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## **The Question Is, When Do Jurors Lean?**

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A common myth that pervades the legal world is that most jurors make up their minds about a case at the end of opening statements. The origin of this misconception can be traced to a misreading of research presented by Hans Zeisel and Harry Kalven in *The American Jury*. Since publication of that book, Zeisel has attempted to set the record straight by reporting that he and Kalven never made this claim, nor did they ever ask the question of when jurors make up their minds. Despite this, it is understandable that attorneys would continue to believe this false notion in the absence of evidence to the contrary. Jury consultants, however, ought to be abreast of current research in their field so as to not perpetuate misinformation.

One of our objectives as a trial consulting firm has been to understand juror decision-making. In the last nineteen years, Trial Behavior Consulting has conducted thousands of in-depth interviews with jurors who have served on civil trials. As a result of our research, we have made three key observations concerning when, how, and under what circumstances jurors make their decisions.

First, our research has taught us that there is a better way to ask jurors, "When did you make up your mind?" Rather, in asking the question, "When did you first lean toward the defendant or toward the plaintiff?" one can obtain a more accurate and detailed report of the jurors' thought processes. We now know that it is absurd to think, for instance, that jurors actually make up their minds about damage amounts before they have heard anything about the range of possibilities. Thus, the first research question has appropriately become one of finding out when jurors first tip toward one side or the other.

The data shows that some proportion of jurors first lean in every phase of the trial. It is also true that some jurors are oriented, or predisposed by existing attitudes, to lean generally toward the plaintiff or the defendant from the outset. Depending on the rigors of voir dire, usually a few jurors remain on every panel who are predisposed to lean toward one side or the other, and that these individuals have usually "leaned" before they ever entered the courtroom. Our data shows, for instance, that in civil litigation involving individuals pitted against a corporate defendant, about one third of jurors lean one way or the other after voir dire and prior to hearing opening statements.



Second, we have found that since there are often many issues in one case, jurors can lean in both the plaintiff and defense direction at the same time. In most civil matters, the jury issues are multiple and complex. It is not unusual in civil cases for jurors to face a special verdict form with five to nineteen interrogatories. While some jurors vote a "party line," most do not. In other words, a juror who leans for the plaintiff on the issue of liability could very well award no damages at all.

Third, jurors often change their minds during the case. As many as one-third to one-half of the jurors on a panel will change their minds, and often do so more than once. We have found that a juror may lean one way during the plaintiff's case, change his or her opinion, and lean the other way during closing arguments, only to change back again during deliberations.

The most fundamental lesson to be learned from our research is that every phase of the trial is influential in juror decision-making. Although opening statements are certainly an important phase of a trial, they are not as determinate of the outcome as some observers suggest. By probing when jurors first lean, how they lean on each case issue, and how their leanings evolve over the course of the trial, juror researchers and attorneys will be able to better assess the jury decision-making process.