

Civil Trial Innovations Conference

United States District Court
for the Western District of Missouri
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Across The Aisle: What Your Opponent Does Well in Trial

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Voir Dire

- ▶ Introduce theme and theory
- ▶ Correct misconceptions about burden/standard of proof
- ▶ Explore concept of even playing field
- ▶ Preview difficult issues in case
- ▶ Develop juror profile, general opinions
- ▶ Analyze juror experiences with your client
- ▶ Remind jurors of importance of keeping an open mind

Opening Statements

- ▶ Clearly develop theme and theory of case
 - Jurors' Views:
 - Provide clear overview, roadmap
 - Keep it short
- ▶ Emphasize applicable burden/standard of proof
 - Jurors' Views:
 - Don't over-sell case or create burden you don't have
- ▶ Tell story of your case through chronology, timeline
- ▶ Explain and emphasize key evidence with documents, photos
- ▶ Preview questions jurors will want to ask themselves

Closing Arguments

- ▶ Explain evidence in concise summary
- ▶ Tie evidence together with timeline, other demonstratives
 - Jurors' Views:
 - Good summaries anticipate questions jurors may have and answer them
 - Timelines and charts help them follow sequence of events
- ▶ Explain how jury instructions fit with your facts, but don't be overbearing
 - Jurors' Views:
 - Jurors appreciate attorneys talking to them as equals, not talking down to them
 - Jurors do not like being told how they must decide a case
- ▶ Always come back to your theme and theory

Other Views from the Jury Room

- ▶ Two jurors can see the same attorney very differently
 - Understand how juror backgrounds, views and your own personality may influence how they see you (friendly/personable vs. inexperienced; tough/effective vs. aggressive/rude)
- ▶ Use time efficiently
 - Jurors do not like repetitive information and resent what they perceive as wasting their time
 - Make sure expert testimony, evidence is high quality

Other Views from the Jury Room

- ▶ Remember that jurors do not always understand that some evidence they might have expected to see does not exist or is inadmissible
 - Anticipate questions about "missing pieces" in your story
 - Address questions in examinations or closing argument

- ▶ Jurors notice the small things
 - Facial expressions
 - Nervous habits
 - How you treat your support staff
 - How you treat opposing counsel
 - How you treat the judge (the judge is always the most popular person in the jury room!)