



Avoiding Jury Duty: Psychological and Legal Perspectives

by David M. Sams, Tess M. S. Neal,
and Stanley L. Brodsky

"I don't think it's fair for me to be on a jury..."

IT WAS THE FIRST TIME we had ever seen an echo effect so dramatically demonstrated. The jurors had been brought in panels of 14 for voir dire in the capital murder trial scheduled to begin the following week. One woman on the jury panel explained she had been taught in her church not to sit in judgment of others, and that only God could do that. She said serving on a jury that would judge somebody of a crime would go against her religion. Both sets of attorneys and the trial consultants furiously scribbled notes. When the questioning continued, a man who was two positions behind her in the alphabetically-ordered venire piped up loudly, "Me, too!". He continued, "What she said. I don't judge others. It's my religion." In response to a series of questions, he stayed with his answer, even though it was clear to the judge, attorneys, and observers that he had leapt on her statement because it was so compelling and tried to make it his.

In one form or another, this scenario of evasion repeats itself in courtrooms all over the country. Jurors are called to serve. When and if they show up, they often have a constructed story to evade jury duty. Sometimes the stories sound rational on their surface. It would be a financial hardship to miss work. They

have caretaking obligations with ill or aging family members. They have physical handicaps that would interfere with sitting for long periods or they have difficulty hearing. Other times their stories are not compelling, like this man who echoed the religious woman. In this article, we provide observations about how and why people try to get out of jury duty and then offer suggestions for selecting jurors. As we will explain, citizens who are not at all eager to be on juries, just as those who are overly eager to be on juries, may not be the best people to have deciding your case.

Jurors and Excuses

Although the jury can be linked back to the participatory democracy that first emerged in Greece in the sixth century, it was not until the signing of the Magna Carta during the reign of King John in the 1200's in England that the right to a jury of one's peers surfaced. As early democracies developed, the use of the jury became the chosen method of administering justice (Sward, 2001). Participation in the legal system by free men was a method to ensure fairness and to prevent state corruption from creeping into judicial systems. This use of checks and

balances as a means to ensure justice remains at the heart of most modern democratic legal systems. Unfortunately, while the use of juries is firmly intertwined into the fabric of most modern judicial systems, jury participation by the citizenry of such democracies has fallen into disfavor.

Most states allow citizens to be excused from their civic duty under certain circumstances that address the needs of specific citizen populations or situations where jury duty would be burdensome on the citizen or their employer. Rottman and colleagues (1998) examined state laws and found that undue hardship was explicitly identified in 36 states as a reason for excusal from jury service. For example, Florida Courts readily excuse prospective jurors who are “expectant mothers” and “any parent who is not employed full time and who has custody of a child under 6 years of age” or those citizens “70 years of age or older.” Regarding employment, Alabama Courts automatically postpone or reschedule a juror’s service if one of the juror’s fellow employees was summoned in the same period and their employer has five (5) or fewer full-time employees. The public policy considerations relating to pregnancy, child care, age, and employment stand out in these instances as do the requirements for utilizing such avoidances.

Many states have broad and vague undue hardship excuse rules to relieve prospective jurors from their service. For example, Wisconsin’s reason for excusal is, “Cannot fulfill responsibilities of a juror.” Other states attempt to narrow their undue hardship guidelines. In Alabama, the legislature curtailed their undue hardship guidelines to apply to only those citizens who would “[b]e required to abandon a person under his or her personal care or supervision due to the impossibility of obtaining an appropriate substitute caregiver”, “[i]ncur costs that would have a substantial adverse impact on the payment of the individual’s necessary daily living expenses”, or “[s]uffer physical hardship that would result in illness or disease.” Even these more descriptive statutes allow the courts wide discretion as to the meaning of undue hardship and provide avoidance-seeking citizens a wide canvas upon which to paint their woeful tales.

Why Citizens May Not Wish to Serve on Juries

Research on the reasoning behind jury duty avoidance points to four main causes: economic hardship, jury service being uncomfortable, distrust in government, and lack of punishment for non-response to summons. Other studies attribute this lack of response to jury summons to a decline in civic participation and activism in the young adult population. In a study by Boatright (2001), non-respondents were surveyed and asked why they chose to ignore the jury summons. He found no significant difference in attitude towards the court system across age groups but a large number of participants cited economic obstacles, such as lack of childcare or job compensation, as reasons they ignored the summons.

