THE FLORIDA BAR TRIAL LAWYERS SECTION

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MESSAGE FROM THE CHAIR:

We Have A Voice!!.... So Let's Use It

Clifford C. Higby

"I have a Voice!!" This is one of the more memorable lines in the recent movie The King's Speech. [1] The Duke of York is working with his speech therapist, Lionel Logue, as he prepares to ascend the throne to be King of England. The Duke is thrust into the role of King after his brother abdicates the throne. Logue helps the reluctant King George VI find his inner voice and overcome his lifelong problem with stammering. All of this happens on the eve of the Second World War, as Britain is about to go to war with Germany.

So in this Spring of 2011, as we witness unprecedented political and economic stress on the judicial system, attacks on judicial independence, and the very independence of the Florida Bar, who will be the Voice for the third branch of government and the legal profession?? The Trial Lawyers Section of the Bar, comprised of over 6,300 lawyers, has traditionally been an effective voice because our Section is seen as non-partisan, representing both plaintiff lawyers and defense lawyers on the fundamental

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The Seven Deadly Sins of Group Voir Dire (and Ways to Avoid Them)

By Jeffrey T. Frederick

Lawyers face a difficult task in uncovering useful information about jurors during voir dire examination. While other tools may be available–for instance, juror questionnaires or juror profile surveys–the bread and butter of successful jury selection relies on the ability of lawyers to elicit critical information on the jurors' backgrounds, experiences, opinions, and biases during voir dire. In essence, voir dire often makes or breaks lawyers' efforts to identify potential juror bias. Across the nation, a majority of voir dire is conducted in a group format that contains a number of potential pitfalls that serve to decrease juror disclosure of essential information. This article considers the seven major pitfalls or "sins" in group questioning that can reduce a lawyer's effectiveness and offers strategies to avoid them.

Before considering these sins, however, it is useful to address what measures lawyers can adopt that will set the stage for more effective voir dire.

Getting Our Minds Right

Even before entering the courtroom, lawyers can facilitate more effective voir dire and reduce the

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In This Issue:

issues of access to courts, judicial independence, and court funding. In today's world of pay to play politics and "what have you done for me lately" political favors, it has only gotten more difficult for the voice of trial lawyers to resonate. Credibility is key, and we have to show that our message is about more than economic self interests and preservation.

I saw a great example of this recently in an editorial from the Nashville Tennessean. Tennessee legislators are pushing to limit damages in civil cases by placing caps on jury awards. The author noted that the agenda was being pressed by "conservatives". His response included the following:

> "To me, conservatism shows due respect for a civil justice system that is rooted in the U.S. Constitution and is the greatest form of private regulation ever created by society. Conservatism is individual responsibility and accountability for damages caused, even unintentionally. It's about government closest to the people and equal justice with no special rules for anybody. It's also about respect for the common-law principle of right to trial by jury in civil cases that was incorporated into the Seventh Amendment to the Constitution.
>
> As someone who practiced in the courts of Tennessee for almost 30 years, I believe that a Tennessee jury of average citizens, after hearing all the facts, under the guidance of an impartial judge and limited by the constraints of our appellate courts, is more likely to render justice in a particular case than would one-size fits all rules imposed by government, either state or federal." [2]

The author? Former Republican Senator and Presidential Candidate Fred Thompson. Thompson, a long-time trial lawyer who has worked in the court system and tried many cases, is a voice of experience and credibility. His message is simple and rooted in the fact that we have had a jury system that has served us well for over 230 years. Thompson's message rings true for those prosecuting or defending cases in the civil justice system, thus his voice is persuasive on the issue of jury discretion and the right to trial by jury.

As I write this column, the court system in Florida faces a projected $76 million dollar shortfall prior to the end of the State's fiscal year, June 30th. If nothing is done, the entire court system would have to shut down on April 15th (the court system in Florida uses almost $30 million dollars cash a month).

Judge Belvin Perry of Orlando recently noted in the Orlando Sentinel:

> "Unlike other parts of state government -- say, the Department of Health, education or transportation -- the courts are an independent branch of government. Their message is critical to every Florida citizen and business: To uphold and interpret the law, protect freedoms, and peacefully resolve disputes. Last year they handled 4.5 million cases... If legislators value the kind of strong, independent judiciary envisioned in the State's Constitution, they should better insulate the courts from the scramble for money among agencies

Editor's Note

Mr. Robert Anderson, Esq. of Henderson, Franklin, Starnes and Holt, P.A. in Fort Myers, wrote me to suggest that an article recently reprinted in *The Advocate* may be misleading to those of you who read the article. Mr. Anderson correctly points out that with the December 10, 2010 amendments to **Federal Rule of Civil Procedure 26,** the article published recently in *The Advocate* titled "Testifying Experts and Privileged Material – Waiver is Easier Than You Might Think" may be misleading because it is outdated. Mr. Anderson is precisely correct as the amendments to Federal Rule of Civil Procedure 26(a)(2)(B) and (B)(ii) and the addition of 26(a)(2)(C) plus the amendment of Federal Rule of Civil Procedure 26(b)(4)(A) and the addition of 26(b)(4)B) and (C) would limit the scope of discovery from expert witnesses.

I thank Mr. Anderson for bringing this issue to my attention and apologize for my carelessness in not making sure this article was published in a timely manner. I will try to do better!

While I am writing this note, I wanted to also remind readers that new Florida Rule of Civil Procedure 1.285 regarding the handling of Inadvertent Disclosure of Privileged Material and the recently enacted Federal Rule of Evidence 502 which also deals with this topic are now in effect.

If any trial lawyer has a comment or question or criticism or wishes to submit an article for publication, please do not hesitate to contact me at *flynnm@nsu.law.nova.edu*.

Professor Mike Flynn
Editor, The Advocate

in Tallahassee". [3] (The State court system's 2010-2011 budget of $462 million dollars approximated 0.7 percent of the total state budget).

Credible voices like Judge Perry are critical in the battle to get legislators to properly fund the courts. The court system's impact on state business interests and the general citizenry far outweighs the measly 0.7 percent of state funds allocated for their use. Why not mandate that at least 1 percent of the state's budget will go to the courts? The governor and the legislature must be accountable to the people in funding and maintaining a viable, fair court system that is not bogged down in delay when it is needed most. The voices of the membership of this Section must also be heard in the ongoing debate on how to keep the court system functioning.

If all of this poking and prodding at our third branch weren't enough, the legislature has announced an initiative to strip the Supreme Court of its rule making responsibilities. Under our Constitution, the Supreme Court adopts and makes court rules with ample input from the Florida Bar, and the Evidence and Civil Procedures Rules committees. Now, the legislature is proposing the "Federal Model" for Florida, where the legislature will promulgate court rules. Imagine if the Court undertook to promulgate and impose rules on the legislature? (The legislature already has the power to overturn court rules with which it disagrees by 2/3 majority vote).

