IN JURORS' OWN WORDS

SPRING 2004 ISSUE

WE THE JURY. . . A LETTER TO COUNSEL AFTER TRIAL

by Patrice Truman, Esq.
Jury and Trial Consultant

"There is no adequate defense, except stupidity, against the impact of a new idea."
Percy Williams Bridgeman
American Scientist, 1882-1961

[Author's Note: This letter comprises a composite of jurors' comments and advice offered in post trial interviews to counsel.]

Dear Lawyer:

We, the jury, want to tell you about some of our observations during the trial—what we liked and disliked. Hopefully, you can use some of our suggestions for one of your future trials.

The Jury Selection
On the first day, when you asked us questions to determine who you wanted to stay on your jury, you should have listened better to each of our responses. Sometimes it felt like you did not think about what we said. Some of us gave you a hint about our true feelings. Take, for example, the woman who asked you, "Will there be guidance on how to award damages?" Or, the older woman who must have been concerned about the size and purpose of a damage award when she asked, "If we give punitive damages, where will the money go? Does it all go to the plaintiff?"

Then there was the man who compromised, "I'll try to be fair…" when you pressed him about his past experience which was similar to the incident that your client endured. Remember that older gentleman sitting in the back who enthusiastically told everyone that he had been on a jury before, and that he "found jury service to be very interesting," and that he "believed in the jury system?" He became our foreperson.

Finally, do you recall when the lady asked you, "How do you judge someone when you don't really know them?" She barely spoke in deliberations, probably because she was against lawsuits. She told you that as a Christian, she felt that it would be difficult to be a juror and to make judgments about people. Too bad the judge talked her into staying on. She seemed to be uncomfortable the entire time.

In the future, pay attention to the language we use. When we responded to your questions, did we use words like "experienced" or "suffered," "felt" or "think," "event" or "trauma?" The words that we chose to describe our life experiences provided you with hints about whether we felt drawn to the dramatic side of a story, and therefore expressed more sympathy during deliberations, or whether we stand back and judge the situation as a detached observer.

Your "Opening" Story
When you began highlighting your introductory story, or "opening statement," you told us, "This is not evidence." Why did you repeat what the judge had already mentioned, when you probably wanted us to consider it? It sounded like you were telling us to discount your 45-minute story!

Your opponent promised us that we would hear from certain witnesses. It seemed as though he did not keep his word because there were holes in his presentation. If a lawyer promised an expert witness or a document, then it must be presented because otherwise we speculate why. Remember, a minimalist presentation of evidence gives us little to work with when we go into deliberations. Don't get us wrong—we'd rather hear shorter rather than longer and convoluted. "Make it timely and keep it moving" would be every jury's motto. By contrast to your opponent, you gave us enough credible evidence that we could sink our teeth into. This challenged us to have a reasoned debate in deliberations.

We trusted you after that because you acknowledged that some facts were not great for your case but you provided us with an explanation that we could regard or disregard. Importantly, you weren't hiding anything from us. You showed us that you were forthcoming and honest. You were telling us that you had confidence in us to make the fair determination.

Why didn't you present a timeline? Without one, give your jury the dates on memos, letters, and other documents so that they can create their own timeframe of events. This eliminates confusion.

Examining Witnesses
A lawyer skilled at examination will uncover the truth. Your opponent hurt his case by the tactics he used while questioning the witnesses. You objected many times and we noticed that the judge sustained most of these objections.

As you may recall, your opponent asked many leading and hearsay questions. He made statements of facts not in evidence. He obviously wanted the jurors to hear certain information that they might not have otherwise heard even though the judge told the jury to disregard these kinds of statements. He made several poor attempts to overly dramatize his questions and comments and he was cautioned by the judge not to continue this. When he questioned one of your witnesses, he was very derogatory.

We noted that he tried to make a short speech after making an objection and the judge cautioned him to stop beyond giving his reason for his objection. You, on the other hand, were quick to raise objections to the lawyer's questions and tactics with a detached, professional approach rather than combatively emotional. You graciously accepted the judge's rulings on your objections and moved on, even when we figured that you weren't happy with the judge's decision.

The Final Argument
During your final argument to us, we liked it when you relied on deposition testimony to corroborate important facts. By doing this, you made it easy for us to connect the dots and make our conclusions.

You spoke in bullet points to avoid rambling. You effectively responded to the issues presented by your opponent, rather than reacting to them. Any lawyer who "bad mouths" their opponent's arguments indicates weakness. A memorable response means pointing out inconsistencies without negativity. You gave us clean cut arguments. You acknowledged what the opponent said by addressing your arguments on the points he made, instead of getting into a conflict with insinuations and side jabs. You seemed to know that there was no need for veiled comments when most of the bad stuff was obvious to us anyway.

In the end, you reminded us to consider only the evidence and not to become unreasonably critical when you asked us, "If I made a mistake during this trial, don't hold it against my client."

The Verdict Form
The verdict form confused us because of how the questions were written. We didn't like the way that it told us if you answer 'no' then you have to do this, or 'yes', then you have to do that. Why couldn't we just answer every question? Because the way we had to answer it, no one felt that it reflected the conclusion that would have been most fair. One of the four parties should have been found responsible, but we couldn't find that way because of how the questions were written.

It would have been helpful if both of you lawyers had given us more instruction on how to answer the questions. Let us hear both sides argue and contrast, question by question, about how we should answer each one.

We appreciated that the verdict questions didn't use the words "plaintiff" or "defendant." You used the names of the parties instead and we felt more secure that we weren't mistaking one person for another in the story. Remember, our familiarity with the case was brief by comparison to the rest of you.

Our Concluding Thought
Finally, we wondered if the other side got too emotionally involved in the case long before the matter came into the courtroom. We, the jurors, want to see that the lawyers believe in their case. But believing in the case means being able to stand back and objectively and realistically evaluate the strengths and weaknesses of the evidence.

We all agreed that the angrier a lawyer feels with defeat, the blinder the lawyer was when walking into the courtroom.

Sincerely yours,

Your Jury
Spring 2004

Patrice Truman, Esq., is a jury and trial consultant working throughout California and elsewhere, with an office in Berkeley, California. She can be contacted at 510-528-4655, by email at ptruman@trumanassociates.com or through her web site, http://www.trumanassociates.com. She welcomes suggestions and topics for future newsletters.