

OFFICE OF THE JURY COMMISSIONER
FOR THE COMMONWEALTH OF MASSACHUSETTS

MASSACHUSETTS JURY DUTY – YOU MAKE A DIFFERENCE
TRANSCRIPT

SEASON 01 – EPISODE 10

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 Chief Justice of the Supreme Judicial Court,
Ralph D. Gants

Audio Video Recording produced by the Office of the
Jury Commissioner in association with the Boston
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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, hopefully the show that

will answer all your questions about the one day, one trial jury system.

HOST RYAN: Our guest today is Chief Justice Ralph Gants of the Supreme Judicial Court.

Welcome, Chief.

CHIEF JUSTICE GANTS: It's good to be here.

HOST RYAN: Thanks very much for being here on the show.

Chief Justice Gants is a graduate of Harvard College. He received a diploma in criminology from Cambridge University on the other side of the pond.

CHIEF JUSTICE GANTS: That's true.

HOST RYAN: And went to, earned his Juris Doctorate from Harvard Law School. Started off at the FBI, and moved on as US Attorney for Massachusetts where he was in charge of the public corruption division.

Then you went into private practice for a while with Palmer and Dodge and was appointed to the

Superior Court bench in 1997, and in 2009, former governor Deval Patrick appointed you to the SJC.

Last year, you became, you were appointed the 37th Chief Justice of the Supreme Judicial Court.

In 2012, you were honored by the Boston Bar Association for its Citation of Judicial Excellence and Suffolk University's Public Service Award.

So today we'd like to tell it, tell us about the SJC. What exactly does the Supreme Judicial Court do?

Title Card: Jury Duty, Ralph D. Gants, Chief Justice, Supreme Judicial Court

CHIEF JUSTICE GANTS: The Supreme Judicial Court is the equivalent in Massachusetts of the US Supreme Court in that we are the final decider with regard to all cases. We're the final source of appeal. We hear every first degree murder case on appeal. But we also, we also hear cases from all the seven Trial Court Departments.

So if there is a matter that needed to, that needs to be decided, either a matter of common law or constitutional law or statutory law, we are the final arbiter of, of that law.

HOST RYAN: And you're in charge of probation, jury, and the seven court departments?

CHIEF JUSTICE GANTS: We are in charge of it all.

HOST RYAN: And of our Trial Courts, of those seven departments, which ones have jury trials?

CHIEF JUSTICE GANTS: Jury trials are in, primarily in the Superior Court, the District Court, and the Boston Municipal Court. But there are also jury trials occasionally in the Juvenile Court and less often in the Housing Court.

HOST RYAN: So the Land Court and the Probate and Family Court, they hold no, no jury trials?

CHIEF JUSTICE GANTS: That's right.

HOST RYAN: And you also, not just you, but the whole Court, appoint the Jury Management Advisory committee. What exactly is that supposed to do?

CHIEF JUSTICE GANTS: That's a group that's working to make sure the jury service is as sensible and efficient as it can be.

HOST RYAN: And how long have we had jurors in Massachusetts?

CHIEF JUSTICE GANTS: We have had jurors back from the date of the Pilgrims. They brought with them their common law of England, and since the days of the Magna Carta, the Brits have had jurors, and that's a tradition which we've adopted from the British.

HOST RYAN: So the Pilgrims brought us not only Thanksgiving, but trial by jury?

CHIEF JUSTICE GANTS: That's true.

HOST RYAN: Are there any exemptions from jury service?

CHIEF JUSTICE GANTS: There are, but we, we ask that all who are called to serve come to serve because the exemptions are determined by the, by the Court.

HOST RYAN: Now, has the Chief Justice of the Supreme Judicial Court been called to jury duty?

CHIEF JUSTICE GANTS: You know, I know you were going to ask that, and the answer is no, I have not been called.

HOST RYAN: You're kidding, really?

CHIEF JUSTICE GANTS: For some, I have no idea why not. My, my family's been called. But for some reason, I have not, although I, I'm sure they'll be a jury notice in the mail when I get home.

