



# Julia

**The  
Juror**

Our system of justice in this country would simply grind to a halt if we did not have citizens who serve as jurors.

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# s a Federal Juror

**J**ulia Herd<sup>1</sup> has an unhealthy look about her. She is frail. Julia is over sixty-five, but has not aged well. Julia's cheeks are sunken, her smile is pleasant but not bright, and her complexion is just a bit gray. Julia looks so conservative or out of touch with fashion as to appear unkempt. Her short cropped hair looks unbrushed even if she works at it for 10 minutes.

And those glasses; the frames were not stylish even in their day! Yet, Julia's eyes are incongruously bright. It does not show at a glance but those eyes are windows to something deeply inquisitive. Julia is a voracious, professional, researcher. She forms her thoughts slowly, but they are strong as tempered steel when finished. Julia's outside look tricks any casual observer wrapped up in judging things by appearances.

Julia is not "well put together;" some might say she cannot dress. She does not own a thing that cost over \$50, except a winter coat. There was no choice about it. She paid \$50 at the consignment store because it was nearly new and she could not have touched the coat for \$300 anywhere else. Julia is not poor, and she is a capable observer of dress habits. She just does not care about her appearance. She gave up on attempts to impress people with her appearance years and years ago. Good shoes are important to Julia; she does not care about wearing heels.

Julia's life has been austere in some ways, and rich in others. Her mind is full, her bank account is meager. A sandwich when everyone else had a meal. Store brand cereal and walk to work. This has been Julia's financial life. Her home — unchanged

since her mother's death in 1977 and perhaps even 10 years before — is dark and a little drafty. Julia's brown chair is worn. The old lamp beside it is worn too; yet, it stands out a bit. Big bulbs; plenty of light. Books lie everywhere, on both sides of the chair. They are a clue. Above and behind them are pictures of five nieces and nephews probably taken at least ten years ago.

Julia walks a little bent over. She cannot be over 5'1" when stretched out to full height. No frills in the diet have left her at 100 pounds when dressed and soaked, all her adult life.

Bone density is an obvious problem for Julia. The curved spine and especially the sunken face all suggest poor health. And Julia's speech suggests illiteracy. She can hardly be understood. Julia seems to press out sounds between her tongue and pallet; not to form them with her vocal cords. She uses no articles; "a", "an" and "the" are simply absent from Julia's lexicon.

Julia looks poor and ill. She is frail and seems weak. One doubts her attention span can be over a few minutes; she looks "uneducated" and unable to grasp complex matters. But the truth is Julia was blessed with the inquisitive mind of a scientist and the powerful recall of a research librarian. Talent comes in all kinds of packages. Julia's talent comes disguised in a body prematurely withered by weather and time while battling the outside world with weak genes. Nearly all the "color" in Julia's life occurs in her alert mind. Her backward speech is a self-effacing habit. Her language gives cover for Julia's brilliance, and Julia's fear of her own success.

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Julia Herd is a federal juror.

She came to court because she was commanded to. A jury summons gave her two choices: show up at the beautiful ornate new federal courthouse downtown, or commit a crime.<sup>2</sup>

Julia is not a criminal. She was summoned for a duty and she will

seats in order in the ornate ceremonial courtroom reserved for infrequent panels of the Court of Appeals, special events like judicial robes and group citizenship ceremonies, and for big trials occasionally.

Julia is number five. She does not know the selection system increases

what the judge called "*voir dire*."

Julia's juror colleagues have no idea they are "witnesses" while being questioned. In all likelihood, even the lawyers do not think of the venire in this way. Nothing is said of the history of jurors as witnesses and *voir dire*. Julia is a librarian, retired from a career at the State Library nearby in this state capital city. Interestingly, no lawyer finds out what Julia did for a living. In fact, all anyone knows of Julia is that she has served on several juries before now, she is apparently inarticulate and seems, or at least looks, quite backward.

