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Trial

October 2018

Cutting Through SECRECY

STOP Overbroad Protective Orders

Q&A With House Judiciary Committee Ranking Member **Rep. Jerrold Nadler**

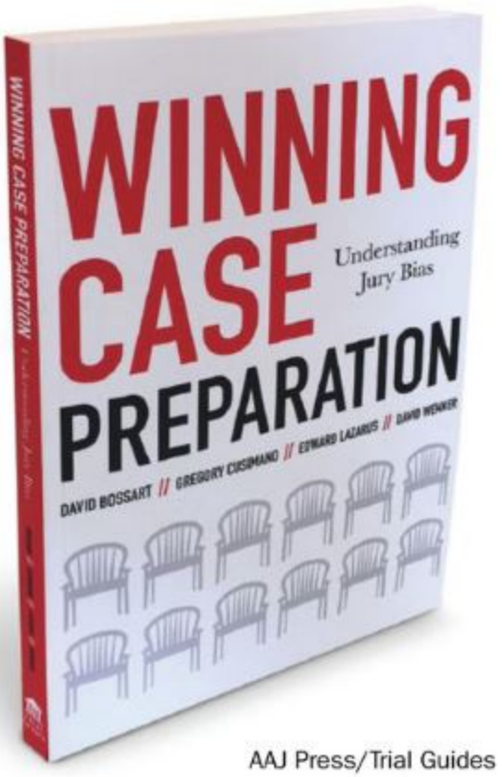
Curb Secret Settlements

ALSO

Cast & Counted— Protect the Vote

Ask, Analyze, and Act

Ashley B. Fournet reviews *Winning Case Preparation: Understanding Jury Bias* by David Bossart, Gregory Cusimano, Edward Lazarus, and David Wenner



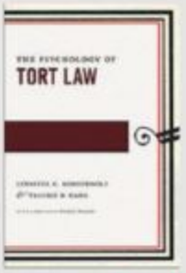
AAJ Press/Trial Guides
trialguides.com
210 pp; $115

I recommend this book for people who:
want to create a winning and persuasive trial story.

My favorite thing about the book is:
the numerous case examples used to illustrate its principles.

I learned:
When framing a safety issue, focus on how the defendant failed to meet standards and not how finding for the plaintiff will lead to a safer community.

My favorite line:
"Attorneys often wait too long to do focus groups on a significant case because their own optimism about the case leads them to believe that it will settle."



You may also like:
The Psychology of Tort Law by Jennifer K. Robbennolt and Valerie P. Hans

Winning Case Preparation: Understanding Jury Bias is a book from which every lawyer can benefit. David Bossart, Gregory Cusimano, Edward Lazarus, and David Wenner use their collective knowledge and experience as trial lawyers and jury bias experts to identify and discuss how to combat anti-plaintiff jury biases. An essential read for trial lawyers, this book provides excellent insights into how to configure your case.

Building on their focus group research, the authors describe five common biases jurors may exhibit—suspicion, victimization, personal responsibility, "stuff happens," and "blame the plaintiff." They provide a strategy to respond to these biases using 10 principles, which they call the "Ten Commandments." One principle, for example, directs lawyers to use confirmation bias to the plaintiff's benefit by developing a trial story that confirms jurors' beliefs rather than contradicts them.

After explaining these biases, the authors' response strategy, and the research and psychological studies that support their approach, the book shifts to providing a framework—called "Bottom Up™"—for developing each case. The authors challenge readers to reexamine the typical preparation model of determining the applicable law and then attempting to frame the case facts in relation to it. While this approach seems logical, they argue that it is not the most persuasive method because it does not overcome juror biases.

Instead, the authors encourage trial lawyers to begin their case evaluation by learning through focus groups what jurors think are the essential issues. Lawyers can use that information to frame their trial stories—and conduct more focused discovery. One example found in the book describes how, after receiving negative focus group feedback in a medical malpractice case, Cusimano asked the focus group members what would change their minds about the defendant's liability: They stated that they would feel differently if there was proof that a delay caused the injury. The plaintiff lawyers applied that information and learned that there was a delay in treatment due to a locked operating room door, which was important—it led to the discovery necessary to win the case.

The authors also cite valuable sources that further explain juror mindsets and flesh out some of the biases and concepts identified. For lawyers unable to implement the full Bottom Up method, the book suggests other options, such as conducting informal focus groups with friends or through social media.

All plaintiff lawyers should consider the lens through which jurors view their clients' stories—and this book provides an excellent concept and method for doing so.

Ashley B. Fournet is an attorney at Brodhead Law in Atlanta. She can be reached at ashley@brodheadlaw.com.