

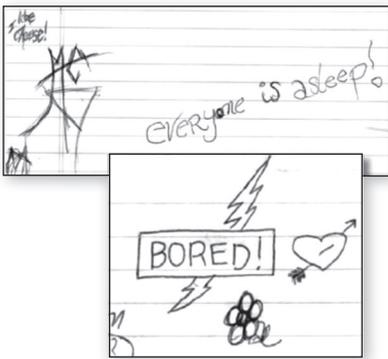
FROM MY SIDE OF THE BENCH

Jury Notes

BY HON. RANDY WILSON

IN 2011, THE TEXAS RULES OF CIVIL PROCEDURE were amended to make clear that jurors are permitted to take notes and use those notes during deliberations.¹ Previously, it was up to the discretion of the judge whether the jurors were permitted to take or use notes during deliberations.

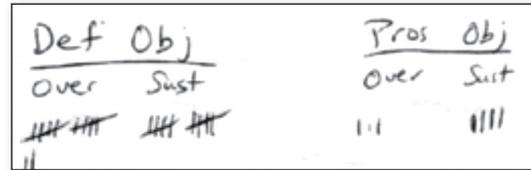
Recently, I read a fascinating article in *Voir Dire*, the publication of ABOTA, the American Board of Trial Advocates.² In that article, former Denver district judge Christina Habas describes her experience with jury notes. In Colorado, jurors have long been permitted to take notes and were assured of the confidentiality of those notes. Judge Habas, however, at the conclusion of trial requested and received permission from many jurors to review and retain the notes in order to assist lawyers in improving their presentations. The notes she published were fascinating and I had to share them.



Jurors get bored. Not surprisingly, many of the notes reflect juror frustration with the process and the speed with which the trial progresses. While there's a lot the judge can do to streamline and move the trial along, much of the

blame for jury boredom rests on the lawyers.

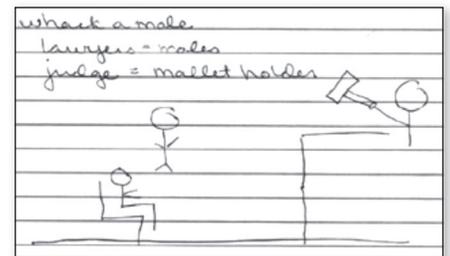
Repetition. The most oft-cited complaint by jurors is needless repetition. Jurors hate repetition. They feel it insults their intelligence and unnecessarily prolongs their jury service. The beating the dead horse drawing is priceless.



Lawyer Objections and Judge Rulings.

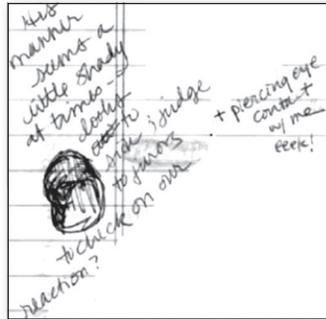
Do jurors pay attention to objections by lawyers and rulings by the judge? Absolutely.

If a lawyer continually makes frivolous objections that are routinely overruled by the trial judge, jurors take note, even to the point of keeping score. Indeed, one juror thought the whole proceeding looked like judicial whack a mole.



Watching Juror Reactions. Trial lawyers often watch jurors to see how the jury is reacting. Lawyers naturally want to see whether the jury is buying the case. What lawyers

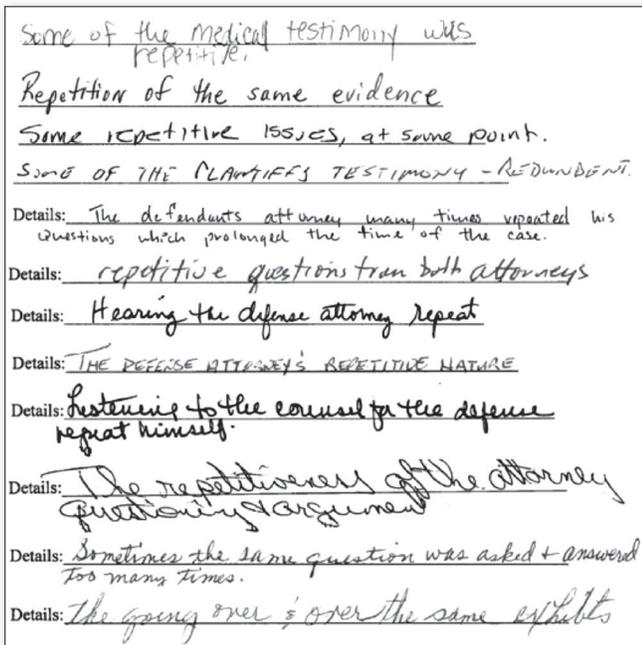
don't realize, however, is that constantly watching the jury makes the jury uncomfortable. This juror's reaction to "piercing eye contact w/ me" was "eek!" I've had the same experience. I once had a 7 day in which, mid-trial, a juror gave us a note which said, "the lawyer with the dark hair keeps staring at us to see our reaction and it's making us very uncomfortable." Fortunately, or unfortunately, both the plaintiff and defendant had lawyers with dark hair, so we didn't know to whom the note was directed. I gave the note to the lawyers and all lawyers spent the remainder of the trial staring ahead with tunnel vision, never once glancing at the jury.



a huge margin, the biggest criticism of lawyers is repetition. Here's a sampling of comments by jurors when I ask them for comments about the attorneys. I could provide many more examples, but you get the point—don't repeat! I'll close with one of my favorite trial cartoons:



Judge Randy Wilson is judge of the 157th District Court in Harris County, Texas. Judge Wilson tried cases at Susman Godfrey for 27 years and taught young lawyers at that firm before joining the bench. He now offers his suggestions of how lawyers can improve now that he has moved to a different perspective. ★



A Final Note on Repetition. While I don't look at jurors' contemporaneous notes taken during trial, I do send questionnaires to the jury after trial to get their reaction to the trial and see if there are things that the court and staff can do better, as well as solicit comments about the lawyers. By

¹ Tex. R. Civ. P. Rule 226a, amended March 15, 2011.

² Christina Habas, What Is Going on in their Minds? A Look into Jury Notes, VOIR DIRE at 26 (Fall/Winter 2012).