

**OFFICE OF THE JURY COMMISSIONER
FOR THE COMMONWEALTH OF MASSACHUSETTS**

**MASSACHUSETTS JURY DUTY – YOU MAKE A DIFFERENCE
TRANSCRIPT**

SEASON 01 – EPISODE 02

OFFICE OF JURY COMMISSIONER

"Jury Duty: You Make A Difference"

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Begin Transcript.

Title Card: MASSACHUSETTS JURY DUTY, YOU MAKE A DIFFERENCE

With The Honorable Matthew J. Nestor, By the Massachusetts Judicial Branch

Audio Video Recording produced by the Office of the Jury Commissioner in association with the Boston Neighborhood Network

Title Card: JURY DUTY, Michael Ryan, Host

MICHAEL RYAN, BNN LIVE HOST: Hello. My name is Mike Ryan. The name of the show is Jury Duty: You Make A Difference on BNN, the show that hopefully will answer all your questions regarding the one day, one trial jury system.

Our guest today is Judge Matthew Nestor from the Chelsea District Court. Welcome, Judge.

JUDGE NESTOR: Thank you.

HOST RYAN: Thank you very much for being on the show.

Judge Nestor is a graduate of Wesleyan University, earned a Master's Degree in Public Affairs from the University of Mass in Boston, and received his Juris Doctorate from Boston College Law School.

Since then, he has been an Assistant District Attorney here in Suffolk County before becoming head of the Massachusetts Security Division under the Secretary of State before his appointment to the bench in 2005.

So, your Honor, you're over at Chelsea District Court. That's the Court that's on the other side of the bridge.

JUDGE NESTOR: It is. It's a short bridge.

HOST RYAN: A short bridge, so people shouldn't be intimidated if they're coming from, with the exception of East Boston, right?

JUDGE NESTOR: That's right.

HOST RYAN: Coming over across the bridge. What's the territorial jurisdiction of?

TITLE CARD: Matthew J. Nestor, First Justice, Chelsea District Court

JUDGE NESTOR: It's the City of Chelsea and the City of Revere. So we have two distinct cities. So those are, that's our geographical jurisdiction.

HOST RYAN: And what kind of cases would, someone might sit on as a juror at Chelsea District Court?

JUDGE NESTOR: Well, in the District Court, typically, well, first of all, we have jurisdiction over criminal misdemeanors, small claims, and civil disputes up to 25,000.

On the criminal side, a typical caseload is your operating under the influence case, a domestic violence case, drug possession, drug distribution, firearms, assault and batteries. That's probably, and some, operating without a license is another thing that we see somewhat frequently on a day to day basis.

That's pretty much our mix on the criminal side.

On the civil side, it's a lot of contractor disputes or motor vehicle accidents.

And the small claims, it can be anything, you know, any kind of neighborhood dispute or any kind of dispute between family members or friends over small sums of money. It can be

collection cases, things like that.

HOST RYAN: So the District Court is sometimes called the Community Court. What does that mean?

JUDGE NESTOR: Absolutely the Community Court. District Court is typically a case where people go get their problems resolved. And I, you know, sometimes I say from the bench, I'm not really a social worker. I'm not really here to solve your problems. I have rules of evidence and I have rules of criminal procedure. I have statutes that I'm supposed to comply with.

But typically, when it's a dispute between parties, that's what they want. They want you to resolve their dispute in some fashion.

And sometimes, they're less concerned about the result than actually being able to be heard and some decision being made so that everyone can kind of move on.

So it really is a Community Court. It's kind of the Court of first stop for people that are having problems with their neighbors or having problems with, you know, a bill collector or a problem collecting their own money, or frankly, a misdemeanor criminal charge.

HOST RYAN: And what would you say the average length of a jury trial at Chelsea would be?

JUDGE NESTOR: It's either, typically it's between a day and two days. If I had to put a guess on it, I would say 50 percent of our cases end in one day, and it truly is one day, one trial.

