CHAPTER 1

Giving the Jurors What They Want

I grew up in a small town in southern Indiana. Every Sunday my brother David and I would get up early to watch one of our favorite television programs. Wedged between *The Farm Bureau Round Up* and religious programming, Channel 4 would broadcast *Earle Stahl—Hoosier Fisherman*.

In our corner of the world, Earle Stahl was a legend. Each week, he and his cameraman would round up a local celebrity—the high school basketball coach, the owner of the Roy Rogers Restaurant in town, or some other big shot—and they would go fishing. Earle and his guests always caught fish. Big fish, too: catfish, large-mouth bass, even trout added to the nearby reservoir from the Department of Forestry's hatchery. Every Sunday, Earle would use his television program to show off what he and his guest had reeled in.

Earle always ended his show the same way. There would be a close-up of Earle's fishing cap with the logo "Stahl's Cheese Bait—Fish Ask For It!" stitched above the brim. The camera would then pull back slowly until you could see that Earle was holding a large fish across his larger belly. He would stare into the camera, grin, and each week offer up the same advice: "If you're going to catch fish, you best give 'em what they want!"

If I had to distill the advice in this book down to a single sentence, I could not do any better than to paraphrase Earle: if you're going to catch jurors, you best give 'em what they want! The point of this book is to provide you with a better understanding of what jurors want and to suggest a process you can follow to give it to them.

My colleagues and I constantly use this process to encourage lawyers to step back and reevaluate their cases from multiple perspectives. We encourage them to carefully assess what is likely to appeal to a wide spectrum of jurors, not just those who may see the world the same way the presenting lawyer does. This helps our clients better determine what is important and what is not; it helps them evaluate what is persuasive and what is not. In

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short, it increases their chances of winning by providing them with tools they can use to help jurors understand, remember, and ultimately rely on our client's version of the facts to form the coalition necessary for a jury verdict.

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WHAT JURORS WANT

Jurors take their jobs seriously. They believe that the truth is out there and that they are capable of finding it. They may complain about jury duty, yet most jurors believe they have a very personal stake in ensuring that the system works. As such, jurors generally apply the facts, as they best understand them, to the law provided to them by the court. In the broadest sense, what jurors want is to reach the right verdict and move on with their lives. Jurors believe that if you give them the right tools, they can and will find the right answer. Trial lawyers who provide these items to their jurors have a substantial advantage over lawyers who do not.

Jurors want to understand what the case is really about, and they want to hear only those facts that really matter. Without feeling like you are unduly wasting their time, jurors want you to give them as much meaningful information as possible, and they want you to do so in an organized manner so that they can understand what is going on in the courtroom. This understanding helps them find the right answer; it makes the whole process considerably more interesting; and it increases the juror's sense of personal investment in the proceedings. If you need incentive, remember it is the interested mind that most readily absorbs what you are trying to teach it; it is the invested mind that is more likely to argue hard for

what it has learned. Without these two key factors, you won't catch many jurors, and if you don't catch jurors, you won't catch many verdicts.

Unfortunately, too many trial lawyers undermine their own chances of winning by failing to give jurors what they want. I suspect this is true because most of us have too few opportunities to observe and interact with jurors. The number of jury trials is rapidly declining, so we try fewer cases. Since trial attorneys are rarely allowed to serve as jurors, we rarely get a chance to see how things work from the inside. As a result, most of us have no chance of experiencing the dynamics of the deliberation process firsthand. On top of that, courts understandably restrict our ability to interact with jurors during trials. And immediately after the verdict is announced, meaningful discussions with actual jurors are sharply limited, for a variety of reasons. The winning attorney feels no immediate need to solicit information from any of the jurors, the losing counsel is typically too disheartened to initiate contact, and the jurors themselves (whom judges discourage from talking to the parties) usually flee the courthouse as quickly as possible to return to their own lives.

