
The 'New Normal' Juror

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Until the events of 9/11 combined with the nation's loss of faith in corporate institutions via Enron and WorldCom, et al., years of jury research showed that male yuppies were often good jurors for corporate defendants. They identified with competitive, entrepreneurial, successful, corner-cutting, in-control corporate entities.

Life was good for these jurors; they were tough and not squeamish. They did not identify with underdogs. But the events mentioned above hit home: These jurors lost their jobs, job security, and significant chunks of their investment portfolios. They now distrust their corporate futures because they became vulnerable. Now they are underdogs.

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TRIAL GRAPHIX.

It may be better to have loved and lost than never to have loved at all, but the same does not apply to wealth.

Defense-turned-plaintiff jurors may pose a greater hazard to defendants than traditional plaintiff jurors (angry, anti-establishment, unempowered, underemployed, and uneducated). “Nouveau Poor” jurors pose a risk for several reasons:

- Converts are often zealous
- These jurors have something in common with old-fashioned plaintiff jurors: A grudge.

Moreover, they come armed with better educations, know-how about the corporate world, fact-finding and analytical skills, awareness about what “a lot of money” is, leadership experience, and the ability to articulate their views.

Hence, it is unsafe to assume that a yuppie is better for the defense than, say, a housewife. The housewife may have worked outside the home in a manner better suited to the defense, and she may have left her employment with no gripes. Only the right questions will reveal her story.

So Now What?

Many voir dire questions are stale one-liners: “What do you do for a living?” Such questions fail to reveal a person’s life experiences or their belief system. Better questions do reveal these things: “What do you like and dislike about what you do?” “What responsibilities do you have in your work?” “What caused you to change your employment? Was it your idea?” “What hardships have you had in the past two years, and what or whom do you blame for those hardships?”

Does the potential juror take credit and responsibility and accept blame, or do they credit or blame someone or something else? This is a key to identifying self-reliant jurors (“internal locus of control”) vs. other-dependent jurors (“external locus of control,” a.k.a. victims/blamers).

A Bad Experience Alone Does Not A Victim Make

It helps to focus on two core issues: What happened to the person and how the person relates to what happened.

Trauma may make one person identify with victims, but another person might refuse to be a victim and may have little tolerance for those who consider themselves victims. Simple awareness of a potential juror’s trauma is insufficient; their views about that trauma are essential.

Such information often reveals more than anything else about a person’s suitability as a juror on your case.

What Should Not Be Asked In Voir Dire?

Cute, esoteric questions are not useful. Such questions are useless at best; at worst, they waste time and annoy the court. It is likewise imprudent to ask too many questions. Judges usually reject irrelevant questions and overly burdensome voir dire demands. When numerous questions are permitted, jurors are rarely asked all the same questions (unless a written questionnaire is given); this makes apples-to-apples comparisons impossible. Another common mistake is to do opposing counsel’s work for them by asking questions that reveal your good jurors.

Finally, jurors are concerned about their privacy. Most are not used to speaking in an authoritarian courtroom setting about anything, let alone anything personal.

What Does This Mean?

To react effectively, we must assess “the new normal.” Unlike the terrorism color alerts whose vague basis eludes most of us, lawyers on both sides of the bar can assess their risk by questioning and testing old stereotypes about jury selection.

Options include:

- Revisit one’s voir dire notions (rather than falling back on old assumptions) by asking deliberate questions that take nothing for granted
- Interview jurors post-trial to test one’s assumptions
- Case-specific profiling research can aid in identifying and understanding favorable vs. unfavorable jurors

What To Ask

Ask/submit questions that:

- Are necessary to establish cause strikes
- Are most likely to be permitted (the fewest, most case-relevant questions)
- Are likely to reveal only hostile jurors to your side, balanced with a few questions
- Indoctrinate jurors to your position and to secure key commitments from prospective jurors
- “Pad” your submission (i.e., include extra questions as bar-gaining chips in exchange for opposing counsel’s most offensive questions)

Voir dire is not an academic exercise, but rather a vital fact-finding mission (and your only opportunity to make a first impression). Quality takes precedence over quantity and accomplishes more; every question must earn its keep.

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