The Texas Jury Rules

By James M. Stanton and Trey Cox
This book is dedicated to trial court judges and jurors who, by their oath and willingness to serve, are the workhorses of the federal and state judiciary in Texas. You make us proud to be trial lawyers.
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Foreword

Juries matter. Juries matter a lot. They are the imperative institution of democracy in America’s judicial system. Yet, jury trials are diminishing and the trend has disturbing consequences for the future of our nation’s jurisprudence. For one thing, since there are fewer jury trials, fewer lawyers know how to try jury cases. Because of this fact, The Texas Jury Rules by James Stanton and Trey Cox is an important book, thoughtfully illustrating for trial lawyers what is important to jurors, in the actual words of people who have served as jurors in Texas courts.

The book’s methodology to determine juror attitudes is creative. While he was sitting as a trial judge, James Stanton invited people who had been jurors in his court to return for videotaped interviews. Along with Trey Cox, James then synthesized the results into a fascinating montage of vignettes that instruct and enlighten. Anyone who wants to be effective before a jury will profit greatly from this book.

Yet, it is not only lawyers (and judges for that matter) who can profit from this book. Everyone can, because it illustrates how conscientious and diligent our citizens are when they sit on juries. Indeed, cynicism toward juries is wrong-headed, because juries do as good a job in performing their duties as is humanly possible. They are not perfect, but they get very close. And without juries, our justice system would be a far different and a much less American institution. As one observer aptly noted, “Adherence to, and execution of, the law is dependent upon the buy in of the citizenry and the social capital created through public participation in legal institutions. Lose that, and we might lose it all.”

James Stanton and Trey Cox are doing their part to exalt the jury and to improve jury trials. For their most excellent contribution, we are in their debt.

W. Royal Furgeson, Jr.
Senior U.S. District Judge
Northern District of Texas
Introduction
By James M. Stanton
During my time on the bench, I welcomed every jury to my courtroom with these remarks.

“Ladies and gentlemen: You live in the greatest country the world has ever known. You are privileged to be citizens of the single greatest society in all of human history. There has never been another country like the United States of America—ever. You should know that one of the many reasons for our nation’s greatness is that we have a robust right to trial by jury enshrined in the Seventh Amendment. The Seventh Amendment is effective only when everyday citizens accept the invitation that arrives in their mailboxes in the form of a jury summons asking them to serve their communities.

The parties before you in court today have exercised their Constitutional right to have a jury of their peers decide the disputed facts in this case. For this reason I have summoned you to my courtroom. On behalf of the citizens of Dallas County and the State of Texas, let me be among the first to thank you for answering the call for jury duty.”

From there, each trial took its own course as the jury was selected, the lawyers gave opening statements, and the jurors dutifully considered the testimony and evidence in cases involving everything from breach of contract and securities fraud all the way to employment discrimination, wrongful death, and motor vehicle accidents. After the evidence closed, I would read the jury charge, the lawyers would give their closing arguments, and the bailiff would hand the jury the verdict form and evidence. The jury would retire to the jury room for their deliberations where the real final argument—the one among the jurors—took place.

For those of us left in the courtroom, the waiting would begin. The lawyers, their clients, courtroom observers, and the court staff all wondered: Who will be the foreperson? What do the jurors think about this witness or that piece of evidence? What did they think of the
lawyers? What evidence did they find most persuasive? What are they going to decide? How long will it take? The idea for this project, *The Texas Jury Rules*, came from those hours of waiting and wondering. This book sets out to answer these, and other, vital questions about what is really important to jurors, based on videotaped, post-trial interviews.

In Texas, state trial court judges must instruct their jurors that they may not talk about the case—even with their spouses—until the verdict is returned. The jurors are further instructed that they may not talk about the case even with their fellow jurors until they have heard all the evidence and begin their deliberations. I encouraged my juries to strictly follow these instructions by offering to come into the jury room after they returned their verdicts to answer any questions they had. My juries would sit and talk to me, sometimes for hours, about their experience. The genesis of this book is the raw and powerful feedback I received from jurors during those conversations.

