

Wednesday, December 12, 2007

## 20% Sex

Photo from website of U.S. District Court (W.D. Mi.). "20% Sex" begins the brochure that I recently received for Dr. SunWolf's "Practical Jury Dynamics2", which I blog about here. The first page of the brochure more fully proclaims: "What are your jurors thinking about? 20% Sex, 40% Worrying, 20% Reminiscing, 2% Religious Thoughts, 12% Actively Listening ... You can change the outcome of your case." (The previous numbers add up to 94%, leaving room for 6% of additional distracting activities.) Jurors are captive audience members ultimately thrown into a jury room with a bunch of total strangers to act as amateur Solomons (at best) over litigants' cases. At least people can escape lousy, boring, or upsetting movies by walking out; they can close the door on door-to-door salespeople, and can hang up on telemarketers. Even if the judge admonishes jurors to pay full time and attention to all courtroom proceedings, that does not automatically translate into jurors adhering to such an admonition, particularly as to jurors who are not accustomed to doing so in the rest of their lives, and also as to jurors for whom a wandering mind substitutes for their inability to leave the courtroom at will, if they wish to leave. The more a trial lawyer and the lawyer's clients and witnesses empathize with and understand jurors and the venire jury panel, the better they will fare before the jury. Dr. SunWolf is a great person to learn from on this path. It is interesting that "Sex" is the lead word in the Practical Jury Dynamics2 promotional pamphlet. It certainly acknowledges reality, that sex heavily occupies most people's activity, thinking and imagination time. Sex sells. Must a lawyer, then, present a sexy trial to win, in order to compete with the power of sex? No, but it certainly can help for a lawyer to let his or her hair down to help relax and entertain the jury. One local lawyer who is particularly successful with jurors when advocating for medical malpractice victims, I understand, presents a particularly non-sexy trial. Insodoing, he is being the same non-flamboyant, kind, big-name lawyer without an ego who spends big advertising bucks, whom I occasionally bump into; thus, he is real at every turn, and being one's best real self can be powerfully persuasive. I understand that this legal legend is totally committed to his clients, completely credible, and fully versed in his persuasion work and in the knowledge trove of his opposing doctors. I am sure he is polished in his own non-flamboyant way. He wins, and wins big. Jon Katz.

Posted by Jon Katz in Persuasion at 00:00

Jon, you've got great eyes regarding the creative brochure my team at LexisNexis created--and you extended the problem usefully: What do we do to make our questions, exhibits, witnesses, have more Velcro power in a juror's multi-tasking mind? When a juror's mind run at 400-600 words per minutes, and we are speaking to them at about 180, there 's a LOT OF ROOM for thinking about food, anxieties, whose picking up the kids, medical appointments, the pain of sitting, bathroom breaks, and gift-buying dilemmas.

I've got a new article, scheduled for Spring 2008, coming out in the ABA mag CRIMINAL JUSTICE, entitled "Juiced jurors: Why some trial jurors are not competent to do the job" that puts additional concerns about juror LISTENING on the table. On the day when sports is about to learn which baseball heros have been JUICED, I raise the issue of, "How many medications are your jurors on?" [Complete list of meds, effects, conditions for which they are taken and what motions to file to find out in PRACTICAL JURY DYNAMICS2.]

Anonymous on Dec 13 2007, 12:01

Thanks, SunWolf, for your feedback.

I, myself, once was on a mock jury. I was exhausted from lack of sleep. I did not want to zone out; the mock trial lawyers were people I cared about. Still my exhaustion interfered. This was just a three or four hour exercise. Imagine what happens with jurors serving multiple days.

Thanks, again, SunWolf. Jon  
Anonymous on Dec 13 2007, 18:11