We very rarely hit a third day. Sometimes, we do. I often tell jurors, you know, most people are very happy to serve on a jury for one day, and most people are pretty comfortable serving a second day.

When we get into the third day, we understand that it can be a hardship on people, typically depending on what their personal life is like or what their job is like, so we really try very hard once we start a jury trial to impanel it as quickly as we can with fairness to everybody and to move it as quickly as we can.

About 50 percent of the time, we get it done in one day.

HOST RYAN: What's the longest jury trial you've ever presided over?

JUDGE NESTOR: I had an eight day vehicular homicide trial that was in the Malden Court. Complicated issues, a lot of different witnesses that had to be presented. The defendant put on a number of witnesses.

That's unusual, and just so people understand, we tell people at the outset, if it's going to be more than a day or two, we announce it and we say how long we expect it to be so that we can hear any concerns that people have.

HOST RYAN: So that eight day trial was more the exception rather than the rule?

JUDGE NESTOR: Absolutely. It's the exception.

I, it, just from memory, and I've been a Judge for ten years, I've done a lot of jury trials, I don't know that I've had another trial that went three days. I've had a lot of trials that have gone two days. I suppose there's probably a smattering that tripped over to a third day that I can't really recall right now. But there's been no others that have been, or even approached that.

Again, District Court is again a misdemeanor, it's a misdemeanor Court. So the typical case, you know, we usually will have a Police Officer and maybe a civilian witness.

Sometimes, if there's a bar brawl, you'll have four or five people that testify, but it's really atypical for anything to go beyond two days.

HOST RYAN: Now, if someone is accused of a crime and he or she feels they're not guilty of a crime, they can either have a bench trial where they waive the right to a trial by a jury, or a jury trial. What, can you tell people what goes on in the courtroom while people are in the jury pool?

JUDGE NESTOR: Sure. The one thing I always tell people in the morning when I greet the jurors is, believe it or not, it's 9AM and you're already working.

Most people, as you can imagine, they don't plead guilty or go to jail or accept a probation sentence until they have to, until there's jurors in the building ready to go.

So when we're able to tell the lawyers and the litigants and the defendants and the alleged victims, this case is going today, things start to move. And before we can tell them that, sometimes things move and sometimes they don't. So it is very important to have jurors in the courthouse ready to go.

Now, the problem becomes sometimes, and I tell jurors again when I greet them in the morning, typically we're impaneling a case about 10:30.

Well, why from 9 to 10:30, what's going on? And I will explain it to them later in the day or the next day what we were actually doing.

We're calling all the cases. Typically, we have somewhere around ten to twelve on the jury trial list. We need to call all those cases. We need to see what's ready and what's going to go to trial.

It's kind of like, I sometimes explain it like have you ever tried to meet four friends for a cup of coffee? Someone's going to be late, and it doesn't mean they're a bad person or they're not a good lawyer or, but it's just the way it is.

When you meet four friends, one of them inevitably calls, I got stuck in traffic, or this or that.

So at nine o'clock, you need the defendant there, you need the defendant's lawyer there, you

need the Clerk there, you need the Probation Officer there, you need the prosecutor there, and you need any witnesses there.

By and large, we do a pretty good job, but there is that time period from 9 to 10:30 where we're literally taking attendance, and more importantly we're discussing the case and seeing if the case can be resolved without a trial. It's very important to resolve cases without a trial, and we do a lot of that.

And I, I really do try to impart to the jury that that time period is really important for us, for the litigants to be prepared, and simply to get things running.

It does create, there is, every once in a while, when a case tips over to the second day for a short period of time, you do get, well, if we'd started right at 9, we wouldn't have had to come back the next day, and that's true.

But I just think for a lot of different reasons, and some very good reasons involving fairness to the defendant about being ready with pretrial motions and those things, we simply can't start right at 9. But they are working right at 9. The magic starts to happen when I can tell the parties there's 18 to 20 good citizens of Suffolk County sitting in that room over there ready to decide it if you can't.

And that does take, make things more.

HOST RYAN: So you're very sensitive about, about the jurors, trying to use them as quickly as possible.