Upon retiring to the jury room following a verdict, I would take off my robe and sit at the end of the table and simply ask, “What do you think?” The most common first question from the jurors was “Did we get it right?” My response always encompassed two principles: first, their decision was correct because it reflected the collective decision of twelve qualified persons; and second, their decision was one of many legally acceptable answers to the questions in the jury charge. I would tell them to be proud of their service and their decision.

From there, my conversations with my jurors varied widely, but common themes developed regarding their experience. I would even go so far as to say that I could see a set of basic rules developing from the juror comments. Even as the lawyers, witnesses, and facts of each case changed, the feedback from jurors was remarkably consistent. As I tried more cases, I witnessed trial lawyers—even some very experienced trial lawyers—running afoul of these basic rules, and I began to realize there would be a great deal of value in capturing these sentiments and sharing them with trial practitioners everywhere. But what was I going to do, ask the jurors to quit their jobs and go on the lecture circuit with me to teach trial lawyers how to relate to jurors? Then one of my interns
suggested that we videotape a few juror interviews and use them as a teaching tool. So I began asking jurors to sit for videotaped interviews. Rather than personally conducting the interviews, I had my law student interns do them. I spent several hours with them, composing a list of common questions and issues to explore with each juror. It was a great learning experience for them and yielded a treasure trove of information for practicing lawyers.

The videotaped interviews were collected during 2009 and 2010 from jurors who served in civil cases before the 134th Judicial District Court in Dallas County, Texas. The district courts are the highest level trial courts in the Texas judicial system; consequently, the cases these jurors considered included significant damage claims. I committed to keep their identities anonymous (of course, I told them I could not prevent someone from recognizing them when their videotaped interview was shown) and asked that they not identify lawyers, parties, and witnesses by name. Finally, I promised the jurors I would use their interviews to make presentations to other lawyers, judges, and citizens about the importance of the right to trial by jury.

Hundreds of jurors shared their thoughts, and over 60 agreed to sit for videotaped interviews resulting in over 25 hours of footage. The interviews ranged in length from 10 minutes to over an hour. Initially, the jurors were asked open-ended questions with more direct follow-up questions. No subject was off limits. By having my interns conduct the interviews, I believe we received open and unvarnished answers to many of our questions. Reviewing the interviews was a powerful experience because the jurors shared their most intimate thoughts about the trials in which they served. They explained how they picked their foreperson, how they conducted their deliberations, what witnesses and evidence they found persuasive, what they thought about the lawyers, how proud they were to serve as jurors, and how to make the whole process better.

The project turned out far better than I imagined possible, and I quickly acknowledged the responsibility to share this information with others. I also realized that it would be a substantial undertaking to review 25 hours of interview footage, analyze the data, and organize it
for effective presentation. I decided I needed a partner for this project, someone who had actual jury trial experience, a passion for courtroom psychology, and boundless energy. In sum, I needed someone to help me in my stewardship of the collective knowledge entrusted to me by my jurors. I needed my friend, Trey Cox!

Trey Cox is the most effective communicator I have ever met. He is a board-certified civil trial lawyer at Texas’ premier commercial litigation boutique. Trey has successfully tried dozens of high-stakes business cases to verdict and received numerous professional acknowledgments, but these successes are just a byproduct of his passion for excellence in the courtroom. His writing and presentations on courtroom decision-making and the effective use of demonstrative evidence have changed the way lawyers communicate with judges and juries.

