

LAW



How to Win Your Next Trial During Jury Selection

It was my first trial. While the stakes were not particularly high, I had every intention of doing my best. On a yellow legal pad, I had a list of every question that I intended to ask during jury selection. One by one, I went through the questions during jury selection and repeatedly looked back at my notes. I thought everything was going fine.

When I returned to counsel table during a break in jury selection, the senior partner of our law firm grabbed my legal pad, crumbled it up and tossed it in a garbage basket. Not pleased at all, the senior partner had one instruction, "Go bond with the jury."

Five minutes later, I stood up, and asked the only question I could think of, "Mr. Smith, please tell me about yourself." I learned a lesson that day: the goal is to build and maintain whatever level of rapport with the jurors that you can. It's not what the jurors say that matters; it's the rapport and credibility that you build with them.

Okay, but how do you build credibility and rapport with jurors during jury selection? You LISTEN to them, and respond in a way that shows you're listening and that you care what they say.

Setting the Stage for Success in Jury Selection

Casual Disposition: How do you act at a cocktail party? That's how you should act during jury selection. You should take an easy-going and low key disposition during jury selection. The goal is to create credibility and rapport. Be somebody who makes everybody feel like a somebody.

Your Client's Presence: Your client should never be present during jury selection. It's hard to be critical of your client if they are right there next to you.

If your client is present, show the jurors that you care about them, both in and outside of the courtroom.

"People don't show up at trial to see who's going to win. People show up to see how much you care about your client."

Joseph H. Low, IV, Esq., Long Beach, California

Use Your Own Name: Use your name to make yourself a real person to the jurors. Using your own name creates empathy, e.g., "My name is John." Say your name in a fun, friendly way.

Your Clothes: You say so much with your clothes. If you are married, wear a wedding band. The jurors will Google you and make up stories about you.

Do not have a messy counsel table. This is bad for focus.

Backup Listeners: Use a paralegal or trial consultant whose only job is to listen intently to the jurors. They will hear things you miss (including comments made amongst defense counsel).

"It's not how well you speak, but how well you listen that determines your success."

Chris Voss, Never Split the Difference

Put your pen and notebook down. There's no reason to take notes.

How to Build Rapport and Credibility with the Jury

The Open-Ended Question: Your most potent tool: the open-ended question. "Who", "what", "when" and "why" inspire the jurors to think and share their thoughts. Avoid questions that can be answered with "yes" or small bits of information. The more information you have, the better.

"Listening is not a passive activity. It is the most active thing you can do."

Chris Voss, Never Split the Difference

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Ask questions that start with “How” or “What”. “How” engages because how asks for help. Be deferential and respectful. Summarize the situation and then ask, “How am I supposed to do that?”

- “How can we solve this problem?”
- “What about this is important to you?”
- “How would you like me to proceed?”
- “What kind of evidence would you like to see?”

The Power of Empathy: You want to establish rapport with the jurors. You are dealing with jurors who want to be understood and accepted. Become an expert at empathy. Use simple phrases, such as “yes”, “ok”, “uh-huh” or “I see”.

- “I know this isn’t easy by any means and some of the questions are very personal.”
- “If anyone understands what you’re going through, it’s me.”
- “We want to hear what you have to talk about.”
- “What else do you feel is important to add to this?”

Invite the juror to elaborate by saying, “I hear you. What else can you share with us?”

How to Show Jurors that You’re Listening

Practice being present. This is the hardest thing to do.

“You will never be a great lawyer unless you are mindful.”

Lisa Blue, Esq.

Listening is such an important skill. Train your brain to be totally present in the present moment. Do not listen with the intent to reply, but with the intent to understand.

MIRRORING: Mirroring is the psychological tool that is most effective. A mirror is essentially imitation, when you repeat the last three words (or the critical one to three words) that the juror said.

“[M]irroring is the closest one gets to a Jedi mind trick.”

Chris Voss, Never Split the Difference



LABELING: Label each fear and repeat their emotions back to them. This is called labeling and it exposes negative thoughts.

- “It seems like...”
- “It sounds like...”
- “It looks like...”
- “It seems like you’re reluctant to...”

You will mirror and label your way to a degree of rapport with the jurors.

SILENCE: The last rule of labeling is silence. Silence is powerful. Once you’ve thrown out a label, be quiet and listen. The juror will fill the silence.

“When people talk, listen completely. Most people never listen.”

