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Greetings from America

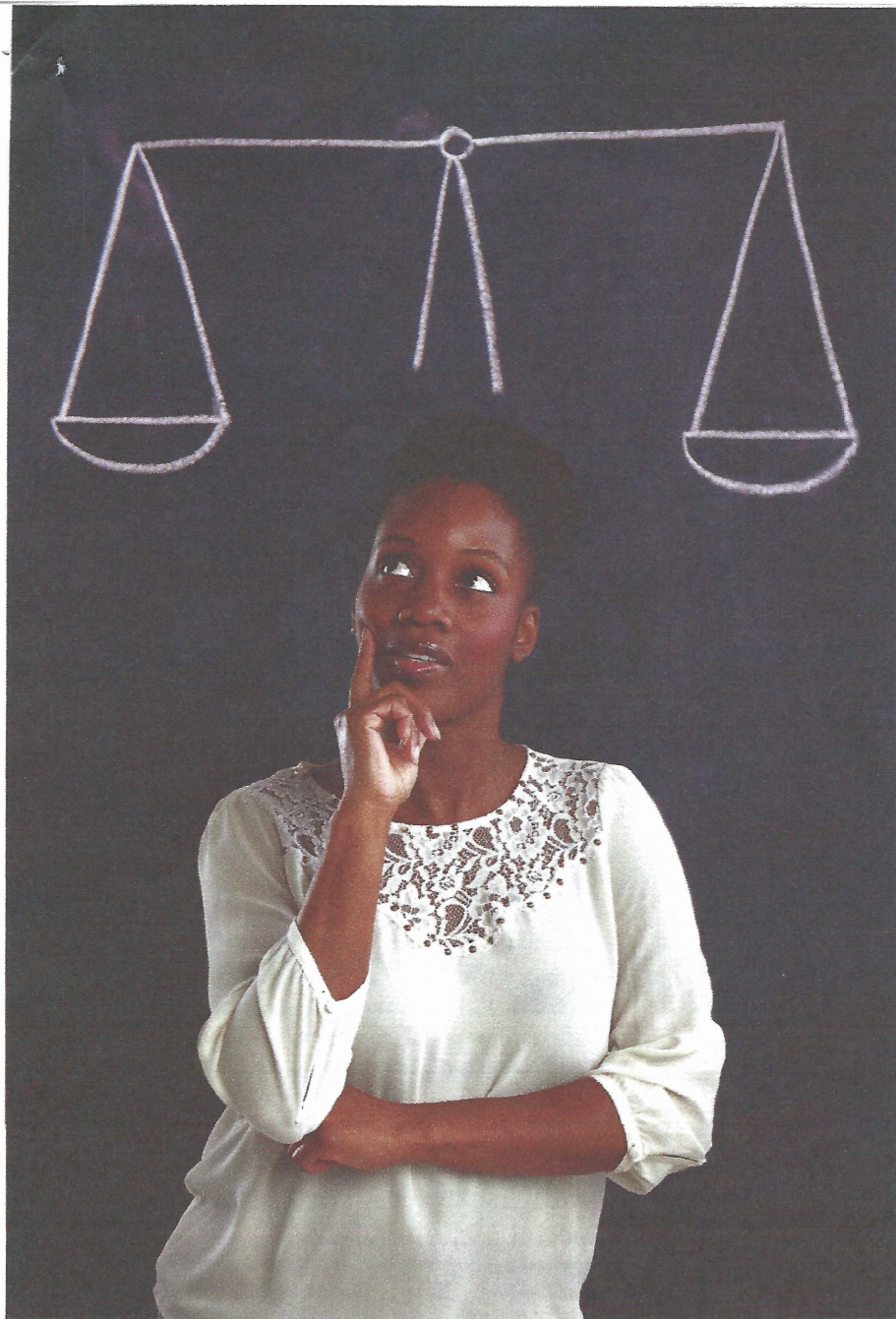


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on the Road**



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10 KEY CONCEPTS FOR JURY SELECTION

by Paul Luvera

1 If you don't know where you're going, you'll probably end up somewhere else.

Motivational speaker Zig Ziglar was fond of saying this to his audiences and it is equally applicable to jury selection. Before starting, we need to know what our goal is. The ultimate goal for jury selection should be to create open, frank, and non-judgmental discussion which reveals information about the juror. The objective is to learn jurors' deeply believed values, their significant past life experiences, and their attitudes about the relevant issues in the case. These are the things that determine how people make decisions. You want to end up with a bonded group without significant bias.

