

"Finding the Golden Retrievers": Jury Selection From the Ground Up

*Andrew H. Eibel, Esq.
Training Coordinator
Criminal Defense Division
The Legal Aid Society of New York City*

A JURY CONSISTS OF TWELVE PERSONS CHOSEN TO DECIDE WHO HAS THE BETTER LAWYER

Robert Frost

LOVE IT OR HATE IT???

Extreme Lawyering: Scary and Exhilarating

Unpredictable

Unstructured

Requires More of Oneself

Presents Great Challenges: Be Effective, Do It Well

Permits Greatest Personal Creativity, Resourcefulness

Chance to Directly Connect With People

Relaxed (?) Period Before Formalism, Real Conflict

Chance for Small Talk?, Humor?

I. Purpose(s)

1. Learn enough about the panelists to intelligently exercise your peremptory challenges.
2. Develop a sufficient record to support your challenges for cause.
3. Preview the good and bad news about the case, and see how the panelists react to it.
4. Preview your theory of defense, and see what the panelists think of it.
5. Personalize your client with panelists who will eventually become your jurors.
6. Develop your credibility, establish a rapport with panelists who will eventually make up the jury.
7. Make a proper record/keep sufficient records to defeat prosecutorial Batson challenges
[NOTE: THIS OUTLINE DOES NOT COVER BATSON]
8. Make the appropriate record where Court limits or interferes with your *voir dire*.
9. Neutralize Panelists' Negative Beliefs, Build Positive Attitudes???

II. Purposes Measured Against the Reality of Jury Selection

Really about *getting* information and *giving* information.

Do You Need to Make Choice About Which Purpose to Pursue?

Learn What Panelist *Really Feels*, Predict How Will/Should *Behave*?

OR

Educate Jurors About Case, Not Vice Versa?

IN REALITY: Often severe time and/or content limitations.

Questions yield limited and unreliable responses:

-answers less reliable as get closer to actual, personal issues

-pressure to give socially acceptable answers in a foreign,
public session

("Called on in Class" Syndrome: say as little as possible,
what the teacher wants to hear)

POSSIBLE SOLUTION: Perhaps Better Off *Giving* Information (= *Advocacy*)
Than *Getting* Information (witchcraft)?:

Advocating Better Than "Witch hunting" Because It Does Not Matter Who
Is Picked If They All Heard the Message?

SYNTHESIS: Get only as much info as need for Batson-proofing peremps and
developing record for cause, advocate your head off the rest of the time?

IIA. Choosing From the Different Approaches

How to Decide Which Purpose(s), Approach(es) for the *Voir Dire*?

*** *IT ALL DEPENDS ON YOUR THEORY OF THE CASE/THEORY OF
DEFENSE*

Preparing and Executing an Effective *Voir Dire* Presupposes a *Fully Developed
Theory*:

You Should Have a Clear Idea of Your Opening Statement, Summation and
the Points to Develop With Each Witness

Otherwise, Process May Be Reduced to Directionless, Boring Questions and Small Talk

III. Limitations/Obstacles

1. Insufficient time for questioning.

- E.g., "Getting more federal every day"
2. Unworkable size of the panel to be interviewed.
 3. Substantive restrictions:
 - a. Boulware: Questioning narrowly restricted to ability to fulfill statutory juror qualifications.
 - B. Prohibited from discussing the facts of the case too closely.
("Don't try case in *voir dire*")
 - c. Specific factual limitations.
 4. Limited Number of Challenges: Really *De-Selection* Process
 5. Interference With Exercising Challenges: Batson
 6. Juror boredom.
 7. Judicial, prosecutorial objections and interference.

