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Engaging Your Jurors

By G. Christopher Ritter

Jury selection virtually guarantees that jurors are “blank slates.” They do not know the parties. The only thing they know about the dispute is what they can glean during *voir dire*. They are probably unfamiliar with the specialized knowledge involved. And they may know little about legal proceedings.

The fact that jurors start as disinterested parties does not mean they also have to be *uninterested*. A skilled lawyer knows how to transform jurors from passive observers into active advocates who will lobby for his or her side during deliberations. In other words, a skilled lawyer knows how to get jurors to “give a damn” about the case.

How do lawyers do this? The first step is realizing there are two kinds of jurors: “I Just Am Jurors” and “Active Jurors.” “I Just Am Jurors” don’t know why they are voting for one side or the other. When pressed on the point, they typically respond, “I don’t know. I just am.” As such, they do not have much influence over their peers during deliberations. Conversely, “Active Jurors” are engaged in the proceedings. They follow the trial arguments and can continue your arguments during deliberations.

“Active Jurors” are the ones you want to court because they can influence their peers. In order to help them do so, you need to give them the tools needed for their dual roles as “truth seekers” (during the trial) and “advocates” (during jury deliberations).

The tools your Active Jurors need *during* the trial are those that help them comprehend your case. Unlike you and your client, jurors have not been analyzing this dispute for months—

and they don't want every detail. They want just enough information to make up their minds about the case and feel good about their decision.

As such, **the truth-seeker's toolbox** should contain tools that *simplify* your case. A ***single coherent story line***, told in simple, every day language, for instance, definitely helps jurors understand a case. Offer too many theories and jurors' heads will spin. Instead, apply Occam's razor: "If two theories explain the facts equally well, the simpler theory is preferred."

Credible case themes also simplify complex cases because humans gravitate toward familiar themes. In fact, a number of literary critics have noted that all stories follow a small number of universal storylines. Find the theme that fits your case. It might be, for instance, a "greedy corporation exploited innocent locals" kind of a case. Or it might be a "look, stuff happens and sometimes it is nobody's fault" kind of case. Whatever the theme, making it transparent helps Active Jurors understand your version of events quickly.

In a similar way, you can simplify your case by using ***analogies***. Need to explain how the Big Box store squelched the independents in one particular region? Recall the story of the bully on the school play yard. Need to explain how computer memory works? Conjure the image of a parking lot with lettered and numbered rows. Just make sure your analogies are entertaining and memorable. If your comparison is as unintelligible (or boring) as the technical point you are trying to make, you have wasted your—and your jurors'—time.

Just as analogies help jurors make sense of complicated topics, good trial graphics help ***make the invisible visible***. Jurors understand a smoking gun or faulty engine part; such objects are tangible and familiar. What is harder to understand is a concept like "fiduciary duty" or "enabling a patent" or a numerical concept like "parts per billion" or "the speed of light." Make such "invisible" concepts "visible" via clear, meaningful graphics. For example, illustrate the size of a 1-micron defect on an 8" silicon wafer with a trial graphic showing a soccer ball lost amid 90 square miles of the greater San Francisco Bay Area, which is far more comprehensible.

Of course, in order to win a case, you also have to give jurors the tools with which, during deliberations, they can analyze and explain your side of the case to the undecided jurors. As such, the tools in your **Advocate's Toolbox** should include ***methods to compare and contrast***

evidence. Why? During your trial research, you delved into your case by topic. However, trials are structured by the testimony of parties and witnesses. That means that evidence about the money-laundering scheme at issue in your case may come up on Days 2, 8 and 23 of the trial, which can make it difficult for jurors to reshuffle the evidence into the narrative theme of your case.

You can help your Active Jurors process evidence by providing them with graphics that organize it during your closing argument. This might simply be a graphic with the opposing party's key statement at the top of the board and citations to all of the contrary evidence arrayed on the bottom. Or it might be as complicated as a computer graphic on which all the demonstrative evidence (e.g., charts, definitions and animations) is organized and available at the click of a mouse.

Annotated jury instructions also can be used as critical persuasion tools. Simply pick the one or two instructions most crucial to your case. Define the key legal terms for your Active Jurors. Then point your Active Jurors toward the evidence that allows them to argue that the necessary elements in the instructions have or have not been met.

In one intellectual property case, for instance, an attorney needed to teach the jurors about the "doctrine of equivalents" test, which is used to prove that two patents are identical in function, way and result. This concept can be hard for laypeople to understand. A graphic was created that offered an analogy of three jurors getting from their house to the courthouse. One took a car; one took the bus; one took the train. As the graphic showed, the "function" (get to courthouse) and "result" (arrive at courthouse) were equivalent; the "way" (mode of transport) was not. By using an everyday example to illustrate a legal concept, jurors understood their charge.

Creating and providing new tools for your jurors may sound labor-intensive. However, attorneys who give jurors a coherent plan have a distinct advantage over those who do not. Jurors who favor the side that provides guidelines are usually out of the blocks faster during deliberations and are more likely to dominate early (and important) discussions about the trial. That's because these jurors don't need to spend time at the outset trying to figure out how to

analyze the facts. They know how to do so because counsel taught them and inspired them to give a damn about the case.

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