THE FLORIDA BAR TRIAL LAWYERS SECTION

# The Advocate

www.flatls.org Vol. XXXVI, No. 2 January 2006

# The Psychology of Cross-Examination

**by Paul Stritmatter**

*Be mild with the mild: shrewd with the crafty: confiding with the honest: merciful to the young, the frail or the fearful: rough to the ruffian: and a thunderbolt to the liar.*
– Francis Lo Wellman

**I. The Art of Cross-Examination**
**1. Psychological Factors**

a. The jury expects cross-examination. They expect a trial to involve a fight between two lawyers and that they will have a ringside seat.

b. Jurors expect the cross-examiner to be aggressive and hostile toward the witness, trying to take everything he or she says apart.

c. Remember, however, the witness is another lay person unskilled in the ways of the courtroom.

d. The jury thinks and expects the lawyer will maneuver the witness try to confuse them and brow-beat them.

e. The witness expects to be attacked and looks at every question with suspicion trying to find ways to counter it. The witness will usually become defensive as a mechanism to this attack. The body language changes as the cross-examining lawyer gets up. A witness will shift in the chair,

*See "Cross-Examination," page 2*

# Chair's Message

**By Mark P. Buell, Chair, Trial Lawyers Section**

For the past several years, the Florida Bar Trial Lawyers Section has found itself in a defensive posture attempting to fend off attacks by enemies of our legal system. It does not appear this posture will change in the foreseeable future.

As I write this message, we are preparing to appear before the Florida Supreme Court on November 30, 2005 for oral argument regarding the Florida Medical Association's Petition to Amend the Rules Regulating The Florida Bar. Specifically, the petition filed on behalf of the Florida Medical Association seeks to limit the amount a trial lawyer may charge her client in a medical malpractice action. No limit of any kind would be imposed upon the amount which a physician or other health care provider could pay for its defense.

The brief filed on behalf of the Trial Lawyers Section was prepared by Arthur I. "Buddy" Jacobs, who has represented the Trial Lawyers Section before the Legislature as its lobbyist for 30 years. It raises a number of issues in response to the FMA petition including the following:

1. The Petition improperly attempts to employ a procedural privilege granted to members of The Florida Bar to seek rule changes concerning matters of professional regulation and ethics to effect an unwarranted substantive change in the law.

2. Any consideration of change in the Rule should await the outcome of litigation in the courts of Florida;

3. There are numerous, serious constitutional challenges likely to be raised against enforcing Amendment 3 to the Florida Constitution as a cap on contingency fees, including impairment of clients' rights to due process, freedom of association, equal protection, access to courts, as well as violations of the Supremacy Clause;

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## INSIDE:

grip the arms of the chair, the back stiffens, clear the throat, lift the chin, get organized for the onslaught.

f. The temptation to the lawyer is to "make a kill" in cross-examination. There is visibility and the thrill of performance. There is excitement. There is power. There is breaking the case wide open in a Perry Mason style, reducing the witness to a mere quivering shell. The jury, however, may well see you as a bully, ganging-up on a lay person by using legal tricks.

g. The jury sometimes can get so busy picking sides in the battle and feeling defensive about the witness, that they forgive the witness for admissions and don't accept the impact of the cross-examination.

**2. <u>The Purpose and Goals of Cross-Examination</u>**

Cross-examination is one of the safeguards of the law to accuracy and truthfulness. It is a matter of right. *Afford v. United States*, 282 U.S. 687; 75 L. Ed. 624; 51 S.Ct. 218 (1930). Cross-examination is the highest and most indispensable test known to the law for the discovery of truth. 81 Am. Jur. 2d. Witnesses, § 510. The purpose of any aspect of a trial is to <u>persuade</u>. Persuasion of the trier of the facts is the only ultimate goal of cross-examination. If cross-examination is not attaining that goal, it is a waste. Too often, attorneys set a goal of destroying the witness and end up with an ineffectual cross-examination or a cross-examination that is disastrous.

Wigmore said that the goal of cross-examination should be to "soften the impact of a witness by cross-examination." Persuading the fact finder by softening the impact of the witness may take many forms.

a. Forcing the witness to admit certain facts or agree with certain basic principles;

b. Destroying all or a portion of the testimony of a witness;

c. Discrediting the witness personally. FRE 607 and 608;

d. Separating falsehood from truth;

e. Separating hearsay from actual knowledge;

f. Separating opinion from fact. FRE 602;

g. Separating inference from recollection;

h. Eliciting contradictions, modifications or retractions of material testimony;

i. Discrediting the witness because of bias, prejudice or perjury;

j. Discrediting the witness because of lack of qualifications or other deficiencies;

k. Destroying or weakening the jury's favorable impression of a witness;

l. Establishing that the witness is lying on one or more material points;

***The goal of cross examination is to "soften the impact of a witness"***

m. Showing that the testimony is improbable or that the witness has a lack of knowledge, lack of opportunity to know or lack of opportunity to observe;

n. To impeach a witness by showing that they have given a contrary statement at another time. FRE 613;

o. To show that a witness has been convicted of an infamous crime. FRE 609;

p. To obtain necessary evidence to establish the case through cross-examination of another witness;

q. To corroborate other testimony on your side of the case;

r. To build up a witness on your side of the case.

**3. To Cross-Examine or Not to Cross-Examine**

The general rule should always be "If there is nothing to gain, do not cross-examine." Cross-examination is more often over-used than under-used. Too often attorneys forget the rule and get themselves in trouble. While the witness is under direct examination you must be analyzing and evaluating their testimony and its impact upon the jury. When your opponent says "Your witness," your mind must work fast and answer the following questions:

a. Do I really need to ask this witness any questions, or can I save it for another witness?

b. Has this witness hurt me? If yes, exactly where?

c. Can this witness really help me? Where?

d. Can I really reverse or weaken the harm caused by this or some other witness by questioning this witness?

e. Is this witness basically honest?

f. Is this witness knowledgeable?

g. Is this witness vulnerable?

If the witness hasn't hurt you, why gamble on asking anything? Trying to convert the witness into "more helpful" rarely works. The witness has already been "helpful" by not hurting you. Besides, your "most helpful" witnesses should have been those called by you on your direct case and not on cross. Where are the land mines? One false step brings self-destruction. Has your opponent set you up for ambush or booby trap? They may have purposely done a sketchy direct examination hoping you will barge in and get killed on the cross. If you say "No questions," your adversaries usually can't reopen their direct to ask more questions to bring out what they have failed to cover on their initial direct (unless, of course, the court gave them permission to "re-open"). What makes you confident you can do anything about reducing the harm with this particular witness? What makes you think you can persuade the witness to "change" their observations, recollections, opinions, or give "confessions"?

1. Do you expect to do it by "sheer logic"?

2. Do you have a writing actually in your possession, or available to you before this witness leaves the witness stand, to force favorable answers (admissions, confessions, contradictions) or are you just shooting in the dark and "hoping to turn the witness around" by luck or logic?

3. If you do not have an impeaching writing (deposition, signed state-

ment, letter or other writing) and if you ask questions, and the witness disagrees with what you want them to say, how are you going to rebut their adverse testimony? What points if any, must you make with this witness? Why can't you make those points better, or as well, with your own witness?

