

OFFICE OF THE JURY COMMISSIONER
FOR THE COMMONWEALTH OF MASSACHUSETTS

MASSACHUSETTS JURY DUTY – YOU MAKE A DIFFERENCE
TRANSCRIPT

SEASON 01 – EPISODE 04

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 Gloria Tan, By the
Massachusetts Judicial Branch

Audio Video Recording produced by the Office of the
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MICHAEL RYAN, BNN LIVE HOST: Hello. My name is
Mike Ryan. And the name of the show is Jury Duty:
You Make A Difference on BNN, the show that
hopefully answers all your questions about the one
day, one trial jury system.

Title Card: JURY DUTY, Michael Ryan, Host

Our special guest today is Judge Gloria Tan from the Juvenile Court.

Thank you, Judge,

JUDGE TAN: Thank you for having me.

HOST RYAN: For being on the show.

And Judge Tan is a graduate of Rice University and of Yale Law School where she got her Juris Doctorate. And once she worked in the legal field, she worked as a public defender for the Counsel of Public Counsel Services first in its trial unit and later in its youth advocacy project.

She also served as the Deputy Director of the Harvard Law School's Criminal Justice Institute where she taught and supervised adults and, taught law students representing indigent adults and youths in criminal, criminal proceedings in Boston.

You also chaired the Mass Bar Association's Criminal Justice Section Council and have served on the MBA Juvenile Law Section Council, and you're currently a

member of the Trial Court Committee on Diversity and Cultural Competence.

And Judge Tan was appointed to the bench in 2013.

So today, we'd like to talk about the Juvenile Court where Judge Tan sits. And how long has the Juvenile Court existed?

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JUDGE TAN: Well, the first Juvenile Court in the United States was established in 1899 in Cooke County, Illinois. And up until that point, all juvenile cases, there was not a specialized Juvenile Court. And then there became growing recognition around that time that juveniles are not just short adults, but rather they were individuals with special needs who were different and should be treated differently, and the goal started moving away, less on, focused on punishment but rather on treating juveniles with care and treatment and with a goal of rehabilitation.

And so specialized Courts, you know, started to become established around that time.

And in Massachusetts, in 1978, that's when the seven separate Trial Courts were established, and so the Juvenile Court was created as a separate division then.

Now, we have a statewide system of, you know, Juvenile Court with 41 Judges who sit in 44 different sites across the state.

HOST RYAN: So back in the olden days, kids or young adults were tried in adult Court. Now, they are tried in a Juvenile Court.

JUDGE TAN: Correct. Yes. And, you know, there's been a movement, and even as recently as, you know, the late '60s, like in 1967, you know, the Supreme Court found in the Gault case that actually procedural safeguards should be applied to juveniles. And, you know, for a while, juveniles weren't even given attorneys.

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And even in 1971, the Supreme Court found that the same standard should be applied, reasonable, beyond a reasonable doubt should be applied to juvenile proceedings in terms of the establishing

burden of proof. And up until then, it had been a lower standard of preponderance of evidence.

So it's been an evolving, you know, sort of, of movement towards making sure that juveniles do have the same procedural safeguards as adults do.

HOST RYAN: What's the age range of children who come before the Juvenile Court?

JUDGE TAN: So our jurisdiction covers children from ages 7 to 18, and in fact, September 2013, the law was passed that raised the age of our jurisdiction. Up until then, it had been from ages 7 to 17.

And so, you know, I think in recognition that juveniles, you know, especially with sort of the more recent I think recognition of adolescent brain development, you know, science has helped us sort of realize that kids, you know, brains are growing and so we need to recognize that. And so the age was raised to 18 which fell in line with the majority of states actually.

HOST RYAN: Now, Juvenile Court proceedings are private, correct?