This decreased contact with jurors has had an increasingly negative effect on most trial lawyers' ability to know what jurors want. As a result, it is common for a trial lawyer to make four myopic assumptions about a jury. First, he assumes that everyone sees the world the same way he does. Second, he assumes that everyone analyzes the case the same way—the lawyer's way. Third, he presents the case at trial in a way that favors only one learning style—his. Finally, because he believes there is only one learning style, he uses only one set of persuasion tools at trial—the ones the lawyer found most helpful.

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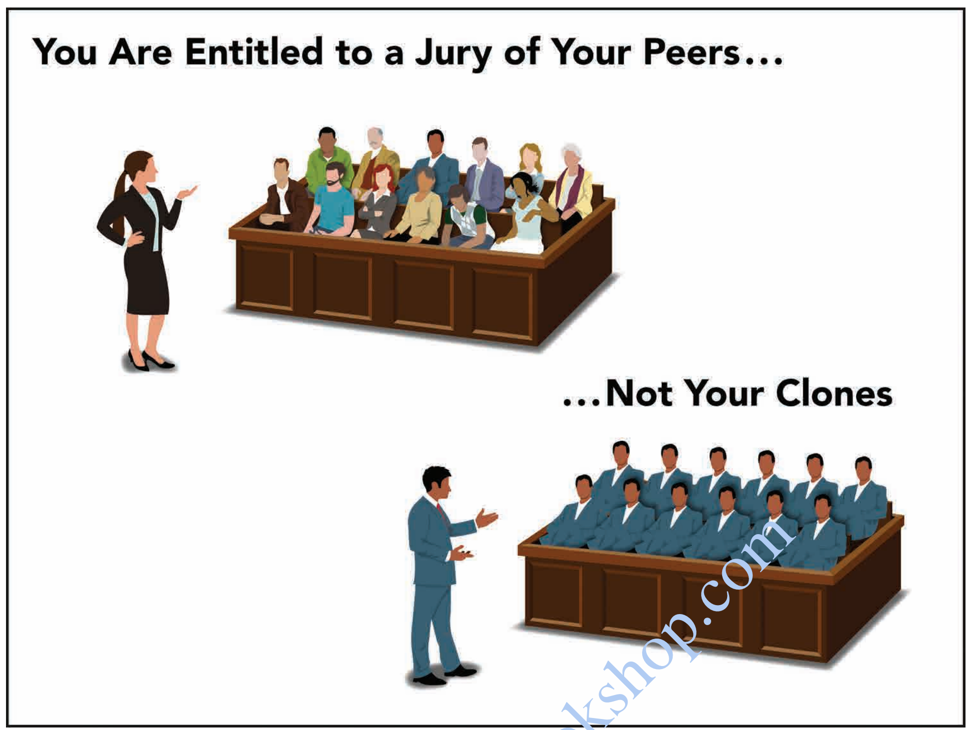
It Is a Mistake to Believe:

- Everyone sees the world the way you do
- Everyone has analyzed the case the way you have
- Everyone's learning style is your learning style
- Everyone values the same things you value

The truth is that all four of these assumptions are wrong. There are multiple ways to analyze a case, there are many different learning styles, and there are numerous ways in which people are persuaded. As a result, lawyers need to design and use different persuasion tools at various points in their cases. The consequences of these mistaken assumptions are clear. Lawyers need to remember that they are trying their case to a jury of 12 of their peers, not 12 of their identical clones.



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What works for the lawyer will undoubtedly work for some, but not all of the jurors. Lawyers need all of the jurors to vote for them in order for there to be a favorable verdict. It is impossible to get a unanimous verdict unless you understand these differences and consciously construct your case in a way that appeals to a broad base of jurors with different learning styles and values.

