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WASHINGTON LAW & POLITICS

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Time Served: Comments from the Jury Box

by Michael Stusser

Justice was recently served in America, and I was part of it. Not only that, I got paid 10 bucks a day plus mileage. My penance wasn't teaching at a public school, or working for an environmental group, but something equally heroic: I reported for jury duty.

In addition to voting and paying taxes, participating as a juror is one of the constitutional cornerstones of citizenship in the good ol' U.S. of A. Unfortunately, most people think of the gig as something to be avoided (along with the plague, visiting one's mother-in-law and paying those aforementioned income taxes). Fears range from being bored silly to getting rubbed out by the mob. The public's main trepidation, however, has to do with the ambiguity of the time factor in serving. The law states simply that, if called, you will be required to enlist for the length of one trial—and if it's OJ on trial, that's a mighty long time. The average tour of duty in Washington is only four days; and, in most cases, jurors are allowed to go home at the end of each day. Being sequestered rarely occurs, and even if it did, who couldn't use a few weeks holed up in a hotel room with room service and free cable?

Personally, I was looking forward to a lengthy trial as jury duty represented a chance for more of a daily routine than I've ever had—a job almost. For those interested in ducking duty, however, there are a couple of ways to bail out: First, you can be a convicted felon, and in this case you know the judicial process only too well—no need to show up, your right to participate in the process has been rescinded. Second, an individual can claim “undue hardship,” circumstances making it truly unfair to serve at the time you're called. Examples include a meeting with the Pope, life-saving medical procedures, or a note from your mother. Plane tickets to Maui will not suffice, nor will front row seats to “The Producers,” even if it's

on your 30th wedding anniversary, in Vancouver, with the original cast.

In addition to a lengthy trial, I had requested assignment to a tabloid case. Perhaps Mary K. Letourneau had escaped and raped another man-child, or Mike Tyson had visited Seattle for the day and chewed somebody's ear off after a fender-bender. There'd be the book deal, TV movie options, interviews on "Meet the Press" and "The Tonight Show."

Apparently, being able to choose your own sensational trial isn't part of the formula, as, upon check-in, a dapper, droll administrative clerk suggested I pay particularly close attention to the introductory videotape presentation on how the judicial process actually works.


The big-picture concept, of course, is that in the event any one of us is charged with a crime, we can call on a jury of our peers to hear the details of the case and determine if we walk, or spend a little time in the Big House. (For my own trial, they'd need to canvass a Grateful Dead concert to find a group of peers, and since Jerry has passed on to the Big Lucy in the Sky, that's no longer possible.) The Seventh Amendment states that any crook, er, accused person ("presumed innocent, presumed innocent") can demand a trial by jury, but, in most cases, offenders cop a plea long before assembling a tribunal. This saves time, saves the state money, and with prisons currently at capacity, it's possible to negotiate a pretty sweet deal. Still, in order to function, the system needs a large pool of jurors on stand-by, and that's where the duty part comes in. Given a chance to serve my country for a few days without killing the enemy, I reported (that, and the fact that I'd *need* a jury if I didn't, as failing to appear is a crime).

Day 1

Most civilians arriving on the first day of jury duty have never been summoned, so the process has that "first day of school/first sexual encounter" anticipation (without the bells, pop-quizzes, or physical contact). There is a Public Address system, though:

"Jurors numbers 14-39 are being called to Judge Bryant's courtroom. Please gather your personal belongings and form a single-file line in the hallway."

Before you know it, your newest best buddy is being shipped off to a foreign court, and you're



left alone in the waiting room with a copy of *Woman's Day* and a stale donut, not knowing when or if you'll be called. My badge number (making it easy for the Mafia to lay down accurate gunfire) was lucky No. 7, and I waited my first day without being called. One more day of inactivity and I'd be issued a free pass, ending my duty. Looking over my blank calendar for the next several months, I was hoping that wouldn't be the case.

