

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

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

SEASON 01 – EPISODE 11

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 Superior Court Judge Peter M. Lauriat

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

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

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HOST RYAN: Our guest today is Judge Peter Lauriat of the Superior Court.

Welcome, Judge.

JUDGE LAURIAT: Thank you. Good afternoon.

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

Judge Lauriat is a graduate of Middlebury College and received his Juris Doctorate from the University of Chicago Law School.

He practiced law privately until his appointment to the bench in 1989, and since he's been on the bench, he's been, he was a former member of the Jury Management Advisory Committee, the Judge's Jury Bench Book.

JUDGE LAURIAT: Yup.

HOST RYAN: And is currently chairing the access to...Public Access to Court Records Committee and as long...and also on the Court Voir Dire Pilot Project.

So today, we'd like to talk about jury trials in the Superior Court.

JUDGE LAURIAT: Sure. Sure.

HOST RYAN: What first got you interested in juries?

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JUDGE LAURIAT: Well, as best I can remember, it was watching the original version of Twelve Angry Men, which I looked up today, it came out in 1957, and I probably saw it in 1962. And then a year later, coincidentally, I moved to France for a year in high school, and I acted in the French version of Twelve Angry Men. So.

HOST RYAN: Were you, were you Henry Fonda?

JUDGE LAURIAT: No. I was one of the other, one of the other jurors. But it, it gave my first understanding of what a jury was all about and how dynamic a jury could be.

HOST RYAN: What would you consider the ideal jury experience?

JUDGE LAURIAT: I've thought about that and decided that I don't think there's an ideal one, and if I were to describe one, no one would, would want to do jury duty because theirs wouldn't measure up to the ideal.

I think the best kind of jury experience is one in which a juror gets to sit as a juror in the trial of a civil or a criminal case and see justice in action and do what we hope all jurors

will do, which is based on the evidence and the law, reach a decision that's going to affect people's lives in some way and do justice for those who are involved.

HOST RYAN: So you think jurors who are not selected for trial, do you think they're missing out?

JUDGE LAURIAT: I think they are. I know they feel frustrated as well because they've sat there for a day under our one day, one trial system, and at the end of the day, having gone no place beyond the jury pool room, they've been told thank you very much, come back in three years.

That's the hardest experience to explain to jurors. Those who actually become jurors have a fascinating experience, and they've told me that repeatedly.

So what we hope to do is show that those jurors who do not make it out of the jury pool have nonetheless performed a very important service because the cases that were scheduled for trial that day have in all likelihood settled generally that day or the day before and settled primarily because the jurors are there and they're ready to do their duty and listen to the case and make a decision, and the lawyers and the parties have decided, now we really have to think about whether we wish to try this case or resolve it.

So they do play a very important function even if they never leave the jury room.

HOST RYAN: So they, some jurors do complain that they feel if they're not selected they've wasted their time, but like you say, just their presence has moved a lot of cases?

JUDGE LAURIAT: It has moved a lot of cases, and we explain that to them every day that we're there. Each morning we have a video that explains jury service to our jury pool in the 69 different courthouses of the Commonwealth where we bring jurors, and then every day we have a juror, a Judge who appears in person to thank the jury members for their service, and to also explain that process about why they may not leave the jury pool room and yet have performed an important function.

And I think it, it, I think they understand it. Ninety-five percent of our cases, civil and criminal, eventually settle, but most settle just before trial.

HOST RYAN: So just their presence is very important.

JUDGE LAURIAT: Very important.

HOST RYAN: Now, if I go to jury duty and like you say, I'm checked in, and I watch a video which you, you appear in, and Judge comes in and welcomes them, tells them a little about what to expect.

JUDGE LAURIAT: Yup.

HOST RYAN: When they eventually get called to the courtroom, what happens next to the jurors when they come into the courtroom?

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JUDGE LAURIAT: We will generally bring, in the Superior Court, between 40 and 60 jurors into the courtroom where the Judge will swear them in as potential jurors because they're going to be asked questions associated with their ability to perform jury service in this particular case.

