

Four Simple Rules of Jury Selection

by Jonas K. Seigel

Someone once said that jury selection is like telling a dirty joke to a stranger—you never know what reaction you'll get. And although I have some pretty good dirty jokes to tell, I thought that I would take the time to remind you that no trial attorney has ever won a trial because of the jury selected, but many trial attorneys have lost trials for selecting the wrong jury.

I have litigated personal injury cases, obtained my LL.M. in trial advocacy from Temple University's Beasley School of Law, and lectured on behalf of organizations focusing on trial work (*e.g.*, the New Jersey State Bar Association, New Jersey Association for Justice, and National Trial Lawyers). I consider myself a true student of the law. The common theme that loops wherever I go is that trial lawyers do not dedicate nearly enough of their time or resources to jury selection.

Today, there are several theories for selecting a fair or unbiased jury, and I am going to share some of the basics that can help you obtain a better result regardless of whether you are litigating a civil or criminal matter. Below are my four simple rules of jury selection, which were compiled from my experience in the classroom and the trenches. My goal is to provide a nugget of valuable information or to simply remind you of something you forgot to do, which, in the end, will make you a stronger advocate.

Rule #1: Not Making a Great First Impression

We have heard it all before, 'you only get one chance to make a first impression' and 'first impressions are lasting impressions.' So why do trial attorneys make such lousy first impressions? Because we do not make our first impressions in the courtroom; we make our first impressions while walking into the courthouse, while eating in the courthouse cafeteria, and while chatting with a colleague in the courthouse bathroom. Be careful of the conversations you have on your cell phones and with your clients while in the courthouse, not just the courtroom, and the surrounding areas (*e.g.*, the restaurant across from the courthouse, the parking lot, and the designated smoking area). Also, be mindful of how you treat others while on trial—your adversary, courthouse staff, and witnesses.

However, it is not just our physical selves that makes a first impression, so does our online presence. Please take a few minutes and Google your name and website. What you see is the same as what juror number three will see when she Googles you while waiting in the jury room.

Lastly, our clients can make a lousy first impression. Be sure to tell your client what is appropriate to wear to court, as well as what behavior is appropriate while on trial. I often tell my clients to dress and behave as though they were going to a job interview or church. Nothing is worse than having to run to Walmart at the last minute to buy a belt for your client or to have to separate your client from their spouse as they argue over what's for dinner. Jurors have a short period of time to judge you and your client; demand that everyone involved put their best foot forward.

Rule #2: Not Recognizing the Different Generation Groups of Your Jury

Would your grandfather laugh at the same joke you just told your coworker at the water cooler? What about your coworker's kid? It is now 2016, and we are on the verge of litigating before five distinct groups of people: the Silent Generation (born 1925-1945), the Baby Boomer Generation (born 1946-1964), Generation X (born 1965-1980), the Millennials or Generation Y (born 1981-2000), and in a few years Generation Z (born 2001-2015). It is important to understand that jurors born in the 1930s are going to process and learn information differently than jurors born in the 1990s. Certain themes, analogies, and stories are going to work for some groups, but perhaps not all. For example, referencing a current reality TV show, the newest Apple iPhone, or the Super Bowl halftime show may not reach your older jurors, whereas referencing a current news story, political debate, or a new prescription drug may not reach your younger jurors. All jurors bring their own life experiences to jury duty. Every juror's experience is going to be slightly different, but do your best to recognize the different generational groups that make up your jury and learn to clearly communicate to them in a way they will understand.

Rule #3: Not Being Organized During Jury Selection

In the words of Ferris Bueller, "life moves pretty fast—if you don't stop and look around once in a while you could miss it." Well, jury selection moves pretty fast too, and if you do not have a system of organizing juror information you may look foolish in front of the jurors or, even worse, get your jurors confused.

First, turn your legal pad on its side and place Post-Its on it to represent each juror the court will seat. Post-Its should be a tool found in every trial bag, and some basic abbreviations will help you quickly categorize important juror information. I always liked to have my Post-Its out on the counsel table at the start of jury selection, ready to go. As jurors come and go, new Post-Its are added right on top of the previous ones. No mess, no problem. The Post-Its quickly become decorated with: Md = married; Div = divorced; S = single, and a series of symbols, as well as a 1-10 ranking. The key is to be neat and organized. It doesn't do much good if you cannot read your own handwriting or your abbreviations are hard to understand.

In addition to having a system to document each juror, try your best to not only listen but also to watch your jurors answer questions. Paying attention to who says what, how it is said, and how others react may provide for some very valuable insight. As we know, the more personal and sensitive a topic, the less likely a juror is going to share with strangers. However, a grimace, the rolling of the eyes, the crossing of arms, or a raised eyebrow may be enough to understand where a juror is coming from.

Rule #4: Not Doing Your Homework

Doing your homework involves more than knowing your case better than your adversary. It is more than anticipating your adversary's objections and having your rebuttals prepared with cited case law or court rule. Doing your homework is what separates the ham-and-egggers from the true advocates. My homework always includes a focus group. Focus groups provide both the rehearsal and insight that many trials require, but are often forgotten about. Focus groups can also be conducted inexpensively, requiring nothing more than an ad on craigslist, a few pizzas, and video camera functionality (*i.e.*, the technology found on our cell phones or tablets). In addition to focus groups, mock trials also allow an opportunity for trial attorneys to better understand the strengths and weaknesses of a case. However, I highly recommend that you do not have family, friends, or staff act as jurors and that you give equal weight and time to both sides for the best results. Of course, you could spend thousands of dollars and have a

professional service organize and lead the focus group or mock trial, but many may not have that option.

The other homework that I do is to request the jury panel list from the court clerk before my trials. I then Google my potential jurors to find any information that will make that particular juror favorable or unfavorable for my case. Again, you could hire a service or a trial consultant, who may charge up to \$18 per person, or you could roll up your sleeves and do it yourself.

I have seen small fortunes invested and countless hours spent in preparation of a case, only to ignore what I believe is the most important, and often neglected, stage of a trial. I hope my four simple rules of jury selection provide some easy fixes, tweaks, and new thoughts on how you tackle jury selection. By focusing on making a strong first impression, recognizing the jurors' different age groups, being organized, and doing your homework you will certainly better your chances of a successful outcome.

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