A Message from the Chair

Jury Duty—Or How I Spent My Summer Vacation

In the 23 years that I've been practicing, I've received my fair share of jury notices. Typically they have been uneventful—daily calls to the phone number on the jury summons, only to hear a message that my number had not been called and that I should call back the next day.

One time—when I was a junior associate—it seemed that things would be different. I was actually called to court, and then was selected as part of a jury pool being questioned in voir dire. After I answered some questions, counsel for one of the parties looked me over and asked, "You actually want to serve on this jury, don't you?" "Absolutely," I said in all of my youthful enthusiasm, "it would be a great experience for a litigator." Moments later, I was sent home.

So, when I was called for jury duty to the Daniel Patrick Moynihan United States Courthouse in Manhattan in mid-July, I fully expected my "service" to be brief. Perhaps some questioning, perhaps just a day of trying to do work outside the office. After all, if I had been struck off a panel as a junior associate, I certainly would not be kept on a jury as a full-time litigation partner (or as the Chair of the NYSBA's Commercial and Federal Litigation Section).

I was called in the first group of potential jurors and sent upstairs. United States District Judge John G. Koeltl, who had recently spoken to the Section's Executive Committee about the proposed changes to the Federal Rules of Civil Procedure, conducted voir dire. I filled out a questionnaire and I noted that I had recently met Judge Koeltl through Bar activities and that I knew the Corporation Counsel. (The case involved the City of New York.) Judge Koeltl asked if I could be impartial, and I answered truthfully that I could, but expected that one of the parties would strike me. The seat numbers of the jurors who were being excused were called, and to my amazement, mine was not among them. In fact, as luck would have it, I sat in the first seat and wound up as Jury Foreperson in a civil trial—a § 1983 case involving a claim of police brutality.

It was a great experience. The trial lasted for only three days (including deliberations), with good lawyering for plaintiff and defendants. The questioning was crisp, and there were very few objections. As a practicing litigator, I found the time spent to be as valuable as any CLE course I have taken. Sitting as a juror helped crystalize what really matters to the finder of fact. In the heat of battle, litigators too often focus on minor victories, concerned about how tactical advantage gained on a certain point can shape the outcome of a case. In a jury trial, however, the effect of those skirmishes often pales in comparison to the big issues that ultimately help determine what a juror will decide—which witnesses are most credible and why, which documents carry the most weight, and how the presentation and order of evidence and use of themes can have maximum persuasive impact. For example, litigators often labor over minor inconsistencies in witness testimony or variations between a witness's recollection and a document. But when you sit as a juror and listen to a witness testify, inconsistencies and errors in memory do not seem to have as much dramatic effect if the witness generally seems to be truthful, or trying her hardest to be accurate and forthcoming.

I was impressed by the respect that juries were shown—not just by Judge Koeltl (who treated us as honored colleagues in the judicial process), but by the entire court system. And I was inspired by the commitment that jurors showed—their commitment to be on time, their commitment to keep an open mind, their respect for the judge, the lawyers, the witnesses and each other.

The collective memory and impressions of a jury are remarkable. Each person brings to the decision-making process her own perspective, skills and knowledge. In addition to a litigator, our jury included a doctor, a stay-at-home mother, an aesthetician, a dentist, an elementary school teacher, a secretary, and a biochemical researcher. When it was time to deliberate, we found that many of us identified the same pieces of evidence, but our own experiences led us to remember or weigh differently the testimony and documents presented. It is not just theory; it actually happens.

I found that my fellow jurors often looked to me for guidance, not about how to decide the case, but as to how the court works. When would breaks be taken? What would happen after the witnesses were examined? I was serving not only as a fellow juror, but as an ambassador to our profession and the justice system.

Sure, serving on a jury is disruptive to practice. (Lunch time was filled with e-mails and calls to keep my own cases moving forward, and I often had to return to the office after testimony.) But jury service allows us as busy lawyers to see beyond the routines that fill our daily schedules—discovery battles, negotiations, time sheets, letters and e-mails—and recognize the critical role lawyers play in the functioning of our society. We invite citizens into the dispute resolution process and help craft resolutions that bring justice.

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Someday soon you will receive your next jury summons, and I know many of you will view it as a potential disruption to your practice—to the important work that you do for your clients and your firms. I hope that my experience will give you another perspective—that you may, in fact, actually serve on a jury…and that the call to service will provide you professional value, personal satisfaction and a strong sense of civic accomplishment.

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One last thought: My involvement and our Section's involvement in the jury process did not end with the verdict (or the follow-up call that I received from one of the lawyers who wanted my feedback on her advocacy). A few days later I went to a meeting of the Section's Executive Committee and learned that two of the projects our Section will be handling this year are designed to improve the effectiveness of juries in commercial cases.

First, our Section is continuing to work with the Office of Court Administration's Pattern Jury Instruction Committee on publishing jury charges for commercial cases. In the past two years, our Section has been involved in proposing instructions relating to (a) veil piercing, (b) breaches of fiduciary duty involving limited liability companies, (c) distinctions between direct and derivative claims, and (d) sales of goods to good-faith and *bona-fide* purchasers. More such proposed instructions are on the way, and we welcome the input of all Section members to help us identify (1) new Pattern Jury Instructions (and commentary) for commercial causes of action that would provide a useful resource for practitioners, and (2) actual or proposed jury instructions that have been used in commercial jury trials—whether in state or federal court.

Second, our Social Media Committee plans to help craft jury instructions relating to social media use by jurors. Most potential jurors Tweet or post on Facebook, LinkedIn, Instagram or Snapchat. When a question arises in the course of their everyday lives, they turn to Google for the answer. However, once they enter the jury box, jurors are supposed to rely only upon the evidence presented at trial to decide the issues in the case—not their independent investigation. Through a survey of our membership and a review of instructions drafted in other jurisdictions, our Section hopes to develop social media jury charges that can be used by both the federal and state courts in New York to give jurors the clear guidance they need—so they can honor their obligations to the courts while still continuing to engage in their normal digital lives.

If you would like to participate in either of these projects or any of our other Section activities, please let me know at Sarkozi@thsh.com.

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