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A VIEW FROM THE BOX: THE LAW PROFESSOR AS JUROR

RICHARD H. McADAMS*

I. INTRODUCTION

On October 19, 1992, I was selected as a juror for a civil trial in the Circuit Court of Cook County. I had never previously served as a juror, and being a lawyer and a law professor, I had no expectation of ever being selected for the role. Although at first I found myself acting as an outside observer, critiquing the lawyers and judge and evaluating the applicable law, I ultimately had to embrace and did embrace my role as finder of fact.

Few legal academics are permitted this first-hand view of the legal process, and except for the occasional, guarded comment in a publicized case, it is rare for jurors to report the process of their deliberations. I decided to record the experience. Although entirely anecdotal, I thought it might prove of some use to those involved in the heated debate over tort reform and the desirability of the civil jury.1 I entered this experience with some skepticism of the civil jury based on admittedly meager observation of juries in complex antitrust trials.2 But I left the experience with the belief that juries may be quite good at resolving factual issues within their personal experience. I also thought this reconstruction might interest those practitioners and legal psychologists who worry

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1. Some observers blame the tort system in general and irrationally high jury verdicts in particular for a crisis in the market for liability insurance. Interestingly, in reaching such a conclusion, the federal government’s Tort Policy Working Group reviewed jury award data from two jurisdictions and one was Cook County, Illinois. See TORT POLICY WORKING GROUP, REPORT OF THE TORT POLICY WORKING GROUP ON THE CAUSES, EXTENT AND POLICY IMPLICATIONS OF THE CURRENT CRISIS IN INSURANCE AVAILABILITY AND AFFORDABILITY 35-42 (Feb. 1986); TORT POLICY WORKING GROUP, AN UPDATE ON THE LIABILITY CRISIS 32-41 (Mar. 1987). See generally VERDICT: ASSESSING THE CIVIL JURY SYSTEM (Robert E. Litan ed. 1993); Andrew Blum, Debate Still Rages On Torts, NAT’L L.J., Nov. 16, 1992, at 1, 32 (listing and describing sixteen recent studies on the costs of tort law); Michael J. Saks, Do We Really Know Anything About the Behavior of the Tort Litigation System—and Why Not?, 140 U. PA. L. REV. 1147, 1225-80 (1992).

2. I refer to two cases, one real and one simulated. I worked extensively on an antitrust case that culminated in a ten-week trial, in which the jury heard evidence about intricate financial and legal events that occurred over a ten-year period. After the verdict, in preparation for trying a related case, we interviewed the jury as to the basis for its decision. I also participated in an antitrust conference in which a fictional "rule-of-reason" case was tried before a mock jury; with the other participants, I observed this jury deliberate via closed circuit television.
about how juries discuss and resolve disputes, as an unusual, if unscientific, opportunity to get inside the "mind" of this group entity.  

II. BECOMING A JUROR

Shortly after arriving at the Daley Center, a bailiff took a group of potential jurors including myself to the courtroom of Judge Howard Miller. When Judge Miller entered, he gave us a detailed explanation of the trial process and what was expected of jurors. He briefly described the case: a civil dispute based on an automobile accident. He admonished us that jurors should not discuss the case among themselves before deliberations began or with anyone before the case came to an end. Eventually, the clerk called twelve potential jurors to the jury box. Judge Miller began voir dire of the first four jurors, but permitted the lawyers to add their own questions. When the parties exercised a peremptory challenge, the clerk would call a new name to replace the excused juror. In selecting this first slate of four acceptable jurors, the plaintiff used three of his five peremptory strikes; the defendant used two. At this point, the clerk called my name.


4. He then listed the lawyers, parties, and witnesses to determine if anyone had a relationship that would compromise their objectivity. Judge Miller took some time to explain the basis for this standard admonition. He said that premature discussion might lead jurors to ignore or discount evidence offered after they thought they had reached a consensus on the case. He also warned that individuals who we told of the case would express views that might influence our decision, even though such people lacked actual observation of the witnesses and exhibits. This explanation was the first of several instances in which Judge Miller acted, in my view, to create among jurors and witnesses an understanding of and respect for the system of justice of which they were a part.

5. If unclear from the form we filled out, Judge Miller would clarify the potential juror's occupation, and then would inquire as to the occupation of the individual's spouse or children, if any. He would end with a series of questions, to the best of my recollection as follows:

Will you listen to the evidence and decide the facts based on that evidence? Will you follow the instructions I give you as to the law applicable to this case? Will you deliberate with your fellow jurors to reach a verdict in this case? Will you sign the verdict? If the plaintiff proves the allegations of his complaint by a preponderance of the evidence, will you enter a verdict for the plaintiff? If the plaintiff fails to prove the allegations of his complaint by a preponderance of the evidence, will you enter a verdict for the plaintiff?

The last question served to make sure the individual was not just mindlessly answering "yes."