**II. Planning the Cross-Examination**

**1. <u>The Psychology in Preparation</u>**

a. Prepare your own witnesses for cross-examination. Explain the form and substance of cross and what the other attorney wants to accomplish and why. Explain that the attorney doesn't necessarily want to kill them or make them look stupid, but that they will seek admissions to support their theory of the case.

b. Tell the witness what points you expect opposing counsel to cover. Tell them what you do and how you prepare for cross-examination.

c. Explain that the jury will see them as one of them - with sympathy and understanding. Talk to them about the fact that juries enjoy a witness who holds their ground.

d. Explain that they should not get defensive.

e. Use role playing and practice a cross-examination. Be threatening and aggressive to show the worst of all possible worlds. Use videotape for review. Take the witnesses to an actual courtroom to learn to get comfortable.

f. Teach body language and how to sit in the chair. Talk about how to speak to the jury.

g. De-personalize the opposing lawyer's attacks by emphasizing that the questions are attacking the issues, not the person.

h. Discuss counter techniques. Explain that they should not be influenced by leading questions. Discuss examples of asking for questions to be repeated to break the rhythm and asking "Which part of that question do you want me to answer first?" to complex questions. Teach them how to qualify their answers and explain, not just follow the leader.

i. Teach them to listen thoroughly and critically to the questions and not volunteer answers.

j. Start each critique with compliments and emphasize what they did right so as not to discourage or panic them.

**2. <u>The Lawyer's Preparation</u>**

a. It is, of course, fundamental that you must have done a complete investigation of the case, the facts and the law in order to prepare for cross-examination. This should include interrogatories, depositions, and requests for production of relevant documents.

***Why gamble with a cross examination - trying to convert the witness into being "more helpful" rarely works.***

b. Generally, you should not be cross-examining during a discovery deposition. This is the time to collect facts and information, not to educate the opposition as to how you intend to cross-examine their witnesses.

c. Index and outline depositions so that they can be properly used during trial.

d. Determine objectives for your cross-examination of each witness.

e. Prepare questions in advance. Prepare a thorough outline of the objectives and areas to be covered. List the points you are sure you can make and separately list those you may be able to make.

f. Determine and list the strongest points to start with and end with. Always start and end strong.

**III. Technique of Cross-Examination**

**1. <u>Psychological Factors</u>**

a. How you begin often sets the tone and the jury's attitude toward how you and your examination will be perceived.

b. Lift the jury's energy for the cross-examination. Move into position energetically, with enthusiasm and purpose. Take your space and secure the focus of attention on you. Use delay to heighten the drama.

c. Arrange your notes and place them properly. Arrange exhibits you will refer to unless surprise is important. Set up visual aids.

d. Stand or sit? Use a podium with wheels. Use the power of the podium but break away for emphasis.

e. Make eye contact with the witness. Take control.

f. Make a transition from the direct examination. Let the other lawyer's voice and images die down.

g. Start subtly. Let nothing in your body language, your voice or your energy level betray that this will be an attack unless you have a bombshell to drop. Just begin by suggesting you'd like to discuss a couple of points.

h. Don't give the jury reason to doubt your sincerity throughout the whole trial by affecting exaggerated warmth at this point. Be courteous and considerate. Don't patronize.

i. Start with benign, clear and short questions.

j. If you have decided not to cross-examine, explain to the jury. "There is no need for a cross-examination now." Body language should also be used to indicate that the testimony of the witness was of no consequence to your case.

k. Don't feel hostile to the witness. It will show. Feel secure enough in the idea that your points are so clear that you don't need to be angry.

l. Maintain eye contact with the witness. Stare them down. It keeps the witness focused and concerned. It makes you seem on solid ground if you wait for the witness to flinch. It will energize you.

m. Be careful of the witness' space. Don't intrude because it heightens the look of aggression and belligerence.

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n. Don't be nasty or name-calling. It is perceived as unprofessional and the jury will discredit you. When opposing counsel objects, don't look at them. You give them too much importance and credence. Look only at the jury or judge. Hold a series of questions for just before a break. End examination before a break on a high note.

**2. <u>Commandments of Cross-Examination</u>**

a. Be brief.

b. Use short questions with plain words. Don't use legalese

c. Use leading questions whenever possible. FRE 611.

d. The strongest point should be made early in the cross-examination as well as a strong point at the end to follow the principles of primacy and recovery.

e. Impeachment on cross-examination is very effective on strong points; it will probably antagonize the jury on minor matters.

f. As a general rule, you should only ask questions to which you already know the answer.

g. Listen to the answers.

h. Generally you should not argue with the witness.

i. Don't let the witness simply repeat the direct examination.

j. Avoid one question too many.

k. If a helpful admission has been made on direct, don't ask for a simple repeat of the admission or you give the witness the chance to waffle. The admission is in the record, live with it! Don't try to perfect an already good response.

l. Don't ask the witness to explain their testimony.

m. Don't ridicule or be sarcastic or discourteous with the witness unless you are positive that their credibility has already been totally destroyed before the jury.

n. Don't let the witness give a speech.

o. Don't show outwardly that you have been hurt by an answer.

p. Don't lose your control or get mad.

q. Don't exaggerate.

r. Try to recap when possible. Repeating the substance of the testimony that is favorable to your case will, in a repetitious manner, reinforce your points.

s. If a witness persists in avoiding answering a question, don't bicker. Repeat the exact same question, not changing any words. Continue to repeat the question if necessary. Consider writing the question on a tearsheet and tell the witness, "That's the question I asked you." Under it, write the re-phrased question identified by the witness and state, "That's the question you are answering." Then look at the witness and quietly ask, "Now you can answer the question, can't you?

***If the witness fears and respects you, cross examination will be more effective than if the witness fears and hates you.***

t. Don't ask the judge to direct the witness to answer. You appear weak and as though you cannot handle the situation yourself.

u. Control the witness with your questions. Do not ask questions that permit a witness to give a narrative form answer. Let the witness know who is boss and who is in control. Hold the reins tight enough so that the witness does not get "their head" and an opportunity to run away with you and your case. When the witness starts to stray, choke up on the reins. Move to strike the answer as non-responsive and remind the witness that your question only asked for a "Yes or No" answer.

v. Act in a gentle fashion during cross-examination. If the witness fears and respects you, cross-examination will frequently be more effective than if the witness fears and hates you.

w. If you are way ahead in your case, cross-examination may merely be sparring and jabbing to build up more points. Be careful you don't get over confident and get decked.

x. If you have been getting killed and you are losing big, you need to slug. You have to take the chance of taking some big punches in order to land some bigger punches. You may attack the witness' qualifications, the basis of an opinion or the accuracy of an opinion. Whichever route you take, however, be sure you can sustain the justification for the attack itself or you will lose ground. Try to compel "Yes" answers. Force agreement with general principles. For example, "Doctor, will you agree with me that. . . ?" "Doctor, do you accept that. . . ?" "Doctor, do the . . . authorities in your field agree that. . . ?"

y. Always consider whether or not to make use of the rule excluding witnesses from the courtroom. FRE 615.

z. Never lose sight of your purpose to persuade.

**IV. Other Principles of Psychology and Cross-Examinations**

**1. <u>Seeing and Hearing</u>:** We know from studies that people remember 10% of what they have only heard, 20% of what they have only see, but 65% of what they have both seen and heard in tests given three days after the event. Try to use demonstrative aids including writing on the blackboard in connection with cross-examination.

**2. <u>Primacy and Regency</u>:** We tend to accept what we hear first as being true, and remember longest what we hear last. Therefore, lawyers should open with strong points and close with strong points in cross-examination.

