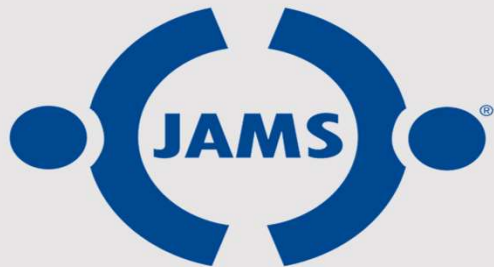


Trial Tips from the Judiciary

Presented by:



Hon. Heather A. Welch

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Agenda

- ❖ Developing and Testing Themes That Will Resonate With The Jury
- ❖ Jury Selection And The Use of AI
- ❖ Embracing Juror Questions

The Jury Pool's Role in Assessing a Case and Developing Themes

People bring their own beliefs, experiences, and expectations to jury.

- Indiana jurors versus California jurors will have different reactions to evidence.
- Good to do research on the jury pool early and build a profile of the likely pool and experiences/qualities that align with your case.
- Avoid stereotypes as you continue to profile good jurors.

Theme Testing With Jury Consultants and Focus Groups

- Need narrative
- Decisions based on beliefs not factors – find aspect of the case that makes sense to jurors (business disputes framed as agreements because all jurors understand agreements; insurance coverage may focus on the underlying issue to resonate with jurors)
- Make jurors' job easier

Jury Consultant's Role in Witness Preparation

- Understand how the witness fits in your overall themes and develop that role during depositions
- Consultants can help keep lawyers on theme
- Consultants understand witnesses have fears / concerns / feelings about the dispute and can help explore them

Assessing How Your Case Will Resonate With Potential Jurors as Part of Effective Mediation Strategy

- ✓ Use Retired Judge as mediator to evaluate your theme and trial strategies
- ✓ Prepare the client and provide a realistic view of how a jury trial plays out in a courtroom, both positive and negative
- ✓ Provide information about the processes used by the jury pool staff and expectations of who appears for jury duty

Selecting a Fair & Impartial Jury

- It is a must that you connect with the jurors
- **Mini-Opening statements:**
 - ✓ Introduce the trial theme
 - ✓ Set up key voir dire questions
 - ✓ Lean into bad facts more than the good ones
- Have a conversation with jurors
- Have a candid discussion about damages/issues that might generate different viewpoints
- Don't be afraid to discuss tough topics such as weakness in your case

Using AI for Jury Selection

- Role of AI in Modernizing Jury Selection
- Streamline the process and improve the quality of juror decisions
- AI-assisted jury selection could significantly expedite proceedings while maintaining the fundamental right to a fair trial
- This innovative approach aligns with the Judiciary's commitment to leveraging technology to improve its legal system
- AI algorithms could potentially identify prospective jurors more likely to engage in specific critical thinking and decision-making styles to suit your case

Using AI for Jury Selection

AI enhances jury selection by utilizing advanced algorithms to process large volumes of personal information quickly.

How AI can facilitate your jury selection process:

1. Set up and log in: Select from one of many free public platforms such as ChatGPT-4o, Claude 3.5, Sonnet, or Gemini 1.5 pro
2. Tell AI about your case details
3. Be sure to not breach confidentiality and only share generalized and non-specific details that will not identify your client unless your firm has PrivateGPT

AI Example

Following is a hypothetical example:

- a. **Trial Venue Details:** This legal case is about a wrongful death arising from alleged hospital healthcare givers negligence. Create a summarized demographic profile of the average prospective juror in Indianapolis, Marion County.
 - b. **Plaintiff Characteristics:** The husband, a white male, 67, has filed a medical malpractice lawsuit on behalf of his Wife who died three years ago because of medical malpractice at a hospital. Had pneumonia and fell on knee. The right knee was painful and swollen. Wife did not respond to IV antibiotics. Cause of death: sepsis.
 - c. **Defendant Characteristics:** Large Hospital Corporation doing business in Indiana. Operated 10 hospital locations for 50+ years. History of patient complaints for being understaffed with a less than positive reputation for quality medical treatment of patients.
- **Result – Ideal Juror Profile: Age: 50 years and older.** Older jurors, particularly those close to the plaintiff's age or older, may better understand the plaintiff's grief and be more sensitive to healthcare negligence. They may have had personal experiences with the healthcare system, making them more likely to empathize with the loss of a spouse.

AI Jury Selection Search Results

- ❑ **Gender: Female** jurors are more likely to be empathetic in wrongful death cases, especially involving healthcare. They may resonate with the emotional aspects of losing a spouse and might feel that the hospital should have done more to prevent the death.
- ❑ **Race:** While the plaintiff is a White male, Marion County's diverse population includes significant numbers of **Black and Hispanic** jurors. Individuals from minority communities may harbor distrust toward large institutions, particularly those with a history of complaints and perceived poor treatment of vulnerable populations. This skepticism could work in favor of the plaintiff.
- ❑ **Socioeconomic Status: Middle to lower-middle class** jurors may have more critical views of corporate healthcare institutions. They could relate to the idea that hospitals prioritize profit over quality care, particularly if they have faced similar struggles with medical institutions.

