



From Hon. Jacqueline Connor (ret.)



PERCEPTIONS FROM THE BENCH: WHAT ARE JURORS THINKING?

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What are your jurors thinking about? What are you inadvertently telling them? Are you winning...or losing...on something you don't see?

I recall talking to a friend at a social occasion. He had been selected for jury service on a premises liability case. The defense centered on how they had established regular safety procedures and checks, etc. During the trial, the jurors saw the defendant out in the walkway take out a stick of gum and carelessly toss the wrapper on the ground. The case was over. Juror misconduct?...nothing to report, nothing to shoot down, just an observation that destroyed all the expensively crafted defense strategies.

Both CACI and CALCRIM do have admonitions that tell jurors they are not to consider things they see outside the courtroom, but impressions such as this are made all too often. Actually, observations outside the courtroom are a powerful argument to make sure the jurors have their own space and are not out sharing public areas during recesses. Sharing public bathrooms and common areas with parties or attorneys are a regular source of stress for jurors, and a source of real danger for the litigants. While such observations may never even be formally discussed by the jurors, impressions are being made and can be deadly. And then we step into the courtroom...

The system clearly directs jurors to base their decisions on the evidence, but no one should be so naïve as to think that perceptions aren't being formed and fixed throughout the trial, shaping how jurors assess that evidence.

Jurors know, as we tell them over and over, that they are NOT to discuss the case until it is over. So, what do they do? They pay attention to everything. They watch you, they watch the parties, they observe interactions and body language and dress, they hear testimony of back pain but notice the five inch heels worn by the plaintiff... Nothing will escape the eyes of at least one of the jurors, and there are always twenty four eyes watching.

Over the last thirty plus years, I have either tried or presided over, I am guessing, between 500 and 700 jury trials. I have spoken to and gotten feedback from literally thousands of jurors. At the end of every trial, I send a letter to each juror with a questionnaire soliciting general feedback. I have file folders stuffed with their responses. (Notice to anyone who has tried a case in my court.....you are welcome to come see what your jurors said about you.) The quotes below are from the written responses of jurors, reflecting what I hear over and over again. None of them are unique and each represents scores of similar reactions. I'd like to share with you what they tell me.

The bad news:

They do not understand why the case could not have been resolved without them.

- “I disliked that the whiny plaintiff thought his problem was worth the courts’ and 14 jurors’ time.”
- “The defendant was arrogant and should have worked this out in arbitration.”
- “Too many attorneys take too many cases to court. This was exactly one of those that should never have been brought.”
- “It’s a shame that in our world, people are so intolerant of each other. An honest mistake was made, no damage was done. It seems everyone is looking for an opportunity to make easy money. It’s a terrible day when someone stops taking responsibility for their own life.”
- “The trial should have been sent to mediation or arbitration. It seemed to me really frivolous, keeping 12 to 14 jurors away from their jobs. It was not professional. The other jurors told me they felt the same way.”
- “Really low opinion of Plaintiff’s attorney. It should have been settled out of court. I could see that he was just trying to get thousands of dollars for nothing, wasting the court’s time, our time, your time and for no good reason. His client was not that sharp and the lawyer was leading her for everything he wanted her to say. It was horrible. He made all lawyers look bad.”
- “This was such an obvious chase of the deep pocket. It should have been handled in arbitration.”

Objections are often a lose-lose proposition: if the objector wins, something is being kept from the jurors. If the objector loses, s/he is a loser.

- “I didn’t understand the objections and found them distracting. Couldn’t they work this out before we got there?”
- “Ms. D’s objections were really distracting, especially when she rolled her eyes and acted imposed upon by the other side.”
- “Both sides seemed to have a problem with all the objections that they called. Maybe this was normal but even we were a bit upset with them at times.”
- “He held off objecting when the questions were answered already. He appeared to not want to waste the court’s or our time.”

They resent being talked down to or manipulated.

- “I felt much more respected by Mr. J. He did not speak down to us, explained what he meant, and stood when we came into the courtroom.”
- “I didn’t like the way the trial started, with lawyers already trying to stack the deck. It was pretty obvious who they wanted and they got rid of some really good people. It was disgusting.”
- “One lawyer was like a villain in a bad play asking repetitive questions we heard the first time, insulting our intelligence. I wanted to boo the villain.”
- “Counsel should be told how resentful he made us jurors feel when he wasted our time and made us feel as if we were stupid with his lengthy redundant monologues.”
- “Both sides talked down to us and weren’t very bright. We found things in their exhibits that damned the state’s case and the lawyers never brought it up!”
- “The best of the attorneys was the one representing Mr. _____. He was direct, concise and extremely

professional and I always felt he respected us. He did not waste our time, he did not repeat himself, he was understandable and he made sure the words used by his witnesses were explained.”