If the current leaders are true to "conservative" principles, they should leave court rule making functions to the Supreme Court, not the politicians. If this initiative succeeds, what prevents the legislature from assuming rule making authority over the Florida Bar? Will lawyers soon be like cosmetologists or kick-boxers to be governed by the Department of Business and Professional Regulation and the legislature? Cooler heads need to prevail on this very important issue. The legislature's plan is a direct affront to the separation of powers and judicial independence. It is hoped that the Florida Bar will pursue a vigorous strategy to quell this legislative pursuit which is coming at exactly the wrong time. Stay tuned and educate yourself on this issue before it's too late.

These are but a few examples of how effective voices are needed from lawyers, the Bar, and especially members of this Section. Now is not a time to rest or be complacent. Otherwise, we will be hearing the voice of Rooster Cogburn in the movie True Grit. Texas Ranger LaBoeuf rides up prematurely on a shack where Cogburn and Mattie Ross are hiding in wait for Tom Chaney and a gang of outlaws they have been pursuing. The gang then rides up, lassos LaBoeuf, drags him behind a horse, and a terrible gun battle ensues. Three outlaws are killed and Cogburn accidently shoots Ranger LeBoeuf and Chaney gets away. LaBoeuf bites through his tongue due to the pain of his injury. Cogburn (played by Jeff Bridges) bemoans LaBoeuf's injury and the botched capture of Chaney and his gang. He looks at Mattie and says: "Well… that didn't pan out". [4]

We members of the Trial Lawyers Section have a Voice!!.... so let's use it.

Clifford C. Higby, Chair
Trial Lawyers Section
The Florida Bar.

Endnotes:

1 The King's Speech. Dir. Tom Hooper. Perf. Colin Firth, Geoffrey Rush, Helena Bonham Carter, Guy Pearce, Timothy Spall, Derek Jacobi, Jennifer Ehle, Michael Gambon. Paramount Pictures, The Weinstein Company, Momentum Pictures. 23 December 2010.

2 Thompson, Fred. "Tennessee's current civil jury system doesn't need fixing." Tennessean [Nashville, Tennessee] (30 Jan. 2011, 2 Feb. 2011) (www.tennessean.com)

3 Perry, Hon. Belvin. "Courts shouldn't have to grovel for money from legislators." Orlando Sentinel [Orlando, Florida] (4 Feb. 2011, 7 Feb. 2011). (www.orlandosentinel.com).

4 True Grit. Dir. Joel & Ethan Coen. Perf. Jeff Bridges, Matt Damon, Josh Brolin, Hailee Steinfeld, Berry Pepper. Paramount Pictures. 22 December 2010.

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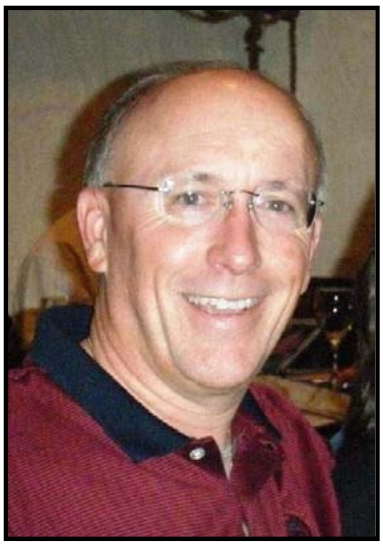
Tribute to a Fallen Warrior II

As Presented at the First Annual Trial Lawyers Summit



On December 25, 2010, Robert Earl Mansbach, the Chair of this Section from June 2009 to June 2010, passed away after a ten-month battle with cancer. Bob was diagnosed almost a year ago, right after the January 2010 Florida Bar mid-year meeting and Trial Lawyers Section Executive Council meeting. It was terribly ironic that Bob would fall ill and find himself in a battle for his life with cancer less than a year after one of his best friends, Glenn Burton, passed away on the eve of the June 2009 Florida Bar meeting. Bob's tribute to Glenn, which was published in the Summer 2009 Advocate, is also on your table as we celebrate here at the First Annual Trial Lawyers Section Summit, a meeting and gathering which was a vision of both Bob and Glenn.

Bob practiced law here in the Orlando area for over twenty-five years, and he was a senior member of the litigation group in the law firm of Zimmerman, Kiser, and Sutcliffe, P.A. He was with the firm since its inception, and I know his many law partners must feel a profound loss with Bob's passing. Bob had been a Board Certified Civil Trial Lawyer since 1992, and was A.V. rated by Martindale Hubbel. He was a member of the American Board of Trial Advocates, the International Association of Defense Counsel, the Florida Defense Lawyer's Association, the Florida Bar's Code and Rules of Evidence Committee, the Bar's Civil Procedure Rules Committee, and finally, a dedicated member of the Executive Council of this Section.

I never had the pleasure of litigating with or against Bob, but from everything I know, he was a tenacious and prepared advocate, who handled all of his cases with the highest of ethical standards. Bob authored and updated the chapter on "Ethics" in this Section's Second Edition of the Florida Bar's Florida Medical Malpractice Handbook. (another project and vision of his good friend, Glenn Burton).

Bob was proud to be a lawyer and he loved the profession. He also took pride in giving of himself for the betterment of the profession and this Trial Lawyers Section. Bob believed that this Section's work helped promote civility, ethics, and legal excellence for all lawyers.

Bob loved baseball, his beloved Boston Red Sox, golf with his friends on the Executive Council, and of course, fine gourmet food and wine. We members of the Executive Council were fortunate to have Bob around, as he was a culinary tour de force, and a guiding light at our meetings over the last eight years.

Finally, Bob was a man of strong faith who was at peace with his Lord when his time came on Christmas Day, 2010. He leaves behind his loving wife of 28 years, Daisy, and two beautiful children, daughter Alexandra and son, Christopher. Bob's selfless dedication to his profession is going to be sorely missed by all lawyers and judges who had the privilege of working with him. More importantly, we have all lost a great friend, father and colleague at the young age of 53 years.

