

# VOIR DIRE

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**DES MOINES, IOWA**

### **I. USES OF SOCIAL SCIENCE TECHNIQUES IN SELECTING JURY.**

#### **A. When Is It Important?**

1. Pretrial publicity.
2. No voir dire or judge conducts it alone.
3. Racial/Ethnic minority.
4. Political/Controversial issue.
5. Will the case have direct effect on jurors as citizens?
6. Cost/Benefit analysis.

#### **B. Community Attitude Assessments.**

1. Purpose: Construct profile of best and worst juror.
2. May also be used for:
  - a. change in venue;
  - b. motion for individual voir dire, lawyer-conducted voir dire, or expanded voir dire on particular issues;
  - c. challenge to composition of jury panel;
  - d. deciding in which jurisdiction to bring action;
  - e. testing a particular trial strategy.
3. Methods.
  - a. Poll/Survey.
    - 1) How many questions.
    - 2) Phone, mail, personal interviews.
    - 3) Forced choice or open-ended.
4. Have professional design instrument if possible.
5. Selecting sample -- for do-it-yourself effort, random sample is usually the only possible choice, i.e., first person on every tenth page of the metro phone book.

#### **C. Mock Trials.**

1. Useful for:
  - a. selecting trial strategy;
  - b. determining appropriate choices for:
    - 1) opening;
    - 2) experts;
    - 3) demonstrative evidence;
    - 4) summation.
  - c. determining effectiveness of lawyer;
  - d. should you settle?
  - e. what kind of people are best and worst jurors.
2. What to test -- depends on individual case.
3. Who do you need?
  - a. Prospective jurors.
  - b. "Judge".
  - c. Opposing counsel.
  - d. Witnesses.
  - e. Facilitators for number of groups you have.
4. Qualification of mock jurors.
  - a. Must be qualified to be selected as jurors in the jurisdiction.
  - b. No familiarity with case, attorneys, issues.
  - c. Must agree to confidentiality.
  - d. Should be paid - but not much. \$25 per day?
5. How many -- four times number on actual panel is ideal - not necessary.
6. How to find jurors.
  - a. Past jury panels.
  - b. Advertising.
    - 1) "Wanted. Participants for communication study in making decisions on Saturday, March 13, 1988, from 9:00 to 4:00. No special skills required. Compensation \$25.00. Call 515-555-5555."
    - 2) Screen callers to assure they meet basic qualifications for jurors.
    - 3) Acquire basic demographic data.
      - a) Age.
      - b) Occupation.

- c) Marital status.
  - d) Spouse's occupation.
  - e) Number of children and occupations, if applicable.
  - f) Education.
  - g) Prior court experience.
  - h) Association with legal/medical profession.
- 4) College classes, unions, civic groups, etc. -- not best choice but inexpensive.
- 5) Note: Do on weekend or evenings.
- 7. Conduct of trial simulation.
  - a. Prepare schedule.
  - b. "Judge" opens proceedings and provides instructions.
  - c. Trial proceeds.
  - d. Administer questionnaire at end of opening statement, after presentation of evidence, at close of evidence.
  - e. Jury deliberations should be tape recorded.
- 8. Read Starr & McCormick, Jury Selection and Jury Work, and other similar books.

## II. USE OF SOCIAL SCIENTIST.

- A. To Conduct Investigation, Polling, Survey and Mock Trials.
- B. Jury Profile.
- C. Voir Dire Questions.
- D. In-Court Assistance.
  - 1. Nonverbal communication.
  - 2. Where does communications expert sit?
  - 3. Notetaking.
  - 4. Formula.

## III. SPECIAL STRATEGIES.

- A. Supplemental Juror Questionnaire.
  - 1. How?

- a. Court order.
  - b. Agreement of counsel.
- 2. Why?
  - a. Personal questions.
  - b. Time and resources.
  - c. Juror hesitancy to speak up and to speak about embarrassing subject.
- 3. When?
  - a. In advance.
  - b. At beginning of court session.
- 4. See Jury Work, pp. 2-42 and 2-43 for list of cases where written questionnaires have been used to supplement oral voir dire.

B. Individual Or Small Group Voir Dire.

- 1. May be used in combination with supplemental juror questionnaire or separately.
- 2. Serves same purpose.
- 3. Irvin v. Dowd, 366 U.S. 717 (1961) at p. 728.  
"No doubt each juror was sincere when he said that he would be fair and impartial ... but the psychological impact of requiring such a declaration before one's fellows is often its father."
- 4. U.S. v. Colabella, 448 F.2d 1299 (2C 1971) at p. 1304.  
[W]hen there is any foundation for concern about juror partiality ... which ... might affect other prospective jurors, the demands of the 'most priceless' safeguard of individual liberty - justify the small expenditure of time [to question each juror separately if they express bias].
- 5. Note: Press-Enterprise Co. v. Superior Ct., 464 U.S. 501 (1984) requires that, except under compelling circumstances, voir dire must be open to the press and public.

IV. VOIR DIRE.

A. Pretrial.

- 1. Decide what kind of juror you want.
  - a. Occupation.
  - b. Age.
  - c. Sex.

