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# MIAMI LAW QUARTERLY

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## A EULOGY OF JURORS

WILLIAM A. HERIN\*

I know no safe depository of the ultimate powers of society but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion by education.<sup>1</sup>

When we read that a man is "serving his country," we usually assume that he is a member of the Armed Forces. Actually, there is another means of participating directly in the administration of government which constantly calls upon thousands of men and women throughout the United States to serve their country in a commendable way. During some time in their lives most men and women are called upon to serve as jurors.

Although the jury system is an institution well established and taken for granted in both the United States and the British Commonwealth of Nations, where the common law is the basis for our systems of law, it is virtually unknown and non-existent elsewhere in the world, where variations of the civil law prevail. It is indeed a privilege of citizenship, as well as a responsibility.

For generations American and English orators have declaimed the virtues of trial by jury, and glowing tributes by the score have praised its many merits. There have been some critics, too, but most criticism has been as sympathetic and affectionate as that of Gilbert and Sullivan in their well-beloved comic opera, "Trial by Jury."

The few observations here set down will add nothing to the volume of literature in praise of the jury as an institution, but may betray a certain admiration for those individual, uncomplaining citizens who willingly consent to act as judges over the troubles of their fellows. Grand jurors as well as trial jurors, also deserve fulsome praise for the invaluable service they render the public, but they are not the subject of this article.

Despite the resounding tributes to the institution of trial by jury that have been heard for many years throughout the land, it is only comparatively recent that definite steps have been taken to solve the day-to-day problems that have impaired the efficiency of the jury system and made jury duty distasteful to citizens who are summoned to serve their country in this way.

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1. Thomas Jefferson, letter to W. C. Jarvis, 1820.

One of the major deficiencies in the jury system has been the absence of adequate accommodations for jurors in the courthouses of our country. This major problem is being solved in the Federal District Court for the District of Columbia. Under the administration of Chief Judge Bolitha J. Laws, with the aid of the American Bar Association and a committee of Washington, D. C. laymen, jurors serve today in a Courthouse designed to accommodate the citizen as well as the Court. There is a jurors' lounge, with comfortable club-like furnishings, a snack bar and cafeteria, and several soundproof private dictation rooms where jurors awaiting assignment may dictate correspondence or confer with business associates until called. A telephone and loud-speaker system make it easy to reach the waiting juror. Twenty-eight bedrooms with private baths are provided in the event jurors must remain overnight. These tangible tributes to the jury system mean much more to the individual juror, and to the efficient functioning of trial by jury than the often empty speeches of its fluent friends.

A second major deficiency has been the lack of readily available information to advise the prospective juror of the nature of the service that is expected of him when he is called for jury duty. With the aid of the American Bar Association and The American Judicature Society, this major problem is being solved also. However, the Supreme Courts of California and of Illinois have cautioned those who seek to "inform" jurors by the use of "jurors' handbooks," that they must never "instruct" them, since no jury can be given an instruction by the court in advance of the trial, nor in the absence of the parties to the proceeding.<sup>2</sup> Further than this, any advance indoctrination of jurors might create a professional class of jurors, contravening constitutional guarantees to preserve jury trial inviolate forever.

Subject to these limitations, Courts and Bar Associations in a number of states have in recent years resorted to the use of a "Handbook for Trial Jurors" to inform prospective jurors of the nature of their duties.

This author has examined handbooks that are in use in Ohio,<sup>3</sup> Michigan,<sup>4</sup> South Dakota,<sup>5</sup> New York County,<sup>6</sup> Minnesota,<sup>7</sup> and in Federal District Courts,<sup>8</sup> in preparing the handbook now in use in the Eleventh Judicial Circuit of Florida.<sup>9</sup> A committee of the Florida Bar also is con-

2. See *People v. Weatherford*, 160 P.2d 210, *aff'd*, 27 Cal.2d 401, 164 P.2d 753 (1945); *People v. Schoos*, 399 Ill. 527, 78 N.E.2d 245 (1948).

3. *Handbook for Jurors*, prepared and issued by the Columbus Bar Association and the Court of Common Pleas of Franklin County, Ohio.

4. *Instructions to the Jurors of the Wayne Circuit Court*, Detroit, Michigan (1948).