"Our friend and we were invited abroad on a party of pleasure which is to last forever. His chair was ready first and he is gone before us. We could not conveniently start together and why should you and I be grieved at this, since we are soon to follow and know where to find him." "Adieu." Benjamin Franklin, 1756 (upon the death of his older brother, Richard Franklin)

- Clifford C. Higby

Winning in the Beginning by Winning the Beginning

By Dominic J. Gianna and Lisa A. Marcy

"Winning" in the beginning of a trial is a misleading concept. Many trial lawyers and teachers of trial advocacy, without any solid foundation, claim that 75 to 90 percent of American jurors decide cases at or before the end of the opening statement. That statement is routinely made only by those who do not try cases to juries or have not actually read the applicable jury studies. It is based in part upon a misreading—or, more likely, no reading—of the Kalven and Zeisel jury studies of the 1960s and 1980s. What those studies and current jury research really tell us is that, while 10 to 15 percent of American jurors do tend to decide controversies very early—*perhaps* as early as the opening statement—most jurors tend and want to adopt one side's point of view early in a trial. "Winning in the beginning" means crafting a powerful, passionate, and persuasive opening statement that motivates jurors to look at the case from that side's point of view. The skilled trial lawyer keeps jurors looking at the case from that point of view throughout the trial. "Winning in the beginning" means creating an opening that so captures jurors' minds and hearts that they root for one side throughout the trial and see the evidence from that point of view. "Winning in the beginning" means gently persuading jurors to convert their point of view to a preference for that side, then converting that preference into their final "say so"—their vote. "Winning in the beginning" also means starting the empowerment process early in the trial. Empowerment means providing jurors with the evidence they need to argue their positions and the motivation to persist in spite of arguments to the contrary. Jurors must be given the tools of logic to convince the other jurors, the passion to care enough for their choice, and the conviction to fight for what they see as the right decision.

Modern jury studies also tell us, without any doubt, that approximately 85 percent of today's jurors develop strong opinions about who should win the case sometime during the trial, most certainly by the beginning of the closing argument. Most jurors at some point in the trial, because of a particular witness or document, or because of some programmed critical event, turn from being "seekers of the truth" to "advocates for the truth" as proffered by one side. The trial lawyer's task is to short-circuit the process and persuade jurors to look at the case from his or her point of view as early as possible.

> The art of jury persuasion requires lawyers to give jurors the tools of logic to convince other jurors, the passion to care enough about their choice and the conviction to fight for what they believe is the right choice.

Why Are Beginnings So Important?

Why do most jurors say that opening statements are the "best part" of a trial? Because beginnings are intuitively important! The first movement of a symphony, the first scene in a play, or the singing of the national anthem are all designed to catch attention, excite emotionally, and inspire the audience right away. Professional storytellers know that beginnings are critical to any story. Powerful, passionate beginnings are essential to capture the attention, the minds, and the hearts of an audience. Only if attention is captured immediately can emotions be unleashed. The "train of persuasion" begins to move forward only when interest is captured. It then becomes the trial lawyer's continuing obligation to keep that attention focused on the case throughout the trial, thereby keeping the train on track. Robert Wise, the talented film director and producer, has said many times that the beginning is critical to a film's success. Wise always started a film with a scene that captured the audience's attention and imagination right away, involved them in the story, and quickly provided the framework for the remainder of the movie. Trials, like films, novels, and plays, are—or should be—powerful, dramatic, human stories. Consequently, just as filmmakers, novelists, and playwrights know they must reach the audience's minds and hearts quickly, the trial lawyer must capture the audience's attention and sway the jury to love (or hate!) the main character as soon as humanly possible. A powerful beginning is the key to capturing the jury's attention and to involving the jurors in the story.

Think of a beginning as <u>the</u> first impression. Is there anything more important? A first impression generates feelings, opinions, and attitudes about the message and the message giver.

The Alphabet Soup Jury

Understanding the importance of openings in the twenty-first century courtroom requires an understanding

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of jurors today—the alphabet soup jury.

Over 100 million Americans on juror lists were born after 1966. They are the so-called Generation X and Y (and, soon to come, Z) jurors. These jurors are self-sufficient, independent, and smart. They include the millions of children of divorced Baby Boomers, the so-called latchkey kids who had to fend for themselves after school while their parents worked. Now grown, they are impatient and want information delivered to them instantly—at Internet speed, if possible. By the time they have turned 21, Gen X and Y jurors have spent over 22,000 hours in front of the television or the computer monitor. They want messages delivered to them in the courtroom *first, fast*, and *focused*.

By first, we mean they want it right away—now. They do not tolerate alien courtroom rituals and do not understand why lawyers would waste their time with anything but a powerful message and a compelling story.

These jurors want the case presented to them fast. Today's trial is indeed the "trial in a hurry." Generation X, Y, and most certainly Z jurors want the message capsulized in an easy form, despise flowery language, and want the message delivered straight to them instantly. They tune out almost immediately if a lawyer lulls them to sleep.

Finally, they want the message focused. They want the case to revolve around one concept, one person, one powerful theme. They accept no substitute and do not want a lawyer to preach to them.

Generation X, Y, and Z jurors are unafraid to voice their opinion, even in a jury room full of Baby Boomers and senior citizens. They have opinions about everything and are happy to express them as often as they can.

They are relatively sophisticated. They grew up fast, "knowing" more about the world than any Baby Boomer or senior citizen juror can imagine—and therefore are cynical about it. These jurors think they have a better chance of witnessing an alien stepping out of a spaceship or Lee Iacocca driving a Prius than the possibility of getting a Social Security or Medicare check. They have very little belief in political systems and distrust anyone who does not communicate to them in a way they find persuasive. They mistrust and distrust lawyers in particular. They dislike authority figures (like the judge) and will not tolerate manipulative emotional appeals.

The jurors of today want the case delivered to them in story form and want the story to be "real," that is, they want it to be a story about a real person so they can deliver real "justice." "Keep it real" is their mantra. The savvy trial lawyer must anchor the case in solid principles of right versus wrong. Significantly, jurors want to know what specific laws or regulations have been violated. They want concrete examples, in a personal injury case, of the losses that should be restored. They reject nebulous principles such as the "reasonable man" standard for negligence and do not readily award pain and suffering damages without solid justification. They prefer to "compensate" and "restore," not "reward." Gen X and Y jurors are attuned to the practicalities of life.

What, then, is your winning formula Show, Not Tell—Teach, Not Preach—Text, Not Test (Patience).

Jury Think

People who have not been deprived of simple language and common sense by a juris doctorate think differently than those who speak legalese and operate in the legal system. For example, very few jurors wait until deliberation begins to decide who should win and lose, and very few use deductive logic. By the end of the trial, jurors are tired and opinionated. The "active" jurors—the so-called 25 percent of American jurors who are "persuaders," that is jurors who make statements about the evidence and build conditions around them in the jury room—desperately want the lawyer to give them the ammunition they need to convince the other jurors that their side is the right one. But active jurors cannot advocate one side unless they get what they need practically and emotionally. Active jurors must be caught and taught early in the game—in the opening, in the beginning—to adopt a point of view.