**3. <u>Attention Span</u>:** The attention span of people is limited by virtue of modern media. Television lasts 20 to 30 minutes between commercials. People tend to have short attention spans. Timing, therefore, is important in cross-examination.

**4. Stories:** People tend to remember illustrations and stories, and more firmly grasp points made in connection with stories than any other way. Examples should therefore be used whenever feasible in cross-examination.

**5. Organization:** Be organized in your presentation. A lawyer who is not well organized is not perceived as professional by the jury. Have your paperwork in order; have depositions marked and ready to go; have the exhibits lined up for easy reference.

6. There is no requirement of reasonable medical probability on cross-examination. Take advantage of this fact to point out facts favorable to your case.

a. Doctor, is . . . possible?

b. Doctor, with what degree of certainty can you rule out. . .?

c. Doctor, when do you assure me that my client will be back in the same state and condition he was prior to this crash?

7. Do not overlook in cross-examination the wonderful opportunity that exists at the resumption of court session, or where there has been an interruption, of asking the court "If Your Honor please, in the interest of continuity and in order to avoid repetition, may I have the reporter repeat the last two or three questions and answers?"

8. No one should forget the substance of the Harry Philo cross-examination question applicable in every products liability case: "Do you agree with the design and engineering principle that the risk of death or serious injury is always unacceptable and always unreasonable if reasonable acts would have minimized the risk?

**9. Use of Depositions:**

a. The jury does not generally know what a deposition is. Make a word picture so that the jury can really understand what is involved. You remember you came to my office to give a deposition? You were protected by your lawyer, who was there with you? Your lawyer prepared you for the fact that you were going to do this? I told you that you could stop me at any time if you didn't understand something? I told you it could be read in court? A court reporter took everything down? You swore under oath, at the beginning, just as you did today, to tell me the whole truth? You read it and signed it? This is your signature, isn't it?

b. The witness' deposition should be an effective document for cross-examination. However, unfortunately, counsel frequently lose the impact of using the deposition because:

1. The deposition is not properly indexed for instant reference and retrieval. Every deposition must be indexed by points as well as chronologically.

2. The deponent has not been effectively tied down and committed; hence the deposition doesn't impeach. The deponent has an escape route.

3. Lawyers overuse the deposition and read too much losing the impact of the few main points which are really impeaching of the trial testimony.

4. Lawyers try to use the deposition for impeachment on matters that are unimportant or not really impeaching.

c. Proper use of a deposition for impeachment should include the following procedure:

1. Lay the foundation and explanation for the jury as shown above;

2. Refer the court, opposing counsel and witness of what pages you are referring to;

3. Ask, "Do you remember when you were asked (read the deposition question)?" Wait for an affirmative response. Ask "Was your answer (recite the deposition answer)?"

4. Make sure you read everything that is pertinent in the colloquy or opposing counsel will bring it out and make it look as though you are merely playing games.

5. Don't give the witness the opportunity to explain the contradiction. If the material is indeed impeaching, it should speak for itself. Move on.

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# Profile of Perfect Juror

**by Lisa Blue, Esq.[1]**

**What is a Perfect Juror?**

When lawyers think of what a perfect juror might be, they often think of things like sex, race and age. If only it were that easy. Unfortunately, not every middle-aged, white woman in America views things the same way. Each person's viewpoint is influenced by his or her unique life experiences. It is those life experiences that are going to tell you how prospective jurors will most likely relate to your case.

As you can see, there is no single perfect juror for every kind of case. But you can create a profile of the perfect juror for your case. In this article, we're going to teach you techniques for creating that profile and then help you learn how to identify those perfect jurors through a carefully constructed voir dire.

**Creating the Profile**

Generally speaking, a perfect juror is someone whose belief system fits well with the issues in your case. Before you can begin thinking about what kind of individual jurors might be good for your case, you need to think about what kind of jury you want. Do you want a jury that is strong on the issue of liability – or one that is strong on damages? A common mistake lawyers make is putting on some jurors who are good for one issue and some jurors who are good for another issue. This usually results in the worst of both worlds. We've witnessed jurors who were against finding liability agreeing to it – on the condition that the other jurors agree to keep the damages low.

Once you've determined what kind of jury you want, you're well on your way to creating your perfect-juror profile. If you decide, for example, that you need to focus on seating a jury that will be strong on liability, you will be looking for jurors who feel strongly about accountability. These are usually individuals who hold themselves and others to high standards – people who follow the rule of law and expect others to do the same. On the other hand, if you determine that liability is clear and you want to focus on getting jurors who will give the largest possible award to your client, you will be looking for a different type of juror altogether. You will be looking for jurors who are concerned about the pain and suffering of others, as well as those who consider themselves generous.

Finding out these kinds of things about potential jurors is often more difficult than lawyers anticipate. The best place to start is your jury questionnaire. Using the jurors' answers as a springboard, you will be poised to dive into a powerful voir dire.

***A perfect juror is someone whose belief system fits well with the issues in your case.***

**Looking for Clues in the Questionnaire**

A well-rounded questionnaire will include questions on a variety of subjects, asked in a variety of ways. One of the most valuable types of questions you can ask in a questionnaire is what we call an "adjective question." An adjective question gives the jurors a list of adjectives and asks them to check off those that they feel best describe them. Here's an example:

Which of the following words would you use to describe yourself? Check all that apply.

__ Analytical
__ Compassionate
__ Detail oriented
__ Generous
__ Kind
__ Old-fashioned
__ Practical
__ Religious
__ Shy
__ Strict
__ Thoughtful
__ Other _____
__ Big-picture oriented
__ Compulsive
__ Emotional
__ Impulsive
__ Logical
__ Opinionated
__ Private
__ Selfish
__ Skeptical
__ Successful
__ Trusting
__ Careful
__ Creative
__ Frugal
__ Judgmental
__ Naive
__ Outspoken
__ Quiet
__ Sensitive
__ Smart
__ Technical
__ Visual

As you can see, we use a wide range of adjectives, from the simple to the cerebral. In one case, a lawyer wanted to pick a jury that would limit damages, and he gave the jurors just two adjectives to choose from: generous and frugal. Because he was working for the plaintiff, he was looking for generous jurors. But like every other answer on a jury questionnaire, he took the answer to that question as a starting point. We've noticed that people who will admit they are frugal usually are, but many people <u>think</u> they are generous when they are really not. So, if a juror answered "frugal," the lawyer looked for a way to get them off for cause. If a juror answered "generous," on the other and, he followed up to make sure they were generous enough to award his client a large verdict.

When writing adjective questions, we typically leave out words like "fair" and "open-minded," because everyone <u>thinks</u> they fall into these categories. We also like to include an "other" line, which has provided some interesting insight into prospective jurors. The important thing to remember when choosing your adjectives is that they need to be tight and

tailored to your case. By "tight" we mean that your adjectives should be specific rather than general. "Pro-business," "pro-corporation," "pro-consumer" and "Pro-employee" are examples of tight adjectives. They tell you something specific about the jurors that you might not learn from more general adjectives like "conservative" and "liberal."

Once you see how a juror describes himself, you're ready to follow up in voir dire with specific questions that will reveal the jurors' life experiences. One juror may describe herself, for example, as "pro-corporation" because she owns her own company. A brief discussion with her on this topic will let you know if she is particularly sensitive to the bottom line. Another jury may consider himself "pro-corporation" because he's worked for the same company for twenty-five years and considers himself a "company man." But follow-up questions may reveal that he relates more to the concerns of the common worker and his everyday problems. These are just two examples of diverse life experiences reflected in the same answer.

