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Jury selection and the feminine advantage

LEARN HOW TO USE ALL THE ADVANTAGES IN VOIR DIRE THAT COME YOUR WAY AS A WOMAN

Whether we want to acknowledge it or not, female lawyers in 2026 still face more challenges in trial than male lawyers. They are judged by the way they look, the way they act, and they are often underestimated simply by the virtue of their gender. We still hear stories from female trial lawyers about how judges assumed they were the court reporter or a male lawyer's assistant. Many female lawyers are, perhaps rightfully, apprehensive about trial. From talking to female lawyers, the most common fear we always hear is about communicating with jurors, gaining credibility with them, and about how jurors will perceive or judge them.

It's no surprise that jury selection is often lawyers' most feared (or hated) part of trial. You get a few hours to meet 30+ new people, get to know them in a very specific way, and hopefully get them to like you, or at the very least, do not offend them... and then you have to pick between them! It's like speed dating, but where a bad outcome is not just a bad dinner or lame conversation, but can affect your client for the rest of their life.

Though most lawyers are wary of jury selection, it has been my impression as a jury consultant that female lawyers seem especially nervous about jury selection. It's strange, though, because most female lawyers I have encountered are conscientious, prepared, and incredibly hard working. They are also dynamic, passionate, and interesting people. They should thrive in jury selection. Even if you are a perfectionist and painstaking about preparation, like most female trial lawyers are, you can learn how to pick a good jury, and even learn to like it.

What female lawyers don't seem to realize is that women have unique skills and qualities that can lend themselves to a thoughtful, well-done jury selection. Though there may be more male trial lawyers, and they may have more trial experience, that does not mean that male

lawyers are better at jury selection. Some of the best jury selections we have seen have been from female trial lawyers. We encourage female lawyers to lean into the advantages of their sex, the advantages of living life as a woman when facing a jury.

Feminine advantage # 1: The ability to listen

Listening during jury selection is the most obvious and easiest attribute of a good jury selection, but the least done. Trial lawyers as a whole seem to find it hard to actually listen. Perhaps the years of learning to advocate and argue get in the way, but most lawyers in jury selection either talk over jurors, or blow past what they are really saying to get to whatever point the lawyer had in mind. Female trial lawyers, however, are built differently.

Women are accustomed to compromising and considering multiple points, rather than bullying and taking over. There's an ongoing joke online about how men will go to dinner with a friend and be unable to answer basic questions about the ongoings in that friend's life afterward. (They broke up and you didn't ask why or how he's feeling? He's moving and you didn't ask where?) Women, of course, do not have this problem, and will leave dinner with a friend completely up to date not only on what happened, but the reasoning behind it and how their friend is feeling.

This trend similarly plays out in jury selection. Asking questions and really getting to know jurors in a short amount of time requires pointed, open-ended questions. This skill is invaluable in jury selection. Sometimes, these questions address very sensitive or hot-button issues. Jurors hesitate to answer those questions if the person asking the questions is not really listening. They clam up or give short answers. Listening to jurors and really addressing what they say meaningfully, with consideration and concern, is

the first step to gaining credibility with the jury.

From a jury consultant's perspective, however, listening also means something else. What are they really saying? What does it mean about the viewpoints you are looking for in your case? When you craft your voir dire – which you should, it should never be extemporaneous – you should have ideas of who is good or bad. Really, really listening to their answers is the first step to liking a juror, or attempting to get them off for cause. Sometimes two very different answers can seem very similar to a bad listener.

In wrongful-death cases, jurors are often asked about wrongful-death damages. Some jurors say, "There is no price for a life" or "Nothing is high enough when someone dies." Those sound very similar but mean very different things. Someone might mean, "I could never give money when someone dies," or they could mean, "Death is precious, someone's life is priceless" (which could be a very good juror). Good listening means active listening – hearing them, taking it in, and then following up. "Wow, what an interesting point. What do you mean by that?"

Feminine advantage #2: The "mom card"

Playing the "mom card" seems like cheating, but why not? Lean into the fact that most people really love and communicate with their mom. Moms are warmth and acceptance. Moms also see and hear everything. This is an advantage that no male trial lawyers could compete with, no matter how hard they tried. When something bad happened in school, who did you call? When you had a problem with your friends, who did you talk to? When you were sick or hurt, who did you ask for? Moms are powerful.