Ernest Hemingway

Face the Danger Points in Your Case Head-On

List every terrible thing your adversary could say about your case and ask the jurors to respond. Every case has a danger point and if you don’t raise them, it’s a sure bet that defense counsel will.

Defuse the danger point as early in jury selection as possible.

- “Josh did not follow the doctor’s advice.”
- “Josh left the hospital against the instructions of the doctor.”
- “Cocaine was found in Josh’s blood during the autopsy...and we’ve got no explanation for this.”

After you list the terrible things that your adversary will say about your case, ask the jurors for their response, e.g., “What do you think about this?” Then, acknowledge the jurors’ negative thoughts and let the jurors show you how they will

respond to the danger points. Follow up by summarizing what the juror says (labeling and mirroring).

By acknowledging danger points in your case, you will gain credibility with the jury. And you might be surprised, some of the jurors will rally to your client’s defense.

Questions that Get Jurors Speaking

You want to keep the jurors talking. The most important words for jury selection are, “What else?”

- “That’s interesting. Please tell us more.”
- “I never thought of that. What else can you share with us?”

Maintain sustained eye contact with each one of the jurors.

The Power of “No”: Give the juror permission to say “No” from the outset of jury selection. Just letting the jurors know that they have the power to say “No” brings down barriers and empowers the jurors.

“Everyone you meet is driven by two primal urges: the need to feel safe and secure, and the need to feel in control.”

Chris Voss, Never Split the Difference

- “Is this something you’d rather not talk about?”
- “Would you rather not be a juror in this trial?”

You can empower the jurors by telling them, “You are the most important people in this courtroom. You are more important than the judge and the lawyers. Why? Because you decide the outcome of this trial.”

Use Scaled Questions: I love scaled questions. People hate to speak in public. With scaled questions, you just have to add up the numbers.

“How many of you—from 1 to 10—hate lawsuits?”

- 10 = hate lawsuits
- 1 = no problem at all with lawsuits

“If supported by the evidence, how uncomfortable or comfortable would you be including millions of dollars for pain and suffering in your verdict?”

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- 1 = very uncomfortable
- 10 = very comfortable

Never Judge: If there's one thing jurors do not like, it's being judged. If a prospective juror says something that you don't like, nod your head slowly and respond, "That's interesting. Please tell me more." Relax and be nice.

- "It's a very difficult issue to talk about. There's no right or wrong answer."
- "I'm in absolutely no position to make a judgment."

Catch-All Question: The final question is the catch-all question, which is designed to uncover what might be lurking in a juror's mind that has not been discussed.

- "What haven't I asked you that you think I should know that might be a concern?"
- "What haven't we discussed that's important for me to know about?"

COVID-19 Questions: Ask very few COVID-19 questions. Do not ask a juror if they have had COVID.

- "Do you feel concerned enough about COVID, that you wouldn't feel comfortable sitting as a juror?"
- "Are you uncomfortable wearing a mask all day?"
- "There are so many wonderful healthcare professionals that we owe so much to, but that doesn't mean that there aren't some who have made a mistake and have been negligent."

Questions You Can't Answer: If a juror asks a question that you cannot answer, explain that you are not permitted to answer the question, but if permitted, you will provide the answer during the trial.

- "I would like to answer that, but I know what the rules are, and I certainly don't want to violate the rules."
- "I would love to tell you that, but the rules don't allow me to. But I promise I will in opening statement."

Reward and Empower the Jurors

Express Gratitude: A simple "thank you" is a very powerful reward. Whenever a juror speaks up, you should reward them. The jurors will be disarmed by your kindness.

"The concept of reward... is so essential in fostering the person's willingness to continue to share truthful information with you."

Philip Houston, Michael Floyd and Susan Carnicero, *Get the Truth*

Make a conscious effort to speak slowly and distinctly. Slow your rate of speech. A lower tone of voice is more effective than a higher volume.

- "Jim, thank you for sharing that. That took a lot of courage."
- "I know that was very difficult, but you did the right thing."
- "Thank you for sharing that with me. It's tremendously helpful."
- "Thank you for that. I know that wasn't easy."

How to Identify Pro-Defense Jurors

The majority of communication is non-verbal. According to UCLA psychology professor, Albert Mehrabian's 7-38-55 rule, only 7 percent of a message is based on the words, while 38 percent comes from the tone of voice and 55 percent comes from the speaker's body language and face.

