

Jury Duty for Lawyers: Are You In or Out?

October 19, 2023

By Thomas W. Repczynski

Jury service is both a civic duty and a privilege. Yet, attorneys rarely serve on juries. To be clear, there is a difference between reporting for duty and actually serving on a jury. For those attorneys who might consider reporting for duty, some question the value of the experience. In the County of Fairfax, Virginia, where I live and practice law, attorneys, along with judges, “first responders,” and some others are among those afforded an exception to jury duty. Every so many years, the County sends out a questionnaire to confirm eligibility to serve. I recently received mine and faced again the question of whether to exercise my right to choose not to serve, i.e., whether to opt in or opt out of jury service. That’s right, jury duty is optional for lawyers! (Please tell me I’m not the only one seeing the irony?!)

[\[For a glimpse into the result of my previous decision to “opt-in” for jury duty.\]](#)

I certainly don’t begrudge anything to those attorneys that choose to exercise their legal right to “opt out” of jury duty. After all, why expend all the effort when not being allowed to serve on a jury is practically a foregone conclusion – especially for a litigation attorney such as myself (and many of my colleagues with whom I’ve debated the issue)? I recognize that it is highly likely I will have wasted a great deal of time and effort only to be sent away without having been part of the deliberative process and/or helping decide a winner and loser at trial.

Be that as it may, for me, at least, opting in is my only option. Why? As I stated at the outset, jury service is both a civic duty and a privilege.

Expectation of a “strike?” For at least one of the lawyers trying a case, allowing an attorney on the jury is likely to be a bad thing since a lawyer-juror may be more likely to recognize weaknesses in the evidence presentation, including evidentiary gaps leaving material questions unanswered, and less likely, perhaps, to be persuaded by legal rhetoric. For these reasons and countless others, I suppose, it is very likely that a lawyer reporting for jury duty will be stricken with one of the “strikes” afforded to each of the parties as part of the jury selection process and, consequently, equally unlikely that the lawyer would actually end up serving on a jury. Our system would fall apart completely if everyone measured and determined their level of input by the relative expected impact on the overall process. Just as a single vote is unlikely to tip the scales of an election either way, the potential significance of one’s individual involvement in the judicial process cannot be overstated. I simply refuse to accept that the measure by which we ought to decide in the first instance whether to participate in the process at all is the extent to which we believe that our individual input is likely to be outcome-determinative. Rather, our willingness to serve, to make ourselves available to serve, as impartial decision-makers willing to share our time for others ought to equate to the level we would hope others might share of themselves should we ever find ourselves in need of a jury of our peers.

Impacting the process? Whether one wants to accept responsibility for the consequences of one’s inaction, one’s non-involvement in the jury selection process impacts the end results. If the presence of an attorney is likely to cause one or the

other party to exercise one of their limited strikes to remove the attorney from the jury, the absence of that attorney must necessarily mean that a strike remains available to be used on someone else. In other words, the ultimate makeup of the jury is skewed by the absence of an attorney who could have reported for duty, even if only to be struck. By not participating, therefore, an attorney has, unintentionally or otherwise, impacted both the process and the results merely by one's absence.

Jury of one's peers? One accused of a felony is entitled to have the matter heard and decided by a "jury of one's peers." In a jurisdiction such as Fairfax, where lawyers abound, a jury pool with no lawyers would reflect less than accurately the "peer group" from which one's jury is to be drawn. Consider, for instance, a lawyer-defendant on trial for a murder she didn't commit. What ought the makeup of a jury pool of her "peers" properly include, if not a lawyer or two? My involvement would not assure an attorney on the jury for this hypothetically wrongly accused lawyer-defendant, but participating to the extent I am able amounts to playing my part and doing at least what is within my power to do.

What if . . . ? Maybe I get contacted and told to report to the courthouse. Maybe I get assigned to a jury pool, and report to a courtroom where lawyers preparing to try a case will ask a bunch of questions and decide whether having me sit on their jury is a good or bad idea. Maybe I survive all the strikes, get seated on a jury panel, and, after hearing all of the evidence, find myself in a jury room with the rest of that same jury panel deciding the fate of an accused criminal or the potential civil liability of parties to a civil case. Maybe I get elected foreman because those non-lawyers on the jury believe the attorney among them knows best what to do and how best to do it. Maybe we convict; maybe we acquit ... or maybe we decide that one neighbor's fence should be moved a foot to the left because it was improperly installed on the next-door neighbor's side of the property line. Maybe, as a litigator myself, it proves to be an invaluable learning experience from which I am able to hone my craft. Maybe I gain a better appreciation for how all those potential jurors feel the next time I am the one selecting a jury.

Maybe I make it as far as the first round of strikes and am sent home. I can live with that! I acknowledge the unlikelihood of my getting impaneled to help decide a case. I accept at the outset that most attorneys selecting potential jurors for their case will not see the potential value in having me in their jury box. I understand that it would be wishful thinking to believe I might find myself as the difference maker persuading fellow jurors to consider evidence in a different light, helping tip the balance in a case with life-altering consequences for the parties.

For my money, opting out of jury duty is akin to not buying a lottery ticket – you can't win if you don't play. The PowerBall jackpot recently surpassed \$1.5 Billion without a winner. My chances of winning were as infinitesimal as the next guy's, . . . but I bought a ticket anyway. I'll be sure to tell you all about it if my jury lottery number gets called. (P.S. I'm not making the same promise if my PowerBall number comes up!)