- d. Ethnicity.
  - e. Family status.
  - f. Education.
  - g. Caution -- stereotypes don't always apply.
  - h. Caution -- same age/same sex jurors as plaintiff when plaintiff does not have catastrophic injuries.
2. Pretrial investigation -- try to get comprehensive tailored questionnaire.
  3. Federal court.
    - a. Prepare questions for the judge.
    - b. Strike a deal.
    - c. Direct questions to entire panel.
    - d. No conditioning.
    - e. Make your motion to permit attorney-conducted voir dire--knowing you will probably lose!
      - 1) See Federal Rule 47(a) - court can conduct alone.
      - 2) Some helpful cases:
        - a) "Peremptory challenges are worthless if trial counsel is not afforded an opportunity to gain necessary information on which to base strikes." U.S. v. Ledee, 549 F.2d 990 (5C 1977), cert. den. 434 U.S. 902.
        - b) "However, we must acknowledge that voir dire examination in both civil and criminal cases has little meaning if it is not conducted by counsel for the parties." *Id.*
        - c) "A voir dire that has the effect of impairing the defendant's ability to exercise intelligently his challenges is grounds for reversal, irrespective of prejudice." U.S. v. Rucker, 557 F.2d 1046 (4C 1977).
        - d) See also helpful language in Cohn v. Julien, 574 S. 2d 1202 (Fla. App. 3 Dist. 1991) restricting plaintiff's counsel to 15 minutes for voir dire in complex medical negligence case was unreasonable.

## B. Before You Talk.

1. Watch them as they come in.
  - a. Nonverbal?
  - b. What are they wearing?
  - c. What are they carrying?
2. Get judge to pronounce their names.

3. Have someone else take notes.

C. Introduction.

1. State theme early.
2. Introduce yourself.
  - a. I am Roxanne Barton Conlin.
  - b. I am a lawyer.
  - c. I am here to speak for Eddie McConnell.
  - d. This is his case.
  - e. I am on his side. That is my privilege as a lawyer and my duty to you and to Eddie McConnell.
  - f. You have the privilege of judging the facts of his case. You and only you have that privilege.

D. To Do Always.

1. Emphasize similarities between you, your client and jurors. (Neighborhoods, schools, families, etc.)
2. Opening questions.
  - a. "Lean back and relax."
  - b. Mirroring.
  - c. "Raise your hand if you have ever heard a boring speech, lecture or sermon."
  - d. Explain process.
    - 1) Personal questions -- not out of curiosity.
    - 2) Let me know if you don't want to answer.
3. Obtain commitment.

Example: Ms. Smith, do I have your promise that even if you don't agree with the law, and I'm not suggesting you won't, but even if you think the law is wrong you will follow it?
4. Disclose serious problems.
5. Save favorable jurors. Example: Sympathy for badly injured plaintiffs.

Ms. Smith, when you came in this morning, you had no preconceived notions about this case, did you?

You will listen to the evidence, won't you?

Aside from a natural sympathy that we would all feel, you will not permit yourself to be unduly influenced by that sympathy, will you?

You will vote your convictions fairly and in accord with the law and based on the evidence?

6. Explain why you won't be chatting with them in the hallways.
  7. Mention the necessity of making objections.
- E. Invariable rule: If you don't like the juror, the juror doesn't like you.
- F. General Areas to Explore.
1. Biographical information.
  2. Knowledge of parties, witnesses, attorneys.
  3. Describe your job and that of your spouse. (Re job -- What do you like best about it? Least about it?)
  4. Describe your prior work experience.
  5. Union member?
  6. Education.
  7. Special skills or training -- medical, legal, technical.
  8. Any injuries to you or family members.
  9. Any experience in legal matters -- prior jury service, lawsuits.
- Example: Questioning on previous juror experience.
- What kind of a case -- criminal/civil.  
What was it about?  
When was it tried?  
What was the verdict?  
How did you feel about the jury's deliberations?  
How did you feel about the jury system as a result of that experience?  
How do you now feel about the verdict in that case?  
Did anyone say anything to you about the case, i.e., judge, attorneys?
10. What do you read on the editorial page of the newspaper?
  11. Have you ever written a letter to the editor?
  12. Any ideas about this kind of a case?
  13. Any situation like this?
  14. Hobbies, recreation, TV programs, magazines.
  15. Have any pets?
  16. What makes you mad?
  17. Explain comparative negligence.
  18. Explain there may be more than one proximate cause.
  19. Is it wrong for a person partially at fault to recover?
- G. Concluding Questions.



1. Have you had any personal experiences which we haven't touched on that would influence your vote -- that would make you lean even slightly in favor of one side before the trial starts? In asking this question, we rely on your sincerity and your honesty to tell us of any such personal experiences and their effect on you.
2. Do you have any essential beliefs, religious, moral, political or personal which would interfere with your following the court's instructions on the law?
3. If you were Don and Marjorie Moreland, would you want someone in your frame of mind sitting in judgment on you?
4. When you take your oath as jurors, you promise to follow the law as given you by the judge. Will you also promise me that you will listen and decide this case based on the evidence, and if the evidence shows that Don and Marjorie are entitled to damages, that you will render a full and adequate verdict in an amount that will fully and fairly compensate the Morelands for their losses?

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