6. The plaintiff struck (i) an insurance company executive, (ii) a Chicago police officer who had been civilly sued on three occasions including once for a traffic accident, and (iii) a retired school bus driver who never had an accident in 17 years. The defendant struck (i) an unemployed woman.
After I took my seat in the jury box, Judge Miller began the questioning. Referring to my jury form, he asked where I was a law professor (Chicago-Kent College of Law), how long I had been there (in my third year), and what classes I taught (contracts, criminal, and law & economics). He then asked me the same series of questions he asked everyone, although with his voice and eye contact, he placed greater emphasis on the question asking whether I could follow the court’s instructions on the law. Having no problem with the role of juror, I gave the appropriate responses. Addressing me as “Professor McAdams,” the lawyers asked me various questions about my experience as a practitioner. They asked a few questions of the juror seated directly behind me, and then each declared, to my surprise, that they had no problems with this panel of jurors.

Judge Miller told the four of us to go to the jury room where we waited as the other eight jurors and two alternates were selected.

III. THE TRIAL

On Monday afternoon, the bailiff provided us with pencils and numbered notebooks for taking notes of the evidence. We took our seats in the jury box to hear opening arguments.

Plaintiff’s lawyer first introduced us to the parties: his client Darren and the defendant Elmer. The parties were both male, both white, but it was impossible not to notice immediately how the case implicated ageist stereotypes: Darren was as obviously young as Elmer was old. We would learn that their ages were 17 and 71 at the time of the accident. In a case that seemed to me to be a classic American lawsuit—the collision who was raising several of her deceased daughter’s children, and (ii) a male (political science?) graduate student who was working part time as a bartender. For those interested in the demographics, the three the plaintiff struck were white males; the female the defendant struck was black and the male was Arab. Before my name was called, no one was excused for cause.

8. Plaintiff’s lawyer asked me how long I practiced (3 1/2 years), where (Morgan, Lewis & Bockius), what type of law (commercial litigation with emphasis on antitrust), and whether I had tried a case (no). He asked me if I had practiced any tort law. I explained that I had once represented pro bono an uninsured motorist being sued by an insurance company who had paid a claim to a bicyclist that the motorist had struck. He asked me if I had any negative views about plaintiff’s personal injury lawyers and I said I did not. The defendant’s lawyer asked me where Morgan, Lewis & Bockius was (Philadelphia) and elicited the fact that I had clerked for a federal judge for a year after law school.

9. Consequently, I have no specific knowledge of how the other jurors were selected. In the end, the jury was composed of ten men and two women. Eight of the men were white and two were black; one of the women was black and one was white. I believe I was the youngest at 32 years; a man who said he was 80 years old was undoubtedly the oldest. I estimate the average age was 48. I would guess that all of the jurors were working or middle class.

10. We were not permitted to keep the notes when we were discharged, so my reconstruction of the trial is based on my memory, which I began recording in writing two days after the trial ended.
of two automobiles—we were presented with a collision between generations: a 17-year old driving to a roller-skating rink with a girlfriend in his mother’s red Trans Am, and a 71-year old and his wife driving home in their four-door Cadillac from dinner at a Senior Citizens Center.

In opening statements, plaintiff’s lawyer (“PL”) stated that the evidence would show that, in July of 1990 at about 8:20 p.m., Darren and Elmer, travelling in opposite directions along the same four-lane road, collided at an intersection. PL said that Elmer was negligent and caused the accident by crossing over into Darren’s lane as he began a left turn in front of Darren. Showing us photographs of the two cars taken after the accident, PL stated what he would emphasize throughout the trial: that Elmer’s Cadillac was not crushed evenly across the front as would be the case in a direct, head-on collision, but was somewhat more crushed on the front right side than the left, as would occur if Elmer were turning left in front of Darren at the time the collision occurred. PL then described the serious injuries Darren suffered: two broken arms, a broken jaw, one lost tooth, and other dental injuries requiring four root canals.

Defendant’s lawyer (“DL”) said that Darren was at fault in causing the accident. He said that the evidence would show that Darren was “speeding and weaving” and that as he approached the intersection going west, he attempted to “shoot the gap” between two cars ahead of him also going west: one going straight in the curb lane and one turning left from the center lane. He also said the evidence would show, contrary to plaintiff’s claim, that Elmer never crossed into Darren’s lane. Referring to the same kind of photographs as PL had showed us, he said that the damage revealed that the accident had been a direct, head-on collision.11

We heard testimony on Tuesday, Wednesday and early Thursday.12 Darren testified that the accident occurred on a Friday evening during the summer after he graduated from high school. After getting off work, he met about nine other friends at a hot dog stand, where they planned to drive to a roller skating rink. Darren did not know exactly how to get to the rink, but planned to keep in touch with one of his friends who did by a “CB” radio. He conceded that he was speeding as he traveled west

11. Although it is sometimes said that jurors make up their mind after hearing opening statements, I certainly did not, nor did I detect that others jurors were particularly swayed by the statements.