**Getting The Jurors Talking**

The plan we've laid out for you so far sounds simple enough: 1) create a juror profile; 2) use your questionnaire as a starting point; and 3) ask follow-up questions that reveal the jurors' life experiences. But any lawyer who's ever conducted a voir dire knows that getting panel members to answer your questions – <u>really</u> answer your questions thoroughly and honestly – is no easy task. There are an unending number of psychological reasons that panel members are less than forthcoming about their values, opinions or even simple facts about their background. On the most basic level, however, we know that jurors hold back during voir dire because they are uncomfortable opening up in front of strangers, which includes the lawyers, the judge and the dozens of other jurors. Getting jurors to open up in voir dire is a skill that most lawyers have to work hard to develop. In this section, we're going to provide you with some tips to help you get jurors talking.

**Psychological Techniques**

A good voir dire is a conversation between the lawyer and the panel members. Just as with any conversation, you'll open with an ice-breaker. An ice-breaker can be as simple as saying, "Good morning." Unfortunately, the frustrating response from the panel members is often nothing. When this happens, we use it as an opportunity to open the lines of communication. So say something like, "I didn't do a very good job starting off, and I want to do better because hearing from you is very important to me. Let's try that again: Good morning ladies and gentlemen of the jury panel." you should consider extending your hands as you say this, making a gesture that encourages a response. We find that most jurors respond the second time around. Always thank the panel for their response.

Another way to get your jury panel warmed up is by asking them to all raise their hands. The point of this simple exercise is to engage the panel and get them comfortable responding to you and actively participating in voir dire. Because you'll never have as much time in voir dires as you'd like, you need to make the panel feel as comfortable as possible as quickly as possible. The hand-raising exercise is a good way to do this.

After you've broken the ice but before you dive right in with your questions, take a moment to warm up the jury panel. There are some specific techniques you can use to help your jurors feel more at ease and get them ready to start talking about serious issues. A good way to start is by saying something you know the jurors are already thinking; for example, "I know some people don't like to speak in groups, but it is important that you understand why we need you to be honest about your opinions today. If you don't speak up, you could end up on a jury in a case that is wrong for you."

Another technique that encourages people to talk about themselves is self-disclosure. We call it The Gerry Spence approach: "I'll show you mine, if you'll show me yours." Self-disclosure involves telling the jury something personal about yourself to make them more comfortable telling you personal things about themselves. This can be as simple as telling them that you are nervous because this is a very important case and you want to do a good job for your client. We have found this to be an extremely effective technique.

Offering praise is another helpful technique in voir dire. This is a simple psychological concept that you've probably used in other areas of your life. By praising jurors and giving them positive feedback for their honest answers, you condition them to continue to open up. This concept is particularly helpful in getting jurors to make negative comments during voir dire. We are all conditioned to believe that we should keep negative comments to ourselves. You want to condition your jurors to do just the opposite. You want them to know it's not just okay but actually a good thing for them to voice their negative opinions during voir dire.

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**PROFILE OF PERFECT JUROR**
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Praising a juror who says he thinks all lawyers are ambulance chasers, for example, reinforces his honesty and encourages other panel members to open up. You should say something like, "Mr. Smith, thank you for your honesty. You are doing exactly what the lawyers and the judge want you to do. The beauty of our legal system is not only that everyone is entitled to his own beliefs, but also that everyone is encouraged to express them. It is so important for you to speak up, so that you won't end up on a case that's not right for you. So thank you for doing just that. Now, who else agrees with what Mr. Smith has said?"

If, on the other hand, you become abrasive toward a juror who expresses a negative opinion, the other jurors will see this and be much less inclined to be honest with you about their feelings. They will punish you for being judgmental by keeping their feelings to themselves. However, even if the panel members suppress their feelings during voir dire, you can bet those feelings will come out in deliberations. The result may be devastating to your client. You must be careful to send a message that honest responses are exactly what you want to hear – no matter what those responses are. The more successful you are at getting honest answers from your panel members, the better equipped you will be to identify those perfect jurors you're looking for.

**Questioning Techniques**

How you ask a question is just as important as the question itself. What types of questions you ask will depend largely on how much time you have but will also be determined by your goals throughout voir dire. Each technique has a specific use.

***Scaled questions... where the juror is asked to rank a statement from very important to not important at all.... are a productive tool when you have limited time in voir dire***

When you have very little time to conduct your voir dire, for example, you will find scaled and close-ended questions more useful. When you have more time, you'll have the luxury of asking more open-ended questions, which tend to be more helpful when it comes to learning about life experiences.

Close-ended questions are a great way to get a lot of information quickly. Open-ended questions, on the other hand, are going to give you the truest insight into your jurors, because they require the jurors to use their own words to express themselves. The key to asking these questions is tailoring them to your case while still leaving them general enough that they allow the jurors to express themselves. You don't want to (and wouldn't be allowed to) ask, for example, "How do you feel about Company X making and selling Product Y even though they know it causes cancer?" What you do want to ask is something like "How do you feel about companies being held responsible for their products?" We recommend that you ask as many open-ended questions as time allows.

Scaled questions are valuable because they get you precise answers to precise questions from every single member of your panel. Although there are several variations of the scaled question, it basically consists of the lawyer making a statement and then giving the panel answer choices along a continuum. For example, you may ask the panel how important they think something is and ask them to respond with "very important," "important," somewhat important: or "not important at all."

Another way to ask a scaled question is to ask the panel members how strongly they feel about a statement. You might say, for example, "People in America are too quick to sue," and then ask the jurors whether they "strongly agree," "agree," "somewhat agree," "disagree" or "strongly disagree" with that statement. One of the most important things to remember about asking a scaled question is to always display your question and the answer choices in a visual aid. If the panel members have to expend mental energy just to remember their answer choices, they will be less able to focus on the question asked.

Scaled questions are particularly useful when your time is limited because they give you a quick overview of every member of the panel. To be successful using them, however, you have to resist the temptation to find out the jurors' reasons for their answers. On a related note, there are always a few jurors that feel they

have to qualify their answers. The best way to head this off at the pass is to say to the panel members, before you ask your scaled question. "I would love to know all the reasons behind your answers. Unfortunately, my time is limited. So in order to do the best job for my client, I need you to limit your answers to the ones shown."

When you come across a panel member who tells you that she simply can't answer with one of the choices you've provided, take that as your answer. Rather than allowing her to draw you into a time-wasting debate, take her answer for what it's worth. Although it doesn't yield any information about the juror on that particular subject, it does tell you something about her personality. If nothing else, her defiance tells you that she is strong-willed and opinionated. But it may also tell you that she is rebellious or that she is detail-oriented. Like all other answers you get in voir dire, this one is just one clue to the juror's personality and should be viewed in the context of her other answers.

The vast majority of your prospective jurors are going to give you middle-of-the-road answers. What you want to keep an eye out for is jurors who "strongly" agree or "strongly" disagree. Then look at their answers to your other scaled questions. Do they only feel strongly about that one question? Or do they consistently feel strongly on the same end of the answer scale? We refer to scaled questions as our GPS (global positioning system), because they give us an accurate fix on the belief systems of most of the jurors.

