



The Focal Point LLC

Keeping Your Jurors Organized

By G. Christopher Ritter

Our society values spontaneous creativity: We marvel at jazz improvisations, delight in a stand-up comic's ability to create something out of nothing and admire an artist who quickly turns a blank canvas into a gorgeous painting.

Yet we all know that being spontaneous carries some risk in the courtroom. If you have tried even one case, you probably have a story to tell about that "sudden flash of genius" that came to you as you were standing in court, that spontaneous idea that seemed so brilliant — until you opened your mouth and unleashed the equivalent of a loud burp in a silent library.

That is not to say that you should avoid all spontaneity during trial. In fact, there are plenty of times when being spontaneous is not only helpful but also necessary. But with certain matters, you cannot risk improvising. That's because whenever you're truly spontaneous, you risk leaving out a salient point. And just as nature abhors (and will fill) a vacuum, jurors hate blank spots in a case and will spontaneously fill them — often in ways that do not favor your client.

This typically happens in two instances. The first is when you leave gaps in your underlying case story. Jurors expect a complete (or relatively complete) explanation of what happened in the case. When lawyers fail to provide information about a crucial point, the jurors first get suspicious and then fill in that gap for themselves. Unfortunately, since they start off suspicious, the jurors often fill in the gaps in ways that are unfavorable to the clients.

The second instance is when jurors do not know what they are supposed to do or how they are supposed to respond in the jury room. I cannot tell you how many times I have watched mock jurors, excited by closing arguments, rush into deliberations, pull out their pencils, grab the verdict form and then . . . sit staring at each other, unsure of what to do next. Eventually, someone fills the gap by suggesting how to proceed, often in a way that is either well-meaning (but wholly ineffective) or disadvantageous to your client. How do you avoid this? You pay attention to the adage that "organization is the enemy of improvisation," and you arm your jurors with tools that help organize them in a way that favors your client during deliberations. And one highly effective way to do this is with trial graphics.

In addition to helping you illustrate and simplify your case, trial graphics provide an easy way to organize and reiterate material throughout your trial. That is, most trials have an abundance of people, information and rules for jurors to keep straight, so organization is key from beginning to end. But organizational tools are especially important during three key points: opening statements, expert witness testimony and closing arguments. In fact, each of these points provides an opportunity to both carefully shape your jurors' understanding of the case and show that you have mastery of your material — and that you're willing to share it.

You can help your jurors get organized during your *opening statement* in a number of ways. You can tell them what the case is about (e.g., “this case is about one man who was so greedy he stole an employer’s invention and gave it to another company” or “this case is about a woman who had to kill her husband to keep him from harming her children”). You also can put up timelines of your case that include the very most important interactions and transactions; create posters that introduce the jurors to the key players involved (using simple headshots with captions), and define the legal concepts that form the basis of the case. The point of these graphics is to let the jurors know why they’re in the courtroom, what they’re going to be learning about, and what they’re being asked to do.

Although we like to think that our *expert witnesses* will provide everything that our jurors need to know, the truth is that expert witness testimony can sometimes benefit from a little explication, because expert witness testimony can sometimes get confusing — or boring. The most effective expert witness support comes from what I call “nesting doll” outlines, or connected outlines that lay out what the expert was asked to study, show what she found and explain why what she found was important. If you think about it, these are the issues jurors care most about and, if you organize them at the beginning of the expert’s testimony (usually after she is qualified), you can help direct their understanding of the testimony.

But it’s in your *closing argument* that keeping your jurors organized can have the greatest benefits, because that’s when you need to be able to summarize your case themes, reiterate your technical points, and flesh out any jury instructions that may be coming from the judge.

If there was complicated evidence, for instance, (or just a lot of it), you may want to create graphics that summarize what the evidence was and why it was important. Throughout a trial involving an airplane crash, for instance, we used a series of graphics showing that the crash was really due to pilot error, not a defect in the airplane. For the closing argument, we used one slide of the crashed plane, to which we added small illustrations representing the challenges facing the pilot that night. He was old; he chose to fly into an airport with no air traffic control; he tried to land a big plane on a short runway and he was flying on a very foggy night. All of that evidence had been discussed at length during the trial, but in closing arguments, we just wanted to give the jurors a summary that they could easily remember and discuss during deliberations.

Finally, graphics that help explain the jury instructions themselves can be invaluable. For instance, you might want to put up slides of text pulls from the applicable law or instruction. You might want to provide brief tutorials on what the law means or what alternative criminal counts might require. You might even provide checklists that the jurors can use to keep track of the elements that are — or are not — present as they try to decide on a verdict.

Of course, these tools don’t just keep your jurors organized, which is in itself invaluable. They also show that you truly understand your case and that you’re willing to share that understanding with your jurors. And in the end that shows that while you may improvise with a flourish when you need to, you’re also very well-organized yourself.

G. Christopher Ritter is chief of visual trial strategy for The Focal Point, a litigation strategy and graphics firm in Oakland. A former trial lawyer, he is author of “Creating Winning Trial Strategies and Graphics,” published by the American Bar Association. He can be reached at chris@thefocalpoint.com.