JUDGE TAN: Yes. So aside from the youthful offender cases, all juvenile proceedings are closed to the public. So that includes Juvenile Court records, unlike in District or Superior Court or BMC, the Boston Municipal Court, you know, juvenile records are, are not accessible to the public, and I think that reflects our recognition that juveniles, you know, the focus is on rehabilitation. We don't want to stigmatize them as criminals. And, you know, that us, it's reflected as well in, you know, the terminology that we use.

So juveniles aren't convicted, rather they're adjudicated delinquent. They're not considered criminal proceedings. They're, you know, juvenile proceedings.

And I think, again, it's just to make sure that we do respect, protect, and preserve juvenile's right to privacy.

HOST RYAN: Now, what kind of cases do you deal with in the Juvenile Court?

JUDGE TAN: So in addition to juvenile delinquency cases where children, again between the ages of 7 and 18, are charged with crimes, we also have our civil jurisdiction.

And I believe it was 1993 that our Court, the Juvenile Court was given exclusive jurisdiction over care and protection, child welfare cases, and child requiring assistance or what we call CARs which used to be called CHINs cases.

And so care and protection cases involve parents who are alleged by the state, the Department of Children and Family, DCF, brings allegations that the parents are abusing or neglecting their children. And so we have jurisdiction to hear those cases, and that can result, you know, if a Court finds by a preponderance of the evidence that the children should not remain in their parents' homes, they can be removed temporarily, and ultimately, in some cases, the Department may move to try and terminate a parent's rights to their children.

And so we, in those cases, the parents do have a right to a trial, to a bench trial in front of a Judge, not a jury trial, and if, you know, the Court finds by clear and convincing evidence that the parent is unfit and that it's in the best interest of the child to terminate that parent's rights, we do have the authority to do that.

HOST RYAN: Is the term juvenile delinquent still in common usage? And what does it mean?

JUDGE TAN: Well, you know, as I said before, and unlike adult Courts, you know, we don't say someone has been convicted. And even in my jury instructions that I give to jurors during jury trials, I always substitute, instead of saying, you know, if you find there's enough evidence to convict, you know, I always say to adjudicate delinquent.

And so, you know, I think that that term, as I said before, reflects our, our mission which is that, you know, we're not, and even, it's even codified in our statute under Chapter 119, Section 53 which really states out the mission of our Court which is to treat children who come before the Court not as criminals, the law says, but rather as children in need of aid, encouragement, and guidance.

And so I think that that is always such a significant and important sort of mission that I always have in the back of mind when I'm hearing cases.

HOST RYAN: What kind of jury cases come out of the Juvenile Court?

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JUDGE TAN: So we have, any crime basically,

HOST RYAN: Ages 7 to 18?

JUDGE TAN: Yes. And so in some cases, I mentioned before, youthful offender cases which are cases where the prosecutor's office has made a determination that they are going to indict and do indict kids who are at least 14 years old, and if they are indicted as youthful offenders, that means that their exposure includes any adult sentence.

And those cases are reserved primarily for sort of more serious cases. There has to be certain criteria for example. It has to be a case that either involves a child who was previously committed to DYS, the Department of Youth Services, or a firearm offense or an offense involving the threat of or infliction of serious bodily harm.

HOST RYAN: Youthful offender cases, are they public?

JUDGE TAN: They are and they are 12 person juries just like in the Superior Court because the exposure,

as I said, is to, you know, an adult sentence potentially.

HOST RYAN: So you, in the Juvenile Court, you have juries of six and juries of twelve?

JUDGE TAN: Correct.

HOST RYAN: Now, when you were a lawyer, did you try many jury cases?

JUDGE TAN: So I did have jury trials as an attorney, and you know, it's very different sitting on the other side of it. But I think it's such an important right. And, you know, Massachusetts actually is, is lucky in the sense that, or juveniles in Massachusetts are lucky in the sense that they do have an unconditional right to a jury trial.

We're only one of ten states in the entire country that gives juveniles a matter, you know, a right to jury trial by matter of right.