Over lunch in September 2010, I thankfully welcomed Trey as a partner on this project. During the next year we analyzed the 25 hours of interview footage. Initially, we plucked out over 300 clips to use in making presentations for judges, lawyers, and law students. We had the privilege of presenting the juror videos to the Garland Walker Inn of Court in Houston, the Texas College for Newly-Appointed and Elected Judges in Austin, the Trial Skills Section of the Dallas Bar Association, and the annual meeting of the Texas Trial Lawyers Association. These initial presentations focused on jurors’ opinions about different aspects of trial advocacy. The response was overwhelmingly positive. We found there was a tremendous appetite for the information we were sharing. People wanted more. They asked for rules; they asked for checklists. They asked for something they could have as a takeaway that contained the lessons and rules of the juror interviews. This book, *The Texas Jury Rules*, is our response to those requests.

In this book, we have taken what the jurors said in their interviews and distilled ten specific rules. Each rule contains some of the best quotations from the juror interviews about that specific aspect of trial presentation. Of course, each rule will give rise to a few war stories along with some of our opinions. Many of the opinions offered by the jurors are common
sense; nonetheless they are lessons that deserve repeating. Some of the opinions—and maybe some of the rules—will surprise you. They may even be contrary to the conventional wisdom of so-called experts of jury trial advocacy. Keep in mind however, that we support each of the rules with the words of Texas jurors.

We hope that you will find these rules valuable to your trial practice. The right to trial by jury is one of the crown jewels of American society. We owe it to our clients and the judges and juries who serve in our judicial system to present our client’s best case.

We appreciate your support and the fact that you purchased this book. We want to hear from you if you have comments. There are several ways you can do so. First we have a website dedicated to this project and the book: TheTexasJuryRules.com. We will from time to time provide new information and content as well as notice of our speaking engagements. In addition, you can reach me at JamesMStanton@andrewskurth.com or Trey at tcox@lynnllp.com. Like you, we have active trial practices and busy personal and professional lives, but we are committed to responding to everyone. We hope you enjoy the book and look forward to hearing from you.

James M. Stanton

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Rules Summary
Following is a summary chapter that holds the lessons you will learn from the jurors throughout the book. As you prepare for trial, we hope you will use this summary to help you quickly revisit the primary tenets of *The Texas Jury Rules*. Of course, we encourage you to read each chapter carefully and pay special attention to the words of the jurors.

**The Texas Jury Rules: Attitude**

**Rule 1: Respect the Process**

Courtrooms are located in government buildings with wood paneling, presided over by a judge who sits in an elevated throne-like position above the jurors, lawyers, observers, and parties in dispute. The courtroom is a solemn place where serious issues are resolved. In nearly every interview we conducted, one thing that came through was the importance jurors placed on his or her surroundings. The aura of the courtroom caused them to feel that what they were doing was important. One juror compared his experience to being in church. For those of us who spend our days in court, it is our job to maintain that solemn environment. That means showing the proper level of respect for the process and the players. No matter how much we think that a thundering “you can’t handle the truth” moment is a good examination, jurors expect something different. They expect you to be respectful. This means treating the jury, the courtroom staff, and witnesses with respect and dignity—at all times.

**Rule 2: Be Prepared**

Jurors expect you to have mastered your facts and evidence before trial. They expect you to know the law, rules of evidence, and the judge’s preferences, too. From the jury’s perspective, what does it mean for a lawyer to be prepared? As one juror told us, he expects the lawyers to “know what they are going to do before they do it.” If you wait to prepare until you arrive at the courthouse, the jury will know it. Jurors told us that they expect lawyers to “only ask the questions that matter” and “get to the point.” When using technology or playing videotaped depositions, the jurors tell us they don’t want lawyers to “stumble over
admitting exhibits” or “fumble around;” instead, they expect things to be “cued up and ready to go.” As described fully in this chapter, the best method to ensure that you do not run afoul of the jury’s expectations is tireless preparation before you enter the courthouse.