12. To condense the presentation, I have organized the description of the evidence around the issues of liability and damages. The actual order of the witnesses was as follows: Plaintiff called (1) the female passenger in Darren’s car; (2) a police officer who arrived at the scene after the accident; (3) Darren’s mother; (4) the orthopedic surgeon who treated Darren; (5) Darren; and (6) the periodontist who treated Darren. Defendant called (1) Elmer; (2) Elmer’s wife; (3) the court reporter; and (4) the “independent witness” to the accident.
toward the fateful intersection. The posted limit was 35 m.p.h; he estimated his speed at 40 m.p.h. Darren said that he did not see Elmer’s car until he was very near the intersection and then spotted it partly in his westbound lane. He hit his brakes before colliding with Elmer’s car. Darren said that the collision occurred entirely in his westbound lane.¹³

On cross-examination, DL asked Darren how fast he was going when he was nearing the intersection before he hit the brakes. Darren said he was going 40 m.p.h. Something like the following exchange ensued:

Q: “Didn’t you testify that you were going 40 m.p.h. at the time of impact with the defendant’s car?”
A: “No, I was going 40 m.p.h. before hitting the brakes.”
Q: “Didn’t you just tell your attorney differently?”
A: “No. I told him I was going 40 m.p.h. before hitting the brakes.”

Later, DL called the court reporter to testify as to what Darren had actually said on direct examination.¹⁴ PL’s question was worded in a more complex manner, but the gist of it was clearly as follows: “How fast were you going at the time your car collided with the Cadillac?” Darren’s answer was: “About 40 m.p.h.”¹⁵

Elmer, of course, told a different version of the accident. Elmer said that when he reached the intersection of the accident, the light was red and he came to a stop in the center eastbound lane with his left turn signal on. When the light turned green, he noticed a car facing him in the center westbound lane that was also signaling to turn left. He stated that he “edged up” straight into the intersection five or six feet, yielding to oncoming traffic in the westbound curbside lane, but did not move at all into either westbound lane.¹⁶ Elmer said he was stopped when he saw a red car coming right at him “like a shot.” He estimated the speed of the red car at 60 m.p.h. The impact caused his car to spin 180 degrees to

¹³ The police officer who arrived at the scene after the accident testified that most of the debris from the two cars was in the westbound lane.
¹⁴ The reporter was called the day after Darren testified. She briefly explained the process of transcription and said that she had used that process to produce an accurate transcript of Darren’s testimony.
¹⁵ After the reporter testified, Darren was recalled and he conceded the accuracy of the reporter’s transcript. On the original cross-examination, DL also asked Darren about switching lanes, and Darren stated that as he approached the intersection, he was initially in the curb lane but moved into the center lane. DL attempted to impeach Darren’s testimony with various purported inconsistencies with Darren’s deposition testimony, but Judge Miller repeatedly sustained objections that the prior testimony was not inconsistent and not impeaching.
¹⁶ On direct, the police officer who arrived at the scene testified that he interviewed Elmer who said that he was “beginning” to turn left when a car drove into him. On cross-examination, the officer admitted that his notes were the basis for his recollection, and since they recorded Elmer as saying that he was “waiting” to make a left turn, that was more accurate than his prior testimony that he was in the act of turning left.
face west in the eastbound lane. 17

Elmer's wife testified that her attention was focused on a White Sox game being broadcast on the radio. She did recall, however, that Elmer came to a stop at the red light in the intersection and that he remained stopped until he was hit by plaintiff's car. On cross-examination, PL seized on this inconsistency with Elmer's testimony 18:

Q: "Your testimony is that your husband did not move his car when the light turned green?"
A: "That's right."
Q: "Your husband did not edge into the intersection five or six feet?"
A: "No, he remained stopped."

DL called an "independent witness," a man I'd guess to be 30 years old, who saw the accident but knew neither party. He said that on the night in question he was travelling in the same direction and ahead of Darren. He first became aware of Darren when he noticed in his rear view mirror a red car "weaving" through traffic. Upon seeing the car, he was worried that "something might happen." The red car passed him at a speed he estimated at 50 m.p.h. 19 After clearing the crest of a small hill, 20 the witness observed Darren further ahead, nearing the intersection in the curb lane. He said that there were cars in front of Darren in both westbound lanes; the car in the curbside lane was proceeding straight, and a cream-colored car in the inner lane was signaling to turn left. As the cream-colored car turned left, Darren shifted left into the inner lane, "shooting the gap" between that car and the car in the curbside lane. Darren struck the Cadillac in the intersection. On cross-exam-

