



- [Home](#)
- [Articles](#)
- [Columns](#)
- [Archives](#)
- [Digital Edition](#)
- [Opportunity Market](#)
- [About](#)

Articles

Be part of the MSBA delegation going to Israel. <http://t.co/11Oini5D> (2 days ago)

[Home](#) / [Articles](#) / The Judge Looks Bored: How to Keep the Judge Interested

The Judge Looks Bored: How to Keep the Judge Interested

Posted [Dec 13 2011](#) by [Judge Jay Quam](#) in [Articles](#) with [0 Comments](#)

For many attorneys, trying a case is one of the most engaging and stimulating experiences of their career. Why then do judges and juries look bored? And how can the attorney overcome such boredom without being inappropriate?

It happens in almost every trial: You look up from your notes and the judge looks bored. You know it is not a good thing that the judge looks bored, but you don't know what to do about it. You think that shouting and histrionics may capture the judge's attention, but you aptly conclude that would not be good strategy.

The truth is that the judge probably *is* bored, and it is *not* a good thing. The good news is that you can do something about it. Moreover, while these comments and suggestions are drafted as though your next case is a bench trial, most are equally applicable to jury trials because the jury has the same focus as the judge—and may be as easily bored.

Why Judges Get Bored

There are a lot of parallels between judges and lawyers in the courtroom: they have similar training; they are focusing on the same general issues in dispute; and they are in the same physical environment. The jobs they do, however, could hardly be more different. The vast differences between the two help explain how judges get bored despite the fact that there is nothing as exciting to the lawyer as trying a case.

Here are some of the main reasons judges can get bored:

1. Lawyers are active while judges are passive. When you are sitting at counsel table it's hard to imagine being bored because you have numerous demanding tasks that you have to handle simultaneously. These are

things like:

- focusing on asking coherent questions;
- identifying whether there is anything objectionable being presented;
- listening to the answer so you can formulate an intelligent next question;
- writing down the answer so you can integrate it into your final argument;
- thinking about which documents may be useful as part of the ongoing examination;
- monitoring the behavior of your client, including the regular notes and whispers reflecting your client's contemporaneous commentary;
- doing self-checks to ensure your body language and reactions are appropriate; and
- making sure you are speaking clearly and using appropriate language.

With the many tasks that you simultaneously handle in trial, your body feels like it is coursing with adrenaline. It seems that everything is moving at the intellectual equivalent of 100 miles per hour. That's because your body is coursing with adrenaline and things *are* moving at the intellectual equivalent of 100 miles per hour.

The judge's job could hardly be more different from the lawyers' job. In contrast to the many tasks the lawyers are performing simultaneously, the judge has one: To listen. Sure, the judge has to monitor the case to make sure nothing inappropriate is happening and occasionally has to rule on objections, but the primary task for the judge is to listen to the evidence as it is being presented.

Though a few people can listen for hours on end without a hint of boredom, the passive nature of the judge's job makes it more likely that the judge's mind will wander during the course of trial.

2. Lawyers are trained to be methodical while judges tend to focus on the key issue. Lawyers are by their nature very careful people. To minimize risk, they typically have checklists of every element and fact necessary to prove the case, and they protect themselves against failure-by-omission by planning to cover every point twice (or more). Though they know that there is likely a critical issue in dispute that will control the outcome of the case, the last thing most lawyers are willing to risk is losing their case because they didn't present enough evidence to prove each point. The end result is often double or triple redundancy on everything.

In stark contrast to the lawyers, judges usually focus in on the one or two key issues that will decide the case. It may be a key conversation in a business transaction, the sequence of events at the moment of a car accident, or the conduct of a former employee shortly before leaving for a competitor. Whatever the type of case, judges want to get right to that key point—why do you suppose that in just about every pretrial conference the judge begins the discussion with “So what's this case *really* about?” It's because the judge really only needs to understand the decisive part. It's what matters most to the judge.

The lawyers' and the judge's perspectives silently clash in the courtroom. While the lawyer feels compelled to methodically present the case, the judge is itching to get to the heart of the case. When the lawyer has gone into the third hour of relatively peripheral testimony, it should not be surprising that the judge is getting bored.

