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April 3, 2012

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**MAKING UP MINDS EARLY AND NOT KEEPING THEM OPEN**

Jurors tend to interpret information and evidence throughout trial in such a way as to remain consistent with their initial bias in favor of either the plaintiff or the defendant. Psychologists refer to this pattern as a "schema." This schema is what allows jurors to interpret information received in a framework they can understand, and tends to remain unchanged, despite exposure to concrete, contradictory information.

Studies have analyzed the mindset of jurors throughout trial, using mock trials and juror "leanings" to determine if, and when, a juror's mind can be changed from his original "leaning." In one study, after hearing neutral arguments from both the plaintiff and defendant, jurors were asked which side they favored. The plaintiff's attorney then presented the plaintiff's evidence and witnesses, and, again, the jurors were asked which side they favored. This questioning of the jury was repeated again after the defendant's attorney presented the defendant's case, after plaintiff's rebuttal, and after deliberations.

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The initial "gut reaction" throughout the entire study was a 50/50 split between pro-plaintiff and pro-defendant jurors. Of the initial pro-plaintiff jurors, 76% also favored the plaintiff before deliberations. Of the pro-defendant jurors, approximately 63% favored the defendant before deliberations. After final deliberations, 64% of jurors who were considered pro-plaintiff after the initial overview still favored the plaintiff, while 61% of the jurors considered pro-defendant after the initial overview remained aligned with the defendant. The study indicated that the opinions of the jurors favoring the plaintiff changed more due to deliberations, while the pro-defendant jurors changed their opinions prior to deliberations.

It is important to note that 40% of pro-plaintiff jurors remained pro-plaintiff all the way throughout the mock trial after the neutral overview, never changing their minds. On the other hand, only 28% of the pro-defendant jurors did not waiver after the neutral overview. The study noted that the pro-defendant jurors who were committed to favoring the defendant were hardly influenced by deliberations, as opposed to pro-plaintiff jurors, who were influenced by them. The remaining percentage of jurors, who ultimately favored the same side as their original preference, waived throughout the day before determining their final choice.

Notably, more jurors tended to favor the plaintiff, regardless of when their opinion was sought. The most important aspect to note from the civil defendant's perspective was that nearly half of all jurors characterized as pro-plaintiff from the onset did not change their minds throughout the trial.

Turning to voir dire strategies, attempting to select people who will wait until they hear all the evidence before rendering a decision is best accomplished by identifying the inflexible jurors during jury selection and doing their best to keep them off of the panel. Often, effective communication techniques during the jury selection process can accurately ascertain whether the panel includes people with pro-plaintiff tendencies, a leader, a contrarian or someone who will not budge.

Asking follow-up questions, including "why," is very useful because it yields more reliable information. In listening to a

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juror's answers to follow-up questions, note whether he appears strident and excessively confident, to the extent that it seems he or she would disregard an opposing viewpoint completely, and how adamant he or she is about his or her beliefs.

It was recommended to spend approximately 75% of voir dire time asking these types of follow up questions and gathering juror information, leaving most of the questions open-ended. Do not attempt to challenge jurors but, rather, introduce case themes and preview the jurors' reactions.

Ultimately, although the legal system relies on the impartiality of the jurors, the jurors are only human, with various attitudes and biases, predisposing them to favoring one party over the other. Determining their predisposition is the best method to obtaining a pro-defendant jury pool.

JLH/MLP/mvm/tsr

\*This is a summary of an article that appeared in the March 2012 edition of *For the Defense*.