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Presenting a live 90-minute webinar with interactive Q&A

Jury Selection: Winning Before Opening Statements

Today's Venire; Voir Dire; Attitudes and Biases; Juror Questionnaires; Social Media

TUESDAY, JANUARY 21, 2020

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

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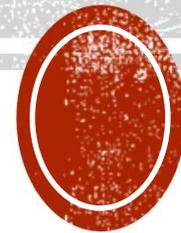
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Jury Selection : Winning Before Opening Statements

A LIVE 90-MINUTE CLE WEBINAR AND INTERACTIVE Q & A
WITH SARAH TORAASON, MURRY CAMP, AND EMILY MCDONALD





OVERVIEW

Today's Venire Panel

Before and During Voir Dire

Attitudes and Biases of Jurors

Execution

Use of Juror Questionnaires

Using Social Media in Jury
Selection



TODAY'S VENIRE PANEL

Characteristics of a juror today	Application/Practice Pointers
More educated	Persuade beyond an 8 th grade level
Learn by doing/seeing vs. lectures	Incorporate modern learning techniques with technology and media in mind
Want to do good, but need guidance	Create a narrative to assist jurors in making the "right" decision
More business acumen	Recognize that business familiarity is more readily available to the masses



TODAY'S VENIRE PANEL

Characteristics of a juror today	Application/Practice Pointers
Movies and TV have made trial familiar, yet jurors are not lawyers	Armchair lawyers, who think they like laypersons, often use inductive rather than deductive reasoning
Grab and Go Culture	Create messages in a format they can and will process given short attention spans
Fake News	Confounds the concepts of "facts" and "truth." Lead to a reliance on "personal truth."
Polarized Society	Less social pressure to conform to majority
Confirmation Bias	Biases are reinforced by any and all types of news. Non-affirming information is rejected as "fake news."



PURPOSE OF VOIR DIRE

- Central Task: De-selection
- To expose dangerous jurors. Who because of life experiences, attitudes, and beliefs will NEVER be able to see the world from my client's shoes?
- Listening and learning
- Getting jurors to care about your case on a personal level



PREPARING FOR VOIR DIRE

Consider themes at these critical points:

- (1) After the initial client meeting
- (2) Original petition/ answer to petition
- (3) Deposition prep with witnesses
- (4) After depositions
- (5) Trial prep

Don't wait until the night before jury selection to think of your most important themes



DURING VOIR DIRE

Anatomy of Voir Dire

- General questions
- Case specific questions

Tips for during Voir Dire

- Remember it's important to use time talking with potential decision-makers wisely
- Everyone has bias, key is determining what biases are important and how to identify those who have them

An effective Voir Dire

- Conversational
- Questioner practices eye contact and shows genuine interest
- Seeks to learn the *WHAT* and the *WHY*





**DURING VOIR DIRE
CONT.**

■ **What will your judge allow?
Ask!**

- **Form of questioning**
- **Number of challenges based on panel size**
- **Use of Supplemental Juror Questionnaire**
- **How will alternates be selected?**
- **Don't forget about Motions to Equalize Strikes**



ADDRESSING JUROR BIASES AND ATTITUDES

- There are no blank slates
 - Know the lens through which jurors will see claims of the case- analogies drawn from other life experiences
 - The conventional metrics (socio-economics, political affiliations, faith, employment background) are not usually helpful
 - Drill down on the specific experiences with trial themes
- Availability heuristic
- Confirmational bias



JURORS ARE LIKE ICEBERGS

- Beware of designating desirable vs. dangerous on paper only
- Learn **why** a particular individual holds a particular attitude
- Demographics much less predictive of decision-making than are life experiences
- Talk about family of origin or personal experiences in relation to case themes



POISONING THE JURY POOL IS A MYTH!

