Most litigators, particularly those handling civil cases, do not try many cases — at least I did not when I was in practice. I do not think that my experience was atypical. Some civil cases are dismissed on Motions to Dismiss. Some civil cases are ended by the granting of Motions for Summary Judgment. Many cases are settled. Still others are tried to the Court in a bench trial or to an arbitrator or arbitrators, which process is now in many respects akin to a bench trial. Occasionally, of course, lawyers try cases in front of juries. However, compare the frequency of lawyers trying jury cases with the experience of a trial judge. Judges have much more experience with juries and jurors than most lawyers. Looking back now over somewhere between 150-200 jury trials as a Judge, I can claim some expertise on the views of jurors.

It has been my practice, along with interested members of my staff, to talk to jurors shortly after a verdict has been received. The experience of serving is still fresh in the minds of jurors. Most express forthrightly their views on the process, including what they appreciate and what they do not appreciate.

Not surprisingly, most prospective jurors are not happy about being summoned. Most jurors are not happy when selected for the actual jury. However, jurors soon realize how important the process is and how central they are to it. Jurors take their service very seriously, realizing that much is at stake. Jurors expect that the judge, the lawyers, and all involved will take a trial seriously. I recall a case where a second-chair lawyer was overly flippant and jocular. After the trial, several jurors suggested that the lawyer needed to learn that this is serious business. They found his behavior disrespectful to the Court, the other party, and the other party’s lawyer. In fact, the jury asked if the Court could convey to the other party’s lawyer — who had lost — how much they appreciated her professionalism. Some humor is, of course, appropriate and some juries have commented favorably on witnesses and attorneys who use it properly. But if the behavior suggests to jurors that the process of a trial is being undertaken lightly, they will not appreciate it.

Jurors almost uniformly express appreciation at the conclusion of a trial for what they have learned and how serious a matter it is to try and to decide cases. They feel educated, informed, and knowledgeable about something that was previously a mystery to them. At the end of a case, jurors realize why I told them at the beginning that our legal system could not properly work without them.

Jurors do not like to feel that their time is being wasted. Jurors may be smarter than you believe they are. They really do not need to have points hammered home more than once or twice. Jurors do not appreciate the same question being asked several different times in different ways. In one trial, a juror mentioned that an attorney cross-examining an expert witness spent so much time on questions regarding the expert’s compensation that the juror then assumed there was no substantive basis for attacking the expert’s opinion. The attorney did in fact have substantive attacks to the expert’s opinion, but the juror had either tuned out by then or began to sympathize too much with the expert to recognize them.

Jurors can generally tell when a lawyer is not prepared or does not seem to care about the case or the client. Jurors expect that lawyers will have their papers and exhibits in order and will know what it is that they want to ask witnesses. They can tell if preparation has been less than thorough. Jurors expect lawyers and the court to be prepared and organized. Prepared and organized lawyers

JUDGE DALE A. KIMBALL is a United States District Court judge for the District of Utah. He was appointed by President Clinton in 1997. He assumed senior status in November 2009.
tend to get to the point and tend not to waste time.

Jurors expect lawyers not to groan, slouch, frown, or make faces when things happen during the trial that the lawyer might not like. Jurors say they expect lawyers to stand when making objections or addressing the Court. Jurors expect lawyers to demonstrate respect for the system, for the Court, for opposing counsel, and for them. Jurors occasionally complain that they cannot hear a lawyer’s questions or arguments. It is never a good idea for a lawyer to get too far away from the microphone and, if a lawyer strays from a microphone, he or she must speak clearly and with sufficient volume so that all can hear.

Jurors appreciate zealous advocacy. They expect that lawyers will represent their clients to the fullest extent. On several occasions, jurors have asked us to tell criminal defense lawyers that they did a wonderful job even though their clients were convicted. On some other occasions, jurors have noted that it appears that a lawyer or lawyers just did not care about their clients, leaving the impression that the lawyer’s representation had been less than adequate.