HOST RYAN: Well, it, it is random selection, your Honor, but, so you haven't been called. But we know we've had Judges who have sat as jurors,

CHIEF JUSTICE GANTS: That's absolutely,

HOST RYAN: On murder cases.

CHIEF JUSTICE GANTS: I would love to be, I would love to serve as a juror.

HOST RYAN: Well, we'll have to talk to the Commissioner and see if we can...

CHIEF JUSTICE GANTS: Okay.

HOST RYAN: ...We can get you,

CHIEF JUSTICE GANTS: Put in a good word for me, if you would.

HOST RYAN: One of the questions we get, Chief, on our website is why do jurors have to fill out the racial ethnic juror survey.

CHIEF JUSTICE GANTS: That is because we want to ensure that there is racial equity with regard to our jury service. A, a counsel can claim that it is not a diverse jury and can claim that there is some bias with regard to the selection of jurors. So it's important for us to know the race of the jurors, both with regard to the jury venire, that is all those who appear in a courtroom to serve, and it's also important for a Judge to keep track of which individuals are chosen in view of their race and ethnicity because one is not allowed to use race or, race or ethnicity as a basis to remove somebody from a jury.

HOST RYAN: So someone who's on trial, a defendant, can challenge the makeup of a jury pool if they feel it's not diverse?

CHIEF JUSTICE GANTS: You can challenge, they can challenge claiming that the jury venire is not, is not

a diverse group of individuals, but they cannot remove any juror because of their race. That is one of, they can remove a juror for any or no reason at all, but not that reason.

HOST RYAN: When you were a Superior Court Judge, did you preside over many jury trials?

CHIEF JUSTICE GANTS: Hundreds.

HOST RYAN: Hundreds. And what makes a good juror?

CHIEF JUSTICE GANTS: What makes a good juror is a juror who comes with an open mind, a juror who is prepared to listen, both to the evidence and to the other jurors, and a juror who brings with them their good sense and is not prepared to leave their good sense at home before they come to Court.

HOST RYAN: So it doesn't matter what kind of background they have, whether, what race, what ethnicity, or how much money I have or don't have, it doesn't matter?

CHIEF JUSTICE GANTS: No. The Courtroom is meant to be one of the few places in the world where that does not matter. If you bring with you

your, your, your good sense, a willingness to listen and to learn, to keep an open mind, that's all that we ask.

And one of the great things about jury service is it brings people who would otherwise perhaps never spend time together, together to listen to each other give differing points of view and come to a common judgment.

Title Card: Jury Duty, Michael Ryan, Host

HOST RYAN: Have you met jurors, your Honor, that may have been cynical when they came in for jury duty, but once they served on a trial, did you, did they find it a positive experience?

Title Card: Jury Duty, Ralph D. Gants, Chief Justice, Supreme Judicial Court

CHIEF JUSTICE GANTS: That's the experience of most of the jurors. I, I was, it was my experience as a Superior Court Judge to note that when a juror was chosen for service, their first reaction was to think of all of the things that they had to do over the course of the next two days which they had to adjust. So the first reaction for, for those who were chosen as jurors was a bit of despair.

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And then after they recognized that they were going to be sitting as jurors and they put aside those matters, they all, almost to a person, really enjoyed the experience, and found it to be a, an important, invaluable experience.

So after that first moment in which they figure out how they're going to deal with their work and their family obligations, it turned out that they actually recognized it to be an incredibly important, invaluable thing to do.

HOST RYAN: We found that social media is becoming quite an interesting item when it comes to jury trials in this country and in Great Britain. We do have posters in, in jury pools about discouraging, is, is this something that we have to be concerned about?

CHIEF JUSTICE GANTS: Absolutely. I mean the, increasingly individuals are listening actively not only with their ears but also with their cell phones. When they hear information, they want to Google it

and check on it and obtain information from all kinds of sources.

In a trial, you can't do that because you have to rest on the evidence that appears before you.

There may be a lot of things on the internet, some of which are true, but some of which may not be, and it's important for jurors to recognize that fairness requires that they decide the case based only what they hear in the courtroom.

They can bring their common sense and their basic knowledge with them, but in terms of information about the case, that must depend only on what they hear in the courtroom.