The Judge will give them some information about the case. He will introduce, or she will introduce the parties, the attorneys, read a list of witnesses, give some estimate based on what the lawyers say about how long the trial might take, and then ask the jurors a series of questions to assist in the jury selection process.

And once that happens, we will then generally meet with each juror individually and do any follow-up questions of, to those that they're responded to affirmatively, and we'll also try to assess whether they would make a good juror in terms of the requirements. Do you speak English? Do you understand English? Do you have any kind of a hearing or other impediment which might make it more difficult for you to serve as a juror?

We encourage those, for example with hearing difficulties, to serve as jurors, and we have equipment available if they would like to use during the course of a jury trial, but we leave it to the jurors to decide what they would like to do at that point.

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HOST RYAN: Now, if somebody has a hardship when they come into jury, they will have an opportunity to speak with the Judge?

JUDGE LAURIAT: They can speak to the Judge in, in one of, in, in two different ways.

In the early morning if they have kind of an emergency hardship, for example daycare turned out not to be available or babysitter didn't show up that day, they can talk to us down in the jury pool room and we'll excuse them for the day for all cases that might be called that day.

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Or they can wait until they go to the jury, to the courtroom and they can talk with a Judge. For example, I have a medical appointment next Tuesday in the morning. I'm not sure I can change that appointment. You said the trial would be going on next Tuesday. Can I be excused?

And we'll listen. Depending on their ability to make changes, we might accommodate them on this occasion or we might not be able to accommodate them and ask them to stay.

HOST RYAN: So if I get into the courtroom, do I immediately get put into the jury box?

JUDGE LAURIAT: Not until we've finished asking all of our jurors who are sitting in the back of the courtroom as a group the questions I've described to you, and then we asked each of them to raise a little white juror card with a number of it so that we can record anyone who affirmatively responds.

Then we bring them up one at a time, talk to them, and at that point, I make a decision as a Judge, should this juror stay, in which case we would put the juror in the jury box, give them a seat number, or should I excuse this juror because the juror's hardship is sufficient to be excused from this case.

I do also tell jurors in every case that if they are excused from the trial of my case, they may well be called upon to serve as jurors in another case elsewhere in the building. In the Suffolk Superior Court, for example, we have 20 jury trial sessions at any one time. So they're very likely to be called to another courtroom.

And we like to tell them that the, the next case, if they're trying to avoid jury service in my case, might be longer than the case that they're being considered for with me.

HOST RYAN: Now, what role do the lawyers have in determining whose put on the jury?

JUDGE LAURIAT: It, there's, it's very interesting. For years, the lawyers would have a, a right to say I challenge a particular juror who's about to be seated because of some bias the juror may have shown in examination by the Judge and the lawyers at the side of the bench. And those are called challenges for cause.

If there is no challenge for cause, each lawyer in each case has a certain number of challenges authorized by law that they can make of jurors without giving a reason of any kind. They simply can say, I ask that the following jurors be excused.

So they have a role to play in shaping the jury that's ultimately selected.

The limitation on that, and I think it's an important limitation, is that if it looks like the challenge is being made for, on grounds of race or gender or age or other protected categories, I have the obligation and the other side has the right to challenge that preemptory challenge, to require the lawyer to articulate a neutral reason why that person might be challenged. And if they fail to do so, I can keep that juror on the jury over the objection of the person who would like to make the challenge.

HOST RYAN: If someone's challenged in Court by one of the lawyers, should he or she take it personally?

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JUDGE LAURIAT: Not at all. Not at all. We, and I try to make it, all the jurors feel this way. I tell them, please don't be upset or offended if you are not seated as a juror in this case or if you're excused from jury service. Please understand that we allow, indeed we encourage, the lawyers in each case to assist in the selection of the jury that will sit in judgment on the particular issues in their case. And while you may not be a fit for this particular jury, you may well be a good fit for the next jury that you may be considered for.

Everyone in this room is well qualified to serve as a juror. It's simply that we encourage the lawyers and the parties to participate in ultimately shaping the jury for the trial of this particular case.