5. *A Handbook of Information for Trial Jurors*. News Printing Co., Aberdeen, S. D.

6. *Jurors Manual*, Supreme Court, New York County (1949).

7. *A Handbook for Jurors*. The Minnesota State Bar Association, Minneapolis, Minn.

8. *A Handbook for Petit Jurors*, serving in the United States District Courts, published by authorization of the Judicial Conference of the United States. (1943); also *Jurors Handbook*, Rubey M. Hulen, Federal District Judge, as quoted in "Twelve Good Men & True" *The Forgotten Men of the Court Room*, 38 A.B.A.J. 813 (Oct. 1952).

9. *A Handbook for Trial Jurors*, Eleventh Judicial Circuit, Dade County, Florida (1952); see also, *Handbook for Trial Jurors* serving in all courts of record in Hillsborough County, Florida (1953).

sidering the adoption of a similar handbook for use throughout the Courts of Florida.

Admittedly, articles in a law review should be of interest to lawyers and law students, and are therefore usually scholarly in form and learned in content. However, as a practical matter, trial counsel should be fully advised of the nature and scope of information that is placed at the disposal of jurors who try their cases. Therefore, I shall set forth matters that are presented to trial jurors by handbooks used in a typical nisi prius court, the Eleventh Judicial Circuit Court of Florida.

A juror's handbook is served upon the prospective juror when he is summoned for jury duty. In Dade County jurors are served by mail. The cover of the handbook, in bold type, contains the following statements:

Bring this booklet with you when answering your summons, and return it to the bailiff before entering the Court Room.

This booklet must *never* be taken into the Jury Room.

The first statement to greet the juror in this typical handbook of information is the preface by Harlan Fiske Stone, late Chief Justice of the United States Supreme Court:<sup>10</sup>

Jury service is one of the highest duties of citizenship, for by it the citizen participates in the administration of justice between man and man, and between government and the individual.

The juryman's duties are defined by laws which are the product of some centuries of experience, an experience which has taught us that they are essential to the impartial administration of justice by jury trial. Unless the juror scrupulously observes them he is himself a lawbreaker. By his neglect he may in some instances subject himself to severe penalties. In all he will fail in his duty as a citizen and inflict injury on his fellow men because through his failure law and justice fail in the appointed task.

Following a list of the courts and a table of contents, there appears a "Juror's Creed," adapted from a prize-winning creed submitted in a nation-wide contest, sponsored by the American Citizenship Committee of the American Bar Association several years ago.

#### A JUROR'S CREED<sup>11</sup>

I am a juror.

I am a seeker after truth.

I must listen carefully and with concentration to all the evidence.

I must heed and follow the instructions of the Court.

I must respectfully and attentively follow the arguments of the lawyers, dispassionately seeking to find and follow the silver thread of truth through their conflicting assertions.

I must lay aside all bias and prejudice.

I must be led by my intelligence and not by my emotions.

I must respect the opinions of my fellow jurors, as they must respect mine, and in a spirit of tolerance and understanding must

10. *Handbook for Petit Jurors*, serving in the United States District Court, published by authorization of the Judicial Conference of the United States (1943).

11. Circuit Judge John T. Flanigan, Carthage, Mo. (1945).

endeavor to bring the deliberations of the whole jury to agreement upon a verdict;—but

I must never assent to a verdict which violates the instructions of the court or which finds as a fact that which, under the evidence and in my conscience, I believe to be untrue.

I must apply the Golden Rule . . . remembering that although I am a juror today, passing upon the rights of others, tomorrow I may be a litigant whose rights other jurors shall pass upon.

My verdict must do justice, for what is just is 'true and righteous altogether'; and when my term of jury service is ended, I must leave it with my citizenship unsullied and my conscience clear.

Since most jurors are called upon to serve in civil rather than criminal cases, the information contained in the handbook is largely devoted to the trial of civil cases. The body of the handbook generally is as follows:

#### CALL TO JURY DUTY

As a citizen, you are a partner and a shareholder in the state and the nation. You have long enjoyed the privileges and protection of your government. You are now summoned to serve for a short time as a juror.

Many citizens are never called to serve as a juror. If you serve now, you may not be called again for a long time. As a citizen, it is your duty to serve if it is possible, and to uphold the laws of your country.

