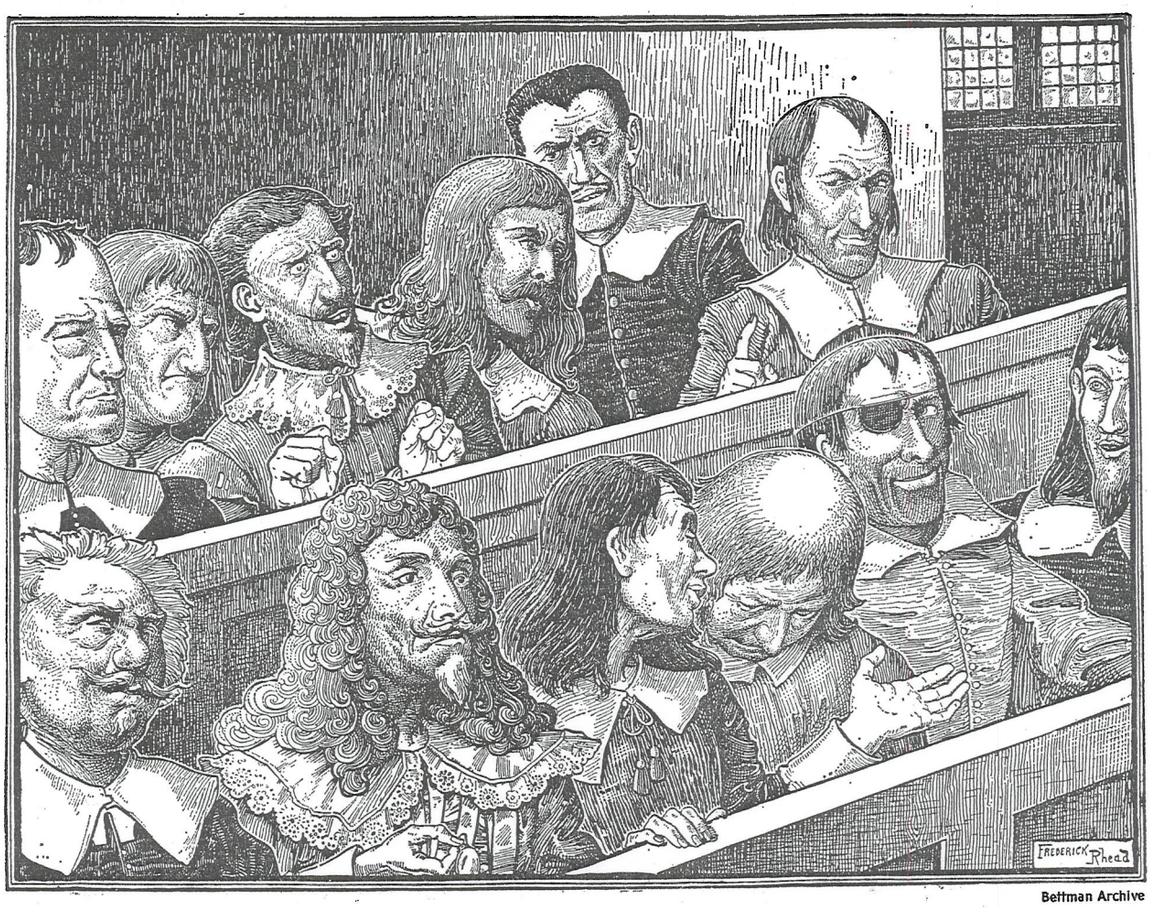
Thoughts on Serving in a Seat of



Bettman Archive

By Daniel Schorr

WASHINGTON—The Juror's Manual of the United States District Court says that jury service is "perhaps the most vital duty next to fighting in defense of one's country." Yet it seemed hilarious to almost everyone who heard about it when Judge John J. Sirica, whose Watergate trial and other man-of-the-year-making activities I had covered, summoned me by form letter for two months of jury duty.