17. On cross-examination, PL attempted to impeach this testimony with various inconsistencies with Elmer's deposition testimony, but Judge Miller repeatedly sustained objections that the prior testimony was not inconsistent and not impeaching. PL ended his cross-examination with a question like: "Isn't it true, that you actually began your left turn and entered the westbound lane, and that your present testimony is a fabrication?" Judge Miller sustained DL's objection to this question.
18. Because Elmer's wife was not allowed to hear Elmer's testimony, she had not heard him say that he edged straight into the intersection five or six feet.
19. One other witness gave testimony relevant to speed: Darren's date and passenger at the time of the accident. Her testimony was largely unhelpful because she said that she did not have any recollection of the accident, nor of traveling the several blocks before the intersection where the collision occurred. On cross-examination, she admitted that several blocks before the accident, during a time for which her memory was intact, Darren was traveling at nearly 50 m.p.h. where the maximum was either 35 or 45 m.p.h. She did not recall Darren "weaving" in traffic although he changed lanes several times.
We were left to wonder as to the cause of her memory lapse. Perhaps Judge Miller had ruled evidence of her injuries from the accident were inadmissible, and the plaintiff wanted us to infer that those injuries were substantial.
20. The midwest is rather fiat. For people from other parts of the country (like myself), you should know that midwesterners have an acute sense of grade that permits them to detect, without instrumentation, "hills" where non-midwesterners would detect only a slight grade increase followed by a slight grade decrease. Having seen photographs of the intersection, I can state that this case represents just such an instance.
ination, PL asked the witness if at any time he saw Darren cross over into the eastbound lane. The witness said "no" and conceded that the accident must have occurred in the westbound lane. On redirect, however, the witness stated that the cream-colored car turning left obscured his view of the actual collision and he couldn't say for certain where the accident occurred.

Darren's mother provided a comprehensive account of the injuries Darren suffered from the accident. Upon arriving at the hospital emergency room, she found Darren's face covered with blood from wounds to his mouth and forehead. Medical personnel eventually placed a bar in his mouth to hold his broken jaw, and placed his right arm in a cast. She spent Friday night with Darren in his hospital room, although they both had trouble sleeping. She took Darren home on Sunday. Early in the week, Darren was reaching to wash his back with his left arm when he heard a snap and felt pain in that arm. Ultimately, the doctor determined that Darren's left arm was also broken, and he now had to wear a cast on both arms. In this state, his mother testified, Darren could do very little for himself, including caring for his own personal hygiene, but depended entirely on her. Darren's mother then testified as to the receipt of various medical bills for Darren's emergency treatment and follow-up care including root canals and special dental work. The bills totalled almost $10,000. Darren and two doctors confirmed and supplemented this testimony. In particular, a periodontist testified to the extensive

21. PL also asked the witness why he testified that Darren was going 50 m.p.h. when at his deposition his testimony was "40 to 50 m.p.h." The witness simply said he thought it was closer to 50 m.p.h. PL asked the witness how fast he was going when Darren passed him. He stated that he was going 30 m.p.h., and in the next question PL emphasized that he was traveling below the speed limit.

22. She began by explaining how she first heard of the accident; she played back her telephone answering machine and heard her father's message that Darren was in a nearby hospital emergency room.

23. Darren testified that he hit his forehead on the windshield because, although he wore his lap belt, he was not wearing his shoulder belt.

24. I did not notice the reaction of the other jurors, but when Darren's mother uttered the word "snap," I felt my face involuntarily twitch as I contemplated the scene she described.

25. When presented with each bill sent to her, she described the treatment the bill was for and its amount. In each case, when PL asked "Was that bill paid?," Darren's mother answered affirmatively. Since PL never asked whether she paid the bill, I interpreted the exchange as a clever way of skirting the fact that an insurance company paid the bills. During deliberations, a few jurors also speculated that insurance may have paid the bills, so I'm not sure if the law's calculated deception on this matter has its intended effect.

26. Darren added that, after hitting the steering wheel, his lower row of front teeth were pushed back and laying essentially flat in his mouth. He said that he had been wearing braces at the time of the accident and the braces may have saved many of his teeth. An orthopedic surgeon testified to his opinion that Darren's left arm broke several days after the accident as a direct consequence of a weakening caused by the accident. He also confirmed the more obvious fact that Darren's right arm broke as a consequence of the accident, testified that Darren's injuries were painful, and stated that it
dental work he performed on Darren, including the details of four root canal procedures. 27

Plaintiff’s closing argument centered on one key factual claim: that Elmer was at least partly in the westbound lane when the accident occurred. PL again showed us photographs of the cars, claiming that the damage showed an impact while Elmer was turning left in front of Darren. He also claimed that the fact that the Cadillac spun around 180 degrees proved that it was struck at an angle and not directly head-on. PL argued that the evidence did not show that Darren’s lane changes constituted “weaving” and that, in any event, the accident was caused by, and would not have happened but for, Elmer being in the wrong lane. For damages, he requested $10,000 for medical bills, $1,600 for disfigurement (from a lost tooth), $80,000 for pain and suffering, and a small sum for lost wages.

