

# Top 5 Things Jurors Aren't Told

By Scott Callahan

Let's face it, most people's stomachs turn when they see a jury summons arrive in the mail. Common sentiments include: Can I get it postponed? How can I get out of it? Maybe I'll just say something crazy or be really quiet so I don't get picked.



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Lawyers and judges know that jury duty can be frustrating. As a trial lawyer, I've heard it all and I completely understand. You have to miss work. Juror pay is not enough. You have to fill out information cards asking personal questions. And if you actually get picked to serve on the jury, it is possible to find yourself at the courthouse for days, weeks, or in rare circumstances, even months.

I can tell you from firsthand experience, though, that the people who actually serve on juries change their minds in the end. I often hear how glad jurors were to have served and how important, educational, and invaluable their experience proved.

Jurors develop a unique bond with one another during a trial. They become a tribe. In a criminal trial, jurors together have the power to decide if another human being should go to jail, and even the power to decide life or death. In a civil trial, they have the power to determine liability and award money damages.

In this column, I'm focusing on civil cases, which usually involve disputes between individuals and/or organizations. A civil lawsuit can be filed by or against an individual, business, or government.

In a civil suit, jurors aren't told certain things because the law prevents it. As lawyers, if we divulge these basic facts, we run the risk of sanctions, a mistrial, or having the jury's decision reversed by an appeals court.

But, the question is, shouldn't jurors know the whole truth and nothing but the truth? You decide. Here are five basic facts jurors aren't told during a trial:

## ***Insurance***

During trial, the parties aren't allowed to tell the jury about insurance. This includes the defendant's auto insurance, malpractice insurance, commercial liability coverage, or excess policies.

Why not? Because the law requires that jurors not let "bias, prejudice, or sympathy play any part in their decision." In other words, the verdict should be based on the facts, evidence, and damages. It should not be results-oriented or based on whether insurance will pay the plaintiff's claims.

However, when the parties are forbidden from mentioning the word insurance, it's like the elephant in the courtroom. While it's obvious to some jurors that there's insurance (i.e. the defendant is represented by a lawyer hired by the insurance company), other jurors are left wondering if a verdict will have to be paid by the defendant personally.

### ***Comparative Negligence***

A jury verdict for a plaintiff will be reduced by the percentage of his or her fault. So, when the jury fills out their verdict form at the end of the trial, they are asked to consider the negligence of the plaintiff and all defendants. They can allocate fault as they see fit as long as it totals 100 percent.

For example, assume that a jury finds a plaintiff 40 percent negligent and the defendant 60 percent negligent. And, the jury verdict is for \$100,000. In this scenario, the defendant must only pay \$60,000.

### ***51 Percent Rule***

If a jury finds a plaintiff at least 51 percent negligent, then the plaintiff recovers nothing. Using the prior example, the plaintiff would recover none of the \$100,000. This is the case even if the jury believes the defendant was 49 percent responsible for what happened.

### ***Settlement negotiations***

The jury is not allowed to know about any settlement negotiations between the parties. This includes any demands, offers, or any settlement communications.

Most cases go to mediation before trial. If the mediation is unsuccessful and the case does not settle, all communications during the mediation are confidential. In fact, the judge doesn't even know what happens at mediation. Instead, the judge will receive a statement that the case either did or did not settle at mediation.

### ***Changes to the Verdict***

Most jurors are not aware that judges have the power to change a jury's verdict or order a new trial. In civil cases, the judge can reduce the award, add to the award, or set the verdict aside and order a retrial based on the evidence. These instances are relatively rare simply because judges typically do not want to disturb a jury's verdict.

However, what is more frequent are instances in which verdicts are reduced because of statutory limits in certain types of cases involving medical malpractice and claims against governmental entities. So, while jurors may think they are awarding a certain amount, it may actually be less depending on the caps.

Keep in mind that every case is different. And, of course, the law and the evidence heard by jurors differs based on the type of dispute involved.

So, the next time you receive a jury summons, try to leave room for the possibility that the experience could be an invaluable one for you. I can assure you it is a very important time for the parties standing trial. And, the jury system doesn't work without jurors like you.

*The information in this column is not intended as legal advice, but to provide a general understanding of the law. Readers with legal issues, including those whose questions are addressed here, should consult attorneys for advice on their particular circumstances.*

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