You probably know how a Rorschach test is conducted: A therapist holds up an inkblot and asks the patient what he sees. We have developed a type of question that serves the same function as a Rorschach inkblot, which is why we call them Rorschach questions. When you ask a Rorschach question, you begin a statement for a panel member and ask her to finish that statement with whatever comes to her mind. For example, instead of simply asking a potential juror how she feels about personal injury lawsuits, you would say, "My thought on individuals who sue for personal injuries is . . . Ms. Smith, can you please complete that thought with your own feelings?"



Rorschach questions are helpful because they eliminate the "I don't know" answer that many panel members give when asked how they feel about something. Asking the jurors to finish your sentence will greatly reduce the number of panel members who say they can't give you an answer. Of course there will be those stubborn jurors who refuse to cooperate for one reason or another. As with any other non-answer, the juror's refusal is an answer in itself.

Once you've spent some time with your panel and gotten a good feel for most of your jurors, ask yourself if there are any panel members you feel like you don't have a good read on. If the reason you don't know much about some jurors is because they haven't spoken up much, you can ask one general Rorschach question of all of them. This will get them talking and hopefully give you some much-needed insight.

**Communication Techniques**

Jurors are not going to be able to talk to you if they don't understand you. You're used to talking to other lawyers, but jurors aren't. Legalese is boring, and jurors don't understand it. It makes their brains work too hard, and they simply start tuning out. Unfortunately for us, we are so ingrained in legalese sometimes we don't even notice we're using it. When it comes to communicating with jurors, it's important to identify legal terms and find a better way to talk about them – a way your panel members can relate to. Only then can you identify how they feel about these important aspects of your case.

We have found analogies to be a great way to communicate with jurors. Analogies allow you to use the vocabulary the panel members come in with and concepts they can relate to. Rather than tuning you out because you're speaking in a language they don't understand, the jurors' interest will be peaked when you talk about experiences they've had. For example, proximate cause is a complicated concept for jurors to understand. One way a lawyer has explained this in the past is by showing a board with five different cigarette packages glued to it. She asks the panel, "If I smoked each of these different brands of cigarettes over the twenty years that I smoked, which one caused my lung cancer?" You could see the light bulbs go off in the jurors' heads when she used this analogy. That's the moment you're aiming for: the moment when the jurors say, "Aahhh, I get it. The key to using analogies is selecting experiences that everyone has had or can easily relate to. If you want to talk about the importance of a person paying attention to the details of his job, for example, you wouldn't use an

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analogy of an engineer developing a complicated program. Not only would the jurors have no idea what you were talking about, but they certainly would not relate to the process of programming. A better analogy would be balancing a checkbook. You would ask the jurors what happens when they balance their checkbooks and leave just one entry out or put just one decimal in the wrong place. This is the kind of analogy that involves something everyone can relate to, which brings your point home to the jurors.

One of the most crucial times to use analogies is when discussing damages. One lawyer has an effective analogy she has used to help the jury really understand what pain and suffering damages are for. She talks about the time when Baby Jessica was trapped in the abandoned well. She asks the jurors, "How much money would it be worth to save Baby Jessica's life?" A question like this gets the jurors thinking about how to quantify the unquantifiable. And there is nothing more valuable and abstract than human emotions.

Visual aids are just another way to communicate with your prospective jurors. They are particularly effective tools in voir dire because psychological research indicates that people remember things they <u>see</u> better than remember things they <u>hear</u>. Another advantage visual aids offer is keeping the panel members interested in voir dire – both by entertaining them and by drawing them in. Today's high-tech world provides countless options when it comes to visual aids, but we are not suggesting that every case requires 3-D animations. What we are suggesting is that using <u>some</u> kind of visual aid will make your voir dire more successful.

Our earlier example of the analogy with the cigarettes is a good illustration of how a simple visual aid can make an explanation of a legal concept much more concrete.

We recommend using the same visual aid throughout the trial so the concept is well anchored in the jurors' minds. When there's any chance that testimony will get complicated, you can remind the jurors that they understand what is being talked about because it's just like the concept they learned in voir dire.

The point of using communication techniques like analogies and visual aids is to help you better relate to your panel members. You want them to understand you and to feel that you understand them. Only by open and honest communication can you begin to identify how they feel about the more legal issues in your case. A profile of some abstract perfect juror for every toxic tort case may include "smart." But what you really mean if you're looking for "smart" jurors is people who can understand the law and follow it as it applies to the facts of your case. This is just another example of how you need to get beyond superficialities to find out who your jurors really are.

***You may want a "smart" juror - what you really mean by this is you want a juror who can understand the law and apply it to the facts of the case.***

**Keeping Those Perfect Jurors**

Once you think you've identified your perfect jurors, you'll have to do some work to keep them on the jury. Opposing counsel has heard the same answers you have and has marked most of your good jurors as his bad jurors. He's ready to request that many of them be stricken for cause, because they have expressed a bias toward your client. But you're going to cut him off at the pass in a process we call "buttoning up the jury."

First, you're going to say something like, "There's no way you could have made a decision in this case already, because you haven't heard . . ." Then you'll pause and let the jurors answer, ". . . the evidence." Next, you'll ask, "Have you heard any witnesses?" They will respond, "No.: Then you follow up by asking your good jurors individually, "Because you haven't heard from any witnesses or seen any of the evidence, would it be fair to say that you haven't made up your mind about this case?" You need your jurors to agree to this statement for the record.

You should also remind jurors that they haven't heard the legal instructions from the judge. You will ask, "If you haven't heard the law and how it applies to this case, then you couldn't have made up your mind yet, could you?" You need the jurors to answer "no" for the record. Finally, you should take one last step toward securing that juror. Recap the conversation for the sake of the judge and the record. Ask something like, "So, summarizing what you have just told me, because you haven't seen any evidence, haven't heard from any witnesses, and you haven't been instructed on the law, can you do what the judge asks and keep and open mind before deciding this case?" Again, your goal is to get an affirmative answer for the record that says that juror can be fair. Be careful to take baby steps and ask all the questions you need to in order to secure your good jurors.

The defense is at a great disadvantage when it comes to buttoning up the jury. If the plaintiff's lawyer has done his job, he has already gotten his good jurors to say something in favor of the defense. For example, he may have gotten a pro-plaintiff juror to admit that she will vote for the defendant if the plaintiff doesn't meet her burden of proof.

There are mechanisms, however, that defense lawyers can employ to save their good jurors. One effective mechanism is using what we call the "Paul Harvey Argument." In other words, you're going to remind the jurors that they haven't heard "the rest of the story." You'll use a similar technique that the plaintiff's lawyer used to button up the jury. You'll start by reminding your good jurors that they haven't seen the evidence or heard from any witnesses. Then, turning to the jurors you want to secure, you should ask, "How comfortable would you be waiting to hear the other side of the story?" Your goal here is the same as the plaintiff's: to get your good jurors to admit they could not have formed an opinion yet because they haven't heard the evidence, the witnesses or the legal instructions.

Another skillful technique defense lawyers can use is getting jurors to

say things that make the plaintiff's attorney question their first impressions. For example, imagine a juror who has said he doesn't believe in awarding punitive damages. This juror would obviously be good for the defense, and the plaintiff's lawyer has already decided that he should not be on the jury. If you are in a jurisdiction in which the juror's statement that he doesn't believe in punitive damage awards won't automatically get him stricken for cause, you might be able to save him.