2 In jury selection, and throughout the trial, be yourself, not your idea of what somebody thinks you should be.

To be great trial lawyers, we need to learn to be fearlessly

authentic. Jurors search for someone they can trust and who can lead them honestly through the process. Authenticity requires vulnerability, transparency, and integrity. We all have the ability to sense someone who is not authentic, someone who is guarded, and someone who is pretending to be something they are not. We know that first impressions make lasting impressions. Jury selection is the first time trial lawyers involve themselves directly with the jury. The impression we make is likely the impression the jurors will have for the entire trial.

3 It is not fair to ask of others what you are not willing to do yourself.

Those words of Eleanor Roosevelt apply to jury selection. The well-known principle of psychology called reciprocity provides that we feel obligated to give something in return when we are given something as a favor. In jury selection, reciprocity means if we want jurors to be motivated to share with us,

we should first share with them.

Our sharing might be something as simple as truthfully saying to the jurors: "As many times as I have talked to jurors at the start of a trial, I still feel nervous. I'm wondering whether any of you might be feeling nervous, too." Try acknowledging your own feelings before asking jurors to share theirs.

4 Three things cannot be hidden: The sun, the moon, and the truth.

Buddha said this about honesty. As advocates, we should be truthful and honest with jurors not only because it is ethically right, but because it creates a favorable impression about our honesty and trustworthiness. Jurors are looking for someone they can trust. When we truthfully share "the good, the bad, and the ugly" about the issues in our case we promote an attitude of trust on the part of the jurors.

It also benefits us regarding the principle of deconditioning. The more we are exposed to negative information about a subject, the weaker reaction to it becomes. Certainly, we need to frame the information in the best possible light, but honesty, in this regard, carries its own rewards.

5 Finding good players is easy. Getting them to play as a team is another story.

Manager Casey Stengel said this about baseball and it applies to jury selection as well. You are not dealing with individuals who will act independently. We are creating a small group that will function together. The dynamics of the group will be determined by the characteristics of the people involved. We cannot ignore group dynamics and the impact it has on the final outcome. No juror reaches a verdict alone. Be aware of how the group is being created in jury selection. While we can't rely on stereotypes, there are some general personality types to be alert for:

Leaders. Leaders are capable of taking over a small group and controlling it. There is no way of knowing what

leaders will do once the jury room door closes for deliberations.

Pro-authoritarians. These are people who are deferential to authority. They are likely to be deferential to police officers, physicians, and other people they feel should be obeyed. Their attitude is part of their value system no matter how much assurance they give about being able to be objective.

People with a personal agenda.

These are jurors with strong, inflexible views. They sometimes can be "stealth" jurors who misrepresent or remain silent about their attitudes because they want to be on the jury to enforce their views. They may not always be objective.

Neutrals. These are people who have no strong value bias or life experiences that would influence their view of your specific case. They are generally



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objective thinkers and are generally safe jurors.

Followers. These are people who do not like confrontation and tend to always go along with the majority's will. They are generally safe jurors.

6 One of the most sincere forms of respect is actually listening to what another has to say.

The most important rule of jury selection is to really listen to what the juror says. We communicate that by our

body language and eye contact with the speaker. When we do respond, we should acknowledge what was said. Looking down at notes or away from the juror, even to make notes, signals you really aren't listening. Try not to take notes during jury selection. Let someone else take notes for you. There are excellent software programs for this. You should be fully involved with the jury.

The most important step in preparing for jury selection is to analyze your case for key issues. These red flag issues should include both positive and negative aspects of the case. Next, arrange

them in order of importance because you may not have time to talk about all of them in detail. Have a one-sheet outline of the issues, good and bad, about your case ranked by priority of importance. Follow your outline to try to cover the main issues.