JUDGE NESTOR: Absolutely. Absolutely.

I mean we sit on the bench and we hear, you know, day after day people say I'm an electrician, I don't get paid if I don't work. That, I mean that's important to us, so we do try to move as quickly as we can, again with keeping an eye on fairness to all sides. I mean that has to be the fundamental concern.

But we're also very cognizant of the fact that we're asking people to come somewhere, we're not paying them, we're taking time out of their lives, and that's important for us to remember.

I will say this though. Most people at the end of it enjoy it. Most people see a slice of life that maybe they don't often see.

Even a typical, you know, operating under the influence, under the influence case, they hear about field sobriety tests which they may see on TV. They hear about a story of someone who went out and maybe drank too much and drove and was all over the road.

It's, for people that are not involved in law enforcement, not involved in the Court system, it's interesting. And a lot of times people say, jeez, that was really interesting.

So I find that no matter how jurors feel when they get there at 8:30 in the morning, if they actually sit on a jury and they actually hear a case, and again, it's a reasonably prompt case, they're happy to have done it, and they've actually really feel good about the process, all, almost to a person. Very few people at the end of it are upset with how things happened.

HOST RYAN: So it's, can not only be a positive but an educational experience for them.

JUDGE NESTOR: Absolutely. Absolutely.

And I actually think people that maybe have, three years have gone by, and they're called again. If they had a good experience on the front end, then I think they're actually more willing to serve.

I do think there's times where someone's called for jury duty and we bring them in, and that day nothing happens to go which actually, from a Court management perspective is not a bad thing. Everyone kind of reached an agreement. All the cases got resolved.

But we need to impart that to jurors on the way out the door. Hey, they were twelve cases on today, and believe it or not, all twelve cases got resolved in some manner, and you did that.

When we don't tell them that effectively, they think they wasted their time, and they didn't. They sat for a couple hours, maybe two or three hours till noontime till everything was resolved, but they had an important function that day, and we need to tell people you actually had an important function today, you resolved a lot of cases, because when we don't tell them that, when they got called back, I'm going to sit in a room and do nothing again, well, you're not doing nothing. You're actually doing something important.

But that's on us to tell them about that.

HOST RYAN: So what exactly, if someone gives up his or her right to a trial by jury, what then happens in the courtroom that is not seen by the jurors?

JUDGE NESTOR: Well, if someone wants to waive the jury, we try it by a Judge instead. They'll sign a piece of paper saying that's what they want. I'll explain the rights to them, that they in fact have a right to a jury trial. I'll go over that and make sure they fully understand it, and make sure they understand that they're giving up that very important right, and then the case would be tried in front of a Judge.

The jury won't hear any of that. The jury won't even know that, I'm, the jury pool I should say at that point.

HOST RYAN: Sure.

JUDGE NESTOR: The jury pool will not hear any of that, will not understand that. And that's why it's important for me to tell them, you know, there were ten cases on today, seven people resolved the case with the prosecutor and, and pled guilty in some fashion or resolved it in some other fashion, and two people defaulted or whatever, and one person had a jury waived trial.

I can almost guarantee the person would not have chosen a jury waived trial if there were not jurors in the courthouse.

Again, it's fundamentally important for us to be able to say to the litigants today is actually the day. It's not a pretrial date any more. It's not a compliance election date. It's not a motion date. It is a trial date.

To the extent that we can keep firm trial dates because we have jurors in the building, it simply allows us to handle cases.

And you know, justice delayed is justice denied. And I truly believe that. And to the extent that we don't handle cases in an efficient manner, people feel like they have not had their day in Court.

HOST RYAN: So just the presence of jurors leads a lot of cases to resolve.

JUDGE NESTOR: There's no question about it. There's no question about it. As, as I said earlier, people don't resolve cases until they have to, on the civil side, on the criminal side, and if you don't have jurors in the building ready to work, you can't tell the parties okay, last chance, do you two want to talk, do you want to try to resolve it, or should we bring the jury in.

