

## Can We Talk? A Spirited, First Time Juror Tells Us What He Really Thinks

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*"The world is divided into people who think they are right"*  
Anonymous

The following is an interview with a juror who served on a two and a half week jury trial involving wrongful termination and gender discrimination in Contra Costa County.

Glen is a single 38-year-old Contra Costa county resident, has a bachelor's degree in communications from Cornell University, and is employed as a graphic designer. Here are his impressions and observations. The "lessons" below supplement his interview.

### **Lesson 1: A juror with a sense of humor lightens the intensity for the other jurors.**

"For me, this whole thing was about pee management. You are stuck in the jury box, and you can't go, which makes you have to. You can't get up and use the restroom whenever you have to so suddenly you are very conscious about it. You have to really watch your coffee. Before this, I had never been called for jury duty and never been inside a courtroom for any reason."

### **Lesson 2: Jurors' initial impression of the parties begins the filtering process in determining credibility.**

"I fully didn't believe it when it started. I figured there were a pack of lies on each side competing for my credence. The lady plaintiff looked like a skank and the guy who represented the employer company had a bad mullet. Mullet? You know, short in the front, long in the back also known as business in front, party in back. The plaintiff was older, age 63, with too much make-up on and over-bronzed, but she grew up in Southern California so she had a different look than what I was used to."

### **Lesson 3: Jurors feel nervous during voir dire responding to questions to a room full of strangers. Counsel can soothe nerves by conversing with and not interrogating jurors when extracting personal facts.**

"During the course of the trial, the other jurors said how shocked I looked when I got called and I started fighting like hell to get out of there. I was nervous because I hate speaking to a room of total strangers. But the questioning by the attorneys was perfectly fine. I argued to them that I don't form strong opinions and I am a peacemaker. I am a middle child and I told them that conflict was illegal in my home growing up. I was scrambling to get off!

Turned out I was an alternate juror.

There was one other juror younger than me, a woman. She said that she worked for lawyers at a law firm, and she did not have a high opinion of them. *They kept her on.*

The forelady, a lawyer, said that they chose us because our jobs were indicators of our strong personalities. That sucked. I said the wrong things and stayed on!"

### **Lesson 4: The opening statement proves more memorable if told as a story, rather than a monologue of cast of characters and dates.**

"The plaintiff attorney stumbled the entire time. His opening did not spell out to me what happened. It was a very mushy case on plaintiff's side and what I got out of him was that this is about feelings and emotions. He didn't say it that way but that's what it meant to me. Then what the defense said to me was we are going to show you facts, facts, facts that support our case. The defense had a really tight show. But, neither side connected the dots. I could not figure out what was important and what was not important. It was like this amorphous mass of people in no particular order."

### **Lesson 5: Jurors scrutinize counsel in their dress, professionalism, organization, ability, and timeliness.**

"We nicknamed the plaintiff lawyer Bozo the Lawyer. Plaintiff's counsel was disorganized. He would lose a whole line of questioning because everything would be objected to. Then he would start again with the same question and the judge would say, 'Counsel, it's hearsay and you know it!' I don't think this plaintiff attorney had ever done a trial before. He was trained right in front of us on how to ask a question—trained by the judge.

One time the judge said to us, 'I've got a plan. Let's take a break. Why don't you leave for 15 minutes.' As we filed out, they had a side bar and I overheard the judge say to Bozo, 'I am losing my patience!' Of course, I told the other jurors what I heard.

He was bumbling the entire time: The evidence book with exhibits fell on the floor, none of the exhibits were numbered correctly, couriers hadn't brought in stuff, mishap at the copy machine and documents were missing. And, for the last three days of testimony, Bozo had toilet paper stuck on the side of his shoe. He wore those tassel shoes, you know, those lawyer shoes.

It was the tendency of the defense attorney to throw in personal relationships to try and taint plaintiff's character on the stand. The defense attorney was playing the asshole card, clearly. He'd stand there on his toes, and pull down his coat sleeves and cuff links, in an aggressive stance."

### **Lesson 6: Jurors facial expressions or lack thereof during the trial proceedings should not be relied upon as indication of propensity toward one side.**

"The attorneys liked to stand when we would walk in. Why? So we could smile at them? I never looked at them ever because I did not want to give anything away. We did not share eye contact. I did not want them to know anything that I was thinking at all because I can't hide what I think."

