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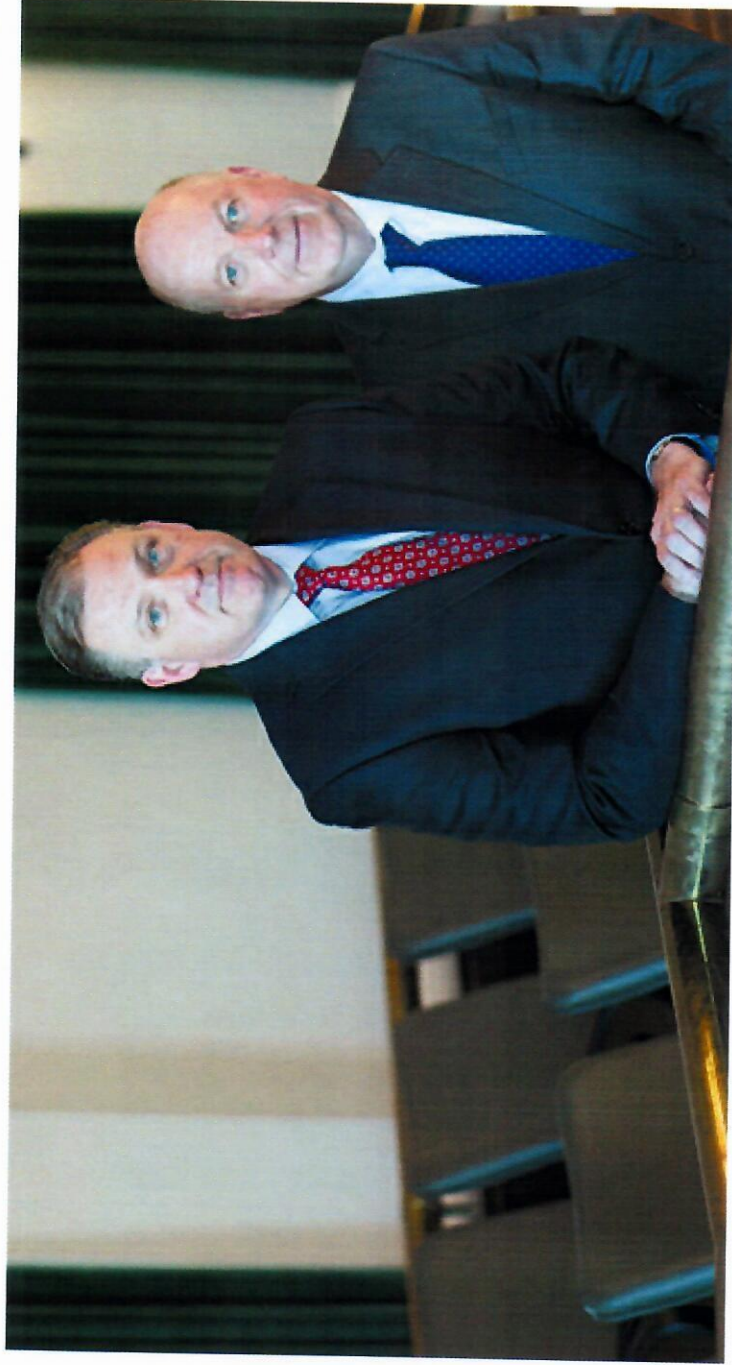
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Scott Middleton and Lawrence Voigtsberger / Photo by Judy Walker

Tough seats to fill

By: Adina Genn | March 30, 2018

In a pool full of prospective jurors, trial attorneys have lots to assess. Who's biased? Who's empathetic? Who can think for themselves? Those determinations can make or break a case, and mean the difference in a winning a case for a client.

That's why prosecutors, defense attorneys and judges need to quickly evaluate jurors by studying body language and facial expressions to gain insights as to how they think.

They also consider the profession that jurors might align with, depending on the case and client. In a criminal case, for instance, an attorney might not want a juror who is related to someone in law enforcement, or in a medical malpractice case, someone related to a physician.

"We're looking for bias-free jurors to decide the case on the merits," said Anthony Grandinette, a Mineola-based defense attorney.

"I want six people who see things my way," said Scott Middleton, a partner at Campololo, Middleton & McCormick, a law firm with headquarters in Ronkonkoma.

But, Middleton pointed out, "the other side is doing the same thing."

Business lesson

A jury summons might spark dread for the recipient, but Suffolk Commissioner of Jurors Lawrence Voigtsberger pointed out that serving is a "civic duty."

"It's a constitutional right to have a trial by jury whether civil or criminal," he noted. "Jury duty is mandatory, but it's typically a very good learning process. Hopefully, no one gets involved in the court system as a victim, but at least you have an idea of what the process will be."

And while businesses on Long Island may see jury duty as disruptive to their organizations, Voigtsberger said, most trials last two to three days, though "there are always exceptions."

Jurors not only see the justice system up close, but also gain insights into the flaws of a contract that prompted litigation.

"All that is brought out in evidence," Voigtsberger said.

Level playing field

Ultimately, Middleton noted, trial attorneys want jurors and alternates that are "impartial to listen to your case and decide what should occur at the end."

That can mean understanding that the person on trial doesn't have to testify – and a juror shouldn't hold that against someone.





