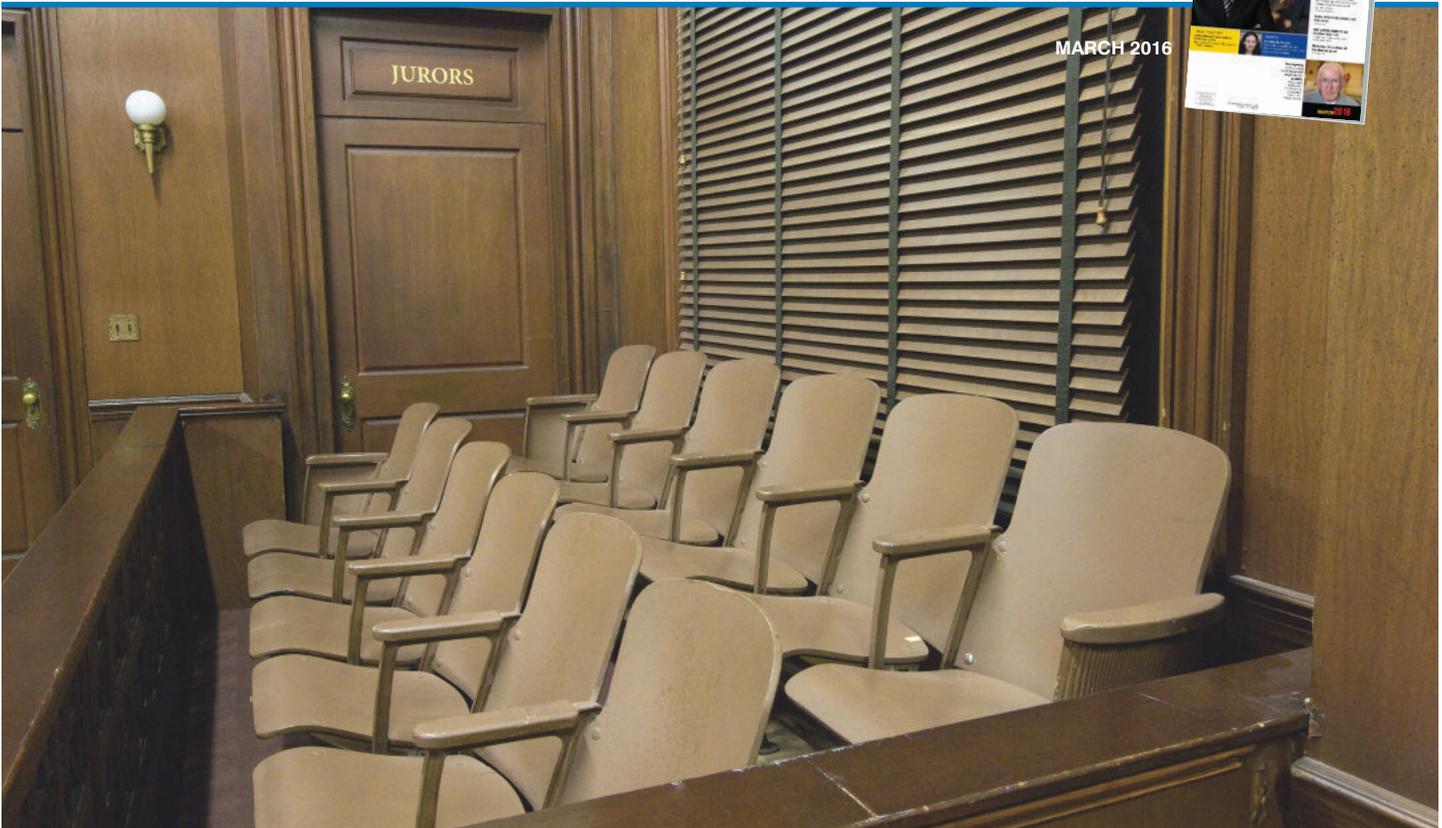




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Our jurors: Giving them respect and honesty

A trial attorney's observations from the jury box

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I recently had the unique good fortune of serving on a jury. I was surprised that I was kept on, and delighted to have the opportunity to watch and judge a trial from the jury box, rather than counsel's table. The experience gave me invaluable insight into what jurors are experiencing internally, as a member of a bigger group, and as the trier of fact.

Jurors' mindset

As trial attorneys, we tend to focus on everything we need to do, to put in our case. We are worried about witnesses and witness order. We are arguing about evidence that should be let in and evidence

that should be kept out. We are concerned about wording in our opening statements and wording in our PowerPoints. In sum, we are focused internally, on what we personally need to do to keep our case moving forward. Naturally, then, we are not focused on what the jurors are dealing with. Yes, we know we need to conduct voir dire and we know which potential jurors are scowling at us, which jurors are sleeping, and which appear friendly – but we are not thinking about what the jurors are experiencing because we are too busy thinking about what we are experiencing.

As trial attorneys, it is critical to get out of our own heads and think about what jurors are dealing with. First, in order to show up after receiving a summons, a juror has had to make arrangements and often in very significant ways.