Julia looks and sounds displaced in time. Her questionnaire simply says she is a retired state employee. If any juror might know the history of the jury as an institution, Julia is the most likely. She has served four times before, and she worked for over 35 years as a research librarian. She may know that as jury selection occurs, jurors are witnesses. Julia might know this is the only time during trial when she will be examined under oath by the court or lawyers. She is testifying now; she answers truthfully. The questions to her are simply poor. *Voir dire* examination of the jury panel is marginally planned and poorly executed. Both lawyers seem to handle this phase of the case poorly. Yet, Julia might know she is a witness now. If asked at this stage, Julia knows something of the rich history not mentioned in court (but of interest to Julia as a research librarian). She wonders if this history is of interest, and known, to the lawyers and the judge:

Glanvill says of the grand assize that it is to be preferred to battle, among other reasons, because "in proportion as the testimony of several suitable witnesses in judicial proceedings outweighs that of one man, so this constitution relies more on equity than does battle; for whereas battle is fought on the testimony of one witness, this constitution requires the oaths of at least twelve men."<sup>4</sup> When he comes to identify possible exceptions (challenges) to jurors, he says merely that "the grounds for taking exception to these jurors are the same as those for rejecting witnesses in an ecclesiastical court," and does not elaborate further.<sup>5</sup>

Bracton on the jurors in novel

## Julia has one thing these others do not. Experience.

perform it. It would seem easy to discount Julia at a palatial courthouse. Yet, there is a burning dignity here. Julia Herd should not be discounted.

Seventy-five jurors, including Julia, all show up about the same time. They "assemble" in the room with a name that commands this activity. Julia is one of the oldest. She may be the smallest. And, she looks the poorest. Some might say the most illiterate, too.

Julia is not educated. She should not be regarded as unlearned.

Despite all this, Julia has one thing these others do not. Experience.<sup>3</sup> She has experience. Julia has already served as a juror four times and deliberated to verdicts four times. One conviction. One acquittal. One personal injury verdict for a plaintiff; another in a contract case to the defendant. All important cases, though all fairly short ones. Julia knows the drill.

Each jury venire member gets a number as a proxy for a name. Who can forget numbers — one through seventy-five. And who can remember Tom, Jane, Ralph, Alfonzo, Juliette, Charles, Bob...

The case is a big deal of some kind. There will be lots of lawyers they are told. The case will take some time; maybe six (6) weeks, and it will be complex.

"Okay! Follow me." This is more a suggestion than a command from the attractive young olive-skinned jury attendant. Julia likes her. She is sweet, and pretty, and wholesome.

Walking loosely, three-abreast, the group hikes up a majestic stair case, around a corner and, as their numbers are called; they take their

greatly the prospect that the jury will be drawn from the earliest numbers.

Julia sits in the front row. She looks frail. But her position is powerful. Just because she is seated where she is, Julia has a better than even chance to make it to the jury. Hurry up and wait; it's the government, even if it is the judiciary. Now, in the courtroom it seems to take a little longer than expected for the Judge to appear. There are lots of lawyers — at least they look like lawyers — all in blue and black, except one in olive green. Another, in a dark suit but with a dated looking, somewhat shaggy curly effect in his hair, seems different, too. To Julia, some of the lawyers seem anxious. One or two seem relieved somehow, like being here is a relief and not a burden. Both "Curly" and the guy in green fall into the latter category.

"All rise!" They do — as a group. Then, all sit — except the judge, who continues to stand far away behind the huge bench, all alone. He is not from Julia's state, and is "on assignment here to handle this case." The Judge seems professional and strong, like a judge should be. Pleasant but very proper and in control.

The case will be long — maybe six weeks. It will be complex and involve agriculture. The judge asks lots of questions; one lawyer on each side asks a few, too. The judge's questions seem to seek information. The lawyers both seem very ill at ease. Both are local though most the lawyers are from far away. Julia could tell the lawyers who were in charge on each side of the case did not ask questions of the jury during

disseisin removes the direct reference to the ecclesiastical courts, saying that "they may be kept from taking the oath for the same reasons that witnesses are kept from giving testimony;" he goes on to list some of the reasons, drawing mainly though not exclusively on Roman-canon procedural texts.<sup>6</sup> If the grounds for objecting to judges had not been specified in the canon law procedural sources, or if they had been the same as the grounds for objecting to witnesses, these references would be neutral. In fact, the grounds for recusation of a judge are specified in contemporary Roman-canon procedural literature, and they are not the same as those for objecting to witnesses, though there is some overlap. If the authors of Glanvill and Bracton had thought that jurors were, as a matter of legal doctrine, lay judges, there is no reason for them not to have used the grounds of recusation of a judge. To this extent, therefore, jurors were clearly thought of in law as witnesses.<sup>7</sup>

No juror says much when asked. Julia's hand shoots up when a question is raised about prior jury service. Four times. Each prior jury is explained by Julia with a short story constructed of short, choppy words in Julia's heavy dialect. The lawyer in green at the smaller table catches Julia's eye; they make direct contact. He smiles and so does she.