Although little research has been conducted on avoidance of

jury duty, there are indications that the incentives to avoid jury duty may be substantial. Financial burdens impeding jury duty service may be seen as substantial. Compensation for jury duty in both state and federal courts is generally between five and forty dollars per day plus payment for mileage, with Connecticut and Colorado offering no pay for the first three to five days. Although judges are most willing to excuse jurors who work on commission or for low wages, the argument can be made that the financial disincentive to serve is greater for potential jurors with well-paying jobs as they will lose relatively more income than someone who makes less money. In addition to the financial disincentive to serve, jurors consider the length of the trial burdensome. These reasons, coupled with the low return rate to jury summons and qualifying questionnaires, lead to selective representation of a community on juries and may threaten jury impartiality.

Derogation of Jury Service in Popular Culture

One further reason jurors may be reluctant to serve is the fact that our popular culture in the United States often derogates jury service. This pejorative attitude toward jury service can be seen on popular television shows, in cartoons, and online. For instance, in one episode of the sitcom *30 Rock*, Liz Lemon is called for jury duty. The episode’s humor is derived from her methods of getting excused from jury duty: wearing an old Princess Leia costume and saying during *voir dire* that she doesn’t think it is fair for her to be on a jury, because she can read minds. In an episode of *The Simpsons*, Apu receives a jury summons in the mail. He notes that he has now truly become an American citizen and proceeds to throw the summons into the trash. In the same episode, Homer advises Bart how one can avoid jury selection by saying he is prejudiced against all races. These are just a few examples; other shows in which jury service is derogated include *Curb Your Enthusiasm*, *Monk*, and *Family Guy*.

Cartoon strips in newspapers and online posts derogating jury service are plentiful (easily found by conducting a Google Image search for “jury duty”). For example, in a Dilbert strip in which a co-worker asks him what excuse he would use to get out of jury duty, Dilbert responds that he intends to serve. His coworker responds, “Insanity. That’s a good one.” Another cartoon shows a man entering hell, where a smiling devil says to him that things are only going to get worse, because he has been selected to serve on a jury. A mock Monopoly “Go to Jail” card reads “Go to Jury Duty! Go directly to Jury Duty! Do not collect \$200.”

To index informally how people talk about jury service in virtual communities online, we conducted a Twitter search for “jury duty.” Among the things people had Tweeted in the twenty minutes previous to our search included: “Yes, I don’t think I have jury duty in the morning *dancing in underwear*”, “My friend just told me he got out of jury duty today because he said he was biased to helping anyone outside of his race!”, “Deferred my jury duty thing again...i don’t have time to do

that mess lol”, and “Reasons not to check your mail: You’re already having a bad week, you open your mailbox and there it sits...Jury duty.”

These examples illustrate the popular notion held by many U.S. citizens that jury service is not something one cherishes. The derogation of jury service in the popular media may create the perception for many potential jurors that attempts to ignore jury summons or evade jury selection is the “normal” thing to do. For some potential jurors there may be also an element of obligation to attempt evasion. For instance, H.L. Mencken wrote that a jury is “a group of twelve men who, having lied to the judge about their hearing, health, and business engagements, have failed to fool him.” In the same spirit, an anonymous commentator rhetorically asked, “How would you like to have your fate decided by twelve people who weren’t smart enough to get out of jury duty?”¹¹

Strategies That Avoidance-Seeking Jurors Might Use

We have begun systematic research with regard to the strategies potential jurors might use to avoid jury duty based on what is found online. For instance, when a Google search for “avoiding jury duty” is conducted, the website Wikihow.com is close to the top of most search lists and provides a fairly comprehensive battery of suggestions on how to avoid jury service. Wikihow suggestions begin with a disclaimer pointing out that jury duty is your “civic duty” and warns against blatant disregard of a jury summons. However, once the short disclaimer ends, the avoidance education begins. We outline some of Wikihow’s suggested strategies here to illustrate the kind of deceptive information potential jurors might rely upon in trying to evade their civic duty.

Wikihow provides the prospective juror a sample “Excuse Letter” written by a fictitious employer on behalf of the summoned employee. This brief letter outlines the hardship that the employer claims will be incurred if the employee is not excused from the scheduled jury duty by outlining the specific nature of their business and the financial hardship that losing the summoned employee would cause. While this may be a legitimate argument for some small companies or those businesses that rely heavily on the presence of a single employee, the courts will probably see through this type of attempt if the person is part of a larger company or employed in an easily replicable position. Because this website is one of the first to come up in a search, the courts have probably seen their share of modified versions of this letter trying to shoehorn various types of employment into the format.