7 You can make more friends in two months by becoming interested in other people than you can in two years by trying to get other people interested in you.

When Dale Carnegie wrote those words in 1936, he was not talking about jury selection, but he could have been. Remember, jury selection is not a cross-examination, nor persuading the juror you are right, nor an interrogation, but rather a process encouraging discussion to learn about the jurors. •

We encourage discussion by stressing there are no right and wrong answers. Assure jurors that they will not be judged adversely for speaking truthfully. Try to get everyone to talk about themselves or their views. Use open ended general questions, such as, "Please tell us about that experience," or, "How do you feel about (subject)?" or, "What are your thoughts about (subject)?" Involve the others by asking "How many of you agree?" followed by, "Why?" Repeat the process for those who disagree. Be nonjudgmental. Accept their views.

8 What you do speaks so loud that I cannot hear what you say.

Ralph Waldo Emerson was right. Our nonverbal communication speaks louder than words. We subconsciously react to nonverbal cues and behavior including posture, facial expression, eye, gesturing, and tone of voice. How we stand, where we stand, and where we hold our hands while talking to the jury communicate a great deal. Our stance should be open, our arms uncrossed, and our gestures congruent with what we are saying. We need to honor the juror's personal space by not getting too close. The juror's impression of us will be affected by how loudly we speak, our tone, and the pace of our speech. We tend to be-

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lieve self-confident and assured speakers but reject arrogance in word and appearance. Be conscious of all nonverbal impressions.

9 Embrace your client even when he's unlovable.

Advertisers understand that there is a "halo" effect involved when they use a celebrity to promote their products. That is, the favorable opinion about the celebrity tends to extend to what that person is promoting. In the same way, whatever favorable impression the jury has about us extends to our client. We can enhance a favorable impression of our client by how we treat and involve our client in the presence of the jury.

10 Apply basic principles of human nature.

Keep in mind the basic characteristics of human nature during jury selection. For example, we know that once people have taken a public stand on an issue they are very slow to change it. This fact of human nature can be useful in obtaining sincere verbal assurances without labeling them "promises or commitments."

In jury selection, we should frame our case in basic themes and commonly accepted principles of conduct. We know people look for rules when they are trying to accomplish something or solve problems. Our first question about a new game is, "What are the rules?" This is why the jury instructions are important to them.

Create the best possible impression of your case and yourself. We know trials can be struggles of impression instead of logic. Human beings make the majority of their decisions at a subconscious level and then give rational, conscious reasons for their decision. What influences our subconscious are the impressions we form and those are largely influenced by our strong values, our significant past life experiences, and our primitive brain's drive for survival. Think impression and not logic when framing your *voir dire*.

When in doubt, remember these six words of Franklin D. Roosevelt: "Be sincere, be brief, be seated." **NWL**



PAUL N. LUVERA is the founder of the Luvera Law Firm. In 2010, Luvera was inducted into the National Trial Lawyers Hall of Fame and is the only member from Washington state. His awards include 1985 Trial Lawyer of the Year; 2009 President's Award; 2014 Pillar of Justice Award from the Washington State Association of Justice; and the 2008 Gonzaga University Distinguished Alumni Award. He is a fellow of the American College of Trial Lawyers, the International Academy of Trial Lawyers, and the American Board of Trial Advocates. He can be reached at paul@luvera.org.

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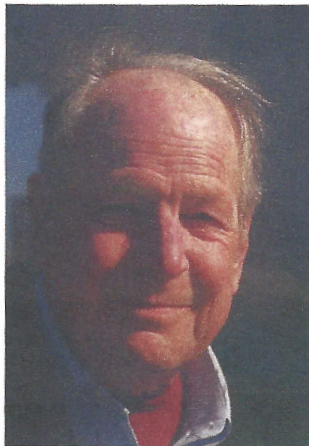


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Congratulations and Gratitude to Rick!

Best wishes to our beloved friend and colleague Rick Rasmussen on his retirement.

Wishing you smooth sailing as you enter the next chapter of your life.

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