In a country where the life, liberty and property of each of us is safe and secure, it is necessary that there be courts of justice in which the disputes that arise between people can be settled justly and peaceably.

It is necessary that persons charged with crime shall be fairly and justly tried, that the public safety and welfare be protected on the one hand, and private rights and liberties be safeguarded on the other.

It is the business of every citizen to see that this is done, and it is a duty which the people must do for themselves if life, liberty and property are to be kept secure for yourself and your children.

#### QUALIFICATIONS OF A JUROR<sup>12</sup>

1. Must be a citizen of Florida.

Must have resided in the State of Florida for one year last past and in the County of Dade for six months last past.

3. Must be a duly qualified elector of Dade County.

4. Must be over the age of 21 years. Jurors over the age of 65 are welcome to serve on the jury, but cannot be required to serve.

5. Must not be a State or Federal officeholder.

6. Must never have been convicted of the crime of perjury, or bribery, or forgery, or larceny, or of any other felony under the laws of this state, or a crime in any other state which is classified as a felony in Florida, unless subsequently restored to civil rights.

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12. FLA. STAT. §§ 40.01, 40.07 (1951).

7. Must not be under any pending indictment.

8. Must not be at the present time under prosecution for any crime in any court of this State or any Federal Court.

Every juror must answer, under oath, questions propounded to him in regard to his qualifications before he may serve as a juror.

#### DEFINITION OF A PETIT (OR TRIAL) JURY

A petit (or trial) jury, is a body of qualified citizens impaneled to decide finally upon facts in dispute in cases being tried in court.

#### CASES TRIED BY A PETIT JURY

Cases which come before a petit jury are divided into two general classes:

1. *Civil*. Civil cases are those in which the parties in dispute come into court for the ascertainment and settlement of their respective rights. The person who brings an action against another is the plaintiff. The person against whom the action is brought is the defendant.

2. *Criminal*. Criminal cases are those in which action is brought by a branch of the government, representing organized society, to try persons who are charged with violation of our criminal laws. The procedure in the trial of a criminal case is similar to that in the trial of a civil case. However, in a criminal case, the State is the plaintiff and the person accused of the crime is the defendant.

#### CHOOSING A CIVIL TRIAL JURY

To provide a jury to hear a civil case, jurors are called by the clerk to take their places in the jury box where they are questioned by the lawyers or by the judge concerning their qualifications as jurors for the trial.

There are many reasons why a person originally on the panel might not be a fair and impartial juror. He might be closely related to one of the litigants, have a business relationship with one of the lawyers or have personal knowledge of the case to be tried. He may show some leaning one way or the other, regarding the type of case being tried that would make him an undesirable juror for that particular case. If a juror thinks he may be disqualified for reasons not brought out by the questions asked him, he should rise in his place and tell the judge and the lawyers about it.

Lawyers are within their rights in asking questions to test a juror's state of mind. If a juror's qualifications are challenged by a lawyer, or if he is excused by the judge, the challenge will not be taken as a reflection on the juror's integrity or intelligence. It simply means that, in one particular case, it may be proper to excuse him. What everyone wants and is entitled to, is a jury of disinterested persons who will try the case on the law as stated by the judge and on the evidence admitted at the trial. These jurors are then sworn 'to well and truly try' the case.

## IMPORTANT THINGS TO REMEMBER DURING THE TRIAL

1. Don't be late for court sessions. Since each juror must hear all the evidence, tardiness causes delay, annoyance to the judge, the lawyers, the witnesses and the other jurors.

2. Always sit in the same seat. This enables the judge, the clerk, and the lawyers to identify you more easily.

3. Listen to every question and answer. Since you must base your verdict on the evidence, you should hear every question asked and the answer given. If you do not hear some of the evidence—for any reason—ask to have it repeated. If you do not understand some phrase or expression used, it is proper to ask the judge to have it explained.

4. Don't be an amateur detective. Since the only evidence you can consider is that presented in court, you are not allowed to make an independent investigation, or visit any of the places involved in the lawsuit. If it is proper or necessary for you to inspect a place involved in the case, the judge will so order.