Day 2

It began just like the first, with check-in, bad coffee, and a damp *New York Times*. (One quick note — when reporting for jury duty at the courthouse, remember it's a *courthouse* — they'll run you through a metal detector, and often have drug-sniffing dogs on hand; unregistered firearms, knives, crack pipes and joints should probably be left out of your lunch pail.) After an uneventful morning of word jumbles and voice-mail retrieval, I headed to lunch at the fabulous and nearby Viet My. I returned to find a long line forming in the middle of the courthouse hallway; myself and 34 other recruits were being assembled for a march over to Judge Harriet Cody's courtroom. Finally, it was showtime!

It's important to understand that most individuals who are summoned are never actually selected as jurors. Prior to choosing a jury comes a process called *voir dire*, a French word for "low pay, long hours." Actually, it stands for "to see the truth" and is one of the most critical parts of the judicial process. During *voir dire*, both sides—the prosecution and the defense—ask questions of potential jurors to determine who they'll bump in order to gain an advantage in the trial. Sorting through jury pools is quite an art; if you're guilty, you want as many liberal, cop-hating skeptics as you can field, while prosecutors are looking for a jury of do-gooders who believe in state's evidence and quick, severe punishment. Lawyers can eliminate a person from the pool for any reason, without cause (peremptorily): too old, too right-wing, too black, too male, too happy; or, in the case of the guy sitting next to me, too insane (muttering "kill 'em all," he was bumped by the defense pronto).

During *voir dire*, you learn quite a bit about the other people in the room, as jurors are straw polled on a plethora of topics that might influence opinions about the case: Did we feel safe (50/50), own guns (22 of 35!), use illegal drugs (six of us), have DUIs (three), have family members who had been arrested (a whopping 70 percent), or have a tendency to impersonate jurors just for the hell of it? In a legalistic version of musical chairs, each time

one of the 13 “in the box” is asked to leave (“Mr. Jones, the state thanks you and dismisses you from jury duty”), a new juror from the field takes that spot, and everyone slides one seat over. Once each side has excused its seven picks, you’ve got yourself a jury.

I thought I was safe from being selected in this particular case for two reasons: My new number was 29, far from the 13 needed (13 are chosen, then, after the case is presented, an alternate is revealed and goes home before deliberations begin). More shockingly, I had voiced my opinion on legalizing marijuana; they asked, and I figured, hell, it’s not me on trial here. Nevertheless, I’d made the cut: each side used all seven of their ejection slips on more obnoxious jurists, and two others revealed emotional biases—one was distracted by an illness in the family, and another, breaking down in tears, told the court of a daughter who died of a heroin overdose. Not exactly objective participants, the judge dismissed both and I was seated as juror No. 11 and given the oath.

Being sworn in to any proceeding has a tendency to sober a person right up. In addition to the flags, robes, and poorly dressed attorneys, the accused is also there, watching you watching him. The defendant in this case was a young Hispanic man, no more than 25 years of age and wearing a lovely prison-issue white jumpsuit. Putting myself in his sandals, I went home that night glad to be sleeping in my own bed.

Days 3-4

At first glance, the case seemed fairly open and shut: an undercover cop witnesses a couple of guys selling drugs, then busts one of ‘em with narcotics on his person. That’s known as possession in the legal profession, and unless you’re in Amsterdam, it’ll put ya in the slammer. The prosecutor in this particular case, however, was trying for more than simple drug possession; in addition, the state was intending to prove the accused had an intent to sell drugs; and not only that, but was selling drugs in a school bus zone—a “no-no” if ever there was one.

“Just the facts, ma’am.” The prosecutor’s case rested entirely on the testimony of the arresting officer, whom we’ll call Detective Dave—because that’s his name. A prettier version of David Hasselhoff, D2 was a 20-year veteran of the force, polite, soft-spoken, and surely in possession of a big stick. According to the blue-coat, he observed two men walking back and forth around Second and Pike from an overhead perch during a C-POP

operation, which is technical jargon for spying on drug dealers. At about 3:30 in the morning, the two individuals nodded to someone coming the opposite direction (drug sign language for “Let’s Make a Deal”); that guy did a U-turn, and the three of them proceeded to duck into an alley, where the deal went down.

