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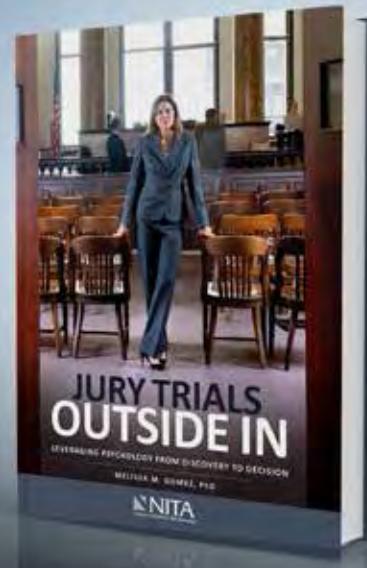
**SAMUEL H. FRANKLIN**  
**68TH PRESIDENT OF THE**  
**AMERICAN COLLEGE**  
**OF TRIAL LAWYERS**



*Betty and Sam Franklin in Birmingham, Alabama*

# BOOK REVIEW: JURY TRIALS OUTSIDE IN

BY MELISSA M. GOMEZ, PH.D (2016) (142 PP.)



No newly minted trial lawyer should undertake his/her first jury trial without reading this destined-to-be-a-classic text on the subject. Less than 150 pages, but rich in anecdotes and examples from a jury trial consultant who has worked on serious personal injury cases and complex commercial disputes, both for plaintiffs and for defendants, in courts across the country, this slender work will give the jury trial tyro a sense of confidence that he/she can handle whatever arises in that important first case.

More experienced jury trial lawyers will find it just as useful in confirming or challenging what they think they have learned from their own experiences in the courtroom.

The subtitle "*Leveraging Psychology from Discovery to Decision*" says much about the approach taken. Time and again, the author – herself the holder of a Ph.D. in psychology – cites one learned study or another about human behavior and then explains, in simple but not simplistic terms, the lesson to be learned in terms of what happens inside the courtroom. The lucid writing style makes the text a pleasure to read.

Perhaps the best way to show the value of this work is to list some of the topics with which the author grapples. Here is a selective review of the five parts of the book:

## PART ONE – UNDERSTANDING JURIES

- The importance of presenting a consistent picture
- The significance to jurors that the defendant is a large corporation – and how counsel for defendant should deal with that reality
- What does it mean when a juror smiles at you?
- Miller's Law – what is it, what does it say about jurors' ability to remember evidence and how to present your case?
- The role of sympathy and anger in jurors' decisions – the danger of overplaying sympathy

- To what extent can you expect jurors to follow the law versus their own sense of justice?
- The pluses and minuses of appealing to jurors' "common sense"
- Guidelines for using disturbing (that is, gruesome) evidence
- The importance of an outsider's perspective to evaluating the strength of your case

## PART TWO – CHOOSING TRIAL STRATEGIES

- Using your opponent's momentum to your advantage
- Anticipating jurors' "gut reactions" – and how to overcome them
- Your opponent's failure to present certain evidence – and how best to exploit that
- The concepts of primacy and recency – and what gets lost in the middle
- Should defendant concede liability where liability is clear – the answer may surprise
- Plaintiffs' loss of consortium claim – should it be dropped? If not, how should it be presented?
- Should counsel for defendant address damages in his/her closing even when there appears to be a sound liability defense? How should counsel for defendant discuss damages without

- conveying the sense that he/she believes that plaintiff is entitled to a verdict in some amount?
- When should a claim for punitive damages be made? What are the dangers of making such a claim just because you can?

- The critical importance of the verdict form – with examples of how the verdict form influenced the outcome of the case

### **PART THREE – DESELECTING JURIES**

- The importance of knowing your own biases
- The bias in favor of the status quo
- Recognizing potential leaders on the panel – who are not necessarily the loudest. Do you want them on or off the jury?
- Crafting voir dire questions so that you identify biases but don't plant biases that are not there
- The usefulness – or not – of Internet searches regarding prospective jurors
- Knowing the Court – with a checklist of things to ascertain about how the judge conducts voir dire before you show up for that exercise
- The benefits of written jury questionnaires – why is the author so high on them?
- Constructing your voir dire questions to fit the judge's procedures
- The importance of conducting the voir dire quickly, clearly and professionally
- Keeping track of the information gleaned during voir dire
- A suggested system for rating prospective jurors

### **PART FOUR – MANAGING WITNESSES**

- Identifying the witness's natural communication style
- How does his/her pattern of problem-solving fit with the testimony to be given
- Establishing a foundation for the testimony of the witness – what are the key points to be made through him/her?
- Asking the right questions outside the courtroom to identify what is bothering the witness
- Teaching balance in preparing a witness for

his/her deposition – what is wrong with the common caution that the deponent should strive to answer every question (a) "Yes" (b) "No" (c) "I don't know," or (d) "I don't remember"?

- Preparing the witness for the lingo and rituals of the courtroom
- Preparing the witness who may see the cross-examiner as an authority figure (a problem especially with foreign witnesses who may be inclined to defer, to concede, to admit)
- Preparing the witness with the opposite problem, that is, one who expects others to defer to him
- Recognizing and dealing with the witness on your side whom the jurors will not find credible – for example, a convicted thief
- Dealing with an adverse witness strategically – the pros and cons of calling an adverse witness as on cross-examination
- What is the real significance to the typical juror of the fact that the witness is shown to have made a prior inconsistent statement (for example, at deposition)?
- Preparing and presenting the unlikable witness

### **PART FIVE – MAINTAINING THE RIGHT CASE IMAGE**

- Does "being nice" have anything to do with being an effective jury trial lawyer?
- Dealing with the home-field advantage
- Investigating public opinion
- Dress to impress – what does that mean in terms of appropriate attire in the courtroom for men? For women?
- How to be the right reflection of your client

Each chapter ends with a section entitled "Questions to Ask Yourself," listing the five to six questions that distill the take-away from that section.

I dislike being so uncritical in writing a critique but the truth is that the book is that good.

If you can honestly say that you already know all there is to be learned on these subjects, you don't need this book. Otherwise, it is "a must."

**Dennis R. Suplee**  
Philadelphia, Pennsylvania