

# Respect Jurors' Declaration of Independence

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# **Respect Jurors' Declaration of Independence**

*Written by Dr. Ken Broda-Bahm*

When in the course of human events, it becomes necessary for a citizen to report to the district courthouse and sit in judgment on the disputes of strangers, it becomes vital for that citizen to remain independent of the passions, sympathies, persuasive techniques, and attorneys that the parties in dispute will bring to that courthouse. In assuming the powers of a juror, and becoming a 'finder of fact,' these citizens maintain a separate and equal station to the law itself. We hold these truths to be self-evident, that all jurors are created equal, that they are endowed by their role and by the law with certain unalienable rights, that among these are the rights to their own judgment, their own sense of what matters most, and their own preferred route to a verdict. To secure these rights, trials are instituted among citizens, deriving their just powers from the comprehension and assent of the juror. And whenever trials become destructive of these ends, it is the right of the jurors to simply ignore you and to form their own state of understanding, their own comprehension of justice.

Those thoughts, cribbed on this Fourth of July, from the document that serves as America's cradle, the Declaration of Independence itself, should remind us of one basic fact about jurors: They're not your tools. Or at least, they don't want to be. Instead of following your lead, your advice, and your advocacy, they want to reach their own conclusions based on what they're able to remember, understand, and use, and based on their own common sense. They want to be



independent. That doesn't mean you stop being an advocate, and it doesn't mean you stop trying to guide them in the best direction. Rather it means that you become an *even better* advocate and guide by becoming one who is sensitive to the fact that jurors, and all audiences, want to feel like they are reaching their own conclusions. This post centers on a few ways jurors want that independence.

### **Independent of the 'Bandwagon'**

Jurors want to believe that they are not being swept along with the crowd, and that means resisting the 'Bandwagon' appeal of a popular position. Still, that can be difficult. Our own internal perception of "common sense" generally reflects the conclusions of our reference groups, and a process known as "informational cascade" explains why groups, including jurors, can all run off in the same direction. When your side of the case tells you that you want jurors equipped to resist that siren song, the solutions are to select a more heterogeneous group (since those are less susceptible to groupthink), and to develop a message that emphasizes independent judgment: E.g., "*You'll want to make up your own mind on this point,*" or "*Before you become a jury of 12, you're a jury of one.*"

### **Independent of 'Persuasion'**

Here's a counterintuitive bit of advice for the practical persuader: 'Don't persuade.' What I mean by that is, advocate strategically, but don't telegraph the message, "*I am trying to persuade you.*" The reason to avoid that is found in the phenomena of persuasive resistance: When we know we are being pitched, we will respond with a motivation to dig in further and to generate counterarguments. For that reason, keep techniques natural and unannounced. E.g., there

should be no suggestion of: "*Here's my theme...my analogy...my best argument.*" This is part of the reason why a framework of telling a story usually works better than the framework of making an argument: because the appeals and inducements in a story are likely to be more subtle, and when the juror reaches a conclusion, she is more likely to see it as *her own* conclusion rather than one that has been foisted upon her.

### **Independent of Power**

An advocate who is sensitized to logic but not to audience, will sometimes use phrases like, "*You must,*" "*You have no choice,*" or "*This conclusion is inescapable,*" as part of an argument. But that implied restriction of choice is a form of power, and jurors don't like it. When that kind of pitch is used with judges, they *really* don't like it. That is because the natural human response to "*You have to*" is generally going to be, "*Oh, no I don't.*" Instead of your preferred conclusions being presented to your target as a destination they've already arrived at, present it as a path that they can take. You know, because you laid out that path, where it leads. But a juror who follows it is more likely to feel that they own the conclusion that waits at the end. Social psychologists have called that simple idea "SPOT" or "Spontaneous Preference for Own Theories." In other words, people like it if they came up with it. Complementing that, one of the most effective persuasive appeals is called "BYAF," or the "But you are free" approach, as in, "*I really want to see Jurassic World, but you are free to pick any movie.*" The idea is that this emphasis on free choice makes the subject feel more powerful and in control, and that can help to make them more comfortable with what you are advising.

There are many ways an audience wanting to reach its own conclusions will seek out a feeling of freedom and independence. The bottom line is, when it comes to adapting to jurors, every day is the Fourth of July.

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