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First Impressions

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There are two primary goals of the voir dire process: to weed out jurors who will be biased against your case, and to create rapport and trust with jurors. While the former requires advance planning of questions, the latter requires interpersonal communication skills, making jurors feel at ease sharing personal information.

Before devising strategies for achieving these goals, you must learn how jury selection is handled by your judge. Find out if juror questionnaires are used, how much time is allowed for voir dire, etc., then strategize how best to use those rules to your advantage.

Crafting Questions

Begin writing voir dire questions by identifying the main themes and issues of your case. Trial simulations, focus-group research and community attitude surveys, conducted on venue-matched, jury-eligible individuals, are the best ways to identify trigger issues.

Know the strengths of your case and plant those seeds among jurors. Don't be afraid to ask about issues that might trigger unfavorable attitudes. It is best to approach voir dire from a de-selection model, getting rid of jurors who might be inherently biased.

Once you have identified the hooks in your case, choose your bait. Keep in mind that jurors, during voir dire, are under enormous social psychological pressure to answer questions in a way they think will make them appear fair and impartial (unless they are on a mission to be excused). That means you must pose questions in a manner that allows jurors to indicate bias without feeling as if they are bad members of society. You must give them permission to answer your questions honestly.

Many techniques can be used to accomplish this. One is to frame initial questions indirectly on a trigger issue. You might broach sex discrimination, for example, by inquiring whether jurors believe that there is a "glass ceiling" in corporate America, or whether biological differences make men better-suited for some jobs and women for others.

Another technique is to use selective self-disclosure to make jurors feel comfortable, or even obligated, to do the same. Take advantage of the norm of reciprocity. For example, describe an

emotional event from your life that might render you unable to be fair in a certain type of case.

Explain to jurors that everyone has been through experiences that could compromise their ability to be fair in certain cases. Tell them this is a simple fact of life because we are all thinking, feeling individuals. Such a preface might go a long way toward creating a safe space in which jurors can admit biases of which they are consciously aware while still viewing themselves as good people.

When a potential juror responds in a manner that leads you to suspect that they will be biased against your case, follow up with questions that incrementally lead him or her to admit that they would be unable to be fair in the case. Such questioning might yield enough ammunition to get that juror excused for cause, and at the very least, you will have identified a good candidate for a peremptory challenge.

A word of caution: Stop questioning jurors strongly opposed to your case once you have enough information to substantiate a challenge. By cutting short your questioning of such jurors, you minimize their opportunity to taint or bias other potential jurors.

Conversely, use as sounding boards jurors you suspect will be challenged by opposing counsel – they will communicate positive aspects of your case to other potential jurors. Lastly, remember to appeal to a juror's self-perception as a fair-minded individual in order to help rehabilitate an overly favorable juror your opposing counsel is likely to attempt to strike for cause.

If you are unable to direct voir dire questioning, take advantage of any opportunity to submit questions for the judge to ask. Also, whenever possible, consider filing a motion for use of a supplemental juror questionnaire; even if denied, you will have had a good opportunity to reveal sensitive aspects of your case to the judge.

Juror Profiling

The most reliable means of profiling jurors likely to accept or reject your case is case-specific research, such as a large-sample trial simulation or a telephone survey. Absent an empirically based juror profile or consultation with an experienced trial consultant, the best you can do is to rely on experience with the case issues and the venue, as

well as generic juror profiles.

Generic profiles reveal that plaintiff-oriented jurors tend to be less educated, of lower socioeconomic status, liberal, disgruntled, disenfranchised, and more emotional than analytical. They tend to blame others when bad things happen to them (in psychology terms, this is called an external locus of control) and to have experienced recent personal hardship.

Generic profiles of defense-oriented jurors tend to fall at the opposite end of the spectrum. These jurors are more educated, of higher socioeconomic status, more analytical than emotional and more conservative. They typically take responsibility for what happens to them (internal locus of control) and have management or supervisory experience.

But those profiles are generalities, likely to be true "on average." They are more predictive of juror orientation in a canonical civil case, in which the plaintiff is the aggrieved underdog and the defendant claims that it did nothing but abide by the rules. The underlying theory is that jurors at the margins of mainstream society are more likely to empathize with an underdog plaintiff, whereas jurors who are well-integrated into mainstream society – who understand and have profited from the "rules of the game" – are more likely to empathize with a defendant.

The more the facts of your case deviate from the canonical scenario, the less likely it is that generic profiles will predict who will accept or reject your case theory. In complex cases, the opposing parties might believe that separate characteristics are likely to elicit empathy from canonic "plaintiff" and "defense" jurors, or several types of jurors might be favorable to one side of the case for differing reasons.

In addition to discerning whether prospective jurors are favorable or unfavorable to your case, it is important to consider their potency. Broadly speaking, some jurors are persuaders; they wield considerable influence in the jury room, even if they are not the foreperson, and will be strong allies or foes of your case. Others are participants; they will have opinions and vocalize them in the jury room but will be less influential than persuaders. There are also passive followers.

Watch the panel carefully from various vantage points, considering not only what the prospective

jurors say but also their nonverbal behavior and how they react to and interact with one another.

Establishing Rapport

Establishing rapport with jurors during voir dire is critical, and you must respect them during this process. Be mindful of those who are in unfamiliar territory and are uncomfortable; they might be disinclined to become the focus of attention. Be sure to smile at them and make eye contact. Show that you are listening and interested in what they have to say. Don't look down at your notepad to prepare for your next item while a juror is answering a question you posed.

It is especially advantageous to establish rapport with jurors you believe will be adverse to your case. This not only makes it easier for them to reveal their biases, intentionally or otherwise, but also gives you the benefit of a positive interaction should they end up on the jury.

You have two important opportunities to hear from jurors in your case: during voir dire, and at the moment they announce their verdict. Remember that you can minimize your chances of hearing something you don't want to hear at verdict by maximizing your opportunities during voir dire.

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