- “The defense attorney exaggerated to the point of lying, tried to trick the body shop manager when he testified, confused the jurors by repeating untruths and made half-arguments that were never supported by the evidence. I was sorry we had to find in his favor.”
- “His tactics were not a bit persuasive and the picture he tried to paint only worked against him. He faults the other side for not calling a witness that might have in fact helped HIS case. Nice haircut though.”
- “I was offended by Mr. D’s leading his witness and testifying for him.”
- “I did not like how abrasive one of the plaintiff’s attorneys got with the witnesses and how he rolled his eyes constantly for the jury to see.”
- “My main complaint with one side was that counsel testified for all his witnesses. And I didn’t trust him. He always exaggerated the facts and the questioning was repetitive and unrelenting.”
- “Mr. K was very organized, didn’t drag on and got straight to the point. He always spoke clearly and loudly. Mr. M had a smerky attitude, wasn’t organized, spoke too softly and took way too long to get to the point.”
- “We took our job very seriously and were not happy when we saw lawyers trying tricks to make us react in a certain way.”
- “A couple of the attorneys kept mispronouncing medical terms and I could not figure out if it was intentional or not. One thing for sure, they misread this jury, trying to appear all hokey and homespun for our benefit. A big waste of time.”

They don’t mind putting in the time but hate having their time wasted, no matter what the reason, and any downtime for them is wasted time.

- “There were too many sidebars and they were really annoying all of us. Why didn’t they do these on their time, not ours?”
- “Thank God the time estimate was accurate. I was afraid I was being lied to.”
- “He seemed hungry to jump on anything rather than to focus on his strengths. There was so much time wasted.”
- “We were glad to have our own copies of the instructions we could read along and had when the attorneys argued. It saved us so much time not having to pass one set around. I was not being paid and my time was precious.”
- “My greatest constructive criticism would be to shorten the closing argument and not talk down to us. Trust the jury’s intelligence and integrity. It cost me \$3000 in lost work to serve and I hated my time being wasted.”

They hate repetition and duplication.

- “It is beyond annoying when the lawyer repeats something over and over in another format to get the same answer to the same question. I heard it the first time and if I missed it, another juror did hear it. We get it!”
- “He explained his client’s side of the case but spent too much time on one point after another after the witness already answered the question. Or is this just being a lawyer?”
- “He talked forever and didn’t say much. He did a real disservice to his client.”

- “Lawyers do NOT need to go over the same points multiple times. We understand the point. Move on!! Is the payday that important?”
- “He was irritating and overdid the repetition way too often. I understand he needed to drive home his side, but it was insulting and irritating.”
- “He spoke too much. He could have done it all in less than half the time and we would have liked him better for it.”
- “One side repeated himself too many times but thank goodness the other side was direct and to the point.”
- “Too much leading the witness. Mr. D was too repetitive in questioning his witnesses. Once the fact is established, no more questions!”
- “The plaintiff’s attorney was the most repetitious of all, with totally illogical arguments. Defense was also repetitious and used so much hyperbole it hurt their credibility.”
- “Less is more but in his case, with his laborious and time consuming way of presenting evidence, more and more and more was his approach. The other side was a relief, sharp and short.”
- “Mr P and Mr W were amazing and a big difference to the other side. They were fast, direct, smooth, organized, smart and compassionate. Good lawyers make such a difference.”
- “Counsel’s presentation was so boringly slow we had difficulty staying focused.”

They aren’t always getting the information and direction they need and want.

- “I was glad I could ask questions. Half the time, the lawyers and witnesses were using words they never explained to us.”
- “Peter ____ might have been awarded a different amount if his lawyer had clarified things.”
- “Mr. P’s lawyer did not have his questions thought out. He seemed to be thinking on his feet. We jurors became impatient and negative when we felt our time was wasted, especially making such a sacrifice to do this jury service. He did not explain obvious holes and waved around exhibits that we could not see nor understand.”
- “More documentation should have been provided to us. How did they expect us to figure it out?”
- “There was so much information the jury needed to make a decision that was left out. Neither side asked obvious questions. The jury should be allowed to ask questions.”
- “No one even provided a diagram of the scene.”
- “The photos and physical evidence should be incorporated into our jury books. It would reduce time counsel has to spend moving large photos around for all of us to see.”
- “Individual copies of the jury instructions are absolutely a must! All of made use of them with individuals often checking items during discussion and deliberations.”

They notice everything.

