

Jury Duty (Part Three): From Voir Dire to Deliberations to . . .

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"Ladies and Gentlemen of the jury, please stand and raise your right hand to be sworn. Do you solemnly swear to be fair and impartial to uphold the Constitution and laws of The Commonwealth of Virginia to the best of your ability?" And with a resounding chorus of "I do's," we — the chosen few! — are asked to be seated and prepare for what is to be a several-day journey through dramatic opening statements, myriad facts and witnesses, emphatic legal "Objections!" (sustained and overruled), rousing closing arguments, and methodical instructions from the judge, before heading off to what was to become our own special home-away-from-home for the next several days for our "deliberations" as we were to decide the fate of the accused — alleged to have embezzled an insane amount of money from a former employer's operating account (apparently not as uncommon as you might think! Note to self — review A/P payment approval process!).

I had been called to serve — my first time ever! — called for jury duty in Fairfax County Circuit Court. Unlike many of those I'd joined in the jury assembly room that fateful Monday morning, I was excited and hopeful of being selected to serve on a jury.

Seeing and experiencing first-hand a juror's perspective of what it is I do for a living in the courtroom as a trial attorney from the other side of counsel's table and behind the rostrum is something very few litigators ever get a chance to experience. (I've only met two over my career that have shared the experience.) There are any number of big screen and small screen representations of what goes on behind closed doors but, as I've previously noted and explained, it is a relative rarity for a litigator to experience the actual inner workings of the jury room. So this was, indeed, an exciting day!

"Voir dire," the part of the pre-trial process where the judge and the attorneys ask potential jurors a bunch of seemingly random unrelated questions designed to help the attorneys decide who the best jurors will be (or at least who they most definitely don't want on the jury, if they can help it) was surprisingly and disappointingly uneventful. The only real surprise was that neither side felt compelled to dismiss or "strike" me as a juror (each apparently believing that having a civil litigator on the panel would be somehow beneficial to their cause). If you've seen the CBS TV show "*Bull*" for instance, you know there is a whole science (art?) to this evaluative process. There is a large "cottage industry" of jury consultants out there willing to take desperate people's money to avoid conviction. This, however, was definitely not one of those cases.

Opening statements were matter-of-factual and methodical (classic "tell 'em what your gonna tell 'em" lead-in's). Witnesses were relatively "vanilla" providing, mostly at least, "just the facts, ma'am!" There was a big flourish of an "OBJECTION!" at one point after some seemingly irrelevant but salacious testimony, but a quick "Sustained!" from the judge mooted the need for the Commonwealth's Attorney (the state's prosecutor) to respond, and she simply continued as if nothing had even happened. Witness after witness, mundane direct exams followed by somewhat more spirited cross-examinations, frequent breaks and lunches (many more than I generally take in a week!), judicial admonitions not to talk to anybody about the case, all

culminating in relatively flamboyant, definitely more emotional, closing arguments including the defense attorney's impassioned insistence that the Commonwealth had failed to prove its case beyond a reasonable doubt and, somewhat surprisingly actually, of his client's having done nothing wrong, etc. before the judge turned to us to read carefully crafted instructions and sent us out with reminders of our oaths and duty to our fellow citizens and community.

We pick a foreman (or forewoman, in this case), take a single unanimous vote; watch the "guilty" verdict get read in open court, watch further as the defendant – clearly shocked by the result – get cuffed and lead by Sheriff's Deputies (a couple of Fairfax County's finest!) through a special side door in the courtroom (leading to the special prisoner elevator and back hallway system in the courthouse most people never get to see; receive an appreciative "thank you" from the trial judge; collect all our belongings, shake hands, exchange pleasantries (and a couple business cards!) with fellow jurors, and unceremoniously head back to our respective lives.

At least that's what I had hoped would be my first juror experience. If you remember back to Jury Duty 2, I left off waiting for the Sheriff's Deputy to come back to bring my group of jurors to our assigned courtroom with me looking forward in anxious and excited anticipation to my first "voir dire" as a prospective juror. In fact, when the Deputy eventually did return, after we were forced to sit and wait in the jury assembly room for nearly another hour or so, he thanked us for our service and summarily dismissed us. That was it. We were done. There would be nothing further required of us. Thanks for playing; there will be no parting gifts, and you won't be getting a copy of the "home game" (a la television game shows of the '80s). The Deputy couldn't tell us how "our" case had been resolved or even the type of case to which we had been assigned – either because he truly didn't know or simply knew better than to engage us down that path of inquiry.

Regardless, there would be no voir dire, not for me . . . not that day. There would be no empaneling, no opening nor closing, no objecting nor sustaining, no deliberating nor convicting. Jurisdictions handle jury service differently with some having continuing obligations in the event one is dismissed as I was that day — not Fairfax County, however. In Fairfax County one fulfills one's jury duty service by timely presenting at the courthouse and making oneself available to serve just as equally as those fortunate enough to be selected and empaneled on a jury.

If you've been fortunate enough to have served on a jury, I thank and envy you for your service. You help the legal system function, and it is better because of you. Drop me a line . . . I'd love to hear your story. For me, I fear, it is like the elusive hole-in-one I may never achieve.