AI Jury Selection Search Results, Continued

- ❑ **Marital Status: Widows or individuals who have lost a close family member** due to healthcare issues are likely to empathize with the plaintiff's experience of losing his wife.
- ❑ **Occupation: Healthcare professionals** (e.g., nurses, aides) who have seen understaffing issues firsthand could be sympathetic to the claim of negligence. However, healthcare administrators may side with the hospital. Other ideal occupations include **teachers, caregivers, and social workers**, who may possess a higher degree of compassion and sensitivity to negligence cases.
- ❑ **Attitudes Toward Corporations: Skeptical of large institutions.** Jurors who distrust large corporations, especially hospitals with a history of complaints, may be more inclined to see the hospital as culpable. They may believe the hospital sacrificed patient care due to understaffing or negligence.

AI Jury Selection Search Results, Continued

Excluded Juror Profiles:

- **Young jurors (under 40)** who may lack life experience with healthcare and elder care.
- **Corporate defenders** or those with strong ties to business and management, who may believe the hospital's practices were reasonable given the challenges of managing large institutions.
- **Highly educated professionals** like doctors, who may focus more on medical complexities and give the hospital the benefit of the doubt.

By targeting **older, middle-income, female, and empathetic** individuals, the plaintiff may secure jurors more likely to hold the hospital accountable for the loss of his wife.

Juror Questions

ABA Principles for Juries & Jury Trials

- **Principle 13:** The Court and Parties Should Vigorously Promote Juror Understanding of the Facts and the Law
- **Principle 13(c):** In civil cases, jurors should, ordinarily, be permitted to submit written questions for witnesses. In deciding whether to permit jurors to submit written questions in criminal cases, the court should take into consideration the historic reasons why courts in a number of jurisdictions have discouraged juror questions and the experience in those jurisdictions that have allowed it.

Juror Questions, Continued

- Jurors should be instructed at the beginning of the trial concerning their ability to submit written questions for witnesses.
- Upon receipt of a written question, the court should make it part of the court record and disclose it to the parties outside the hearing of the jury. The parties should be given the opportunity, outside the hearing of the jury, to interpose objections and suggest modifications to the question.
- After ruling that a question is appropriate, the court may pose the question to the witness; in so deciding, the court should consider whether the parties prefer to ask, or to have the court ask, the question. The court should modify the question to eliminate any objectionable material.
- After the question is answered, the parties should be given an opportunity to ask follow-up questions.

Juror Questions & Benefits

- Benefits of juror questions and how you can pivot in the middle of the jury trial to make sure you are answering the jurors' questions
- Counsel can clarify misunderstandings about the testimony
- Counsel can answer questions of jurors in other testimony
- Counsel can also focus on particular jurors
- Juror Questions can be addressed in Closing Arguments

Juror Question Example #1

INDIANA COMMERCIAL COURT

STATE OF INDIANA)
) SS:
COUNTY OF MARION) CAUSE NO. [REDACTED]

[REDACTED])
) Plaintiff,)
))
) vs.)
))
[REDACTED])
))
) Defendant.)

I. My question(s) is/are directed to Mr. Moffatt.

II. My question(s) is/are: do you usually see a decline
in a Dr's WRVU's when a Dr leaves ~~an~~ a
practice? ~~an~~

↳ If so, did you take that into account
when calculating the damages.

Juror No. 4 5/10/23

The Court didn't
ask these questions
by agreement of
the attorneys.
Heather Welch

Juror Question Example #2

STATE OF INDIANA) IN THE MARION SUPERIOR COURT
) SS: CIVIL DIVISION, ROOM ONE
COUNTY OF MARION) CAUSE NUMBER [REDACTED]

[REDACTED])
) Plaintiff,)
))
) v.)
) [REDACTED])
))
) Defendants.)

- I. My question(s) is/are directed to Robt Wilcox.
- II. My question(s) is/are: Did the van hit
the lawn mower and then the mower
hit Mr. Daly?
Then Did the van hit Mr Daly?
was Mr Daly sitting on mower, or was
he standing next to lawn mower?

Juror No. 4

8/10/23
The Court
asked the
above questions
by agreement,
Thanks
Heathera Welch



Hon. Heather A. Welch joined JAMS after a distinguished 23-year career on the Marion Superior Court (Indianapolis), including service as an Indiana commercial court judge for almost eight years and the presiding judge of the Marion Superior Court during the COVID-19 pandemic. At JAMS, she mediates and arbitrates commercial and complex negligence cases. While Judge Welch presided over commercial and business disputes, she also managed a civil docket comprising over 120 civil jury trials. While on the bench and now, Judge Welch held many leadership roles, including current Chair of the ABA Judicial Division, President of the Indiana Judges Association, elected member of the American Law Institute, elected member of Litigation Counsel of America and legal writing adjunct professor at Indiana University McKinney School of Law.