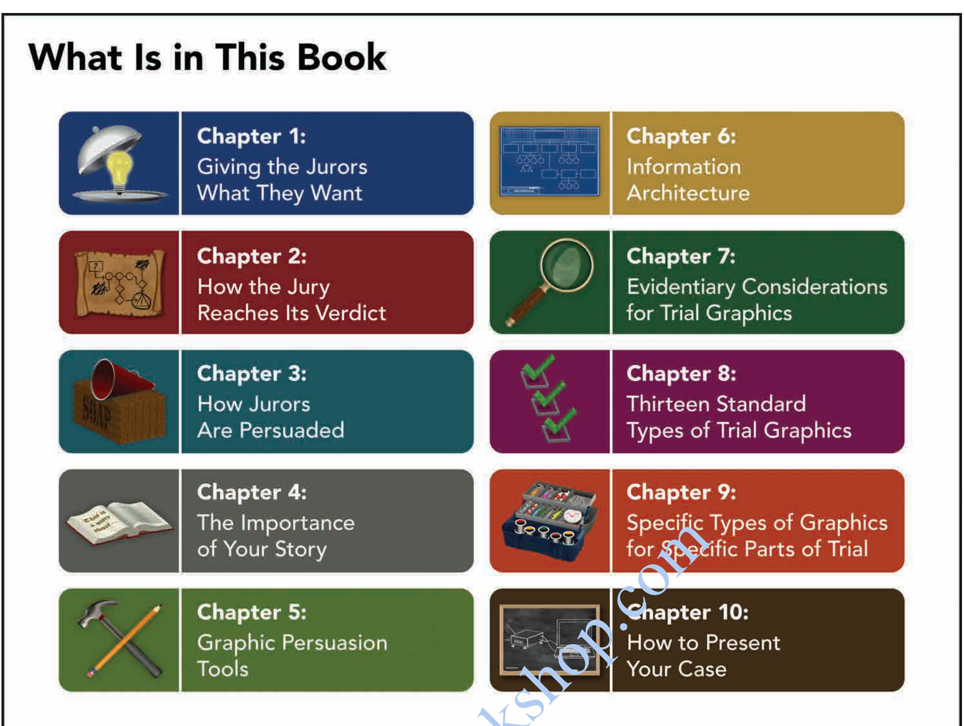
HOW TO GIVE JURORS WHAT THEY WANT

If you are going to consistently give jurors what they want, it is important to understand nine important areas, each of which is the focus of one of the following chapters in this book.

Understand the Mechanics of Why the Jury System Works and How 12 Diverse Jurors Reach a Single Verdict

When it comes to reaching a verdict, a simple majority is never enough. If it were, the jury would simply shuffle into the jury room, take a quick vote, shuffle out, and declare the side with the greater numbers the winner.

We require far more. We require that our jurors deliberate. To ensure that this happens, we intentionally place a major hurdle in the jury's way—any verdict must be unanimous (or at least a supermajority in some jurisdictions). Getting 12 people to agree on anything is not easy. My family of five cannot even agree on where to go for dinner, but we insist that 12 diverse people, who have likely never



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met, collectively learn a complex case, analyze the facts, apply those facts to the law, and figure out a way to agree who should win.

So, how do they do it?

Despite what exhausted lawyers may think, efforts at persuasion do not end after they deliver their closings. Arguments, often very powerful ones, continue among jurors during deliberations. These arguments are usually led by a particular type of juror, ones we call the Active Jurors. Active Jurors shift from being neutral finders of fact (which is how all jurors are supposed to at least start) and become highly partisan advocates for one side over the other. Active Jurors will fight hard to see that the side they favor wins. In the process, they convince all of the others on the jury to form a single coalition that agrees which side should win, even if they rarely all agree on why. It probably goes without saying, but Active Jurors are exactly the people you want advocating for your client while you are sitting helplessly in the courtroom cafeteria, drinking bad coffee, pacing the floor, and waiting for word of a verdict.

Chapter 2 examines why the jury system works, how jurors process the information you provide them, and how a special group of jurors—Active Jurors—create the coalition necessary for there to be a unanimous verdict.

Understand How to Best Persuade Your Jurors

Chapter 3 deals with a lawyer's stock in trade: persuasion. Highly persuasive trial lawyers share six characteristics. First, they are skilled teachers who understand that, in order to persuade, they must first educate the jury. Second, they are constantly