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# Five Tips for Jury Trials

There's nothing like a jury trial. The Honourable Justice Brian Dickson famously commented that juries were "endowed with an abundance of common sense". The virtues of civil jury trials to our justice system may be too numerable to list here. But as a point of advocacy, the exercise of telling your client's story to a jury of their peers – instead of to a judge sitting up on the dais – requires different skills, different sensibilities, and different presentation styles.

These tips should be kept in mind by all advocates when trying a case before a jury:

## 1. The Jury Is Always Watching

In a civil jury trial, "all the world's a stage". The jurors are assessing you as counsel as much as they are assessing the litigants and the witnesses. Since there are six of them, or more if alternates are selected, you and your witnesses should behave as if eyes are always on you – because usually, they are. This is true both inside the courtroom as well as in the halls or the perimeter of the courthouse, since jurors enter and exit the courthouse, walk its halls, and therefore observe counsel and witnesses outside the courtroom, unlike judges.

Jurors are highly attuned to counsel's demeanour and comportment, identifying if it displays confidence, or defeat. Ensure to the extent possible that you and your witnesses are carrying yourselves in front of the jury with integrity, with composure, with conviction, and with grace.

## 2. The Jury Is Always Listening

While jurors are not legally trained, they are highly capable of adjudicating even complex civil disputes. Jurors take their duty seriously. They are engaged in the issues and want to do a good job. Do not underestimate how much they are listening to and comprehending not only the fact evidence, but also the legal instructions they are given both mid-trial and during the charge. While your task as an advocate is to educate the trier of fact, and simplifying the issues is a useful tool to educate, do not shy away from introducing complicated evidence out of fear that the jury will not understand it. The jury is committed to learning every aspect of the case.

Use this to your advantage. Jurors are invested in identifying factual disputes that arise and are visibly excited when evidence emerges on those topics. Think about how you can get helpful evidence in front of the jury's eyes early and often.

Consider whether you can make an impact in cross-examination by suggesting things to a witness that will communicate your theory to the jury regardless of that witness's answer.

### **3. Speak Slowly and Smile a Lot**

These immortal words of J.J. Robinette has always been essential guidance for advocates, but especially important to follow during a jury trial.

Unlike for a judge or counsel, the courtroom is completely unfamiliar to the jury. The civil process is completely unfamiliar. In all likelihood, the subject matter of the case is also completely unfamiliar to your jurors. Help them become familiar with the process and get comfortable with the material by being the side that educates them on it all, and do so in an approachable and digestible way by speaking slowly and smiling a lot.

### **4. Tell a Story – and Show It Too**

Every persuasive case has a clear story. It need not be overly-simplified; the notion that jurors can't understand complex subjects can and should be rejected. However, the story needs to be credible and consistent with the evidence. Provided that the story explains in a credible way what happened, the jurors will understand and appreciate why it happened and what sources of evidence they can trust.

Remember that you are not limited to telling your own client's story. It is important – perhaps even more important – to tell the other side's story. How did they get here? What is the impact on them and their family? What isn't the other side telling the jury that they should know?

Don't forget that one of the most important parts of the story is explaining why things happened the way they did. Focusing on the "why" might mean making different strategic choices than you would in front of a judge, in order to preserve and protect the narrative for the jury. That could even mean setting a higher burden on your client, or dropping a compelling (but distracting) alternative argument. Every strategic decision must be made in service to the story.

Jurors also appreciate it when you put the evidence in their hands. They want to see the evidence and make their own determinations about it. Make copies of the key exhibits and give them each an organized binder of the documents you want them to spend time with, as well as an ability to take their own notes.

Also consider how you can use demonstratives, videos,

medical records, imaging, and more. Use slide decks in your opening and your closing with sufficient screenshots from the evidence. Show the jury the evidence, and tell them how it fits in your story. Explain any difficult or technical concepts and give them the tools to analyze the records the way you want them analyzed.

## **5. Read the Room**

Jurors don't mind drama or adversity, but the tone needs to fit with the atmosphere. Jury trials require for you to have the ability to operate at multiple speeds. Judges have years of experience listening to counsel, but for most jurors, this is the first time they will have observed an examination in chief or cross examination. There are times when a theatrical cross can be effective, but there are also times to down-gear your tone.

### ***Witnesses***

Pay attention to how the jurors react to certain witnesses and act accordingly. There is a difference between appearing as a lawyer ferociously in search of the truth, and someone who is trying to pressure a witness into agreeing with their theory of the case.

If a particular witness is inherently sympathetic, do not engage in a harsh cross examination. Different witnesses will require different strategies – consider how you and the witness will be perceived by the jury. In a medical malpractice case, for example, the cross examination of a family member requires a different tone than an expert witness.

### ***Experts***

If an expert is demonstrating themselves to be an advocate, there is room to draw them into combat. However, if an expert is likeable and forthright in their answers, you may also adjust your tone to avoid appearing unnecessarily zealous.

### ***Objections***

Objecting in front of a jury is a delicate matter. When trying a case by a judge alone, counsel may choose to forgo certain objections because they know that the judge is well-versed in the law and will disregard inappropriate questions or evidence. Jurors, on the other hand, have little understanding of what is or is not admissible or appropriate. They will not know if a certain question or piece of evidence has been presented improperly, and therefore counsel must diligently listen to the evidence and intervene when necessary.

On the other hand, counsel should not appear as though they are objecting to every other question, which may inadvertently convey to the jury that their case has something to hide. Jurors

can become frustrated if they are repeatedly removed from the courtroom while objections are being fought. Depending on the nature of the evidence, the jury may blame the examiner or they may blame the objector – and that blame doesn't necessarily follow the judge's ruling on the objection (which they don't get to hear in any event). Use your judgment and focus on raising objections that are worthwhile in the circumstances and where there can be a strategic benefit to doing so.

### **Conclusion**

An advocate's relationship with the jury – just like their relationship with the judge – is built on credibility and trust. Help the jury feel comfortable and engaged at all times. Tell them a complete, coherent, and genuine story. Show them the evidence and trust them to form their own judgments. Be sympathetic and be respectful.

We hope these tips provide some helpful guidance for how to build a positive relationship with the jury, as well as obtain the best outcome for your client in a jury trial.