He is not asking questions in *voir dire* so they do not talk to each other. Julia then looks at the bigger table. There are a dozen lawyers over there; none of them pay any attention to Julia.

It takes about five hours before the jury is chosen. When it is seated, Julia is one of the dozen who will hear the case — probably five or six weeks worth. Wow! This is longer than all four prior cases combined; and two of those had been for big chunks of life as retribution sought for alleged crimes. Once, Julia had agreed, and once she had disagreed.

Julia sees jury service as her duty. She has long regretted not serving in the military. Jury duty has filled part of this void. Julia is a deep thinker, masking her inquisitiveness with her outdated look. Serving on this jury will take time and energy.

But Julia has time to be on a jury in a long case now. It is early in the new year. Last year, in the fall, the

state budget was slashed, due to a revenue shortfall. The State Library was forced to lay off three people. Julia did not have to go; she had seniority.

But, if Julia stayed, a woman in her mid-30s with children would have been out of work and she desperately needs her job. So, Julia takes stock of her situation and decides she will retire now to protect the young mother's job. This will mean \$100 per month or more less — for the rest of her life — than if Julia worked another year as planned. But Julia will get by; the young mom might not.

Julia is a liberal thinker.<sup>8</sup> She votes for the candidate for president who seems most sincere about helping people. Julia is not inclined to make decisions based on high-sounding platitudes; she is able to tell when folks hurt, and when they are being helped. Looking for the truth and finding it has worked well all Julia's life; she has learned this is generally easiest to do if she pays attention to straightforward statements that make sense, and are not selfish. It is hard for a person to be both selfish and truthful.

None of this is discovered by the judge or lawyers during *voir dire*. Instead, Julia makes the jury because she seems harmless; eccentric maybe. The lawyers figure her for a follower. Little do they know!

She has never been talked into anything. Julia has never been persuaded by trends in choosing glasses or shoes, in her politics, or in prior jury work. Julia is her own decision-maker and is fiercely independent about it.

Opening statements will wait until the next morning. So Julia, six other women and five men who had never met leave the courtroom. They are ushered out by the pleasant jury attendant, past the court security officer, and by an odd-looking thing that Julia will learn is a symbol for the plaintiffs' case. The jurors go with the jury attendant out a door on the side of the courtroom to see their deliberations room and area for the first time. They, they head back down to the jury assembly room to gather things left there, and go home.

Julia can walk to and from court; she lives close by. One of her fellow jurors will have to decide to commute 100 miles each way, or live in a motel; he will do some of each

as the case wears on.

### The Jury's Interaction

Tuesday is the first real day of trial. Julia and the other eleven jurors all arrive nearly 30 minutes early. After today, they will always be at the courthouse early to be together. The pleasant attendant tells them they are going to work with a judge from far away, and will hear a complex case that has been working its way through the court system before proceeding to trial for many years.

One of the jurors quietly, but audibly and spontaneously utters something like "God help us!" Another says "Amen!" and there is a brief, but sincere chorus. A well-dressed older lady, joined immediately by another, suggests a short prayer.<sup>9</sup> A young man, a high school coach who will become the foreperson, volunteers to lead with a short, general prayer. He has occasionally done this quietly with his players and fellow teachers; he has seen a togetherness grow from it especially if the prayers are short, sincere, and general. All the jurors politely join though they did not know each other until a short time ago. The prayer is religious enough to invoke God's existence but general enough not to be expressive of only one religious faith. It is simple, thoughtful and meditative. This continues throughout trial as jurors fall into a loose rhythm of leading and participating.

After this morning, the prayer will become a daily thing; by the end of the trial the jury will meet, open with a short prayer, and say another together before departing from the courthouse each day. By evening on this first Tuesday, the jurors know they are chosen and sworn to the duty to decide a case that will affect many, many people.<sup>10</sup> They are committed to being studious, focused, thorough, and fair.

Of course, the parties and lawyers know none of this — unless they are watching very closely they probably cannot tell whether the jury has coalesced or segmented. What a difference knowing, or even guessing correctly, would make!