Body language and tone of voice are the most powerful assessment tools. Hand-to-face gestures (hand covering mouth) and a closed posture (crossed arms) are forms of non-verbal communication that are often indicative of deception and a closed mind.

Qualified Responses: Pay attention to the jurors' non-verbal communication or qualified answers. Are the jurors crossing their arms and looking down? Do the jurors look away when you're not speaking with them? If so, make sure you raise your concerns with the juror. Qualified answers are always bad. "I'll try" really means, "I plan to fail."

- "It seems that there's something here that bothers you."
- "I heard you say 'yes', but it seemed there was some hesitation in your voice."

If a juror responds with a qualified answer, they are likely holding back information. For example, if you ask a juror whether they would sue if injured by the negligence of another and they respond, "It depends", they are likely holding back information. Truthful responses tend to be direct and spontaneous.

Silent Jurors: No communication is always a bad thing. Often, jurors sit quietly and will not say a word. You need to break the ice:

- "If you were my client, would you want someone like yourself on the jury?"
- "Do you believe that a judgment for millions of dollars can actually get a hospital to change their conduct in the future?"

When you are verbally attacked, do not counterattack. Pause, think and relax.

Juror Who Won't Stop Talking: Occasionally, you will face a juror who will not stop speaking and due to time constraints on jury selection, you need to question other jurors. When this happens, politely interrupt them by saying:

"The Judge has told me that I have to do my whole jury selection in 40 minutes. If I come back to you, would that be alright?"

Know Your Jurors: Collect as much information as you can about your jurors. There is no such thing as too much information. Does the juror own real estate or rent? What kind of social media presence does the juror have? What are the jurors' likes and interests? Are they Democrats or Republicans? It matters.

The trial consulting service, www.VoltaireApp.com, will provide detailed

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information about prospective jurors, including voter registration, criminal background, social media and financial and real estate. Voltaire offers customer support during trial and customized reports about the bias of prospective jurors during trial.

Bias for Medical Professionals: In medical malpractice trials, you need to identify jurors who idolize physicians.

“Some people think the medical care has gone up in the last 10 years. Other people feel the quality of medical care has gone down. Which way do you lean?”

The Golden Question: If you can only ask one question, ask: “If you were injured through the negligence of another person, would you sue?”

If the juror would not sue for their own losses, you can bet they won't side with your client.

Some jurors will hem and haw and give qualified answers, such as “It depends.” If the juror would not sue for their own losses, you can bet they won't side with your client. You want to remove these jurors with a challenge for cause.

How to Identify Jurors who are Weak on Damages

Some jurors will be strong with liability issues, but weak on damages. Many jurors will express doubt about their ability to determine an appropriate amount of damages for non-economic losses.

- “When you heard that we will be asking the jury for money damages for pain and suffering, what was the first thing that went through your mind?”
- “If supported by the evidence, how comfortable would you be with a Judgment of \$7.4 million?”
- “If you were the Governor of New York, would you like to put a cap on how much money an injured person can recover?”

- “What do you think when you see in the newspaper that a jury made a Judgment for \$10 million? What are your first thoughts?”

How to Treat Pro-Defense Jurors with Respect...and Eliminate Them

You want to help the bad jurors get off the jury. Don't let the defendant rehabilitate a bad juror. Make it easy by giving a bad juror a “Get Out of Jail Free” card.

“It is a duty to serve, but you have just as much a duty not to serve when it's not the right case for you.”

Lock the juror into a tight position, so they can't later soften their position when defense counsel or the Judge tries to rehabilitate them. You want to use 4-bullet proof presumptive questions to lock the juror into a position.

“What I hear you tell me is...

- “You have a **strongly held conviction** that you've held for a long time. Is that right?” [slowly nod your head]
- “Your **convictions are not going to change** during the trial. Is that right? [slowly nod your head]
- “**No matter what the evidence is**, you will still hold this conviction. Is that right?” [slowly nod your head]
- “**No matter what instructions the Judge gives you**, you will still hold this conviction. Is that right?” [slowly nod your head]

Once the prospective juror agrees with your presumptive questions, they are locked into a position and you've got a bullet-proof challenge for cause.

Start and End with Power Statements

Start Strong: The first words out of your mouth should convey the importance of the case: “This is a big and important case, but a simple case.”