HOST RYAN: Now, you've been involved with the Voir Dire Pilot Project.

JUDGE LAURIAT: I have.

HOST RYAN: What does that mean? That means that lawyers now are more, have a direct participation in selection.

JUDGE LAURIAT: They do. And, and some of you may remember My Cousin Vinny, and there's a scene in My Cousin Vinny in which the lawyers are talking to the jurors directly and asking them questions in order to determine whether the jurors should be challenged or not challenged. And that in a way is what we have just authorized or what the legislature has just authorized, which is to allow the lawyers to stand in front of the jury box where we have put 14 perspective jurors and have a conversation with the jurors directly without judicial interference, talk to them individually, talk to them in groups, ask them how they feel about some of the issues that are likely to come up in the case, gain their reactions, judge their reactions, and then after, in a typical case, each side has done that for say 30 minutes per side, they'll then come over to the bench and say, Judge, I'd like to challenge the following jurors for cause, I'd like to challenge the following jurors pre, peremptorily, and they do it with a better understanding of who the jurors are. Although we've given them a lot of information in the questionnaire that all jurors fill out, they feel they have a better understanding of who the jurors are.

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HOST RYAN: So finally, when both sides agree, you have a jury. A foreperson is selected, is sworn in?

JUDGE LAURIAT: Actually, the selection of the foreperson is another interesting issue. The law generally says I am to select the foreperson at the start of the trial.

I tried that for a while, and it worked until I selected a foreperson who nodded off during the trial. And I decided to, that probably wasn't, and I, and I had a hard time trying to figure

out how to tell that person you're no longer going to be foreperson because you were asleep.

Then I moved to selecting the foreperson at the end of the trial before we selected the alternates.

That however left the foreperson not eligible to be one of the alternates, and some of the other jurors said that's not fair, he gets to be a juror. We've all sat through this.

So then I moved it further back to selection of the foreperson after the alternates have been selected.

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And then I got an irate letter from a juror who said that the foreperson I had selected had done a terrible job in a case that I'd had. And I talked to Judge Hiller Zobel, one of our real leaders of the bench, and he said, why don't you let them pick their own foreperson.

So I took that advice to heart, and ever since, probably been about ten years now, I have said to the jury that when you go to the jury room, your first order of business is to select a foreperson from among your number. And you should all understand that being selected foreperson carries with it neither more honor, nor more pay. You all have an equal voice and an equal vote, but we'd like to have a foreperson who can be the facilitator if you will for the jury during deliberations and who can report the jury's verdict when you're ready to return that verdict in open Court.

That has worked very well, though I am probably in the minority in allowing jurors to select their own.

HOST RYAN: Now, you deal with juries of twelve, but there could be four, six alternates. What exactly does an alternate juror do?

JUDGE LAURIAT: They have an important role to play, and I tell them that at the end of the trial once selected as an alternate.

They are kept separate and apart from the jury itself, but if a juror, during deliberations, has a good and sufficient reason to be excused from service, family emergency, not feeling well, an issue has come up with the job, and I decide to excuse that juror after talking with the lawyers, then we will put the numbers, and they're usually the disks representing the seats of the two alternate jurors, into a box or a barrel, roll it around, and at random, we will choose the number of one of those. That juror will then become a deliberating juror.

And I tell the jury, and this is the interesting part, that the jury is going to have to start its work all over again because you are now dealing with a different group of twelve jurors, and it's important that all twelve, including the new juror, hear everything that the other

jurors have been discussing up to this point in time and going forward until there's a verdict.

It's also interesting that on the civil side in Superior Court, in most cases, the lawyers and the parties are willing to have all of the jurors deliberate, not just the 12 which the law authorizes. But if there are two alternates, they will say, Judge, we'll let all 14 jurors deliberate.

HOST RYAN: That's per, per agreement of both sides?

