

Practicing What I Preach: A Professor in the Venire

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Recently, I was summoned for jury duty. Contrary to the instinctual fight or flight response most people would have, I embraced the opportunity. I am a sociologist; I study and teach about crime and the criminal justice system, and I was enthusiastic to participate and watch a case unfold in real life, rather than in the abstract or hypothetical examples I inflict on my students.

I arrived promptly outside the courthouse, where I was immediately sized up by the bail bondsmen who were eager for business. When the doors opened at 8:15 A.M., my peers and I shuffled in, a few dressed in what I also interpreted as “appropriate courtroom attire”—perhaps best described as office casual; most, however, were in jeans and what I might be found wearing when mowing the lawn or leaving the gym. Clearly, the law was something to be revered. This was an observation confirmed many times over throughout the morning, as my juror colleagues complained about their time being wasted and discussed strategies for “getting out of it.” My favorites included those who claimed they would pretend to be racist and prejudiced against everyone, and one especially creative woman who feigned the inability to speak English, then smiled broadly and perkily said, “Have a nice day!!” in flawless English on her way out, having successfully escaped.

I was patient and attentive through videos describing civic duty and juror responsibilities. I learned the history of the jury system and the dos and don'ts of juror etiquette (such as not doing investigative work or listening to or reading about the assigned case in the news). I listened politely as fellow citizens posing as armchair criminologists offered their own theories as to why a well-known local dentist had been arrested recently for stealing high-end automobiles.

Later in the morning, fortified with all the free coffee we could consume, we were corralled and escorted to a courtroom, several of us into the prestigious jury box, the remainder into rows of pews neatly lined up around the room. As the judge described the case, I realized I had not given much thought to this task. I assumed I would hear interesting, though in some ways, I realized, mundane details about a crime—harm suffered by one fellow citizen at the hands of another. The judge sagely informed us of the unique opportunity before us, a privilege bestowed upon precious few citizens; apparently, according to the expressions of those around me, “privilege” is both a relative and a pejorative term. At first,

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“penalty phase” was mentioned almost in passing, so subtly as to nearly escape detection. For me, however, it hit like a bolt of lightning. Dismayed, I realized this was a capital case; twelve people in that cold room with its fake wood would decide “death” or “life without parole.” This realization was confirmed when the judge explained that the defendant had already been convicted of a double homicide, some details of which he was kind enough to share with us. Our task, as it turned out, would be to determine how he would be punished for these crimes.

As a researcher and educator, I am quite familiar with the topic of capital punishment; it is a component in several of my courses. Perhaps this is why I figured I had a better chance of actually being struck by lightning or winning the lottery than sitting in the jury pool for a capital case.¹ As a criminologist, I have found myself concerned with marginalized and vulnerable populations, including juveniles, female inmates, and those affected by the death penalty. I suppose it is no accident that my research and teaching interests have coincided with my personal values concerning human rights and the welfare of others. However, I have not been one to wear my attitudes like a badge. In fact, when I first began teaching, I tried to be elusive about my personal beliefs; I presented the evidence and let students decide for themselves, though I secretly hoped my lectures would leave little doubt in their minds which side of the debate (abolitionist) was most logical. Over time, I realized the futility of this effort; when I presented the arguments for and against the death penalty, my passion for the latter was obvious. I took comfort in the advice of a former colleague who reassured me that students have unlimited opportunities to hear the “wrong” things all day; it was my duty to present them with the “right” things. Now I would confront the issue from an entirely new perspective, on a personal level I had never anticipated. Duty in the classroom is one thing; duty in the courtroom, another. At that point, I was not sure whether I would have the courage to maintain my convictions.

We were given a survey to complete—nine pages of seemingly innocuous questions about our backgrounds—demographics, education, and job experience. My interest was piqued when I reached questions about the kind of books I read, the radio stations I listen to, and my favorite television programs (I must confess I was a little embarrassed to admit my top choices included “24,” “Prison Break,” and “The Shield”). The survey included questions about professional and social organizations to which I belonged or had been involved. I’m a criminologist; my professional organizations included the American Society of Criminology and the Academy of Criminal Justice Sciences, so I listed those as requested. I had also been involved with Amnesty International and the Connecticut Network to Abolish the Death Penalty, and the irony was not lost on me (a follow-up question asked whether any of those groups had taken a position on the death penalty—I believed that would be self-evident). I was asked whether I had taken any courses in which the death penalty had been discussed; I wondered whether it would be relevant to

¹ At that time, Connecticut had eight individuals on death row; nearly all of them had come from other counties.

mention that I also taught many of those classes, or was I just being arrogant. There was a question about activism; I had spent a day with Sister Helen Prejean, sponsored a campus lecture by David Kaczynski (representing New Yorkers Against the Death Penalty), and attended an Amnesty International conference on the death penalty—but was that *really* activism? Oddly, there was no question about publications (though I had co-authored a published textbook chapter on the topic).