5. Control your emotions. You should not indicate by exclamation, facial contortion, or any other expression, how any evidence or any incident of the trial affects you.

6. Don't ask the witness questions. Jurors sometimes desire to participate in the questioning of witnesses. There are practical reasons why the practice should be discouraged. By taking so active a part in the trial, a juror may find himself unconsciously led into the position of being an advocate for one of the parties, thereby destroying his ability to render an impartial verdict. The juror's questions may result in an antagonism on the part of the witness, which is likely to be reflected by a similar attitude in the mind of the juror. Furthermore, the parties have gone to the expense of retaining attorneys who are trained in the highly technical requirements for the presentation of evidence, and are entitled to such service. Jurors not being lawyers are less qualified to phrase questions which are not subject to some legal objection, and no matter how objectionable a juror's question may be, the lawyer hesitates to object for fear of offending him and losing his good will. Jurors usually find with experience that most questions which arise in their minds during the trial, are afterwards answered in the due course of the proceedings.

7. When in doubt ask the judge. If you are in doubt about your rights or duties as a juror, you should not ask anyone but the judge for information. If an emergency affecting your service should arise, consult the judge about it.

## UPHOLDING THE LAWS

The oath taken by judge and juror alike requires each of them to accept and apply the law as it is. Neither one is free to disregard the law because he thinks that the law might better be otherwise. Laws are made, repealed or changed by those who are elected to make laws. Judges and

jurors do not make the laws—they only apply them, and must be careful not to usurp power which does not belong to them. People look at the law as it is written to know what their rights are, and decide what they may or may not do with safety. Such people should not be expected to guess whether a court or jury will uphold the law. This is a sworn duty.

The people and lawyers involved in a lawsuit have spent considerable time preparing for the trial. Each of them will bring in evidence and argument to prove his side of the case. Judges and jurors (who are also judges) must be patient and careful not to form conclusions until they have heard all of the evidence and argument, and the jury has received the instructions of the court on the law.

(This information booklet is not a part of the Court's instructions.)

#### THE COURSE OF A CIVIL TRIAL

After the jury has been sworn in, usually the plaintiff's lawyer outlines the nature of the case and the evidence that will be offered to support plaintiff's case. This is called an 'opening statement.' It is not intended to be an argument, and is not evidence.

Then the lawyer for the defendant may make an 'opening statement' for his side, or he may reserve his statement until the plaintiff has completed his case.

The first evidence is received from witnesses for the plaintiff who are called to the witness stand and sworn to tell the truth before giving their testimony.

As a rule, every witness is examined by the lawyers for one of the parties and may be cross-examined by the lawyer for the other side (or questioned by the court) as the trial progresses, in an effort to determine just exactly what the truth is.

After the plaintiff has put in his evidence, the lawyer for the defendant may make an opening statement for his side, if he has chosen to wait until this time to do so. He then may call witnesses for the defendant, who are subject to examination and cross-examination also.

Then the plaintiff's lawyer may put witnesses on the stand in rebuttal, or reply, and they are likewise subject to examination and cross-examination.

When all of the evidence is in, the lawyer for the plaintiff usually makes an argument intended to help the jury to analyze the evidence. His argument is also an attempt to convince the jury, that under the evidence, his client is entitled to win. Then the lawyer for the defendant makes an argument for his side for the same purpose. Finally, the lawyer for the plaintiff makes his concluding argument in reply. After these arguments have been made, the judge instructs the jury on the law.

During the trial, the judge decides all disputes about the law and the rules for trying the case.

The judge may rule upon many questions that are submitted to him and may hear arguments of counsel in the absence of the jury. The rulings



of the judge involve questions of law—not of fact—and must neither be questioned by the jury as to their correctness nor made the basis for inferences for or against either side. Such questions are decided by the judge as the law requires. A ruling does not indicate that the judge is taking sides. In effect he is merely saying: ‘The law does not permit that question to be asked,’ or ‘That question is permissible under the law.’

At the close of the trial, as stated above, the judge will instruct you on the law and tell you the principal questions you are to decide. The case is then turned over the jury. The power and responsibility moves from the bench to the jury room where you will consider the testimony and the instructions given by the court.

