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## 5 LESSONS FROM INSIDE THE JURY POOL

BY GAVIN R. VILLAREAL

Have you ever watched a sporting event and thought you could do a better job than the referees? That's a little bit what it's like to be a litigator called for jury duty, as I was recently. The experience taught me several valuable lessons about what folks are feeling and thinking as they go through the jury selection process.

In Travis County, most of the impanelling process occurs online, and it happens weeks before a prospective juror shows up in court. I filled out an online questionnaire and identified the few dates when I absolutely could not be available for service.

Perhaps I was too accommodating. I soon received an email telling me that I had been assigned to a panel for a criminal trial that was expected to last almost two weeks. I'm sure my clients would understand me disappearing for that long.

On the day I was to report, I arrived at the courthouse shortly after lunch. Checking us all in, getting us lined up by juror number and then seating us in order in the courtroom took almost an hour. I was potential juror No. 24 out of about 70—a very large



venire panel. With my assigned number, I was very much in play.

**Lesson No. 1:** No one wants to be on a jury. This probably isn't a surprise to most attorneys. I was somewhat excited to be there. No one else was.

Although people take the obligation seriously (only one person failed to show, and she called in sick), no one enjoys spending more than a few hours fulfilling this civic duty. There was a loud groan when the bailiff informed us that we should expect to be there until well into the evening.

Once we were seated and given numbered paddles, voir dire began. Someone gasped when the assistant district attorney informed us that this would be a first-degree murder trial with a potential maximum penalty of 99 years to life. (I noticed one of the defense attorneys make a note about the woman who gasped. Good job.)

**Lesson No. 2:** The opinions of our fellow citizens will surprise most attorneys. Once the lawyers got us talking, I was amazed by what some of my fel-

low panelists said. One man said he couldn't consider the upper range of potential punishment because he felt imprisonment of that length would serve no rehabilitative purpose. Another juror said he was against incarceration of any kind. Several said that they expected the defendant to take the stand to defend himself and would hold it against him if he didn't.

The defense attorney asked one of the best questions: "If you were on trial, would you want yourself to be on the jury?" The responses made clear that there were many people who were predisposed against the defendant just because he had been accused of a crime.

**Lesson No. 3:** "CSI" has changed the way lawyers pick juries in criminal cases. The prosecutors in my case clearly felt the need to counteract the "CSI effect," the expectation that the state will have irrefutable and iron-clad scientific evidence implicating the defendant. Most of the time, that's not the case. The assistant district attorney compared "CSI" to "Star Trek." His point: Both are science fiction.

**Lesson No. 4:** If you're a lawyer, expect to get picked on. Defense counsel spent a long time questioning me. Few of the questions had much to do with my potential biases. Instead, the defense used me to educate the panel about the state's burden of proof and why the jury must acquit if the state failed to meet

that burden. I agreed, for instance, that the defense could prevail without putting on any evidence if the state hadn't proved guilt beyond a reasonable doubt.

I thought defense counsel's use of me as a mouthpiece was very clever. On the other hand, I'm accustomed to asking questions, not answering them. My back-and-forth with the attorney for the defendant felt like it lasted forever. At the next break, one of my fellow panelists said, "I thought you attorneys took it easy on one another." I guess not.

**Lesson No. 5:** Since no one wants to be on a jury, many jurors are irritable to begin with and will get angry if they think lawyers are wasting their time. This is a corollary to lesson No. 1. As the hours passed, the frustration in the courtroom was palpable. The panelists were tired, and we had no control over the process. We were supposed to take a break every hour. The prosecution's voir dire, however, went on for an hour and a half.

I've sat in courtrooms for days at a time, but it's different when you're not an active participant. I caught myself repeatedly checking my watch. I zoned out once and almost stood up reflexively when the judge asked to see counsel at the bench.

Short breaks were anything but. Two 20-minute breaks lasted almost 45 minutes each. Potential jurors were pacing the halls outside the courtroom, fuming.

The occasional need to exclude us while the court addressed challenges and other issues exacerbated the situation. As a litigator, I knew that everyone inside the courtroom was working hard and that their work was probably saving us all time in the long run. But the folks milling around outside the courtroom had no clue what was happening.

As he wrapped up his voir dire, the defendant's attorney asked us if we had any questions. One hand went up. "How much longer is this going to take?"

About six hours after we began, the judge announced the chosen 12 jurors (plus an alternate). They didn't pick me. I was both relieved and slightly disappointed. Perhaps the fact that I had a passing acquaintance with one of the defense attorneys made the prosecution uncomfortable. Or perhaps being a litigator from a big firm was enough to strike me.

I thought the defense did a good job during voir dire. But I'm sure that they would have liked a different outcome. The jury found the defendant guilty and sentenced him to 70 years in prison.

*Gavin R. Villareal is a partner in Baker Botts in Austin. He focuses on complex commercial litigation and co-chairs the Professional Liability Litigation Committee for the American Bar Association's Section of Litigation.*