They have explained to HR why they have to miss a day of work and asked coworkers to handle their responsibilities; they have arranged and paid for extra childcare; they have asked someone else to give their sick parent daily medications; they may not be receiving pay for the day. Then, by the time a potential juror has been chosen to serve on a jury, that juror has now had to likely make dramatic arrangements to do so, and the responsibilities they have reassigned, put on hold, or are neglecting in order to serve on the jury, are on their minds.

Thus, we must respect the time they have given us and not waste it. This doesn't mean that we give the usual "Thank you for your service" line – jurors do not buy this and do not appreciate it. This means we need to consider their time in



everything we do in our case. This is not a group of people who have chosen to go watch a jury trial – the performance we think we are putting on. This is a not a movie they have gone to see and enjoy the popcorn. These are people who feel their lives have been taken over for a few weeks by this civic duty.

We must not simply expect that because our witness is running long, or we are out of witnesses for the day and want to end early that the jury can easily accommodate us. Jurors should be given the same respect, consideration, and accommodation that we expect to be given. I recall trying a case and seeing a juror roll her eyes when the judge suddenly announced we were done early for the day. I thought to myself, “Shouldn’t she be happy? She gets to go home early.” No, she wasn’t happy – because she had that day covered for childcare and knew that, by leaving early, she would need to be here longer in days to come; days that she couldn’t necessarily make arrangements for.

Jurors’ scrutiny

In trials, we often presume that quite a bit is either missed by our jurors or too complicated for our jurors. Sometimes, we presume our jurors are very impressed with certain evidence, or convinced by the way testimony has been presented. Through my experience serving on a jury, I have learned that these presumptions are almost always wrong. Jurors are paying attention, to everything. Once a jury has been empaneled, a different mindset takes over. Jurors may be there begrudgingly, but they now have a job to do – and they focus on every detail.

Being yourself

Jurors detect trial attorneys’ personalities immediately. Similar to the studies regarding the seconds it takes for a person to judge another person – jurors have a character profile of the attorneys

in front of them within moments. We are taught in trial colleges to use our own personalities in our cases – to not try to become someone else. Having served as a juror, I now see the profound yet obvious wisdom in this. Watching an attorney put on a different personality – even by use of a gesture, or a phrase – is difficult to see, creates distrust, and reduces respect. Using slang to seem more familiar, if you are usually a formal speaker, is disingenuous. Chuckling in response to a witness response, if you do not find it funny, is disingenuous. Pacing through the well because that’s what opposing counsel does, when your style is to question a witness from behind a lectern, is disingenuous.

Honesty with evidence is critical. If a witness describes something one way and you want to minimize it so you rephrase it, a jury will notice – and more importantly, the jury will know what you are doing and not like you. Find another way to do it. While trying a case involving a severe traumatic brain injury, defense counsel referred to the injury as “a bump on the head,” and the jurors told me after the trial that they found this truly offensive.

As a juror, I watched one of the attorneys refer to broken bones as “deep bruising,” and that was discussed at length back in the deliberation room. Every juror noticed it and was bothered by it. If you have bad facts, own them and figure out a way to present them – as the trial attorney, you yourself should not change them.

Don’t waste time on needless foundation

In the deliberation room, jurors asked me (since they knew my profession) why the attorneys had wasted so much time with “build-up” on a witness. They were referring to foundational questions. The jurors said that, as soon as each witness took the stand, they just wanted to know why that witness was there – their

relevance to the case. To the extent you can, ask your initial question to a witness in a way that introduces why that person is there. Cut to the chase. If it brings an objection, then add in more foundational questions – now it is opposing counsel wasting the jury’s time, not you.

“Good morning, Officer. On December 1, 2007, you pulled over Mr. Smith on Main Street, correct?”

“Good morning. Doctor, you’ve been Mr. Smith’s primary care physician for 17 years, correct?”

Yes, these are objectionable – but first of all, an experienced judge should understand the point of doing this and let the questions in as phrased, and second of all, if you are forced to then ask more questions by the judge – the jury has at least heard where you will be going.

Jurors are not impressed by your lengthy and detailed, and technically correct, foundational questions. They are bored and irritated that you are wasting time and they tune out – so by the time you get to why a witness is important, you have lost them.

Simplicity

Simplicity is key with technology and exhibits. If PowerPoint or any exhibits are cumbersome to you, forget them. They only hurt you because your discomfort is both painfully obvious and distracting to the jury. As trial attorneys, we sometimes believe that if opposing counsel or opposing counsel’s witnesses are using flashy graphics, we should as well – for the jury’s sake. Jurors will not be misled into believing your case or your witness simply because of a flashy presentation. If technology and complicated exhibits are not second-nature to you, and you cannot afford someone to manage the technology in the courtroom, then do not use them.

If you do plan to use technology or complicated demonstratives, make sure they are perfect. As a juror, I watched a lengthy PowerPoint that clearly took



hours to put together. It had two typos in it. The only thing our entire jury remembered from it was the two typos – we were all critical of the attorney for not proofreading. And for believing we would be more convinced by his case just because he had a PowerPoint.

Our jurors give us days, weeks and sometimes months of their time. They deserve our respect for their time and intelligence, and our honesty in the evidence we present to them.



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