the corridors and around the sheriff's office during court terms. These men are in the jury business for "revenue only." They are the would-be ward heelers and broken down politicians who consider it a disgrace for one with "political tendencies" and "influence" to have to work as ordinary mortals; they are the same gentry you find in public parks during a state or national political campaign discussing "our political destiny."

Do away with the politico-professional juror and the average defendant will be satisfied with the verdict of even two-thirds of the jury.

The erroneous notion is afloat that the criminal element is the one mostly benefitted by ignorant juries. A short conversation with nine-tenths of the men convicted of crime will easily dispel this fallacy. If a man be guilty he prefers to have the extent, the degree of his crime passed upon by intelligent men; if he is innocent he has faith in the discerning power of twelve intelligent men not apt to base their verdict upon the eloquence of the contending attorneys in closing the case.

Eliminate the laws debarring really intelligent men from jury duty; avoid the professional juror, and it is fair to assume that both sides to a case will abide by the verdict rendered and assented to by nine of the twelve men selected to try a case.<sup>31</sup>

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<sup>31</sup> *The Prison Mirror* (Minnesota State Prison, Stillwater), September 16, 1897, at 2.

Part 3.  
Editorials on Professional Jurors from Newspapers  
in Other States.

The “problem” of professional jurors was not limited to Minnesota. Newspapers in cities in other states also printed scathing criticisms of them.<sup>32</sup> Some states wrestled with this problem into the 1920s. A few editorialists saw a beneficial side of the professional juror, that they prevented delays in trials.

From *The Evening Telegraph* (Philadelphia), January 12, 1866:

It may not be known, but it is nevertheless true, that there is a low and senseless class of our community who make it a regular profession to be on juries, who are all friendly to each other, and who live on the rich fees of one dollar per day. These men are the most stupid and the most unscrupulous of any set of men in the city. To look at the physique of the generality of Quarter Sessions juries is to see a collection of animal physiognomy which would disgrace a jail. And these professional jurors are the twelve peers before whom it is the delight of the American people to be tried! This is the sacred privilege bequeathed to us from the days of the Magna Charter.

The manner in which the majority of our jurors are taken from the lower classes is a singular incident of the evasion of a wise law. By a revision of the statute some years ago, the business of juror as a profession was supposed to be done away with. All the names of citizens are placed in a wheel, and a certain number drawn out at the opening of that term of the court for which all the jurors are to be selected. Those of our most respectable citizens who may be so unfortunate as to be selected either are excused from service for

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<sup>32</sup> The newspaper articles posted in Part 3 and many others can be found in the historic newspapers available on [Chronicling America](http://ChroniclingAmerica.gov), a website of the Library of Congress.



sufficient cause, or do not believe in capital punishment, and thus evade the duty of sitting for hours in a filthy room to decide on the life of a fellow-being. Thus only such as are beneath any such scruples remain, and thus from the lowest classes are our jurors selected.<sup>33</sup>

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From *The Iowa Plain Dealer* (Cresco), February 4, 1870:

#### Professional Jurors.

The grand jury system under the loose practice prevailing has become in a measure a court of inquisition which is too frequently composed of professional jurors that make it their business to attend court with the sole view of being called into the panel by the sheriff to supply the absence at roll call of any one of the regular panel. It is perhaps unnecessary to say that these men always have an axe of their own to grind, or else are ready to undertake, for a reasonable consideration, to grind the axe of somebody else. The grand jury list of this county shows nearly always the names of some of these professional jurors. Not more temperate than the rest of mankind they would for the pay of a grand juror remain in session until every man in the county (but themselves,) who ever bought, sold or drank anything but water should be indicted. If they have no grudge of their own to settle they are generally ready to take up and settle the grudge of any friend they may have. They are generally very scrupulous as to the conduct of others but nut examples of total abstinence and virtue themselves. The Sheriff we hope will take this matter into consideration and in future let the professional jurors dressed in their Sunday best,

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<sup>33</sup> *The Evening Telegraph* (Philadelphia), January 12, 1866, at 4.

wait with open mouths outside the bar until doomsday rather than call them to fill up the panel.<sup>34</sup>

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From *The Public Ledger* (Memphis), February 20, 1871:

### The Professional Juror.

The much-abused individual has an existence a local habitation and a name. His existence may be merely nominal on two dollars per day during a term of court, but his local habitation in the court-room and his name, so often heard from the lip of the Sheriff, are real. It is generally believed that this important personage presents a lean and hungry appearance, is out of pocket, out of the elbows, and almost out of the world. It is even believed that the chronic juror is the father of a large family, a wine-bibber and a beer-drinker.

