

THE INDIANA LAWYER

Nordstrom: Important lessons from 100 trials on prepping for success

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GUEST COLUMN

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Although jury selection remains the single most important phase of a trial, without effective delivery, it becomes a meaningless exercise.

The following are points filtered from over 100 jury trials.

Dress for effect

How you dress in court reflects how you feel, whether you are a party or an attorney. To enhance a persuasive image in court, some attorneys utilize a personal stylist for themselves and their clients. Juror reactions to attire issues at trial include, “I didn’t care for the expert with the bow tie.” or “I didn’t like the fact that the plaintiff wore the same clothes through the entire trial.”

Having a plaintiff wear inappropriate clothing, such as a bright red dress during a wrongful death trial, can also be a problem. These are all true examples.

Why, not how

Many attorneys believe they have a good chance to prevail at trial simply because they have good case facts. Your job as trial attorney is to communicate your case facts and client’s plight to the jury in a clear and persuasive fashion.

Keep in mind that jurors want to hear **WHY** the negligence happened, not merely **HOW** it happened. Be explaining, not describing.

Leaders and followers

Years ago I taught a Continuing Legal Education class on how to identify the jury foreperson. Verdicts are the result of interaction among jurors, age, gender, occupation and education.

You have limited time to make impressions, both favorable and unfavorable. In addition to pre-identifying a potential foreperson, you will also want to look for a “negotiator” type for your jury.

You can assess a person’s leadership aptitude by explaining the roles of the jurors, including the foreperson and asking, “How would you feel if the other jurors nominated you as foreperson?” or “Why would you make a good foreperson, if elected by other jury members?”

Some attorneys even focus on the person they want as foreperson, essentially planting the seed. It is a trial advantage if you successfully identify the foreperson early on in the selection process.

Attorney trust and likeability

Jurors can often give leniency to weaknesses in case facts if they like and trust the lawyer. Juror impressions may be influenced, at least partially, by which attorney they like the most.

You can engender trust by asking jurors open-ended questions with active listening to help establish rapport. Some self-disclosure can also help establish rapport. This includes nodding your head in agreement and making eye contact with jurors.

Locus of control

This refers to how any specific juror interprets their world and a belief system of what controls their life. Locus of control is important for determining which juror you want—or don’t want—to be on your panel.

In order to identify the locus of control of your venire, you could ask questions like, “What astrological sign are you? What does that tell about the kind of person you are?” or “Do you believe in destiny or fate?”

If the juror’s answers show that they take responsibility and control of their environment, this probably suggests they have an internal locus of control.

On the other hand, if someone places blame on conditions outside of their control, their locus of control is external.

Use a definition board of critical terms

These definitions help jurors understand your case from the beginning and should be used in voir dire if possible.

Publish demonstrative evidence

People prefer one of these main subjective sensory modalities—visual, kinesthetic or auditory. Having jurors handle a critical piece of evidence (kinesthetics) helps get them involved in the trial and helps them understand evidence.

For example, in one case, after getting the medical expert to admit that the human head weighs about eight pounds, which is about the same as a gallon container full of water, the attorney gave jurors greater appreciation for the weight of a human head by putting a full gallon of water in a juror's hands.

The above points were learned from over 100 trials. They are relatively easy to incorporate into your own presentation style and will prove to be a valuable addition to your trial presentation skills. •

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