Colleagues took off on rollicking fantasies of my sitting in judgment on the Ehrlichmans, Haldemans and Colsons I had so long staked out, broadcasting exclusives from hidden microphones in the jury room.

I suppose that there is something intrinsically funny about being suddenly translated from the free press to the fair trial corner of the ring. But it also seemed absurd to many that someone as busy and recognizable as a television newsman should be asked to spend his time this way. The impression has somehow got around that this "most vital duty" is meant for the idle and the anonymous.

Judge Sirica, himself amused at what random selection had wrought, offered to excuse me. I held that it was up to my employer, C.B.S. News, to say whether my services were deemed indispensable. C.B.S., which is anxious to make the point that it seeks no privilege for its personnel save First Amendment privilege, has a rigid rule against asking exemption from jury service. So, I served.

When I arrived in the jury lounge to join the new contingent of some 200, there was a ripple of double-takes. From the jury-lounge staff there was much deference, coffee and offers to excuse me on any day when I might have something more momentous to do. It was nice, they said, that I was willing to serve. But, alas, I would probably spend most of my time in the lounge. For experience indicated that a well-known newsman would probably never make it through the peremptory challenges to the jury box.

That prediction was supported by every judge and lawyer of my acquaintanceship. The general theory was that trial lawyers don't like to take risks and that anyone recognizable is perceived as an undefined risk, someone on whom a losing client might focus in criticizing his counsel.

The conventional wisdom proved spectacularly wrong. I was called for four criminal cases—three narcotics, one armed robbery—and was not challenged in any. The Government, apparently as a policy matter, challenged no one. All of the four defendants were black, and defense challenges, applied generously, reflected a pattern of eliminating the elderly, the stern-looking, and whites. but they always left one white man and one white woman. I became the token white man in these cases.

The race- and class-consciousness evoked in the jury selection pursued us silently into the jury room. Three times, as though carrying out the decision of some secret caucus, the jurors selected me as foreman. The fourth time, when I demurred, they selected the other white. But if management was left to whites, discussion was not. Younger blacks displayed expressiveness, vehemence and sensi-

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tivity about being listened to that often seemed less connected with current proceedings than prior conditions of discrimination.

The sense of minority was dramatically displayed by one angry young black woman, holding out against the rest of us. I asked her to make her argument. She said that for all she cared we could just go ahead and report a verdict without her. When I reminded her of the requirement for a unanimous verdict, she said: "You're eleven to one against me. Isn't that unanimous enough?"

And then there was the juror who exercised his freedom of choice by saying he would join us to make the verdict unanimous but might just change his mind if polled in the courtroom. It took us another hour to get his assurance that he would stick to his vote.

The greatest problem in the jury room is focusing on the evidence. Inexplicably, note-taking by jurors in the courtroom is prohibited, leaving jurors to rely later on often conflicting recollections of testimony. There is also considerable theorizing and sheer conjecture, based less on evidence than personal grievance and personal experience. And preciseness of deliberation appears to suffer from leniency in excusing busy professionals, leaving juries weighted with the marginally employed, who welcome the $20 daily fee, the retired, and others out of the mainstream. Jury service has tended to become an activity for those whose regular activities are not valued by society.

But, in the end, though lacking much common language and common experience, we in the jury room found common ground. In my four cases we brought out verdicts—two guilty, two not guilty—that my conscience can live with. Let me, though, reveal the jury-room secret that despite judges' instructions to the contrary we engaged in a certain amount of "jury revisionism" of the law.

We were more inclined to find reasonable doubt in the case of a young man accused of selling his own clinic dose of methadone to a soliciting undercover policeman than a man accused of heroin-pushing.

In the end, Judge Sirica got from me a requested memorandum with observations about the jury system in practice. I got from him a personally signed certificate of service. I also got an experience that should be shared by more "busy" people, if this "vital duty" is really to rest on a peer relationship.

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