Before the case is given to them to decide, jurors are usually permitted to separate when the court is not in session. However, after the case goes to the jury, the members are not allowed to separate until they have agreed on a verdict or the judge has discharged them.

#### FOREMAN OF THE JURY

Your first duty upon retiring at the close of the case is to select your foreman. The foreman acts as chairman. It is his duty to see that discussion is carried on in sensible and orderly fashion, to see that the issues submitted for your decision are fully and fairly discussed, that every juror has a chance to say what he thinks upon every question. When ballots should be taken, he will see that it is done. He will sign your verdict when you arrive at one. In selecting your foreman, it is well to select someone of experience and general knowledge, if possible, for a good foreman keeps the discussion in due bounds, much time is saved and better results secured.

He, and each juror, should see that discussion in the jury room is never so loud that it can be heard outside. Until a verdict is announced, no outsider should know what goes on in the jury room.

#### CONDUCT IN THE JURY ROOM

The attitude and conduct of jurors at the outset of their deliberations is a matter of considerable importance. It is rarely productive of good for a juror, upon entering the jury room, to make an emphatic expression of his opinion in the case, or to announce a determination to stand for a certain verdict. When one does that at the outset, his sense of pride may be aroused and he may hesitate to recede from an announced position if later shown to be in error. Remember that you are not partisans or advocates, but are judges.

The final test of the quality of your service will lie in the verdict which you return to the court, not in the opinion any of you may hold as you retire. Have in mind that you will make a definite contribution to efficient judicial administration if you arrive at a just and proper verdict in a case.

To that end, in your deliberations in the jury room, there can be no triumph except the ascertainment and declaration of the truth. The word verdict comes from two Latin words meaning 'to speak the truth'; so your verdict should always 'speak the truth.'

In many civil cases you may have to determine whether there is any liability to pay damages, and, if so, how much. It is suggested that you determine the issue of liability first and independently of the issue of the amount of damages.

#### CONDUCT OF JURORS OUTSIDE THE JURY ROOM

In discharging your duties, conduct yourself in such a way that no one will question your integrity. Judicial decisions have no higher sanction than public confidence in judicial integrity. Any judicial officer who does any act tending to destroy that confidence, thereby unfits himself for performing his duty. Integrity is evidenced not by words but by conduct. Be watchful of that conduct. Do no act which will arouse the distrust of the most suspicious. Accept no gifts or favors, not matter how insignificant or trivial, from litigants, their attorneys or representatives, whether these favors be extended during or after trial. Avoid all familiarity and all appearance of familiarity with every one interested in your decision. Lest you may be suspected of receiving an improper communication, receive no communication of any kind from anyone in any way connected with a case in which you are a juror.

You must not, in the court room, corridors or elsewhere, talk with lawyers, parties to suits, their witnesses, agents, detectives, or with any other person interested in any way in the trial of any case.

It is expected that while you are acting as a juror, while you are an officer of this court, your personal conduct will be above reproach.

#### YOUR VERDICT

In civil, as well as criminal cases, you will be furnished with the forms of verdict that may be used, and instructed in their use by the judge. Since your verdict must be unanimous, only your foreman need sign it.

Ordinarily, as soon as the jury has agreed on a verdict, it is brought into court, received by the judge, and read and recorded by the clerk. In criminal cases, if the jury agrees to a verdict when the judge is not in the court house, the judge may permit the jury to seal the verdict in an envelope provided for that purpose. The judge will tell you when to bring in a sealed verdict.

All jurors must be present when the verdict is returned. You must keep your verdict secret until it is brought into court. In cases in which a sealed verdict is permitted, the jurors are allowed to separate after the verdict has been agreed upon and sealed.

Your verdict will show how reasonable, fair, just and sensible is the jury. Your findings on a disputed question of fact are almost always final

and will seldom be set aside by the judge or a higher court, so in all verdicts you must be careful to be just.

