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Some Takeaways From a Lunch With My Jury

BY ROMAN T. GALAS
Special to the Legal

I was recently second-chair defense counsel in a three-and-a-half-week trial for a wrongful death action arising out of a vehicle pedestrian accident, which settled after directed verdict motions at the close of the plaintiffs' case. With the court's permission, I had the privilege of meeting our 10-person jury. After a friendly discussion in the courthouse hallway, the jury invited me to grab lunch with them. Here are the takeaway points that struck me.

• The courtroom is a stage; always be aware of your actions and mannerisms.

While not an earth-shattering observation, the discussion made clear that trial is like a Broadway show, the courtroom is like a stage. Every person in the courtroom has a visible role. The jurors picked up on some of the littlest, most random details, down to eye color. Some noticed our client taking notes, others commented on his quirky mannerisms, and one even drew a substantive conclusion about the plaintiff's case theory based on the shuffling manner in which our client walked (there was "no way he was ever running to his vehicle," the juror explained). Others noticed how counsel for both sides shook hands with witnesses on their way out of the courtroom, but that plaintiffs counsel only seemed to shake hands with favorable witnesses. They observed and appreciated the collegiality between counsel for both sides, and respectfulness toward the judge. Jurors also noticed the court clerk's unappreciative looks toward the plaintiffs counsel, who, they further observed, were frequently disorganized with their exhibits and general presentation. On that front, jurors were turned off by the plaintiffs counsel's constant indiscrete cellphone usage; one went so far as to do a mock demonstration. Jurors also commented on the plaintiffs counsel's assigning one lawyer the task of "jury monitor," which entailed the lawyer staring at jurors and taking notes of her observations; they were very turned off by this, with one explaining that she would shift positions in her seat to avoid the lawyer's constant gaze.

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The jury was also interested in the overall process, including how and why they were selected, and why others were stricken. They showed a vivid recollection of the process, recalling specific details provided by potential jurors who were stricken. Indeed, one juror later emailed me and signed off not only with her name, but as "juror No. 5". In other words, even a day after the case resolved, she still self-identified as a juror.

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The jurors internalized the messages conveyed to them in the testimony/argument that they heard. They almost unanimously expressed that, over the course of the trial, they had taken on an extra degree of caution in their personal lives by, e.g., being more vigilant crossing the street as a pedestrian or approaching an intersection as a driver, and taking extra care to make eye contact with others to avoid a potential accident. This showed that they were not simply going home each day and shutting off, but were replaying the facts of the case in their mind, and applying those facts to their every day experiences.

• The group bonding dynamic was remarkable.

This jury got along naturally and seamlessly. When the judge gave them final instructions that they were all free to talk to the attorneys, but were equally free to go home, every single juror stayed. And as the conversation with the attorneys wound down, and the attorneys remaining whittled down to just me, every single one of them still stuck around. Turns out, they had so carefully listened to the facts of the case, and so diligently applied the admonition from the court to not discuss the case with each other, that they would not leave each other without debriefing first. When I asked if any of them wanted

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to eat lunch with me, they turned the offer around on me, with one inviting me to have lunch with their group. Consider that they had no advance notice that the case was about to settle, and thus no time to plan a group debrief lunch in advance. Without any person calling for it, they organically gravitated toward each other, and spontaneously decided as a unit that they were going to at least have one group meeting.

• Witness credibility is key.

The jurors picked up on, and were turned off by, witness bias. They seized on two witnesses in particular who they did not like—a responding officer and one of the plaintiffs experts. The jurors almost all noticed some of the errors in the officer's testimony (most glaringly, his error regarding the compass direction of the street on which the accident occurred), and did not find his eventual recounting of our client's supposed post-accident statement credible; at least one juror found the cocksure manner in which the officer described our client's account too stark of a contrast to the manner in which he could not recall other simple details of the day, which he blamed on the time that had passed. Point being, if he could not get such simple details like compass direction right, how could he credibly recall what our client supposedly told him in minute detail?

The plaintiffs expert, on the other hand, proved a case study in blatant expert bias. The jurors' problem with him was best explained by one who, though aware of the witness's role as an expert, was nonetheless turned off by how overtly biased in the plaintiffs' favor he was, and felt like he was simply regurgitating whatever the plaintiffs wanted him to say. Even understanding his paid role, the juror expected a heavier dose of objectivity.

• Make your point once, and move onto the next point.

The jurors had almost unanimously tired of the plaintiffs counsel's constant reemphasis of argument points and document excerpts. One juror summed it up best: "I'm not in second grade, why are you talking to me like I am?" The jury appreciated the contrast with our side making quick, sharp points and ending examination quickly; they also noticed the several instances where we declined cross-examination.

• Jurors prefer live witnesses over video.

Jurors were, predictably, unimpressed by the fact that the plaintiffs, three older gentlemen who lived out-of-state, did not attend trial. They were also unimpressed by the plaintiffs' testimony being presented through a video-conference feed. As for video depositions, jurors described their eyes glazing over and fighting sleepiness as the videos played.

Jurors also understood the human side of being a witness. They could tell, for instance, that one of our client employee witnesses was nervous when testifying, and did not seem to hold that against him. They also noticed how our client's witnesses got visibly more comfortable during our examination.

• Juror impressions are difficult to predict.

Different jurors can perceive the same testimony and make polar opposite judgments. For instance, certain jurors wondered how our client could not remember certain aspects of his training, while others were not troubled by that. A 30(b)(6) witness proved polarizing; some jurors found that he presented as polished and knowledgeable, while others were troubled by his inability to answer various questions (which, in fairness to him, were outside of the scope for which he was designated to testify).

Another example: one juror expressed that she'd been surprised when we went into attack mode against the plaintiffs experts, with the unspoken implication being that her reaction was less than positive. But another juror spoke up and said that she'd noticed it too, and had in fact liked it, finding the shift in tone was exactly "what he needed to do."

As still another example, we had one client employee witness who particularly concerned us going into trial, because of his lack of focus and filter. You can imagine our surprise, then, when at least one juror considered him our best witness.

• Voir dire must be approached with caution.

The question and answer process here, with the attorneys allowed much latitude, injected side issues that had no place at trial. For instance, despite the issue never once coming up during openings or testimony, the definition of an "implied crosswalk" was a subject of much voir dire discussion.

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With neither the plaintiffs counsel nor the court clearing up the issue, the jurors were left in utter curiosity until they could finally ask me: "so what IS an implied crosswalk after all?"

The voir dire process can also outright offend people. Once again the plaintiffs counsel provided the most glaring example, with the jurors' being turned off by his badgering of an eventually stricken panelist about his dead wife, and why the panelist did not file a lawsuit as a result.

Though many of these points have been imparted upon me in the past, probably as long ago as law school trial advocacy class, my afternoon with the jury certainly reinforced them all. It is worth keeping them in mind, and not taking them for granted, when preparing for trial. •