Then came the zinger—the question that would consume my thoughts over the next several days—“Is your opinion such that you would not be able to vote to impose the death penalty under any circumstances?” Having just listened to the rhetoric about civic duty and juror responsibility, I must admit I was swayed by the argument that being a juror doesn’t mean you have to *agree* with the law, but whether you can *apply* it. To say I could not impose such a sentence under *any* circumstances seemed so absolute; in the abstract, I thought I might be able to apply the law, even though I certainly disagreed with it.

Prior to completing our surveys, we had been asked to disclose whether we knew any of the parties who might be called as potential witnesses. One of the prosecutors whose name was called had been an adjunct in my department. Though ultimately this would not exclude me from the pool, it did bump me to the front of the line for determining who would be called back for questioning. Thus began my initial tête-à-tête with the judge. For the first time in my life, I took a seat on the witness stand, a rather sobering and intimidating experience. Fortunately we were questioned individually, so the audience in the courtroom was relatively small—attorneys, court staff, a group who appeared to be students, and the defendant. When I explained how I knew the prosecutor whose name had been read, the judge asked me what I teach. When I replied, “I’m a criminologist,” I detected a slight murmur in the courtroom. The judge smirked and followed with, “And just what qualifies *you* to be a criminologist?” I explained that I had earned both an M.A. and a Ph.D. in sociology and was a tenured associate professor, though I felt more like a twelve-year-old girl sitting there, looking up at the big man wearing a black robe and a look of delight not unlike the one my cat used to get when he had trapped a mouse. He smirked again and said, “You know, *I’m* sort of a criminologist.” “If you say so,” I replied, suddenly all too aware of the court reporter’s tap-tap-tapping.

The main question at hand was whether my work schedule would permit me to attend the trial, should I be selected. It would not begin until fall and would likely last several weeks. As luck might have it, I would be on sabbatical during the time needed. Once again the judge smirked and commented on *his* need for a sabbatical. “Wow,” I thought, “Can’t wait to see this guy again.”

The next week was filled with much soul-searching and dread. This was, as the judge would later so eloquently state, “the real deal” and not some abstract classroom discussion. I was appalled at myself for even considering the research potential of my participation if I was selected, though I assumed I would likely be

the first person the prosecutor would seek to exclude. The scientist and educator in me wanted to demonstrate I could set aside my personal beliefs and weigh the facts. I considered the hypocrisy of teaching students to think critically and objectively about criminal justice issues when I was having difficulty being neutral. I really wanted to believe I could be impartial. As *voir dire* approached, I realized, begrudgingly, my inability to do so. I thought long and hard about how I would present my beliefs when I returned the following week for questioning.

As round two with Judge Smirk began, I took a deep breath and humbly explained the conclusion I'd reached after so much thought: that despite my best intentions, I realized I could not truthfully say I would or could impose a death penalty, regardless of the evidence presented to me. I thought, having admitted I could not vote for a death sentence, I would be whisked away out of the courtroom and allowed to resume my day. However, Judge Smirk wasn't going to let me off that easily. From there the discussion took a perplexing turn. Essentially, I was asked to give a mini-lecture on the death penalty to explain why I held such strong beliefs (I was even offered use of the chalkboard propped in the corner, for my convenience). I mentioned studies on cost. I mentioned deterrence (or lack thereof). I explained that it seemed irrational to me, given the available alternative of life without parole. And while I do have moral qualms about the death penalty—I believe that killing cannot be justified, no matter who is doing it—I chose to hide behind the cloak of science, perhaps as a defense mechanism. “And have you personally studied or written anything in this area?” asked Judge Smirk. “Well, now that you mention it...” The appropriateness and relevance of this digression eluded me; who was really on trial here—the individual convicted of a double homicide seated to my left, flanked by his two public defenders, or the criminologist who had stepped out of her ivory tower to convert and corrupt the masses? Though the judge suggested that I probably knew more about the death penalty than he did, or anyone else in the room for that matter, he certainly did his best to test my knowledge (my students would later take great pleasure in hearing that). I began to wonder whether I should have attached a copy of my C.V. to the venire questionnaire. “This is the real deal, you know, not some made up textbook example,” Judge Smirk explained to me. “I am *painfully* aware of that,” I responded.

