

## **A. *The Constants of Persuasion***

The techniques trial lawyers use to persuade jurors are no mystery. They can be reduced to a handful of rules, the collected wisdom of generations of lawyers, filtered through the prism of modern forensic science. They are the same no matter the type of case, so I call them the constants of persuasion. Master them and you will have all the tools you need to persuade any jury in any case.

### **1. Think *inside* the box**

Trial lawyers should do virtually everything with persuading jurors in mind—from the initial meeting with the client to the final word of closing argument. Long before you empanel a jury, think inside the box—the jury box—about how to persuade the people who may one day be seated there.

As you develop your case, constantly ask yourself how you will use each significant piece of evidence and testimony to win the jurors over. Will this document make sense? Will this picture move them? Am I doing all I can to break down the barriers between the jurors and my clients? It just stands to reason: Even if the case is never tried, building a persuasive case greatly enhances your chances of getting an excellent result.

### **2. Tell a compelling story**

We all love a good story, and jurors are no exception. To hold their attention, consider presenting your case as if it were a work of fiction. Put together a narrative that builds to a climax and that features clearly defined characters. Construct your story around an over-arching moral or theme. For inspiration, think about the great themes in literature—good versus evil, justice versus injustice, pride versus humility, greed versus generosity. They have endured for centuries because they tap into our common human experience.

The right theme also makes the legal issues more accessible. For example, fraud is a concept far removed from the daily lives of jurors. However, at the heart of every fraud case is a betrayal of trust. That is a concept everyone can understand and identify with because we have all experienced it.

### **3. Humanize your client, key witnesses—and yourself**

There have always been social and economic barriers that separate the jurors from our clients and key witnesses and ourselves. They are exacerbated now, given that our country is so polarized. But it doesn't matter if you represent an injured worker or the largest corporation in America: You must tear down those barriers and reveal the humanity common to those on both sides of the jury box.

Humanizing your clients and key witnesses turns litigants into real people. But they won't be real to jurors unless they are real to you first. In a single dinner, you can learn the kind of personal things that jurors will identify with, such as frustration with a boss, or the things they will admire, like the scholarship that got your client through college. Those few hours away from the office talking about something other than the case can transform your relationship. You can't fake the comfort level that results. The jury will pick up on your good feelings toward your client and key witnesses and will follow your lead. On the other hand, if you don't like your client or believe in her cause, the jury will sense it, and your case will suffer.

When I was coming up, lawyers—trial lawyers especially—were among the most respected people in America. Now, for a variety of reasons (a fit subject for another day), we are not. So it is essential that you humanize yourself. Transform the sterility of the courtroom with warmth, sincerity, and humor. Of course, not all trial lawyers are blessed with a great personality or the ability to connect easily with people. Those lawyers can compensate by being more knowledgeable about the case than anyone else in the courtroom. Jurors respect lawyers who have done their homework.

### **4. Earn the jurors' trust; trust the jurors in return**

Jurors don't distinguish between lawyers and their clients. For that reason, you can't produce a good result for your client unless the jury trusts you. The simplest thing to do is the most effective: Be candid about your case from the beginning. Become the lawyer jurors depend on to tell the whole story and set the record straight. If you misstate something during trial, as we all do from time to time, admit the mistake, apologize if it's serious, clear it up, and move on. However, if jurors believe that you have consciously misled them about a single significant fact, their trust will be broken completely. It will be all but impossible to recover.

As important as it is for the jurors to trust you, it is equally important for you to trust them. Jurors can sense when you don't. Without being obsequious, jurors have to know that you believe they will understand your case and do the right thing in reaching their verdict. If you really don't believe that, especially if you feel jurors are too stupid to "get it," they will know, and your client will pay a heavy price. In fact, if you feel that way, maybe you should rethink the profession that you have chosen.

### **5. Set the agenda**

If you want a decisive verdict, jurors' hearts have to race when you talk about your case. That means making clear the compelling themes of your case and emphasizing their importance with hard evidence and memorable phrases. When you sit down from opening, you want to leave jurors with an impression so vivid they won't forget it, and your opponent so overwhelmed he can't dislodge it. That sets the agenda for the entire trial.

### **6. Make impeachment matter**

Impeachment and admissions alone are never enough. The object is to undermine your adversary, to bury him under a mound of his own deceit or rob him of his credibility. That means an ordinary cross will never do. Make damning testimony mean something more than clever questioning: You must teach the jury what you already know, that what the witness has said has consequences for your case, what the witness has said means that you should win. Most important, as discussed more fully below, frame your questions in the words and phrases the jury will have to answer. Force the adverse witness to answer those questions for them.

### **7. Never deny the undeniable**

Your worst facts are your opponent's greatest strength, but ignoring them is never an option. Openly discussing your weaknesses sends a signal of strength to the jury. If you are willing to admit your client's mistakes, jurors assume your case must be strong. Whenever possible, bring them up first. Pull the teeth of your adversary's arguments and cross. If you admit, embrace, and explain your bad facts, you reduce their impact. If you can't go first, don't be defensive about them. Be ready with a powerful and direct response.

### **8. Prove that standards have been violated or upheld**

It is an unwritten law of the governed and the enduring credo of juries: Everyone must play by the rules. A group of strangers can reach a verdict because we all react similarly to proof that standards have been violated or upheld. That means educating jurors about the standard of conduct that applies to your case and then proving to them that your client lived up to it, or that the other side violated it. Little else is as important in motivating jurors to see things your way.

### **9. Make the jury mad (at the other side)**

This is the unspoken constant of jury trials. Jurors give favorable verdicts to people they like, but they return *great* verdicts when they get mad at the other side. The best way to arouse the jury varies from case to case. If your opponent has been dishonest with them, use that. If a corporation has put profits ahead of safety or damaged the environment, drive the point home. When even a badly injured plaintiff has made an outrageous demand, don't flinch from telling the jurors how greedy that is. Examine the facts of each case for conduct that is deliberate and outrageous. When you find it, build it into your narrative and remind the jury of it periodically, but especially during closing. Whether you represent the plaintiff or defendant, inflame their passions and send them out mad. Inspire them to return a decisive verdict that reflects their indignation.

Finally, don't underestimate the power of your opponents to alienate the jury totally on their own. Jurors take dishonesty and deceit personally, turning instantly on lawyers and witnesses they perceive are misleading them. There is a delicate balance between exploiting those moments when you catch an opponent speeding (exaggerating) and piling on. Find the excesses and let the other side destroy itself.

### **10. Answer the jury questions for the jury**

In every civil jury trial, the disputed elements of the claims, counterclaims, and affirmative defenses are included in questions for the jury to answer. That is why cases are tried—to resolve the contending facts, which leads to one of the few ironclad rules of this book. From the first deposition to the final closing argument, focus on eliciting admissions that answer those questions for the jurors. There is nothing as persuasive as argument and examination built around your opponent's own damning evidence.

***B. Conclusion***

Persuading jurors is the obvious and overarching goal of every trial. The constants of persuasion tell you how. For that reason, they are a subtext of every chapter in this book, whether they are identified by name or not. Just keep them in mind as you read. And also bear this in mind: No matter what your level of skill may be, using the constants to organize your presentation can only make you better.