

“The humorist who invented trial by jury played a colossal practical joke upon the world, but since we have the system we ought to try and respect it. A thing which is not thoroughly easy to do, when we reflect that by command of the law a criminal juror must be an intellectual vacuum, attached to a melting heart and perfectly macaronian bowels of compassion.” -Mark Twain, New York Tribune, March 1873

As trial attorneys, we remain the backwards sort of people who derive pleasure from the pressure-packed situation that is our clients arguing their cases in front of strangers we have never met and will likely never see again after trial. So much of what we can accomplish for our clients relies on the right to a trial by jury. Many parties pay hefty sums for a plethora of services from mock juries to focus groups in order to predict what potential juries might do with a case. Attorneys pay for numerous seminars and classes to better understanding sociological and psychological factors that might influence a jury. An amazon or google search will literally produce thousands of listings for books, videos, and so much information about the art of jury selection, the psychology of jury, and techniques for persuading a jury.

And yet, Ohio juries hear fewer and fewer cases with each passing year. Trial attorneys invariably have less experience with jurors as a result.

Last Spring, I received a birthday gift in the form of a post card in the mail informing that I had been selected for jury duty for the first time in my life. Unlike some who may initially react with disdain, I was elated. Remember, trial attorneys are backwards people.

I reported to the common pleas court of my large county for four straight days. I remembered the types of questions I asked potential jurors at past trials. I dreamed of all the responses I was going to give to make it impossible for me to be excused from a jury. I longed to provide my insight to my fellow jurors. But I only sat and waited. For four straight days. I checked emails, returned some calls, and stayed up with my cases, but all I really wanted was to be empaneled on a jury.

By the end of the first day, I realized that there was a very really chance I would never even be called from the bullpen, let alone have the opportunity to answer an attorney’s questions. At the time, there were plenty of jurors reporting for their second week who had not been called for a jury, so I was closer to the back of the line than the front. Rather than cursing my luck, I started to pay attention to the other prospective jurors in the room.

Where I expected frustration and indifference, I saw excitement and interest. I overheard several conversations during my service. Prospective jurors were not talking about the ways they could be excluded from a jury without serving. They were talking about the types of cases they might serve on. They were curious about the selection process. They were asking each other questions about the information they were asked to provide. While a few were relaying their prior jury experiences, many had never had an occasion to be in our common pleas court. In fact, many experiences were limited by what the prospective juror had seen on television or in movies.

The experience was not all rainbows and unicorns: there were a few prospective jurors bemoaning the fact that they had to miss work to serve. Some could truly not afford the \$19 a day that they were compensated. Some could not donate that daily stipend back to Court. For those folks, my hope was that the Court would excuse them if they were called, though I genuinely believe that those prospective jurors would have enjoyed serving on a jury if only they could afford giving up their time.

Generally, when I heard gripes and complaints from my fellow prospects, they seemed more bored of waiting for the possibility of serving. They were not upset to serve, but they wanted the opportunity to come.

As a personal injury attorney who only represents injured people, I do not for a minute ignore the years of insurance companies' efforts to taint jury pools and make the language of tort reform part of the regular vernacular. Many of you have undoubtedly developed ways to combat those trends. Our battle is uphill. The big judgments that teach insurance companies to treat claimants more fairly are few and far between. Make no mistake, however, the people around us in our daily lives are intrigued by the process that we know much better than they do.

One of my colleagues will tell clients that any attorney who tells you that he or she has won every case has not tried many. I do not pretend to be able to understand every prospective juror. I am sure that I am somewhat blinded by my love of our profession, which caused me to see the experience of serving on a jury in a more positive light. I am equally sure than some of our neighbors would like nothing more than to never be called for jury service. Perhaps Mark Twain is right to critique the idea of a jury.

Based upon my limited experience over four days in my county, I would humbly submit that the citizens who are called to serve are eager for the chance. Please give them everything they need to have a positive experience, which could very well be their only interaction in a court.

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