

Contents

List of Illustrations	xi
Acknowledgments	xv
About the Authors	xix
Notes	xxi
Preface	xxiii

Section One **Examining Process** **1**

Chapter 1	
Why the Jury System Works	3
A Tragic Case Study	3
A Tribute to Jurors and Juries	10
The Lawyer's Role at Trial—Great Trial Lawyers All Share Certain Characteristics	13
<i>You Can Be Helpful by Not Being Afraid to Be an Advocate Who Is Also an Effective Teacher</i>	14
<i>You Can Be Helpful by Not Behaving Like a "Mad Dog" in Court</i>	17
<i>You Can Be Helpful by Limiting Your Case to What Really Matters</i>	20
<i>You Can Be Helpful by Identifying and Devoting the Necessary Time to the Key Topics That Require Extra Explanation</i>	22
<i>You Can Be Helpful by Taking the Necessary Time to Learn and by Making the Necessary Effort to Thoroughly Understand Your Own Case</i>	24
Why the Jury System Works	26
<i>Reason One: The Jury System Works Because Most Cases Are Defined by a Common Core of Recurring Elements That Jurors Find Familiar</i>	27
<i>Reason Two: The Jury System Works Because All of the Participants Share Much in Common, Around Which You Can Build Consensus</i>	37
<i>Reason Three: The Jury System Works Because We Use Stories to Educate Our Jurors</i>	43

<i>Reason Four: The Jury System Works Because, at Trial, We Repeat the Story Three Times in Slightly Different Ways, Thereby Allowing Us to Use a Variety of Persuasion Tools</i>	44
<i>Reason Five: The Jury System Works Because We Require the Essential Characters to Tell Their Stories in First-Person Narratives to the Jury</i>	46
<i>Reason Six: The Jury System Works Because There Are Opportunities at Key Points in the Trial for the Lawyer to Talk Directly to the Jurors</i>	47
<i>Reason Seven: The Jury System Works Because Jurors Have “Collective Intuition”</i>	48
<i>Reason Eight: The Jury System Works Because Jurors Have “Collective Wisdom”</i>	49

Chapter 2

The “Four Inputs”

Chapter Introduction	51
The Proto-Story	53
<i>The Factual Strand: An Overview</i>	53
<i>The Central Cord</i>	56
<i>The Included Facts</i>	84
<i>The Persuasion Tools</i>	96
<i>The Operating Instructions</i>	97
<i>The Arguments</i>	101
Putting the Pieces Together That Are the Proto-Story	103

Chapter 3

The Process—How Your Client’s Version Becomes “The TRUTH”

Chapter Overview	105
“Ultimate Reality”	110
<i>Reality Version 1.0: The Big Bang</i>	112
<i>Reality Version 2.0: The Universe of Potential Information</i>	113
<i>Reality Versions 3.1 and 3.2: The Proto-Stories</i>	114
<i>Reality Versions 4.1 Through 4.12: Each Juror’s Secondary Story</i>	115
<i>Reality Versions 5.1 and 5.2: The Two Coalitions</i>	116
<i>Reality Version 6.0: The Winning Coalition</i>	116
<i>Reality Version 7.0: The Verdict</i>	118
From the “Big Bang” to Final Verdict: The Mechanics Of How Jurors Determine Ultimate Reality in Four Steps	118
<i>Step One: Each Side Assembles and Presents Its Proto-Story</i>	121
<i>Step Two: For Each Juror, Two Proto-Stories Go in and One Secondary Story Comes Out</i>	136
<i>Step Three: Coalition Forming</i>	138
<i>Step Four: Coalition Building</i>	140

Section Two

Selecting the Right Tools **145**

Chapter 4

Tools for the Jurors	147
Chapter Overview	147
An Introduction to Persuasion Tools	149
<i>Operating Tools Address Core Values</i>	151
<i>Educational Tools Address Core Details</i>	159
<i>Situations When Jurors Typically Need and Benefit from Educational Tools</i>	160
Why You Need to Offer a Variety of Persuasion Tools to Your Active Jurors	164
The Characteristics of Successful Persuasion Tools	165

Chapter 5

The Five-Step Process for Creating Your Proto-Story and Persuasion Tools	169
Chapter Introduction	169
Overview of the Five-Step Process	169
<i>Observation One: The First Four Steps Are Connected</i>	170
<i>Observation Two: The Process Is Nonlinear</i>	171
<i>Observation Three: Deciding How to Present Your Material Must Always Be the Last Step</i>	172
<i>Observation Four: The Five-Step Process Takes Time; Give Yourself That Luxury</i>	173
The Five Steps	174
<i>Step One: You Need to Understand Your Case</i>	174
<i>Step Two: You Need to Mentally Mine Your Case</i>	176
<i>Step Three: You Need to Simplify Your Case</i>	182
<i>Step Four: You Need to Shape Your Case Using Information Architecture</i>	185
<i>Step Five: After You Complete the First Four Steps (And Only After You Have Completed the First Four Steps), Choose the Right Technology to Present Your Persuasion Tools</i>	187
Index	195