

## **How to Win your case During Jury Selection**

**By Ty Hyderally, Esq.**

**Hyderally & Associates, P.C.**

**November 7, 2017**

First impressions are indelibly imprinted, and you never get a second chance to make a good first impression. From the minute you stand up and introduce yourself to the jury panel in *voir dire*, you are “on stage” and the judging has begun. Each potential juror imports biases and prejudices, fixed through patterns and firmly held beliefs. Such biases can override the juror’s judgment, to the point that the case could be lost, regardless of the strength of the evidence, unless that juror is drastically outnumbered and pressured by the majority. The way in which a case is perceived is thus significantly limited by the jury that remains after the elimination process. As a result, retaining jurors well-suited for and receptive to your case will significantly increase your chances of winning. Therefore, the earlier you begin preparing for trial, the better. An experienced trial attorney is always assessing the strength of their client’s case through the eyes of a reasonable juror. A good plaintiff’s lawyer will keep this in mind during the process of case selection and determining whether to accept the potential plaintiff as a client. The following tips will help guide you in the process of choosing an appropriate juror:

### **A. Pre-Trial Preparation**

Considering the time constraints that you will have to get to know potential jurors and detect those who may be beneficial to your case, there are several measures that you should take before you even steps foot in the courtroom. In order to determine which jurors to keep and which to reject, you should first decide which type of juror has the potential to damage the case and which

type of juror would be ideal for their particular case. You should then prepare preliminary questions that will allow you to quickly and effectively determine beneficial jurors.

### **1. Juror Research**

In addition to compiling target jurors, you will want to research the actual potential juror pool. Researching each juror prior to trial will expedite the selection process and aid you in selecting the ideal jurors for the case during *voir dire*. This research includes obtaining a copy of the juror list prior to trial in order to deduce as much information as possible before meeting the jurors. For instance, voter registration lists can be helpful because they reveal the name of the municipality, ward, district, party affiliation, voter, and the street address of voter. This will allow you to better ascertain the demographics of the potential juror pool and what potential views jurors will have. In fact, there are many trial lawyers who believe the best way to ascertain how a juror will rule on various issues is guided by their political affiliation. Knowing the political demographics of specific cities is very helpful as well and good to keep in mind as you are going through jury selection.

On a related note, researching each town affiliated with the specific jurisdiction will reveal socioeconomic demographics of the juror pool. The demographics of a juror pool could vary greatly depending on where the case is tried. Imagining what the jury pool might look like and how that might affect the case is important in how you should try the case, because the selection of jurisdiction and venue will have a monumental impact on the outcome of a jury trial.

Each juror has leadership potential to impact the outcome of your case, some of which may be more pronounced than that of other jurors depending on the venue. For example, cases tried in

counties with majority residents of working-class backgrounds or lower socioeconomic status, may have leaders who will strongly favor the employee over the employer.

Once the jurors are selected, this research can and should continue, so as to get a more precise understanding of who the jurors are and what their potential biases may be.

## **2. The Jurors' First Impression of you and your Client**

In addition to a potential juror's attributes, your own characteristics will always contribute to how the jury reacts to your case. The way in which you address the jury, from the moment you encounter potential jurors, is crucial. You should keep in mind the demographic you are addressing, and adapt accordingly. A certain juror pool may have a less sophisticated understanding of the subject matter involved in the case, and you should be mindful that you are communicating clearly, effectively, and without any indication that you feel superior to the potential jurors. At the same time, you should exert a certain degree of expertise in order to establish the strength of your case and instill confidence in the jurors. In order to impart a positive first impression, you, your client, and anyone present and involved with your side of the case, should be dressed in a professional manner. This means not only sporting formal attire, but also wearing certain colors, wearing certain hairstyles, makeup, jewelry, and shoes. The way you and your client are dressed will send an immediate message to the jurors, and ideally it will be a positive one. It goes without saying that your client should come across as humble, professional, trustworthy, and respectful in order to appeal to the prospective jurors. You want to speak to your client about how they are to be constantly mindful of their actions and comments from the time they leave their car in the parking lot to the time they get back in their car. Advise them that there are potential jurors parking their cars in the same area, potential jurors in the bathrooms, hallways,

etc. What they say and how they interact with others can have significant consequences. Further, your client should be mindful of how they appear and what they say while witnesses are on the stand. As a trial lawyer, you should be mindful of your interactions with your adversary and the judge as it has an impact on the jury. Additionally, a positive first impression will lead to a more successful conversation during *voir dire*.