This is an unspoken advantage. Obviously, you are never to imply or state that you are a juror's mom or to act like it in court. But, simply keep it in the back of your mind. Know that most jurors are more likely to open up to you and feel comfortable around you simply because you are a woman, especially with cases dealing with sensitive issues.

The same goes for prepping your plaintiffs and making them feel comfortable. A warm smile when someone is being vulnerable, a soft thank you when someone opens up, these are all evocative of when a child has to come forward to their mom in a hard time, and it is a valuable asset in a trial which can be incredibly fraught with tension.

Not a mom? No problem. Neither is one of the authors of this article. But jurors don't know that and make the same gendered assumptions that result in every woman over 25 receiving Mother's Day wishes if they leave their house on Mother's Day. While that assumption is irritating on Mother's Day, in the courtroom, we accept all advantages that come our way.

Feminine advantage #3: Not mansplaining

Mansplaining: A man's ability to talk at someone and go on and on in detail to a woman who is a more qualified expert in the subject. We all know it, we've all seen it, and it, (likely), happens to us all the time. A variation of it happens in trial too. Male lawyers often talk at jurors. They tell them about issues, without truly explaining, or without showing how or why what they say is true. They misunderstand what the juror said earlier (see advantage #1, listening), make an assumption about that juror's perspective, and often bulldoze over the juror toward a cause challenge.

Most women are not built this way. Probably because of years of being underestimated or not listened to the first time, women are accustomed to building their cases and thoughtfully laying out facts and evidence as proof. This tactic is much more successful in trial. We are in a "show me" time. Jurors are used to video proof and easy access to technology. Telling them anything and thinking it is enough is *never* enough anymore.

Feminine advantage #4: The desire to be prepared

Female trial lawyers are the most prepared people we have ever seen. These type A personalities tend to be rehearsed several times over, with scripts and drafts and notes everywhere. This is an incredible asset for jury selection. If you come prepared with a set of questions that are designed to elicit the responses you need and with an idea of the answers you might hear, you are going to be unstoppable in jury selection. No effective jury selection can be done without prepping your questions and going through the possible answer scenarios, either on your own or with a few colleagues or friends helping you work through it.

Before jury selection, confront your case's biggest issues. Make a list! They could be things like delay in treatment or attorney-referred care, which affect damages, but those should be secondary to your most important points – points that affect how jurors perceive liability. What are the defense's best points? How do they sound reasonable? What kind of person would find these answers reasonable? These questions are how you will find your best and worst jurors.

New trends in jury selection reflect that a few well-crafted liability questions can show the difference between how your best jurors and your worst jurors perceive your case. But these take preparation, nuanced thinking, and deep understanding of the defense's best points. Lawyers who perceive all the defense points as flawed and laughable are likely to miss huge things in jury selection and might just lose their case. Think about what the jurors who will hate your case will think and why. Then ask about it.

Years ago, a plaintiff's attorney in voir dire for a sex harassment asked each juror, one by one, "What are your feelings about the Me-Too movement?" This type of question, an open-ended question about a feeling aligned with your case, asked to each juror in a way that puts them on the spot and forces them to really state their position to you, can be incredibly helpful. You can hear nuance, emphasis, what matters to them (or doesn't), and you hear from every juror. This goes way beyond, "Who hates lawsuits?" These questions tell you whether your case will resonate with jurors, or not.

Feminine advantage #5: Being vulnerable without seeming weak

This is such an interesting phenomenon. Women are often scared of seeming weak and vulnerable, and they often overdo it, and get called "pushy" or "bitchy." But the secret is leaning into your vulnerability, and femininity is often much more powerful than hiding it. In voir dire, the most powerful thing to a jury is seeming human and invested.

When talking to a jury, female lawyers do not need to be perfect. You can mess up, make a joke, flub a name, and often it is more endearing than disabling. If you are so nervous that you cannot put a sentence together, that's an entirely different issue. But if you are nervous in a way that makes you seem human, jurors might like you even more.