HOST RYAN: Do you explain that to youths who are accused of a crime, that they have, they have the option to go either in front of a Judge or in front of a jury?

JUDGE TAN: Yes. In every case, so many of our cases, I think the majority, and I don't know the statistics, you know, resolve, most cases resolve short of trial, either cases get dismissed or the attorneys work out an, a plea negotiation. And so for every juvenile or, or adults for that matter, who wants to change their plea, we are required to give them what's called a colloquy which basically is an explanation of their rights.

And so I find it so important, and especially with kids, you know, who sometimes, even with adults when they come before the Court, you know, always, sometimes I say to them I get yessed so many times during the day. You know, you understand? Yes. Uh-huh.

But then when you sort of dig a little deeper, they're just saying yes, but do they truly understand, you know, the rights that they're giving up which are really important.

So I always make a point to say, you know, you're required by law to say you understand you're giving up your right to trial, right? And of course they say yes.

And then I follow up though and I say can you tell me what a jury trial is.

And so the attorneys, it's funny. The attorneys who appear in front of me regularly, they, they know that I'm going to ask that every time, so they prepare their clients, and they come in and their clients can usually, you know, give an explanation.

And, but every now and then when there's an attorney who doesn't appear that often comes before me, sometimes, you know, the juveniles can't really answer.

And so I think it's really important. That's why I ask the question because I want to know, I want to know for sure that they understand this important right that they're giving up.

HOST RYAN: Very good. So when you sit a jury, seat a jury, do you give any ground rules for jurors before you start a trial?

JUDGE TAN: You know, I'll always make sure that they, you know, one of the first things I do when they come into the Court, the venire, they are all, you know, told to raise their right hand and they take an oath and that's to tell the truth, to give

truthful, honest answers. And, you know, so far in my experience, I don't, I hope that everyone's been truthful and honest. That's one thing that I always tell the jurors.

And also to make sure they keep an open mind and to decide, it's really important for them to decide the case based only on the evidence that's presented in the courtroom.

And so we always tell them, especially nowadays in this digital world, you know, where you can look up anything in, you know, in two seconds, it's important that they not do their own investigation, you know, and don't look up, don't be the lawyer, don't be the investigator.

And it's tempting I think for many of them to say, oh, I'm going to look up that address, or, oh, I'm going to look up the elements of the, of the offense.

So I always make sure that I tell them look, you can only decide based on the facts you hear in the courtroom.

HOST RYAN: What is your role when you're doing a jury trial? What's the role of the Judge?

JUDGE TAN: Well, the role of the Judge is to make decisions on evidence. You know, often, and I always tell the jury, you know, my job, your job is to decide the facts as you hear them, and my job is to instruct you on the law as you should apply to the facts in the case when coming to a decision.

And my job in ways is like an, an, I guess a referee if you will to make sure, and I tell the juries this. You know, sometimes, you're going to hear attorneys object, and you know, don't think it's because, you know, sometimes they are trying to keep something out, but, you know, it's important that we make sure that the evidence that the jury hears is permissible and admissible under the rules of evidence.

And so, you know, we have to make decisions on, on evidentiary rulings.

HOST RYAN: Are you ever surprised by any jury verdicts in your experience?

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JUDGE TAN: Yeah. You know, there have been a couple of times they've gone both ways where I

thought, there was a circumstantial case that I heard about a year ago in which no one actually observed the young person do the actual crime, but there was some circumstantial evidence, and I wasn't sure, you know, which way the jury would go. And they came back and found her delinquent.

And again, it was a close case. It, like I said, I think it could have gone either way.

In my experience, I think jurors take their jobs very seriously, and they really pay attention to the evidence, and, you know, the jury instructions which can often take 30 minutes, and I always find, when I was a lawyer, you know, it was important for me to pay attention because you want to make sure the Judge is saying everything correctly, but, you know, I can imagine to everyone else, it just, it just can, it can be sort of, how should I say this, I don't want to say boring, but it can be a little tedious,

HOST RYAN: Sure.

