

On Jury Duty

By Michael Dayton

I have written a number of articles for the Iowa Lawyer on substantive matters that I hope you have found useful and a bit entertaining. From those articles you have probably determined that I am a business attorney – usually working on mergers and acquisitions and general contracting matters. This time, however, I am writing on a personal experience that I hope you will find meaningful and perhaps educational: my service as a juror. I am certain the fact that I am a business attorney and not a litigator was, in part, what kept me on the jury; and I am also certain that my viewpoint of the proceedings is different than that of a litigator. Still, I know every juror's experience is colored by his or her life (e.g., belief system, upbringing, family) and my legal education and practice certainly did the same.

The article is broken down into four short parts: (1) a brief description of the subject matter and jurisdiction

of the trial; (2) what it felt like to be a juror; (3) a critique of attorney practices based on my experience; and (4) some closing thoughts.

1. The trial

The trial was a criminal matter in the Southern District of Iowa. The matter contained a number of counts, some of which were of a disturbing nature. And the jury was required to view evidence that was disturbing. That may be enough for some of you to figure out which trial I took part in, but I don't want to go into any further detail in this article. I will tell you that my background in psychology and social work and the composition of my family made the evidence on certain counts very difficult to view.

2. What it's like

There were a multitude of reactions when I had to let clients and colleagues know I would be out of the office for up

to two weeks. Some were sympathetic of the time commitment; some were envious, knowing they would never be selected; and all were understanding (not understanding how, as a lawyer, I got selected, but understanding of the fact that I would not be able to help them for a while). Having experienced the trial, I would not be envious. I think the view of most non-lawyers – that jury duty is an imposition, but a necessary one – is correct.

It is stressful. In many ways I was much more fortunate than many folks who are selected for jury duty. It is a stress and hardship for jurors. If you can continue to work, it is another full-time job jammed into the middle of your current full-time job. For many of the people on the jury, they could not continue to work and were foregoing their current wages to get \$8/hour. I got paid \$239 for my first week of jury duty. FYI – that is not a livable wage. It would be an extreme stress to forgo two weeks of pay to sit on a jury. That stress was palpable in voir dire. For me, I have flexibility in my job, so I could work before and after jury duty each day and on the weekend. But I couldn't work as much, which means my firm was burdened and had to absorb my absence, and my wife and kids basically didn't see me.

It is disorienting. I don't have a trial practice and am never in court. Still, I know the trial process, have participated in moot court, and remember civil procedure and the rules of evidence – I even read the introductory booklet they provide to you while you are awaiting



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Michael Dayton appears in a jury room at the United States District Court for the Southern District of Iowa in Des Moines. Photo credit: Jon Lemons Photography

voir dire. But despite my background, jury duty was still disorienting.

There is minimal introduction as to what will occur. You call the number; it tells you to report on a certain date at a certain time; you arrive at the courthouse; you have your personal items scanned and go through a metal detector; you go into a hall to wait with about 50 people who all look confused; you wait in line to be checked in then are told to go to a different room (which is the courtroom); you wait on benches in the courtroom until your name is called; you cram yourself into the jury box and seats in front of it; voir dire begins. After voir dire, which took about three hours for our case, the trial begins. Immediately. It is a lot to process in a few hours, especially given the fact that you have no idea when your day begins whether you will be asked to stay or asked to go.

It is exhausting. This one, perhaps, is unique to my experience, but I don't think so. As noted above, I was working a decent amount during trial, which could account for how extremely fatigued I was at the end of the day. However, I think the more likely reasons are: it is tiring to be stressed and disoriented (as discussed above); it is tiring to listen; it is tiring to hear about the subject matter; it is tiring to keep a secret; and it is tiring knowing you have someone's freedom in your hands.

Listening intently for a workday is extremely difficult. I would say this is especially true for lawyers, but all of my jurors felt the same. They wanted to ask

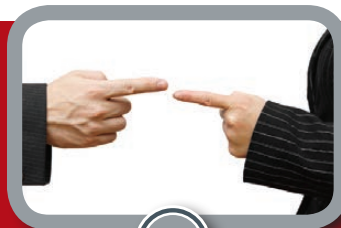
questions, have evidence replayed, and otherwise interact with the trial. That, of course, is not permitted. So you just sit there, take notes, try to remember every little thing you heard, and try to fit the puzzle together. All of that listening without being able to otherwise interact with the proceedings is exhausting.