IV. The Process

1. Preliminary screening:
 - a. Judge's introduction to case:
-type of case

- accusation
- parties
- anticipated length of case
- b. General questions to entire panel.
- c. Solicitation of panelists who are unable to serve.
- d. Preliminary legal instructions, group questioning about ability to follow law
- 2. Seat panelists in jury box for particularized questioning.
- 3. Juror Questionnaire:
 - a. Filled out by panel at the outset? Beforehand?
 - Mechanics of use (When disclosed to parties, is there sufficient time to analyze, prepared by whom, use of standard form, any defense input on content?)
 - b. Used by panelists in jury box?
 - c. Content (Too many questions, too much information to process easily?)
- 4. Individualized *Voir Dire*?
 - a. Instructions re giving answers privately – Effective?
 - b. Mechanics (In Chambers? In the hallway? Who does the questioning? Will the Court tolerate slowing down the process?)
 - c. Private Questioning of Individualized Panelists About Sensitive Subjects *After* Overall Group Questioning?
 - Due to Response Calling for Private Inquiry
 - Work It Out With Court Ahead of Time? (Procedure, subject matter)
 - Avoids “Contaminating” Entire Panel
- 5. Get the “Scouting Report” on the Judge Ahead of Time
 - a. Preferred Procedure
 - b. Time, Substantive Limitations
 - c. Can Always Ask Judge Directly
 - BUT: May eliminate your “plausible deniability” (“I’m sorry, Judge. I didn’t know that you don’t allow the lawyers to *hypnotize* the panelists! Sheesh, go figure!”)
 - Some Judges go over the ground rules at the outset — and then stomp all over you when you violate them.
 - d. Ask Colleagues? Watch Other Cases? Read Transcripts?

V. General Principles

1. Know Where You Want to Go (Don’t Waste Precious Time)
 - a. Listen to questioning by the Court and prosecutor.
 - b. Make (preliminary) assessments about which panelists need to be spoken with,

and about what.

(i.e., substantive follow-up questions, clarifying facial expressions, body language and non-verbal reactions to previous questions and comments)

c. Consider the panelists' backgrounds and answers as stepping stones for particular questioning.

E.g., people who know cops, crime victims, teachers, health care workers

2. Get Right to It (Avoid Lengthy, Boring Introductions)

- a. Sets a Proper (Efficient, Juror Considerate) Tone
- b. Keeps the experienced jurors (who have been through it before) from tuning you out.
- c. Saves Precious Time
- d. Sharpens the Focus of *Voir Dire*.
- e. Use "Small Talk" *Sparingly* and *Judiciously*.

3. Try to Eliminate "Non-Answers" (Head the Evasive Panelists Off at the Pass)

- a. Discuss Your Assumptions About the Panelists:
 - *All panelists will be fair and impartial
 - *All will follow Court's instructions
 - *All will wait to hear all evidence before deliberating/deciding case
- b. Allows You to *Gently* Reject "Non-Answers" and Require the Panelists to Answer *Your* Question.

"You remember that I already told you that I fully accept that you would/would not do that. But I am really interested in how you would answer the question I asked."

4. Create a Safe Environment for the Panelists to Engage in a Dialogue With You

- a. Tell Them the Good News: No Law Requires Panelists to Be Jurors in *YOUR CASE!* – Panelists Are Only Required to Answer Questions Honestly
There are many other cases in the Courthouse to serve on,
if not selected for your jury
(Dorito's Commercial: "Eat All You Want, We'll Make More")
- b. Not a Matter of Qualified versus Unqualified Candidates:
Looking for Panelists Who Are the "Best Fit" for Case Among Many Qualified Candidates
E.g., May Feel More Comfortable With One Capable Baby Sitter,
Doctor Over Others

Panelists May Be Better Fit As Juror – Themselves *Feel More Comfortable* Sitting on Another Case

- c. Liberal Use of Self-Disclosure to "Break the Ice"
- d. Be Considerate of the Panel (What Goes Around Comes Around)
Remember that the Balance of Power will switch to the Jurors after *Voir Dire* —

Your Control of the Process Lasts Only Until the Decision makers Are Chosen – And They Know It

(The Audience Makes the Performance Meaningful)

e. *DEFEND* the Panel From the Court and DAs

Powerful Way to: Win Friends,
Create Sympathy, Empathy
Get Benefit of Doubt From Jurors

Especially Where Court Will Be on Your Back During Trial

f. *BE GENUINE!!!* Don't Be Obsequious--Everybody Hates a Suck-Up

g. Better for Panelist to Be Honest in *Voir Dire*, Than to Struggle With Issues by Himself/Herself Later During Trial or Deliberations

The Court and attorneys may be able to answer questions, clarify issues and resolve problems during the jury selection process.

5. Don't Embarrass the Panelists Or Put Them on the Spot

a. Frame Questions to Avoid Asking Panelists to Disclose Embarrassing Personal Details.

Not interested in *Who*, but whether the Panelist knows *Anyone* in the particular situation/with that particular problem/who had that particular experience.