- “The defense attorney was popping TUMS. What’s wrong?”
- “Plaintiff’s counsel had a shaking foot when he was seated as the defendant’s lawyer was speaking, a nervous distracting gesture.”
- “The attorneys were both professional. They kept their distance from us outside the courtroom and avoided eye contact.”
- “I saw Miss G’s friend in the audience every single day. I kept wondering why she was not called by

either side.”

- “Mr. B. Too much hairspray. And grow out his hair!!”
- “Too emotional! One counsel called too many irrelevant witnesses, tried to play the sympathy card and did not respect the jurors’ intelligence with his tirades.”
- “One lawyer really wasn’t sensitive to juror’s backgrounds.”
- “As a writer, it was the closest experience I’ve had to reading a book. The story unfolds slowly, in bits and pieces. There are main and minor characters. The attorneys are the authors, holding critical bits of information and only revealing it at the appropriate moment. The judge is the editor, making sure the storyline stays on track. Here I would say we had a very unreliable narrator. Few writers can write a successful book with an unreliable narrator. In this regard, both plaintiff and her attorney failed.”
- “She was good, logical, kind of dull though. And needs to update her wardrobe (button hanging off.) Stuff like that is distracting.”
- “The fidgeting was a distraction, especially when the questions were slow and rhetorical, plus there were too many questions.”
- “It was helpful watching the audience, especially Mr. F, the realtor. His head bobbed up and down whenever truthful testimony was given.”
- “I found the trial lawyers occasionally unpleasantly angry and we were unimpressed by the disorganization (dropping papers, searching for documents.) I also wished the defense attorney should have taken a second to look at the witness before addressing him and look up the name of the person she was questioning before addressing him.”
- “His argument was highly inappropriate in terms of his gulping soda at the podium.”
- “I believe the defense attorney knew she couldn’t win her case and it affected her presentation.”
- “Skilled and articulate but his hair was a little too long to be compatible with his high quality of dress without suggesting “shiftiness” to the jurors.”
- “He was too sure of himself and cocky. Half the time he couldn’t even pronounce his client’s name properly.”
- “The plaintiff’s attorney used incorrect grammar and diction (needs a tutor!) Tell him to either SHAVE or grow a beard. His modern “halfway shave” made him look ill-kempt and not macho. I didn’t like his lowering his voice at the microphone to keep jurors more alert. His redundancy drove me crazy!! He repeated way too many things and bored us all. He had a smart-aleck attitude. The least of his sins was the white socks with the brown suit!”
- “I liked the plaintiff’s lawyer so much more..he kept emotionalism to a minimum.”
- “One counsel seemed to be presenting his case by rote, no enthusiasm at all. The other took contradictory positions. He should have had a consistent story to tell.”
- “The attorneys were technically proficient but neither was credible.”
- “Plaintiff’s attorney seemed to lead the witnesses and coach them from his chair when the defense attorney was asking questions. I didn’t want to hear the attorney. I wanted to hear the witness and never knew what the witness thought or saw.”
- “I was totally offended by her tactics. She was grasping at anything and everything to make a case and IT DID NOT WORK! Her closing argument was filled with misinformation.”
- “The plaintiff’s attorney was a likeable guy, clever in presenting his side. He was interesting and kind and projected a sense of fairness, not slanting the evidence in his favor. His leading of the witnesses was stressful for us though. The defense attorney had an aggressive manner that made it difficult. The

way he jumped around on the dates diffused his argument, even losing evidence for me.”

- “Mr. B was one attorney I would want on my side, so well prepared, organized, fair, honest and just all around fantastic.”
- “We didn’t need the walking around and grand gestures! Just the facts.”
- “Plaintiff’s attorney was unprepared, disorganized and theatrical and he disrespected the entire court keeping his cell phone on and not responding to the judge. The defense attorney was well organized and succinct. I would want her on my team.”
- “His yellow Mustang license plate is _____. He seemed cartoonish, shirt collar flipped up, some first grade overacting and sometimes confused looking. At times his “stories” did not make sense.”

The good news:

They are very serious about their charge and worry about making sure they do what is right.

- “The jury I was on was filled with intelligent fair-minded people who worked hard to get to the correct decision. I may not have chosen some of them as friends but we enjoyed each other and every one of us took it seriously.”
- “Before serving, I thought we should have ‘professional’ jurors but I have now had second thoughts. I found that considering the views of the people with whom I served was essential. They were thoughtful people who took their job seriously and I was pleased to deliberate with them.”
- “The biggest debate we had was over the word “knowingly.” We debated and argued for over an hour on the context. It was amazing how passionate we all were. We really spent a lot of time on the law. Thank goodness we each had our own copies of the instructions.”

