

Chapter 18

Communicating with Your Jury

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Your communication with the Jury starts before you talk. From the moment you are both in the same room, in fact when you are walking down the hallway on your way to the courtroom, the communication is occurring.

Every physical aspect of you is being inspected by the jury pool. Your clothes, hair, demeanor, face, attitude, gait, style - everything. Before the trial starts, you are on display and the Jury's perception of your competency is already on trial. You are "on trial" from the moment you arrive at the courthouse, long before you enter the courtroom, and long before you stand up to begin your voir dire. Knowing that fact can make a difference before your trial even begins.

Your acceptance and your credibility with a jury starts with how you look and how you act. It solidifies with what you say and how you say it.

As a trial attorney, you are both an actor and the director of the stage play that is the trial itself. The jury is the audience. Whether the audience applauds you with a verdict (you win) or throws tomatoes at you (you lose) will depend on how well you present both yourself and your version of the play. The version of the play that you present, of course, is your client's version of the truth.

Ironically, your opposing counsel is presenting his or her own version of the same play (and their truth) and the Jury is watching both of them unfold in roughly the same time frame. Ultimately, they will applaud only one side's presentation. They will only believe one side sufficiently to award their verdict.

The prevailing side's version of the truth becomes, in the process, the truthful reality that is accepted by the Jury and on which they award their verdict.

In most courtrooms you will have three chances to communicate directly with

the Jury - voir dire, opening statement, and closing argument. You may also get a rebuttal argument, for a final and fourth opportunity. Each of those presents a uniquely different chance to communicate from the communication that will occur during the vast majority of the time that the trial will consumer each day. For that reason, the indirect communication that occurs during a trial must not be ignored.

Your Indirect Communication

Throughout the trial, always show utmost respect and courtesy toward the jury and the judge. Jurors expect it and anything less will offend the jury, even if the judge overlooks the missteps that will occur in the heat of a trial.

A level of “professional” courtesy and respect should always be shown to your opponent and all other persons in the courtroom. This is not the same thing as “utmost” courtesy and respect. Jurors know that in a civil lawsuit the two sides do not agree on something and are fighting each other over it, with the expectation that it commonly involves money.

The result is that the jury expects to see a fight. A courteous and professional fight with words, yes, but a fight nonetheless.

Control your communication with the jury. A trial is about the evidence and witnesses that are presented to the jury for their consideration. Although it should not be about the attorneys or their personal styles, human beings can not help but notice and, at times, be influenced by nonessential and extraneous information. At all times, control your dress, style and mannerisms.

If the jury thinks you are not genuine and sincere with others in the courtroom, then they may not accept your evidence as genuine and sincere - or as truthful. The result is that you may have great difficulty communicating your evidence to the jury in an accepting manner.

Your Direct Communication in Voir Dire

Use voir dire to make friends with the jury. Be genuinely interested in learning all you can about each juror. Ask open ended questions that probe responses and promote conversation.

Use humor lightly and tastefully. Be human. Show compassion and attentiveness. Listen. If you don't listen, you don't learn about your jurors. If you don't learn

about them, you will seat the wrong jurors.

Know your case and use juror comments as the opportunity to tie in case elements with juror's experience.

And if your court process has you excuse a jury in front of the panel, always look at the juror and thank them in the same sentence that you exercise your peremptory.

Your Direct Communication in Opening Statement

Never go to trial in a case that you think you will lose. The jury can smell a trial attorney's lack of confidence in their case. If you think you will lose, you will lose.

Never give a weak opening and never promise more than your evidence will deliver. Keep strong eye contact and inoculate the negative evidence before your opponent emphasizes it.

Use your opening statement to set the framework to build your personal credibility and the acceptance of your truth as the reality of the case. Introduce your trial theme and tell your client's story in the process. Your trial theme must be appealing, simple and fit the evidence. Most of all, tell your client's story.

Your Direct Communication in Closing Argument

Your closing argument started to be written with your Intake interview. The key facts never change. Now tell the jury how you proved them.

Replay the opening promises of each side and contrast where it was met by you and not your opponent. Where possible, use the defendant's evidence that favors your side of the case.

Replaying video testimony is powerful. Work the jury instructions into your argument. Be passionate as you tell the story of why your client should win.

Explain the damages question in plain everyday language and tell the jury what you want them to do.

If you get a rebuttal argument, remember that rebuttal is really rebuttal plus

another chance at closing argument.

And at the end, always thank the jury.

The 13 Rules of Jury Communication

Rule 1: Know Your Case. Inside and out. Forwards and backwards. Jurors can “smell” a poor case just as well as they can see a poorly prepared attorney

Rule 2: Know Your Witnesses

Rule 3: Know Your Opponent

Rule 4: Use the Jury Instructions

Rule 5: Know Your Jurors

Rule 6: Make Eye Contact

Rule 7: Use Graphic Aids

Rule 8: Emphasize the Good, Minimize the Bad

Rule 9: Name Your Opponent’s Theme

Rule 10: Explain Damages

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