(You Won't Ask Panelist to Specify Person)

E.g., "Do you know *of anyone* who . . ."

b. Allow Them to Opt Out of Difficult Question?

(However, You Can Certainly Draw a Substantial Adverse Inference Against Them for Their Unwillingness to Answer)

c. Ask If Other Panelists Feel Differently/Have a Different View of Subject NOT Whether They Disagree With Another Panelist

6. Try Not to Repeat Yourself Or Others

a. Ask the Entire Group, Where Possible.

Then, You Can Get More Specific in Questioning Individual Panelists.

b. Where You Must Repeat Yourself, Explain Why.

c. Be Sensitive to Panel's Learning Curve: If They Get It, Move On

(You Can Even Ask Them, If You Need to Check)

7. Take a Genuine Interest in the Panelists' Answers (Or Don't Bother Asking the Question)

a. Don't Ask "Stock Questions."

-They rarely yield useful information.

-They are clearly and obviously "canned."

-The panelists may have heard them before.

b. Ask Follow-Up Questions about the Panelists' personal information.

- Shows that you are listening
- c. Give Affirmation for Panelist's Answers (Even the "Bad Ones").
Facilitates the Discussion (from that panelist and the others)

8. General Procedure and Mechanics

- a. Reassure Jurors About Your Taking Notes About Them and Their Answers.
- b. Discuss Use of Your *Voir Dire* Notes.
- c. Mispronouncing Names:
Try the Hardest One at the Outset.
- d. Act As Though You Control the Process.
E.g., Help everyone, Direct traffic, Thank discharged panelists loudly
- e. Involve Your Client Where Possible? How?
BUT: Panelists may be nervous about being identified or unduly scrutinized by the Accused
- f. Be Honest About Process: Maybe Not the Most Riveting Part of Trial???
You May Not Want to Promise Boredom, but --
Your honesty may engage the Panelists who have previously been through *Voir Dire*
- g. Promise to Be As Efficient As Possible.
BUT Panelists Will Hold You to That Promise If You Make It!
- h. Acknowledge/Involve the Panelists Remaining in the Audience
Involve Them in Hypos?
Turn to Them, Look at Them (Don't Just Give Them Your Back)
- i. Punctuating Questioning With "O.K."
May Provoke Objection/Judicial Interference
Either Verbally Checking Off Mental Point On Your List, Or
Signals Change of Subject
- j. Tell Panelists About Your Time Limitations; Apologize If You Can't Speak With All of Them
-Lets you subtly remind them that it's the *judge's* idea, not yours.
- k. Take Note of Which Panelists Associate With Each Other
Do You Want to Keep the Set? Split Them Up? Double Down?

9. Carefully Ask About the Law

- a. Ask How the Panelists Will *Feel* About the Legal Principles.
- b. Ask Whether the Panelists Would Have Difficulty/Problems With the Legal Principles.
- c. Make the Situation Concrete: How the Panelist Would *APPLY* the Principle When Sitting As a Juror in the Case.
E.g., "Suppose you have been selected as a juror in this case, have heard everything and are in the jury room deliberating, . . ."

d. Do *NOT* Ask Whether the Panelist Will Follow the Court's Instruction About the Legal Principle.

Unless You Absolutely Have to With Boulware-Crazed Judge

-You KNOW What the Answer Will Be.

-Only Tips Off the Court to Rehabilitate the Panelist.

e. "Un-Rehabilitate" the Panelist: After Court Extracts Promise to Follow the Law:

Ask Panelist If Doing So Would *Still* Be Difficult Or a Problem, then Would They Be *More Comfortable* On Another Case?

f. Don't Poach on the Court's Turf: Do *NOT* Start Off With, "As the Judge Will Instruct You . . ."

-You're Only Begging to Get Cut Off

(Also Avoids the Unanswerable Cosmic Judicial Question:

"If You Do My Job, What Will I Have to Do During the Trial?")

g. Translate the Legal Principles Into Lay Terms (Another Way to Avoid #9(f) above)

E.g., Ask specific questions about "Defending Oneself" instead of whether the Panelist understands "Justification"

10. Use Questioning About Legal Principles to Elicit Challenges for Cause

a. The Burden of Proof Never Shifts to the Defense

-Even If the Defense Puts on a Case And/Or the Defendant Testifies

-The Prosecution Case Must Support Charges Beyond a Reasonable Doubt

-An Unpersuasive Defense Case Does Not (on Its Own) Support Conviction-

BUT: Do NOT EVER Put It That Way:

(Don't get potential jurors thinking about such horrifying things)

b. The Presumption of Innocence

(Better Phrasing: Legal Assumption That the Accused Is Not Guilty?)

