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Thoughts From the Jury Box

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As I arrived home after another late night at the office, I reviewed the few items of mail that I received that day hoping that I received something of interest other than the typical monthly bills. I did indeed receive something of interest but not quite what I expected. It was a notice from the local courthouse indicating that my time had come to serve on a jury.

Could it really be so soon since the last time I received a notice for jury duty? It seemed like yesterday that I visited the courthouse — not as a trial attorney eagerly looking forward to conducting oral argument or examining a witness in court but as a prospective juror. My next reaction was analyzing what I may have done to prompt the jury duty notice. Did I make the "mistake" of voting in a recent election that placed me on the short list to be called for jury duty? Was the notice another benefit of home ownership along with maintenance obligations and paying real estate taxes?

I then carefully reviewed each of the permissible exemptions listed in the notice and considered the best arguments I could muster to fall within at least one of these exemptions so I could be excused. Surely, I thought, there must be some exemption for attorneys or, if not, then for any hard-working folks who cannot spare the time for a day of jury duty let alone several days serving as a juror for a trial. As I progressed through each reaction, Mrs. Servodidio was chuckling over my shoulder watching my desperation and thankful the notice was not addressed to her (at least this time).

Once I realized that none of the exemptions applied, the next thought was whether I should postpone the inevitable and hope that a future date for jury duty would be better timing than the present. None was. It was best to just accept my fate

and hope for the best. How tough could it really be? As I usually try to look at the bright side of situations, I thought that this might even be positive since it would give me a day away from the office to work without interruption.

The day arrived sooner than I expected or wished. So, I gathered as much work as I could take with me in my briefcase and, armed with cell phone and Blackberry, headed to the courthouse. Upon my arrival, I noticed a neighbor and engaged in some friendly conversation. As she was nervous about being selected for jury duty, I reminded her that she had a wonderful excuse — she had young children at home that needed her care; she could, no doubt, be excused. Of course, the irony of the situation was apparent to me — here I was coaching a neighbor on how to get out of jury duty yet I had no antidote for myself.

We watched a film explaining the role of the juror in our system of justice, and then I heard my number called. We marched single file into the courtroom, and it dawned on me that a day of uninterrupted work was not to be my fate.

The judge explained that the pending case was a felony case involving alleged aggravated assault and that the trial was scheduled for the better part of the next two weeks. The judge indicated that any prospective jurors who believed that such a time commitment was an undue hardship should get in line to explain their situation privately to the judge and trial counsel. As I am sure you can imagine, nearly all of the juror pool moved quickly into line — my neighbor and I included.

I quickly began to rehearse my arguments to be excused from this trial. I serve as the chairman of our firm's employment, labor, benefits, and immigration practice group, which requires intense daily attention. Also, I was scheduled to take and defend a number of depositions the next week in Chicago as the lead trial attorney in a case with a very tight discovery deadline, and the trip had been organized with the opposing counsel around my schedule. Surely, I thought, no other prospective juror had better reasons.

As I surmised, my neighbor was easily dispatched from duty. That encouraged me, so when it was my turn I walked briskly to the judge and presented my case with confidence in the anticipated outcome. As I argued my request to be excused, the judge asked me to understand her predicament — she could not require all of the factory workers to serve on the jury and excuse the lawyers — it did not send the right message to the community about one's civic duty. So, the judge "asked" me to remain in the juror pool. A lesson in humility and civics — something that I did not welcome at the time, though one I certainly needed.

Well, before I had much time to reflect on what just happened, my juror number was called as one of the 14 persons selected to move into the jury box. As a trial attorney, I realized my predicament — if I were not stricken by the judge, prosecutor or the defense counsel, I would be one of the jurors assigned to this criminal trial. The judge commenced voir dire.

The questions asked of the prospective jurors included: "What television programs did we watch?" and "How did we obtain news on current events?" The responses were surprising to me. I had no idea that, seemingly, the vast majority of folks regard reality television shows as their primary source of entertainment. I also was disturbed to learn that few of our fellow citizens read newspapers or magazines to obtain news of current events. When it was my turn to answer these questions, I noted that I am far too busy to watch much television (hoping that this truthful response would remind the judge as to why I should have been excused from serving on the jury). I also was in the distinct minority when I indicated that I typically read *The Wall Street Journal* and *Philadelphia Inquirer* each day to obtain my news. Clearly, I was not the typical type of juror yet my answers to the voir dire did not prompt any of the attorneys to strike me from the jury. Foiled again.