#### SECRECY AFTER VERDICT<sup>13</sup>

Experience has demonstrated that both publicity in your proceedings before you retire and secrecy afterwards are essential to the administration of justice. In the jury room you necessarily discuss the credibility of witnesses. Every juror should feel free to urge any legitimate reasons for accepting or rejecting their testimony. Many such reasons would not be advanced if it were supposed that the public would know what was stated. You should feel that your relation with your fellow jurors is one of sacred confidence. Feel that they will so regard what you say. You should so regard what they say. You violate that confidence when you tell anyone any part of the proceedings of the jury room (unless something has occurred which it is your duty, under instructions of the court, to report to the court, because it indicates corruption). In violating that confidence you betray a public trust and prove yourself unfit to be a juror. Such action discredits the court and destroys public confidence in our whole judicial system. Of course, the law provides that jurors may be polled as to their verdict in open court before the verdict is recorded.

After a case has been decided we find that occasionally attorneys, litigants, or other persons ask how you arrived at your verdict. They have no right to such information. Your verdict cannot be questioned, and what occurred in the jury room is secret and confidential.

#### THE INTEGRITY OF JURORS

Heated discussions in the jury room sometimes engender such bitter feelings as to arouse unjust suspicion of the integrity of those of a different mind. Jurors so wrought up are not always mindful of their obligation, and not infrequently in the heat of passion not only violate the obligation, but give expression to charges affecting the integrity of their fellow jurors, which are unfounded, unjust and most injurious. Those charges coming from jurors against their fellow jurors have a peculiar weight. They are generally made to those against whom the jurors, whose conduct is criticized, have wished to decide the case. Those auditors are not, in general, hard to convince that corrupt conduct furnishes the explanation of an adverse decision. Such tale-bearing is particularly to be avoided.

The safeguard which the law has provided to preserve the secrecy of the jury room prevents any such public investigation in such a case as would show the utter groundlessness of the charge, and so the suspected juror suffers a loss of reputation without any chances of redress.

On the other hand, we say it is the highest duty of everyone about a court to keep out of that court every form of corruption. No dishonest

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13. Presiding Judge Ira W. Jayne of the Circuit Court of the Third Judicial Circuit, Detroit, Wayne County, Michigan, the originator, in 1929, of the widely followed pretrial procedure, is the author of this section of the handbook.

official should be retained one moment. If, therefore, you are possessed of any evidence which has a legitimate tendency to prove any juror to be acting corruptly, no matter whether that evidence was obtained in the jury room or elsewhere, it is your duty at once to bring it to the attention of the judge presiding over your deliberations, in order that it may be speedily investigated and the wrongdoer punished.

You have a right to suspect the integrity of a juror if you have evidence tending to prove him dishonest. You have no right to suspect that integrity unless you have such evidence. In determining whether or not you will charge him with lack of integrity, bear in mind that it is your duty to expose a corrupt juror, and to refrain from slandering an honest one.

Remember—if you are in doubt, consult the judge.

#### EXCUSE FROM JURY SERVICE

It may be inconvenient for you to serve on the jury. You may even lose money by being kept away from your work or business. Unfortunately, this cannot be helped if citizens are to take part in seeing that justice is done in upholding the laws of the land. It is a duty to your government as well as a privilege, and all responsible citizens should be willing to serve as jurors when called upon, unless this would cause unusual loss or hardship.

If you are suffering from any illness or disability which renders you unable to serve, or if you are otherwise disqualified, you should be prepared to present your excuse from jury duty in court to the judge presiding at the time stated in your summons, unless illness prevents attendance, in which case a doctor's certificate as to your illness should be presented to the court.

#### CONCLUSION

The importance of your position as a juror cannot be overstated. It might be that others could serve as well as you and with less loss and trouble, but you have been regularly drawn according to law, and no one can be especially selected to take your place if you are excused. We think you will find jury service interesting. We believe and expect that you will do your full duty as a citizen and juror."

After a trial is concluded, counsel are permitted to request and receive suggestions from jurors as to the conduct of the trial which may assist the lawyers in the trial of cases in the future, but jurors are advised that they are obligated not to reveal what transpired in the jury room. The leading case of *Phillips v. Rhode Island Company*,<sup>14</sup> contains a number of authorities, ancient and modern, which appear to support the position that jurors must not, following a trial, reveal proceedings which took place in the jury room. At the same time, however, it will be noted that all jurors are directed to report promptly to the court any evidence of corruption that may come to their attention.

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14. 32 R.I. 16, 78 Atl. 342 (1910).

The Constitution of Florida in Section Three of the Declaration of Rights contains the following:

"Trial by jury inviolate.—The right of trial by jury shall be secured to all, and remain inviolate forever."

