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What Do Juries Really Think?

by Judge Frank G. Forchione

In the course of the last eight years on the bench, and hundreds of jury trials, my curiosity has been peaked as to what do jurors really think? Very early on, I started speaking to the jurors at the end of every trial. At first, I just wanted to thank them for their service and find out whether there was any way that we could make jury service more comfortable, but I quickly found out that jurors had their own concerns, and a lot of questions. More than anything else, jurors wanted to discuss the trial, the attorneys, and the court system as a whole. As a result of these conversations, I decided to let lawyers know: what do jurors really think?

1. Lawyers Talk Too Much

Jurors want to see things. They look forward to observing witnesses testifying on the stand; they are anxious to examine all the exhibits. They express annoyance when lawyers ramble on and on. A lawyer that can make arguments brief and to the point is going to score a lot of points. Over and over, I've heard jurors express their frustration that the "lawyers seemed to talk down to us." It's important not to be condescending. The use of big words not only frightens them, but confuses them and makes them feel inferior.

Another major question jurors stress is: "Why do they make the same point over and over and over? Do they think we're stupid?" Give jurors credit; they actually are listening. They certainly don't want to be lectured, as they get enough of lecturing in their routine lives. Treat jurors like

you would a family member. As one juror pointed out about a plaintiff's lawyer: "He had me from the beginning; he spoke to me like a friend. I trusted him and would have felt confident going to him to discuss any of my personal problems."

2. Jurors Hate Side Bars

There is nothing more aggravating than someone telling secrets to someone else in one's presence. Simply put, jurors hate sidebars like Browns fans hate the Steelers. After all the talking, arguing and bickering in the courtroom, it seems odd that jurors would get so upset about the whispering, but jurors feel as if attorneys and Judge are trying to keep something from them – and they're usually right. One juror groaned, "Sidebars are nothing but lawyers trying to find a way not to tell us the truth." Many victim advocates have proposed a "Bill of Rights" to bar these meetings. Unfortunately jurors do not understand the importance of and need for these discussions.

Judges themselves hate sidebars because it slows down the trial process. Sometimes the judges dislike getting up time and time again at the bench. Jurors pick up on the Judge's frustrations very easily. Jurors also feel sympathy for the court reporter as she tries to translate the attorneys talking over each other during the sidebar. One juror smirked, "I don't know why they thought they were keeping anything from us. We're so close to them, and they talked so loud, we heard just about everything."

3. Eye Contact Is Important

My father always taught me that when you greet someone, shake their hand firmly and look them straight in the eye. The same holds true with jurors – eye contact is important. During opening and closing arguments, it is important to make eye contact with jurors. It's easier to influence them when you have their attention. On the other hand, you have to be careful not to stare. You don't want to intimidate them or make any one feel singled out. Several jurors have expressed discomfort when lawyers "turn their heads and glare at us every time they ask a question of a witness." When that happens, jurors feel that they are "being played by the lawyer." *Too much* attention can actually be a negative.

Jurors also feel it's important that the lawyers make eye contact with opposing counsel when they are discussing matters, and especially with the judge when they are making a point. Eye contact is equally important with witnesses. Witnesses that take the stand and turn away or gaze up in the air appear to be dodging the truth. Jurors find witnesses more credible when their attention is directed towards the attorney while they respond to their questions. Witnesses are rewarded when they focus on the jury during the critical parts of their testimony. Jurors frown on witnesses who refuse to make eye contact with the opposing lawyer during cross examination, but who, instead, often glance over at their own lawyer, desperate for a life preserver. As one juror observed, "When you're looking for your own lawyer to help in cross examination, you're in real trouble."

4. Professionalism Counts

Most studies conclude that jurors tend to align themselves with the attorneys they like the best. When an attorney is disrespectful to opposing counsel, or the judge, they actually are hurting their own

client's case. Think about it – no one enjoys watching rudeness or constant conflict for several hours at a time. Therefore, don't take witnesses' answers or judges' decisions personally. When you address the court saying, "I'll be brief", don't go on a longwinded diatribe on opposing counsel's case.

In addition, it is important to develop a poker face. Expressions of dismay or frustration, such as throwing hands up in the air or pounding fists on the table appear childish in the jurors' eyes. If things aren't going your way, show you can take a punch. Jurors pay close attention to how the lawyers treat witnesses: don't interrupt or cut off witnesses when they are legitimately trying to answer a question. One juror stated: "I get very frustrated when the attorneys don't let the witnesses say what they want." Another juror asked, "Why do they demand 'yes' or 'no' answers" when it's obvious that it couldn't be answered simply with a yes or no?"

