

# No Joke: Aversion To Jury Duty A Serious Threat To Justice

By **Brandon Lowrey**

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Law360, Los Angeles (October 3, 2016, 8:09 PM EDT) -- Jokes about concocting clever excuses to avoid jury duty are a dime a dozen in recent history, a symptom of a widespread indifference or even aversion to serving that some experts say endangers the institution of the civil jury trial.

Homer Simpson famously suggested that "the trick is to say you're prejudiced against all races." And late-night host Stephen Colbert once joked that President Barack Obama should be able to get out of jury duty like the rest of us: "Show up, wet yourself, get in a fistfight with a stenographer and tell the judge that you are afraid of Koreans."

This general perception that jury duty is something to fear and avoid has been prompted by an opaque and ostensibly unfeeling system, experts say. And the consequences of that threaten the hallowed institution of the jury trial — particularly in civil cases — by eroding confidence in the system by jurors and parties alike.

"If you Google 'jury duty,' all the YouTubes are about what you say to avoid serving," said veteran trial attorney Steve Susman of [Susman Godfrey LLP](#).

Susman's not the only one who has noticed the distressing trend.

In a YouTube video posted on Sept. 13, Nevada Supreme Court Justice Mark Gibbons and Clark County District Court Chief Judge David Barker read from a David Letterman-style top 10 list of actual excuses tried to get out of jury duty. The winning entry was, "I'm a psychic and I know something bad is going to happen." After a chuckle, they tried to convince Nevadans that jury service isn't so bad, after all.

"Jury service is vital for our community," Gibbons says in the video.

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"Participate in our jury and justice system. I served on a jury, and it was a great experience."

The jurists' video had 260 views as of Friday.

Susman, who founded [New York University's](#) Civil Jury Project, said that most people who actually end up on a jury enjoy the experience. But the majority never end up making it to the trial.

Instead, most are forced to call the courthouse daily to see if they have to come in, then perhaps sit in a crowded jury room for hours, and ultimately may be subjected to probing questions during voir dire before finally being cut loose. So when those people talk to their friends and co-workers, that's the picture they paint: A boring, bureaucratic waste of time.

That, Susman said, is doing real harm to the entire justice system and fueling the decline of the civil jury trial. Citizens dread receiving a juror summons, and corporate defendants have become increasingly loathe to entrust their cases to jurors.

"If the word gets out that people hate to be on juries, the people you get on juries are people who are too stupid to say the right thing to get out of jury service, or they're unemployed or retired," he said. "That's not a good situation because that just feeds into the notion that juries can't be trusted with complex things."

Of the roughly 320 million people in the United States, about 240 million are eligible for jury service, said Philip K. Anthony, CEO of jury consultancy firm [DecisionQuest](#). But most of them probably haven't set foot in a courtroom before and don't really have a full understanding about how the system works, he said.

Rather, they're ordered to show up, herded into a room and essentially kept in the dark as they're ushered through the process. The whole process is stressful and disconcerting, adding to the disruption of their personal and professional schedules, he said.

"There needs to be more education in the system and more focus on understanding what jurors are aware of compared to what lawyers and

others in the legal system are aware of, and there's a gap there," Anthony said. "There's no reason they need to be anxious if it's simply explained to them."

But all too often, it's not, he said.

Judges might thank jurors and tell them they're doing their civic duty or honoring their country, but that provides little comfort to the jurors. And it doesn't answer any of the questions they probably have: How long will the trial be? How much is this going to end up costing me?

Meanwhile, they're bombarded with voir dire questions and maybe even asked, threateningly, by the judge if they can be unbiased. Under this pressure, they might answer the questions in a way that they think would please the judge.

And that, obviously, can cause problems for the lawyers later in the trial, he said.

Bill Simms, an experienced trial lawyer at [Vinson & Elkins](#), has served as a juror on four civil trials. He said that those experiences were among the most interesting in his entire career.

Overall, he greatly enjoyed his time spent in jury service and said his fellow jurors seemed to feel the same way. But he also had his moments of annoyance.

In two of the trials, proceedings never started or finished on time, leaving jurors frustrated with a sense that their time wasn't being respected.

"It made us think, 'Oh come on, let's get with it,'" he said. "Even as a trial lawyer, when I sat there, I had the same feelings."

He also empathized with jurors whose daily lives are disrupted by the process.

For attorneys, the trial can become all-consuming. But it's never that way for jurors.

If an attorney has to stay late, it's no big deal. If jurors are made to stay

late, they'll become preoccupied with their work, or their children's daycare or other obligations that are being disrupted, he said.

Generally, he said, if courts are upfront about jurors' obligations and stick to their schedule, jurors tend to be more satisfied.

And then, there's the issue of money. While jurors' jobs may be safe, their employer might not offer pay for days spent on jury duty. The stipends that courts offer jurors are generally far less than minimum wage.

Susman said his Civil Jury Project is exploring ways to make jury service more pleasant. Jurors would benefit, but so too would the entire justice system.

The veteran plaintiffs' lawyer said that even defendants in intellectual property cases in the Eastern District of Texas have seen the benefit to having a healthy jury system. That district uses tightly controlled timelines that allow for relatively short trials in even nine-figure cases, he said.

As a result, those juries tend to be composed of well-educated people who can digest the cases' complicated issues rapidly. He said defendants in those cases have taken notice and have become emboldened to try more cases there.

"We all have an interest because we are in a profession to try cases, and if there are no cases to try, why are we doing this?" Susman said. "So we have to figure out what the problem is."

--Editing by Philip Shea and Kelly Duncan.

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