### Opening Statements; Evidence

"This is America's cattlemen's case." These words, early in the comments of the lawyer in the olive green suit, introduce the case. It is a

class action. Cattlemen seek to use a law their lawyer says has fallen into disuse though it was passed to protect producers from market abuse by slaughterhouses. The case was brought because the cattlemen claim the largest slaughterhouse in the country manipulated the market for their cattle and unlawfully lowered their price in the process. They want money from the jury for damages and will ask the judge for orders to change cattle markets so the disused law is honored in the future.

Cattlemen ask the jury to help them mend the legal fence intended to keep slaughterhouses from abusing producers with market power wielded by big meat companies.

The slaughterhouses' lawyer denies this is happening. He claims the cattlemen who brought the suit are trying to push others into doing business their way instead of how they choose. But the six cattlemen have little to gain, and the attack on these men by the slaughterhouse lawyer seems out of focus somehow.

Four weeks of evidence by the cattlemen follow. The lawyer in green and his colleague with curly hair call witness after witness to make their case.

Cattle people from across the country testify. Depositions are read from some of the slaughterhouse's employees. Videotaped depositions of several meat company directors are shown. It becomes clear the slaughterhouse is a powerful company with many political connections to both political parties and to high levels of the government. Their directors are luminaries of Wall Street, executives of other big companies, former high ranking federal officials, or spouses of prominent elected officials.

The cattlemen have no such connections.<sup>11</sup> They come to court with their families and friends. They sit together, stand together and seem to work together. Though the cattlemen are from across the nation — east to west and north to south — they seem to be neighbors with one another. The cattlemen and their lawyers seem to communicate pretty well. The lawyer in green is from cattle country. The curly-haired fellow is local. The slaughterhouses' lawyers are from Washington, DC.

Julia does not detect any haughty airs from the cattlemen. They seem

sincere and respectful. The case is tough and their lawyers fight hard. They have to. The behemoth slaughterhouses' lawyers are obviously well prepared and have constant objections and matters that take the lawyers to the "sidebar" often. Julia can tell these conferences are often about important matters. The varied looks on the Judge's face; the furrows in his brow, and the intensity of the lawyers at the sidebar made it clear tough points are being argued.

The judge tells the jury at the outset to ignore objections and the court's rulings on them. Julia obeys. So do the other jurors.

The judge also tells Julia and the jury they can take notes, and ask questions. The questioning procedure allows jurors to write the question out, hand it up to the Judge through court personnel, and have the Judge ask the question, if he approves it. This is done at least a dozen times during the trial. Twice, to Julia's pleasure, another juror asks the expert economics witnesses very complex, and pointed, questions about using regression analyses and econometrics. Julia doubts any of the lawyers, or the judge, could have asked these questions. She is proud of the jury. Julia does not know it, but one observer of juries has said:

Who is to say that a judge, or a group of judges are in a better position to decide the amount of damage a truck driver should have for losing an arm than twelve men and women chosen at random and including mechanics, laborers, grocery clerks, accountants, and possibly truck drivers.<sup>12</sup>

After a month of evidence, the cattlemen rest their case. The defense puts on evidence for less than a week and trial is all but over. The jury is told to return to court for closing arguments the following Tuesday as the Judge and lawyers will have to work without the jury on Monday.

The evidence ends. By now the jury has grown close. Friendships have formed and no enmity has developed. Diverse backgrounds, different ethnicities, ages, genders, and experiences have worked their roles to mold a decision-making group for the important task at hand. They have become a real jury<sup>13</sup> capable of debating while remaining respectful. They are now able to pray

together while disagreeing vigorously about points of evidence or sentences in the jury instructions.

Part of the jury's "togetherness" is the ease with which its members have learned to say hello, goodbye and how you are. They care about one another; and about respecting one another as well.

### Instructions and Closing Arguments

The judge holds a work day with the lawyers. This is the day before closing arguments are given and the jury instructions are read. Julia does not know what the work day for the lawyers and judge is used for; common sense suggests it might deal with what will be said on the final day of courtroom presentations to the jury. She does not think much about this; it is not within Julia's sphere of responsibility to know or understand what occurs at the meeting in the courtroom without the jury present. During her final day before deliberations, Julia works to avoid the case that looms so huge in her life. Yet, try as she might to avoid it, the subject seems to be everywhere.

Were those grocery store ad circulars always so filled with meat specials? Those trucks on the highway that she knows now are hauling beef — were there always so many of them? Has the whole world tuned to country and western music and have boots and hats ever flourished so well? Julia knows, though she finds herself wondering, that she is now sensitized to these things by the invasion of evidence she has heard into her daily awareness.