To reveal jury room proceedings would clearly contravene this provision of the Constitution. For example, jurors are charged by the court to disregard such testimony as they believe unworthy of credit. In their deliberations, jurors, by their vote or in their discussions with each other, sometimes must express their disbelief of statements made under oath by their fellow citizens who are witnesses in a case. If these witnesses were free to receive reports of the low esteem accorded their sworn testimony by individual jurors, no juror would ever feel free to discuss the credibility of the testimony of any witness, in accordance with his sworn duty as charged by the court. Lack of privacy in the jury room would bring fear of reprisal, and render it impossible for jurors to perform their proper functions. The right of trial by jury would indeed be violated by this conduct.

Over the years, challenges to the privacy of proceedings in a jury room have been made most frequently by offering affidavits of jurors to impeach their verdict. Both in England and America such affidavits have been held inadmissible.

In *Owen v. Warburton*,<sup>15</sup> Chief Justice Sir James Mansfield said:

We have conversed with the other judges upon this subject, and we are all of opinion that the affidavit of a jurymen cannot be received. It is singular indeed that almost the only evidence of which the case admits should be shut out; but, considering the arts which might be used if a contrary rule were to prevail, we think it necessary to exclude such evidence. If it were understood to be the law that a jurymen might set aside a verdict by such evidence, it might sometimes happen that a jurymen, being a friend to one of the parties, and not being able to bring over his companions to his opinion, might propose a decision by lot, with a view afterwards to set aside the verdict by his own affidavit, if the decision should be against him.

In *State v. Freeman*,<sup>16</sup> the Court by Chief Justice Hosmer said:

In England, and in the courts of the United States, jurors are not permitted to be witnesses respecting the misconduct of the jury, for it is a great misdemeanor; and this is most unquestionably the correct principle, for otherwise a juror, who should be disposed to set aside a verdict, would give information to the party for that purpose. If not so disposed, he could suppress the information and, in that way, any of the jury could command the verdict.

. . . On a principle of policy, to give stability to the verdicts of jurors, and preserve the purity of trials by jury, the evidence ought not to be admitted. The reasons assigned by Sir James Mansfield in *Owen vs. Warburton*, and by Chief Justice

15. 1 Bos. & P. 326, 329-330 (1805).

16. 5 Conn. 348, 351 (1824).

Swift in his Digest, are of great weight. The sanctioning of the testimony of one juror, relative to the misbehavior of the rest, would open a door to the exercise of the most pernicious arts, and hold, before the friends of one of the parties, the most dangerous temptation. By this capacity of penetrating into the secrets of the jury room, an inquisition over the jury, inconsistent with sound policy, as to the manner of their conduct, and even as to the grounds and reasons of their opinions, might ultimately be established, to the injury and dishonor of this mode of trial,—imperfect, undoubtedly, but the best that can be devised. And under the guise of producing equity, there might be generated inequity, in the conduct of jurors, more to be deplored than the aberration from law, which, undoubtedly, sometimes takes place. The opinion of almost the whole legal world is adverse to the reception of the testimony in question; and, in my opinion, on invincible foundations.

In *Sanitary District v. Cullerton*,<sup>17</sup> the court said:

This court in an unbroken line of decisions . . . is committed to the doctrine that the affidavits of jurors cannot be received for the purpose of showing cause for setting aside the verdict. There may be dicta in some of the cases intimating a contrary rule, but in every case where the question has been before the court and determined, the principle has been adhered to.

The decision went further:<sup>18</sup>

In trials in the courts of justice, not only should there be absolutely nothing improper permitted, but, to the end that respect for the administration of the law may be maintained, the very appearance of evil should be avoided, and the courts are clothed with ample power to punish appropriately the misconduct of jurors, and of others in their presence, and no court ought to hesitate to impose adequate penalties and set aside verdicts where there has been conduct by which the jury may have been improperly influenced, or the verdict has been the result of improper conduct on the part of jurors. But to permit the affidavits of jurors to be heard, showing that the verdict to which they, on their oaths, consented, was the result of improper influence or corrupt practice, 'is condemned by the clearest principles of justice and public policy.' But few verdicts in important cases would be permitted to stand. Litigants, in whose favor verdicts might be rendered, would be placed at the mercy of corrupt jurors. Litigation would be increased, the widest door thrown open to fraud and perjury, and the administration of the law brought into contempt.<sup>19</sup>

This continued concern by the courts of England and America, for the sanctity of our system of trial by jury, clearly shows the importance of the work that jurors are called upon to do.