Defendant’s closing argument again denied that the photographs showed anything other than a direct head-on collision. DL argued that the angle of impact suggested by PL would have caused greater damage to the right side of Elmer’s car than occurred. DL said that Darren caused the accident by speeding, weaving, and “shooting the gap,” ultimately striking Elmer in the eastbound lane. For the first time the jury heard the concept of comparative negligence: DL said the judge would instruct us that if Darren were more than 50% at fault for the accident, he could not recover. DL said that we should find that Darren was entirely responsible for the accident, or at least far in excess of 50% responsible.

Judge Miller’s charge took 20 to 25 minutes. The instructions included the comparative fault concept, and explained that we had to return our verdict on one of three verdict forms depending on our resolution. 28 Judge Miller stated that he would provide us with a written copy of the instructions as well as certain exhibits admitted into

27 The procedure the periodontist described certainly sounded painful, but PL made a minor tactical blunder when he asked: “Is this procedure painful?” The doctor proudly proclaimed that he took care to minimize pain, and that he believed he succeeded. The periodontist also stated that Darren lost one tooth as a result of the accident.

28 If we found defendant was entirely at fault we were to return a verdict for plaintiff and specify damages on Verdict Form A. If we found defendant more than 50% but less than 100% responsible, then we were to return a verdict for plaintiff on Verdict Form B, and deduct from damages an amount proportionate to the degree of plaintiff’s fault. If we found defendant not at fault, or that the plaintiff was more than 50% at fault, then we were to return a verdict for defendant on Verdict Form C.
evidence.29

IV. DELIBERATIONS AND VERDICT

To begin at the end: we returned a verdict for defendant. All the jurors seemed to believe that the defendant was, despite his testimony and that of his wife, partly in the westbound lane at the time of the collision. Almost all believed that his partial intrusion in the lane of oncoming traffic was negligent, and made him partly at fault for the accident. But after about an hour and a half of deliberations, we decided that plaintiff’s speeding and abrupt lane change were also negligent, and made him more than 50% responsible for the accident.

Almost everyone who hears I was on a jury asks me if I was the foreperson. I was not. I have no idea if I would have been otherwise, but I intentionally remained silent during deliberations until the rest of the jury elected a foreperson. I wanted to avoid my being elected out of concern (a) that jurors would defer too much to a law professor foreperson, and (b) that the judge and losing attorney might believe that I had exercised excessive influence over the jury if I were foreperson. In the end, I learned that at least the former fear was misplaced: these jurors, at least 10 of whom were older than I, had plenty to say and with minor exceptions (I discuss below), paid me no more attention than any other juror. About 30 minutes after retiring, we elected a junior high school algebra teacher as our foreperson.30

To begin again, this time at the beginning: We did no deliberating for the first fifteen minutes, because we were sorting through the boxed lunches, each of us searching for the sandwich we had ordered. Group deliberation began when one juror, whom I will call Mr. Bush in honor of the campaign button he was wearing, decided to announce his view of the accident. He said he believed that Elmer had crossed over the double yellow line, but that he wasn’t convinced that Elmer was more than 50% at fault. Mr. Bush went to the blackboard at one end of our room, drew

29. After reading the charge, Judge Miller stepped down from the bench, and, standing behind the witness box, spoke to us in a more informal way about our duties. He stated that he could not explain the evidence to us or provide us with transcripts of testimony or any exhibits other than those he would give us at the outset of our deliberations.

30. The “election” went like this: During the first 30 minutes after we entered the jury room, a juror would occasionally state that some other juror, usually someone speaking a lot at the time, should be foreperson. For the first 30 minutes (and intermittently afterwards) there would be several conversations going at once, so it would be difficult to get everyone’s attention to approve or disapprove a foreperson. On what I believe was the third attempt at nominating a foreperson, the nominating juror, a gregarious man who had perhaps been the most socially engaging juror during breaks in the trial, spoke up loudly enough to capture everyone’s attention and nominated the algebra teacher. Nearly everyone expressed assent and no one expressed opposition.
the intersection where the accident occurred, and explained that he thought Elmer had edged into the oncoming lane because he saw that the cream-colored car ahead of him in that lane was also turning left and there were no cars behind it. Mr. Bush said that once Elmer edged into the oncoming lane, he was a “sitting duck” when Darren switched into the lane behind the cream-colored car and came speeding into the intersection.

Even before electing a foreperson, this was a pivotal moment in the deliberations, for although we “tested this hypothesis” against the evidence for much of the remaining time, we would ultimately agree to this view of the accident. And based on this view, we would assign relative responsibility for the collision.

We began discussing Mr. Bush’s interpretation by asking why he rejected Elmer’s account of the accident. We passed around the hotly disputed photographs and, upon scrutiny, it appeared that the plaintiff was correct: the damage to the right side of the front of the Cadillac was greater than the damage to the left. We also noticed for the first time a pronounced indentation in the front bumper of the red Trans Am that looked as if it collided with a corner of the Cadillac. After further discussion, there was a consensus that Elmer had moved over into the lane of oncoming traffic.\(^3\) Equally important for our ultimate decision, however, we did not think Elmer had edged over the line all that much. DL had been able to plausibly (though wrongly) argue that the accident was directly head-on for the very reason that the difference in damage to the left and right sides of the front of Elmer’s car (although observable) was not that great.