On closing arguments day the whole courthouse seems different.<sup>14</sup> It is charged with a different energy than during the trial's earlier stages. From the minute Julia enters, she senses electricity in the air. The U.S. Marshalls were always friendly and kind, but they seem to have a sense of special accommodation for the jury today. Julia hears there are "lots of cowboy hats" in the courthouse. She soon learns the courtroom is full largely with people from far away. Everywhere she looks; Julia can see and feel signs that the case she and her fellow jurors are to decide is terribly important to cattlemen. Their lawyer tells the jury they are fighting big business for their way of life.

The case is extraordinary to the slaughterhouses, too. The President of the largest corporate group of slaughterhouses was a witness. He believes his company cannot compete if it must do business the way the cattlemen want.

The company employs 50,000 people; their lives will be impacted if the jury makes a wrong decision. The consequences are sobering for Julia and her fellow jurors.

Julia and her colleagues have been conscientious throughout trial. Among all of them, the jurors have over 1,000 pages of notes — about a hundred pages each, average. The note-taking volume ranges from only a few notes on a half dozen pages, to a couple hundred pages of careful notes, cataloged witness by witness. A few jurors even wrote summary notes daily after the first few days of trial.<sup>15</sup>

The lawyers argue before the judge gives his instructions. These are the longest, and the most complicated closing arguments Julia has ever heard. They are helpful. The lawyers all argue well — forcefully, and earnestly, though with very different styles.

The jury instructions are read. Each juror follows along carefully with his or her separate copy. A few make notes on the instructions; nearly all underscore or star something as the Judge reads. As he finishes, Julia senses that the Judge wishes the jury well and expects careful deliberations. He notes the time and appears to sign his name at the end of the pages he reads.

Now, the case belongs to the jury.

### Deliberations

Yesterday, the jury room seemed familiar to Julia.<sup>16</sup> After spending time in it daily for five weeks, she got to know its creaks and groans, and its idiosyncrasies. Today, it seems different; like it, too has a new energy field. The listening is over; now the room ceases to be a second lounge for the jury; it becomes a work room where exhibits are studied, instructions are debated, ideas are exchanged, votes are taken, and decisions are made.

Choosing a presiding juror is a snap. Someone says, "Well you are the foreman" to the young coach. All jurors concur in a chorus. No written vote is required. A presiding juror is chosen by acclamation.

The coach leads well — he herds, really. His approach is to gently, but firmly keep the discussion focused as the jury decides how to proceed with its work. First, they will go around the room and each will summarize what he or she thinks are the highlights of the evidence and key issues. Next, they will study the exhibits; these are voluminous. As they do so, the jury will discuss both general case topics and specific witnesses.

They will study the instructions after that. Then, they will begin debating the first of seven jury questions. If they stall on a question, they will pass to the next question to try to decide it. After doing so, they will go back to the skipped question until it is decided.

The presiding juror makes a simple grid of this decision process. The grid makes the rounds for each juror to see. By acclamation, the deliberations approach summarized by the coach is approved, and it serves the jury well during its week of deliberations.

On the first day of deliberations, the jury chooses a leader and a protocol for its work. It starts the debriefing process and gets through a little under half the jury. This is finished in a couple hours on the second or "day two." Then the instructions are reread and studied. So is the verdict form. It requires the jury to be unanimous on each issue decided. Seven questions; 12 votes on each. Eighty-four votes. The plaintiffs must win all 84 to get a complete victory. Well, maybe not. Maybe the last question is a throw away that will not defeat the plaintiffs' claims. Without question, the plaintiffs have to win on 72 votes.

Julia sees the power of her vote — each of her votes. She learns what trial lawyers know:

*The jury serves as a school in democracy. The right to the tribunals of justice is the right through which all other rights can be protected or through which they can all be destroyed. The humblest juror becomes a part of that tribunal. He sees it in operation. He operates it. He is elevated to a position of importance. The events of his judicial system are brought home to him. This is impossible if the case is tried to a judge, a referee, an expert,*

*or what-not.*<sup>17</sup>

Juror comments in the first phase of deliberations make clear an 8-to-4 split on the basic question of liability. Julia is among the 8 for the cattlemen. She is devoutly committed to the cattlemen's side of the lawsuit. The four reluctant jurors make business and efficiency points for the defense; Julia understands these points and can see where they come from.

