

# dissent

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## Daily Life and the Jury System

**Jim Sleeper**

WHEN I WORKED as a regular newspaper columnist, I absorbed two informal, folkloric, strictures on subject matter: No columns based on conversations with cab drivers and none touting jury service as a magisterium of democracy, where one's faith in the people is refreshed. The fear, I think, was that a columnist who dotes on the wisdom of cabbies or fellow jurors is confessing that he becomes one of "the people" only from the back of a cab or when he has been summoned legally to meet with "the people" face-to-face.

Yet everything Tocqueville says about juries as schools of democratic virtue and bulwarks of liberty and equality is true, and not because deliberating with other jurors deflates a pundit's conceits. I've served on five New York City juries, criminal and civil, in Brooklyn and Manhattan, and every one of them confirmed Tocqueville's observation that juries instill a

deep sense of equity that arises in sharing responsibility for another person's fate.

That was true even for one of my jury deliberations that failed. Two Latina women had been caught red-handed, stealing armfuls of coats off a rack at the Kings Plaza shopping mall, but our jury included an ageing, pony-tailed hippie-cum-radical who, for world-historical reasons about which he was interminably eloquent, was NOT going to convict a poor non-white of any crime. It was in that jury room that I first heard a black person tell this white ideologue that he was being racist in refusing to pay non-whites (the defendants) the elementary compliment of holding them to standards he would demand of his own children. Our holdout was unmoved and prevented our reaching a verdict.

Years later, as a journalist, I was told by an insider in the Central Park Jogger case that during jury deliberation a Latino juror had slammed his fist on the table, glared at two black jurors, and said, "All right, all right, I'll vote to convict Ramon Santana if you'll vote to convict Kharey Wise." If this actually happened

and played a role in the convictions (which were later overturned), it was a bitterly ironic rebuke to what the civil rights movement fought for when it opposed all-white juries on the grounds that every defendant should receive justice based solely on the evidence and not on ascriptions of racial characteristics by jurors who consider themselves loyal delegates of their races or bearers of a presumed racial wisdom

"Racial wisdom" sometimes has a sad validity; one reason that juries must be racially integrated is that people with a certain cultural experience bring to the table understandings of motives and perceptions that others lack. But preemptive racial brokering is an affront to everyone's dignity and so is the ideological presumption that "racism made them do it"—as in my jury's shoplifting case. When these approaches are brought to a trial, the idea of the jury as a "free school" of civic virtue and a crucible of justice is hobbled by people convinced that racism has destroyed the presumptions of trust and comity upon which equality and liberty ultimately depend.

The virtues Tocqueville celebrated in juries cannot be nurtured, much less ensured, by economic security or armed authority. The roots of injustice lie deeper in the human heart and must constantly be exposed and discredited in free dialogue by evidentiary standards. That's precisely what is presumed by the jury system, which shields ordinary citizens from intimidation by state authorities, priestly types, demagogues of politics and the press, and mob whims, so that they may teach and sustain one another in republican virtue that gives all individuals their due.

The brief, instructive "Welcome" movies shown to prospective jurors by the courts are prompts to dignity in deliberation, but they are all that the courts can offer. Ultimately, liberal

institutions have to rely on virtues and beliefs that the state itself cannot really nourish or enforce. The counterintuitive lesson here is that those virtues have to be nurtured and defended somewhere else; they must be already living in the hearts of "the people" who are shown those movies as they wait to sit on juries.

WHERE IS THAT "somewhere else"? A friend whose son plays Little League recently overheard a referee urge members of one team—the one from his own neighborhood—to "get out there and win this one." My friend strode up to the ref and asked: "What did you say?" "Nothing, don't worry about it" the umpire huffed; but, later, he made a very dubious call that my friend challenged. "I can get you thrown out of here," the umpire warned. "No you can't," my friend replied, "*because I heard what you said.*" He was confident enough of the system under which umpires are assigned to believe he could bring this one to justice. But the system's integrity depended wholly on the fair-mindedness and active vigilance of people like my friend.

The point is that, no less than in the civil-rights movement, which had to take to the streets because juries were closed, the teaching of what Tocqueville called "equity in practice" and of taking responsibility for one's own acts rises or founders in the daily give-and-take of democratic life—in sports, in the workplace, even on street corners—long before it can be awakened and reinforced by a jury film and the behavior of fellow citizens in the deliberation room. ●

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