

GARDEN STATE CLE LESSON PLAN

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LESSON PLAN AND EVALUATION**

DWI JURY TRIAL – HAS THE TIME COME?

With

Robert Ramsey
Senior Instructor/Author

And

Robert J. Pinizzotto
Attorney

Program description

It may be heresy to even suggest this radical idea, but isn't time to consider providing suspected drunk drivers with a trial by jury, like the do everywhere else in the United States? Check out the discussion in the engaging and controversial CLE.

I. Introduction

- **Robert J. Pinizzotto, Esq. – Offices in Hammonton, NJ**
- **Whether or not the time has come to conform NJ to the vast majority of other jurisdictions in US and permit DWI defendants to have case tried by jury of their peers?**

II. Trial by Jury in NJ

- **Provided in common law**
- **Constitutional law only institutionalized right that previously existed**
- **Right is protected under 14th Amendment and NJ State Constitution**
- **What cases are important enough to merit trial by jury – where is the cutoff?**
- **US Supreme Court – “crime” (trial by jury) v. “petty offense” (not entitled to trial by jury)”**
- **The only objective criteria is what is the authorized maximum punishment:**
 - **180 days in jail or less = petty offense and not entitled to trial by jury constitutionally**
 - **If penalty exceeds 6 months then entitled to trial by jury**
- **Problem with drunk driving law – involves IDRC in conjunction with 6 month period of incarceration**
- **Start with proposition that authorized punishment is 180 days or less then no constitutional right to trial by jury**
- **Could have situation where above 180 jail term, other penalties that are so packed in there and so onerous that a look at the totality would result in a trial by jury constitutionally – addressed in *Blanton v. North Law Vegas*, 489 US 538 (1989) – case decided that the particular statute was not so onerous**
- **Consider the consequences – whether or not these are consequences of magnitude that would equate to trial by jury: loss of driving privileges, IDRC (180 days in jail plus IDRC), fines, surcharges, additional ignition interlock requirement – so severe penalties that should be entitled to jury trial**
- **Political/social agenda issue**

III. Applying these concepts to DWI context

- **180 days in jail only comes up in certain situations: 2nd offense DWI in school zone; 3rd or subsequent offense DWI school zone or DWI**

- **IDRC – 1st offense is 12-48 hours of “detainment”; 2nd offense “can serve jail sentence in IDRC”; no mandatory period of time for a 3rd offender – under the statute but can argue that even if you go for 2 days the sentence then becomes 182 days – and if don’t complete IDRC then cannot get license back – 16 hours of therapy over 16 weeks.**
- **Can be held in contempt if don’t do IDRC? If so, is that more than 6 months on original sentence? Jury trial?**
- **Under NJ law – offense with jail term of 180 days or less as maximum sentence = petty offense and no right to trial by jury**
- **Statute has become more onerous – more penalties**
- **Can argue that penalties are collateral – not penal but are rehabilitative**

IV. Issues Pro and Con Jury Trials for DWI Cases

- **Factors that militate against jury trials in NJ for 3rd DWI:**
 - **It would create havoc: cases would have to be tried in county court because that is where juries are brought in; no mechanism for handling juries – space, no jury box; caseloads – no ability to handle jury trials based on volume of DWI cases; technical issues with DWI cases and jury issues**
 - **Policy issues – more likely to have NG finding by a jury than at a bench trial**
 - **Speedy justice – *State v. Cahill*, 213 NJ 253 (2013) – recognized that in drunk driving cases 60 day target disposition date is not consistent with modern day DWI case process**
 - **Cases will take longer to be resolved**
 - **DWI offenders are not in jail pending trial – gives them an opportunity to reoffend – social policy issue – not arrested on a warrant therefore no conditions of bail**
 - **Additional burden on prosecutors**
 - **Saves government resources**
 - **Higher conviction rate**
 - **Significant cases added to the system – but those cases are not going to have a high priority over criminal matters**
 - **Few hour trial in municipal court becomes 2-3 day jury trial**
- **Factors that militate in favor of jury trials in NJ**
 - **No jury trial = speedy disposition**