JUDGE TAN: Because it's important, you're talking about the law. But, you know, I look out in the jury and they're always just, you know, wrapped in their attention and they're really listening and paying attention.

So I always find that encouraging.

Title Card: JURY DUTY, Michael Ryan, Host

HOST RYAN: Do you find a lot of your cases that are possibly scheduled for trial, for a jury trial settle just because of the presence of the jurors?

JUDGE TAN: Yes. And that's what I always tell the jurors because, you know, I think jury service, sometimes when people, I mean realistically, right, people get the summons in the mail, and not everyone, but, you know, I think a lot of people sort of groan and say, oh, I don't want to, you know, and but then I always tell the jurors even if we don't impanel, even if you don't get into the jury box and hear a trial, just your being there has helped us resolve the cases because sometimes it takes, you know, the juvenile or, to see, oh, there's a jury here, you know, do I really want to go to trial? Or sometimes it's the prosecutor, you know.

And, you know, but I have to say in my experience, I always try and go back after a trial and speak sort of more informally with the jury,

HOST RYAN: Sure.

JUDGE TAN: You know, I tell them I can't talk about the deliberations at all but just to see if they have questions or find out what we can do to improve the process.

And I have to say jurors almost unanimously have, talk about how positive an experience it is.

HOST RYAN: Good.

JUDGE TAN: And I think if you asked them, they will all say, and sometimes I do, you know, they said they would want to do it again, and they view it as, I think one juror said she really felt like she was an important part of the process.

HOST RYAN: So even those people who might have been initially cynical about serving, you found that once they sat on a trial, they found it a positive experience?

JUDGE TAN: Absolutely.

HOST RYAN: Now, you work in the Juvenile Court where you deal with, you know, children and families. Do you find it a stressful job?

JUDGE TAN: You know, at times, the cases can be challenging. You know, even today before I came here, you know, I heard some cases that, you know, you're being asked to make some important decisions that really affect people's lives in a significant way, and you're being asked do I detain this young person, do I hold them in DYS, do I commit them. And on the civil side, you know, do you remove a child from a parent, do you terminate that parent's rights, you know, and that, once that's done, it's final.

So they are very important decisions that, you know, you do, you just, you do your best with the information that you have to try and make what you hope is the best decision.

HOST RYAN: And obviously this is something you, youth law has been something that you've, I shouldn't say interested, but something that you, that you really are involved in, something you have believed in most of your career, correct?

JUDGE TAN: Yes. And, you know, when I was a lawyer, I rep, I represented juveniles, kids in the Juvenile Court, and that was always my passion is to work with kids. And I feel that I the Juvenile Court, and I'll admit to being biased, I think it's one of the,

you know, most important Courts because it's where most people have their first contact with the system, with the Court system, and it gives you a unique opportunity to hopefully redirect a juvenile from maybe, in the right direction so it keeps them from perhaps, you know, further future Court involvement.

HOST RYAN: Now, you're a Judge in the Massachusetts Trial Court. Have you gone to jury duty?

JUDGE TAN: I have. I've actually be summonsed twice, once I, we didn't even make it out of the room, no jury trial was even impaneled.

And the second time, I, I was also a lawyer, and I did get brought up to the side. I actually made it into the box and I got brought up to the side and was dismissed from there.

But, you know, I was a little bit disappointed when I was dismissed because I really was looking forward to getting on the jury. Although to be honest, you know, I didn't know that I would feel this way. When I thought that I was getting close to being possibly impaneled, I started getting a little nervous because it was a serious, serious charge, and I

thought, you know, the sort of responsibility that you have as a juror in rendering a verdict, it's, you know, an awesome responsibility.

So in some ways, I guess I was a little relieved that I was dismissed, but.

HOST RYAN: Now, as part of your job, job, when youths are found delinquent and they've been found guilty by a jury, where are they sent?