Start by going through his questionnaire to see if he gave any answers that might make him a good juror for the plaintiff. For example, he might offer the plaintiff some hope on liability. In this case, you would avoid any discussion of damages and ask only questions related to liability. Ask questions you think will elicit answers opposing counsel wants to hear. This technique is successful when you have made the other lawyer question whether he really wants this juror stricken. If opposing counsel thinks this juror might be worth the gamble, she will reserve her peremptory strikes for other, more dangerous jurors.

But what if you are in a jurisdiction where the statement, "I don't believe in awarding punitive damages," can be sufficient to get the juror stricken for cause? You should attempt to get the juror to retract that statement, so you can get her on your jury. Start by developing a rapport with the juror. Ask open-ended questions about the liability issues to get the juror comfortable and talking. Then start asking leading questions about punitive damages. Your goal is to get her to admit that she would consider awarding punitive damages in the right situation. To do this, ask her, "If the judge instructs you that punitive damages are a part of this case, can you follow her instructions?" If you can get her to state that she would follow the law, you should be able to save her from being stricken for cause. Then, again, it will be up to opposing counsel to decide whether to exercise a peremptory strike or take a chance with this juror.

When a panel member makes a statement that suggests that she has a bias toward your client, you have a few options: You can attempt to rehabilitate her immediately; you can come back to her later when you do a general rehabilitation of jurors you want to save; or you can sacrifice her. Sacrificing a favorable juror can be a powerful tool for getting other panel members to open up and is a great option when the juror's statement shows an extreme bias. You sacrifice a juror by saying something like, "I would love to have you on this jury, but it sounds as though you already have a bias toward my client and that wouldn't be fair to the defendant. Thank you so much for your honesty." This makes you look extremely fair to the panel members. With most panel members, however, their leaning toward your client will be more subtle and you'll want to rehabilitate them.

***Rehabilitation of your "perfect juror" is often required to make sure the juror is not challenged for cause.***

By "rehabilitate" we simply mean getting the juror to say that she has not yet made up her mind about the case. When rehabilitating a panel member, you're going to use the same type questions as when buttoning up a juror. You'll use a series of simple, close-ended questions to lead the juror to a statement of non-bias. We like to talk to favorable jurors about being "fair." Here's an example of how you might rehabilitate a favorable juror:

Question: "Do you consider yourself to be a fair person?"
Answer: "Yes."

Question: "Are you the kind of person who, if chosen to sit on this jury, would listen to all the evidence before making a decision?"
Answer: "Yes."

Question: "And as a fair person, you would listen to the evidence presented and follow the law as instructed by the judge?"
Answer: "Yes."

Question: "So you would decide this case based on the law and the evidence and not the personal opinion you just expressed, is that fair to say?"
Answer: "Yes."

Although this technique will work with most prospective jurors, there will be some whose beliefs are so deeply held that they do not answer "yes" to all above questions. When this happens, we suggest you go to round two of questioning before giving up. In round two, we usually ask the juror if she can envision a scenario in which she would feel differently. For example, if a juror tells you she's against punitive damages, you should ask her if there is any circumstance she could imagine that would warrant a punitive damage award.

We recommend that you handle all

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**PROFILE OF PERFECT JUROR**
*from previous page*

your rehabilitation questions at once rather than interspersing them throughout your voir dire. There is a simple reason for this. If you intersperse your rehabilitation questions, they will conflict with your challenge questions – that is, the questions you are using to establish challenges for cause. When nailing down your challenges, you're going to be trying to get your unfavorable jurors to fully commit to ideas they've already expressed. With rehabilitation questions you'll be doing exactly the opposite, because you'll be asking the panel members to take a step back from the opinions they've expressed and keep an open mind. If you intersperse these two questioning techniques, you will send your prospective jurors a confusing message. Then both groups - the unfavorable jurors you're challenging and the favorable jurors you're trying to rehabilitate – will be less likely to be influenced by your questioning.

One common problem we encounter when asking rehabilitation questions is equivocal answers like "I think so: or "I'll try." These answers are useless, because they don't express a commitment to be fair. When that juror is challenged by the other side, the judge is going to see that she clearly stated she was biased against the other party and then, only after prodding by you, did she say that she sort of felt like she might be able to keep an open mind. That juror is gone. As you can see, when you get an equivocal answer, it's imperative that you make the juror commit. You should let the panel member know that you appreciate her thoughtfulness on the issue, but that you have no choice but to ask for a "yes" or "no" answer.

Michael Tigar, a professor and accomplished trial lawyer, has a great approach to the "I think so" answer. Tigar responds, "if I go home tonight and ask my wife, 'Do you love me?' and she says, 'I think so,' I'm going to have to ask her some follow-up questions." We think this is an excellent come back, because it works on so many levels. By making this statement, Tigar is using humor, which helps the panel members relax and helps them bond with him, but he's also teaching the jurors why he's going to have to ask them follow-up questions to get a firm answer.

**In Conclusion**

Although there is no cookie-cutter profile of a perfect juror for every case, you can draw a fairly accurate picture of your own perfect juror. Doing this successfully is part hard work, part experience. Of course you have to take the time to formulate a well-thought-out plan of what kind of jury you want, which means you have to know your case inside and out early on. And once you've identified the type of jury you need, you'll have to spend even more time thinking about what kinds of life experiences to look for in your perfect jurors.

Remember that the profile you create will not be a flat picture as a simple as "a single, minority, male from the middle class." Instead, your profile will be a much more well-rounded image of, for example, an empathetic person with strong family values who is very involved in the community. If you go into voir dire with a good understanding of what kind of juror will be perfect for your client, you will be well on your way to winning her case.

Lisa Blue *is an attorney specializing in toxic tort litigation with the law firm of Baron & Budd, P.C. in Dallas; she also maintains a practice as a counseling and forensic psychologist. This article is reprinted with permission from* ©Trial Talk *(August/September, 2004). Published by the Colorado Trial Lawyers Association.*

THE FLORIDA BAR CLE

**The Florida Bar Continuing Legal Education Committee and the Trial Lawyers Section present**

# Civil Trial Certification Review Course 2006

NEW

**COURSE CLASSIFICATION: INTERMEDIATE LEVEL**

**One Location: February 6-7, 2006**

**Tampa Airport Marriott • Tampa, FL • 813-879-5151**

**Course No. 0264R**

**REVISED AND UPDATED FORMAT** - This seminar is designed for two audiences: those who plan to take the test to become Board Certified as Civil Trial Lawyers and all civil trial lawyers who want a concise, dynamic and thorough review of civil trial practice with an emphasis on recent developments. The course has been revised to put more emphasis on trial skills and evidence, and a presentation has been added on "Technology for Trial Lawyers" by Andy Adkins, Director of the Legal Technology Institute at the UF Levin College of Law.