Jurors understand that a trial involves contested issues and occasionally much potential emotion. However, they do not appreciate unnecessary conflict. They do not like it when lawyers argue directly with each other. They also do not appreciate too much drama from lawyers in the courtroom. They are sympathetic to witnesses whom they believe have been subject to overbearing or overly contentious cross-examination. All of the above suggests that lawyers should try to remain relatively calm, not shout too much, and not try to bully witnesses. This does not mean, of course, the lawyers should avoid pointing out discrepancies in witnesses’ testimony or discrepancies between testimony and documents. What is suggested is that lawyers’ points should be made in as reasonable and calm a manner as possible.

Jurors treasure honesty. They like lawyers who do not try to hide or slide by weaknesses or inconsistencies in a case or in testimony. In one case, a juror stated that defense counsel’s honesty in admitting that his client was not a good man showed respect for the juror’s intelligence. Jurors understand the necessity of minimizing and explaining problems but do not appreciate when lawyers pretend that problems and inconsistencies do not exist. We have
heard many comments about this.

Early on, we received occasional complaints about jury instructions. They were, apparently, sometimes difficult to understand and confusing. Now we receive many compliments from jurors regarding jury instructions. Many have stated that having the jury instructions made everything in the case fall into place. Somehow lawyers and my staff and I have, over the years, managed to make jury instructions clearer, less confusing and actually, apparently, very useful and helpful. I am not sure how this has happened but I’m grateful that it has. Thank you for your part in that process and let me encourage you to continue in your efforts to make jury instructions “juror friendly.” Perhaps jurors have become increasingly intelligent over the years.

Jurors love to hear the whole story. I realize that sometimes I have prevented that because of evidentiary rulings. However, insofar as possible, you should try to put on sufficient evidence that the story and the narrative make sense and are as complete as possible. I have seen a product liability trial where a party sought to exclude evidence of three other accidents involving the product. I agreed to exclude it, and then learned in talking to the jury that the excluded evidence would have actually helped the party’s case.

Without any evidence about other accidents, the jury had assumed that there had probably been hundreds of other accidents.

In that connection, jurors do not like to sense that they are being excluded when they are in the courtroom. Try to keep side-bars to a minimum and do not object to questions when it really is not necessary. Objections tend to indicate to the jury that there is other evidence of which they are not aware. Appropriate objections should, of course, still be made.

Jurors love to complain about the food, the chairs, the excessive number of breaks, the insufficient number of breaks, the parking, and the weather. Jurors do, however, appreciate court staff. A lot of this is outside of your control. But to the extent that you can have witnesses ready to go and reduce the length and number of breaks, you should try to do so.

In my early days on the bench, I was somewhat concerned about jurors “getting it right.” Now, after thirteen plus years of experience, I can say that I have only disagreed with a jury verdict on two occasions. There was one civil case where the plaintiff was no-caused and one criminal case where the defendant was found not guilty, and in both cases, I would have reached a different conclusion. In my experience, jurors carefully listen to the evidence, pay attention to the arguments, take seriously the instructions, and, in my view, almost always “get it right.”

However, in civil cases where jurors have found a defendant liable, I am almost consistently surprised at what I consider to be relatively small damages verdicts. I don’t know exactly why this is the case. Many have opined that because our federal district pulls from the entire state and federal juries must be unanimous, it leads to smaller damage awards. In talking to jurors, I’ve merely sensed that a typical Utah juror wants a plaintiff to be compensated for injury but that he or she should not receive a windfall just because something bad or unfortunate happened to him or her. Jurors have made comments that they just want to “set things straight.” It might be that plaintiffs in our federal district would do better with the judge in terms of damages.

All jurors, however, want to know if I agree with the outcome. They look for validation. My sense is that they do this because they realize they are new to the legal process, but they have done the best they could. It is almost always easy for me to give the validation they seek. After my years on the bench, I can say without hesitation that the jury system, and Utah juries in particular, work.