JUDGE LAURIAT: Per agreement of both sides. And in a civil case in the Superior Court, you do not need a unanimous verdict so 10 of 12 jurors that, the law says the fraction five-sixths constitutes a valid verdict, and we try to figure that out, and it works out to be 10 of 12 or 12 of 14 deliberating jurors have to agree on the answer to each question that they reach an answer in connection with a series of questions that we'll give them as part of their deliberations. And that constitutes a verdict.

So we think and the lawyers think and the parties think and frankly the jurors think that this is terrific if all of them, having worked so hard during the trial, are allowed to participate in the solution.

HOST RYAN: Now, can you take us through what, what should someone expect if they've never been on a jury trial before.

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JUDGE LAURIAT: Sure.

HOST RYAN: What, what's the procedure?

JUDGE LAURIAT: The process will be once the jury is chosen and sworn in, I'll instruct the jury preliminarily on what the law is all about in this area, tell them a little bit about the jury process, what the various steps are as I'm telling you now.

Then we'll turn to the opening statements of the attorneys, which I tell the jurors are not evidence, but are important and helpful and appropriate and are more like a roadmap by which they will explain what they anticipate will lie ahead in the way of evidence.

Then we'll put on the plaintiff's case or the Commonwealth's case depending on a civil or criminal trial. That is the party with the burden of proof, either the plaintiff if it's a civil case or the Commonwealth having to prove the defendant guilty beyond a reasonable doubt, will put on their case first with witnesses, with photographs, with documents, with demonstrative exhibits. We might take a view if it's a criminal case to see the scene where the crime allegedly occurred.

There will be examination by both lawyers of each witness.

And then we might talk about this further in a minute, but I do allow jurors to ask questions of witnesses.

And once we have finished with all of the plaintiff's witnesses or the Commonwealth's witnesses, we turn to the defendant's side, and the defense will put on witnesses and evidence in support of its responses to the Commonwealth's case.

Then when that's done, I'll declare the evidence closed, and the lawyers will be given one last opportunity to stand before the jury and discuss with the jury the evidence that has in fact been presented during a trial and to suggest to the jurors what conclusions each lawyer for each party would like the jury to draw from that evidence.

I will then instruct them on the law that applies to the issues in the case as well as the law that applies to civil or criminal cases generally.

I have, for many years, been tape recording my instructions because we've learned over the years that it's hard if this is a language you're not familiar with as a juror to absorb and understand all that the Judge is saying.

So I tape record my instructions, and I tell the jury that I will send my instructions back to them along with a tape recorder, and they can listen to my instructions as often as they want during their deliberations.

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We then select our alternate jurors, if we're going to, and we, or I ask the jury to first pick a foreperson and then retire and begin their deliberations.

So they do that.

HOST RYAN: Now, you allow jurors to take notes during a trial?

JUDGE LAURIAT: I do allow jurors to take notes. It's a, it's something we have long urged our colleagues to do. Not every Judge, even now, allows jurors to take notes, but we found, especially with longer trials, it's so helpful and the jurors feel so much more confident about the evidence when they've been allowed to make notes.

And we tell the jurors that the notes are not the most important thing in the trial. You still have to listen and watch the witnesses and assess credibility which you can't do if your head is buried in a notebook.

But we give the jurors notebooks. We give the jurors pencils. We encourage them to take notes if they'd like to. We, we allow them to take their notes with them into the jury room during deliberations.

We have also encouraged the lawyers to take the most important exhibits in a case, civil or criminal, and make 14 copies. And during the trial when the exhibit is discussed by a witness, they, each juror will have a copy of the exhibit and be able to follow along as the witness talks about that particular exhibit. And that's been very helpful.

HOST RYAN: Now, do you, do you allow jurors to ask questions?

JUDGE LAURIAT: I do, and we, as part of a pilot project of, on Innovative Jury Trial Techniques which we began in 1997, and I was the chair of that project, identified certain techniques that we thought would help jurors during the course of their work as jurors in a trial.

The idea of asking questions came from Arizona where the jurors were allowed to ask questions, and indeed they were told they should ask questions during the trial.

So I tell the jury you may do that. The process we follow is that you wait until the witness has finished testifying, and then before the witness steps down, I'll ask you if you have a question you'd like me to consider asking of the witness, and if so, write it down.

