

The Fox in the Henhouse: An Attorney's Experience Sitting on a Jury

By Paul F. Clark

At first glance, there's nothing special about Juror #2. He's about 50 years old with greying hair and dressed in the suburban uniform of khakis and a blue, buttoned-down shirt. He answers the questions of the court easily and seems to enjoy the banter when questioned by the judge.¹

The attorneys learn that Juror #2 has a wife with four children who are slowly moving out of the family home. He has several police officers in his family, surely an admission that will give the defense some pause before letting him remain on the panel. Yet the juror readily concedes that the testimony of police officers should not be given any undeserved weight because they can be mistaken as easily as anyone else. In sum, there are factors in his profile that appeal to both sides but his employment history concerns the attorneys and court alike: Juror #2 is a practicing attorney who litigates and tries cases himself.

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I am Juror #2 and was selected to serve on a criminal case in my home county of Union, New Jersey. After 30 years of litigating cases in New York and New Jersey, the tables turned and I was the one questioned about my background, experience, attitudes and potential biases. I was the object in the attorneys' crystal ball, engaged in their elusive exercise of predicting how I would react to the parties, claims, defenses, and anticipated evidence in the case.

After several rounds, I was left unchallenged and sworn in as a juror. I was initially a reluctant participant but, by the end of the case, I was humbled by the experience of deciding the fate of another human being and gratified by working together with 11 other complete strangers with whom I had little in common other than our residence in Union County. The experience also caused me to reconsider some of the long-held assumptions that trial attorneys hold about jurors and how trial attorneys approach their craft. Here's what I learned.

1. **Never waste the jury's time.** Although each juror approached his or her duty with differing levels of enthusiasm, everyone would have preferred to be somewhere other than the courthouse. We showed

up reluctantly but ready to fulfill our civic duty. In return, we expected—no, demanded—that the process respect the value of our time. We noticed which attorneys showed up on time, whether the witnesses were sworn in at their scheduled times and how long we waited during any breaks in the trial. So be on time, be prepared and have your witnesses lined up ready to proceed. You want the jury focused on the case, not their watches.

2. **Be aware of your surroundings.** Courthouses are notoriously cramped quarters. The attorneys, litigants and jurors frequently find themselves using the same elevators, bathrooms and lunch venues. With nothing but time on their hands, jurors focus on any attorney and litigant who cross their paths, unconsciously forming opinions based on these silent interactions. The jurors will notice how you carry yourself. So treat the court staff, the newspaper vendor, and the pizzeria counter worker with courtesy and respect. I suggest you honor the "Five Mile" rule and assume you are under the direct observation of at least one juror anytime you are within five miles of the courthouse and conduct yourself accordingly.
3. **Be careful of your leaders.** Previously, I worried about all jurors equally, debating whether to challenge the silent young man with the tattoos sleeping in the corner or the brash middle-aged woman who dominates the entire room when expressing her opinions about the litigious nature of her fellow citizens. Jury experience refined my views on this subject, now armed with personal experience about how twelve strangers arrive at a unanimous decision about the guilt or innocence of a person who they never met before. It sounds self-evident but remember that leaders lead and followers follow. Forget the lambs but take great care of the wolves that you leave on your jury because they will dominate their less confident peers.
4. **Educate and entertain the jury.** Yes, you can educate and entertain at the same time. Ask young people where they get their news and you'll find that they tune into cable TV to watch Jon Stewart or Stephen Colbert. Born entertainers, these hosts chronicle the serious news of the day using parody, satire, hyperbole and irony. They cloak serious discussions in laughter, using skits, interviews and manic, non-stop action to keep things exciting and fresh. Why not try a few blowups when try-

ing to make a point with a document or highlight a prior written inconsistency made by an adverse witness? Better still, project digital images with an ELMO or Smartboard that can be seamlessly displayed on a large screen so that the jury can visually see, with their own eyes, the point you are trying to make. If I am part of the TV generation, the younger jurors are the smartphone, Twitter, and Facebook generation for whom multitasking is a way of life. So be creative with your presentations to keep the jurors' attention while driving your most favorable points home.

5. **Be respectful.** An experienced judge gently holds the jury's hand during a foreign experience (the trial) in a foreign land (the courthouse). She tells the jury when they can sit, relax or use the restroom. She makes them feel special, dispensing badges that grant them unique access in the courthouse. Unless the court's bias is obvious, a rare thing, the jury comes to respect, admire and bond with the trial judge. Tread lightly when disagreeing with the court. You can object to an adversary's question or the court's ruling but it should be done respectfully and without a whiff of disdain, anger or bitterness. Tempers may flare but the tone of your overall presentation should reflect your respect for the court, your adversary and the judicial process. Otherwise, the juror may perceive you as someone who is breaking the rules, is rude or is trying to gain an unfair advantage.

Attorneys are a difficult lot during jury selection, a reluctant group who pre-judge themselves as unqualified for jury duty because of their prior experience as participants in the process. Like many of my colleagues, I approached jury service with dread, worried about my time, my schedule and how I would juggle the myriad demands of my practice while sitting on a jury. But the experience opened my eyes and, in addition to fulfilling an important civic duty, gave me new insights about how a jury actually functions in its decision-making process.

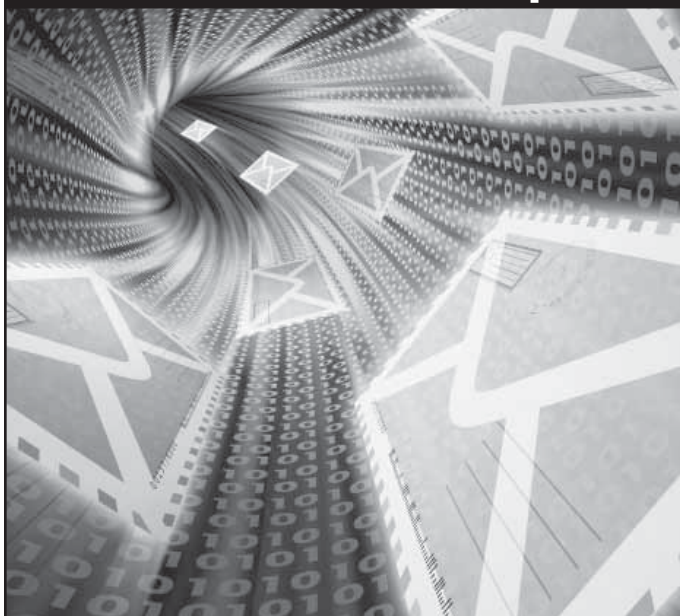
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Endnote

1. In New Jersey, the judge conducts the *voir dire* in both civil and criminal cases.

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