They appreciate being allowed to submit questions, even if they don’t ask any and even if the questions submitted are not answered.

- “I loved having the option of asking questions, I did ask one that was really wearing on my mind. It was answered and was very helpful in providing clarity.”
- “I didn’t ask any but experienced the possibility as inclusive and really respectful.”
- “I really appreciated being able to ask my question. It was nagging at me for days and the attorneys didn’t even pay attention but I needed to know that bit of information.”

Credibility and integrity are critical, both on the part of the lawyers as well as the parties.

- “Although professional and prepared, I did not get the impression he had much faith in his case. He showed that he was flustered by his opponent a couple of times.”
- “Mr. ___ was really slick without being identified as slick. His client was brilliant getting him. I think that’s why the jury voted the way they did...to please him.”
- “Defense counsel was a typical attorney: made things too wordy and tried to confuse us. Plaintiff’s counsel was straightforward in his questions, treated us respectfully and tried to make sure we understood the process and the laws. Not too wordy.”

The experience is often life changing and a confirmation of our democracy and the power of our freedoms and responsibilities.

- “After serving on my first jury, I was really impressed and thought the lawyers did a good job representing their clients. The system really works!”
- “I found the process, even when it was boring, fascinating. This case was no exception. Jurors took the job seriously and were attentive. It was so interesting to see it all live!”
- “I have renewed faith in the court system and in lawyers.”
- “I loved the professionalism of the lawyers and the judge’s insistence on cutting the bull...”
- “It was so interesting to learn the “lingo”. By the third day, I was objecting before the attorneys (‘objection..Relevance!’)
- “We all took our jobs very seriously. The decisions were not easy but we knew we were dealing with people’s lives.”
- “This was my first civil case and an eye opener with respect to personal injury since much of the political debates talk about frivolous lawsuits (the McDonald’s case, which actually was not so frivolous) and runaway jury awards. This case was neither and was very important as a result.”
- “The process was fascinating. It really gave us all an opportunity to exercise our rights as American citizens.”
- “After getting over the irritation and inconvenience, I found this to be inspiring and uplifting. The jurors were wonderful and it was a pleasure to approach this challenge with them.”
- “I was surprised that the responsibility of the decision weighed so heavily during the trial. None of us slept the first night and it took me a couple of days to return to normal. I went through withdrawal.”
- “Ms. T was exceptional. She clearly takes justice and the system of law seriously.”
- “It was fascinating to go through deliberations and see how fairly the case was judged. It was such an honor and privilege to serve! I have been telling everyone about my experience and about the attorneys.”
- “This is absolutely the best system in the world. Amazing how people from all walks of life, background, ages and education can come together and earnestly strive to reach a consensus based on the evidence.”
- “I am proud to be an American and feel even better about our country. This is the most stimulated I have been, intellectually, emotionally, philosophically, morally and personally, since college.”
- “I learned that justice can prevail. I am recommending jury service to all my friends.”
- “I have told many people they should absolutely serve on a jury. Maybe include a flyer in the summons emphasizing the very positive aspects of jury service. As it is, the population at large only sees it as a burden and no one points out the really practical and stimulating aspects of what one learns in the process. It would change the image of jury service. Thanks for the positive experience.” (from a doctor)

And last, but not least, from a lawyer:

- “Even though I lost approximately fifteen hundred dollars, I really valued this experience and believe that every lawyer should serve on a jury.” (Hear Hear. Better than three years of law school!)

The themes that are repeated often are self-evident. Credibility is critical. The projection of fairness on your part can change the way jurors hear witnesses. Lawyers’ leading their witnesses may as well sit

down. Explain the terminology or work out a glossary in advance with opposing counsel. Jurors expect to be respected. Delays and wasted time are excruciatingly disrespectful. While trial lawyers can't control everything, there is much that can be controlled and much that can be handled on the attorneys' and court time, not on jurors' time. Important areas that one side or the other knows will elicit objections can be handled in advance. Repetition is not only unnecessary but dangerous. Once the evidence is in, it is available to be emphasized in argument. (One lawyer presents his case as if none of the jurors were being paid while serving and that helps him set his priorities for his presentations.)

As flawed as this system can be, there is none better. This gets driven home even more powerfully when there are new citizens in the panel. At those times, often with tears, we are reminded why we are proud to be American. Just keep the five inch heels at home, dump the TUMS and get your documents organized so you can find them. Now get out there. The jurors are waiting.

Questions?	Email Judge Connor: judgeconnor@adrservices.org
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