



(Photo by Nikolay Mamluke / Dreamstime.com)

First Impressions Before Trial

By Noelle C. Nelson, Ph.D.

Considerable emphasis is placed on jury selection because of the need to get as many jurors on your side from the very beginning. However, when you are selecting jurors, they are also selecting you. Prospective jurors are forming favorable and unfavorable opinions about attorneys based on the attorneys' respective "performances" (self-presentation, behavior and actions) during voir dire.

This is significant, because people listen more carefully and give more credence to individuals they favor. On the flip side, by creating an unfavorable first impression to jurors, you can go into trial having unwittingly biased them against you, even when their demographics and their responses during voir dire show that they should be on your side. Help jurors select you as the "favored attorney" by following these guidelines.

1) Give equal time to all prospective jurors.

How much time you spend with an individual is culturally interpreted as showing how much you value that individual. We generally spend more time with friends than we do with enemies. A common mistake is to spend a great deal of time asking questions of prospective jurors whom you feel will not be on your side, trying to unearth reasons to dismiss those jurors.

Meanwhile, you are likely to ask fewer questions to those prospective jurors who you sense are already sympathetic to your cause. Sympathetic jurors are often put off by what they interpret as this lack of interest in them. In debriefings, these jurors will make comments such as: "Why didn't he ask me any questions? Spend any time with me? Aren't my opinions worth anything?"

Don't slight your would-be allies in the jury box. If you sense that a prospective juror is sympathetic to your cause and you have no need to ask further jury-selection type questions, spend a little time creating rapport with that juror. Don't immediately turn to the next prospective juror because the first juror has quickly fulfilled your need. Instead, be aware of how important it is for jurors to connect with you (their

need). Being sympathetic to your case doesn't automatically grant you a juror's favor.

Try to give about the same amount of time to each prospective juror, or at least ask the same number of questions of each juror. The prospective jurors -- whether they espouse your cause at this point or not -- will perceive you as "fair," which is an important ingredient of trustworthiness that precedes the ability to persuade.

2) Make prospective jurors feel valued as people.

Attorneys are frequently so task-oriented during voir dire that they see prospective jurors as merely holders-of-opinions, not as flesh-and-blood human beings. This sparks comments from jurors in debriefings such as "I don't think he even saw me at all. All he wanted to know was did I think 'yes' or did I think 'no.'" "I'm not a computer, you know, I'm a person. I felt like I was just a keyboard he was punching." "I don't mind that she was getting the job done. That's a good thing. I minded that she never looked at us or smiled or anything during that voir dire, then, at trial she's acting like we're her best friends. No way."

Granted, you have a great deal to focus on during voir dire. Nonetheless, these few simple techniques can help you effectively value prospective jurors.

Use good eye contact. Look each prospective juror directly in the eye as you ask your questions. Avoid staring at your notes while asking questions. If you look at your notes during a question, place your eyes back on the juror as soon as possible. Equally important, look at jurors directly when they respond. Should you make a note, do so after the juror has finished speaking.

Acknowledge each response with head nods and "uh-huh" sounds. Being heard is oddly enough a very visual experience. If you don't look at people as they speak to you, they will feel you are not hearing them, although logically, since eyes and ears are not connected, it shouldn't make a difference. But human beings are more than logical beings, and eye contact and nods are extremely important to the experience of "being heard."

As often as possible, factor in some portion of the prospective juror's response into your next question. In doing so, you clearly show that you value the juror's comments. You give the impression of a dialogue. We generally prefer to talk with others rather than be talked to.

Use the prospective juror's name frequently. If you have trouble remembering names, jot down the prospective juror's name on a pad of paper and circle it so you can easily distinguish it from your questions and notes. Few forms of behavior show the value we place on someone as the act of using their name.

3) Be aware of your vocal tone.

"Well, he asked OK questions and all, but boy was he cold!" "I'm not a kid, you know, I didn't appreciate getting a morality lesson from her." These are the type of comments heard in jury debriefings when an attorney negated the good questions asked by using an authoritarian or parental vocal tone. Jurors like to be guided, not told what to do. Ask jurors whether they can be, for example, "fair to both sides," don't demand it of them.

Think of jurors as fellow travelers, about to embark on an expedition with you, not as your enemy. As best you can, converse with the prospective jurors as you go through the intricate dance of question-response. Use a conversational pace. Keep your voice modulated for warmth and directness. Be sincere as you ask your questions. Ask them as if you really want to know the answer, not as if you're dictating to the prospective juror what he or she must think.

Notice how differently the following question can come across if asked sincerely or asked in a demanding fashion: "Would you want someone to decide your case who has the same frame of mind that you have

right now?" Vocal tone sometimes makes all the difference.

4) Be aware of your body language

There is little for the prospective jurors to look at during voir dire other than the attorney. Your every move, twitch and grimace is observed as if under a microscope, just as it will be at trial. Jurors resent attorneys who present themselves one way during voir dire, and another during trial, especially the attorney who has been cold and abrupt during voir dire, and who at trial suddenly becomes warm, acknowledging and everybody's best friend.

Use open, undefended body postures. Leave any smirks, annoying mannerisms (continual throat clearing) or gestures (head scratching, hand steepling) at the office. Keep your facial expression pleasant.

By adopting your best trial presentation right from the start, you can create jury rapport that will carry you through the trial and to success.

About the author: Noelle C. Nelson, Ph.D., is a California trial consultant who provides trial/jury strategy, witness preparation and focus groups for attorneys. She authored "Connecting With Your Client" (American Bar Association) and "A Winning Case" (Prentice Hall). Dr. Nelson conducts in-house seminars and often speaks before legal organizations. E-mail: nnelson@dr.noellenelson.com.