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PERSPECTIVE

Tips for jury selection

By Dan L. Stanford

A compelling story and credibility are two important components of any successful jury trial. Your first and important opportunity to put both on display is in voir dire – jury selection. This is your first of three opportunities to directly address the 12 “judges” of your case, and you should treat it as an exciting time to display your skills.

Historically, legal scholars have described the purpose of voir dire as “the opportunity to obtain information from the prospective jurors to enable you to effectively exercise your preemptory challenges,” remembering, of course, you don’t really “pick” a jury, you “unpick” the jury. However, this description is incomplete.

In reality, you should use voir dire to establish your credibility, drive home the theme of your case and also find out prejudices and biases of prospective jurors. So, great thought must be given to formulating and implementing an effective voir dire.

Any effective voir dire begins with focusing on the theme of your case: What basic theme do you intend to convey to the jury throughout your case? I would hope that this is the theme of your case you recognized from the beginning and employed throughout discovery. Then, make sure many of your proposed questions support and reinforce your theme. Ask jurors questions about their experiences in areas that relate to or are analogous to your theme, for example: “Have you or someone close to you experienced betrayal?” “Has someone you know been abandoned by a ‘professional’?”

Next, create a list of both the strengths and weaknesses of your



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case. You will want to try and address both in your questions. Part of establishing credibility with the jury, especially as a plaintiff’s lawyer, is disclosing and addressing the weaknesses or problem issues in your case before the other side does. This begins in jury selection.

Use this list of strengths and weaknesses to devise jury questions that bring up both favorable and harmful facts to your case. Again, especially as a plaintiff’s lawyer, you build credibility with the jury by not allowing the defense to be the first to raise facts that are harmful to your case.

Make it interesting! Try and engage the prospective jurors in ways that might help them forget they don’t want to be there in the first place. Use both group questions and individual questions. Use both open ended questions and leading questions – the leading

questions designed to get the “yes” or “no” you want. Don’t go in order, or simply down the row. Going in order simply allows your juror number 12 to take a nap for a while. Instead, be in control and move around the panel with your questions, mixing up the pattern and sequence. Be sure to engage each one of the prospective jurors.

There are things to avoid in voir dire. Avoid repeating things that have already been said, unless you have an important follow up. If the judge or opposing counsel have already covered an area, don’t repeat questions that have already been discussed. Avoid ever asking questions like, “Do you think you can be fair,” or “will you be biased because...?” You will never get anyone to admit to being “unfair” or “biased.” Instead, if you’re concerned about this, ask, “would you feel more comfortable

Dan L. Stanford is a Senior Trial Attorney and CalBar Certified Legal Malpractice Specialist who has prosecuted hundreds of such cases throughout California.



being a juror in a different case than this?”

Try your best not to make any prospective juror feel uncomfortable. They will likely hold it against you if you do. Probe areas in a gentle, understanding way. Finally, avoid using slang and other casual language. After all, you’re the lawyer, not some neighbor from the ‘hood.

Next, get promises or commitments from the jurors, especially if you are on the defense side. Classic examples include: “Can you promise to base your decision solely on the evidence and not sympathy?” “Can each of you promise to treat both sides of this case (including corporate defendants) the same?” “Will each of you promise to wait until all the evidence – including the defense evidence – has been presented before making up your mind?”

It is also critical in voir dire to

use all of your senses, especially when opposing counsel is questioning. Even though you may be nervous and clutching your notes, it is important to look as well as listen. What does your juror number seven look like when the others are being asked tough questions?

Next, I would encourage you to spend time with any prospective juror you are convinced will be excused by the other side. A juror who is obviously against the defense or the plaintiff’s case can be used to further drive home the theme of your case and potentially influence the other panel members. Do not forgo this opportunity! Use effective questions to expand the answers of such a juror, all in an effort to “enlighten” (read: prejudice) the other jurors.

Have some effective wrap up questions. Don’t just ask questions, going from juror to juror and then

sit down. Finish with some general wrap-up questions to the panel, like, “Has anything I’ve asked, or opposing counsel has asked, made any of you concerned about sitting as a juror in this case?” “Now that we’ve been talking for some time, is there anyone who would add anything to your answers, or change something you’ve already said?” “Can any of you think of any reason why you would rather not sit as a juror in this case?”

As a final note, one of the best things I have ever done to establish credibility in jury selection is to memorize all of the names in the prospective jury panel. If you can, and this is especially possible for defense counsel, you can then use this to mix up your questioning of individual jurors, by first going down the rows using each juror’s name, and then up and down and even backwards, again using the

jurors’ names. Trust me, after every trial in which I was able to use this technique, all of the jurors when interviewed commented on how impressed they were. Although some might view it as a trick, it gives an impression that instantly establishes your credibility. Once that initial credibility is established, work hard every day not to give it up.

This column is the third in a series of 6 monthly articles:

Aug. – Trial prep in 16 ‘easy’ steps

Sept. – Expert depositions in preparation for trial

Oct. – Tips for successful jury selection

Nov. – Effective opening statements

Dec. – Keys to effective direct and cross examination

Jan. – Tips for a winning closing argument”