-Exists Throughout Every Moment of the Entire Trial

-Goes With Jurors Into Deliberations

Some Jury Instructions: The Starting Point for Deliberations

("You must begin by saying that the Defendant must be innocent . . .")

****Concretize the Concept:*

Means a Juror Cannot Decide Guilt in Mid-Trial Merely Because

-Persuasive Prosecution Witness(es)

-No "Knockout Blow" On Cross-Examination

-Unpersuasive Defense Witness [God Forbid!]

(Any time where Juror Reaction: "Looks bad for the home team!")

Have Panelists Consider *Why* They Can't Prematurely Decide Case

(“Can’t turn off TV sets/stop listening and tune out then?”)

- Witness May Contract Self/Be Impeached/Lose Credibility
- Another Witness May Contradict/Impeach First One
- Other Evidence May Render Witness’ Testimony Irrelevant
- Strong Defense Case Is Presented
- Realization That Witness Did Not Prove All Necessary Elements

***Have Panelists Promise to Remind Selves Not to Get Carried Away When They Hear Seemingly Strong Evidence of Guilt

- c. Must Prove All Elements Beyond Reasonable Doubt
(Better Phrasing: “Elements”=Essential Ingredients?)
Proof of Most, But Not All Elements Insufficient to Convict
Examples: Missing Essential Recipe Ingredient, Essential Part for Model, Piece of Furniture, Electronic Device, Computer
- d. The Jury Is the Sole Fact finder and Decision maker
No One Can Tell the Jury How to Find Facts, What Facts to Find, Or What Verdict Should Be Reached.

Especially Valuable Where: Hostile Judge, Prosecutor
Emotionally Charged Atmosphere

Allows You to Enlist Jury to Your Side
(“You and Me Against the World”)

- e. Charges Are Merely *Accusations*; Trial is Accusation Versus *Denial*
Different from Real Life — Where There’s Smoke Does Not Mean There’s Fire
Confront Panelist’s Ordinary Reaction to Begin the Educational Process: “When you walked into the courtroom just now, how many of you thought, ‘I wonder what he did?’”
Law Elevates the *Denial* Over the Accusation: Presumption of Innocence Must Be Completely Removed Before Conviction
- f. “I Have to Hear *Both Sides*”: What If the Defendant Does Not Testify?
 - i. Reassure the Panelists: Will Indeed “*Hear From Both Sides.*”
Opening Statement
Cross-Examination of Every Prosecution Witness
Defense Case (If Any)
Summation

***Promise Panelists That They Will Know *Exactly* What the Defendant/You Are Saying About the Case
(Of course, be sure that you *keep* the promise!)

- ii. Rephrase the Question: “It’s Not a Matter of Whether You Will Hear From Both Sides; It’s *Whether You Have to Hear the Defendant’s Side From Him or Her Directly?*”

11. What NOT to Ask About the Law

- a. WHY Elicit Panelist's Promise to Hold Out?
Panelist Hears: "I Expect to Be On the Minority/Losing Side, *HELP!!!*"
Why else would you be trying to *prevent* a verdict?
In Reality: Virtually ALL Such Promises End Up Getting *BROKEN!*
- b. General Discussions About the Presumption of Innocence, Burden of Proof, Equal Competing Inferences
Elicits socially acceptable and completely worthless answers
-Against peoples' *Real* Attitudes
-Based on complete lack of knowledge or understanding of Arcane Legal Terms
-Suggests Defense Will Be in Trouble
(Lack of Confidence in Merits of Your Case)

***Jurors Don't Care About Burdens, Inferences, Procedures:
They Want to Do the *Right Thing*

12. Be Creative in Looking for Challenges for Cause

ANYTHING That Interferes With the Panelist's Ability to *LISTEN, REASON* Or *DISCUSS*

