

The Education of a Juror

How Serving on a Jury Serves a Juror in Life

By Emily Wessel Farr

I recently second-chaired a medical malpractice trial in Gaston County. The jury pool filed in just after 2 p.m., nobody looking particularly pleased. As they sat in the rows behind me, I could hear fidgeting (perhaps it was the unforgiving benches?), whispering, and sighs. When a name was called, I often heard the echo of a groan.

I couldn't blame them. In the courtroom on that Monday, duty had interrupted routine. Thanks to that dreaded summons, shifts needed to be covered, kids needed to be babysat, and elderly parents needed to be cared for. What did these people do to deserve such a fate? (The answer is: move to Gaston County and register to vote.) Even worse, as the jurors sat there, wondering how long they were trapped, they couldn't even check Facebook! They were going to tweet about their bad luck, but they couldn't use Twitter. Texting was also forbidden. There was literally *nothing* to look at or listen to other than real live human beings. Swimming in the jury pool was just cold.

Jury Duty – An Unwanted Task?

When I typed “how to get out” into Google; there it was. Jury duty. Number three. Right behind “how to get out of the friend zone” and “how to get out of debt.” (If any of you are interested, I learned with two quick clicks that the “friend zone” is the unfortunate moment in a man's life when he befriends a woman and eventually decides that he wants to date her, only to find out that the woman just wants to be friends.)

Carole Lieberman, M.D., M.P.H., is a forensic psychiatrist/expert witness, jury consultant, and Professor of Psychiatry at UCLA. “When most people get the notice in the mail that they've been picked for jury duty, they try to find a way out of it. Especially now, because of the economy. People are afraid of losing their jobs and feel that the employer will figure out they don't really need them, or they'll hire a temp and permanently replace them.” While North Carolina law prohibits an employer from terminating an employee for serving as a juror, a leave of absence from work understandably creates stress, and employers are not required to pay the juror for his or her time away from work.

John Brewster, an administrator in the Washington, D.C. office of RTKL, a global design firm, served on a jury in a wrongful termination case in 2010. At first, Mr. Brewer took the notice in stride. “If you get a piece of mail, and it's not a bill, it's generally okay.” However, when he heard that the trial was estimated to last two weeks, Mr. Brewer was not pleased. “I didn't want to serve because the case was so long. I knew that being out of work for two weeks would really put me behind. I told the Judge, but they wouldn't let me out of it.” Mr. Brewer's company paid him his regular salary dur-

ing his absence, but he recalled that many of his fellow jurors were not so lucky.

Jury Service – A Positive Outcome?

While the summoned juror is hesitant, nervous, and maybe even bitter, what happens when that juror is empanelled? Do feelings change as the trial moves along? Does a sense of accomplishment accompany a verdict? Dr. John Gastil, Professor and Head of the Department of Communication Arts and Sciences at Penn State University and co-author of *The jury and democracy: How jury deliberation promotes civic engagement and political participation*, has spent years researching the impact of jury service on the juror. He and his co-researchers obtained data from thousands of citizens throughout the United States, including Cumberland and Swain counties.

The research was a first of its kind. The only study to focus on how jury service impacts jurors individually, the researchers found that jury service is more than a civic duty that one completes and then forgets. Rather, the experience actually changes individual beliefs and impacts behavior. For jurors who render a guilty verdict, they are more likely to volunteer in the community. For homemakers who have a positive experience deliberating, they are more likely to trade volunteering with the PTO for campaigning for the President. Most strikingly, for all jurors who participate in deliberations, voter participation increased five to six percent. “With a large national sample, we found that it doesn't matter if you hang or reach a verdict. The point is the deliberation process.”

Sheila Nelson, a real estate agent in Sarasota, Florida, served on a jury in a criminal case in which the defendant was acquitted. “I listened to the evidence and the defendant was obviously innocent. I gave my best reasons to the other jurors, and when we read ‘not guilty’ you could see the relief on the defendant's face. I felt like I was accomplishing something important. I loved the experience and would love to be a professional juror.”

“Compared to work, you have an equal voice in the jury room. There's no boss. You are all equal and a lot of people don't have that respect or sense of importance in their personal life,” said Dr. Lieberman. “When people go through the experience, and feel that they have been part of a jury that has made a difference, then they do walk out of the courtroom a little taller.”