3. Multitasking causes lawyers to slow down while the singularly focused judge wants to move things along. For the reasons identified above, being a trial lawyer is one of the hardest jobs on earth. It is only natural that the overall time it takes to effectively handle a group of tasks goes up in direct proportion to the number of tasks that must be handled simultaneously. To prove this point, try to give a speech while juggling: Either you will drop the balls, or your rate of speech will drop significantly as you split your attention between two

demanding tasks.

Given the sheer number of tasks that lawyers have to juggle simultaneously, it is extremely difficult—maybe cognitively impossible—to deliver on those tasks at a pace that would be more normal if it was the only task to be accomplished. The end result is that the mental strain on the lawyer to process multiple tasks causes the testimony to become unnaturally slow.

As discussed above, the judge has a singular task: to listen to the evidence. Compared to the demands on the lawyer, the judge's job is not that cognitively demanding. Judges often need more information more quickly to remain engaged. The result is that most judges either prod the lawyers to pick up the pace (“move it along, counsel”) or become bored.

4. Testimony is an inefficient (and often dull) way to deliver information. Trials are about delivering information to the judge, with just about all of the time in trial dedicated to oral testimony. There are several reasons why typical oral testimony can bore the judge:

- **Speech is slow.** A fundamental problem in keeping a trial interesting comes from the relatively slow pace people speak. The average person typically speaks at a rate of around 120-150 words per minute (WPM).
- **The brain is fast.** In contrast to the relatively slow delivery rate of 120-150 WPM for speech, the brain can intelligently process somewhere around 600 to 800 WPM.
- **People don't communicate efficiently.** People generally do not communicate efficiently because by its nature verbal communication is rarely precise. The result is that people err on the side of covering too much rather than too little. In the courtroom that means it takes longer to communicate basic information than is technically necessary. There isn't anything wrong with that, but it is a reality that can make the courtroom a boring place.

To prove the point about the inefficiency of oral testimony, pick up a typical transcript and mark off 675 words (which is about five minutes worth of information delivered through oral testimony). Now time how long it takes you to read it. How long did it take, a minute? What does that tell you about the brain's ability to absorb information? Now think about how many truly important facts or points are contained in those 675 words. Very few, right? What does that tell you about how concise people are in presenting testimony? If it takes five minutes to present testimony that could be absorbed from the transcript in one, know that it will be easy for the judge to get bored or distracted in the time it takes to present it.

5. Judges are adept at processing testimony. To compound the problems identified above, judges are generally able to process information faster than the normal person. Not only are most judges fairly intelligent, but they listen to testimony day after day. They get good at listening to testimony and identifying its significance. It is fair to say that they are better at processing testimony than the average person, making the disparity between the rate of delivery of the information and their ability to process it that much greater.

6. Witnesses are not professionals. If every witness was like Col. Nathan R. Jessup (played by Jack Nicholson) in *A Few Good Men*—“You can't HANDLE the Truth!”—there would be very little boredom in the courtroom. Contrary to the impression given by the movies, there are extremely few witnesses who have the ability to command attention. Unlike Col. Jessup, very few people were put on this earth to perform well on the witness stand. Being an engaging witness requires a rare and complex skillset that the average person lacks.

In fact, the average person is frightened of the prospect of testifying in court. The typical reaction is to be either meek, quiet and deliberate, or talkative, disorganized and unrestrained. Either way, the witness is decidedly *not* dynamic, and very unlike Col. Jessup. It's not the witness's fault, it is just what happens to people when put unprepared into the trial environment.

Test it out for yourself. If you have any doubt about the above, ask a judge to let you know when there is a routine civil case coming up, and go watch some of it. You will be amazed at how slow court proceedings seem to go when you are watching a routine case where you have no interest in the outcome. You, possibly like the judge, may become bored very quickly.

Making Trials Interesting

You can't change the basic structure of a trial, but there are a number of things you can do to make it go faster and keep it more interesting. If you can do those things—trust me on this—you will have a much better chance of getting the judge to pay attention to your presentation and to rule in your favor.

Here are the most important things you can do:

1. Be brief and be focused. This is the easiest one there is. Present what you need to present, and nothing more. Trust that the judge will get your point without unnecessary redundancy.

