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### *Why Juries? How are they selected and what do they actually do?*

Because jury service affects us all--yes, even judges get called to serve--I thought I would use this first column to address jury service. I have noticed a stunning difference in the views of those who end up actually serving on a jury versus the group (we call them the "panel") as they first appear in the court room. When the fifty or sixty folks first appear in my courtroom, many on the panel are anxious, sometimes upset to be called away from their daily personal and business routines. But by the end of the trial, jurors are almost always happy to have served, and they have good things to say in their post-trial questionnaires. They are pleased to have performed a public service--for perhaps the only time in their lives.

How is this? The jurors who have served understand something that the panel does not. The jurors found out that jury service is rewarding, intense, and sometimes even exhilarating as one discovers the truth of how the justice system works, and how twelve citizens from all walks of life and backgrounds come together to reach a just result. Because of their experience, these jurors have lost their fear and apprehension. They know they can rely on common sense, they have the law the judge provided to decide the case, and they have the impressions and thoughts of fellow jurors as they decide whom to believe and which witnesses to rely on. They know the job.

#### Why Juries?

Those who end up on a jury understand how our justice systems works, what happens at a trial, how the truth comes out. They see the Constitution in operation—in a way, they become the living embodiment of our Constitution.

The right to a fair and impartial jury is one of the most important guarantees of the Constitution. It is at the core of the justice system. It is what distinguishes our country, as a nation under law, from most of the governments in the world and throughout history. But constitutional rights only exist as long as there are people who are willing to uphold them and fully participate in the process.

There are no juries in India, Israel, or Sweden. In Iran, trial is before an appointed judge who answers to the powers that run the government. There are no juries in Switzerland. There are few juries even in England (where our jury right came from) except for the most serious crimes, and certain types of civil cases. In Viet Nam, the judges are approved by the communist party. In China the government decides whether a defendant will have access to a lawyer and usually the witnesses are not available to be cross examined in court.

The court systems may work well in many of these countries such as Israel, England, Sweden, and India. But the U.S. system is unique in the safeguards it affords through the use of juries.

In the United States we have *independent* courts which resolve disputes between people and between companies, and which guarantee people's constitutional rights and render verdicts based only on the facts and on the law. Our courts are independent because they are not answerable to presidents, or other politicians, government officials, generals, dictators, or the local militia. Our courts answer only to the law, the law as enacted by the people—that is, the people who show up for jury duty.

### Jury Selection

Generally courts obtain the names of prospective jurors through DMV records and voter registration lists. A random selection is asked to come in, and generally meet first in the court's jury assembly room. Hundreds of people may be assembled there. Groups of about 50 or 60 people are then selected at random to go to a judge's courtroom. The judge welcomes the panel, says a little about the case and how long it is expected to be, and then asks general questions designed to see if any member of the panel is biased or prejudiced for or against one of the parties. "Prejudice" here doesn't have just the ordinary meaning, but also refers to a sense that a prospective juror doesn't have an open mind about some important issue, or has a strong feeling which he or she cannot put aside. The point is simply that the jury can only be made up of folks who will decide the case solely on what happens inside the courtrooms, solely on the presentations of witnesses, and documents; and not based on a past experience of a juror. After the judge is done, the lawyers have a right to ask questions too, perhaps following up on the judge's questions, or asking others. Again, the only point here is to make sure jurors don't have such strong feelings about an issue that they can't be open to the evidence—and only the evidence—presented in the courtroom, and to ensure they will actually follow the law as provided to them by the judge.

When asked questions, jurors can discuss private responses with the judge and the lawyers outside the hearing of the other people in the courtroom.

After the questions, the judge and lawyers take a break and discuss the responses of the panel, and make suggestions as to people who might, for example, automatically vote one way or the other, regardless of the evidence. Some people simply shouldn't sit on certain juries, because it wouldn't be fair to one of the two sides.

Back out in the courtroom, the judge may excuse some of the panel, and then the judge allows the lawyers to exercise what are known as "peremptory challenges" to the panel. This just means each lawyer is allowed to exclude a certain number of people. Although no reason need be given, lawyers can't do this based on race, sex, gender, race, ethnic origin and so on. The goal is simply to give each side a chance to have some role in the choice of the people who will ultimately decide their case; in this way, regardless of how the jury votes, even the losing side is more likely to accept the result, good or bad. When the peremptory challenges are done, the first 12 of the remaining people are the jury, and generally a few more are picked as alternates.

The entire process can take a day, and sometimes more. It can be tedious to sit and listen to the questions addressed to someone else in the room. But there's no short cut. Every person who might end up on the jury needs an opportunity to discuss their feelings, thoughts, and backgrounds with the judge and the lawyers. Sometimes, it turns out that a person who seemed to be entirely neutral has deep-seating feelings about a key issue that he or she simply cannot set aside; sometimes, we find that a person who seemed to automatically favor one side in fact *can* be fair, and *is* open to the arguments of both sides. It just take time to figure this out.

### The Job

So what do jurors do? They are judges, judges of the facts. Juries decide what happened. They decide based on the evidence they see and hear in the courtroom, and the legal instructions the judge provides. They listen to witnesses, and decide how much weight to give to that testimony. They might listen to what we term percipient witnesses—witnesses who saw or heard something related to the case. They might hear expert testimony, perhaps on handwriting identification, how alcohol affects the body, the way in which a hip implant works or is removed, or some other kind of scientific testing.

Jurors can take notes, and in many courtrooms, including mine, they can ask questions of the witnesses (by submitting short written questions to the judge). Juries are strictly forbidden from making their own investigations or experiments or research, including on-line research, on any aspect of the case. Jurors cannot research the facts, or the law, or the people, involved in the case. Why? Because then the verdict might not be based solely on what happens in the courtroom, and one party or the other would then have been cheated of a fair trial. In a fair trial, the parties know what the evidence against them is, and have an opportunity to rebut or contradict it.

Juries are neutral, they are fair, they are open minded. Their verdicts are based solely on the evidence presented in the courtroom, and the law the judge gives them. It is a serious work, but it is not a hard job—millions of Americans do this every year. And—as it turns out—they enjoy the public service, and the sense that one has, even for a brief period, exercised the sovereign authority of the government, and personally implemented the Constitution.