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American Juries: The View from the Little Locked Room

By Manuel S. Varela

Having practiced law in the United States for more than twenty years, it is the American jury system that seems to be the greatest source of confusion, mystery and sometimes fear for clients. Many of them have seen the classic jury room movie *Twelve Angry Men* or, more recently, *Runaway Jury,* and fear that an unreasonable jury will bankrupt their companies or convict them of crimes they did not commit. For all of the questions about juries I have answered over the years, I now have a new experience on which to draw – two months ago I was a juror on a federal criminal jury trial. I was surprised by what I learned inside the jury box and inside the jury room and it changed some of my own assumptions about juries.

In early January I received a summons to appear for jury duty in federal court in Washington, D.C., where I live. Yes, lawyers get called for jury duty and in Washington, where there are many lawyers, it is quite common for us to be called to be a part of the jury pool from which juries are picked. Given that the previous nine or ten times I had been summoned I was excused – that is, I was not picked for a jury – I headed to the Prettyman federal courthouse confident that I would be returning home excused once again. I had booked a flight to Madrid leaving a few days afterward and I saw no need to change my travel plans. I sat in the courtroom quietly pecking away at my laptop awaiting my "inevitable" dismissal until at one point I looked up, saw how many people remained, and realized I was very likely to get picked. I panicked, complained to my wife in a self-pitying text message, but ultimately accepted my fate as the judge confirmed what I saw coming – I had been picked to sit on a jury.

As we quickly learned, the case involved an allegation that a high-ranking executive from a labor union had committed health care fraud by placing his girlfriend on the union's health insurance plan despite the fact that she did not work there – a big no-no under U.S. law. Soon after being placed on the union's insurance, she became ill and incurred tens of thousands of dollars' worth of medical care paid for by the health insurance plan. After everything came to light, the union executive was charged with health care fraud as well as conspiracy (with the girlfriend) to commit health care fraud.

During the four-day trial, we learned that the union executive had already pled guilty to embezzling from the union. We also learned that the girlfriend and the executive had a very rocky relationship and that he tried to have her removed from the insurance plan without telling her; something that elicited a graphic – and unprintable here – response from her. We learned, accidentally, that she too had been charged with health care fraud, but her trial had been bifurcated, or separated, from his. (The prosecutors accidentally presented evidence that included a case caption that made clear that she had been indicted as well.) Unlike in the movies, during the trial there were no huge surprises; no compelling "gotcha" moments on cross-examination, no outbursts from the witnesses or attorneys, and no one burst through the courtroom doors to make some dramatic proclamation.

After four days of fairly routine proceedings – around midday on a Friday – the lawyers completed their closing arguments, the judge gave us his instructions and we were sent to the jury room to deliberate. The jury was comprised of a cross-section of Washingtonians – the youngest juror was in her early 20s and the oldest in her 70s. There was racial, ethnic and economic diversity as well. The deliberations went on for almost three often-frustrating days. I say frustrating because we were stuck. In criminal trials, jury decisions must be unanimous. Of the twelve jurors, eleven (including me) believed that the defendant should be convicted of health care fraud but found not guilty of conspiracy. (Without getting into too much detail, on conspiracy, the prosecutors simply did not present any evidence that the executive and the girlfriend ever agreed on anything. In fact, there was evidence that suggested that for a time she actually thought she *was* employed by the union.)

The twelfth juror believed that the executive should not be found guilty of either charge. The twelfth juror was set in her beliefs – she simply did not trust the government and believed that anything the government put forward as evidence must be tainted – and we reported to the judge that we were deadlocked. Because we were unable to reach a verdict, the judge declared a mistrial, which meant that the case starts over. Assuming the defendant and the government do not reach some plea agreement, they will return to the courthouse, pick a new jury, and conduct the trial all over again.

After the judge declared the mistrial, many of the jurors apologized to him. It was as though our inability to reach a verdict left many of us feeling that we had failed. The judge reassured the jury there was no reason to apologize – we had participated and done our duty. Nonetheless, while I realize that my singular experience is not statistically significant, I feel I learned several lessons from jury service.

Jurors Take Instructions Seriously. The judge allowed us to learn that the defendant had already pled guilty to the charge of embezzling from the union, but we were only to use that information to evaluate whether the union executive had the authority within the union to commit the crime, not to judge the executive's guilt or otherwise conclude that he is a bad person. This is exactly the type of information that I always thought so prejudices a jury against a defendant – he committed *that* crime therefore he is a criminal and must have committed *this* crime – that it is an insurmountable hurdle to overcome. The prosecutors clearly thought the same thing because they never passed up an opportunity to mention the other charge however much of a stretch; but in the jury room it only came up once and that was in the context of someone saying that it did not influence them one way or the other.

Jurors Take Their Duty Seriously. The judge allowed us to the take notes in notebooks the court provided. I thought I was paying attention and taking copious notes until I realized that several fellow jurors had filled multiple notebooks! In addition, as I mentioned, the case ended on a Friday around midday. I certainly hoped we could reach a verdict before the beginning of the weekend so that we would not have to return the following Monday. However, most of the jurors

took their time reviewing evidence, as well as their notes, in great detail, even though it meant returning the following week.

Jurors See Through Lawyers' Tricks. Witnesses are often nervous and nervous people often look like they are hiding something or not telling the truth. In our trial, one witness in particular stumbled, seemed confused, and was sweating impressively. The lawyer cross-examining the witness seemed to take advantage and ask him a series of questions that would heighten the witness's confusion. When he sat down, the lawyer seemed quite pleased with himself. In the jury room, the jurors tended to put themselves in the witness's shoes and saw his stumbling for what it was – nervousness – and what it was not – deception. The lawyers' tactics backfired. Similarly, when the lawyers tried to make themselves "friends" of the jury – saying things like, "we don't want to waste these nice people's time" – it came off as fake.

Lawyers are too immersed in their cases. This one is no secret. It is why we conduct moot arguments and ask colleagues who are not involved in our cases what they think of our arguments. When you have been involved in a case for years it is difficult to remember a time when you did not remember every last detail. In our case, while the lawyers did an admirable job of trying to present their cases succinctly, the jurors had a hard time following the narrative until the very end. In hindsight, the lawyers would have been better served using their opening argument to tell a simple, clear version of what they believed happened instead trying to anticipate every single argument the other side *might* make and provide a response. As it was, the lawyers' opening statements were too complex and laden with details that served only to confuse the jury.

Jury instructions are incomprehensible. In our system, judges decide the law and juries decide facts. This is done to some extent through the judge's instructions to the jury where the judge explains the law that applies to the case. The catch is that instructions come from models drafted by lawyers who are apparently not skilled in communicating in plain English. My fellow jurors knew that I practice law and asked me a number of times what the instructions meant. Even as a lawyer, I found the jury instructions confusing. The lesson I took from this is that lawyers need to present a commonsense version of their case – because in the end that is what jurors are likely to rely on when they get lost in the verbiage of the jury instructions.

The food in the courthouse is bad. This should not have been a big surprise, but it is not just bad – it is really bad, and when you are deliberating you are not allowed to go out for takeaway.

The experience was ultimately unsatisfying because we were unable to reach a verdict – as jurors we did not do our job, which is to reach a verdict. With that said, I was encouraged by how seriously my fellow jurors took their job. They didn't complain because of the disruption in their lives, they paid attention, and they tried to follow the judge's instructions faithfully.

In the future, I'll look at my cases a bit differently knowing that juries are less susceptible to being influenced than I had thought; that they are capable of doing their job and doing it well. And if I'm ever called again, I'm going to bring my own lunch.