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Seven Things a Civil Trial Attorney Learned While Serving as a Juror

BY BONNIE M. HOFFMAN
Of the Legal Staff

I have always assumed that attorneys, like me, are never selected to serve as a juror. This assumption was confirmed numerous times in my own life when I was called for jury duty but after being asked about my occupation (and other innocuous aspects of my life) was excused and sent home. Nor have I ever met another attorney who had been selected to serve as a juror.

That's not to say, however, that I didn't want to be selected. In fact, I have always thought, as I am sure many other attorneys have, too, that being in the jury room to see what goes on and how the jury deliberates and decides the issues with which they are presented would be priceless.

Recently, however, my assumption was proved not to be true and I got that chance as I was selected to serve as juror in a criminal case. Despite my surprise and initial trepidation (I had work waiting for me back at the office), serving as a juror proved to be a terrific learning experience. While serving as a juror in a criminal case, this civil trial attorney learned, from how I felt as well as through my observations of the other jurors, the following seven important things about trying a case that I may not have otherwise appreciated.

Bonnie Hoffman

The witnesses you do not present matter as much as the witnesses you do present.

Jurors are very attentive and they listen to testimony of each witness. Witnesses are obviously a very important aspect of any case. But what mattered to the jurors as much, if not more, were the witnesses who did not testify. Questions like, "Why didn't the prosecution have Officer X come testify?"(where it was alleged that numerous officers besides the two testifying officers showed up on the scene), or, "Where was the defendant's brother?" (where the defendant's brother appeared to be a key player in the events at issue) were prevalent throughout the jury deliberations. What the jurors seemed quick to conclude from the absence of a witness was that the absent witness was not going to be helpful to the party who was expected to present him or her, i.e., there was a negative inference. Whether the negative inference was appropriate is unclear to me. What is clear, however, is that if you are not presenting a witness that may appear to be a large part of the case, you should explain why to the jury. Otherwise, you can assume it will be held against you.

Physical (or documentary) evidence is important, and if you don't have it you better explain why.

Nowadays, with all the crime scene investigation shows on television, most jurors believe that in every case a team of forensic investigators surveyed the scene, collected evidence, often including DNA evidence, and that the evidence will be shown to them during the trial. In the particular case for which I was a juror, there was an allegation that a portion of the drugs (which were in tiny plastic bags) retrieved from the scene of the alleged crime had been in the defendant's mouth. A larger portion was allegedly retrieved from the defendant's pocket. During deliberations, a common feeling amongst the jurors was that if a portion of the drugs had actually been in the defendant's mouth, then the prosecution would have offered DNA evidence linking the defendant to the drugs (i.e., the defendant's saliva would have been on the baggies). Because the prosecution did not have DNA evidence of

this kind, many of the jurors quickly concluded that it meant the drugs were not in the defendant's mouth as alleged (and therefore he had not tampered with the "evidence"). While I am not a criminal attorney, I can imagine there are numerous plausible explanations for not having DNA evidence in most cases. Without an explanation, however, the jurors decided that the story being told was not true.

Be up-front about inconsistencies in your case.

An important factor in finding the defendant not guilty in this particular case was the fact that there were some inconsistencies between the police officer's initial report and a later report completed by that officer. The inconsistencies were not addressed either through the officer's testimony or in the closing statement. As a result, the jurors were left to speculate and, almost uniformly, concluded that the inconsistencies could only mean one thing – that the officer was not telling the truth in the reports on any issue (not only the issue to which the inconsistency pertained), so little weight could be given to the reports. Ultimately, this was a major factor in finding that the prosecution had not met the burden of proof. Had the inconsistencies been addressed, it could have tipped the scales in the opposite direction.

Don't say "this is a simple case" if it is not a simple case.

The prosecutor's opening statement lasted around five minutes and went something like this: "This is a simple case; while on patrol, police confront four men, one man runs, brief struggle ensues, when officer is able to contain fleeing man, officer finds drugs in his pocket and drugs on the ground, which the fleeing man spit out of his mouth during the struggle." Based on her opening, the jurors had the impression that this was going to be a "simple case." After the defense counsel's 20-minute opening and four days of testimony regarding police brutality, a previous relationship between the officer and defendant, revenge as a possible motive, 50 police officers showing up on the scene, the planting of drugs, we were no longer feeling like this was a simple case. Indeed, that was one of the first comments made during deliberations. It was evident from comments like this that the prosecutor had lost some credibility.

What the attorneys say matters.

During the deliberations, I heard the jurors remark time and time again that Attorney A said X or Attorney B said Y. In response, a number of times I found myself thinking and saying, "Yes, the attorney said that, but there was no evidence to support the statement." Whether there was evidence to support the statement, however, didn't seem to matter. The statement became important and relevant simply because the attorney said it. Clearly, this is a reminder that attorneys should choose their words wisely, because the jury is listening.

Act professionally toward the opposing lawyer.

Perhaps this one goes without saying. Or maybe not. The attorneys I watched certainly could have used a reminder. The jurors noticed and were quick to point out when one attorney was not treating the other with respect, like rolling eyes or making other facial expressions that conveyed disgust or frustration. While this did not seem to affect the ultimate outcome in the case, it was noticed and negatively impacted the jurors' views of the attorneys.

Who your jurors are matters.

In the end, serving as a juror made me realize that the ultimate outcome was, more than anything else, based on who the jurors are and where they came from. The jurors paid attention, listened to the evidence, witnesses and the attorneys, but how they interpreted the evidence, who they believed and what they concluded from the evidence was clearly based on each individual's background, including, for example, their gender, race, profession and experiences – making voir dire a key aspect of any trial.

Bonnie M. Hoffman *is an associate in the litigation department of Hangley Aronchick Segal Pudlin & Schiller. She has broad experience in complex commercial litigation matters.*