So too is hearing about certain subject matter. The subject matter of certain

counts of our case was disturbing. And isn't forgettable. There are aspects of my life that I know will change because of the evidence we heard and saw. Even now, I know that it wears on my psyche – my emotions feel closer to the surface than I would otherwise like. The subject matter changes in each case, but this type of subject matter is, unfortunately, not uncommon.

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And you also have to keep it a secret. You literally cannot talk about the evidence with anyone until deliberations, when at last you can talk to your fellow jurors. You are carrying around a very dark secret that you must keep inside you until then. It is not quite the same as harboring your own guilt, but it is close. It is cathartic to finally be able to talk to your jurors about the case, and then finally to others when the case is over.

We didn't know what the sentence might be until after the trial, but the jury knew, given the counts, that it would likely be substantial if we convicted the defendant on all counts. That is stressful and exhausting. Don't confuse my stress or exhaustion with sympathy. The jury heard the evidence and reached the appropriate verdict. More than that, I think the sentence will be morally and ethically right. But I don't think you are human if it doesn't affect you to know that because of your actions (in part, of course) that a person will lose his or her freedom for what could be the rest of his or her life.

3. Critique of attorney practices

Knowing my experiences above can hopefully help you in your litigation practice. Remember that it is stressful and exhausting for a juror, not only because of the time and financial commitment the juror is making to be

present at the trial, but also because of what the juror actually goes through at the trial. Based on my experience, here are some thoughts:

Don't ever waste the jury's time (or make them think you are wasting their time). A juror is necessarily going to feel about the government or the defendant how they feel about the attorney representing them. If you have a jury that can truly focus on the elements of the crimes and discuss simply the evidence as applied to those elements, then the jurors' feelings towards you might not matter. I am guessing, in most cases, they do.

There are times where evidence needs to be admitted, or the pieces won't truly fit together, or questioning must take a long time. Let the jury know what you are trying to accomplish, to the extent you can; don't let the jury guess at what you are trying to accomplish. Explain things very clearly in your opening statements. And don't repeat things – trust me that we heard you the first time.

Be organized and alert. The jury will notice your preparedness, or lack thereof. If you are rifling through papers, don't immediately answer the judge, or appear lost or circuitous in your questioning, the jury will notice. And they will comment on it in deliberations.

Sympathize and be cordial with your

jury. Before you get sucked into the details of the trial, as a juror you are mostly sitting there with a mixture of anticipation about what is to come and worry about how the hell you are going to manage your life while on the jury. Sympathize with the jury about this. Sympathize with the jury about the subject matter. Most of the trial feels like a conversation between you and the attorneys, with the witnesses involved. Be a person the jury wants to have a conversation with. Don't condescend or repeat yourself. Don't mock or belittle witnesses. Remember that being and acting like a good person goes a long way in Iowa.

4. Closing thoughts

Having made it through my article, you are probably wondering what the verdict was and what I thought about the judge and the attorneys in the case. I won't tell you the verdict, but I will tell you that I think it was the right verdict and that every single one of the jurors did an excellent job in listening to the evidence, applying it to the elements and coming to an unprejudiced decision. I think, at least in federal criminal matters, you should have a lot of faith in our jury system.

The judge was very good. I had never interacted with the judge previously, but the judge's courtroom demeanor, respect for juror time, and explanations to the jury were excellent and gave me great respect for the judge.

The defense did the best they could with the evidence presented and what appeared to be a difficult client.

The prosecutors were excellent. The presentation of the evidence was clear and concise. And the cross-examination of the defendant was, quite frankly, phenomenal. Of the whole experience, it was the only thing that was something you might see in the movies.

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Michael Dayton is a shareholder in the Business, Finance and Real Estate Department at Neymaster Goode, P.C., in Des Moines. Michael assists entrepreneurs from the start up to the eventual sale or other wind up of

their businesses and with everything in between. He can be reached at mjd@nyemaster.com or 515-283-3111.