

HOW DO YOU PICK THE RIGHT JURY?

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Picking the jury is the hardest and most important part of the trial. It is the hardest because you can plan for it least. It is the most important because any case can be lost if it is tried to the wrong jury.

We learn to pick juries by watching others do it, by hearing anecdotes about it, by talking to jurors afterward, by doing it ourselves, and by reading about how to do it. Sometimes the information seems intuitive, sometimes counter, sometimes conflicting and often confusing. Picking a jury is as much art as anything done by a trial lawyer.

There is no substitute for the experience of doing it yourself. If you do not have much experience picking juries and are not getting to pick many juries now, chances are you will never get to pick many juries unless you change your practice. Believe it or not, there are still plenty of jury trials going on in Indiana. Doing what it takes to get that experience may be the sacrifice you have to make if you really want to be a trial lawyer.

But you have to start somewhere and it always helps to have a crutch to lean on when starting. The following, in no particular order, are a few ideas about picking a jury. These are some that have been collected over the years from watching others do it, by hearing anecdotes about it, by talking to jurors afterward, by doing it myself, and by reading about how to do it. Some of the ideas will seem intuitive, some counter, some conflicting and others confusing. Take them for whatever you feel they are worth.

Remember that sixty percent of communication is nonverbal, thirty percent voice inflection, and only ten percent what is said. This applies to both them and you. Listen to what they say. Listen to the way they say it. See how they look when they say it. Notice what they do not say. Drop the lawyer lingo and talk plain. Keep good posture when standing and sitting. Speak up, stand open, be friendly, come out from behind the podium, but don't crowd them and don't push too hard. Make eye contact, do not follow a set order, try to talk some to each juror, but use questions addressed to them all whenever possible to speed things up. Do not waste their time.

Tell them what "voir dire" means. Introduce whoever has not already been introduced but who is involved in the trial, including court personnel. Make sure you know the court personnel before the trial starts.

Tell them that the purpose of this process is to get a jury which makes both sides feel comfortable: a jury that does not start off with any presumptions for or against either side. Presumptions could be from experiences in their lives or in the lives of someone close to them. Presumptions could be from relationships to the litigants, counsel, the witnesses, etc. Find out if because of their experiences or relationships they would be more comfortable on a different jury deciding different questions.

Tell them that both sides want a jury that will use their common sense and base their decision on the evidence presented to them and on the law as given to them by the judge.

Introduce your theme. Do not interrogate them. Instead, have a conversation with them. Remain professional but let them see that you enjoy talking with them. Use leading questions to tell them something. Use non-leading questions to find something out. Give them 100% of your

attention, even when the other side is talking with them. Do not take lots of notes because you cannot look at them when you are taking notes and because it makes some jurors nervous. Have someone else take notes if you need them.

Know what is already on the questionnaires they filled out and do not just read it back to them. Ask them if anything significant has changed since they filled out their questionnaires, especially if that was several months earlier. Because you are asking them personal questions, it is only fair to tell them something about yourself first. Tell them there are no wrong or right answers, just their answers.

Get them talking about their jobs, their families, what they do for recreation, their thoughts about current events and what they believe is fair and what is justice. Find out how they feel about lawsuits and under what circumstances they would sue. Ask why. If you tell them what you heard them say, then they know you were listening and they have a chance to add or explain. Remember that life experiences are more important than demographics. Never fake it. Respect the jurors. Use the juror's surname when you talk with them. Show them you want their opinions.

Let them know you as someone who is reasonable. Show the jury you like your client. Never refer to your client as a "client."

Make sure you know if the judge has a time limit on voir dire. Make sure you completely understand the judge's method of passing or striking before voir dire begins. Resist discussing the jurors with others in your group while they watch. Make any strikes you have to make as quickly as you can. Know how many peremptory challenges each side gets, keep track of how many peremptory challenges each side has used, and consider before using a peremptory challenge who will take their place in the box.

Remember - while you are picking a jury, the jury is picking a lawyer, a guide they can trust to lead them.

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