5. Jurors Find It Hard To Believe Expert Witnesses

Although expert witnesses are one of the most important parts of every case, jurors candidly admit, "We have a hard time believing anything an expert witness says." For the most part, jurors feel that experts are overpaid "hired guns" who will testify to anything as long as they're getting paid. Therefore, if you are going to bring in an expert witness, find one who will be viewed as objective, who charges reasonable fees, and speaks in terms that the jury will understand. As one juror said after hearing the fee the expert billed, "He should be charged with robbery!" A consistent comment is: "They are nothing but professional witnesses." Another juror stated, laughing, "If I live life again, I want to be an expert witness."

The most effective witnesses are those

who can actually step off the witness stand and explain their opinions in language that jurors can understand. They must be able to speak the English language clearly, and in succinct sentences. Jurors hate complicated medical jargon like "myocardial infarction", when "heart attack" is the term that everyone knows. Most jurors will follow expert witnesses who are good teachers, who simplify complex information in a manner a jury can decipher. Remember, if you have trouble comprehending your own witness, the jurors are probably going to feel the same way. Trust your instincts.

6. Admit The Obvious

Jurors get frustrated when lawyers and witnesses fail to concede even the most obvious point at the trial. The facts are being presented to the jury because there are two sides to the story. For the most part, every case has some level of weakness. Instead of acknowledging the problem, witnesses get on the stand, panic, and stumble over their words, trying to defend a hopeless point. Jurors have more confidence in those who will admit a flaw in a polite and prompt manner. Conceding weaknesses in a case also displays integrity with the jury. One juror complained, "How can I trust his testimony when he won't even admit the obvious?"

7. Use Technology, But Make Sure It Works

In this day and age, jurors expect technology to be utilized during the trial. It's used in schools, in the workplace, and even at home. The attorney who doesn't use technology is placed at a disadvantage. The use of technology in a courtroom is no longer feared, but welcomed. The public is used to seeing computers on judges' benches and counsel tables during fictionalized television trials and if used properly, technology can actually be a visual

storyteller. As one juror questioned, "Technology is always used on *CSI* and *Law and Order*; why aren't they using it in this case?" Using computers, CDs and DVDs can help in presenting evidence effectively and clearly; it makes it easier for the jury to follow along, which in turn allows you to be a better lawyer.

However, if you are going to use technology, make sure it works. It may be best to have an experienced trial technician nearby. Get to know the bailiff and court staff; they can be a big help in walking you through the technology specific to each courthouse. Jurors and judges get frustrated when technology doesn't work. Any delays will cause both your client and yourself unnecessary distress. As one juror noted, "Why didn't they try it out on their own beforehand instead of wasting our time watching them try to get it to work?"

8. Preparation And Organization Make an Impact

Jurors love lawyers who are prepared and organized. It builds a feeling of confidence that if the lawyer knows what they're doing, they must be right. Jurors are impressed when the attorney is prepared enough to have the right paper in their hands or files at the time of questioning. If an attorney appears disorganized, the impression is that they did not know what they were doing, and perhaps their case isn't that good. Mark all your exhibits prior to trial. You can save everyone a lot of time by avoiding the unnecessary exercise of handing every exhibit to the court reporter to place a sticker on it and mark it.

9. Jurors Struggle With Jury Instructions

More attorneys focus so much on the presentation of evidence at trial that they forget how crucial jury instructions become. The majority of jurors have no

prior jury experience. Legal definitions seem foreign to them. For example, jurors are unfamiliar with the concepts of "burden of proof", "standard of care", "negligence", and are often overwhelmed the first time that they hear these definitions at the close of the trial. Jurors commented, "Why don't they explain these terms to us at the beginning? Then maybe we could understand."

A good idea may be to define these terms immediately by PowerPoint during voir dire or in the opening statement. Trial court judges frequently grant permission to do so. Requesting that the judge read the jury instructions prior to closing arguments would also give counsel a second opportunity to go over the terms to the jury. Some judges allow written jury instructions to be taken back to the jury at the end of the trial. It may be beneficial to make this request so that jurors can have the instructions to view while deliberating. One juror pointed out that, "It's hard for us to decide the issues when it's never really explained to us what we're deciding."

10. Jurors Notice Small Things

Jurors observe things that most of us don't see at trial. They make judgments on the plaintiffs by the amount of jewelry they wear, whether they walk up three flights of stairs or take the elevator, and how they interact with their attorney, as well as courthouse staff. They pay attention to the lawyers – how they communicate with their clients, opposing lawyers and judges. One juror disclosed, "I had no faith in the attorney when I walked by the counsel table and saw on his laptop that he had Facebook up." Another juror admitted that she was influenced by the respect that an attorney showed to the jury. "Every time we walked in or out of the courtroom, he stood up while opposing counsel sat at his chair looking at emails."

Hopefully these thoughts can assist you in your practice at trial. It's always helpful to know what a jury really thinks! ■