

LOOK OUT FOR THAT ICEBERG!

A Dozen Modes of Thinking That Can Sink your Jury Selection

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1. “I’ve got a good feeling about this juror...”

Intuition is only good thing in jury selection when it is informed by a clear idea of the qualities the defense is looking for in a juror. It is quite one thing to have a favorable first impression based on superstition, and quite another to be positive because this person seems to exhibit characteristics favorable to the case. Most of the time, this type of first impression is wrong.

- .2. “I can tell this juror likes me.”

Just because a juror is polite and friendly does not mean that she would be the right person for the case. The juror's apparent friendliness toward an attorney does not always translate into a favorable verdict.

3. “This juror reminds me of...”

Mentally associating a juror with an unrelated person is a worthless endeavor. Each juror needs to be evaluated on who he really is.

4. “She’s black. She’ll be a good juror for us.”

Snap decisions based upon gender, race, ethnic heritage or any other broad categories are dangerous. If the client is African-American, he may want to see a black person on the jury regardless of how unsuitable the individual juror appears. Try to dissuade the defendant if the juror is not appropriate for the case.

5. “I know he SAID he feels X (where X= the opposite of the heart of your case), but I’m sure I can change his mind.”

If a juror says that he feels a certain way, believe him. The juror comes to court with a lifetime of experiences, and it would be unrealistic to believe that we can change his true beliefs over the course of a trial.

6. “Let’s put her on. We need something good to look at in the jury box.”

This comment gets jokingly made far too often. If the trial is going to last for a number of weeks or months, some attorneys are tempted to include at least one juror solely based upon pleasing physical appearance.

7. “If I ask too many questions, the jurors won’t like me.”

Wrong! If the lawyer has solid reasons for asking the questions, the jurors will see him as doing his job. There is no need to apologize for asking voir dire questions.

8. “He’s just too nice to vote for conviction.”

Want to bet? Look at the juror’s attitudes and opinions instead of his pleasant personality.

9. “I can tell she would make a good juror. I don’t need to ask her any questions.”

This feeling sometimes comes from a fear that the prosecution will know that the defense likes a particular juror just from asking her questions. All jurors need to be asked questions, even the one you can “tell” about.

10. “It will look bad to the jury if I make objections during voir dire.”

Objections do not look bad: not objecting to outrageous characterizations by the prosecution looks bad.

11. “This jury stuff isn’t really important. I just want to try my case.”

Remember where the verdict comes from. Jury selection is one of the least understood, most important parts of trying a case.

12. (In death penalty cases) “I know that this juror would be terrible in the penalty phase, but I think I can win him over in guilt.”

This is dangerous thinking. The odds of getting an acquittal in the guilt phase are not worth betting the life of the defendant.