And there's nothing wrong with not resolving it. I tell people all the times I'm not twisting your arm. I'm happy to give you a trial, but now is the time that we're going to have a trial.

HOST RYAN: Now, what happens if someone admits guilt? What happens in the courtroom after that?

JUDGE NESTOR: Well, if someone admits guilt, again, there's a number of things I need to tell me, very important rights that they've giving up, obviously the right to a trial, the right to confront witnesses, the right to remain silent. All those things are being waived.

Once those things are waived and the person pleads guilty, then a sentence will be imposed. I'll hear from the prosecutor. I'll hear from the defense attorney, and I'll hand down a sentence.

HOST RYAN: What's the Judge's role in a jury trial?

JUDGE NESTOR: Judge's role in a jury trial pursuant to the, I'll quote the jury instructions, is to see that the trial's conducted fairly, orderly, and efficiently.

And I think I, you know, we try to take that very seriously, that it's fair to both sides, that it's

orderly, and that it's efficient for the jurors.

You know, there are times where something will come up in the middle of the trial and they'll be a 45 minute, I'll have to have a, some type of motion *in limine* or some other voir dire hearing, and I'll tell the jurors when they come back in, please, you need to understand we've been working. We've just had some things we needed to do outside of your presence. Don't speculate about what that might be.

But there's nothing worse than taking a 45 minute delay to handle something and not telling the jury because the jury just simply thinks you're not doing anything.

Once we impanel a jury trial, we're working on that case whether we have the jury in the room or not during the Court hours.

HOST RYAN: We tell jurors that if they have a problem in serving, even though they're eligible, they'll have an opportunity to speak with the Judge at sidebar.

Does someone have to come up with an extraordinary hardship to be excused from jury duty?

JUDGE NESTOR: No. The short answer is no. The longer answer is, well, sometimes it depends. If I have five jurors, we need six to have a trial. If I have five jurors, and the last juror comes up and says, well, I have to pick up my child at 3 o'clock. Typically, if I have more jurors, I might be a little bit different about that, but I might start to say well is there someone else you can call.

And again, we're not trying to, to create an undue hardship on anybody, but we do have business that we need to attend to.

There was one case up in Peabody. It was an important case. It was actually a vehicular homicide case. And we ran out of jurors, and there was one juror who came to sidebar, and she said I'm really concerned about sitting. I have some anxiety issues.

So I spent a long time talking to her, a long time, 10 or 15 minutes at the sidebar, and we had a lot of discussion, and I said to her, well, she finally said, okay, you know, I'd really like to try it. I said okay, great. Are you sure you want to try it? Yes.

So we put her in the jury box, and this poor woman, I applaud her for giving it an effort, I really do.

We got about five minutes into the opening statement by the prosecutor and I could literally, she was sweating, she was hyperventilating, and we immediately called a halt to the trial and excused her.

I mean that's the type of thing there's no way to go forward.

So different people have different reasons they can't go forward. We try to kind of take that into account, but there is a competing interest that we really need to have a trial sometimes too.

HOST RYAN: Anybody been difficult?

JUDGE NESTOR: Sure. Absolutely.

You run across it, and again, almost to a person, even a difficult juror that I have to seat, if the trial moves along in a fair, orderly, and efficient manner, and a juror, and a verdict is reached, there are some people who actually say, you know what, Judge, it wasn't too bad when I meet with them afterwards. Or I didn't think it was going to be like that. Or they kind of acknowledge that maybe they didn't have a, the best face on in the morning.

There's been a few, but very few that I can pick out over ten years that were completely displeased by having to sit for the day.

HOST RYAN: So during the trial, exactly, you also rule what's to be admitted as evidence, and then you rule on what the people, whether parties object to some of the proceedings?

JUDGE NESTOR: That's right. I mean we rule on objections. We rule on what should be admissible. We basically try to guide the trial and move the trial along.

