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CREATING A SEAMLESS TRANSITION FROM JURY BOX TO JURY ROOM FOR MORE EFFECTIVE DECISION MAKING

Annie King Phillips*

INTRODUCTION

Why am I writing here? I am not a judge or lawyer, and I may never be. I don't even play one on TV. In searching for an answer to this question, it came to mind that at sometime in everyone's life, there is a need to enter the court system—as a victim, offender, witness, court staff or juror. The interactions among these persons impact the effective administration of justice in our court system. Every two years for the past eighteen years (like the tick of a clock), I am summoned to jury duty at either the District of Columbia Superior Court or the District Court for the District of Columbia. Both court systems use the same jury wheel. Presently only two source lists are used—voter registrations and driver license records—but a juror can serve no more frequently than every two years. I have been an active juror on six to nine trials that I remember well; these trials lasted from a few hours to about ten days. These experiences have prompted me to spend the time and energy required to reform and improve the jury system.

Until recently, very little was known about what goes on behind the closed door of the jury room. It is in the jury room that twelve people must come to a decision that impacts the property, life or liberty of one or more persons. How do these twelve persons proceed? How can the public be more confident that they make as fair a decision as possible? Reaching a verdict should be the result of a seamless transition from the jury box to the jury room. Several proposals are being made for reform toward that end.

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- I. TRADITIONALLY, JURORS SIT IN THE JURY BOX OBSERVING, LISTENING AND ATTEMPTING TO INTEGRATE ASPECTS OF THE LAW WITH THEIR OWN THOUGHTS.

REFORM PROPOSAL

Allow jurors to ask questions to witnesses by sending the written question to the judge who decides if the question may be asked during trial.

REFORM PROPOSAL

Enhance decision making by having the judge give interim instructions to clarify points of law and to define terms that may not be understood by the jurors. In addition, the judge should give instructions just before closing arguments.

- II. WHEN JURORS ENTER THE JURY ROOM, THEY ARE TRADITIONALLY NOT PERMITTED TO TAKE NOTES. IT SEEMS THAT JURORS WOULD BE MORE PREPARED TO TAKE ON THE TASK OF MAKING A DECISION BASED ON EVIDENCE PRESENTED AND THE APPLICATION OF THE LAW IF THEY ARE ALLOWED TO TAKE NOTES AND/OR HAVE BEEN PROVIDED WITH A NOTE BOOK.

REFORM PROPOSAL

Allow jurors to take notes. Such note taking should not be mandatory and would not influence those jurors who choose not to take notes.

REFORM PROPOSAL

Provide notebooks for long, complex cases.

- III. JURORS WHO HAVE BEEN MORE ACTIVE IN THE JURY BOX ARE MORE PREPARED TO ENTER THE JURY ROOM AND ENGAGE IN DECISION MAKING THAT WILL RESULT IN AS FAIR A TRIAL AS POSSIBLE — A SEAMLESS TRANSITION.¹

REFORM PROPOSAL

Do not designate alternates until the trial is completed. All jurors—those later chosen as deliberating jurors and those chosen as alternates—will pay attention in case they are called to serve as a deliberating juror or called to replace one during deliberations.

REFORM PROPOSAL

Allow jurors to discuss the case during trial, provided they are all present in the jury room, and do not make a decision until the trial is completed.

- IV. THE JURY IS FACED WITH THE TASK OF FOLLOWING THE JUDGE'S INSTRUCTIONS TO WORK TOGETHER BY BLENDING, BALANCING, AND MATCHING THE EVIDENCE PRESENTED WITH THE POINTS OF LAW SPECIFIC TO THE CASE.

Jurors do not sit passively during a trial. They reconstruct the scene, evaluate the story line presented by the attorneys, and contemplate the evidence offered. They remember people and events (and sometimes injustices) that are part of their own lives (and, God forbid, TV). Jurors often enter deliberations limited by cultural or religious customs and beliefs that give them pause in dealing with the facts of the case. There may be 12 different versions of what just happened in the trial. They often arrive with some misunderstanding of the law and how it is to be applied. Misunderstanding sometimes leads to a miscarriage of justice that is not the same as the sometimes defensible act of intentional nullification.

