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Tips for Trying Science-Based Jury Cases as We Emerge From the COVID-19 Pandemic

Q: THE COVID-19 PANDEMIC HAS EXACERBATED THE SKEPTICISM SOME LAYPEOPLE HARBOR TOWARD SCIENTISTS AND MEDICAL EXPERTS. HOW CAN YOU OVERCOME THESE JURORS' PERCEPTIONS IN SCIENCE-BASED TRIALS?

A: Trial lawyers should spend more time educating jurors on an expert's qualifications and background to maximize the expert's credibility to the jury. The goal is not just to qualify the expert to testify on the topic, but also to help build a rapport with the jury early on. In addition to highlighting an expert's credentials, consider sprinkling in some personal questions about the expert's family and hobbies. The trial lawyer should be the one to highlight the expert's accomplishments/accolades so that it does not appear that the expert is pretentious or boastful.

Furthermore, there should be a balance between simplifying complex science-based concepts for the jury, but also presenting enough clear and convincing data to support the expert's opinions. One way to present the science in a jury-friendly way is by using visual demonstratives. Simple graphics can be an effective tool if they include drawings and symbols while avoiding too many words. Graphics must be honest, not objectionable, and compliant with the Rules of Evidence. Timelines, checklists, and colorful cartoons can also powerfully convey facts. The expert must also be careful to present his or her opinions in a way that does not overpromise or oversell. Providing accurate information and building trust with the jury is key.

Q: HOW CAN TRIAL LAWYERS DETERMINE WHETHER A POTENTIAL JUROR HAS AN ANTI-SCIENCE BIAS?

A: Jurors may have experienced particular hardships during the pandemic, affecting both physical health and financial well-being. These negative personal experiences, colored by conflicting reports from politicians and scientists, may have caused them to develop an anti-establishment or anti-science attitude and lead to unexpected plaintiffs' verdicts or higher damage awards against corporations. On the other hand, positive public perception about health care providers because of their heroic efforts during the pandemic may make jurors more likely to believe science-based medical testimony. The voir dire process will be critical to learn more about each potential juror's unique concerns and opinions about the COVID-19 pandemic, and to flush out their feelings towards experts, science, and corporations. Also, talking generally about COVID-19 restrictions will give you the opportunity to learn more about whether a juror tends to accept science-based evidence (e.g., by asking questions about vaccines, treatments, wearing masks indoors, social distancing, etc.).

Q: ON A PRACTICAL LEVEL, WHAT HAS BEEN THE IMPACT OF SOCIAL DISTANCING ON JURIES?

A: Given some courts' desire to keep jurors six feet apart, they are often not seated all together in the jury box and separated by plexiglass from each other, the attorneys, and witnesses. Jurors may be located on the courtroom floor and even in the galley. You should ensure before and repeatedly during trial that all jurors can still effectively hear and see your presentation materials. Also, find out in advance what the rules will be for masks. When your experts or witnesses take the stand to testify, sometimes in a plexiglass enclosed box, ask the court if they may take off their masks so that they can better be heard by and connect with the jury. Take the time to investigate the physical layout of your assigned courtroom, being mindful that things may change repeatedly as the pandemic spikes and recedes.



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