The Texas Jury Rules: Effective Trial Presentation

Rule 3: Be Credible

The jurors told us that the most important attribute of an attorney or witness is credibility. They describe in vivid detail why they trusted some lawyers and witnesses and why others were considered untrustworthy. Even though jurors do not spend their days in courtrooms or possess law degrees, they are masters in the art of judging people. That is why we have this process in the first place. Like you and me, they size people up every day and decide who is trustworthy and credible. Their life experiences qualify them as credibility experts: they raise children, they deal with office politics, and they navigate the in-laws visiting for the holidays. They know when someone is manipulating them or telling half of the truth. Our analysis of the interviews established that, in each case, the jury is looking for a guide. The guide is the person who will lead them through the forest of witnesses, documents, and trial procedures to help them find their way. If you can become their trusted guide, they are likely to follow you home—to a favorable verdict for your client.

Rule 4: Set Expectations

Most jurors don’t know what to expect when they appear for jury duty. During their interviews, we heard them wonder, “How will this affect my life?” and “How long will it take to finish the trial?” They worry about how their bosses will react to taking time off for jury duty (“Can I be fired?”) and whether they can fulfill the promise to attend a daughter’s soccer game by 6 p.m. on Thursday. If the judge does not provide guidance about the length of the trial, it becomes the responsibility of the lawyer during voir dire. Your jurors are a blank slate with respect to courtroom processes so take advantage of your
tabula rasa to teach them. You will start to earn their trust and gain credibility. One juror aptly told us that her experience was “nothing like it appears on T.V.” After all, as the jurors told us, they wanted the lawyers to tell them how many witnesses would be called to testify, how long each will be on the witness stand, and why the testimony and other evidence being presented was important. Immediately before closing argument, when the jury charge and verdict form are read, jurors find out what is important to the judge. Jurors told us that after reading the questions they were supposed to answer in the jury charge, they were surprised by how the lawyers had spent their time during the trial. Jurors told us they want lawyers to more carefully structure their cases around the questions in the jury charge. When you accurately set expectations for the jury, you become a person of influence, a good role to have when the jurors’ final decision—the answers to the questions in the jury charge—is being made.

**Rule 5: Be Sincere**

In this chapter we analyze what strategies and tactics the passionate advocate can use to capitalize on the jury’s desire to do justice. Jurors told us they respect, and even admire, lawyers who advocate zealously for their clients. A juror bemoaned one lawyer for just “going through the motions” and thought that the lawyer “shouldn’t represent the client if [he didn’t] believe in the case.” Another juror wanted to know she was “doing the right thing” by her verdict. What do jurors think of crying? What about the personal injury plaintiff claiming back injuries who wore three-inch heels every day of the trial? Conversely, jurors also describe how unpersuasive purely emotional arguments are.

**Rule 6: Be Transparent**

Jurors repeatedly told us that they believed some lawyers and witnesses were trying to hide the truth. In Texas, state trial court judges instruct the jury that they must consider all the evidence admitted in the case, but the jury decides how the evidence is to be weighed. Being transparent means understanding that to the jury there is one case that has all the evidence. The jury doesn’t separate plaintiff’s facts and
defendant’s facts; jurors don’t care whether the plaintiff or defendant offered an exhibit or called a witness to the stand. But something they will not forget is who objects; and as they told us, they will not forget who tries to hide information from them. In this chapter, jurors teach us that there is a difference between making every possible objection in order to get an “A” on a law school evidence examination and making the right objections in a courtroom. In their interviews, jurors recount how successful evidence objections affected the lawyer’s credibility and the client’s case during their deliberations as they wondered out loud: “What was he trying to hide from us?” or “Why can’t we listen to the whole conversation on the tape?” or “Why were those documents redacted?” Jurors expect the lawyers to be responsible for all the facts. When we aren’t, jurors think the lawyer “must have something to hide.” Experienced trial lawyers know that every case that goes to trial has good and bad facts for each side. Great trial lawyers know how to account for the bad facts and explain to the jury why they do not matter or how the conclusion being urged remains the right conclusion, despite some bad facts.