## *Monday, February 6, 2006*

8:30 a.m. – 8:50 a.m.
**Late Registration**

8:50 a.m. – 9:00 a.m.
**Opening Remarks**
*Edward K. Cheffy, Program Chair, Naples*

9:00 a.m. – 10:30 a.m.
**Ethical Issues for the Civil Trial Lawyer**
*Edward K. Cheffy, Naples*

10:30 a.m. – 10:45 a.m.
**Break**

10:45 a.m. – 12:15 p.m.
**Pre-Trial Skills**
*Steven R. Adamsky, Ft. Lauderdale*

12:15 p.m. – 1:30 p.m.
**Lunch (included in registration fee)**
**Technology for Trial Lawyers**
*Andrew Z. Adkins, III, Director, Legal Technology Institute, UF Levin College of Law, Gainesville*

1:30 p.m. – 2:15 p.m.
**Trial Skills: Voir Dire, Examination of Witnesses and Objections**
*William E. Hahn, Tampa*

2:15 p.m. – 3:00 p.m.
**Trial Skills: Opening, Closing and Trial Motions**
*F. Gregory Barnhart, West Palm Beach*

3:00 p.m. – 3:15 p.m.
**Break**

3:15 p.m. – 4:45 p.m.
**Trial Skills: Preserving the Record for Appeal**
*Jack J. Aiello, West Palm Beach*

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## *Tuesday, February 7, 2006*

9:00 a.m. – 10:30 a.m.
**Civil Procedure**
*Neal L. O'Toole, Bartow*

10:30 a.m. – 10:45 a.m.
**Break**

10:45 a.m. – 12:15 p.m.
**Evidence**
*Professor Lee Schinasi, Barry University School of Law, Orlando*

12:15 p.m. – 1:15 p.m.
**Lunch (on your own)**

1:15 p.m. – 2:45 p.m.
**Evidence (continued)**
*Professor Lee Schinasi, Orlando*

2:45 p.m. – 3:00 p.m.
**Break**

3:00 p.m. – 4:30 p.m.
**Personal Injury and Wrongful Death**
*Gary D. Fox, Miami*

4:30 p.m. – 4:40 p.m.
**Closing Remarks – Tips for the Test**
*Edward K. Cheffy, Naples*

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# Proving and Defending Damages 2006

**COURSE CLASSIFICATION: INTERMEDIATE LEVEL**

**Live Presentations: February 8, 2006 - Tampa Airport Marriott**

**Video Replays (5 locations): February 21, 2006 - March 2, 2006**

**Course No. 0276R**

7:50 a.m. – 8:10 a.m.
**Late Registration**

8:10 a.m. – 9:00 a.m.
**Proving Damages in the Significant Personal Injury Case (Plaintiff Perspective)**
*Stuart N. Ratzan, Miami*

9:00 a.m. – 9:50 a.m.
**Proving Damages in the Wrongful Death Case (Plaintiff Perspective)**
*David W. Bianchi, Miami*

9:50 a.m. – 10:00 a.m.
**Break**

10:00 a.m. – 11:00 a.m.
**Update on Settlements and Damages Recoveries in Personal Injury and Wrongful Death Cases**
*Peter van den Boom, Bartow*

11:00 a.m. – 12:00 noon
**Defending Damages in the Significant Personal Injury Case**
*Thomas P. Scarritt, Jr., Tampa*

12:00 noon – 1:00 p.m.
**Lunch (on your own)**

1:00 p.m. – 2:00 p.m.
**Defending Damages in the Wrongful Death Case**
*Robert M. Stoler, Tampa*

2:00 p.m. – 2:50 p.m.
**Techniques for Jury Selection, Opening Statement and Final Argument (Defense Perspective)**
*David C. Banker*

2:50 p.m. – 3:00 p.m.
**Break**

3:00 p.m. – 4:00 p.m.
**Techniques for Jury Selection, Opening Statement and Final Argument (Plaintiff Perspective)**
*James D. Clark, Tampa*

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- ❑ Member of the Trial Lawyers Section: $125
- ❑ Non-section member: $150
- ❑ Full-time law college faculty or full-time law student: $75
- ❑ Persons attending under the policy of fee waivers: $0

*Includes Supreme Court, DCA, Circuit and County Judges, Magistrates, Judges of Compensation Claims, Administrative Law Judges, and full-time legal aid attorneys if directly related to their client practice. (We reserve the right to verify employment.)*

METHOD OF PAYMENT (CHECK ONE):

- ❑ Check enclosed made payable to The Florida Bar
- ❑ Credit Card (Advance registration only. Fax to 850/561-5816.)

☐ MASTERCARD ☐ VISA Exp. Date: ____/____ (MO./YR.)

Signature: _____

Name on Card: _____

Card No. _____

❑ Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.

## COURSE BOOK – AUDIO/VIDEOTAPES – PUBLICATIONS

Private taping of this program is not permitted. **Delivery time is 4 to 6 weeks after February 15, 2006. TO ORDER AUDIO/VIDEO TAPES OR COURSE BOOKS,** fill out the order form above, including a street address for delivery. **Please add sales tax to the price of tapes or books. Tax exempt entities must pay the non-section member price.**

_____ COURSE BOOK ONLY: Cost $35 plus tax TOTAL $ _____

_____ AUDIOTAPES (includes course book)
Cost: $125 plus tax (section member), $150 plus tax (non-section member) TOTAL $ _____

_____ VIDEOTAPES (includes course book)
Cost: $250 plus tax (section member), $275 plus tax (non-section member) TOTAL $ _____

**Certification/CLER credit is not awarded for the purchase of the course book only.**

*Please include sales tax unless ordering party is tax-exempt or a nonresident of Florida.* If this order is to be purchased by a tax-exempt organization, the course book/tapes must be mailed to that organization and not to a person. Include tax-exempt number beside organization's name on the order form.

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# *Mark Your Calendar!!*

## The Florida Bar Trial Lawyers Section
## 2006 CLE Seminar Schedule*

**January 19, 2006 — Arbitration and the Trial Lawyer** [0353R]
Miami Hyatt Regency Downtown - Chairs: Bert Grandoff / John Salmon

**February 6/7, 2006 — Civil Trial Certification Review** [0264R]
Tampa Airport Marriott - Chair: Ed Cheffy

**February 8, 2006 — Proving and Defending Damages** [0276R]
Tampa Airport Marriott - Chair: Christopher Knopik

** Please check The Florida Bar Website to confirm the date, location and time of these seminars(floridabar.org)*

**CHAIR'S MESSAGE**

*from page 1*

4. The FMA backed petition tramples upon the basic right under both the Florida and federal constitutions to knowingly waive one constitutional right in order to more fully exercise another right more valuable to the holder of both constitutional rights.

By the time you read this message, the Supreme Court may have ruled regarding the petition filed at the behest of the FMA. Notably, The Florida Bar Board of Governors has likewise taken a position adverse to the FMA's requests.

On a related topic, the Section successfully presented seminars in late October regarding medical malpractice and advanced evidence. The seminar materials from the medical malpractice seminar are being bound into a book which will be available in late 2005 for purchase from The Florida Bar. Chapters in the book were written by many of Florida's leading medical malpractice practitioners, both plaintiffs and defense. Glenn Burton and Tom Masterson chaired the seminar and compiled the chapters in the new book which is commended for your consideration.

While we anticipate new legislation may be filed jeopardizing access to the courts, it is too early at this point to predict what will be proposed as legislation. Rest assured we will respond to legislation which may impact trial lawyers in Florida while we continue to provide opportunities through seminars for our members to enhance trial skills as well as professionalism.

We are continuing to update the collection of sanction orders entered by Florida judges in past years which is available on the Trial Lawyers Section website (www.flatls.org). If you would continue to forward sanction orders entered by our courts to me, I will see that they are included in this resource to be used by courts and lawyers seeking insight into how other courts have dealt with discovery abuses. Thank you for your attention to this matter.

*The Advocate* is prepared and published by the Trial Lawyers Section of The Florida Bar.