- **If more people are acquitted with a jury trial, it will show that police are making mistakes and then police can start doing the job more professionally to protect everyone's rights**
- **Creates a better system**
- **Defendant has better chance to defend himself**
- **If jury trial can be more than 180 days – as in other states or a criminal offense**
- **Vindicates right to trial by jury**
- **Legislature can create new crimes but does not equate to additional trials or cases**
- **We have fair judges out there that give a fair trial**
- **There are those that should not be on the municipal court bench and don't advance the cause of justice**
- **Superior Court judges are beginning to note potential bias in municipal court cases**
- **Pressures on municipal court judges regarding potential future appointment – financial pressures – and societal pressures**
 - **Pressure to convict intoxicated driver**
- ***State v. Tischio*, 107 NJ 504 (1987) – DWI statute must be construed based on societal dilemma of drunk driving; legislature working in tandem with legislature – “successful prosecution” of drunk drivers (NOTE: not “fair” prosecutions!)**
- ***In re Collester*, 126 NJ 468 (1992) – superior court judge found guilty of DWI; 2nd offense; court looks at DWI seriously, DWI is highest priority; “governmental commitment to the eradication of drunk driving as one of the judiciary's highest priorities”**
- ***In re Connor*, 124 NJ 18 (1991) – superior court judge found guilty of DWI**
 - **High profile arrests for DWI by members of the judiciary**
- **Judiciary through caselaw has created rules that barred certain defenses that can be use:**
 - **Extrapolation (can be used at superior court level) – same defense can be used in superior court not municipal court – state can use**
 - **In re Edson, 108 NJ 464 (1987) – defense attorney made up facts to fit an extrapolation defense – this**

- **Enormous influence by police department and local politicians**
- **Supreme Court wants judges to rule fearlessly but cannot if judges are not tenured**
- **Municipal court judges are not independent**
- ***In re DiLeo*, -- NJ—(2014) – judge violated all nature of procedural requirements; played judge, jury and executioner; judge said made good faith mistake about what the law is – Supreme Court wants to allow judges to call them as they see them and be independent**
- **How can judges be independent if they are watched and checked as to whether they are doing their jobs “properly”?**
- ***In re Fenster*, 138 NJ 134 (1994) – judge was suspended for 6 months to allow a mayor to come in to take over a trial**
- **Judges who fear whether the money they generate for the town is sufficient**
- **A councilman in Eatontown brought up the fact that the revenue of the court went down and thus reflected on the municipal court judge**
- **Nothing addresses quality of case disposition – just looking at numbers of dispositions**
- **Municipal court measuring stick is based on money – has nothing to do with the administration of justice**
- **No monetary pressures in superior court**
- **The municipal court system was established legislatively – created to deal with minor police-court, petty crimes – motions to suppress were unheard of – current municipal courts are dealing with highly technical cases in the framework of the original municipal court system**
- **If we are going to have jury trials in municipal court, don’t we need more independent judiciary?**
- **Bench trial would be ok with a judge that has tenure and continued training, and insulated from local politics**
- **Look at perception of the informed, general public that they can get a fair trial in municipal court**
- **Without insulating judges and allowing them to be independent, the only way to insure that 3rd time DWI offender would be treated properly would be to have a jury trial**

V. Maybe it is time to revisit jury trials for DWIs

- ***State v. Stanton*, 176 NJ 75 (2003) – no trial by jury for DWI case even when there are related felony and DP offenses where the jury is deciding**
- **Seems that NJ Supreme Court is waiting for the right case to revisit jury trial issue**
- **Court may interpret the need for a jury trial based on the 180 days**
- **Legislature might mandate it based on some of the issues pointed out above**
- **Even Supreme Court judges must be reaffirmed – so is there pressure on them?**