HOST RYAN: So while they're waiting in the jury pool, they can do their Facebooking, and they can do all their tweeting, but once they go into the courtroom, silence your devices?

CHIEF JUSTICE GANTS: And, and, absolutely. And even then for cases which are often well publicized, we really do not want them to be checking out to see what is coming into the courthouse that day if it is to be a publicized case.

So, so even, once you're chosen for jury service on that day, you need to be a little bit careful as to what you may read in the paper or read on your, on your smart phone.

HOST RYAN: And the Trial Judges are, are pretty quick to remind jurors constantly that they should stay off of social media while they're serving on a trial.

CHIEF JUSTICE GANTS: I, I always did, and I think it's now, now a routine instruction of every Judge.

HOST RYAN: There's a new program in the Superior Court called the, the Voir Dire Pilot Program. What does that mean during the course of putting a jury together? What does, what does it allow lawyers to do?

CHIEF JUSTICE GANTS: Part of what a Judge has to do in a courtroom is to make sure that the jury which sits in that case is a fair and impartial jury. That's, that is the responsibility of the Judges.

And in the past the, the questions that were asked of the jurors were asked generally only by the Judge.

Now, as a matter of statute, the attorneys are permitted to ask some questions. That can be done either by the attorneys furnishing the Judge with a question and having the Judge ask the question, or by having the attorneys themselves ask jurors directly a set of questions.

The Judge approves the questions that are asked, so they're not too impersonal or inappropriate, but the attorneys now are, are given a greater role in making sure that we have jurors who are fair and impartial.

HOST RYAN: And that's starting in the Superior Court? Is that in...

CHIEF JUSTICE GANTS: It is right now only in the Superior Court by statute. The District Court and Boston Municipal Court can, if they wish, adopt it. But that's still a work in progress.

HOST RYAN: So that allows the lawyers more of a direct involvement in questioning potential jurors?

CHIEF JUSTICE GANTS: That's right.

HOST RYAN: Okay. Jurors themselves, can they, can they ask questions during a trial?

CHIEF JUSTICE GANTS: That depends on the Judge. I would in civil cases but not in criminal cases allow jurors to ask questions. And I would do so with a particular procedure. They would, they would, at the end of the questioning by the attorneys, I would allow them to write the questions down. Then the questions would be brought to sidebar, and I would go over the questions with the attorneys.

There, they could object to a question just as they could object to a question asked by an attorney, and then I would serve as the juror's voice and ask the, the witness the questions of the jurors.

I found it in civil cases to be a very valuable tool. Very often there were jury questions more thoughtful than that of the attorneys. And it actually I think made the jury more active and involved listeners.

So I, I actually thought it was terrific.

I did it only in civil cases, not in criminal cases because I was a bit concerned in criminal cases that there are certain matters which would be a bit difficult to explain to a jury why the question may

not be asked, either because there was a motion to suppress or some other matter, and also I worried a little bit that if the defendant were to testify, it would be me asking that defendant questions, and I was a bit concerned that it may be seen as me interrogating a defendant.

So I was, I was sensitive about it, but there are Judges who have done it in criminal cases and done it successfully.

Title Card: Jury Duty, Michael Ryan, Host

HOST RYAN: Now, are jurors allowed to take notes in certain, certain instances?

CHIEF JUSTICE GANTS: That too depends upon the Judge, but I have never known a Judge in State Court who has not allowed a juror to take notes. To my knowledge, every, every jury in every State Court is permitted to take notes. But it is a matter that the Judge may choose differently if he or she thinks that note taking makes no sense.

HOST RYAN: And jurors should not, never talk about the case until the case is over, correct?

Title Card: Jury Duty, Ralph D. Gants, Chief Justice, Supreme Judicial Court

CHIEF JUSTICE GANTS: No. They, a juror should really wait to listen to all the evidence and to listen to the law. The, the reason for that is that if you you're allowed to discuss the case, you may come prematurely to a view and express that view to another, and it may be difficult to retreat from that point of view if it turns out, as you listen to more of the evidence or learn that the law that perhaps you spoke too soon.

So rather than have anybody be in the position of having to say I, I spoke prematurely, I want to retract something I said earlier, it's best left to not really discuss the case until you've heard all the evidence and all the law.