Trial lawyers must also understand that most of today's jurors are primarily "affective," not "cognitive," thinkers. Eighty to 90 percent of Americans are affective in their thought processes, which means that same percentage of jurors decides to root for one side or the other rather than deciding solely by logical reasoning and deduction. They choose sides primarily by adopting the story that sounds right and the story that matches their basic human values, their individual principles of right and wrong. In short, most jurors decide cases primarily with their hearts and use logic and facts to buttress their emotional judgments. Affective jurors see the case from the point of view that fits their attitudes, values, and expectations. Once they determine that one story better fits their attitudes and matches their point of view in the beginning, that one story sounds like "the right stuff" over the other, they will listen to and adopt the evidence that supports that story and reject the evidence that does not. Gen X and Y are affective thinkers in the sense that they rely upon their basic inner values to make the judgment about who should win and who should lose. But Gen Xers and Yers also incorporate logic and deductive reasoning into the process. They are both affective and cognitive in their thinking.

Purely cognitive thinkers, on the other hand, make up only 10 to 15 percent of American jurors. They use only deductive reasoning. They think like lawyers and scientists. They build fact upon fact upon fact, digest those facts, use only pure logic to judge those facts, and for the most part wait

until the end to decide the outcome. Cognitive persons are scientific in their thinking rather than emotional in their approach.

The trial lawyer must deliver the message to both affective and cognitive thinkers. In other words, the opening must meet the needs of both affective and cognitive thinkers. Gen X and Y jurors require a melded approach.

Most people, affective and cognitive thinkers alike, remember only what they understand and see and hear what they expect to see and hear. The winning lawyer must tell them precisely what they expect to hear, speak their language, and use the jurors' own internal words. After all, all human beings are persuaded by their internal dialogue, not by words from someone else. The trial lawyer must try to tap into that dialogue, that mind-set. Learning that "inner story" is the challenge of voir dire and the primary purpose of jury focus groups.

The winning advocate must also be the jury's leader, teacher, helper, and guide, assisting jurors in linking everything together in a way that is meaningful to them and responsive to their needs. In other words, only the jurors' priorities count. For example, the common technique of explaining the law of the case to a modern jury is a waste of time. Jurors do not, for the most part, care about the law. They care about what is important to them. Gen X and Y jurors use the law as just another tool to accomplish their goals.

What is primarily important to modern jurors is the story! Jurors ask themselves, "Why should I care about one side or the other? Does the story I am hearing match my internal story, my attitudes and beliefs?

The Key Concept

The key concept central to judging the power, and therefore the effectiveness, of an opening statement is this: *if the opening were the entire trial, whom would the jury blame?* Keeping that in mind is critical to crafting a powerful beginning. Craft the opening to jurors to focus their judgments on the opposition—the bad guy!

The Will and the Way

The default state of most jurors when they walk into the courtroom is one of total disregard. They care nothing for the lawyers, the clients, the cases. They care about themselves. Why should they care about anything else? The system has dragged them into an alien, unfriendly place, away from jobs and families for an unknown time and for little money. The atmosphere is strange, the language different, the people unusual. How often do jurors get to be in the presence of a supposedly all-knowing , almighty person in a black robe? One main task of the lawyer is to make them feel comfortable, to integrate them into the process, and to begin to persuade them to look at the case from a point of view, all the while overcoming the alienation inherent in the system and the process.

Nothing good happens until jurors begin to care. Making people care means motivating them to care. Motivation comes not from the mind but from the heart. Cicero said, "Engage the mind, move the heart, make them care." Making the jurors care mandates that the trial lawyer use both logic and passion. The winner engages the mind and moves the heart. What is the key? A lawyer must put aside his or her self-importance and see the case—and hear it, think it, and feel it—from the jurors' point of view. That point of view means making jurors care, thereby motivating them to do something, to act. Only people who are motivated to do something—to care—will act. After all, would anyone care about global warming if it were not going to happen until the year 3000? Taking action in this context means raising one's hand in the jury room for one side, and fighting for

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that particular side. Jurors will not fight for one side unless that side has reached them emotionally and has given them the tools to act and sound logical.

What are the critical, core concepts? Two words embody these concepts: *visceral and visual.* What do these words mean in the context of the opening?

These words mean that jurors must be motivated to act and must see the winning case in their minds. Make them care about the people involved, motivate them to see the case from one point of view, give them the tools they need during the trial to absorb the favorable facts and see the winning case. Then, at the end, empower those jurors to fight, to argue the winning lawyer's side in the jury deliberation room.

The key therefore to motivating jurors is to communicate with them viscerally. Visceral communications are mainline communications. All people are programmed to react, almost physically, to certain words, events, and situations that generate powerful emotions. For example, most people are terrified of large insects. If 1,000 roaches were suddenly to invade a kitchen, reactions would be visceral indeed! Opening statements must be visceral. They must stimulate the emotions positively.

Openings must also be visual. That is, the opening must create three-dimensional and colorful mind pictures that clearly show victory. The words of the trial must create those mind pictures. Why? All of us think in pictures. Think of the following concepts: home, office, courthouse, airport, mom and dad. What immediately comes to mind? What thoughts and feelings do they evoke? The opening must create a picture—a "visual"—in the minds of the jurors that repeats itself throughout the trial. Combining a visceral communication—a story—and a visual—a mind picture—is the winning combination for the opening statement. (See chart below).

Storytelling: The Main Means of Communication

The key to communicating viscerally and visually with a jury is to reduce a case to a simple story, and every simple story must be unified by a visceral theme. What is a story? A story is a drama about a person's life involving a conflict between a hero and a villain. The best stories are "people stories"—they focus around the persons involved. They do not center on a legal theory or legal principles. People stories move us.

The basic principle behind modern trial advocacy is therefore that people will hopelessly and helplessly suspend reality to become emotionally involved in the life of another person. That is the essence of advocacy. The story, the drama the story creates, and the conflict involving the jury all must be focused around the life of a person, whether he or she be a real human being or a corporate citizen.

The essence of drama is conflict. The opening story must set up and involve the jury in a conflict that reveals the terrible injustice caused by the evildoer. The "people story" makes the choice of winner simple and involves the jury directly in the conflict.

Every story must then be further reduced to a simple word or phrase, that is, to a simple communication that embodies the heart of the story and the righteousness behind it. For example, "if the doctor drained the puss, there be no fuss, but because he waited a day, he must pay." The case is therefore about "Waiting a day and delay."