You know, sometimes objections can be difficult with a jury. They don't, the same point will be tried, hammered over and over again, and they'll be a number of objections with, that are sustained, and I'll try to have tell the jury, you know, I don't want you to speculate on this. And I'll try to explain it.

And when, later on when I meet with them after the verdict, if they ask about it or even if they don't, sometimes I'll explain it to them.

But I don't want them speculating about things that are not being admitted as evidence. It's very important not to do.

HOST RYAN: Do you set ground rules to your jury after you've impaneled?

JUDGE NESTOR: Sure. I tell them a few things. First of all, I tell them their most important job is for, is to be fair and open minded, but more important than that, to keep an open mind. And if they start to discuss the case with anyone, even their fellow jurors, they'll start to take a position.

Once you start to take a position on something in life, you're not fair and open minded. So I tell them, please do not discuss the case with anyone.

The other thing I always tell them is, you know, when we take the lunch break at one o'clock, if you make a phone call to a friend or family member and you tell them I'm on a jury, I guarantee

the first thing that they will ask you is well, what's the case about.

And I can promise you that if you tell them what the case is about they'll tell you what they think about the case.

Well, what they think about the case isn't based on any evidence. So it's so important that they not discuss it.

The other thing that's become important nowadays is to tell jurors, you know, no internet searches. If you hear about an address or a term of art or some disease or weather report, no Google, no Internet searches.

Again, the same reason, they have to decide the case based on the evidence presented, not on, on things outside the courtroom.

HOST RYAN: Because I guess jurors using internet and social media has been a problem throughout this country and Great Britain.

JUDGE NESTOR: It has. It's been a real problem. So now, we've taken the proactive step of telling jurors up front, you can't do any of that.

HOST RYAN: So you haven't caught anybody tweeting in the jury box?

JUDGE NESTOR: I have not.

HOST RYAN: Okay. That's a good thing. So.

JUDGE NESTOR: I have not. We actually don't allow cell phones in the Chelsea Court.

HOST RYAN: Okay.

JUDGE NESTOR: And if I saw someone with a cell phone, we'd certainly, you know, address that.

HOST RYAN: Now, do you meet, after the verdict comes in, do you sit down and talk to the jury?

JUDGE NESTOR: I do. I do. And I wish I had that benefit when I was a trial lawyer. Jurors get it way more than we think they do. They parse away all the things that really aren't important in the trial, that, important to the lawyers going through it, but they kind of, why did they spend so much time on whether the car was dark blue or navy blue?

And they parse all that away, they really do. Jurors intuitively understand the issue at stake. They take their, their job seriously, and I wish I was able to kind of engage in that when I was a trial lawyer. I think it would make trial lawyers better, better than, improve their craft.

But I also want to answer any questions they have.

But it's a fine line. I don't want to feel like they have to ask any questions. I don't want them to feel like somehow that I'm judging their verdict, because I'm not.

HOST RYAN: Are you ever surprised by a verdict, a jury verdict?

JUDGE NESTOR: All the time.

HOST RYAN: Really?

JUDGE NESTOR: Yeah, sure. And I, we talk about that in the courthouse, and I think that's because of, we see it day after day, so we kind of know things that are kind of behind the scenes.

But sure, we're, I'm surprised by verdicts all the time. And I, you know, people always ask me, well, what do you think, and I don't think anything. I don't think anything until the verdict comes in because there are times where I personally think that the verdict was definitely going to go one way and it goes the other way.

And that's why it's so important to have jurors. It's not only a Constitutional requirement. It's more than that. It's so important to the parties at hand that members of the community, their peers, hear a case and not a Judge, who, we're, I believe we're fair and impartial. I believe that we know the law. But there's something about a fresh set of eyes that comes into that courthouse every day to hear, you know, similar fact patterns.

HOST RYAN: So it doesn't matter that maybe, you know, not obviously in your Court, but in some cases, maybe some of the material is too complex for jurors?

JUDGE NESTOR: I don't find that in the District Court. I don't. We don't do medical malpractice cases that are in Superior Court.