HOST RYAN: If jurors are challenged what, during the voir dire, should they take it personally?

CHIEF JUSTICE GANTS: No. A, a Judge, an attorney may have many, many reasons for choosing to challenge a juror. Some may be sensible, some not sensible at all.

So no, there should be, it says nothing about the juror. It says much more about the attorney.

HOST RYAN: Are some cases too complex for jurors nowadays?

CHIEF JUSTICE GANTS: I don't think so. I mean I think the very, I mean certainly we have some cases which are quite complex, but that is the responsibility of the attorneys is to make that which may appear to be complex less so.

The fact of the matter is in criminal cases, the issue is really did he do it and did he intend to do it, and those issues, often when you clear away a lot of the debris, is not really that, as complex as it may seem.

And even in civil cases which may have complex sets of law, if you clear out a lot of the stuff and get down to the heart of the case, it very often is a matter that is not nearly as complicated as it can be, and the common sense of jurors generally is what is the best way to decide the case.

HOST RYAN: So the responsibility is the lawyer's to break things down into layman's terms?

CHIEF JUSTICE GANTS: I think that's right. I mean that's what, that's what a good attorney does and needs to do because ultimately we depend upon jurors from the community to make these decisions.

And frankly, there are many cases which, in which Judges have no particular specialty or expertise in the matter, and they come with no more expertise than a jury would do.

And in fact, it turns out that there are many cases in which there's at least one person in the jury who knows much more about the case than any of the attorneys do.

HOST RYAN: Do we, do we need jurors if we have Judges like yourselves who are trained in the law?

CHIEF JUSTICE GANTS: Sure. I mean Judges, we hear cases all the time, but the fact of the matter is when you bring twelve persons of good sense and, and sound judgment together, there are things they see which even a, even a terrific Judge may miss.

So there is great value in having persons from the community decide these issues. It gives legitimacy to a decision to be rendered by persons from the community as opposed to a Judge, and it brings a

freshness of a point of view that sometimes a Judge may lose, lose if he or she sits on cases all day and, and, and for many years.

HOST RYAN: Is, what if somebody does not do his or her jury duty? Is there any sanc... sanction, sanctions?

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CHIEF JUSTICE GANTS: Sanctions. Yes. Yes, there is. Your jury service is an obligation. It's one of the last civic obligations that we, that we have in this, in this country since we no longer have a draft. But when you are called to service, it is something which we expect you to do, and if you do not appear, you're subject to fine and potentially to arrest.

HOST RYAN: Could I volunteer for jury duty?

CHIEF JUSTICE GANTS: No. It's, it's, it's randomly selected, so we don't want to sit, we don't want a world in which for particular cases we have certain juries raising their hand and saying I want to hear it. The random selection is one of the ways in which we ensure the fairness and impartiality of the jury.

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

CHIEF JUSTICE GANTS: A Judge's role is to, is to be essentially the, the arbiter of, well, first of all, you, you're, you're managing the trial. You're, you're deciding what matters come into evidence and which do not. And you're providing the jury with the law that will govern them in their deciding of the case.

HOST RYAN: Massachusetts is considered a national model for its one day, one trial jury system. Are there any improvements you'd like to see in the jury system?

CHIEF JUSTICE GANTS: Well, I think we're always looking to be more efficient and more effective in terms of jury service. We've made great strides over the, over the last few years in terms of making sure that jurors come in only when they're needed, that we're using the jury pool we have to be respectful of, of the jurors' time, and that we're trying to be able to select juries and have cases be tried as, as quickly and as efficiently as they, as they can consistent with the needs of justice.

So we are, we are always trying to be respectful of the fact that jurors do have many responsibilities,

that they're leaving those to do their civic duty, and we want to make sure that we use no more of their time than we have to.

HOST RYAN: Do you find most of our Judges are very sensitive to jurors because of their vari...various backgrounds?

Title Card: Jury Duty, Ralph D. Gants, Chief Justice, Supreme Judicial Court

CHIEF JUSTICE GANTS: I think that's right. I think, I think for many Judges, we feel that we are the captain of the ship, and we are responsible for those persons who are giving up their, their days to serve with us.

