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## PERSPECTIVE

## Reflections on trying an 8-week jury trial during COVID-19

By Randy Sue Pollock

After eight weeks of trial and nine days of jury deliberations, a federal jury in Lexington, Kentucky acquitted my client of conspiracy to transport drugs and money laundering. The case, which dealt with drugs distributed from the Sinaloa drug cartel, presented many concerns for attorneys and defendants from Los Angeles but one of the most was being in trial when the COVID-19 virus began to rage and Gov. Andy Beshear issued shelter-in-place orders after trial had begun.

This presented unique challenges to Judge Karen K. Caldwell in protecting the jurors, courtroom staff, attorneys, paralegals and parties in the courtroom. It also subjected the attorneys to difficulties in being able to have witnesses travel to Lexington for their testimony. Technology met its test in this trial as video depositions and live stream testimony had to be used in lieu of air travel.

The case began on April 21, 2017, when a jet arrived at Bluegrass Airport with 80 kilos of cocaine and 20 kilos of methamphetamine. Richard Carlson, the ringleader of the trafficking organization, was arrested at the scene. In order to receive a plea agreement for a lighter sentence, he had to name names. The more he could provide, the lighter the sentence would be, so he named everyone the government would think could be involved. The more he named the more believable and valuable to the government he thought he would be.

When cross-examined for over 10 hours, he asserted his 5th Amendment protections 66 times in order to avoid answering questions about



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his finances. And upon cross examination of the case agent from the Department of Homeland Security, it was established that his testimony, that was presented to a United States magistrate judge for warrants and used for a grand jury indictment, was not thoroughly vetted by the government and was untrue as it was based solely on the uncorroborated word of Carlson.

With the virus raging through Kentucky as well as the nation, Judge Caldwell was presented with a challenge unlike any other federal judge has had to face since this was the only ongoing federal trial in the United States. The judge had great concern for the well-being of the jurors, court staff, attorneys, paralegals and witnesses. She had the jurors social distance themselves by adding a row of chairs in front of the existing jury box and placed three jurors in an area usually used by spectators. Only the parties involved in the case were permitted into the courthouse. Masks were made available to the jurors by the Court, but all but one juror decided they would rather have the masks be donated to

frontline healthcare workers instead. The judge discussed with each juror individually their concerns about the virus and had them fill out a questionnaire each day to determine if they had concerns about continuing.

The impact of the pandemic on this jury cannot be overlooked. We ask jurors to devote their time to jury service which keeps them from their jobs and their families, especially with schools being closed. Jury service during a pandemic required a commitment and dedication that was above and beyond a normal jury trial. Each day the jurors left their home to come into a federal courthouse, not open to the public, where they had to sit every day, including some Saturdays, to hear the evidence and deliberate. These 12 jurors epitomize the essence of our judicial system. We should never under-estimate how important jury service and the seriousness with which juror approach their role.

Every participant in this case from the jurors, attorneys, the judge, the court staff and the defendants put their health at risk in order to ensure that a fair trial was held. Judge

Caldwell's patience and genuine concern towards everyone in the courtroom as well as the courage of the jurors to continue to perform their duties ensured that justice was done. Not Guilty verdicts were rendered for three of the four defendants.

My thanks are especially heartfelt to my paralegal/trial assistant Carey Lamprecht and the entire defense team who traveled cross country to defend our client during what developed to be perilous conditions. Special thanks are also extended to my superb jury consultants Becky Jones from Smith Jones Consulting in Kentucky and Karen Jo Koonan in San Francisco as well as our team of California-based investigators who prepared for the trial. The psychological toll of being in a different jurisdiction far away from the west coast working 14-16- hour days cannot be overlooked. This was truly a trial in the worst of times with the silver lining of a courageous judge and jury to ensure that justice was served. ■

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