### **3. Prepare and tailor a *Voir Dire***

In preparing *voir dire*, it is important to tailor a set of questions appropriate to the specific case. As mentioned, the fundamental purpose of conducting *voir dire* is to select jurors who will likely accept your client's theory of the case. In most jurisdictions, it is now common for the judge to conduct *voir dire* and permit attorneys to submit proposed *voir dire* questions in advance. These questions should explore the most significant aspects of the case; namely the age, race, and gender of the party and the opposing party, and the subject matter in dispute. In order for the short conversation with a potential juror to be most efficient, it is also important to convey how important their role as a juror will be in the trial. This will encourage them to answer more honestly and candidly, and may reveal which jurors will be motivated and engaged in the case, and which jurors will be disinterested or repelled by it.

In order to gather sufficient information during *voir dire*, you should establish a friendly rapport with jurors, without prying into their personal lives. For example, if you have something in common with the juror that you learn from the juror's questionnaire, mentioning the similarity may interest and engage the juror more. This approach will allow you to gather more information in a shorter period of time. When drafting your questions, avoid asking any intrusive questions that do not really need to be asked, while bearing in mind that each juror's past experiences will

elicit unique emotional responses to the case. Any questions which are particularly intrusive should be designed in order to elicit sufficient information to quickly determine which jurors will have negative responses. Such as the question “can you think of anything in your own life that reminds you of this case?” Your preliminary research on the potential juror pool will help streamline this process.

Each decision you make during the conversation should also adapt and depend upon the juror’s answer, and their nonverbal behavior, such as a juror’s body language, eye contact, and facial expression, etc. A juror’s apparent discomfort in response to a question may indicate that they will be reluctant to be as candid as you may need them to be. Maintaining a friendly rapport will enable you to redirect the conversation if and when an uncomfortable moment occurs.

Additionally, if you are a plaintiff-side attorney, talking like opposing counsel can help bring out potentially damaging jurors. Using “defense” words in your *voir dire* will encourage jurors who agree with these words to talk, and reveal that they identify and agree with the other side. However, it is important to not express your opinions and biases to the jury. You do not want to speak in way that will make them believe that their beliefs are wrong, because this will lead potential jurors to remain quiet and you will not get the most out of your *voir dire*.

### **B. Getting rid of damaging jurors.**

Last, it is also important to take advantage of the challenges available to strike certain jurors. Juror challenges fall into two categories: (1) for cause and (2) peremptory challenges. When you challenge a potential juror for cause, there is an unlimited number of strikes available. In contrast, in Federal Court under F.R.C.P. 47 and U.S.C. Section 1870, only three peremptory challenges are allowed per party. If multiple parties are involved, the Court has discretion to allow the peremptory challenges to be exercised separately or jointly. However, in State Court

the number of peremptory strikes varies from state to state in civil cases. For example, N.J. state court Rule 1:8-3 allows six peremptory challenges per party, but parties represented by the same attorney will be considered a single party. If multiple attorneys and parties are involved, the Court may provide the adverse party with additional challenges. Because the makeup of your jury is so critical to the success of your case, it is imperative for you to use your challenges strategically.

### **C. Conclusion**

The importance of jury selection is often minimized and misunderstood. While there is no substitute for common sense, skill and experience, many of the tips discussed above have proven valuable in setting the stage for a successful verdict via the jury.

**TY HYDERALLY, ESQ.**

**HYDERALLY & ASSOCIATES, P.C.**