All this is, however, a mistake. The professional juror is the quietest of all men; he is always non-committal, and his positive opinion cannot be discovered, even in the jury box, on any given proposition of fact or law. He moves through the court-house halls and offices in a cat-like manner, and always has a pleasant word for the judge, clerk and deputy sheriffs. His face never assumes the happiness of a smile unless he is selected as a traverse juror, or, when that regular employment is lost, he is called as a *talesman* to fill up the panel of jurors. He is omnipresent when court is in session, and holds the eye of the sheriff as did the ancient mariner the frightened wedding guest. How anxiously he awaits for the joyful words: "Mr. Smith, take a seat in the jury box."

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<sup>34</sup> *The Iowa Plain Dealer* (Cresco), February 4, 1870, at 3.

We know of one professional juror who adroitly secured a place on the regular panel of two courts, which were transacting business in adjoining rooms. For several days he sat on juries in both courts, thereby earning four dollars per day; but jealousy and envy exist in the hovel as well as in the palace, and why not in a court-room? Another professional juror, when Jones' name was called, instead of presenting some little excuse, gravely informed the court that "Mr. Jones was serving on a jury in the adjoining court room." An investigation followed, an attachment for contempt issued, and poor industrious Jones was fined twenty-five dollars and had his name stricken from the list of jurors in both courts. The juror tries to look as respectable as possible, in order not to present too striking an objection to the attorney trying the cause. Few men who have any other business seek the position of jurors, but the race of volunteers is not small.

The professional juror, after serving through a term or two of court, assumes to be a judge of law, and prides himself on his success in unraveling complicated bundles of facts or falsehoods. He will never commit himself, however, for fear he would be rendering himself incompetent. You see a different class of professional at the different courts. The Circuit Court juror is quite a different man from the chap who haunts the Criminal Court, and both are distinct from the worthy who frequents the precincts of the United States Court. They are members of different branches of the same profession, and follow a branch as a matter of taste. In the Criminal Court, the juror must have a bad memory, he must never read newspaper accounts of crime, or form or express an opinion as to the guilt or innocence of criminals. His mind must be a *tabula rasa* to receive impression while in the jury box, but never out of it.

There are mythological accounts how such jurors are bought and sold, but these stories are not well

authenticated. Almost any quiet, decent-looking man will do for a Law Court jurymen; he must not be positively objectionable, that is all. The United States juror is of a higher race of beings. He must possess an air of ancient respectability, and look grave and solemn. The juror's fee, to him, must be in theory a matter of no importance, but he must be always willing, if no other person can be found, to serve a few days, which can be lengthened to an indefinite period of time without consulting him any further.

Occasionally, in a fit of virtuous indignation, courts try to throw off these excrescences; but soon they fall back into the old grooves, and the juror becomes victorious. Whether the professional juror advances or retards the machinery of law and justice is an open question. He may, without being positively objectionable, be to a certain extent necessary as an aid to the advancement, not, probably, of justice, but the machinery of courts. He can never be interviewed by enterprising short-hand reporters, because on this very point his lips are ever sealed, and outside of his semi-legal life he presents no interesting side to the public.<sup>35</sup>



From *The Dayton Journal*,  
reprinted in *The Fayette County Herald* (Ohio), April 6, 1871:

#### Juries and Jurors.

Complaints about juries, as they are often made up, are common, and the professional Jurymen, the hanger on about the court house, waiting for a job, is considered a nuisance, while, in reality, he is a necessity under the present circumstances; the courts couldn't get along without him. Business would be

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<sup>35</sup> *The Public Ledger* (Memphis), February 20, 1871, at 4.

delayed, and the cause of justice impeded, if the professional were not ready to the hand of the Sheriff when wanted. This much should be said in fairness, when the merits of the professional juror are canvassed.

