

CHAPTER I: WHAT DOES A JURY WANT?

We are not permitted in New Jersey to discuss a case with jury members in a trial in which we have participated even after a verdict. Much as we would like to know precisely what went on in the jury room, we'll never get that in detail in one of our cases.

In spite of this, there is almost a universal sense among lawyers and judges that juries almost always reach common sense, well reasoned conclusions. While we cannot talk to jurors about our own cases, we can learn from friends, family and acquaintances about their jury experiences. In such conversations, what is found is that the vast majority of people who have served believe that the process of give and take toward reaching a final verdict is an extremely satisfactory mechanism for resolving a dispute.

If we think generally about what jurors are looking for, then we will better know how our overall presentation must be made in all aspects of the trial. Maybe it can be considered too basic to even say it, but since it is at the very foundation of what we're doing in a courtroom, it must be stated. Juries are looking to find the truth in a case. Beyond that, in terms of damages, juries want to be fair. Truth and fairness. That is what the collective wisdom of a jury will always seek.

Work backwards and analyze any verdict with which you are familiar. Talk in depth with anyone you run into who has served on a jury. What you'll find is that among the individuals making up the jury, there was a verdict reached that was not based upon wild speculations, or astrology, or mysticism. Juries, by and large, reach for truth and fairness based upon their common experience and logic.

What then does this tell us about what we should be in the courtroom? The answer is apparent if we think about it and act in accord with these thoughts. We as advocates must be the ones in court who are on the side of truth and fairness. Our conduct must truly demonstrate at every turn our interest in procuring what is true and fair.

You might respond to this basic contention that advocates be perceived as being the ones in court who are on the side of truth and fairness as so overwhelmingly obvious that it's time to close this book and get on to something more worthwhile. But think about it. How many lawyers do you see in court

day after day, week after week, year after year, decade after decade, who are nasty, arrogant, deceptive, impolite, hostile, argumentative, nit-picky, unfriendly, or otherwise demeaning either overtly or subtly?

Lawyers who twist the words of a witness out of context through cross examination are not seen as purveyors of truth. Lawyers who are sarcastic or caustic with adversaries are not seen as truth deliverers. Yet, we see this kind of advocacy all the time. It may be the rule, not the exception. We lawyers may be so accustomed to the adversarial nature of many non-jury proceedings, that we forget that some of our mannerisms look doggone ridiculous to lay people in the courtroom sitting in a jury box.

Earned or unearned, lawyers are at the tail end of a lot of jokes. These jokes are premised upon the notions that lawyers are slick, cheaters, tricksters, money grubbers, and you know all the rest. These notions held by many don't get suspended when a perspective juror walks into the courtroom for possible service.

In response to these preconceptions, we, as individual trial lawyers, must show in all our time with jurors, including jury selection, that we are absolutely trustworthy. We must show that it is our side that is trying to obtain truth and fairness. If we use this as our overall guide, we are going to be at a tremendous advantage in the jury room during deliberations when we are no longer present.

By the end of the case, unless your opponent has also used total trustworthiness as a guide, you will be able to show the jury just how the other side has tried to obfuscate, deceive, or trick the jury away from truth and fairness. In ninety percent of the cases, you will be able to demonstrate that the other side has tried to obscure the truth. That is because many trial lawyers develop bad habits, such as distorting cross examination or conveniently omitting important facts.

Trustworthiness. That is what jurors want. Give it to them. You don't provide it by simply telling the jury, "I'm trustworthy." Your trustworthiness must emanate from every move you make and word you utter in the courtroom. Every moment you are in the presence of a juror, you need to break the negative courtroom stereotype of the trickster lawyer.