Although the jury quickly dismissed Elmer’s version of the accident as fundamentally in error, the jury never thought this conclusion might itself resolve liability. Various jurors expressed concern about Darren’s negligence while rejecting Elmer’s account. Moreover, our rejection of Elmer’s testimony and that of his wife did not taint them as dishonest individuals. PL had suggested in closing argument that Elmer might believe the testimony he gave, though it was inconsistent with the facts, and the jury seemed to agree. The jury also gave a charitable interpretation to the plain contradiction in the testimony of Elmer and his wife about

31. I believe three other facts were discussed that supported this conclusion: (1) that the Cadillac spun around as if hit from an angle; (2) that the independent witness at least at one point in his testimony seemed to believe the accident occurred in the westbound lane; and (3) that it was somewhat common for drivers making left turns at a four-lane intersection (with no left turn lane or arrow) to edge over into the oncoming lane when the only cars present in the lane are also turning left.
whether he “edged up” into the intersection five or six feet.\textsuperscript{32} The jury’s willingness to forgive inconsistencies was not limited to the defendant. The jury did not seem impressed by the internal inconsistency in Darren’s testimony regarding his speed, notwithstanding the drama of having a court reporter testify. Although he originally did testify that his speed \textit{at impact} was 40 m.p.h., the jurors seemed to accept that he really meant all along that he was going 40 m.p.h. before applying the brakes. And even though we thought Darren was going faster than he admitted, no one suggested that Darren was testifying other than to what he believed the truth to be.\textsuperscript{33}

The jury did conclude, however, that Darren was negligent for several reasons. Most obviously, he was speeding. He admitted to 40 m.p.h. in a 35 m.p.h. zone, but from the evidence, we believed he was going closer to 50 m.p.h.\textsuperscript{34} Second, we believed that Darren made an abrupt lane change to take advantage of the cream-colored car turning left. Although lane changes need not be negligent, the testimony that Darren had been speeding and quickly “weaving” from lane to lane suggested that Darren was driving in a dangerous manner for someone approaching an intersection. Elmer may have edged over into the oncoming lane because, at the time, no one was behind the left-turning cream-colored car. If so, a sudden lane change by Darren may have caught Elmer by surprise. Third, some members of the jury thought that Darren was negligent for not wearing his shoulder harness, as he had admitted;\textsuperscript{35} some jurors expressed doubt as to whether Darren was even wearing his lap

\textsuperscript{32} The wife said Elmer remained stopped when Elmer testified he rolled into the intersection. The only comment on this contradiction was that, because Elmer’s wife was listening to the radio and not really paying attention to the driving, she probably did remember the accident in the manner to which she testified.

\textsuperscript{33} Since the trial, some lawyers have expressed surprise that these inconsistencies did not affect our deliberations more. Upon reflection, I would say that we may have disregarded Elmer’s inconsistencies because his testimony was largely irrelevant to our determination of the facts. First, the same photograph that suggested that Elmer was in the oncoming lane of traffic also suggested that he had entered the lane only slightly. Second, the evidence of Darren’s negligence, discussed below, does not really depend on Elmer’s testimony. As to Darren’s inconsistency concerning his speed, I am confident that I would have used the inconsistency to impeach his testimony had I been the defendant’s lawyer, and yet, I believe that Darren had understood the original question to ask, as he remembered, how fast he was going when he applied the brakes. The jury seemed to appreciate that not every inconsistency proves dishonesty.

\textsuperscript{34} One juror noted that three witnesses placed his speed at 50 m.p.h. or greater: (1) Darren’s passenger recalled 50 m.p.h., although only at some distance before the accident; (2) the independent witness estimated “nearly 50 m.p.h.”; and (3) Elmer stated the speed at 60 m.p.h.

\textsuperscript{35} One juror, a Boy Scout leader, summarized the discussion on the blackboard with a list of the flaws of each driver:

\begin{tabular}{ll}
Elmer & Darren \\
\text{moved into} & \text{speeding} \\
\text{oncoming lane} & \text{lane change} \\
& \text{seat belt}
\end{tabular}
belt as he claimed, given that he cut his forehead on the windshield.\textsuperscript{36}

When we started discussing comparative fault, at least one juror argued that Elmer, although he was partly in the lane of oncoming traffic, was not actually negligent. This juror, who I will call Mr. Music in honor of his college major, gave an attention to the language of the judge's instructions worthy of a promising first year law student. Several instructions described relevant legal rules of the road, and said that we could consider the failure to abide such rules, in light of other facts, as evidence of negligence. Mr. Music read out loud the instruction stating the duty to yield when making a left turn, something along the lines of: "A driver turning left at an intersection must yield to all oncoming traffic sufficiently near the intersection to constitute a hazard." Mr. Music argued that Elmer did yield to the traffic in the oncoming curbside lane, and that at the time he edged into the oncoming center lane, the only car in that lane near the intersection was also turning left, and therefore not a hazard. Although I think Mr. Music failed to convince a majority of the jury that Elmer was not at all negligent—one juror (a Boy Scout leader) noted that it was inconsistent with "defensive driving"—I think he helped persuade many that Elmer was not as negligent as Darren.