Building on the “Excuse Letter”, Wikihow adds many more specific tactics that can be applied if the summoned citizen ends up in the courtroom. The site outlines what they have labeled the “play stupid” tactic. For example, the prospective juror might overtly display confusion over the standard of evidence required for the type of case. Conversely, the site also promotes

the use of “play smart” tactic, the main goal of which seems to lie in the premise that an intelligent juror is going to be hard to persuade and will consequently be problematic. For criminal cases, Wikihow suggests expressing confusion regarding proof beyond a reasonable doubt. Does this standard mean 99%, 99.5%, or 100% certainty? This is the question Wikihow believes will label the juror as problematic and undesirable during *voir dire*.

Wikihow also suggests claiming to believe “the great majority of people arrested for crimes did them.” With a wink and a nudge, the avoiding juror would then state, “I understand I’m supposed to pretend he is innocent until the trial is over.” In addition, Wikihow suggests stating the following: “Police officers are better witnesses than the average person”; “[W]hen I am in the minority I usually cave in to the majority”; “I was a victim of a crime. They never caught the guy. I’m angry about that. The system doesn’t work”; “[m]y friend/family member is a police officer/prosecutor/defense attorney. We talk about a lot of his cases”; and, “[t]he defendant is about the same age as my son. My son has been in a little trouble himself”. The avoidant jurors may find themselves in disfavor with the court if the court or the attorneys decide to probe deeper into a falsely embellished excuse.

Palpably Deceitful Jurors

Some stories are absurd, such as a woman who explained she could not serve on a capital murder trial jury because she had been a murder victim herself (Larue, Nov 5, 2012). An ethical-emotional disconnect appears in the actions of some of these deceitful stories. Persons who see themselves as ethical and responsible citizens otherwise can metamorphize into slippery liars ready to embrace almost any phony excuse. The psychological question is why do otherwise law-abiding citizens react so strongly and deceptively in this particular context? We have four working hypotheses, based on observations of juries and jury selection.

1. Coercion elicits evasion. Because they are coerced into roles and possibly extended time commitments, they become oppositional in nature, demonstrating in a perverse form of American exceptionalism that nobody can force them to do anything.
2. Normative perceptions. This is a cultural phenomenon in which trying to get out of jury duty is perceived by many individuals as a thing that people commonly do. People do what they think other people are doing.
3. Simplistic levels of cognitive-legal concepts. Drawing on the Kohlberg dimensions of cognitive-legal development, these persons operate at the lowest levels. They think about what is in it for them and how can they avoid punishment.
4. Self versus social institutions. Beyond what is to their

benefit, there is a major cognitive distance between what they think of as their responsibilities to the self versus lesser felt responsibility to social institutions like judicial processes.

Not All Efforts to Avoid Jury Duty are Alike

Some people who show up when called for jury duty bring a sincere desire to serve if needed, but have compelling personal reasons to get out of jury duty. Some such reasons are physical and environmental, such as substantial pain, family demands, or occupational restrictions. In contrast, others who are called for jury duty show up with the explicit plan to generate an excuse sufficiently powerful that they will have to be excused. They have no hesitation about pretending they have an attitude or issue that would be enough to be excused. Between these extremes are individuals who have a general aversion to the role of jurors and who may exaggerate some existing problem, but who neither lie nor malingering.

For purposes of thinking about what these three groups bring to the jury context, we have constructed a table that posits the likely emotional-personal states (and perhaps traits) of each group. These are hypotheses drawn from experience as opposed to research, but nevertheless present a preliminary schemata for thinking about these jurors.

Efforts to Avoid Jury Duty

	Apparently legitimate reasons to be excused	Exaggeration of legitimate reasons	Arguably constructed reasons
Commitment to conventional values	High	Medium	Low
Likelihood to invest effort in assessing evidence	High	Medium	Low
Likelihood of being idiosyncratic and unpredictable in deliberations	Low	Low-to-medium	Medium-to-high

To Strike or Not to Strike?