Every case story must be unified

OPENING STATEMENTS DOS AND DON'TS	
To generate a dynamic opening each and every time	**Never do the following in an opening**
1. Tell the visceral people story	1. Argue
2. Focus on the evildoer	2. Read
3. Reveal the theme	3. Advocate openly
4. Reduce the case to a simple word or phrase, the trial vocabulary	4. Tell a jury what to do or patronize
5. Establish yourself	5. Waste a minute, a sentence,
6. Be passionate, not emotional	6. Confuse them with details
7. Create a winning mind picture	7. Demean the opponent or counsel
8. Link it all together	8. Ramble or appear to disorganized
9. Be concise	9. Ramble or appear to be disorganized
10. Tell it from the heart, from you to them	10. Bore the audience

and solidly grounded in a powerful theme. A lawyer without a theme is like a soldier without a gun or a stockbroker without a BlackBerry! A theme is a powerful, short statement—ten words or less—that capsulizes the story of the case and cries out for justice. For example, "People in a hurry hurt" capsulizes an auto injury case. It answers the question of why that side should win and, in fact, answers every question that comes up in the trial. The story grounded in a basic theme of right and wrong becomes the base of operation. The trial is merely a matter of showing jurors how and why the facts fit into the story and support the theme. A trial lawyer's job is to prove to the jury that the facts support the simple, visceral story and the passionate theme.

Simple themes support stories with the moral fiber needed to win. "Taking responsibility," "Doing the right thing," "Following the rules," "Playing fair," "Being generous," and "Taking the high road" are all winning themes. Only a few basic visceral themes exist in this world. A trial lawyer must always anchor the trial story in one of these themes.

What is the essence of a great story? A great story shows the righteousness of the cause. To a juror, a trial is, "Who did what to whom and why." In other words, it is all about *character, conduct*, and *choices*. A great story involves jurors in the injustice done to the client, drops jurors directly into the conflict and shows them that the main character is good and pure, revealing that the motive behind the character's conduct is moral and just.

Every important issue should be delivered to the jury as a choice, and taking responsibility for that choice. For example, the automobile manufacturer makes the choice to put the fuel tank on one side rather than the other. If an accident happens, the automobile manufacturer must accept responsibility for that choice.

To a jury, choices revolve around knowledge and control. Who has the knowledge? Who had control over the situation? If that manufacturer had knowledge of a danger, or of an untoward previous event, then to jurors that manufacturer could control the situation and prevent the accident. Therefore, the manufacturer is responsible.

When do jurors want the story and the theme? Right away! An average person's attention span is 20 seconds. So, in the first minute or two, jurors want to know what the story is and why justice is on that side.

Always revolve the story—and most certainly the beginning—around these basic principles of jury psychology.

Crafting the Opening—From the Jury Box

The key to fashioning an opening statement is to see it from the jurors' point of view, what social scientists and marketing strategists call being "receiver-oriented." The storyteller must see a trial from the perspective of the jury. The opening must therefore meet all of the jurors' needs and wants. It must engage the listeners' emotions, must make them care, make them angry, sad or even vengeful, and make them hope that what happened to the main character never happens to them. From the jury's perspective, the opening statement must position jurors directly into the people story. It must engage the jurors in the life of the main character, motivate them to care about the people involved, help them to see the case from a point of view—all the while showing them that the story they are hearing is really the story *they* bring to the courtroom, meeting their need to understand and become involved in the story. Persuasion—the art of getting what the storyteller wants—is easy if the storyteller speaks the same language as the listeners and has the same wants and needs. If the trial story and the visceral theme fit the jurors' own stories and concepts of good and evil, that story will be adopted. Jurors are persuaded by their own stock stories, not someone else's.

80% to 90% of all Americans are affective in their thought process. This means that this same percentage of jurors decide to root for one side or the other rather than deciding solely based on logical reasoning

Delivering the Opening

What do modern jurors expect of the trial lawyer-storyteller?

First, jurors expect the skilled storyteller to talk to them individually, to look into their eyes. Forget about notes. Tell the story from the heart. Talk to them, not at them. Let them know the story is coming from your heart and soul.

Second, jurors want to know who is responsible and why—and very quickly. Who refused to accept responsibility? Who broke the promise? Therefore, begin with the bad guy, the evildoer. Focus on what the evildoer did wrong. Focus on the other side's illegal, immoral choices, and its refusal to take responsibility. Why? The concept of "defensive attribution" is a key concept in the thinking of jurors. All human beings want to think that bad things happen to other people. Consequently, beginning with the bad guy focuses the jurors on the bad guy, not the good guy. The jurors will not be tempted to judge anyone but the evildoer. No good comes from a jury focusing on what the good person should or should not have done. Focus on the bad guy first.

Third, what *rule* did the evildoer violate? What statute or regulation did he or she transgress? Modern jurors want concrete principles against which to judge behavior. Therefore, in a personal injury case, show that the defendant violated job safety regulations.

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WINNING / BEGINNING

from previous page

Fourth, after the jurors are focused on the bad guy, tell the people story. Humanize the client, make the jury sympathize with that person by telling the people story. Tell it factually. *Do not argue.* The opening statement is too early in the process to argue a case—a position—no matter how tempting it is. Relate the story. Reveal the injustice. Create that injustice visually in the minds of the jurors. Let the story show them why one side should win and the other side should lose. Storytelling is the principal way we have taught each other from the beginning of time. A story allows the jurors to feel the story from the inside out and allows them to argue from the inside out, not from the outside in. Storytelling forces the listeners to involve themselves in the character. Very few people involve themselves in legal principles or cold facts. Jurors want to involve themselves in a story. Tell the story, then after establishing the facts, reveal the wrongdoing.

Fifth, set the theme. Show jurors the moral principle behind the story and why the story is the just one, supported by basic principles of right versus wrong. Those principles can be based upon the Bible, the Talmud, the Koran, Shakespeare, or whatever other source may inspire goodness.

Sixth, tell the jurors only the facts they need to know to support the story and the theme. Never overload a jury in the beginning. Give them just what they need to know to follow the case. They need neither details nor summaries of what each witness will say. Summarize those facts in an easy and show them that the facts support your case.

Seventh, point out coming attractions. Preview one witness or one document that forcefully focuses on the trial story and theme. Let t hem look forward to hearing your case.

Eighth, integrate the bad with the good. Every story, every case, has bad facts. Do not hide these bad facts. Integrate them into the story. Put them where they do no harm. For example, in a personal injury case where the plaintiff, right before the accident, stopped at a bar for a drink or two, integrate that into the story. "Folks, on the way home from work, Jimmy stopped at a restaurant with his buddy for a beer and some peanuts. They drank a beer, ate some peanuts, watched the news, and then Jimmy went home to his family for dinner." Make bad facts part of the story. Ninth, make the story short and easy to follow. A ten-minute opening is better than a 15-minute one. The first one and a half minutes are critical. In that time, involve the jury in the story, show why the other side is the bad guy, reveal the theme. Make the story easy to follow by linking the facts into a simple story.