She finds herself consulting the jury instructions, comparing her notes, reading the voluminous exhibits — sometimes out loud to others. Julia listens. She speaks. And she thinks and thinks and sifts and weighs.

These are big decisions; about big money; bigger ideas. Julia's clothes do not matter; neither do her glasses, or her hair style, or her halting speech. When Julia speaks, eleven others listen. When anyone else speaks, Julia pays close attention. Big points, small points. Metaphors, analogies. Numbers, notes. Perceptions, reactions. Documents, data. All are used. All are considered and weighed. No one is belittled. No one takes over; no ego pushes others aside. Temerity disappears as the presiding juror creates a climate for all points of view and all comments to be welcome and respected.

Julia and her fellow jurors do not know what appellate courts have to say about the verdict they will render. Post-trial motions will prompt the cattlemen's lawyer to include observations, from both luminaries in attendance and the trial judge in Julia's case, in post trial briefs submitted by the parties attacking, and defending, Julia's jury's verdict.

Julia's jury's work would call to the minds of the lawyers the words of the author of the 7th Amendment who stated: "I consider trial by jury as the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution." Thomas Jefferson, 1789.<sup>18</sup> Indeed, before allowing Julia's jury to be seated, the presiding judge reminded the jurors of the significance of jury duty:

*... jury service is probably one of the two or three most important responsibilities that we all have — certainly our responsibility to participate in the electoral process*

*electing our local and state and national officials is one of the very primary responsibilities we have as citizens ... Our system of justice in this country simply would grind to a halt if we did not have citizens who serve as jurors in helping to resolve disputes between parties or between the party and their government or some other entity.*<sup>19</sup>

Two, three, and four days go by. Near the end of day four, the jury is close to a verdict. A three-day weekend is approaching. All the jurors would like to finish; they suspect the parties would like to hear from them, too. But, as a group, they are not ready to be unanimous on all points. Instead of rushing, they decide to think it over for several days, and come back on Tuesday. Each juror supports this idea; none wants a rushed decision.

Their backgrounds are so diverse: A coach; pharmacist; research librarian; two career military men, both with combat experience; retirees; young parents; religiously committed; religiously disconnected; Democrats; Republicans; jurors who care nothing about politics; differently racially, spiritually, politically, socially; well groomed; poorly groomed; loquacious; quiet.<sup>20</sup>

Sincere. Every juror is sincere; each is deeply committed to a decision of conscience. Each juror willing to go home with no decision for the parties if conscience blocks a decision from being made. This group works hard at the task it is sworn to; they try to work as a unit.

### The End Comes

Finally, day six. The complex verdict form is all but finished. One question remains. The jury decides to send a last question to the Judge, knowing now they are likely to be told to see the other jury instructions or disregard the concern that compels their collective question.

The answer comes back from the Bench. It takes a little longer than previous questions. When it does come, the final vote, on the final question is unanimous. The verdict form is signed. The security officer is notified.

As Julia and her jury walk into the courtroom, they see some, but not all the lawyers. The witnesses are gone. The crowd is gone. Only one of the cattlemen remains.

The judge asks for the verdict form. The courtroom bailiff retrieves it, hands it up to the bench as every eye in the courtroom is on the judge. The microphone catches the ripping noise as the jury's envelope is opened. For fully five minutes the judge reads the verdict, then flips back to page one and rereads it — in silence.

Finally, the judge says in a clear voice: "We the jury duly empanelled in this case do find as follows ..."

Julia's eyes, and 22 other eyes in the jury box, turn quietly to the lone cattleman and the lawyer in green.

### ENDNOTES

1. Julia Herd and her jury are fictional. Like any author, Mr. Domina has drawn upon his experiences and observations in court in this article.

2. Bertel M. Sparks commented in a 1957 address published after his death: "As for the jury's alleged inability to cope with the facts before it and that it is an incompetent instrument for determining truth, this too may be doubted. Who is to say that a judge, or a group of judges are in a better position to decide the amount of damage a truck driver should have for losing an arm than 12 men and women chosen at random and including mechanics, laborers, grocery clerks, accountants, and possibly truck drivers." Published in *Freeman*, a publication of the Foundation for Economic Education, Oct 1995, Vol 45, No. 10.

