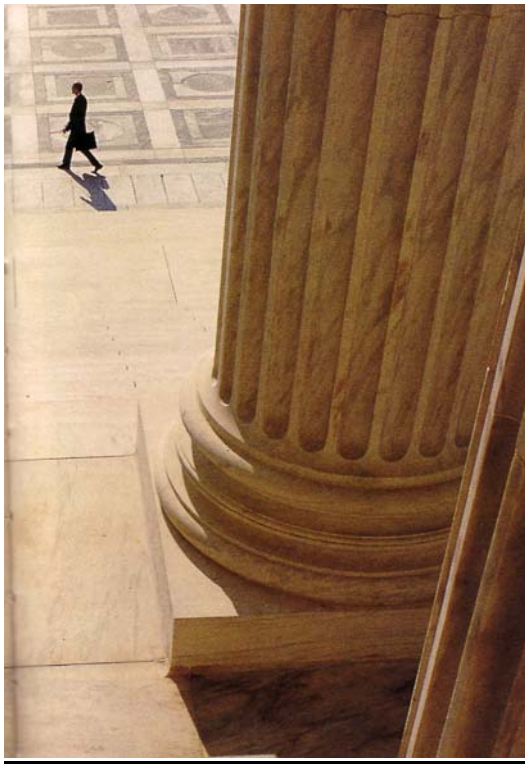
The Power of Decision Maker Oriented Trial Advocacy



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THE ADVOCATES
TRIAL & ADVOCACY SCIENCES

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"To motivate people in the courtroom to listen to you and to take action in your favor, you must understand their needs and what inspires them."

When we ask a judge, jury, or arbitration panel to accept our arguments and to decide a case in our favor, we are asking them to allow us into their world. It is like asking someone to let us come into that person's house for a visit. They must be the one to unlock and open the door from the inside.

Some people dismiss the conviction with which courtroom decision makers decide cases by saying simply that they act in their own self-interest. However, the argument is too simplistic. People are complex. They use their logic and emotions in varying degrees to make decisions that will help them to experience pleasure and avoid pain. One way in which people experience pleasure is to make decisions that make them feel good about themselves. This principle is absolutely true in persuading judges, juries, and arbitrators.

To motivate people in the courtroom to listen to you and to take action in your favor, you must understand their needs and what inspires them. Using the most correct and appropriate trial advocacy technique is not enough.

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Persuading people in the courtroom involves meaningful two-way communication between the trial lawyer and the people he or she wishes to convince. No lawyer ever won a case by telling a judge, jury, or arbitration panel what to do. He or she won a case because the fact finder could identify with the lawyer's moral interpretation of the case.

When it comes to interaction between trial attorneys and courtroom decision-makers, lawyers cannot dominate fact finders. Lawyers can only inspire them and motivate them. Fact finders choose for themselves how they will respond.

It is a fallacy to believe that decision makers in the courtroom are passive participants in the trial. Even though tables, walls, or benches may separate them, they are actively visualizing and imagining the circumstances of the case and interpreting them in accordance with their attitudes and life experiences. They are working vigorously trying to understand the meaning of the case for themselves.

No matter who the decision makers are in your cases, their images and interpretations of the circumstances of the case are uniquely their own. For decades post-trial interviews of jurors have revealed that each of them develops their own version of a case story by the end of trial. Most of them have begun to form the story before the end of opening statement.

It is immensely helpful to know in advance of trial how the decision makers in a particular case are likely to process the circumstances of the case. For example, in product liability cases some manufacturers undertake cost-benefit analyses to determine the cost-effectiveness of designing their products in certain ways. Armed with this information, a plaintiff attorney might wish to argue that the manufacturer had reduced the value of life to dollars and cents and that a jury should impose punitive damages to punish the company for being so callous. A defending attorney might wish to argue that the cost to the public of implementing a new design would be prohibitive considering that only say one out of one million of the products would result in someone's death.

Before developing the argument on the issue, one might want to know more about how a jury will view the issues. Once this information is available, a lawyer might develop an argument that coincides with the fact finders' likely views. One way to obtain this information would be through the use of scientific focus groups or mock trials to better understand how jurors are likely to perceive the issue. If there are budgetary or time constraints, there are now hundreds of peer reviewed journal articles which publish the results of scientific research about how people in the jury population think about certain issues that arise often in the courtroom.

After three decades of experimenting with the use of scientific decision maker research, we have learned that the most powerful and creative ways to present an argument results from a process of gathering information about the decision makers using an objective process and then brainstorming ways to incorporate this information into the development of the argument.

To some extent we have become conditioned to believe that our performance in the courtroom is about us and how well we present a case. Although three decades of intensive trial

advocacy training have helped us to enhance our communication skills, this is only the first step. The next step is to use our skills to engage fact finders in powerful ways. After all, their decision is about them, not us.

The most effective trial lawyers realize that working with judges, juries, and arbitrators is a cathartic experience. They realize that in order to be effective, they must let down their personal barriers and engage decision makers in intimate and powerful ways. They must get in touch with that part or their own spirit that unleashes real personal power. They realize that their role is to stimulate and motivate decision makers, not to control them.

It is not our power that results in a favorable verdict. It is the power within the decision maker that creates the magical experience and results in a decision.
As trial lawyers, we give homage to the power of the decision maker. We honor and respect their power and should not try to upstage it. To the contrary, one of our goals is to empower fact finders by acknowledging their supreme authority.

About the Author

Dr. Richard Waites is a board certified civil trial lawyer and is the chief trial psychologist and CEO for Advocacy Sciences, Inc. and **The Advocates**, the nation's leading firm of **jury consultants** and **trial consultants**.

The Advocates' clients include major law firms and corporations all over the United States (www.theadvocates.com).

The Advocates is the nation's leading jury and trial consulting firm with offices in more than 17 major U.S. cities. The **trial consultants** and **jury consultants** with **The Advocates** have more than 32 years experience assisting trial attorneys and corporations in some of the most high profile cases in the areas of torts, products liability, complex business litigation, intellectual property, employment and most other areas of practice.

The firm provides support for many state and national professional organizations, including the American Bar Association, American Psychological Association, American Society of **Trial Consultants,** and the Association of Corporate Counsel. Dr. Waites is the author of the new book, ***Courtroom Psychology and Trial Advocacy***, published by American Lawyer Media.

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