



AMC 2026

Session 1

**In Minds of Jurors:
Using Juror Feedback for
Better Outcomes**

Presented by:

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About the Presenters...

Tim O'Brien is a trial lawyer with Bakke Norman Law Office. Tim has litigated everything from traffic tickets to homicides, DNR violations to Section 1983 claims, business disputes to car accidents, and a lot of stuff in between. His current criminal practice focuses on homicide, drug and sexual assault cases, while his civil practice includes personal injury claims, business disputes and legal negligence defense. He is AV rated by Martindale Hubbell, has been certified as a Civil Trial Specialist by the National Board of Trial Advocacy for 25 years, and has been chosen as a Wisconsin *Super Lawyer* 16 times.

Stephanie Schmidt, State Public Defenders Office, Hudson.

Kevin Smith is the Regional Attorney Manager for the Janesville Region of the Wisconsin State Public Defenders. He previously served the Wisconsin State Public Defenders as an Assistant State Public Defender, the Pretrial Motions Practice Coordinator, and as a Local Attorney Manager. In his current role, Kevin oversees Wisconsin State Public Defender operations in Lafayette, Green, Rock, and Walworth counties. Likewise, Kevin represents indigent defendants in each of those counties - focusing on serious felony offenses. Kevin is an active trainer and educator. Kevin is one of the authors of the Wisconsin Criminal Defense Manual. Kevin is also active with several professional organizations, including serving as the Chairperson of the Wisconsin State Bar's Criminal Law Section Board.

Judge R. Michael Waterman was appointed to the St. Croix County Circuit Court in 2015. He received his undergraduate degree from Muhlenberg College in Allentown, Pennsylvania and his law degree from Hamline University School of Law in St. Paul, Minnesota. He currently chairs the Civil Jury Instruction Committee, and presides over the St. Croix County Family Treatment Court. He is a frequent presenter at judicial education programs. Prior to joining the bench, Judge Waterman had a civil litigation practice in Hudson, Wisconsin, and he taught appellate advocacy at William Mitchell College of Law.

What Jurors Say

Hon. R. Michael Waterman
St. Croix County Circuit Court Judge

Introduction

Having presided over more than 100 jury trials, I make it a point to meet with jurors after each verdict. Expressing gratitude to them is important, but I also value hearing their comments about their experience. Jurors consistently provide insightful observations and constructive criticism—feedback I often wish lawyers could hear as well.

Over time, I have collected the most common comments I receive from jurors. I am sharing these thoughts so that lawyers can better understand their audience. While this is not a scientific study on juror psychology or decision-making, these anecdotal insights are so frequent that lawyers should consider them when preparing for their next jury trial.

Juror Feedback and Common Themes

Skepticism Toward Lawyers

“We were skeptical of the lawyers.” Many jurors reported feeling wary of the lawyers at the outset. Pop culture often depicts trial lawyers as manipulative advocates, and jurors understand that a lawyer's goal is to win, not necessarily to provide neutral truth. To overcome these initial impressions, successful lawyers focus on building trust and credibility. Competence—demonstrated through organization and preparation—helps establish credibility, regardless of the lawyer's skill or experience-level. Sincerity and honesty are also crucial. Jurors trust advocates who use plain language and appear genuinely invested in the case, while they are sensitive to any perceived dishonesty or evasion.

Frustration with Repetition

“We got it the first time; we didn’t need to hear in 10 times.” Jurors frequently complain that lawyers ask the same questions repeatedly and labor over points that

were clear the first time. Multiple witnesses often testify about the same matters, which many jurors believe unnecessarily extends the length of the trial. Jurors often suggest that the trial could be much shorter if lawyers were more efficient in their presentations.

Difficulty Organizing Information

“There was so much information that we didn’t understand how it fit together.” Jurors can feel overwhelmed by the sheer volume of information presented during a trial. They often express frustration about having to make sense of the case on their own. Conversely, they appreciate lawyers who present the case around a clear theme or story. Jurors are most attentive when evidence is woven into a chronological narrative, rather than being presented as isolated facts. They value explanations about why a witness is called or why a particular piece of evidence matters. Opening statements that function as a "table of contents" help jurors understand and organize the evidence as the trial progresses.

Desire for More Information

“The lawyers are probably hiding the truth.” Even though some jurors feel overwhelmed, many also express a desire for more information. They sometimes suspect that lawyers are withholding evidence. Objections, sidebars, and conversations outside the jury's presence are often perceived as attempts to hide the truth. Successful lawyers reassure jurors that they are getting the whole story, or at least all the information necessary to decide the case.

