What Were They Thinking?

Musings from the Director of the NCSC Center for Jury Studies on Her Stint in the Jury Box

I've worked at the NCSC for over 30 years with most of my career focused on the topic of jury system management and jury trial procedure. During this time, my perspectives have mostly been informed by the professional views of judges, lawyers, court administrators, and academics. Only occasionally did I interact with actual jurors. At best, I could only imagine myself in their place when thinking about policies and practices that would benefit the institution of trial by jury. This changed this week when, much to my surprise, I was selected as a trial juror in a criminal case in my local court.

Part of the surprise stemmed from the relative infrequency of jury trials in my community. My home county is a mostly agricultural county with a total population less than 7,000 according to the most recent decennial census. The court had fewer than 400 new case filings in 2023 – and half of those were handgun permit petitions. I've lived here since 1996 and can count on one hand the number of jury trials during that time. Given the likelihood of even having a jury trial, I thought the chances of my being summoned, much less selected, were vanishingly small.

I was initially excited to receive a jury summons to appear for a two-day jury trial. I dutifully returned the juror qualification questionnaire, checked the status of the case on the court's telephone message system the night before my reporting date, and, after learning that I should report the following morning, appeared for service with other prospective jurors at 8:30 am. The excitement was quickly tempered when we learned the nature of the case: a child sex offense, which is quite possibly the most disturbing type of case for prospective jurors.

I was assigned as Juror # 12 in the venire, so I knew that I would be questioned during jury selection. But I expected to be removed by peremptory challenge, if not for my status as a nationally recognized expert on jury system management and trial procedures, then due to close personal relationships with individuals who were sexually abused as children. To their credit, the judge and attorneys questioned prospective jurors privately about their responses on sensitive topics, which is where they probed for more information about the potential impact of my professional and personal biases.

My professional expertise seemed to cause the most consternation for the attorneys. First, they asked exactly what it was I did at the NCSC. After I explained my role conducting research and providing technical assistance and education to judges, court administrators, jury managers, and lawyers about effective practices, they followed with the reasonable question of whether I could still serve as an impartial juror if their practices somehow fell short. I assured them that I could. "But you'll still be grading us, right?" asked the defense attorney. I promised not to grade them, but I would provide candid feedback if either of them wanted it.

Once the judge and attorneys had concluded individual voir dire, they brought the panel back into the courtroom. Some members of the panel had obviously been removed for cause during individual voir dire because there were now gaps in our assigned seats. While the judge read preliminary instructions, the attorneys passed the list of remaining jurors back and forth as they

exercised their peremptory challenges. At one point I caught the defense attorney looking at me while whispering to his client and thought to myself, "That's it, he's going to strike me."

The attorneys finished up their strikes and returned the strike sheet to the trial judge. He instructed us to stand as he called out our names. Mine was the fifth name called and I expected him to thank us for our service and then release us from jury service. Instead, he asked the Commonwealth's and defendant's attorney in turn, "Is this your jury?" They responded in the affirmative, and he then thanked the sitting jurors for their service and instructed them to retrieve their belongings from the jury assembly room. They were dismissed, and the judge instructed us to raise our right hands to be sworn in as the trial jurors. You could have knocked me over with a feather!

From that point on, the trial went very quickly. We immediately heard opening statements and testimony from the first two witnesses before lunch. As the day progressed, I fully appreciated jurors' complaints about the disjointed and confusing manner of introducing evidence through direct and cross-examination of witnesses. There were so many gaps in the case! Lines of questioning begun, then objected to and abandoned. And references to intriguing details that seemed to be important but were ultimately not pursued. There was also a weird exchange about a TikTok video, ostensibly intended to show the victim's state-of-mind for alleging the abuse, but the video was not admitted as evidence and we never got a chance to see it.

The courtroom itself was not designed to facilitate sidebar discussions between the trial judge and attorneys. Consequently, a good part of our day involved traipsing back and forth between the jury box and the jury deliberation room whenever the parties raised legal objections. During one of these interruptions, one of the jurors huffed in frustration, "Oh, I have SO many questions! Like, what about …?" Several other jurors agreed and began voicing their own questions before a couple of us gently reminded them that we were not supposed to be discussing the case yet. We did encourage them to remember those questions so we could discuss them during final deliberations.

Instead, we turned to what were presumably safe conversations, such as the comparative merits of Dunkin' Donuts versus Krispie Kreme Donuts, which almost caused a hung jury, until we reached a compromise verdict that Duck Donuts were certainly a viable alternative and possibly superior to either of them. We also agreed to try to expedite our future deliberations by nominating our presumptive jury foreman: a social studies teacher from the local high school who had taught at least one of the jurors and several other jurors' children. Collectively, we agreed that his experience managing classes of obstreperous high school students more than qualified him for the role of jury foreman.

By 4 pm, both sides had presented all their evidence, so the judge told us he would hold us late and try to get the case done that day, including closing arguments and final instructions. Part of that process included randomly selecting the alternate juror. Unfortunately, the name selected was the juror whom we had previously nominated as our foreman. It was a tremendous blow to all of us when the clerk called his name and the judge dismissed him from service.

Jury deliberations were much more chaotic than I expected. They were not at all as they are depicted in juror orientation videos in which jurors calmly take turns discussing their views around the table. The acoustics in the room were not great. The table was long and narrow, making it difficult to see everyone. And it is more difficult than you would expect for 12 people to engage in

sustained discussion without talking over each other or engaging in side conversations. Nevertheless, after 30 minutes or so, it became apparent that most of us had some doubts about the defendant's guilt.

This was perhaps the most significant insight from my experience as a trial juror. Most criminal jury trials result in a guilty verdict in which jurors reach a unanimous consensus that the defendant committed the crime of which they were accused beyond a reasonable doubt. Substantial empirical research has shown that most jurors are profoundly satisfied with their jury deliberations and confident in their verdict. Voting to convict the defendant involves a certain moral clarity in which jurors may ultimately find comfort.

In our case, however, we had concluded only that the Commonwealth had not proved the defendant guilty beyond a reasonable doubt. But there was no consensus about whether the defendant had actually committed the crime. Instead, our views ranged the gambit from the defendant's complete exoneration (the victim was lying or was coerced by her mother) to the defendant probably committed the crime, but the collective testimony of witnesses was too equivocal to support a verdict of conviction. I found the lack of a consensus about that underlying issue to be profoundly disquieting—we had done our duty as trial jurors with respect to the ultimate conclusion of guilt versus acquittal, but we had failed to find the truth of the allegations. In this respect, I was surprised and unhappy at how unsatisfying the process was. In 20/20 hindsight, this may be a more common sentiment for jurors than is generally recognized.

After we had formally voted and our foreman had signed the verdict form, we returned to the courtroom. The clerk read the verdict in open court and the judge polled the jury, asking each of us in turn to verify that this had been our verdict. These formalities having concluded, he sent us back to the jury deliberation room where he thanked us for our service, informed us that we would be paid $50 for serving as trial jurors, and released us back to our lives as ordinary citizens. I am profoundly grateful to him and to the attorneys who permitted me to serve, and to my fellow jurors who brought patience, thoughtfulness, and clarity to our task. I also have a new appreciation for just how difficult the task of deciding a defendant's guilt or innocence is. It is much harder than it looks.