In recent years, some powerful nations of the earth that are ruled by tyrants, uniformly deny to their citizens the many rights guaranteed to our people, including the right of trial by jury. Occasionally, to give an appear-

17. 147 Ill. 385, 390, 35 N.E. 723, 724 (1893).

18. *Id.* at 391, 35 N.E. at 724.

19. See *Heldmaier v. Rehor*, 90 Ill. App. 96, 98 (1899); *Herring v. Wabash Ry. Co.* 80 Mo. App. 562, 568 (1899); *Deacon v. Shreve*, 22 N.J.L. 176, 182 (1849).

ance of public participation in the administration of justice, such nations authorize legalized lynching by so-called "people's courts" consisting of prejudiced and impassioned mobs who vent their hatred and envy upon hapless persons who are placed in their hands to be done to death. In a world where such practices are permitted, we have every reason to be proud of our American system of government. It calls upon citizen jurors, during the consideration of a case, to disregard every trace of bias, prejudice, sympathy or any other emotion that might affect their decision, and to decide the case solely upon the law and the evidence.

Thomas Mann, the famous German novelist, said that democracy is the political expression of Christianity. Respect for the rights of individuals is the basis for the Bills of Rights in our several Constitutions. One of the rights guaranteed to a citizen is the right of trial by jury. The Florida Constitution requires that this right shall remain inviolate forever. The "Juror's Creed," quoted above, states superior ethical standards, and invokes the Golden Rule. These ideals appeal to the loftiest aspirations of mankind, and the highest character is required of those persons who are chosen to perform the governmental functions that democracy has established to perpetuate these ideals.

The responsibility that is placed upon a jury may be greater than any person alone is ever called upon to bear. As this is written, a jury of twelve citizens is deliberating in a jury room in the Dade County Court House, considering the fate of the accused in a first degree murder case.

The accused in this country has the right to a fair trial at the hands of his fellow citizens. We all have the responsibility of seeing that our jury system is preserved and maintained inviolate, that jurors are chosen according to law, comfortably accommodated during their service, and properly informed as to their duties before being placed in a jury box and instructed as to the law in the trial of a particular case.

Indeed, there is no greater service than a citizen can render to his fellow citizens or to his country than to serve upon a trial jury, and bring in a verdict that speaks the truth. All citizens should be proud to serve in courtrooms where the conduct of every person is inspired by the words: "We who labor here seek only truth." These words are inscribed above the bench upon the wall of each of the courtrooms of the Eleventh Judicial Circuit.

The late Charles Evans Hughes, Chief Justice of the United States said:<sup>20</sup>

We are here not as masters, but as servants, not to glory in power, but to attest our loyalty to the commands and restrictions laid down by our sovereign, the people . . . in whose name and by whose will we exercise our brief authority. If as such representatives we have, as Benjamin Franklin said—'no more durable pre-

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20. Charles Evans Hughes, before a joint session of the Senate and House of Representatives of the United States, March 4, 1939; Merlo J. Pusey, *Charles Evans Hughes* (New York: MacMillan Co., 1951), p. 783.

eminence than the different grains in an hour glass—we serve our hour by unremitting devotion to the principles which have given our Government both stability and capacity for orderly progress in a world of turmoil and revolutionary upheavals.

. . . If we owe to the wisdom and restraint of the fathers a system of government which has thus far stood the test, we all recognize that it is only by wisdom and restraint in our own day that we can make that system last. If today we find ground for confidence that our institutions which have made for liberty and strength will be maintained, it will not be due to abundance of physical resources or to productive capacity, but because these are at the command of the people who still cherish the principles which underlie our system and because of the general appreciation of what is essentially sound in our governmental structure.

No citizen deserves more appreciation from his fellowmen than the juror who by his loyal service insures "that this government of the people, by the people and for the people, shall not perish from the earth."