Only after the jurors know where responsibility lies should they hear about causes of action, that is, why they are in court. Tell the jurors why they are there and what they are expected to do. Never tell a jury what to do. Rather, suggest to them why they will be asked to do something at the end of the trial. Make it clear what their function is: to put a happy ending to the story and, most of all, to do justice. Tell them why their help is needed, why the opposing party will not accept responsibility for the actions that led to the accident, injury or business transaction that went south.

Tenth, end with a bang! Return to the beginning, repeat the case visuals, the trial vocabulary. Conclude with the theme. "You, as jurors, will be asked to make it right, to tell the defendant [or plaintiff] that doing the right thing requires that she take responsibility for her actions, her choice"

In short, the opening statement, from the jury's prospective, must not only preview the case; it must capture the jurors' emotions, make them want to root for one side, compel them to see the case from a point of view, and convince them that they will be able to follow the story point by point, simply by referring back to the opening.

Dominic J. Gianna, *founding partner of Middleberg Riddle & Gianna in New Orleans, Louisiana, is a program director for the National Institute for Trial Advocacy, a faculty member of the Professional Education Group, Inc., and author of Winning in the Beginning by Winning the Beginning: Opening Statements 2d (Thomson/West 20004).*

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SEVEN DEADLY SINS

from page 1

chances of committing the seven deadly sins if they keep several factors in mind.

It's a conversation. The lawyer's perspective on voir dire affects the voir dire style adopted and the subsequent willingness of jurors to be honest and candid. Approaching voir dire as if it were a job interview or an interrogation, as opposed to having a conversation with jurors, affects the quality of information that jurors reveal. The pressures to look good in a job interview or to be defensive under interrogation operate to compromise voir dire goals. On the other hand, viewing voir dire as having a conversation with jurors serves to facilitate lawyers' goals. By adopting this perspective, lawyers are more likely to ask questions and to listen to jurors in a manner that makes jurors feel more comfortable and more willing to be candid and honest.

Avoid the "looking good" response. Quite simply, jurors like to "look good." They are well aware that being biased against a party is inappropriate, irrespective of their true feelings. There is therefore a strong tendency for jurors to provide answers that they know are, for lack of a better term, socially acceptable. Asking jurors if they can be fair or if they have any bias against a party can trigger a less-than-candid reply. So, too, can using a phrase like "Do you understand that. . . ?" Concentrating on specific actions or viewpoints that would indicate that jurors would not follow their duty as jurors is a more fruitful avenue of inquiry. For example, getting jurors to admit that, as a result of their views about lawsuits, they would require a higher level of proof than the "more likely than not" standard shows that these jurors would not appropriately discharge their duty, without ever raising the ego-challenging issue of whether they could be fair jurors.

Lead up to sensitive questions. Sensitive questions are, by their very nature, the ones that jurors show the greatest reluctance to answer. When jurors perceive these questions as coming out of the blue, particularly in the public setting of group voir dire, they often times either fail to respond or respond in a superficial manner. This results in a failure to secure critical information. Using a series of questions that leads up to the ultimate question gives jurors an opportunity to reflect on their experiences, views, and opinions before the main opinion question is asked. As a result, a sense of greater participation will be engendered and more thoughtful answers offered by jurors. For example, when asking whether jurors would have any reservations in returning significant money damages for a plaintiff and against law enforcement personnel for the alleged use of excessive force, one might first offer a series of questions similar to those that follow.

> Avoid the question that urges the juror to provide the response that makes the juror look good rather than be honest.

Q: How many of you have ever received any law enforcement training or applied for a job in law enforcement?

Q: How many of you have friends or relatives who are employed in law enforcement, the corrections system, or by the courts?

Q: Do any of you have any contract with law enforcement personnel in social, religious, professional, or business settings?

Q: How many of you have been in a situation where you felt the need for assistance from someone in law enforcement?

Q: How many of you have been in a situation where someone from law enforcement assisted you or helped you out in any way?

Q: How many of you have had any interactions with law enforcement personnel that you would consider positive or good?

In addition, leading up to sensitive opinions should include obtaining basic opinions, such as:

Q: How many of you feel that police and other law enforcement personnel do a pretty good job under difficult circumstances?

Q: How many of you feel that the public, in general, does not give police and law enforcement personnel enough credit for the difficult job they do?

Once the context for the sensitive question has been established and jurors are fully grounded in the issue, they can be asked about their views on lawsuits against law enforcement personnel over issues of excessive use of force with a greater likelihood of more thoughtful and candid answers.

Capitalize on open-ended questions. In general, open-ended questions provide more information about the jurors' feeling and beliefs than closed-ended questions do. Open-ended questions such as "What are you views concerning punitive damages?" or "What are the major responsibilities of a manufacturer for producing a safe product for consumers?" or "If the defendant did not take the stand and tell his side of the story, how would that make you feel?" or "How would you feel if you had to base your decision in this case solely on circumstantial evidence?" often yield more valuable information because jurors must put their feelings and beliefs into their own words. Closed-ended questions are more susceptible to pressures to respond with socially acceptable answers because the "right" answer is often apparent in the question. Therefore, lawyers must capitalize on opportunities for open-ended questions that present themselves during voir dire. However while open-ended

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questions can be more valuable, appropriate integration of the two forms of questions is necessary, not only to effectively uncover potential bias but to meet the demands of most judges for a time-efficient voir dire.

Craft the question with the answer in mind. When considering what questions to ask jurors, think of the potential answers you are seeking and craft questions with those answers in mind. For example, if confronted with the problems that jurors might have in returning a money verdict for pain and suffering, you might ask, "What problems do you think you might have in returning money damages for pain and suffering?" Or if you are concerned about jurors disregarding testimony by mental health professionals, "Of what value do you think it would be for you to hear testimony from mental health professionals concerning a defendant's upbringing and childhood experiences?" In addition, when specific responses are associated with potential bias that has been previously identified through pre-trial research, you can specifically address these critical views in the question itself. For example, jurors could be asked to choose between competing concerns that arise in the area of compensatory damages: "In terms of deciding on a dollar amount in a verdict, which do you think is worse: to include too little money for an injured party or too much money for that party?" The same approach could be taken when considering potential jurors' views on the abuses of drug addiction: "Some people believe that drug addiction is a physical disease that causes the affected person to abuse drugs. Others believe that drug addiction is simply a lack of willpower and self-control on the part of the person. Which position do you agree with?"