Anthony Grandinette

"Some people are terrified to speak or are poor public speakers," Grandinette said. "It could be a bright intelligent person, who got nervous. Magnify that process with facing jail time. Assume that individual got an 11th grade education, and is accused of a crime ... and not articulate and is cross-examined from a Yale graduate who could make anyone look like an idiot. You have to make sure the playing field is level. Innocent until proven guilty."

And to the untrained civilian, some of the questions might seem surprising.

Consider, for example, Judge Joan Azrack, who at federal court in Central Islip, reportedly asked about the favorite TV shows of potential jurors in the Ed Mangano, Linda Mangano and John Venditto trial.

That's par the course, attorneys said.

"I like to ask people who watches CSI and NCIS," said Robert Fallarino, a trial attorney with Lake Success-based Pegalis & Erickson, who focuses on medical malpractice litigation.

These kinds of questions garner "how analytical" a person is, and, for instance, in a case where the evidence may be complex, help an attorney understand who might quickly grasp the elements, Fallarino said.

But that's just the start.

It's all part of "trying to get them to open up to you," Fallarino said. "I try to ask open-ended questions."

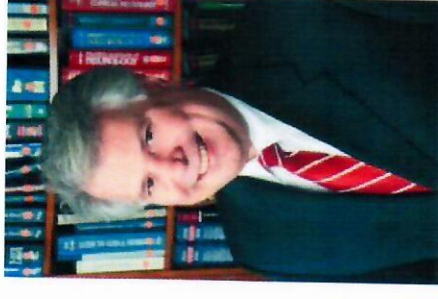
"I'm looking for independent thinkers who will spend time on facts and elements" and someone "compassionate by their nature," Grandinette said.

High profile cases

Experts say local jurors can be impartial, even when the case is a high profile one.

With the case against the Manganos and Venditto, for instance, attorneys said they would not necessarily second guess the ability of prospective jurors to serve even if they were unfamiliar with the case.

It's not surprising that some potential jurors have not been paying attention to that case, experts said.



Robert Fallarino



"Put yourself in the general population – a lot of people just don't care," Middleton said. "Even if they have an interest in politics, [people] going to work have real issues to deal with. The Mangano situation doesn't really affect them at their level." And a juror from say Queens, or Brooklyn, may have very little awareness of political leaders in Nassau County, he added.

"People are busy in their lives," Fallarino said. "I'd probe deeper. Maybe they think every politician is corrupt. Or the converse might be accurate. They're so busy. They trust [the politicians] will do the right thing."

Timing

Jury selection can take as little as one day, to about three days. Typically in a state case, "the attorneys engage in jury selection," Grandinette said. "It's very different in the federal system, where the judge controls the bulk of the jury selection."

The time allotted for a jury selection is tied in with the time a judge offers.

And a group of prospects can be dismissed quickly.

"A judge may call in an entire panel and question jurors as a whole – 14 or 16 people – and ask a series of questions," Fallarino said.

The questions asked can scope out not only bias, but also whether people have a planned vacation, a medical issue, a language barrier and other concerns.

"Seven people may raise their hand and are gone," Fallarino said.

Once they've completed jury service, they can breathe easy, at least for a while.

"They won't be summoned again for six years," Voigtsberger said.

Quick decisions required when attorneys make their choices

Voir dire – Merriam-Webster defines this legal term as a "preliminary examination to determine the competency of a witness or juror" – takes a certain skill.

Experts say observing a prospective juror's whole being come into play.

"What we try to do is think of what backgrounds, life experiences, cognitive styles, opinions, and values jurors might have that would make them less receptive to our case," Jeffrey Reynolds, director of the jury research division of

the National Legal Research Group, and author of "Mastering Voir Dire and Jury Selection" told the online publication MentalFloss.

And while body language, gender, lifestyle choices, race and even social media may seem to fall into play, that view may prove limited.

"Any attorney picking a jury may consider all of those things, but not to the exclusion of other things," said Terrence Tarver, of Tarver Law Firm, which has an office in Garden City.

Tarver has moderated panels on jury selection at the Nassau County Bar Association.

"People are so diverse – just because a person is white, Hispanic, black or Asian – that doesn't tell you anything about a person," he said, adding lawyers can't focus on one variable to the exclusion of all others.

And while social media searches on jurors may offer insights into those sitting on a jury, not all states, courts and judges approve. The New York State Bar Association, for example, has cited ethics concerns. For instance, it states that attorneys conducting research on a juror cannot communicate with that individual without running into professional conduct conflicts.

And there may be no hard and fast rules, with each case having its own set of idiosyncrasies – for example, whether it's a criminal or civil – or its venue. Tarver, who hails from a small community in Louisiana, pointed out that "although small towns in Louisiana and New York City are in the same country, they are two vastly different worlds, with vastly different people."

"You can't go in to a jury selection with a myopic view of everything," he said. "Everybody has the way they were raised, with life experiences and preconceived notions and biases."

And there may be instances where a prospective juror may not seem to like you. The person sits with arms folded, offers single-word replies, smiles or laughs at times. But these signals may have nothing to do with the attorney. As Tarver noted, perhaps the person is nervous, or appears cross but is actually hungry.

"There are so many variables," he said. "People don't fit into a box, and just when you think they do, they come back and surprise you."

So what's an attorney to do?

Tarver put it this way: "Go with your gut, and try to get people who will be open, honest and fair, and will listen to the facts."



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