Surveying the transaction through a pair of binoculars, the detective saw the defendant lay his arm over a trash can, open his palm, and reveal four small packages. The buyer picked one, gave the second man a wad of cash, then left the alley. At this point, the officer attempted to radio his partner at street level, but a malfunction required him to take solo action. Faster than a speeding bullet, Supercop ran down three flights of stairs, catching up with the suspects two blocks later, grabbing each by the collar, until one broke free, running off into the night. When the officer frisked the remaining suspect he had three “bindles” of heroin in his pocket—“Book ‘em Davo.”

Just like you see on TV, it was now time for the defense lawyer to cross-examine (a.k.a. badger) the star witness in an effort to poke holes in his apparently airtight story: The so-called “transaction” took place at quite a distance—how much can a person see from hundreds of feet away on a rainy night? The policeman testified to watching the defendant open his hand, revealing several packages of heroin. Are we to believe drug dealers commonly display their product in this manner? And why did there need to be any “selection” at all if the heroin was packaged in plastic bubble wrap? In fact, was it possible this “transaction” was actually just a conversation between drug users, each with his own stash? Perhaps the defendant had *bought* drugs in the exchange. Since two guys got away—one of them the supposed buyer—how could it be ascertained there was a sale of any kind? And why wasn’t the buyer apprehended? (According to the detective’s deposition, the Seattle PD doesn’t really attempt to catch the users, as the current political directive is to nail the problem at the source. There’s some chicken-and-egg in that theory.) Finally, if our defendant is such a big-time drug dealer, why did he only have \$64 on his person?

The afternoon was taken up with the prosecution’s slow, methodical presentation of charts, maps and forensic analysis, as well as the submission of a lengthy police report echoing the officer’s sworn testimony a few hours earlier. This is the part they don’t show you on *Matlock*.

“We’ll call it a day and return promptly tomorrow morning at 8 a.m. for closing arguments.” *Closing arguments?* But we had just started rolling! What happened to the surprise witnesses? (Only three witnesses had been called, none for the defense.) What happened to breakdowns on the stand, incriminating photos, and last-minute guilty pleas from God-fearing, remorseful criminals? The accused, in fact, hadn’t said a word, rarely looking up from his table. Maybe he’d have incriminated himself, or perchance the young man didn’t speak a lick of English. Maybe no smack dealers were willing to step into court with an alibi. Regardless, it appeared our jury was going to have to rely on the facts presented, without seeing the defendant try on a pair of gloves.

The prosecutor closed his case with a cute but ineffective parable about a man hanging around a no-fishing area. The warden approaches the suspect as he’s putting on his hip-waiters, testing his line, tying flies, and looking into the water with a gleam in his eye: He may not be caught with his pole in the water, but he’s guilty nonetheless. Frankly, I was a bit confused about the analogy, and the veracity of it, but perhaps I was expecting Perry Mason.

The defense rested with a more high-brow approach, a quote by Oliver Wendell Holmes: “I’d rather see 100 guilty men go free than one innocent man convicted.” It reminded me of the passages I’d used in high school debate, except without the potential jail time. His main point—and a damned important one—was that in a criminal case, the prosecuting attorney must prove the defendant is guilty *beyond a reasonable doubt*. (Hell, it would be tough to prove a lemon was sour beyond a reasonable doubt.) So there it was: Hang ‘em high vs. erring on the side of freedom—quite the contrasting summaries. Now it was up to us.

Before heading into the sequester phase, our stern but fair Judge Judy issued a few rules for the deliberation road: Get everyone’s opinion on each point. We were all going to need to agree, so there was no point trying to sway the majority with rhetoric or faulty logic. Don’t think about the punishment, only guilt or innocence. Don’t talk to anyone on the outside about deliberations until a verdict has been reached (Yeah right . . . This was the best cocktail fodder I’d had in years). Finally, don’t draw straws, flip coins, or otherwise arrive at a verdict by chance (in hindsight, an excellent piece of advice). With that, we were sent into the jury room, cloistered until reaching a verdict, or it was 5

o'clock, whichever came first.

