

Law You Can Use: Consumer Information Column

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Jury Psychology Plays Role in Civil Cases

Most people have seen television shows that feature jurors listening to lawyers talk about criminal cases, but juries are also used for civil cases, which generally have to do with contract disputes or injury cases, such as from traffic accidents. A jury role in a criminal case is very different from its role in a civil case. In a criminal case, a jury must decide guilt or innocence that may result in the loss of someone's freedom, whereas civil cases generally have to do with who owes money to whom. This article will address what lawyers must consider when preparing cases before juries in civil cases.

Q: *Why are juries used to decide cases?*

A: The "jury" concept was originally devised as a safeguard for citizens against tyranny, and to help ensure that controversies were decided justly and without political or other influences that had nothing to do with the controversy itself. The right to a trial by jury remains an essential aspect of the American legal system. The law does not require a jury to decide cases, but generally, if either party in a dispute asks for a jury, a jury will hear the case. Sometimes, both parties request a jury, but often, in disputes between businesses, neither party requests a jury.

Q: *What must attorneys consider when preparing for cases involving a jury?*

A: Since juries are made up of persons chosen randomly from lists of registered voters or licensed drivers, attorneys must consider how a particular side of the case or controversy might appear to such a random cross-section of the community. Jurors bring varying life experience, beliefs, prejudices and biases, and while all jurors swear to be impartial, all of them analyze evidence in light of their own experiences and biases. Therefore, lawyers on both sides of the controversy will try to anticipate the potential experiences and biases of the jurors and prepare accordingly.

Q: *What do lawyers look for in a jury?*

A: The best lawyers can expect is that a jury will be fair and free of fundamental prejudice or bias against the parties to the dispute, and that they will be able to apply logic and common sense to the evidence presented. In order to try to find jurors who can be both fair and reasonable, lawyers have the right to use a limited number of "challenges" to exclude some people from sitting on the jury. Of course,

the plaintiff's lawyer will want a jury that is inclined to be sympathetic towards those who claim injuries resulting from carelessness or negligence, while a defense lawyer may prefer a jury that is more inclined to review the facts of the case without being unduly influenced by the suffering of the person claiming injuries.

Q: *On what basis do lawyers exclude certain jurors?*

A: Voir dire is a process that is conducted at the very beginning of a trial to elicit the thoughts and beliefs of the jurors so that the most effective jury panel can be selected for a particular case. It also allows the lawyers on each side to discuss directly with potential jurors some of the difficulties the case will present. During voir dire, the judge and lawyers for each side question each juror to determine if any juror has a significant fundamental prejudice or bias exists that would provide "cause" to excuse that juror from service. Also, voir dire is used to determine if any juror has particular beliefs that might lead a lawyer to want to use one of the three "peremptory" challenges each side is entitled to use to remove a juror without giving a reason. Jurors must be questioned carefully for the voir dire process to be effective. The voir dire process can take about an hour, but often takes much longer. It works best when the potential jurors are open with the lawyers, whose job is to encourage an open exchange.

Q: *Is jury behavior predictable?*

A: Jurors generally try to do their best, but the legal process and the judge's instructions may be foreign or confusing, and a juror's good intentions to be objective and follow directions can easily give way to influences of bias, personal experience and gut reactions to what the juror is hearing in the courtroom. Therefore, it is safe to say that jury behavior is not very predictable.

This "Law You Can Use" column was provided by the Ohio State Bar Association. It was prepared by C. Bruce Williams, partner in the Salem firm of Williams & Apple Co., LPA. The column offers general information about the law. Seek an attorney's advice before applying this information to a legal problem.