But what about the many jurors who are present for *voir dire* but are later dismissed, or listen to the evidence but never deliberate due to illness, directed verdict, or an eleventh hour settlement? Dr. Gastil's research shows that these individuals do not benefit from the juror experience. “Our research did not find a correlation between just showing up for jury duty and higher civic participation. There wasn't this ‘Wow!’ moment when they entered the courthouse.”

Even sitting through the entirety of the evidence did not make a statistical difference in a juror's behavior. "It is the experience of deliberating that gives the jurors a role," said Gastil. "Whether civil or criminal, there is a tremendous gravity in what you are doing. It's easy for attorneys and judges to forget that, for most people, they only see a courtroom on TV. Then all of a sudden, you are called on to be a magistrate – to determine the fate of a person or a large company," said Gastil. "Freedom in our hands' is a quote from one of the jurors we interviewed. Even if it's a relatively minor offense, jurors still realize what they are doing. They are the court. They are the judicial branch of government at that point in time."

Lisa Comrie Gibson, a producer in San Diego, served on a jury in a criminal trial in 2005. The defendant was charged under California's "three strikes" law, and he had two strikes against him. "Almost everyone on the jury was surprised by the law. We weren't given any literature on the law until we went to the deliberation room, and we were shocked by it. But, we took on the role of learning the law and really understanding what that law meant. We were the final say. We didn't think that what he did was that big of a deal, but we had to find him guilty."

And the impact of deliberations exists regardless of the length of the trial. "You don't have to drag somebody through the weeds for weeks on end, you just have to give them awareness that they have this role." One factor that did contribute to higher civic participation: the number of charges. "More charges means you are asking the jurors to make more decisions. This increases the number of times they have to conclude their deliberations," said Gastil.

For Dr. Gastil and his team, their research complements Supreme Court precedent. In **Powers v. Ohio**, Larry Joe Powers appealed his conviction of murder, aggravated murder, and attempted aggravated murder. 499 U.S. 400, 111 S.Ct. 1364 (1991). After the Ohio Supreme Court dismissed his appeal, the Supreme Court granted certiorari. Mr. Powers argued that the State of Ohio discriminated in its use of peremptory strikes, excluding six black jurors during *voir dire* and thereby violating his Fourteenth Amendment rights under the Equal Protection Clause. The Supreme Court had held five years earlier in **Batson v. Kentucky** that a defendant can raise an equal protection challenge to a prosecutor's use of peremptory challenges by showing that the peremptory challenges were used for the purpose of excluding members of the defendant's race. 476 U.S. 79, 106 S.Ct. 1712 (1986). The State of Ohio argued that Powers did not meet a prerequisite to bringing a **Batson** challenge. Powers was white.

The Supreme Court disagreed. Justice Kennedy, writing for a 7-2 majority, clarified that **Batson** was broader in scope than its facts suggested. "In **Batson**, we spoke of the harm caused when a defendant is tried by a tribunal from which members of his own race have been excluded. But we did not limit our discussion in **Batson** to that one aspect of the harm caused by the violation ... **Batson** recognized that a prosecutor's discriminatory use of peremptory challenges harms the excluded jurors and the community at large. The opportunity for ordinary citizens to participate in the administration of justice has long been recognized as one of the principal justifications for retaining the jury system." 499 U.S. at 406, 111 S.Ct. 1364 at 1368 (citations omitted).

The **Powers** case signaled a change in the way our justice system sees jurors. "Prior to **Powers v. Ohio**, we had seemingly forgotten

about the jurors. When you have fewer minorities selected to serve on that jury, you are systematically reinforcing low voter turnout and lower civic participation for certain groups. If we haven't addressed discrimination in *voir dire*, the group that is free from discrimination is gaining inspiration to engage, which will change the outcomes in elections. The case was a great moment of awareness," Dr. Gastil said.

"When we think about justice and how to administer justice, we think of juries as one tool, but not as part of a larger civic fabric. In the United States, we are having to cut back and save costs, but you rarely hear people say that we are essentially cutting back the hours of our civic school when we reduce jury trials. It should be a consideration."

When we try a case, we ask 12 people to put aside their daily lives, listen to the evidence, and render a verdict. It is reassuring as a litigator that, amidst the groans and complaints, jurors who are ultimately selected understand the importance of their role. Some are even inspired by it. For many, the experience enhances their commitment to social and political issues. And that is a victory for both sides. •

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