# Thinking About Becoming BOARD CERTIFIED?

## Visit our Web site at *www.floridabar.org/certification*

*"Merit selection of judges and board certification of lawyers are two of the jewels in the crown of the Florida justice system. The character, competence and commitment that defines professionalism is also the essential formula for certification."*

*The Honorable Harry L. Anstead*
*Justice, Supreme Court of Florida*

If you are interested in becoming Board Certified, please contact the area's staff liaison below. Filing periods are listed on the back of this form.

### *850/561-5842*

**Michelle Acuff - ext. 5736**
lacuff@flabar.org
* Antitrust & Trade Regulation Law
* Business Litigation
* Wills, Trusts & Estates

**Linda Cook - ext. 5735**
lcook@flabar.org
* Criminal Appellate
* Criminal Trial

**Michelle Francis - ext. 5737**
mfrancis@flabar.org
* Labor & Employment Law
* Workers' Compensation

**Mustafa Mahdi - ext. 5768**
mmahdi@flabar.org
* Aviation Law
* Construction Law
* Marital & Family Law

**Cherie Morgan - ext. 5693**
cmorgan@flabar.org
* Civil Trial
* Elder Law

**Carol Vaught - ext. 5738**
cvaught@flabar.org
* Appellate Practice
* Immigration & Nationality
* International Law
* Real Estate

**Lindsay Worsham - ext. 5690**
lworsham@flabar.org
* Admiralty & Maritime Law
* City, County & Local Gov't Law
* Health Law
* Tax Law

THE FLORIDA BAR

Approximately 4,000 attorneys are Board Certified by the Florida Bar. Board certification symbolizes specialized skills, experience, and professionalism in the practice of law. It is one way of helping the public make a more informed decision when selecting a lawyer and it is a valuable resource for referrals among those within the profession. The Supreme Court of Florida has approved standards for certification in the following specialty practice areas:

- Admiralty & Maritime Law
- Antitrust & Trade Regulation Law
- Appellate Practice
- Aviation Law
- Business Litigation
- Civil Trial
- City, County & Local Gov't Law
- Construction Law
- Criminal Appellate
- Criminal Trial
- Elder Law
- Health Law
- Immigration & Nationality
- International Law
- Labor & Employment Law
- Marital & Family Law
- Real Estate
- Tax Law
- Wills, Trusts & Estates
- Workers' Compensation

* To review the specific standards for each practice area, please refer to Chapter 6, Rules Regulating The Florida Bar or visit www.floridabar.org/certification.

## Benefits

- ✔ Identification as "Board Certified" "Specialist" or "Expert" in your field of practice
- ✔ Personal pride, peer recognition and professional advancement
- ✔ Malpractice insurance discounts
- ✔ Excellent referral network
- ✔ Separate listing in The Florida Bar *Journal* directory issue and on the Bar's Web site

## Minimum Requirements*

- ✔ A minimum of 5 years in the practice of law
- ✔ Substantial involvement
- ✔ Passage of an exam
- ✔ Satisfactory peer review
- ✔ Completion of the certification area's CLE requirement

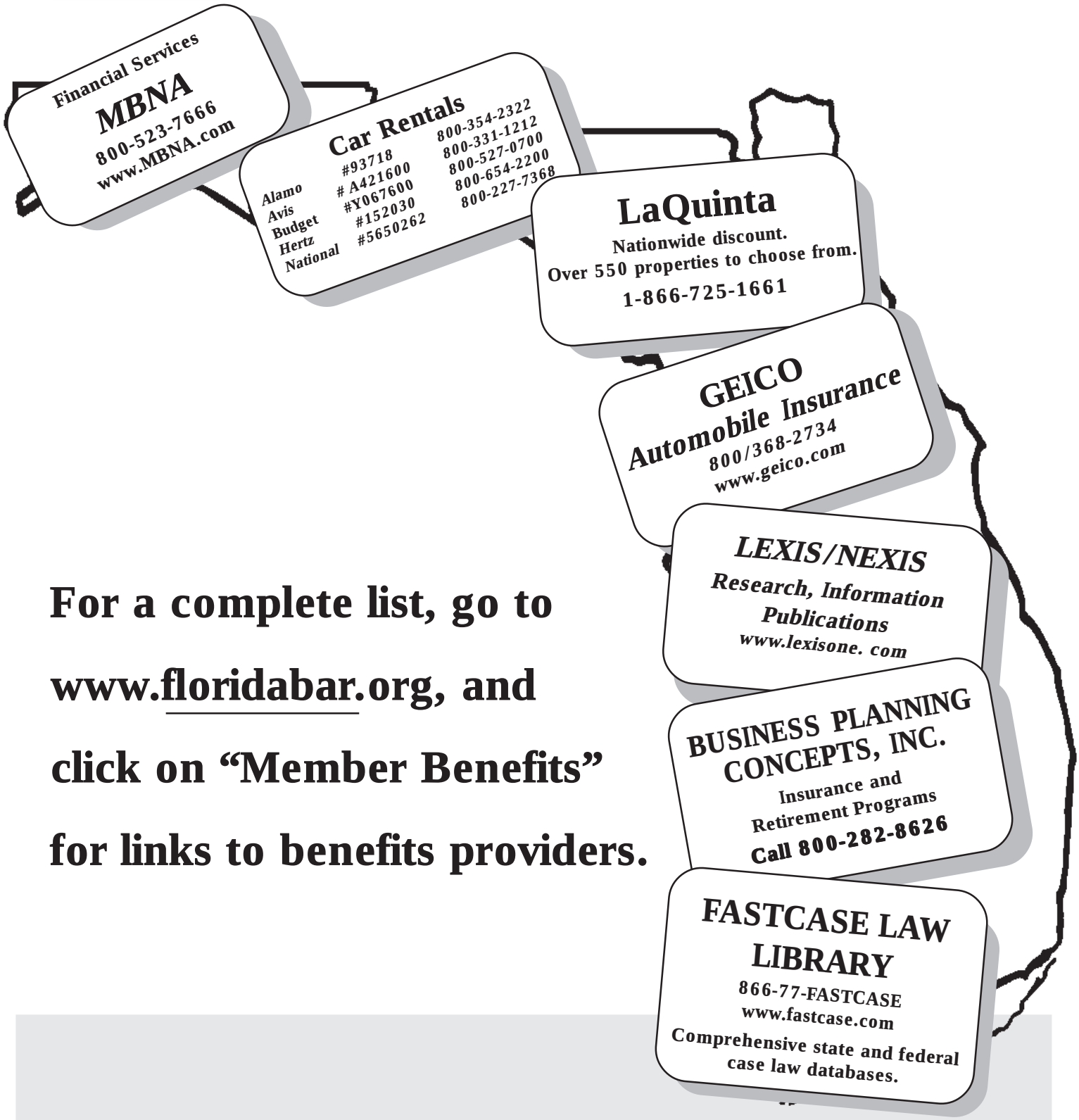
## Important Dates

**Application Filing Periods Each Year:**
1st Cycle: July 1 - August 31
2nd Cycle: September 1 - October 31

**Exam Dates Each Year (Day to be Announced):**
1st Cycle: March
2nd Cycle: May

# Member Benefits

THE FLORIDA BAR




**For a complete list, go to www.floridabar.org, and click on "Member Benefits" for links to benefits providers.**

**The Florida Bar**
**651 E. Jefferson Street**
**Tallahassee, FL 32399-2300**