1. In addition to the reforms proposed here, courts should also consider how best to equip the jury room. The jury room should be comfortable with appropriate furniture, lighting, and ventilation. Moreover, the room should be equipped to meet the needs of jurors in an environment conducive to working together. Chart paper, markers, pencils, and other supplies should be provided so that both visual and auditory styles of learning can take place.

REFORM PROPOSAL

- Provide each juror with a written copy of the judge's instructions. These instructions, along with interim instructions during the trial, point out elements of evidence and points of law to be considered.

V. THE PROCESS OF DELIBERATIONS DOES NOT ALWAYS FLOW SMOOTHLY BUT MAY BECOME DIFFICULT TO THE EXTENT OF IMPASSE.

REFORM PROPOSAL

In response to a declaration by the jury that they can no longer deliberate, the judge should clarify instructions or answer questions regarding the evidence (consistent with applicable law). The judge might also ask that the jury identify the issues, if any, on which they have reached agreement, as well as which issues continue to divide them.

VI. WHEN CONSIDERING THE AFOREMENTIONED PROPOSALS, IT IS IMPORTANT TO CONSIDER THREE "FORCES" THAT ARE AT WORK IN THE JURY ROOM.

Each of the forces at work in the jury room requires the jury to perform one or more "tasks" toward completion of the ultimate goal: arriving at a just and true verdict.

A. Context

How does a jury contemplate the evidence?

TASK: The jury must somehow attain an understanding of the law as it applies to the evidence presented at trial.

B. Group dynamics

How does a group of individuals apply the law to the facts and arrive at a consensus decision?

TASK: The jurors must choose a "Presiding Juror" (commonly known as a foreman or foreperson). Note that this nomenclature suggests a deliberation process based more on democratic participation than on authoritarian decision making.

TASK: A jury must avoid arriving at a premature verdict. They should not, therefore, begin deliberations with a vote. Discussion helps release pent-up feelings, allows reality testing of one's own thoughts, and helps jurors learn more about each other.

TASK: Following a period of introductions, the jurors should organize the points of law and assess the significance of each piece of evidence.

TASK: The jurors must next go through each charge or offense, one by one, and determine if each element has been satisfied.

Through such an organization of discussion, jurors learn from one another, trigger recall, handle emotion, and remain focused.

REFORM PROPOSAL

The judge should give special suggestions along with final instructions to help the jury begin deliberations.

C. Control

The jury must be fully participatory so the points of law specific to the case are matched with evidence to produce the verdict.

TASK: The jury, as a whole and through the direction of the “presiding juror,” must manage the individual jurors’ freedom of expression in an atmosphere of trust and respect. Each juror must be allowed to speak and offer information, yet each must also be encouraged to stay focused on the task at hand—arriving at the just and proper verdict.

TASK: The *individual* jurors must arrive at a consensus (a *group* decision) to create the verdict.

TASK: The jury must complete and present the verdict form.

CONCLUSION

The aforementioned issues addressed and reforms proposed would greatly enhance the accuracy and fairness of the results at which a jury arrives at the end of deliberations. Courts should seriously consider implementing some, or preferably all, of the reforms suggested while always keeping mind the other jury issues and complications noted here.

To complete the seamless transition from jury box to jury room, I offer one final proposal. I feel it is important that judges and lawyers make the effort to meet with jurors after the verdict. Such a meeting allows the court and the parties in the case to thank the jurors for their time and effort, to talk about the process to determine if their needs were met,² to discuss how to respond to media requests, and to assist any jurors who may feel traumatized or unsafe. In short, this process brings to the once and likely future jurors an important sense of closure to the case.

2. This feedback, which relates not to satisfaction with the outcome but instead to the trial process itself, is important to the continued evolution and improvement of the jury system.