

From the Attorney's Desk
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Advocate or Juror?

There we were. The senior citizen who liked to tap dance and line dance. The dental hygienist. The retired Illinois State Police officer. The owner of a cleaning company. Two nurses. The founding member of the local university. The bar owner. The woman who misunderstood when the judge asked her how many grandchildren she had; she answered with how many *great*-grandchildren she has. All potential jurors.

The American criminal justice system relies heavily on the participation of jurors. Everyday citizens are vested with the extraordinary power of determining who broke the law, if indeed anyone did. In more autocratic cultures, this power is vested in officials, often judges, chosen by and from the society's elite. In this country we *want* the regular citizen, the person who holds a second job to make ends meet, the person who has faced discrimination, the person who is not part of the criminal justice system, to be that factfinder. And we presume, that from a fairly random selection of ordinary citizens, we will garner a pool of relatively objective, unbiased jurors to judge a peer.

Is this true?

This week I summoned for jury duty. A group of us were shuttled to a courtroom on the 7th floor of the Sangamon County Courthouse. I learned that the case to be tried was a criminal sex crime case.

The process of *voir dire* (a French phrase meaning literally, "to see, to say") began almost immediately. Smaller groups of potential jurors, chosen randomly from the pool of 50, were seated in the jury box and questioned, first by the judge, then by the prosecutor, and finally, by the defense attorney. The purpose of *voir dire* is to weed out any potential juror whose participation would be unfair and to select 12 jurors, plus two alternates. The judge is permitted to dismiss any juror with an obvious conflict or bias regarding the case. Each attorney is permitted seven preemptory challenges to dismiss jurors the attorney believes will not be inclined to be on her side. The lawyer does not have to say why she is dismissing that juror, barring a challenge that she may be doing so for racially discriminatory reasons.

After learning of each potential juror's professional status, the judge began asking questions more specific to the case. And as I sat in the back of the courtroom, I began to formulate my own answers in preparation for questioning. The initial questions were straightforward. I understood that the burden of proof was on the prosecutor, not the accused. I could use common sense, apply the law as instructed by the judge, and wait until the end of the case to finally make up my mind.

The questions became more specific to each potential juror's past interaction with the justice system. Yes, I do know people in law enforcement – I work with many competent officers on a regular basis. Yes, I know people in the State's Attorney's Office – again, some very valued colleagues. Yes, I have been the victim of a crime; twice my home has been burglarized. Yes, I have served on a jury before, in a civil case involving a motorcycle accident. And yes, I certainly have been in court many times for reasons not already discussed – on behalf of clients I have represented.

Then, to each prospective juror, came the two questions that stopped me in my tracks:

*Is there anything about this case that would keep you from being fair and impartial?
Could you reach a verdict in this case without using sympathy, prejudice or bias?*

This case involves an allegation by a 12-year old girl, that the defendant, a young man in his 20's, committed a sex crime against her when she was nine years old.

Day in and day out, I work with advocates, educators and counselors to help heal the devastating wounds caused by sexual violence, and to eradicate this epidemic. On a firsthand basis, we see the fallout of a life interrupted by such trauma. We see the psychological impact of sexual abuse, including flashbacks and phobias, self-blame and self-hatred, guilt and shame. We seek help for victims suffering the many physical side effects of sexual violence, including lethargy, sleeplessness, panic attacks, gastrointestinal problems, even self-mutilation. We see the families torn apart by a child's allegations of familial abuse – allegations that may go unbelieved. We guide victims through a criminal justice process that may not respect them or even trust them.

The judge's questions hovered over me. His insistence on fairness and impartiality. His refusal to allow sympathy, prejudice or bias to guide the decision-making process in his courtroom. Was I the juror who could do those things?

No.

I am, at heart and by profession, an advocate. I do indeed have sympathies for the women and children whose lives are torn apart by sexual violence. While I think I could be fair, I am probably not impartial. I have an intense drive to help the victims of sexual violence and to hold the offenders accountable. I *don't* approach a sex crime case as a blank slate; I come to the table educated and aware of the impact of this crime, and with an unwavering desire to end it.

Jurors play a critical role in our criminal justice process. I hope in the future to have an opportunity to serve again as a juror. Today, serving on a sex crime jury would be disrespectful to the criminal justice process and in abrogation of the responsibility of a juror to approach a case with an open and uninfluenced mind. Today, my job is that of advocate.

Post script: I was not questioned as a potential juror in this case, as the jury was selected before my name was drawn. One day later, while in the prosecutor's office on related business, I learned that the judge had declared a mistrial in the case. Soon, a new pool of potential jurors will face the same questions I did.