I have summarized primarily the arguments and conclusions of the jury, but not so much the actual process by which these arguments were communicated and consensus reached. The process was both chaotic and detailed. We discussed a very large portion of the evidence, making frequent use of our notes.\textsuperscript{37} The foreperson, Mr. Bush, and the juror who I recall as a Boy Scout leader, were all extremely vocal. Three other jurors including myself made a few lengthy statements, several jurors made a handful of comments, and perhaps two made no comments at all.\textsuperscript{38}

In particular, Mr. Algebra took his role as foreperson seriously. When he saw the jury leaning toward the view that Darren was more

\textsuperscript{36} The photograph of Darren's car after the accident revealed two circular patterns of cracking in the windshield, so positioned as to suggest an impact from the heads of the two occupants. Certain members of the jury raised the seat belt issue as part of our general charge to consider the negligence of both parties, even though DL had not argued that Darren was negligent for failing to wear his lap or shoulder belt, and Judge Miller had not given any instruction on seat belt usage. Since the trial, I have learned why the argument and instruction were omitted: a torts scholar informed me that evidence of seat belt usage is not admissible in Illinois to show negligence. See Clarkson v. Wright, 483 N.E.2d 268, 270 (Ill. 1985).

\textsuperscript{37} Actually, at some point perhaps 45 minutes into the deliberations, someone suggested that we all spend some time reviewing our notes, and we all sat silently for a time looking for any evidence inconsistent with our deliberations up to that time.

\textsuperscript{38} Actually, by "comments" here I refer more to communications made to the whole group because it was clear that throughout this somewhat chaotic process, people would whisper thoughts to the person or persons sitting next to them.
than 50% at fault for the accident, he probed and tested the arguments people made for that conclusion, raised testimony or evidence that seemed to cut the other way, and generally played the role he himself termed as "devil's advocate." For example, he pressed us to consider, in deciding exactly what happened, the testimony about where the cars and debris were found after the accident; he also asked us to think about what Elmer might have done, in addition to staying in his lane, to avoid the accident.

The deliberations moved in a sometimes disorderly way from issue to issue, but when focused on a point, we often achieved an intensive analysis. For example, in discussing how far Elmer had progressed into the oncoming lane, we considered as relevant where Elmer's car was found after the accident. About this relatively simple factual matter, we discovered in our notes an inconsistency in the testimony of Elmer and the police officer who arrived on the scene, an inconsistency not noticed, or at least not explored, by either lawyer. In attempting to resolve this inconsistency, someone asked which way Elmer's Cadillac spun around after impact. At first we imagined, given an impact to the front right side of the car, a counterclockwise spin that would place the car in the position consistent with Elmer's testimony. But then Mr. Bush pointed out that if Elmer had turned his wheels to the left, the impact might push the Cadillac backwards into a clockwise turn, more consistent with the police officer's testimony. We never really resolved the discrepancy, but as with other issues, the jury eagerly sought to reconcile the evidence to tell a single, detailed story of the accident.

My role in this whole process was quite limited. Throughout the deliberations, several jurors asked me questions, usually aside from the group discussion, concerning puzzles of the legal process like why the depositions took place so long before the trial, the exact difference in Verdict Form B and C, whether we could infer anything from the fact

39. For example, someone raised the possibility, not mentioned by any witnesses, that Darren's view as he travelled west might have been obscured by the setting sun. This suggestion caused us to focus on the exact time of the accident, and we found substantial inconsistencies in the testimony. I eventually suggested that Darren would have told us if the sun had obscured his vision and we dropped the matter. As another example of intensive review of the evidence, the Boy Scout leader, who seemed to know a lot about cars, said that you could observe in the photograph of the interior of Darren's car that his cracked speedometer was stuck at 20 m.p.h., suggesting his speed at the time of impact. Several of us found the resolution of the photograph too imprecise to permit any judgment about the speedometer, but I was impressed at the attempt.