### **Lesson 7: The overdramatic plaintiff may lose some credibility, but the side least forthcoming with information and the most arrogant loses the case.**

"The plaintiff was interviewed first. Direct lasted for a day and a half. She testified like she thought that huge significant things would make the whole case for her. She spoke very deliberately. At that time, I was not on her side yet. She acted melodramatic.

It was very painful because Bozo was just trounced by the witnesses. One was impenetrable. The defense witnesses were all nice when questioned by their side. Then they got all squirrely and cagey when the other side came on to question them. It was a visible change in demeanor.

The defense lawyer got right into her face. The plaintiff was prescribed drugs for depression and he got her all worked up about that. This was good drama. The defense attorney said to her, 'Are you mad right now?' She rallied us good for her case. She said, 'I would not have chosen to put my life on the big screen here if this had not meant so much to me.'

The defense lawyer delved into plaintiff with the question, 'Isn't this lawsuit all about money? Aren't you doing this just to get attention for yourself?' How slimy! How can you stand there and say such things?

We thought that it was really slimy that the first defense question for all of the expert witnesses was 'Are you being paid for your testimony today? What is he paying you?' Who cares! What was that supposed to show us? He was more expensive so believe him more?

Oddly enough, we bought plaintiff's case. We saw through her attorney's problems at trial to see that the company's conduct was just mean. The defense attorney was trying to show her colorful past. He was trying to show that she had other psychological problems going on.

The plaintiff lawyer didn't object to all the mean questioning. The forelady lawyer said it was in plaintiff's favor not to object because it allowed us to see what slime bags they were to her and easy for the jury to see how the company would treat her that way."

### **Lesson 8: Jurors don't start over with deliberations when an alternate comes into the process, rather the alternate is "caught up" to the process.**

"One juror had a vacation and could not deliberate the whole time. They called me at the end of Day One of deliberations. I was expecting a verdict call. The court clerk called and said, 'What is your availability for next week?' This was totally unexpected. I fumbled around. The clerk said, 'Well, what should I tell the judge—hardship or what?' She didn't care what I said. I had no excuse, I was available.

When I showed up to deliberate I said, 'What is the problem! Why am I here!' By the end of the trial we were all getting along real well. I had only missed Day One of deliberations and they caught me up pretty quick. They told me that they had spent their time venting how the case went, about Bozo and anything else. When I got there on Day Two, they asked me if I had anything that I wanted to vent about. I said, 'Sure, I'd like to vent that you guys aren't finished yet and I have things to do and I need to get on with my life.' And they said, 'We know, we know, but really, what?'"

### **Lesson 9: Jurors will state their life experiences, and their friends', as their basis of comparison in argument.**

"At one point or another, a juror was giving their whole life story and why we should feel a certain way—on the soapbox trying to make a point."

### **Lesson 10: Sympathy may be stymied by jurors with similar experiences who reject plaintiff's story when they received nothing for what they endured.**

"I would divide the jury into three groups. The women in their 60's and they were not sympathetic to plaintiff's case at all. They wanted to give her nothing. There were the guys, age 38 to 63. They were sympathetic to plaintiff. Then there was the girl who worked for the law firm. She held out for awhile and then she asked, 'The seven of you who feel this way, if you are really strong, I will vote with you because right now I am on the fence.'

The lady next to me was the same age as plaintiff and she threatened us by saying, 'I'm leaving' if we gave the plaintiff \$100,000. She lived in a gated community in Black Hawk. She told us that she had stress in her life and she got over it. She stated: 'I had been fired before and I did not lie in bed and cry. So what is wrong with this lady?' Later, this juror just sulked when we talked about damages and we gave more than \$100,000.

The facts in the end were not in defendant's favor at all. They *accidentally* lost her whole personnel file. They had a strict company handbook which spelled out all of the documentation steps to take for disciplinary action. They didn't follow it at all. The day she filed suit they probably chucked her whole file. The Vice President of HR suddenly did not recall anything about anything.

The way we figured damages was that everybody said their number, then we agreed to throw out the high and throw out the low and pick something in the middle. We did not average damages because we were told that we were not supposed to.

The result was not what I was expecting at the beginning of trial. After listening to eleven people's points of view, you hear things that you never considered, things you totally missed, things you didn't think important.

We discussed how we should look on our way back into the courtroom to read the verdict. We discussed whether we should walk in joking or be very somber. Because the defendant would be pissed when this was read, we decided to walk in stone-faced."

### **Lesson 11: More often than not, jurors who appeared most dismayed about serving initially find the experience worthwhile, and their contribution significant.**

"I now consider myself officially an adult, having had to behave like one, and think like one. It was an interesting, but intense experience."

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