Arming Jurors throughout Trial

I will teach you how to change a tire because from now on it’s up to you to do it.

—Sidney Ball to David, circa 1958

David Ball

This short chapter about arming jurors for deliberations is among the book’s most important. Arming means preparing jurors to argue for you in deliberations. You do this in two ways:

◆ Give them the exact words to use.

◆ Throughout trial, remind them frequently about deliberations. Keep the ultimate task in their minds. (For information on arming in closing, see page 283, “Arming.”)

There are two ways to do trials: the okay way and the excellent way. The difference is night and day, and lies in when you arm jurors to argue for you in deliberations. The okay way is to arm jurors
only in closing. The excellent way is to also arm them in testimony and opening. The worst way is not to arm them at all.

**Persuading jurors is only half the battle.** The other half is arming. Persuaded but unarmed jurors fold on you because you did not arm them. You must arm them by teaching them how to fight for you in deliberations. The ultimate battle is not in the courtroom but in deliberations. Sending in your favorable jurors unarmed is like sending bunnies to fight Rottweilers.

**WHY ARM DURING OPENING AND TESTIMONY?**

Arming throughout trial, instead of only in closing, provides the following benefits:

- Creates an interactive jury from the start, instead of passive throughout.
- Focuses jurors from the start on their ultimate job. Normally during trial jurors don’t think about deliberations. Instead you want them continually thinking, “How am I going to use this point in deliberations?” This chapter explains how to make them think that.
- Gets jurors to listen more closely, and work harder to remember.
- Gets note takers to take more and better notes.
- Increases the effectiveness of your persuasion efforts.
- Helps you focus yourself on the essentials of your case, and remove the chaff. (For more information, see page 50, “TMI (Too Much Information) and Its Equally Rotten Twin TMW (Too Many Words).”)
- Keeps jurors alert during trial for your important points and keeps them thinking about how to resist opposition points.
- Makes jurors eager for deliberations. When people learn how to do something, they are more eager to do it.
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- Keeps jurors more interested.
- Creates better rapport between the jurors and you.
- Puts jurors into a more active listening mode throughout trial.

Arming in Voir Dire

Limit arming in voir dire to mentioning the fact that jurors will have to deliberate. Don’t yet be specific about what they’ll deliberate about. That would be too easily taken as advocacy, which you must not do until much later. It’s remarkably easy. Say this:

In deliberations, you’ll need to explain to each other how you feel about the case. Some folks are okay with that; others are a little uncomfortable with having to do that. Which way do you lean?

Or,

How many of you are a little closer to folks who are okay with that? How many of you are closer to the folks who might be uncomfortable with it?

And follow up with:

Please tell me about that.

This puts their deliberation job up front in their minds.

Arming during Opening

In opening, the first time to remind the jury they’ll deliberate varies according to the nature of your opening. If you use—as you should—the structure for openings in David Ball on Damages, 3rd. ed., chapter 5, you know it includes “Who Are We Suing and Why?” Add this:

In deliberations, you’ll need to explain to each other how you feel about the case. My job from here on is to provide what you’ll need to do that. So let me tell you who we’re suing and why. We’re suing [defendant] for . . .

and so on.
You’ll arm the jury at least once more in opening. Again, using the structure for openings in Damages, this will be at the start of “Part V. Causation and Damages.” Add:

Because it’s my job to provide what you need for deliberations, here’s what we’ll show you about how [defendant’s] rule violations harmed John.

Arming is a matter of a few words, no more. It puts the jurors’ ultimate jobs into their active minds right from the start, and makes you their source for how to do their job.

If you don’t use the Ball opening, then despite being disadvantaged in many ways, you can still use this arming method. Just don’t overplay it, and keep it to very few words.

**Arming during Testimony**

It’s just as easy.

Q: Mr. Expert, these folks are going to need to talk about this [or “use this”] in deliberations [or later], so how would you explain X to people who didn’t go to med school?

For every witness:

Q: Let’s talk about this one piece at a time, because that’s how these folks will need to use it later.

Q: Miss Eggers, I’m writing down what you say so the jurors can use it later in deliberations. [Write it on butcher-block paper.] Is this right? Anything I should change?

On cross:

Q: Mr. Smith, I’m writing down your answer [Use easel.] to be sure I got it right for these folks to use later in deliberations. [Write it.] Did I get it exactly right or is there anything I should change?
Arming When Showing Exhibits

When showing exhibits to the jury, here are a few statements to use.

This is something you can look at in deliberations to explain ____________________.

We put this together not just for me to show it to you, but for you to use in deliberations.

Doctor, how could someone use this graph [diagram, photo, and so on] to explain ________?

For opening, witnesses, and exhibits, there are endless ways to arm—so long as each time, you hit the two main points:

1. Remind them they’ll use this later.

2. Tie your reminder to the specific thing you’re about to say, elicit, or present.

Do this often enough to keep the jurors’ job always in their minds, but not so much that it gets annoying. Twice in opening, and then several times per trial day, especially with material you can’t afford to have them miss. Don’t waste the technique on lesser matters.