3. Superficially, Julia is the precise juror about whom James D. Zirin railed: "Commercial cases require a sophistication and expertise that lay jurors; generally don't have." Zirin, "Courting Disaster," *Barron's*, March 13, 1995, p. 45.

4. R. C. van Caenegem, *Royal Writs in England from the Conquest to Glanvill* (Selden Society, vol. 77, 1959), 57-61, and R. V. Turner, "The Origins of the Medieval English Jury: Frankish, English or Scandinavian?" *Journal of British Studies* 7, no. 2 (1968): 1-10 (reprinted in *idem*, *Judges, Administrators and the Common Law in Angevin England* (London: Hambledon Press, 1994). See specifically, *Glanvill*, ii, 7, p 28, Hall's translation.

5. *Ibid* 12, p.1 32, Hall's translation.

6. *Bracton De Legibus et Consuetudinibus Angliae*, ed. G. E. Woodbine and S. E. Thorne, 4 vols. (Cambridge, Mass.: Harvard University Press, 1968-77) [hereinafter *Bracton*], fol. 185, iii 71, (Thorne's translation) and Thorne's notes there.

7. Mike McNair, *Vicinage and the Antecedents of the Jury*, *Law & History Review* (1996). Mr. McNair is senior lecturer in law, Lancaster University, England. (Fn 4 & 5 are from Mr. McNair's work.)

8. Julia is not a real person. Though the scenes described are based on a recent trial in which the author was engaged, the persons and events involving the jury, jurors, and their interaction are all fictional. This fiction is portrayed to convey this article's central theme about the seduction a trial lawyer can suffer at the hands of discipleship to stereotyping prospective jurors.

9. "We are moving toward an oligarchic society where a relatively small handful of the rich decide, with their money, who will run, who will win, and how they will govern. The defenders of the present system will fight hard to hold on to their privilege, and they write the rules. Nothing short of an aroused public can change things, nothing less than democracy is at stake." Bill Moyers, *Moyers on America*, 2004.

10. The author is not a particularly religious person. The prayer procedure illustrates for all how meditative jurors in a major case tend to become as the realization of their responsibility registers with them.

11. As Patrick Henry is reputed to have said, "Why do we love this trial by jury? Because it prevents the hand of oppression from cutting you off. This gives me comfort that as long as I have existence, my neighbors will protect me."

12. See fn. 3, *supra*.

13. Every trial lawyer knows a tough case, with conscientious jurors is best decided by a group that coalesces around mutual respect. This makes a

“real jury” and not just a group of decision expeditors.

14 The author has noted the different “atmosphere” of the courthouse on closing argument day in many long, complex trials. He believes this has nothing to do with the expected performance of the lawyers and everything to do with the majestic expectation of an impending decision by the most revered decision-making body in the nation — the jury.

15 Jurors’ notes are strictly confidential and are described as imagined, and not as witnessed nor as described by a juror.

16 The jury’s deliberative process is portrayed as imagined here; not as described by a participant.

17. See fn. 3, supra.

18. *The Writings of Thomas Jefferson: Memorial Edition* (Lipscomb and Bergh, editors) 20 Vols. Washington, D.C., 1903-04. 7.408.

19. Quotation from record at trial in which the author was counsel.

20. No single person can encompass all these qualities. Yet, each is uniquely human and each contributes uniquely to a group decision. Who could doubt a group decision is superior to one made by a single person? Thus:

When these rights are achieved, by whatever means, they get enforced, not through the legislature, not through the executive, but through the courts. They are trials. It is there that the individual finds justice or fails to find justice. What can give him more confidence in that justice than the fact that twelve of his peers participate in meting it out. These twelve men are part of the process. The man concerned may feel that he is not getting justice. The community might not want to accept it. If it was decided by a representative group from the community, it is likely to be

accepted. It is here that the administration of justice is brought close to the people. The people are not ready to accept a doubtful decision made by a professional, by a panel of experts, or by a dictator. They are ready to accept that decision which came from their own group. And the jury is a means of bringing the whole power of the citizenry to bear upon the daily administration of justice.

The jury is also a means of bringing flexibility into the courtroom. The judge must be impartial. He must be impersonal. He must administer the law as he finds it. All this is said to the jury. The jury has been criticized by the allegation that it does not apply the law but is swayed by the emotional appeal of the particular case. The very fact that it is so swayed is one of its crowning features.”  
See, fn. 3, supra