And, and Judges that I have spoken to universally have admired the work of Judges and we're very thankful for the juror service to us.

HOST RYAN: Trial by jury is guaranteed, as you know, by the Federal and the Massachusetts Constitutions. If someone feels he or she is not guilty of a crime or someone is a defendant in a civil case, they do have the option. They could either have a bench trial or a jury trial.

CHIEF JUSTICE GANTS: Yes.

HOST RYAN: Yeah. So that's something they could, they, people always think every case goes to?

CHIEF JUSTICE GANTS: No, no.

HOST RYAN: Goes to...

CHIEF JUSTICE GANTS: Either you have the option to choose a bench trial or a jury trial. Virtually, everybody chooses a jury trial.

HOST RYAN: Did you find, as a Superior Court Judge, a lot of cases settle because the, because of the presence of jurors in the jury pool?

CHIEF JUSTICE GANTS: There is nothing that focuses the mind more than the call to say let's choose a jury. So there are many times in which civil cases can't be resolved and criminal cases cannot be resolved. But when it comes down to the fact that this case is going to be decided either by the parties themselves or by a jury, it does focus the mind to reach a resolution that perhaps they, had alluded them before.

HOST RYAN: Now, outside of military service, would you consider jury duty the greatest civic contribution someone can make?

CHIEF JUSTICE GANTS: I think that's right. I mean I, I, I speak to juror, well, when I was a Superior Court Judge, I would, I would tell jurors that we are asking of them a great deal, but frankly, there are lot of folks in, who are serving in our military who we ask that much more of.

So as much as we ask individuals with regard to jury duty, it is trifling compared to what we ask of those persons who are, who are serving in, in Iraq and Afghanistan and, and other places in which they are risking their lives for the country.

So it is an obligation, but it is, it is critical to the pursuit of justice and it's really critical to maintain, making sure that a verdict is a fair and impartial and thoughtful verdict, and we depend upon jurors to do that.

HOST RYAN: What was the longest jury trial you ever worked on?

CHIEF JUSTICE GANTS: How long it actually lasted or how long it felt?

So I think my longest was probably about a month.

HOST RYAN: Was it a civil or a criminal?

CHIEF JUSTICE GANTS: It was a, it was a, it was a civil case, and it took quite a long time. I think it was a family dispute. Those are always the most difficult because it's always about much more than money when it's a family dispute. And the jurors paid very, very careful and good attention to the case and rendered a fair verdict.

HOST RYAN: I think some people when they get, they get picked for juror service, they're always concerned they're going to get on some criminal trial, but I think they forget they could be sitting on a civil trial as well.

CHIEF JUSTICE GANTS: Absolutely. I mean we, we, we, we are, we try both criminal and civil cases, and civil cases often turn out to have human elements that perhaps may not be seen in a particular criminal case.

So I've, I've, I've had many a civil trial.

HOST RYAN: And civil is a little different. It doesn't require a unanimous verdict?

Title Card: Jury Duty, Ralph D. Gants, Chief Justice, Supreme Judicial Court

CHIEF JUSTICE GANTS: It does not. It can be ten of, ten of twelve can decide it in a civil case, and also, it's not by proof beyond a reasonable doubt, but it's by a preponderance of the evidence, that is more likely than not, because what is at stake in a civil case is money as opposed to liberty. And when it is money as opposed to liberty, we have a different standard of proof.

HOST RYAN: So they can, so with civil cases, people can always feel they'll have their day in Court?

CHIEF JUSTICE GANTS: Absolutely.

HOST RYAN: So we've, we've run out of time. We'd like to thank you for being here on Jury Duty: You Make a Difference on BNN.

Title Card: JURY Duty, Michael Ryan, Host

Just remember, if you have any questions regarding your juror service, you can always call the office of

Jury Commissioner at 1-800-THE-JURY, that's 1-800-843-5879, on the web at MAJury.Gov.

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You do make a difference. Please serve when called. It's important to all of us.

Thank you, Chief Justice.

CHIEF JUSTICE GANTS: Thank you.

HOST RYAN: And thank you at home.

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