

Conversation about how to conduct oneself as a juror in the present judicial system.

<http://www.youtube.com/watch?v=sLf3ZyMw7Wo>

So you got called for jury duty?

Yes. But it will come at a bad time for me.

Jury duty always comes at a bad time for everyone. Do you want to get out of it?

Just this time. It might be okay later.

If you were a criminal defendant, would you want a jury of those not smart enough to get out of it?

No. I guess not. What can I expect when I get there?

The first phase is called voir dire. You will be in a pool of candidates, from which the panel of twelve will be selected. You will be given some questions to answer. Each side will be allowed to examine your answers, ask further questions, and reject a certain number of candidates. A rejection is called a strike.

What kind of questions?

Questions about your occupation, education, connections to the parties, biases, or things the lawyers might use to profile you as being more or less disposed to their side. During that questioning you will also get a sense of what kind of case it is, whether civil or criminal, and perhaps how long it might take.

So if I answer the questions cleverly, I can either avoid being struck, or make sure I will be.

I have heard that prosecutors sometimes ask jurors what they know or think about nullification.

Yes. They want to strike anyone who might know she can use her own judgment about what the law is.

Does the jury not get to hear the legal arguments?

No. The judge will not let the lawyers argue points of law in the presence of the jury. The lawyers would be punished or disbarred if they try to do that. They will present evidence, and the judge will give instructions

I hear that jurors have to take an oath.

Yes. The judge will ask you to take an oath to follow the law as he gives it to you.

It does not seem right that I should have to take an oath to do that before I know what the instructions are. Suppose the judge is wrong about the law?

You are only being asked to follow the law he gives you, not his opinion of what the law is. If you know the law better than he does, you won't be violating your oath to decide on what you know.

But how can I know what the law is if I can't hear the legal arguments? That could affect how I evaluate the evidence or decide guilt in a criminal case. Does even the judge know the law before he hears the legal arguments?

The judge is likely to be getting the legal knowledge for that case for the first time from the lawyers. He may get it wrong, or he may not care and make biased decisions. That is the basis for the saying that none of us is more than one false accusation away from prison.

I've heard that some prosecutors try to convict innocent people, but do the judges not try to prevent that?

Most judges are former prosecutors. Why do you think our Founders established trial by jury?

To involve the public in the justice system?

We have trial by jury because judges cannot be trusted.

If judges cannot be trusted, can we trust their instructions to the jury?

No. Judges sometimes cleverly word their instructions to steer the jury in a certain direction. In a criminal case, usually to convict.

Have jury trials always been like this?

No. Until the late nineteenth century it was common practice to make legal argument before the jury. But a Supreme Court case allowed judges to not instruct juries that they could judge the legal issues, and courts took that as license to forbid lawyers to make legal arguments to the jury.

If the jury do not get the legal arguments, how can we render a just verdict?

You cannot, which is why you should vote to acquit on that basis alone, because the due process rights of the accused have been violated.

Even if he is a bad guy?

Yes. We have to insist on due process, even for bad guys, and if that means letting them off, then that is what we have to do.

But he might commit more crimes, might hurt people, if we let him off.

Yes, but violating his rights in the way the trial is conducted is also a crime, and you do not want to be an accomplice to that.

What if mine is the only vote to acquit?

If you are sure you are right, stand firm.

Should I make these arguments to get the other jurors to join me?

No. One of them might complain to the judge and have him kick you off the jury. It is better to just argue that the prosecution has not met the burden of proof beyond a reasonable doubt, for a criminal case, or that you do not believe the prosecution witnesses, that they may be testilying. Gently plant seeds of doubt to get others to come around. Most people make herd decisions. You have to form a herd around you.

Is there anything else I need to know?

Yes. Do not even hint you've ever had a conversation like this one.

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