Once sequestered (I love that word), the first order of business was to select a jury foreman, who, hopefully, would keep some sort of order, and announce the verdict once deliberations had finished. Only one juror volunteered for the task, so he got the job.

It became clear fairly quickly that our jury crew was remarkably civil and open to new ideas. The process made me hearken back to the days of student government, when we knew we had some sort of power, but weren't sure how to use it. Suppressing giddy laughter, we'd vote on stuff, make serious points of order, and rule like bureaucrats. Difference now was that part of a man's life was at stake, not yearbook prices or dance themes.

In actuality, we weren't the defendant's peers at all; he was a young Mexican-American, and the rest of us were as white as the day is long. While not exactly a melting pot (the new politically correct term is "salad bowl," full of diverse ingredients that their uniqueness and flavor), we were a mixed lot: a stiff but cordial Mormon, a pig farmer as stubborn *as* a pig, a few blue-haired old ladies, a young woman happy to be away from the pressure of bank telling, a coupla guys like my Dad, and two strange bookish men who wound up asking crucial questions in the clutch. Rounding out the roundtable was our gay jury chief, a man who ran the forum as part Oprah, part Dan Savage. Not exactly *12 Angry Men*, but evenhanded nonetheless.

Though we were supposed to stick strictly to the facts of the case (we were specifically instructed to avoid personal detective work after hours, as well as conjecture), we periodically found ourselves side-tracked: "This kid's just a middle man," offered the bank teller.

"Well, he shoulda *flea*-bargained," countered Farmer John. One of the blue-hairs offered up a surprising, "That cop sure looks like he practiced his story," while another member of the peanut gallery wanted to know, "How much does a dime-bag cost these days, anyway?"

I found myself distracted for a different reason. During deliberations, all of a trial's evidence is left in the jury room: smoking guns, bloody hatchets, black masks, ransom notes, the whole shebang. In our case, the evidence admitted included a map delineating city school bus zones, and three valuable "bindles" of black tar heroin. I kept wondering if there was some sort of lost-and-found

system for contraband seized in raids, and if no one claimed them after 30 days, whether I might be able to put my name on a list of some kind.

Even an even dozen can get winded in the course of an eight-hour day, but, with a little help from our foreman, we usually got back on the justice track, cogitating the issues at hand.


After a few hours of dialogue, we decided to test the waters with a secret ballot on the charge of possession with the intent to sell. Eight votes guilty, four not guilty, including myself, who just wanted to drag things on a bit to see where they went. Deadlocked, as they say, we'd take it up again the next morning.

Day 5

Tempers flared! Well, they flickered. I almost lost it the fourth time I heard one of the old bats say: "Those binoculars are strong. They're just like the ones my husband's got. You can see the marks on a hummingbird with those. They're strong. You can see a whole lot with those binoculars."

As if binoculars were some new-fangled gizmo from the future. I personally had no doubt the cop could see out of them, but I questioned why a drug dealer would display a bunch of heroin across a trash can. Luckily for me, the cops' exaggerated testimony didn't sway me one way or another. He must have seen something (more like a handshake), and when he finally caught up to the perpetrators, they had the stuff on them. Not only that, but the heroin was packaged in handy little ready-to-sell packets. (It didn't help that, during booking, the appellant's pager went off non-stop, and when the officer dialed several of the numbers displayed, each caller was looking for "black, fixes and forties," \$40 being the amount a bindle apparently sells for on the streets of Seattle.) Tide ebbing, someone smartly called for another vote; we'd reached a unanimous verdict on two of the counts, possession and possession with intent to sell. Guilty as charged.