Our guidelines for thinking about people who avidly do want to be on jury duty and who equally avidly do not want to serve are seated in the principles of the strength of the case. Elsewhere (Brodsky, 2010) we have argued that highly emotional, unstable, or intense people are risky and should be struck when the evidence is strongly on your side. So it goes with persons who are intensely committed to getting on or off jury duty. They have what may be termed “over-determined motivation,” in which their personal agendas have the potential to override careful consideration of the evidence. If you have a strong case, challenge or strike them. Suppose you have a weak case? If the case is weak enough, no skilled manipulations will make a difference. However, in the normal range of a case that is somewhat lacking or faulty, then these may be high-risk high-payoff choices for not striking. Persons who have excessively sought to evade jury duty may well be inattentive. Overeager jurors may be passionate to set things right for either side, but often will ally themselves with the state in criminal cases and the plaintiffs in civil trials.

Suggestion: Seek Direct Data

Much information used in jury selection is made up of indirect data. Some attorneys use neighborhoods as defined by zip codes to make inferences about juror inclinations. The word *inferences* is used generously, because the outcome of generalizing about entire zip codes of 20,000 people is in actuality somewhere between guesswork and pure fantasy. Even more unlikely conclusions are sometimes drawn when a member of the venire has a relative who has been convicted or who is in law enforcement. We can speak personally and from observational data to how unlikely and tenuous are such links.

When citizens are called to jury duty and seek to avoid it, their behaviors are visible, they offer direct and sometimes open self-reports, and, best of all, they are usually fair targets for follow-up questions from counsel. “What is involved in caring for your

mother?” they may be asked. “What happens to you when you have to sit for a long period of time?” “What exactly about your religious beliefs relate to what goes on in a courtroom?”

Jumping from these disclosures to decisions about striking or challenging for cause is not always straightforward, but the data are of better quality than gender or occupation. In one jury selection a woman stood and waived a Bible to the assembled parties when asked about whether she could be a fair juror. All of the answers she needed, she told us, were in this book and not in any laws made by men. She did not seek to be excused (unless she was being very clever), but she might as well have done so, because the judge’s raised eyebrows alone left no doubt about what would happen. She was excused for cause.

Conclusion

It is clear that not all potential jurors are happy about being called for civil service. Representative participation in jury service by the populace has declined over the last several

decades. There are many reasons potential jurors might not want to serve, reasons that range from legitimate to palpably disingenuous or illegitimate. We argue that it may be wise to strike jurors who avidly seek to avoid jury duty. Just as a juror who appears to be overly enthusiastic about serving on a particular jury may be problematic, so too may be a juror who appears to be unusually focused on *not* serving on a particular jury. Insufficiently eager jurors may be impatient and inattentive and they may disrupt the justice process. One strategy to try before striking a juror who might be attempting to evade jury duty is to seek personal disclosures from them about the basis of their purported excuse. Doing so may serve two purposes; first, it might reveal the flimsiness of their excuse and convince them that shirking their duty is not the right thing to do. Second, seeking additional information might help reach a more informed decision about whether to strike them. Potential jurors who appear to be putting in an extraordinary amount of effort to get out of jury duty may not be the kind of people who will carefully consider evidence. If evidence is important to your case, consider striking such potential jurors.

[David M. Sams](#) is an ad hoc member of the Witness Research Lab at the University of Alabama and is currently an Associate Attorney with the civil law firm of Fabiani & Hope, P.A. in Gainesville, Florida. David primarily focuses his practice in the areas of business and corporate law, international business transactions, bankruptcy, and taxation. David’s research interests include witness credibility issues in the civil law realm, class-bias issues regarding witnesses and jurors, and the question of continued use of juries in civil courts.

[Tess M.S. Neal, Ph.D.](#) is a Forensic Psychology Post-Doctoral Fellow in the Law-Psychiatry program at University of Massachusetts Medical School. Her academic and clinical interests are in the interface between the legal and mental health professions. Dr. Neal’s scholarly focus is on improving the validity and reliability of decisions made by expert witnesses. A summary of her professional experiences can be found on her [LinkedIn profile](#).

[Stanley L. Brodsky](#) is a Professor in the Department of Psychology, The University of Alabama, Tuscaloosa. His professional interests are in jury selection, witness preparation, and court testimony. He is the author of 14 books in psychology applied to the law, including Principles and Practice of Trial Consultation and the recently released 2nd edition of Testifying In Court. You can review the activities of his witness research lab at [WitnessLab.ua.edu](#).

Endnotes

^[1]Cited by Daniel W. Shuman & A. Champagne, Removing the people from the legal process: The rhetorica and research on judicial selection and juries, 3 Psychology, Public Policy & Law, 242 (1997)

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