- a. Inability to Concentrate on Case
-Preoccupation With Personal, Business Problems
-Illness, Use of Medication Affecting Senses, Doctors' Appointments
-Panelist As Active Care giver for Child, Ill or Elderly Person
-Substantial Upcoming Work or Personal Project
-Heavy Workload
E.g., Student, Night Job
-Religious Holidays
-Personal Plans
- b. Problems in Deliberating
-Poor Understanding, Command of English
(Discuss this *VERY* tactfully!)
-Inability to Maintain Own Opinions in Deliberations
Youngest Juror, Shy, Too Soft Spoken
-(Undue) Deference to Juror With Particular Experience
Juror As *Expert*
(*"When EF Hutton Speaks, Everyone Listens"*)
- c. Do NOT Give Away Challenges Once You Get Them
RESIST the Urge to Summarize: "So What You're Saying Is . . ."
"In Other Words . . ."
-May Cause Panelist to Retreat From Specific Position
-May Tip Off Court or DA to Rehabilitate

13. Some Basic Considerations in Questioning

- a. Have Court Do Pedigree Questioning of the Panelists
Unless You Want Your Adversary to Get Chummy With the Panel
("Getting to Know You")
Find Out What the Judge Usually Asks:
You Could Ask Him/Her/It to Customize/Add/Eliminate Some of
the General Questions
- b. Avoid Meaningless Personal Questions
Focus on Panelists' Personal/Professional Details That Have *Some*
Bearing On Issues in Case
- c. Your Questions Tell Panelists About Your Case
Should Be Able to Answer: "What Is He/She Looking For?" "What Is
He/She Driving At?" (It's *Advocacy*, remember?)
Haphazard, Throwaway Questions Cause Confusion, Boredom, Distrust
- d. Questions Should Relate to Your Theory of the Case, Drive Your Central
Theme
- e. Body Language Is Deceptive: May Simply Be Nervousness Over Public
Questioning, Anxiety Over Being Chosen
- f. *KEEP YOUR MESSAGE SIMPLE*
Do NOT Give Too Much Information
Voir Dire is NOT a substitute for
Coherent, Fully Developed Theory of the Case
Coherent, Fully Developed Theory of Defense
Appropriate Opening Statement
Discuss 2-3-4 Principles *AT MOST*
Repeat Principles With No More Than 2-3 Panelists *At Most*
NOT Every Panelist (Repetition Devalues Meaning)
- g. Do Not Let Familiarity Breed Contempt, Dull Presentation
Remember: Your Material is *FRESH* to the Panel, Even If You've Done It
Hundreds of Times
- h. Use the Language That Gets You Closest to Where You Want to Go --
Use Terms of Art and Judge's Favorite Phrases to Avoid Objections or
Interference
Track Language of Jury Charges?
If important to case
If in semi-coherent English (Otherwise translate for panel)

14. Making "Contracts" With the Panelists

- a. Just How Effective Are Panelists' "Promises" to the Lawyers?
Panelists Promise Because:
Put On the Spot
Want to Be Liked
Shuts Up the Lawyers
- b. "Calling in Your Markers" During Trial Can Sound Whiny?

(“You *Promised* Me . . . ”)

Maybe Only Use Sparingly? For “Big Ticket Items?”

C. Better Formulation: Not “Will you promise *me/client* . . . ?”, but “Can you promise all of us, *but mostly can you promise yourself that* . . . ?”

15. Specific Techniques

- a. Make Injuries *Worse* Than They Are
(“Is Anyone Squeamish . . . ?”)
- b. Isolate Each Negative Piece of Evidence and Ask Whether It Alone Would Require Conviction
Gets Panelists to keep a slightly more open mind about each piece of evidence
Prosecutors rarely smart enough to respond by asking about the Evidence in combination
- c. Ask Panelists to *VISUALIZE* What You’re Discussing/What They’re Talking You
***People Think *Visually*
***“Can You *PICTURE/SEE (Envision)* A Situation Where . . . ?”
***Most Vivid, Memorable Way to Have Panelists Think
- d. Use Clarifying Questions
-To check your understanding of panelists’ answers
-To show Panelists you are listening
-To empower Panelists by investing their opinions with importance
- e. Prime the Pump: If Panelists Can’t/Won’t Answer Your Question, Suggest an Answer
-You can then ask their opinion of your suggestion, then ask them to come up with others
(Shows you are willing to “play the game” with them)
- f. Use *Simple* Hypotheticals
-Use only a few key facts