End Strong: “At the end of the case, we will ask you to do 2 things: (1) Find the hospital responsible for the injuries and death; and (2) compensate the injured, dead and their families.”



Mirroring—Identifying the Ideal Juror: People like people who are like themselves. Select jurors who resemble the age, gender and vocation of your client.

Listen to Your Instincts: Always listen to your instincts. If you have a gut feeling against one of the jurors, listen to your intuition. Nine out of ten times your gut instincts are right.

Why Jury Selection is the Most Important Part of the Trial

Gerry Spence, Esq. once said that if you take care of jury selection and opening statement, the rest of the trial will take care of itself. It's essential to begin every trial by showing that you care about the jurors, you're listening to them and you want to make their job easy.

If you've done your job during jury selection, the jurors will know your name, your client's name and care about your client. And if you've done this, you achieved the most important goal of jury selection: building rapport and credibility with the jurors. Nothing is more important to winning your next trial.



PEACE, HOPE,
AND FAITH

*A beautiful
Life*
Love
to you
Sally



(left) Two very special people: My mother and her twin sister.

(above) Who could resist? Our furry friend just had to devour my book, *The Law Firm of Your Dreams*.

(right) Lisa with a proud graduation hug for our son Tim. Congratulations Tim!



THE
MASTERMIND
EXPERIENCE

The MAGICAL Power of the Mastermind



The two partners of a start-up law firm were honest and scared. Turns out, one partner confessed that he wasn't sure he had the \$ to attend a mastermind. But the two partners realized that the growth of their law firm had to be a priority, so they found the \$ and time to attend the mastermind.

Over the next 3-5 years, something magical happened. The law firm kept growing. New team members couldn't wait to join this firm and they had one success after the next. In just a few years, the personal injury law firm in New Jersey went from two lawyers and one staff member to 22 employees. Turns out, this law firm is thriving. It has been amazing to watch and the story keeps getting better.

How did this happen? The two partners realized that they didn't have all of the answers and they needed help. The start-up law firm got advice from other lawyers who had already gone through the start-up phase and they leveraged this wisdom from high achieving members of the mastermind.

Just a few years later, the results were stunning. That, my friend, is the power of a mastermind. In a mastermind you leverage the knowledge and wisdom of ultra-high achieving lawyers who have already been where you want to go. And there's nothing like it.

The Mastermind Experience is Coming to the Dutch Caribbean in February, 2022

On February 18, 2022, the **Mastermind Experience** is coming to the Dutch Caribbean island of Curacao. What happens at the mastermind? An elite group of lawyers meet to brainstorm, collaborate and share solutions. The sharing of ideas is special and the brainpower is off the charts.

If anyone has to sell you on the benefits of a mastermind, you're not a good fit. The mastermind only welcomes those who strive continually to get better, generously share their wisdom, and are transparent about their mistakes.

On top of this, we have a little fun in the hidden gem of the Caribbean, Curacao. Image yourself on an island in the middle of the Caribbean sea, a pearl white beach stretching for miles, crystal clear ocean waters all around you, and in the middle of the island, a tall pink lighthouse. Sounds like paradise, right? This can be you.

Bring your partner, marketing director or associate and let them see the power of a mastermind. The **Mastermind Experience** may be the best thing you ever do for your career.

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You can apply to join the fun at www.MastermindExperience.com and if you've got questions, call John Fisher at 518-265-9131.

We hope you make 2022 a transformative year for your law firm!