Next came questions from the public defender, who basically reiterated many of the points the judge had made. “Are you *certain* you could not impose a death sentence? Can you not imagine *any* case in which you could?” Yes, I was pretty certain, and no, I couldn't think of cases where I would choose a death sentence when the available alternative was life without parole. I was asked whether I could be objective in other types of cases. For example, if I had to hear evidence to determine guilt or apply a sentence other than death, could I be objective under those circumstances? Yes, I believe I could do that. I understand the concept of reasonable doubt and hearing evidence about whether someone had “done it” seemed relatively straightforward, as did balancing a period of supervision or

incarceration to the offense committed as specified by the state statutes. This situation, however, is qualitatively different. I was not being asked to determine whether this individual was guilty, but if he should be executed as punishment for his offenses. "Is this decision based on your educated opinion, or your moral beliefs?" It was both, though I was reluctant to admit the latter. I realized the evidence I would hear could not simply be plugged into some mathematical equation and result in a logical and tidy answer. The fact was, a human life, however repugnant, would be at stake, and I knew I would have considerable difficulty arriving at a conclusion without hearing what I'd been telling my students for years: The death penalty is poor public policy. The money devoted to these cases (many times the cost of life in prison) would be better spent on education, social services, and prevention programs. Taking this life would not deter others (who are acting on impulse or under the influence of drugs or alcohol) from committing heinous crimes. Had this crime occurred about thirty miles north—in Springfield rather than Hartford—execution would not be an option (because the legal definition of a capital offense varies from state to state). The United States remains the only Western, industrialized country that takes a life as punishment for taking a life. Killing this individual would not spare his victims' families of pain and anguish, but would only extend their suffering as the case continued its way through the labyrinth of appeals.

Though it was clear I would be excused, Judge Smirk wasn't about to let me off quite so easily. "They didn't have a sociology major at my college," he said. "Maybe they should have," I sassed, once again realizing the court reporter's presence and his silent tapping. The judge perused my questionnaire, asking me additional questions about my graduate studies at Bowling Green State University (no, it was not in Kentucky, I explained) and the crime situation in my home state of Ohio, as if it was some foreign and exotic country. He mentioned the television shows I had listed, and commented that they all center on death and violence. "Yes, they do," I replied, "but they are *fiction*" (the marshal would later confide that "The Shield" was his favorite show, too). He posed hypothetical crime situations involving high status offenders, corporate criminals, and people who have everything going for them but commit crimes anyway. How would I explain *that*, he wanted to know, as if I could pinpoint a single cause of crime and spare society its troubles. I'd been there before, as it is the cross we academic types must bear. For it to be carried out on display, and as public record, however, was not particularly pleasant. Finally, he suggested that someday, when the outcome of the sentencing phase had been determined, I might want to learn more about what type of person the defendant was and the gruesome details of the offenses he had committed. "No, I don't think I would like that," I replied, a response the judge seemingly did not appreciate; clearly, he had his own ideas about the type of person the defendant was.

I was ushered out of the courtroom while the judge and attorneys determined whether I was jury-worthy. As anticipated, I was excused. I would not have to

spend my sabbatical enduring weeks of excruciating testimony. Though serving would not have caused me to miss work or suffer undue hardship while carrying out my civic duty, I was spared the “privilege” of serving on that jury. In many ways I was disappointed. Reflecting on my observations of fellow jurors, who were annoyed and inconvenienced by their attendance, I found it troubling that these same individuals would have the responsibility of carrying out such an arduous task. I was reminded of a news report I’d seen about a capital case in which jury members flipped a coin in order to resolve a deadlock. I sincerely hoped this man’s fate would not be determined in such a trivial manner.

In the days after my dismissal, curiosity got the best of me, and I decided to browse newspaper archives to learn more about the case. I discovered that this was in fact the court’s second attempt at securing a death sentence. The defendant was convicted, but during the first penalty phase the jury failed to reach a unanimous decision regarding a death sentence. It only takes one, and I would not be it. Perhaps what Judge Smirk had implied during his interrogation of me was true: “Those who can do, those who can’t teach.”²

² In October 2006, a jury sentenced the defendant to death.