The Texas Jury Rules: Putting on Your Evidence

Rule 7: Get to the Point

Like you and me, jurors have spouses, kids, jobs, and lives they want to get back to. They willingly give their time in jury service, but it is our job to make good use of it. We have to ensure that we demonstrate through our words and deeds that we appreciate and value the time jurors are giving to help our clients resolve their differences. How do we show jurors that we are making efficient use of their valuable time? Jurors tell us they appreciate it when “all of a lawyer’s questions seem to matter” and do not like it when “lawyers just kept droning on” until they can find the right documents. They also do not like waiting while lawyers look for documents, struggle with technology, or try to decide what witness to call next. One juror asked, “If you’ve had this case for five years, how do you not know everything about it already?” Another pet peeve of jurors is when they keep hearing
the same thing “over and over and over.” It makes them wonder, “Do you not think we heard you the first time, or the second time, or the third time?” In this chapter jurors describe ways that lawyers creatively communicated important information and the positive effect it had on their decision-making process.

**Rule 8: Stay Focused**

The trial lawyer’s singular goal in the courtroom is to effectively communicate the facts, themes, and conclusions in a clear and memorable way. Anything that distracts from this goal hurts our client’s case. Jurors described how lawyers’ mannerisms, nervous ticks, and bad habits distract them. In this chapter we analyze the danger of a distracted jury. Jurors described how they had competitions to decide how long an attorney would drag out the “o” in “so” before each question on cross examination; or in another trial, they counted how many times an attorney twisted his eyebrow each day. One juror lamented the use of “air quotes” which, in his opinion, showed bad manners; and regardless of what Miss Manners would say, it caused jurors to fixate on “coming out of the jury box if we could to tie his hands to his sides!” These stories are humorous unless you are the lawyer with the distracting habit—or worse—the client whose lawyer is distracting the jury from your best arguments. Ask yourself this question: is the jury counting how many times you twist your eyebrows? Is the jury plotting to tie your hands to your sides? If yes, what is the likelihood that the jurors are paying attention to the substance of your client’s case?

**Rule 9: Use PowerPoint Slides and Demonstratives Effectively**

Jurors tell us that effectively using demonstrative evidence is a powerful trial skill. Entire books have been written on effectively using PowerPoint slides. Graphic design firms have been established solely to assist lawyers in creating demonstrative evidence at trial. One juror described how a demonstrative exhibit showed how “tragic” an accident was and “helped her see clearly how everything happened.” Another juror, who was an actress, provided a detailed analysis of how
demonstrative evidence should have been used in her case but wasn’t. Too often lawyers present confusing graphics or slides with twelve bullet points and a page worth of words. Neuroscience teaches us that loading slides with too much information causes a phenomenon we call “juror overload.” In this chapter we explore describing how lawyers effectively use demonstrative evidence to enhance their trial presentations and to ensure that jurors understand and remember the key points of their clients’ cases.

**Rule 10: Present Credible Witnesses**

It is hard to over-emphasize the importance of choosing the right witnesses and preparing those witnesses to tell your client’s story. Recognizing this, it is now common for jury consultants to offer “witness school” for problem witnesses. Witnesses actually attend classes and preparation sessions where they learn how to answer questions in a way that makes them look truthful. In the jury’s eyes, the lawyer is the chief spokesperson for the client. While they look to the lawyer to be the guide, they also remember that the judge has instructed them that what the lawyers say is not evidence. Instead, the jurors are told to consider the evidence admitted during the course of the trial. For this reason, who you choose to testify and how each witness presents to the jury are the foundation for your case. When a lawyer’s arguments are not backed up by credible testimony from witnesses, jurors describe the effect on their decision-making process. One complained about her difficulty in judging the credibility of a witness who was presented by reading a written deposition (rather than offering videotaped deposition testimony or live testimony) because “ninety percent of what the person is saying is how they are saying it.” In this chapter, the jurors provide a detailed description of what makes a credible witness.