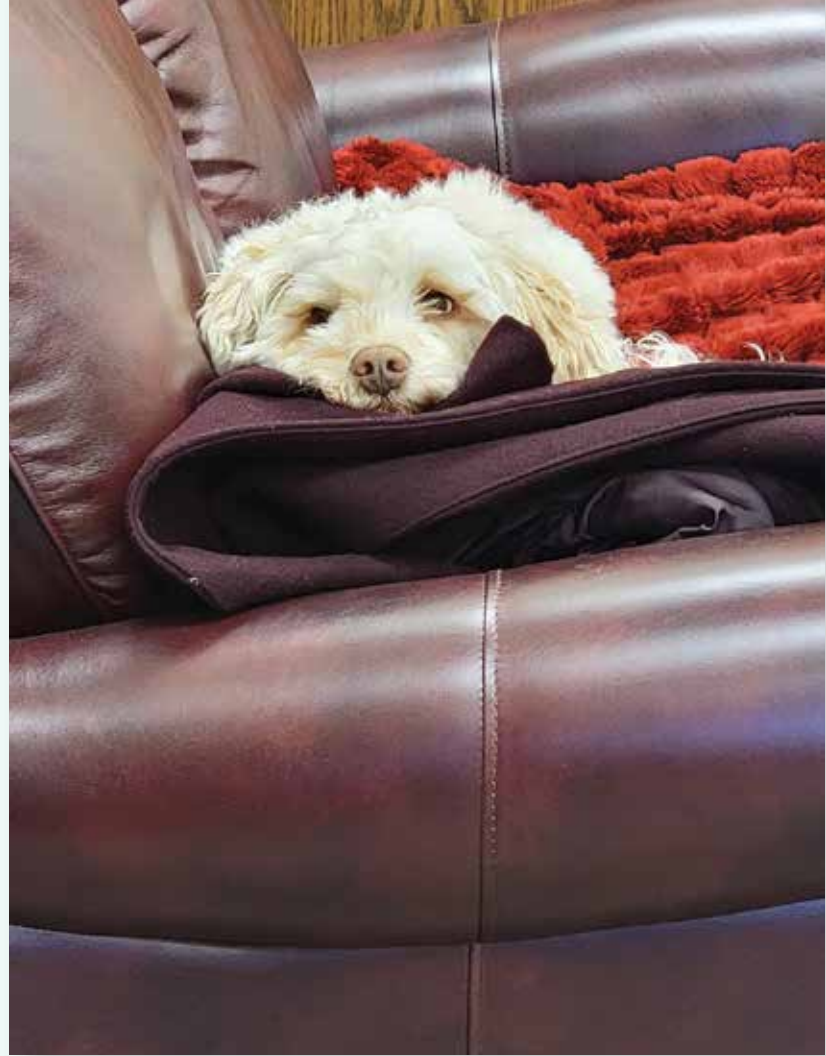
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(above) How can you fail with a friend like Seth Price, Esq.
(and his trusted partner, Scout).



(above) Another tough day for Patch.

WHAT THEY'RE SAYING ABOUT JOHN

Ellen Liburt
3 reviews
★★★★★ a month ago

A top-drawer NYC law firm referred me to John Fisher as the go-to guy for medical malpractice in these parts. One incredibly helpful conversation with him showed me why. I felt heard. John's prescient questions were often steps ahead of where I was heading, the mark of one who knows the terrain inside and out. His remarks resonated knowledge, experience and kindness, making me feel the tiller was in trustworthy hands. But of all his stellar virtues, there was none I appreciated more than John's graceful ability to keep our conversation on track despite the number of moving pieces in my case. He gave me valuable insights into my legal situation using language that lodged them in my head, whence they've been radiating reassurance ever since. In short: This attorney's also a rock star, and an extremely generous one to boot. If you can get John Fisher on your side—rejoice!!

Trevor Meyer
1 review
★★★★★ 2 weeks ago **NEW**

I reached out to Mr. Fisher's office a few weeks ago and had the pleasure of speaking with Randy Smith paralegal at the firm. My husband and I are senior citizens and did not know where to turn with my husbands case. Randy was not only kind and patient but her expertise in our case was fathomable. We really did not know where to begin but with Randy's assistance we were able to explain in detail my husbands case. She never hurried or rushed us which was very important to us. She made us feel comfortable and that she really cared about us as people. Randy advised us that she would look into the matter and get back to us. Today I spoke with Randy and as promised provided the information necessary for us to proceed. Folks like Randy are rare and we feel so fortunate to have connected with her. I would highly recommend anyone who needs an attorney to contact Mr. Fisher's office and speak with Randy. She is a keeper.

Kari Elliott
4 reviews
★★★★★ a week ago **NEW**

John Fisher is an exceptional attorney. He goes far above and beyond what I believe most attorneys do. He makes your case personal. He got to know our family spent time with us introduced us to his family. He is kind, compassionate, and caring. To this day I still call John my friend. He worked our case tirelessly and we could not have been more pleased with the outcome. If you need an attorney who will not only give your case 1000% but will actually care about you as a person, call John Fisher. I promise you won't regret it.

John H Fisher, PC
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Grateful for our firm's 500th Google review!
The kind reviews mean a lot to us. Thank you for your support!

John H. Fisher, P.C.

Website Directions Saved Call

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Practice Limited to the Representation of Seriously or Catastrophically Injured Persons

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