- Opinions, attitudes, and beliefs are formed and enforced by a lifetime of experiences
- Bias is personal, a function of socialization
- A stranger one encounters on a jury panel with a different opinion is unlikely to change years of experiences, attitudes, and beliefs
- Techniques to deal with the overbearing panel member



Parenting style

Sibling relationships

Birth order

Parental approval/disapproval

Perceived or actual slights

Family violence

Substance abuse/mental health issues

Family dysfunction (neglect/psychological abuse)

**COMMON
THEMES THAT
INFLUENCE
JURORS IN
PROBATE AND
FAMILY
FIDUCIARY
CASES**



EXECUTION: WARMING UP THE PANEL

- Be curious while cordial
- Reveal something personal about yourself
- Make it okay to disagree or have a different opinion
- Talk about biases. Remind the panel that bias is human, everyone has some
- Permission to talk privately
- Thank the folks who share



Practice Tip: Jurors who feel like the attorney cares are more willing to share



EXECUTION: AVOID THE CRICKETS

- Get them active
 - “Raise your hand (or better yet juror card) if you have ever...”
 - “Who on the first row....?”
 - “No one on the first row has ... ?”
 - “Anyone else agree with Mr. Smith?”
 - “Mrs. Jones, what do you think? More like Mr. Smith or Ms. Clark? Or do you have another opinion?”



EXECUTION: AVOID THE CRICKETS

- Relate to personal experiences
- Always build rapport
- Remember, a primary goal is **De-Selection**
- Don't 'accidentally rehabilitate'



JUROR REHABILITATION

- When the other side is attempting to rehabilitate a juror:
 - Two opponents: opposing counsel and the judge
 - Be careful with your questions; everyone wants to be thought of as “fair.”
 - Alternative: “Because of your experience with ‘X’, would it be fair to say that my client would be starting from behind in this case in your mind?”
 - Alternative: “Because of your experience with X, would it be fair to say that you have some strong opinions about about X? Do you think you will have these same opinions if opposing counsel were to ask you about them?”



JUROR REHABILITATION

- When you are trying to rehabilitate:
 - Remember: everyone wants to be thought of as fair.
 - Question: Do you want to rehabilitate? When a potential juror shares a belief or personal experience, believe them!
 - Everyone has biases. “You are someone who could put your own experiences aside and judge this case based on the evidence, right?”
 - Don’t be afraid to object.
- Recall the challenge for cause standard
 - Can the juror reasonably be found able to render a fair and impartial verdict?





Supplemental Juror
Questionnaire



Social Media



Challenge for Cause List



Private conferences with
judge and attorneys

**TOOLS
TO GAIN
INSIGHT**



SUPPLEMENTAL JUROR QUESTIONNAIRE

- Use of questionnaire makes voir dire more helpful and laser focused on possible bias issues
 - Short and sweet—not repetitive
 - Juror identifying information
 - Different questions styles
 - Use the Likert scale
 - Don't forget to ask WHY



SAMPLE QUESTIONS

- Have you ever been executor of a will?
- Have you ever been the primary caretaker of an elderly parent or family member?
- Do you have any formal education or work experience in any of the following areas: (include case specific themes)
- What TV, Podcasts, Movies do you most frequently watched
- Where do you get your news? (TV, Radio, Social Media)
- How do you spend your spare time?
- Have you or family member ever been a Plaintiff, Defendant, Witness in lawsuit?
- Under what circumstances would you file a lawsuit?
- Ever been in a serious business dispute with partner, customer, client (or boss)?



MORE SAMPLE QUESTIONS

- Do you believe your word is your bond? Why or Why not
- In this day and age, do you believe contracts must be written?
- Do you consider yourself leader, follower, team player?
- Do you think your life is more difficult than the lives of most people?
- Has someone ever used your idea without your permission?
- Have you ever owned/operated small business?
- Ever left one job to work for the competition?
- Ever worked for a company that was bought and sold while you were there?



SOCIAL MEDIA

- **Advantages**
 - More honest, less self-censorship
 - Far more detailed information: opinionated, legal dramas, religious, media-diet
- **Know the avenues of inquiry:**
 - LinkedIn, Google, Facebook, Twitter, Instagram, PR Databases
- **Know the footprint you'll leave:**
 - Will your search be identified to the juror? Privacy settings.
- **Know jurisdictional issues and limitations:**
 - ABA Opinion 466 (April 2014)
 - New York Bar Association Formal Opinion 2012-2
 - Changing area of law
- **Practical Examples**
 - “Erin Brockovich is my hero!”
 - “Chic-fil-a is homophobic.”



CONSIDERATIONS FOR SOCIAL MEDIA

- Timing? Determines whether and how you can use in jury selection.
- What to look for/learn?
 - Confirmation of juror card job/education/marital status
 - Inconsistencies
 - Photos –any big changes recently
 - How old is the information posted?
- Plan for how to collect data?
 - Divide among available hands
 - How certain are you that this social media belongs to this particular juror





Questions?



*Thank
You!*



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