Along these same lines, move quickly to your best two or three pieces of evidence, focus on those, and be done. If your best two or three key pieces of evidence don't tip the case in your favor, the rest won't either. But by putting your best—and only your best—evidence in front of the judge, you will ensure that the judge pays close attention to it.

It is important to be brief and focused in *all* aspects of the trial. Be concise in your direct examinations; only cross-examine a witness if there are good reasons to, and then just pick out your best points; and make any opening or closing argument short. It takes a great deal of discipline to do this, but it will be worth it.

2. Take the high road. Many lawyers will test you by arguing with every effort you make. They will object, they will ask for sidebars, they will complain about every little thing that you do. You will be sorely tempted to reciprocate. *Don't. Do. It.*

The judge will love you if you stay above the fray. More important, the judge will listen to you and respect you. The reason is that, by taking the high road, you have kept the courtroom from becoming akin to two children fighting (“*He started it!*” “*No! She started it!*”). You will have also relieved the judge from having to endure that type of unpleasant conduct for a longer time. While the other lawyer's tantrum will become an annoying noise in the background, the judge will actually listen to you as you present your case.

3. Streamline whenever you can. In civil cases you have the ability to stipulate to facts you are not going to contest. Do that as much as possible, even if your opponent will not reciprocate. The judge will know of your efforts to make the case go faster and will reward you for it by paying closer attention to your case. Plus, an opponent who will not stipulate to anything is likely clueless enough to make their case into a mind-numbing slough.

Along these same lines, don't drown the judge in paper exhibits and don't drone on about them. Simply identify

the most important documents and then call out the important parts. Anything more will just bore the judge.

4. Use visual evidence whenever possible. Judges like multimedia presentations as much as anyone, so use technology whenever possible to spice things up. Whether you use high-tech computer animations, pictures, foam boards, pie charts or whatever, don't pass up any opportunity to let the judge look at something. It breaks the monotony when the judge gets to do anything besides listening to witnesses testify.

5. Prepare your witnesses. Though very few people are naturally effective witnesses, nearly everyone can become far more compelling in court with preparation. In fact, witness preparation is one of the most important things you do as you prepare for trial: Truth be told, *more cases turn on witness performance than on lawyer performance.*

Though there are things you have to do differently in every case to prepare your witnesses, one thing is universal: You must practice with them. Just as one can't learn to shoot free throws without throwing the ball up toward the hoop, one can't learn how to become a good witness without getting asked questions. Find a place that looks like a courtroom (maybe even ask a judge if you can use one sometime) and run through your direct examinations several times. Have another lawyer cross-examine your witnesses; even have your witnesses watch a trial to see what the environment is like. If you have properly prepared your witnesses, they will make the courtroom, and your case, come alive.

6. Develop a style that is interesting. The last, but certainly not least, ingredient for a case that holds the judge's attention is *you*. You are the glue that holds your case together (or which bores the judge to tears). If everything else is good but the narrator—you—is deathly dull, the judge will have a hard time paying attention to your case.

You don't have to have the voice of James Earl Jones, the charisma of Gregory Peck, or the looks of Reese Witherspoon to stand out in the courtroom. While those attributes wouldn't hurt, what you really need to be effective in the courtroom is to be *comfortable* in the courtroom. Or at least appear so.

Appearing comfortable in the courtroom starts out, of course, with being prepared. If you don't know your case inside and out, you are going to stutter, stammer, lose your place, lose your credibility, and lose your judge.

Beyond being prepared, the main thing you need to do is to follow the basic rules of polite social interaction. It's a lot like how you interact at a cocktail party: Maintain eye contact with the people you are speaking to, but don't creep them out by staring unnaturally at them; stay calm, but interested; don't monopolize the conversation; don't interrupt; and keep the conversation moving. It is easier than you think, and far more important than you can imagine.

Becoming comfortable in the courtroom is another one of those things for which there is no substitute but practice. Get in the courtroom whenever you can. Talk to groups, people, clients whenever you can. Give CLEs. If you do these things, you will find that it is not so difficult to present yourself well in the courtroom.

Conclusion

The courtroom is by its nature a dynamic place where you deal with the most important parts of peoples' lives. It lends itself to drama and human interest. By following a few simple rules, you can bring out that drama in a way that avoids boring the judge and wins your case.