JUDGE TAN: So if you, we have the options of, unless it's a mandatory commitment, like if it's a firearm offense, we have the option of probation, giving a young person probation, and, or commitment to DYS, Department of Youth Services which is the most serious penalty that Juvenile Court, if the person's not indicted as a youthful offender, can receive.

And so DYS makes the decision on where the young person is going to spend their treatment time. And there's many different facilities throughout the state with different levels of security.

And unlike adults, and I think not many people may be aware of this, if you're held pretrial before you're adjudicated as an adult, the time that you do, the

time you were being held, counts towards your sentence that you get if you are in fact convicted.

But in Juvenile Court, it doesn't work that way. So even if you're held prior to being found delinquent, that time doesn't count towards your ultimate time that you receive after you're adjudicated because the way our system is, you know, the mission is treatment, right, and so DYS says, well, we can't really determine the proper, appropriate treatment until after we, you know, you're adjudicated.

So, so that's one difference.

HOST RYAN: How long can someone be committed to DYS?

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JUDGE TAN: Until they turn 18, and that doesn't mean, so let's say if you're 14 and you get committed to DYS till you're 18, it doesn't mean that you spend the next four years locked up.

The amount of time is determined by a number of factors. There's a, what they call a grid which has all

the different offenses. So it depends on the type of offense.

So if it's an assault and battery, it could be from three to five months.

If it's an armed robbery, you know, it could be higher, from 12 to 24 months.

And DYS convenes what they call a classification meeting of treatment providers and decides based on this young person, their history, you know, their offense, the circumstances, this is the amount of time that that young person does.

And if, let's say they get a three to five months grid level time, five months, if DYS says, hey, we don't think Johnny has really availed himself or has sort of completed his treatment, they can actually keep a young person longer.

HOST RYAN: Now, have you tried youthful offender cases?

JUDGE TAN: I have not had a youthful offender trial yet.

HOST RYAN: Now, if someone is found guilty by a jury in a youthful offender case, are they sentence similarly as an adult, like an adult?

JUDGE TAN: They could be, and we have a couple of different options, sentencing options, for youthful offenders. You can commit a young person to DYS to 21. Or it could be a, you know, it could be a straight eight to ten years in MCI, you know, in State Prison. It could be basically any lawful adult sentence. It could be to the House of Corrections for two and a half years.

It could also be a blended sentence, a combination sentence of commitment to DYS to 21 and, you know, let's say a two and a half years House of Correction sentence suspended.

So we do have a lot of options when it comes to youthful offender sentencing.

HOST RYAN: How important are juries in the Juvenile Court?

JUDGE TAN: I think they're extremely important. You know, I, we're, I think that, you know, as I said before, we're lucky that in Massachusetts, juveniles do have the right to have a jury trial. And I think it

sort of recognizes again that juveniles should receive the same, you know, procedural protections as, and safeguards as adults do.

And to have, you know, a case decided by a jury of your peers I think is an important right, and, you know, to have the, put the government to its burden, you know, to prove beyond a reasonable doubt.

So I think they're extremely important to, to juvenile cases.

HOST RYAN: And you encourage anybody if they get called for, for jury duty that they should report?

Title Card: JURY DUTY, Judge Gloria Tan, Middlesex Juvenile Court

JUDGE TAN: Absolutely. And I, as I said before, I've had so many jurors when I talk to them afterwards say what a great experience that they've had doing it.

So I would encourage everyone to report for jury duty.

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

Just remember, if you have any questions regarding your juror service you can call us at 1-800-843-5879. We're also on the web as well at JuryDuty.MAJury.Gov.

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

Thank you, Judge Tan.

JUDGE TAN: Thank you.

Title Card: JURY DUTY, Michael Ryan, Host

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 Operators Myles Netherton, Jhashawn Burrell, Marcela Maroso, For the Boston Neighborhood Network, Studio Manager David A. Palomares, Assistant Studio Manager Cullen

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