In the District Court, these are community problems, community issues, community crimes. And I, the jurors are, whether a juror is book smart or has an academic degree, everybody has common sense and life experience. And they use it. They use it effectively.

HOST RYAN: Is that your perfect juror?

JUDGE NESTOR: Absolutely. Absolutely.

HOST RYAN: Does it matter, does it matter education, background, or anything like that?

JUDGE NESTOR: Not at all. Not at all.

The one thing that, that I do say to jurors, and I'll say it here as kind of an advertisement, is, you know, sometimes people come to me and they say, they'll write on their juror form, I don't really believe in the criminal justice system. I don't think it's fair.

Well, if you want to make it fair, participate. I mean if, now if you can't be fair, that's a different issue.

But if you're a little bit cynical, if you're a little bit jaded, we need jurors that are skeptical. We need jurors that are questioning.

And if everybody excludes themselves from the juries who maybe just have a pinch of doubt about the criminal justice system, that's not the healthiest thing in the world.

Now, again, if someone literally can't be fair, that's different.

But I do encourage people that they may be a little bit reluctant, you know, we need you. The litigants need you.

HOST RYAN: Do you serve jury yourself?

JUDGE NESTOR: I have. I've actually sat on a jury. Right before I became a Judge, I sat on a jury. And I got jury duty about three years ago up in Lowell Court. The interesting thing was the Judge who was on the jury trial had recently trained with me. He was a new Judge, and he had recently trained with me, and it was his first jury trial. And I walked in in his jury pool.

I'm not sure he was happy to see me, but I was, I was two away from getting, sitting the jury.

HOST RYAN: But you went?

JUDGE NESTOR: Absolutely.

HOST RYAN: And, well, you know of Judges who have sat as jurors?

JUDGE NESTOR: Absolutely. And my family members sit. My daughter recently went. My wife went a year ago.

So when people call me up and say, jeez, I really don't want to do jury service, I'm like well I did it and my family does it, and it's an important obligation.

HOST RYAN: Did you do many jury trials as a prosecutor?

JUDGE NESTOR: I did. I did a large number of jury trials as a prosecutor, in both the District Court and Superior Court.

HOST RYAN: You did both. So you did juries of six and juries of twelve?

JUDGE NESTOR: I did.

HOST RYAN: What was your longest jury trial as a prosecutor?

JUDGE NESTOR: It was probably about five or six days.

HOST RYAN: Really?

JUDGE NESTOR: It was a motor vehicle homicide out of the Chelsea jurisdiction in Superior Court.

HOST RYAN: Ironically from Chelsea.

JUDGE NESTOR: Yup.

HOST RYAN: So how important are jurors in the administration of justice in the District Court?

JUDGE NESTOR: Vital. We can't do our job without it.

Again, first of all, because it's a Constitutional requirement. People are entitled to a jury trial, and they should be able to get a jury trial.

But much more important, it is central to the issue of fairness to the litigants.

Litigants do not want a Judge handling each and every case. We shouldn't. We should have members of the community do it.

HOST RYAN: So they're, without them, you, you wouldn't be able to resolve a lot of cases?

JUDGE NESTOR: It would grind to a halt. It would grind to a halt.

HOST RYAN: Well, we've run out of time.

We'd like to thank you at home for tuning into Jury Duty: You Make a Difference on BNN.

Just remember, if you have any questions regarding jury duty, you can always call the Office of the Jury Commissioner at 1-800-THE-JURY, 1-800-843-5879, or also online at JuryDuty.MA.JuryDuty. [MAjury.gov]

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HOST RYAN: Just remember when you do jury duty, you do make a difference. Please serve when called. It's important to all of us.

Thank you, Judge, Nestor.

JUDGE NESTOR: Thank you.

HOST RYAN: And thank you at home.

Title Card: Produced by the Office of the Jury Commissioner, Directed by David A. Palomares, Audio and Video Tape Operator Wallace Fashaw, Camera Operations Myles Netherton, Jhashawn Burrell, Marcela Maroso, For the Boston Neighborhood Network, Studio Manager

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