Reinforce jurors. A lawyer's goal is to foster candid and full participation during voir dire in an attempt to identify potential juror bias. Positively reinforcing jurors facilitates this objective. Thank jurors for their candor and honesty. Remember to reinforce jurors for their answers, no matter how "bad" the answers were for you. Not only will your voir dire be more informative but you will increase the chances that undesirable jurors will express opinions and viewpoints that would lead to a successful challenge for cause.

Listen. The last consideration in getting our minds right is to remember to listen. Listening is a special skill. People often spend more time thinking about what they will say next than listening to what the other person is saying. This is a particular hazard in voir dire, when lawyers are trying to get through lists of questions. Listening will reveal the subtleties often found in jurors' answers. In addition, the attention paid to jurors while truly listening serves to encourage juror participation and candor.

The Seven Deadly Sins

Now that we have got our minds in order, we should concentrate on the seven major pitfalls of group voir dire and carefully consider their countermeasures.

1. Failing to frame the process

In general, jurors do not know what to expect when they face questioning in group voir dire. Failing to set their expectations for full and candid participation during voir dire serves to defeat the process before it even begins. Simply telling jurors that "voir dire" means to "speak the truth" and then proceeding with questioning, while a common approach, fails to sufficiently frame the process for jurors. Relying on this approach often leads to superficial and minimally informative voir dire.

Instead, you must let jurors know that no right or wrong answers exist. Highlight the fact that jurors frequently differ in their view on the topics being considered and, as a result, it is important to candidly share their views. Educate jurors that his process is a chance to explore their views and life experiences, which will enable lawyers to get to know the jurors and, more importantly, to address areas that might be sensitive to some jurors as a result of their past experiences. Only by going through this process in a candid and forthright manner can the parties ensure that there is nothing that might interfere with potential jurors' abilities to comfortably judge this case. Finally, jurors should be told that while they will be asked to raise their hands in response to certain questions, there will be times when follow-up questions will be asked of those who have not raised their hands. This statement alerts jurors regarding the futility of trying to avoid participation by not raising their hands, which is a common strategy used by jurors who are reluctant to answer in a group setting or who have other agendas.

2. Failing to get jurors involved early.

The beginning of voir dire is a crucial time for setting the expectations for juror participation. If jurors are not encouraged—and in some cases forced—to involve themselves at this time, overcoming their natural tendencies to avoid participating will be difficult throughout voir dire.

Our goal is to make jurors feel as comfortable as possible with participating from the start. Two approaches can be used to encourage early full participation initial hand-raising and initial background summary.

Group voir dire often relies on the raising of hands by jurors when responding to questions posed to the panel. There are two ways to get jurors accustomed to raising their hands at the beginning of voir dire. The first is to simply have jurors raise their hands. Tell jurors that, while much of their responses to questions will be through the raising of hands, lawyers have found over the years that some jurors are reluctant to raise their hands in a group of strangers, with the first time being the most

difficult. Ask jurors to help out their fellow jurors by everyone raising their hands at this time.

The second (and not mutually exclusive) method is to ask a question to which all jurors will likely raise their hands. For example, asking jurors to raise their hands if they are U.S. citizens (or some other basic qualification for jury service) is an easy way to have all jurors raise their hands. Again, the goal is to make jurors feel comfortable in raising their hands at the beginning of voir dire.

3. Allowing participation to drop.

Even when jurors are encouraged to participate early, participation tends to drop off. Failing to identify this tendency and taking appropriate steps to prevent it can lead to a negative spiraling of participation where less and less information is disclosed by jurors as questioning unfolds.

Once we get jurors more comfortable with speaking and participating, we need to maintain the momentum. Two methods can be used to foster continued participation: the use of majority response questions and the springboard method of examination.

Voir dire questions are often phrased so that a minimum number of jurors raise their hands, for example, "How many of you have been party to a lawsuit?" Asking such questions is logical and efficient. However, after a number of these questions, most jurors become accustomed to not raising their hands and may become reluctant to do so in response to later questions. To counteract this reluctance, questions should be included periodically where a majority of jurors are required to raise their hands. For example, jurors could be asked "How many of you have not been a party to a lawsuit?" In this way, a majority of jurors will raise their hands (refreshing the habit of hand-raising) while those who do not raise their hands could be questioned individually. When the time and scope of voir dire are not too restrictive, it is even possible to include less critical, majority-response questions as a way to meet our goals. For example, with a case arising from a traffic accident on an interstate highway, "How many of you have traveled on the interstate highway?"

A second method to encourage continued participation is to ask a question of one juror and use the answer as a springboard for the questioning of the remaining jurors. The original juror gives his or her answer and answers any necessary follow-up questions. Within the context of the first juror's answers, questions are asked of the remaining jurors concerning their opinions or views on the topic. In this manner, all jurors are encouraged to continue to participate in the process. A note of caution is necessary. When using the springboard method, it is important to poll all of the jurors. This can be accomplished by making sure that you address each juror individually or by addressing a summary question to the entire panel. In this manner, critical information is collected from all jurors and none are allowed to fall through the cracks.

Group Voir Dire presents an easy opportunity for jurors to hide… don't let this happen!

4. Letting jurors hide.

As discussed above, there is considerable pressure to not participate or to hide during group voir dire. Jurors can hide by simply not raising their hands in response to parties' questions. The more that they are allowed to do this, the greater the inhibition to participate throughout voir dire, and the less informative it becomes.

Jurors should be told in the beginning that those who do not raise their hands may be subject to follow-up questions. However, such a strategy must be implemented during subsequent questioning. Asking the panel questions and then following up with jurors who fail to raise his or her hand rapidly alerts jurors to the fact that failing to raise their hands will not enable them to escape participating in voir dire.

5. Not offering jurors a second chance to respond.

Unfortunately, group questioning often occurs at a fast pace, with some jurors not raising their hands when they should. Sometimes this lack of participation occurs because the jurors are still considering the appropriate response and just do not have enough time to respond before the lawyer starts the follow-up questioning of those who did raise their hands. Other times jurors are simply reluctant to raise their hands in the group setting. In either event, this situation has the potential to leave undiscovered information critical to the lawyers' decision making. In the worst case scenario, potentially undesirable jurors could be left to fly under the radar screen.

Much like a version of the springboard method discussed above, by taking one juror's answer and asking the question again to the remaining panel members, additional jurors are given an opportunity to respond—and often do. Those jurors who are reluctant to respond see that nothing bad has happened to someone who has had a similar experience or who holds a similar opinion. As a result, these reluctant jurors are more likely to raise their hands in response to a simple follow-up question such as "Has anyone else had a similar experience as Ms. Jones?" This approach also allows a second chance for jurors who were unsure earlier if they should respond or who did not react quickly enough to the initial question.