Next, the judge asked the jury pool whether any of us would hold it against the criminal defendant if he chose to not testify in his defense and to explain the rationale for our response. As luck would have it, the judge asked me first of all of the jurors to answer this question. My legal instincts immediately kicked in as I debated my response in the few seconds I had to consider my answer to this question. My initial thought was that if I stated I would hold the criminal defendant's unwillingness to testify in the case against him this should get me excused from jury duty and I could then get back to my duties at work. As I reflected on this response, I was reminded that, upon being admitted to practice law, I swore an oath to uphold the Constitution of the United States of America, which includes the Fifth Amendment — the right to remain silent and not "be compelled in any criminal case to be a witness against oneself."

Surely, I could not answer this question in a manner inconsistent with my oath as well as my belief in our justice system. So, I answered the question truthfully and explained to the judge and those in the courtroom about the import of the Fifth Amendment. As soon as I finished answering the question, I resigned myself to serving on this jury since it was not likely anyone would strike me now. Shortly thereafter, the voir dire ended and the judge congratulated us by announcing that the 14 people in the jury box were the impaneled jurors for this criminal case. Within minutes, opening statements started and the trial was under way.

After hearing the testimony of the victim and an eyewitness to the assault, it was readily apparent that this was a case of recanted testimony. Only a few days after the assault occurred, the victim was interviewed by police and gave a signed statement, under oath, implicating the defendant. Similarly, an eyewitness to the assault, a close friend of the victim, also gave a signed statement implicating the defendant only a few days after the assault. Now, in court, both the victim and the "eyewitness" testified that they did not recall who actually assaulted the victim, they did not remember implicating the defendant in their signed statements, and they did not want to participate in convicting someone who they could now not be absolutely sure was guilty of the crime.

As I listened to this testimony unfold, I considered how I might handle hearing "surprise" testimony from key witnesses if I were trial counsel. I analyzed how to admit the prior inconsistent statements into evidence under the applicable hearsay rules. As the trial progressed, I used each witness as a means to silently practice my skills at direct and cross-examination and the use of the rules of evidence for asserting appropriate objections. Much to my surprise, I was thoroughly enjoying the experience of participating in a trial as a juror.

Of course, the real challenge was still timely serving my clients and getting my work done either early in the morning each day or late at night after jury duty concluded for the day — all without the ability to use a Blackberry during the day because of courtroom rules. Nevertheless, I started to look forward to the daily trial proceedings and could not wait to get to the deliberations with the other jurors as we weighed the evidence after the close of the case.

Finally, the prosecutor and the defense counsel made their closing arguments. The judge then charged the jury with a summary of the applicable legal principles and the meaning of "reasonable doubt" in a criminal case. The judge indicated that it was time to identify the two alternate jurors who would not be able to participate in the deliberations. Much to my chagrin, my juror number was selected and I was identified as an alternate juror. As the 12 "real" jurors departed to the jury room to deliberate on the case, I was left to reflect on the process.

My initial reaction was one of disappointment, as I wanted to see the process through to the end now that I had participated as a juror for several days in the trial. Certainly, I thought, I could assist in the deliberations with my legal training and the ability to explain the significance of prior inconsistent sworn statements. Once again, the irony of the situation was apparent. In only a few short days, I moved from trying to avoid jury duty to wanting desperately to serve.

After only an hour or so of deliberations, the jury returned to the courtroom with a verdict. I stayed to listen to the verdict. The jury foreman announced that the defendant was found not guilty. The judge then thanked the jury for its service and dismissed us. Afterwards, I approached one of the members of the jury and inquired about the deliberations since I wanted to understand what the members of the jury relied on to reach their decision. The response I received was stunning.

The jury understandably struggled between the weight to give the prior sworn statements of the key witnesses implicating the defendant and the recanting of that testimony in the courtroom. Ultimately, the jury concluded that the witnesses and the defendant came from the same part of the county — where in their view, members of the community were perceived to handle justice in their own way, "on the streets," so to speak. Therefore, the jury reasoned that it was better to allow them to do so in this case prompting the acquittal. A male juror who had seemed to have all the best intent going in, revealed a motive that would never have occurred to me. In his mind, the jury acquitted the defendant, not for lack of evidence of guilt, but to allow the key players in this trial to handle the matter through what he called "street justice."

It would be an understatement to say I was devastated by his report. I was heartbroken about the means by which this case was resolved and I wondered whether I had wasted my time. As I reflected on the events, I came to better understand the important role that we, as jurors, have in our system of justice. Whenever we abdicate our role to serve on a jury, whether by avoiding service on a jury altogether or by avoiding our obligation to decide the case when we are impaneled, we allow "street justice" to reign. Is that what we want?

Foremost in my mind was the civics lesson I had learned from the judge when I tried to be excused just a few days earlier. As I recalled the judge's words, I felt disappointment in myself at my initial reluctance. One outcome of this experience was my education (or re-education) about the critical role jurors serve in our system of justice. In some small way, perhaps you will reflect on the importance of our civic duty to serve on a jury and you will have a better initial reaction than I did when the jury duty notice came for me in the mail.

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