40. Although I previously noted that the case presented a possible clash of ageist stereotypes, the deliberations I heard were largely free of such thinking. On the one occasion I noticed a juror comment on the evidence prior to deliberations, I heard the quiet remark that Darren was "quite a young Turk." But this person did not speak during deliberations, and I heard no one else suggest that Darren's youth or Elmer's age were relevant in deciding the case.
that the defendant had not sued the plaintiff, and why the court reporter had been called to testify.\footnote{Most of the questions to me were asked by individual jurors, outside the group discussion. I was also asked whether Darren's passenger might have sued Darren for her injuries and whether there might be an appeal. After the verdict was signed, I was asked whether the medical bills may have been paid by insurance and what I thought of the lawyers.} On one occasion I exercised a modest policing role. Some jurors were trying to determine, given conflicting testimony, the exact time of the accident. Given testimony about when Darren left the hot dog stand, they thought they could determine how long it would take to drive to the scene of the accident by consulting a map. Unfortunately, this map was not part of the record; instead, there were several maps in the jury room because a juror who worked at a toll booth had, on the second or third day of trial, been kind enough to bring enough Chicago area maps for all the jurors. When reminded that the judge had told us to consider only the evidence in the case, and had apparently decided not to give us a map that had been entered into evidence, the few who were huddled over the map agreed it was out of bounds and quickly put it away.

At a point when the jury seemed to have made up its mind that Darren was more than 50% at fault, the foreperson, Mr. Algebra, turned to me and said something like: "The judge said we were supposed to rely on our own experiences to determine how to decide. Your experience is being a law professor. What do you think? Have we missed any important legal issue?" I told the jury what I thought: "No, I think we've zeroed in on exactly the issue we should be discussing: which party is more at fault. The issue really depends on our experience as drivers or as passengers in cars." I then went on to state that I agreed with how the jury seemed to be resolving that issue: that what Elmer did to cause the accident—edging into the lane of oncoming traffic under the circumstances in which he did it—was simply not as dangerous as what Darren did to cause the accident—speeding and abruptly changing lanes as he approached an intersection. In my view, Darren was driving very "aggressively," and that aggressiveness was largely the cause of the accident. This had been my tentative view before deliberations began, and I had grown more persuaded to this view as I had listened to the other jurors discuss the evidence.

A short time later we signed Verdict Form C to reflect our decision and signaled the Court that we had finished our deliberations. When we were called back into the courtroom to deliver our verdict, I couldn't help but notice that Darren, who had been conservatively attired for the entire trial, was now wearing rather colorful reflecting sunglasses on the
top of his head. Judge Miller read our verdict to the courtroom, and our job was complete.\textsuperscript{42}

\textbf{V. Reflections}

The role of juror did not come naturally to me. At first, I viewed the trial as an outside observer, trying to guess the arguments occurring at sidebar, and wondering what effect the lawyers' arguments and witnesses' testimony were having on other jurors.\textsuperscript{43} Even during deliberations, I found myself holding back, wishing to see what a jury is really like, rather than one corrupted by a lawyer and academic. But at some point I caught myself, and began to assess the evidence of this particular case rather than the legal strategy or policy involved. And eventually I did participate in the deliberations. My participation did not noticeably affect the outcome: I have been driving cars longer than I have been studying law and most or all of the other jurors have been driving cars longer than I. It was this experience that the jury appropriately consulted in resolving the case.

Perhaps I served on an unusual jury and should draw no lessons from it. I found the experience, however, to provide some evidence of the jury's ability to resolve questions of fact fairly and intelligently, at least for matters within their own experience. In the argot of personal injury cases, we were presented with an "attractive plaintiff," someone who suffered serious injuries as a result of an accident involving another party who was at least partly at fault. We rejected as false the defendant's version of the events, and found the defendant was in fact, by his negligent conduct, partly responsible for the accident. Nonetheless, we considered the evidence in detail, followed the court's instructions, and determined that we were obligated to return a verdict for defendant.

\textsuperscript{42} Before discharging us, however, Judge Miller stepped down from the bench and, standing behind the witness box, thanked us for our time and effort. He said he had observed us to be a very attentive jury, and hoped that we had obtained greater respect for the system now that we had learned more about its operation. In my view, Judge Miller succeeded in his exemplary efforts to make jury duty not just an obligation but an opportunity for civic education.

\textsuperscript{43} Since the trial, several lawyers have asked me to evaluate the lawyers and to assess how their performance affected the outcome. I have not emphasized the lawyers' performances in my account because (perhaps naively) I view our decision as the product of the evidence more than their advocacy. I do not recall much jury comment on the lawyers themselves, much less any suggestion that the winning attorney was "better" or more believable than the losing one. I believe the lawyers were rather evenly matched, but I think that PL, the losing attorney, was probably the more experienced of the two. I would note that both lawyers made many losing objections which at times seemed only to annoy the judge and to emphasize the relevance of the elicited testimony and that neither attorney was particularly successful at cross-examining the other party. Both attorneys consistently articulated a single view of the accident, although each asked a number of questions for which I perceived no evidentiary or tactical purpose.
I do not pretend that this experience replaces or even approaches the value of genuine social science study of the civil jury. My account is an unobjective story of one jury. Nonetheless, anyone capable of accurately recounting their observations, and perhaps especially legal academics, could add some worthwhile qualitative insights to the statistical literature if, on the occasions that present themselves, they record their experience as jurors.