6. Failing to take advantage of opportunities for secluded questioning.

In some situations, judges will allow individual questioning of a juror outside the presence of the remaining jurors. Failing to request and/

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or broaden the scope of questioning to elicit full participation in such a manner further acts to decrease information disclosure during voir dire.

When the court allows the pursuit of follow-up questions on sensitive subjects at the bench (or in some other way out of the presence of the panel of jurors), it is important to take advantage of this opportunity. Phrase the questions to the panel in the most broad, yet effective manner so as to encourage as many jurors as possible to raise their hands. For example, consider the differences in the following two questions:

Q: How many of you have ever sought psychological counseling or pastoral counseling?

Q: How many of you or your close friends or family members have ever sought psychological or pastoral counseling of any kind?

Obviously, the latter question opens a broader area for an affirmative response. Such a broad question not only maximizes the response potential but gives jurors the cover needed when responding to a potentially sensitive question in front of other panel members. An additional benefit of this approach is that often judges are more likely to allow more detailed questioning and the use of open-ended questions at the bench as compared to questioning of the jurors in the panel as a whole.

7. Failing to ask the "last chance" questions.

Finally, no matter how effective a lawyer is in avoiding the pitfalls of group questioning, there is always the potential for jurors to have missed opportunities to answer during this process. In addition, as a result of the questioning process, some jurors may come to realize and be open to admitting that because of their experiences and opinions, they might lean in favor

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2011 Calendar of Events

~~**Jan. 12 - 13, 2011**~~
~~**Chester Bedell Mock Trial Competition**~~
~~*Omni Orlando at ChampionsGate*~~

~~**Jan. 13 – 14, 2011**~~
~~**Civil Trial Certification Review 2011**~~
~~*Omni Orlando at ChampionsGate*~~

~~**Jan. 13, 2011**~~
~~**Mock Trial and Members Reception**~~
~~*Omni Orlando at ChampionsGate*~~

~~**Jan. 15, 2011**~~
~~**Medical Malpractice Update and Jury Instruction Update**~~
~~*Omni Orlando at ChampionsGate*~~

~~**Jan. 15, 2011**~~
~~**Executive Council Meeting**~~
~~*Omni Orlando at ChampionsGate*~~

March 4, 2011
Topics in Evidence
Co-sponsored with Criminal Law Section
Tampa Airport Marriott

May 6, 2011
Executive Council Meeting
Hot Springs, VA

May 10 - 14, 2011
Trial Advocacy Seminar
University of Florida, Gainesville

June 22 - 25, 2011
The Florida Bar Annual Meeting
Gaylord Palms, Orlando

June 24, 2011
Executive Council Meeting
Gaylord Palms, Orlando

of one party. Failing to recognize this opportunity and to explore this at the end of voir dire can have potentially disastrous consequences.

To avoid this, you should conclude voir dire questioning with a series of questions that gives jurors one last opportunity to reveal important experiences or beliefs that may have an impact on how they view the case. Ask jurors several concluding questions along the lines of the following:

Q: It is important that we do not miss anything. Has anything come up for any of you during the course of questioning that you have not had a chance to tell us about, perhaps concerning a topic or question that we went over too quickly?

Q: Given all that we have discussed, anyone feel that they need to add something to or qualify any of the answers you gave earlier?

Q: Have any of you had any experiences or do any of you hold any opinions that you feel that either side should know about?

Q: How many of you feel that one side starts out a little ahead of the other in your mind right now?

Q: If you were sitting at either of these tables, would any of you feel that there would be any reason why you would not want yourself as a juror in this case?

Pursuing these questions and others are useful last chance opportunities to identify potential bias. They also will serve as a fitting closure to the voir-dire questioning process. Remember that the entire process must be handled to ensure the optimal response to questions by the jurors. Only then will you maximize the potential for honest and candid disclosures—and a resulting success in selecting your jury.

Jeffrey T. Frederick, *Ph.D. is the director of Jury Research Services at the national legal Research Group, Inc., in Charlottesville, Virginia. A more in-depth treatment of this topic, as well as other aspects of voir dire and jury selection, can be found in Jeffrey's book, Mastering Voir Dire and Jury Selection: Gain an Edge in Questioning and Selecting Your Jury (3d ed. American Bar Association, 2005). This edited version of this article is reprinted with permission of the author.*

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Fifty-six (56) attorneys will be selected. Selection is based on a first-come, first served basis. When your application is processed, you will receive program materials in advance of the program. The case file for this program is used as a source of facts and law for the training. Following lectures, discussion and demonstrations, you will learn primarily through participatory exercises. Following your performances, you will receive suggestions on how you can be more effective by experienced Florida trial lawyers. Your presentation will be videotaped and you will receive a one-on-one video performance review. Your advance preparation is critical to the success of the program and your own learning. You are expected to attend all sessions. If you cannot, please do not apply.

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HOTEL RESERVATIONS

A block of rooms has been reserved at the Hilton UF Conference Center, at the rate of $129 single/double occupancy. To make reservations, call the Hilton directly at 1(352) 371-3600. Reservations must be made by April 19, 2011 to assure the group rate and availability. After that date, the group rate will be granted on a "space available" basis. When making reservations, please reference group code "FBT."

Schedule of Events

Tuesday, May 10, 2011

6:15 p.m. – 9:15 p.m.

Registration

Introductory Remarks

Demonstration of Opening Statements

Discussion of Effective and Ethical Opening Statements

Wednesday, May 11, 2011

8:00 a.m. – 5:30 p.m.

Ethics Tutorial

Opening Statements and Case Analysis

Simplicity and Complexity of Cross Examination

Demonstration of Direct Cross of Expert and Lay Witnesses

6:30 p.m. – 8:00 p.m.

Tutorial of Material Science Issues and Reception at UF Hilton

Thursday, May 12, 2011

8:00 a.m. – 5:30 p.m.
Ethics Presentation

Direct and Cross Examination of Material Science Engineers and Sports Science Experts

Jury Selection Tutorial and Jury Selection

Friday, May 13, 2011

8:00 a.m. – 5:30 p.m.

Ethics – Jury Misconduct

Direct and Cross of Medical Experts

Ethics from the Bench

Faculty Demonstration of Closing Arguments and Discussion of Effective and Ethical Closing Arguments

7:00 p.m. – 9:00 p.m.

Reception and Dinner at UF Hilton

Saturday May 14, 2011

8:30 a.m. – 1:00 p.m.

Closing Arguments

Inside the Jury Room Discussion

Faculty & Steering Committee

Robert C. Palmer, III, Pensacola — Program Co-Chair
Thomas Bishop, Jacksonville — Program Co-Chair
Mike Tanner, Jacksonville — Program C0-Chair
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Hon. Ralph Artigliere, Blue Ridge, GA
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