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Jury Selection: Time for Exposing Bias and Selling Your Case

https://melandbudwick.com/2015/05/05/jury-selection-time-for-exposing-bias-and-selling-your-case/

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While most attorneys recognize the importance of selecting the right jurors, they often neglect to take full advantage of the jury selection process to gain a competitive advantage at trial. With the right approach during the jury selection process, attorneys can greatly increase their chance of success.

The primary purpose of jury selection is, of course, to ensure that a fair and impartial jury is seated. Indeed, the Florida Supreme Court has noted, "A failure to ensure that our jury panels are comprised of only fair and impartial members renders suspect any verdict reached." Matarranz v. State, 133 So.3d 473, 477 (Fla. 2013).

To meaningfully exercise challenges for cause and peremptory strikes so that a fair and impartial jury is seated, trial attorneys must ask questions that will reveal potential juror biases.

All people have biases, and those biases are the best predictors of how jurors will view the evidence in the case at issue. But because people will rarely volunteer their biases, the best method of ferreting out jurors' biases is by asking targeted questions about their relevant life experiences.

And because jurors' views of the litigants are impacted tremendously by their personal feelings about people similar to the litigants, even when asked to set those feelings aside, attorneys should inquire about jurors' experiences with individuals similar to the litigants.

Thus, for example, in a medical malpractice case, attorneys should ask the jurors targeted questions about their own prior experiences with their doctors, as those

experiences will often guide how the jurors will later assess the evidence and the defendants in the matters to be heard.

Aside from learning about the jurors, attorneys should use the jury selection process to begin educating juries about the cases. Though attorneys may not cross the line into impermissible indoctrination or ingratiation during jury selection, there are several permissible methods by which attorneys may begin planting the seeds of persuasion during the process.

Even in federal courts, which are generally more restrictive on the scope and time limitations of jury selection, attorneys should use whatever time is allotted to them to begin the process of persuading the juries.

This is important because, as in many situations in life, first impressions are critical in the jury selection process.

Establish Rapport

Despite judges' admonitions and jurors' best intentions, an overwhelming majority of jurors make determinations about the merits of cases from the moment they enter the courtrooms and begin to see the people involved and hear about the matters to be tried.

These determinations invariably stay with them through the trial and verdict stages. Numerous studies have shown that more than 80 percent of jurors will interpret evidence to support the parties they favor from the outset of the cases and have determined their verdicts by the end of opening statements.

After jurors have adopted certain views, they will often view and judge the evidence in a way to support that framework and will reject any evidence that does not.

During jury selection, counsel should bring up relevant topics and case themes, present them in the same order as those topics and themes will be discussed in the ensuing opening statements, and relate those case themes to the jurors' life experiences.

For example, in a breach of contract case, the attorney should begin by asking jurors questions about their experiences with business deals and contracts, then get into

their experiences and feelings about broken contracts and conclude with questions about damages.

Without ever getting into the case-specific facts, by the end of jury selection the jurors should understand what the case is about, what the opposing party did wrong, how the plaintiff was or was not harmed, and how damages should be assessed.

Additionally, while it is inappropriate for attorneys to ingratiate themselves with juries, it is appropriate for them to begin to establish rapport with the juries during the jury selection process. Jurors are human, and they sometimes decide cases simply based on which attorneys they favored and found more credible.

Establishing trust is one of the most important milestones that attorneys should aim to achieve during jury selection. Simple gestures such as showing interest, being appropriately humorous, making eye contact, expressing appreciation, remembering jurors' names and smiling are all appropriate techniques that attorneys can utilize.

Engaging in a powerful and persuasive jury selection process is one of the most challenging parts of trial.

Ultimately, it is impossible to know how a jury will decide the case, but understanding the case-specific goals, tailoring questions to meet those goals, planting the seeds of persuasion and establishing rapport during jury selection will greatly increase the chances of success at trial.

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