You'll find that your vulnerability encourages theirs as well. Female trial lawyers often find success by admitting to feeling nervous or feeling uncomfortable about asking a certain question because it is sensitive, and jurors will often want to help them and provide answers. Jurors want to engage with real people. When jurors see authenticity and a genuine interaction from a lawyer, they are pulled away from all the lawyer stereotypes, and they start to see you as a believer and an advocate. That's where the good verdicts come.

Feminine advantage #6: Observational skills

Hand in hand with the higher emotional intelligence many women have is the ability to use that emotional intelligence to observe smaller cues in the jury pool that show how prospective jurors are responding to a case. In our experience, women are more likely to notice the small reaction of a particular juror and realize they need to follow up with that person. Or, they will see how a prospective juror that might not seem like a leader is the one helping everyone make sure they get in the correct seat when they come back into the courtroom after a break. If jurors are clamming up on you (or your male colleague who is handling the questioning), this skill set can help give you some insight that you are not receiving from the questioning itself.

Feminine advantage #7: Asking for help and collaborating

The jury consultant

To be clear, Casey is writing this section, not Claire, but Claire is adding this: The number of male attorneys that I watch hire a jury consultant and then completely ignore everything the jury consultant says stuns me. Women sometimes ignore the advice of the folks they have hired to help as well, but at significantly lower rates. I do not understand hiring someone to help you with a part of the trial and then not listening to what they have to say. I will never understand it. It frustrates me to no end.

If you feel confident in your jury selection capabilities and do not want a consultant, just skip it. But to have such a resource there and not rely on them is tomfoolery at its finest. Jury consultants, by nature of their job and the fact that they often do not stay for the full duration of the trial, have picked significantly more juries than most trial lawyers. A trial lawyer in California with a heavy, heavy trial calendar may see 10 trials a year. Most do not see anything close to that number. Jury consultants often pick upwards of 20 juries a year, separate from the focus groups they also work on.

Hiring a jury consultant, doing focus groups, or workshopping your voir dire with friends does not make you less capable. Reading the Post-it notes from your colleagues during voir dire is not a sign you do not know what you are doing. I sometimes huddle up with my colleagues

before I sit down, both at the end of voir dire and sometimes at the end of a witness examination, to make sure I did not miss something a Post-it note could not adequately convey.

Trial at its best is a team sport. Use your team. We have all watched a player in any sport try to do too much and blow the game. Pick your head up, pass the ball, and have a better time. But hey, if you've read this far into an article on feminine advantages in jury selection, you likely are not the person who needs to hear this.

How do we tell the men this?

Are you are now thinking to yourself, “Yes, *I should do voir dire; I will be great at it.*”? But perhaps you work with a man who thinks he is the greatest jury-selection expert of all time and you are not sure how you are going to get a chance to do it. You are not alone: Claire estimates that of the over 200 juries she has picked, only 20-25 of those involved voir dire with female lawyers (and three of those were with Casey).

Try to squeaky-wheel your way into the parts of jury selection they under-value. We have seen male trial attorneys willing to give up mini-opening or the questioning of alternate jurors. Judges are also more inclined to allow multiple attorneys to participate in voir dire if you make it clear that it is for someone to gain experience.

Judges are aware of the gender and age disparity surrounding trial work and

especially if you are a woman under 40, you are not likely to have to explicitly say you are asking for the ability to have multiple attorneys participate in voir dire for you to gain experience. (We again take our advantages where we find them even if they come from gender bias.)

Sometimes, other trial attorneys have to see you excel to realize it is time to give you a chance. This advice rings true for other parts of the trial as well. Get experience however you can. Figure out which witnesses they do not value in the trial (very often the before and after damages witnesses, who are actually some of the most challenging witnesses to examine at trial) and offer to handle those examinations.

Jury selection and trial are for you. We cannot wait to hear about your awesome results. ♦

Claire Plotkin is a jury consultant in Los Angeles who has consulted in all types of civil litigation, including employment, personal injury, and business disputes. She selects juries, mock-tests cases, preps witnesses to testify, and gives advice on how best to present your case in trials, from large to small.

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