-Expressed in Simple, Declaratory Statements with Question at the end
-Can quickly describe scenario
- g. Use Concrete Examples for Concepts
- h. Ask Panelists for Specifics, Concrete Examples
What Kind of Problem Will You Have?
About What Subject?
How Would It Work?
Makes panelists concretize their ideas, feelings
You get much more information from panelists that way
Most Powerful Question: “Can you give me an *EXAMPLE?*”
- i. The “I’ll Try” Syndrome: *Gently* Explain to Panelist Why That Answer Is Unacceptable
Example: Doctor Before Operation, Pilot Before Landing Plane

- Need Assurances On “Big Ticket Items” – Otherwise Panelist May Not Be Perfect Fit for Case
- May Just Be Panelist’s Way of Speaking
- j. “Q: *Does He Discuss His/Her Work With You?*
 - A: *No, Not Really.*”
 - Does He/She Talk About People He/She Works With?
 - Does He/She Talk About Funny/Unusual/Sad Incidents That Happened At Work? (“Wait Till You Hear This One”)
 - Maybe Don’t Call Them “War Stories?”
 - Do You Ask Him/Her About Whether Things That Happened on TV or in Movies Occur in Real Life?
 - Does He/She Tell You About Insider Lingo/Slang?
 - Has It Given You an Insider’s View of Subject?
 - You Notice When People/TV/Movies Get It Wrong
- k. Co-Counsel Cases:
 - Decide *Up Front* If You Want to Be Identified With the Other Defendants
 - If Not, Don’t Visibly Cooperate With Them in Front of Panel (Don’t Prove the Conspiracy Through the Attorneys’ Behavior)
 - Maintain Physical, Rhetorical, Intellectual and Emotional Distance
 - Don’t Publically Speak for Group, Either
 - “Co-Counsel” Should Be “Lawyer for Co-Defendant”
 - If Joint Defense, Divide Up *Voir Dire* Material?
 - Work Out Process for Jointly Exercising Challenges
- l. Ask About Defendant Not Testifying? Defendant’s Prior Record?
 - What Does This Get You?
 - Hard to Do Well
 - Invites Galactically *Huge* Juror Speculation
 - Sets Negative Filter for Jurors to Process Information At Trial?
- m. Panelists Experience At Group Decision making
 - Have Panelists Describe Experiences/Problems
 - Occupy Supervisory Roles?
 - Make Decisions by Consensus/Committee in Work or Personal Life
- n. Jury Decision Making: “Important Life Decision”
 - Can Use Everyday Tests and Techniques
 - With *Same* Care As “Important Life Decision”
 - But: Subjected to criticism lately — People make personal decisions on whims, emotions, without sufficient information, etc.
 - (**So: Should Use *As Much Or More* Care . . .)

o. Explore the Panelist's Decision Making Process

-Have You Ever Made Up Your Mind Right Away, Without Knowing All the Details?

Was it a good or bad decision? Why?

How did the missing details figure into whether it was a good or bad choice?

Did you have to change your decision later? Why?

-Would you (or a close friend or loved one) say that you are willing to reconsider once you change your mind?

-Have you ever changed your opinion about a strongly held belief?

Relate the answers to these questions to:

Keeping an open mind

Listening to all the evidence

Not deliberating until the evidence is in, summations given and jury instructions delivered

Group decision making process

p. Does the Panelist Need (Expect) Perry Mason Before He/She Can Decide Case?

-If At the End of the Evidence, You Only Have Facts That Don't Add Up or Prove Anything, Contradictory Details, Or Things That Don't

Make Sense, Will You Have Trouble Deciding Whether the

Prosecution Has Proved the Accusation Beyond All Reasonable Doubt?

-In Other Words, Do You Need Perry Mason to Make the Real Perpetrator Confess ("I did it, I did it, and *I'm glad!*"), Or to Show *Who Really Did It* ?

q. "Call Your First Witness" in Jury Selection

If Panelist Has Experience Relevant to Issues in Case (e.g., false accusation/arrest, seen real criminal activity, witnesses police

brutality, etc.) Have Him/Her Tell the Entire Group All About It

Before the Prosecution Gets Him/Her Off the Jury

r. Panelist "Expertise"

Panelist Can Use Life Experiences, Even Specialized Ones, to Help Decide Case?

*Very Active Controversy

Must Accept Translation Even If Knows It's Wrong

BUT-Why Not Bring Particular Knowledge to Bear in Discussions With Other Jurors?

