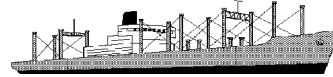




Rollin' On



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JURORS, JURY DUTY, AND WHAT'S FOR LUNCH?

Jury duty isn't what it used to be. There was time that you just called in, said you had such-and-such excuse, and the jury duty summons would disappear. The remaining persons were not a cross-section of society, since many working people would never be on a jury.

Things are changing. Many counties are going to one trial, one day systems so that when you're called, you know it will be limited to one day, unless you get a longer trial. This means those excuses don't work like they used to. Sure, you might talk yourself out of it one time, but they'll get back to you. So you may as well get it over with.

I received a federal court jury summons a few years ago. It came at a bad time, as I had an appellate brief due in the Oregon Court of Appeals, the deadline was nearing and the heat was on. I tried the phone thing and that didn't work. So I showed up as instructed, fully expecting to be quickly excused. This was especially so since it was going to be a criminal trial with two defendants, meaning three lawyers altogether. No way would they keep me on the jury.

Wrong. I tried my deadline plea with the judge, and that went nowhere. I had heard they were short on jurors, and when the judge refused to excuse the relative of a police officer, it seemed plausible. So with office work starting at 4:00 a.m., I showed up for my duty. And you know what? If it hadn't been for the brief, I would have actually enjoyed it more. As a lawyer, you always wonder what it's like to be in the jury room. As a lawyer, it's the one place you're not allowed. At all.

LARRY R. DAVIDSON
Attorney at Law
1850 Benj. Franklin Plaza
One SW Columbia St.
Portland, Oregon 97258
(503) 229-0199
Fax (503) 229-1856
E-Mail: larry@rollin-on.com
www.rollin-on.com

Ever. Except as a juror.

So we start trial, and during opening statements, one of the defense attorneys emphasizes that we had an obligation to presume everyone is innocent until all of the evidence is received, and that we had to give these two guys the same presumption as we would give Mark Hatfield had he been in the house. He reminded us of this obligation during closing argument.

So the trial ends and deliberations begin, which is interesting. The two defendants were caught with drugs in their house, and 10 of us fairly quickly decided that they were guilty. They weren't caught with Girl Scout cookies, they were caught with cocaine and that stuff is illegal. (When I lived in Miami, someone would get busted with, e.g. two kilos of cocaine but only prosecuted for one, the other one having disappeared. Who's going to complain? "Jeez, judge, someone took my other kilo." Even the dumbest don't say that.)

That left two persons to go. They felt there was some doubt, so our departure from the jury room, and resumption of our normal lives, is delayed. Then one of the 10 of us states, you know, that lawyer emphasized that if Mark Hatfield were in the house, that he would be entitled to that presumption. Then she continues and says, well, you know what, Mark Hatfield would not have been in that house. Now at this point, one would have a strong urge to strangle the speaker since she obviously missed the point. On the other hand, you want to wrap this up.

Finally, the other two gradually came around and changed their minds. As a lawyer, I would try to show the breakdown in thinking, if not reality in her case. But I wasn't in there as a lawyer, I was in there as a juror and I felt strongly in my own mind that the defendants were guilty, so I wasn't going to worry about how someone else might reach the same conclusion.

The point to the story is, you never know what's going to happen in a jury room. There have been studies which show that in many instances, it doesn't matter what you harp on during trial, the jurors are going to use their own personal experiences, and prejudices (yes, even racial and sexual and grammar and a whole lot more) in making their decisions. It can be a real crap shoot. And most of those factual findings that come out of the jury room are not appealable.

So before you put your fate in the hands of your peers, as the saying goes, you should wonder what's going on in your peers' lives, who are they mad at, how's their week going, what did they have for breakfast, and are they going to have you or your opponent for lunch? Some people will opt for a nonjury trial, meaning a trial before a judge only, especially so in business disputes. This works if you have a judge with a good reputation. It also works, or has to work, if the other side has more jury appeal to their case.

Recyclable Material and Franchises

I just finished a two day trial in federal court regarding the transportation of recyclable material, and whether federal transportation law impacts regulation by local governments. More on that next month.

That's all for now. Keep on rollin'!

The Obligatory Disclaimer

This newsletter is for informational purposes, does not provide legal advice and does not create an attorney-client relationship

Short Bio

Admitted to the state bars of Oregon, Alaska, Florida and Massachusetts. Practicing law for over 20 years and emphasizing transportation law, business law and related litigation