It was time to deliberate on the final charge, "Did the defendant possess, with the intent to deliver, a controlled substance within 1,000 feet of a school bus route stop?" This was supposed to be a no-brainer; if the defendant was guilty of the other two allegations, and it could be proved the crime took place within a school bus zone (which a city engineer adeptly demonstrated with a compass, city map and a ruler), then the accused must be found guilty of the final charge. One thing the state's attorney didn't count on, however, was having a liberal, anal wordsmith on the jury.



The great thing about the judicial system is that it's flexible, and can accommodate real human beings and their feelings. Many of us on the jury were already a bit suspicious about how three bindles of heroin at a street value of \$40 each (according to Detective Dave) could become a criminal case (possession of \$500 or over of a controlled substance). Apparently, the people in the SPD "lab" are the same ones who do property values for the tax assessor. The bottom line was that the members of our jury were willing to punish a man for dealing drugs, but even the most conservative among us felt the school-bus zone law was a politically charged little ditty, probably dreamed up by overbearing council members trying to get votes from the PTA. No one wants drug dealers selling on school grounds, but this particular school-bus zone was unmarked, in Pioneer Square, and the deal had gone down at 4 in the morning—hardly the time for little Susie to be influenced. Since the bus zone was unmarked, our neighborhood drug dealer couldn't possibly have known it was there, and therefore had no *intent*, at least not "intent to sell drugs within 1,000 feet of a school zone." With a show of hands, we voted not guilty on the third and final charge. It was late in the day and all of us were satisfied nailing this guy on two of the three charges; no reason to hit him while he was down. Our job completed, the foreman rang a bell, and we notified a sleepy bailiff that the jury had indeed reached a verdict. Chills ran down my spine as I remembered these very words from dozens of episodes of *The Practice*.

The discourse among our crew of 12 over a two-day jam session was remarkable in a number of ways: full participation by all members, polite listening, a lack of profanity, and a relaxed, serious tone. Even my effort at breaking the ice with a game of hangman was politely but thoroughly rebuffed (my word—if anyone wanted to know—was "innocent").

I saw a slight smile on the defendant's face as our foreman announced the "special" school-bus verdict. We'd just saved him six to 10 months in prison. Hopefully, after he does time for the other two counts, he'll use the free time to do some community service, or, better yet, rehabilitation. More likely, he'll be back selling on the street.

There's one added bonus to jury duty after the case is over; in a kind of backstage schmooze session, all the judicial players get a chance to hang out and exchange notes, with the exception of the convict, who is dragged straight to jail. This allows

the jury to ask questions, while the lawyers and judge can find out what went on in the jury room, and perhaps learn more about trying cases in the future. I immediately approached the young prosecutor to inquire why he hadn't bounced me from the jury after my rasta-like "legalize it" statement during voir dire. He mentioned that the case in question was about a harder drug, and since I'd acknowledged there might be a distinction between dope and heroin, he thought I could be impartial. Later, upon learning I'd been the agitator in regard to the word "intent," he commented that he wished he'd bumped my sorry ass when he had the chance.

The defense counsel, a public defender, told us afterward that his client was probably a drug addict. In addition, the young man didn't want anything to do with his lawyer, as, in Mexico, if you work for the government, you're not helping anyone in prison, no matter who you say you are. When a juror asked him why he appeared to get so emotional during closing arguments, he replied that his client was innocent until proven guilty. The entire case had rested on one police officer's testimony from the vantage point of a balcony hundreds of feet from the incident, a scary principle in any event (think Rodney King). "By the time I get through looking over most of these cases, I believe there really is a reasonable doubt. If I didn't, I couldn't do my job."

I believe the system works. And I believe our participation is key to the future of the democratic process. Jury service has made me more of an activist than I'd ever be if I had not participated. *Sure*, the war on drugs is unwinnable; *sure*, they busted the little guy, he'll get out and do it all over again, and we'll wind up paying more tax dollars for police and prisons rather than rehab and refunds. But you gotta start somewhere. For a change, I saw individuals—citizens—hard at work, laboring for the common good. And in this age of reality TV and voter apathy, it was the most refreshing thing I've seen in a long time.

Besides, I like sitting in judgment. I do it all the time anyway; might as well get paid.

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