And then the, the Court Officer will bring me all of the questions they've written down. I'll meet with the lawyers. We'll confer and decide whether the question they asked is appropriate. And if it is, I will turn to the witness and say I have these questions from the jurors. If you can answer them, please do. If you can't, you may say so.

They do answer those that they can, and then I allow the lawyers brief follow-up on those questions.

So the jury has a, kind of a fuller understanding of the evidence, can clarify anything that they feel they don't understand that this witness might have said.

And then you do occasionally get questions that are not quite on the mark.

I had a long civil case, evidently quite boring, in which I turned to the jury and said do you have any questions, and I got several, and I opened up one, and the question was, who's that dude in the portrait above your head behind the bench, to which I didn't have an answer because he was a very old Judge, and I didn't know who it was.

HOST RYAN: And it had nothing to do with the trial.

JUDGE LAURIAT: It had nothing to do with the trial. He was just bored and he was looking to see who the Judge was.

HOST RYAN: Were you ever surprised by jury verdicts?

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JUDGE LAURIAT: On rare occasions. I, I've learned over the years even as a lawyer that you never quite know what the jury is going to do. These are twelve citizens who've gotten together from all different walks of life and put their heads together along with their common sense, their good judgment, their life experiences, and their good reasoning, and based on the evidence and the law come to a joint decision.

And I've gotten pretty good I think over the years at, at speculating where the jury's going to come out in terms of plaintiff wins, defendant wins, Commonwealth wins, defendant wins.

I think on the two or three occasion, two or three occasions that I've been surprised, they have been cases in which the jury has found the defendant in a criminal case not guilty despite what I would describe as substantial evidence.

For example, a transaction between an undercover Police Officer and the defendant in which a drug was exchanged for cash, all of which was videotaped, and all of which was shown to the jury, and the jury still found the defendant not guilty.

HOST RYAN: Has Judge Lauriat done jury duty?

JUDGE LAURIAT: I have been called four times for jury duty under our one day, one trial system. As you know, there are no exemptions from jury service. We all serve. And I like to tell jurors in the morning that even I have not been exempt from jury service.

I've been called four times over the years. I have come very close to serving as a jury. I've been in the jury box among the other perspective jurors, and then in the end not reached or knocked out.

I'm still waiting. I would love to serve as a juror.

HOST RYAN: Because we have had Judges serve on, on criminal trials?

JUDGE LAURIAT: We have had. We've had one Judge, for example, who was sworn in on a Friday to the Superior Court and that following Monday, he had already been called for jury service, so he went to jury service his first day as a Judge, was actually selected to sit as a juror, and for the next two and half weeks sat as a juror in a first degree murder trial. That was his initial experience as a Judge.

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HOST RYAN: Let me ask you this. Should every eligible citizen perform jury duty?

JUDGE LAURIAT: Absolutely. You should look at it as not just a burden of citizenship but an important positive role you can play as a citizen.

I like to tell jurors that there are really two things that all of our citizens do that they should consider to be a right. One is to vote; and one is to do jury service.

And the, the neat thing about jury service is, compared to voting, you're one of thousands of voters, often millions of voters who together are going to collectively decide who wins a race, or which ballot question succeeds or fails.

As a juror, you're one of twelve, or in the District Court, you're one of six. And you twelve citizens or you six citizens are the only ones who are going to make that decision. And on that decision rests, in a criminal case, someone's liberty; and in a civil case, a dispute that the parties have been unable to resolve on their own and need some help.

And so that's an important function, and you should, you should look very positively on the ability and the opportunity to do that, and we count on you to help us do that.

HOST RYAN: We've run out of time. We'd like to thank you for joining us today on Jury Duty: You Make a Difference on BNN.

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.

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We're also on the web at **MAJury.Gov**.

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

Thank you at home, and thank you, Judge Lauriat.

JUDGE LAURIAT: Thank you. Thank you very much.

HOST RYAN: Thank you. Appreciate it.

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