But there in another side of the question, which is not properly considered when well-meaning people complain of the character of the Juries which often determine many important stilt, and that is, the unwillingness of those who are designated by law, to respect the obligation which requires them to take seats in the jury box. The names of a certain number of persons are returned by the trustees of each township and ward in the county and city, to serve as Jurors. From these names, so returned, Juries are made as the law proscribes, but after the persons are notified, not one half of them perhaps, obey the summons and serve as jurors. Now, it must be apparent to all, that if there is to be an advance in the course of Justice, the citizen as well as the Judge must do his full share to accomplish that end. It is useless to complain of the ways in which the laws are executed, if those who have the deepest interest in the proper administration of the laws, refuse to obey them when called to act as Jurymen. - *Dayton Journal*.<sup>36</sup>

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From *The Public Ledger* (Memphis). April 24, 1873:

#### Professional Jurors.

Quite a large number of Memphians are known by the appellation of "professional jurors." These worthies can always be found in the jury boxes of either the Criminal or Circuit Courts. On the Circuit Court jury one term and in the Criminal Court the next, they vibrate

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<sup>36</sup> *The Dayton Journal*, reprinted in *the Fayette County Herald* (Ohio), April 6, 1871, at 4.

like a pendulum from year to year. Two dollars a day and board is the remuneration; pretty good pay for so light work. It is not unusual for one of these chaps to approach the clerks and ask for "a situation on the jury."

Many a time, at the commencement of a term, the regular panel is composed of first-class citizens, but toward the close of the term the professional jury men compose the panel. Not long ago two professionals were in court during a trial. The Judge said: "Mr. Sheriff, fill up the panel, there is one juror required." The two professionals started for the vacant chair, and one of them, a German, got there ahead of his brother American, who fell back toward the clerk's desk, and said, sotto voce, to the clerk: "Did you see that d---d Dutchman beat me out of my situation?" Under the present jury laws of the State it is impossible to get rid of this legal Modoc, the professional juror.<sup>37</sup> ■

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#### Part 4

#### Related Articles

"John Leppla v. The Minneapolis Daily Tribune & Willis Creore v. The Minneapolis Daily Tribune" (1885) (MLHP, 2021). In these libel cases, Thomas Canty represented both plaintiffs. After the juries returned nominal verdicts, the *Tribune* roasted Canty, who replied in a heated letter to the editor on December 28, 1885. When discussing the *Leppla* case, Canty described a juror who poisoned the deliberations to the detriment of his client. That juror had all the earmarks of a "professional juror."

"Inside the Jury Room During the Kelly-Lamb Murder Trial" (MLHP, 2021).

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<sup>37</sup> *The Public Ledger* (Memphis). April 24, 1873, at 3.

Oscar F. G. Day, "A Crown of Shame" (1893) (MLHP, 2020). A professional juror recommends a solution to an evenly divided jury in a murder case—flip a coin. (pp. 195, 197-198).

### Acknowledgments.

This article was researched and written during the Pandemic of 2020. Covid-19 closed the library of the Minnesota Historical Society but I doubt this article would have been different if I had had access to that facility. I used almost daily three public sources: 1) historic newspapers available on *Chronicling America*, a website of the Library of Congress; 2) the *Minnesota Digital Newspaper Hub*, a website of the Minnesota Historical Society; and 3) *Minnesota Statutes and Session Laws*, a website of the Office of Reviser of Statutes, which supports the Minnesota Legislature. To each I am once again in debt.

### Suggestion for future research.

Unlike the authors of many articles in scientific journals, contributors to law journals do not suggest related areas for future research. Because this is not an online law review, I will suggest that the history of the jury in Minnesota is an important topic for future research—jury selection, *voir dire*, challenges, how lawyers investigated the backgrounds of potential jurors and so on. The professional juror will be but a footnote in this history.



Posted MLHP: December 9, 2020;  
Related Articles added, October 29, 2021.