Need for Engagement

“We want to stay busy and engaged.” A common source of frustration is the "hurry up and wait" routine. While judges and lawyers handle legal matters in the courtroom, jurors are left idle in a cramped jury room. Although conducting business outside the jury's presence is necessary, it should be minimized. Filing motions and requesting rulings before trial, having witness ready, and testing equipment ahead of time can help keep jurors engaged and the process moving efficiently. Jurors also appreciate being mentally engaged during the trial. Hours of oral testimony can be difficult to sit through, and jurors appreciate trials that include demonstrative and illustrative aids.

Confusing Jury Instructions

“The jury instructions were confusing.” While the judge is responsible for the instructions, lawyers who take time to explain them often help their case. The winning lawyer is often the one who clarifies the instructions and shows jurors how to apply them to the facts. Closing argument should be used as a teaching moment: explain the meaning of the instructions, show how the evidence fits, and guide the jury to the desired verdict answers.

Awareness of Surroundings

“We pay attention to our surroundings, not just the evidence.” Jurors notice everything, from who is seated in the audience and their attire to the conduct of the litigants and lawyers. How lawyers treat their clients and staff, as well as their demeanor—whether it be negative (scoffs, sneers, eyerolls) or positive (smiles, respect, kindness)—does not go unnoticed. While trials are decided on evidence, the image projected in court influences how jurors interpret that evidence.

Dislike of Aggressive Lawyering

“We didn’t like seeing the lawyer bully the witness.” Cross-examination is inherently confrontational, but jurors strongly disapprove when lawyers mock, belittle, or harass witnesses. Jurors are sensitive to the power imbalance between a legal professional and a nervous witness. They tend to sympathize with the less powerful individual. If a lawyer becomes overly aggressive or condescending, jurors may stop listening to the substance of their questions and focus instead on the fairness of the interaction. This can result in a serious loss of credibility for the lawyer.

Jury Duty as a Civic Responsibility

“We didn’t want to do it, but we’re glad we did.” Many people approach jury duty with reluctance, but their attitudes often change as they participate. They feel the weight of their oath, especially when deciding matters of liberty or significant financial interests. The concept of “civic duty” becomes real, and many jurors note the high levels of stress and responsibility, knowing their decisions can have immediate, life-altering consequences.

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State Bar of Wisconsin 2026 Annual Meeting
Tim O'Brien, Bakke Norman Law Office

Tim O'Brien is a trial lawyer with Bakke Norman Law Office. Tim has litigated everything from traffic tickets to homicides, DNR violations to Section 1983 claims, business disputes to car accidents, and a lot of stuff in between. He's spent a lot of time in front of juries. He's still trying to figure them out.

Voir Dire Basics

The standard for challenges for cause: The juror's views would “**prevent or substantially impair**” the performance of his duties in accord with his instructions and oath. *Wainright v. Witt*, 469 U.S. 412 (1985).

The standard for objective bias: “Whether the juror should be removed for cause turns on whether a reasonable person in the prospective juror's position could set aside the opinion or prior knowledge.” *State v. Faucher*, 227 Wis. 2d 700, 719, 596 N.W.2d 770, 779 (1999).

The standard for subjective bias: “A prospective juror is subjectively biased if the record reflects that the juror is not a reasonable person who is sincerely willing to set aside any opinion or prior knowledge that the prospective juror might have.” *State v. Oswald*, 2000 WI App 2, ¶ 19, 232 Wis. 2d 62, 74, 606 N.W.2d 207, 214.

Make sure jury selection is recorded and that objections are clearly noted on the record

Voir Dire Considerations

As lawyers, we're fearful of voir dire because it's the least predictable part of a trial. It's always good to remember that the prospective jurors are likely more frightened when they show up for the trial than you are. So, be a people person, acknowledge it's not easy for anyone, and start the conversation.

The three E's of jury selection:

Elicit information

Favorable or unfavorable to your client or case theory

Exercising strikes

Find the bad ones

Educate jurors

Introduce facts, law, case theory/themes, burden of proof, duties as jurors

Establish relationships

Develop a rapport, use open-ended questions

Be respectful of the jurors and the system, thank them for honesty

Listen, listen, listen

Be careful of stereotypes

Example: A person who identifies the importance of following rules or law may not necessarily be pro-police

Give the jurors the ability to talk about their concerns, fears, biases

Use self-disclosure techniques: "It would be impossible for me to be fair in this type of case because of ___ in my background" questions. Does anybody feel that way about the type of case we're here for today?

It should really be called Jury Deselection

While you'd always like to pick the 12 best, you should concentrate your efforts on getting rid of the 3 or 4 worst.

Identify jurors who can be challenged for cause

Identify jurors who will not accept your theory of the case

Identify jurors who don't like your client – or don't like you

Don't be afraid of a "bad answer" - it might give you insight into who you don't want in the jury room