-First, Decide Whether Specialized Knowledge Helps or Hurts Your Case

-Then, Decide Whether to Raise It

-Develop Cause Challenge

-Get Assurance Not to Discuss With Other Jurors

-To "Call First Witness in *Voir Dire*"

s. Prior Jury Service

i. Pay Attention to Panelists Who Served on *Hung Juries*

-Likely Endured Much More Acrimonious Deliberations

-Subjected to Haranguing, Allen/"Dynamite" Charges From the Court

-May Well Have Bad Taste in Mouth for Future Jury Service

ii. Alternates on Prior Juries: How Did They Feel About Not Deliberating?

-Felt Cheated Not to Be Able to Vote

-Paid Less Attention Because Alternates

iii. Ask About Court/Lawyers' Reactions to Verdict

"Did the Judge Say Anything About Your Verdict Besides Thank You For Doing an Important Civic Duty?"

"Did the Lawyers Tell You Anything That Substantially Changed Your View of the Case/Your Verdict?"

-May Help You Skirt Around Judge's Prohibition Against Panelists Relating the Verdict in the Prior Case

-May Disclose Whether Panelist Contaminated by Conversations With the Lawyers About

-Evidence Not Disclosed At Trial

-Defendant's Criminal Record Or Bad Acts

-Plea Bargaining History in Case

****Be Very Careful* Probing Remarks That Radically Changed

Panelist's View of Case/Confidence in His/Her Verdict:

Don't Contaminate Other Panelists

t. Ask Panelists to Look At Your Client

"Can You Look At Mr. Jones and See Him As . . . ?"

Merely Accused? Falsely Accused?

Innocent (?) Innocent Victim (??)

A Member of the People of the State of New York

*** If Panelist Can't Look At Client, You May Not Want Him/Her On Jury

BUT: Make Sure That He/She Is AWAKE, On Best Behavior

16. Finish BIG

Have Strong Closing Question Ready When Court Says Your Time Is Up
(Don't just meekly say, "O.K.," and slink back to your table)

Ask Something That Panelists Can Wholeheartedly Agree About/Say “Yes” To

My favorite: “I have one more question, which may summarize all the things we’ve talked about:

Can you promise us-me, Mr. Defendant, the judge and prosecutor- that if you are selected for this jury, you’ll give Mr. Defendant a *FAIR SHAKE* in this case?

Because that’s all we can really ask, isn’t it? You can? Well thanks so very much for your time!”

VI. A Few Miscellaneous Factors in Selecting the Panelists

1. Just How Useful Are Projected Juror Profiles?
The Real Panelists Never Match Up to Them Anyway
2. Cause Challenges: If Court Isn’t Granting Them, You May Just Be Telegraphing Your Peremps
E.g., Denial of Challenge to Panelist Who Wouldn’t Read Questionnaire in Front of Defendant!!!
3. It’s Witchcraft Anyway
Everyone Has Been Dead Wrong About Panelists Who Were Selected
4. Unless Unlimited *Voir Dire*, We All Resort to Stereotyping Eventually
Just Be Aware of What Stereotypes You Are Using, and How You Use Them
5. Once You Have Selected the Jurors, *DON’T SWEAT IT*
Forget It and Move On
6. Compromising On Alternates: Each Side Gets One of the Panelists Challenged by Their Adversaries
-ONLY if you get *the FIRST ALTERNATE*
(and it is unlikely that you’ll get to the second alternate)
-Be Sure That You Propose Compromise FIRST

- (with your panelist as the First Alternate)
- Saves Court's time, keeps Judge from getting Cranky
7. Jury Consultants? Have Others Observe the Questioning
- Useful to Have Observer Seated in Audience Among the Panelists, Where Possible
 - Do They Need to Be Professionals?
(Do you have money that you don't know how to spend?)
What Do They Know That *You* Don't?

*****BE HONEST, HUMBLE, STRAIGHTFORWARD**

*****TALK LIKE A REAL PERSON**

*****DON'T SOUND LIKE A LAWYER**

*****SHOW AN INTEREST IN THE PANELISTS**

*****BE SELECTIVE ABOUT WHAT YOU DISCUSS**

*****PREVIEW ONLY THE FEW MOST IMPORTANT ASPECTS OF YOUR CASE**

*****BE YOURSELF (FOR GOD'S SAKE!)**

BE THE VERY BEST YOU THAT YOU CAN BE

"If the Trial Is Theatre, Your Client Can't Afford to Have His/Her Star Get Bad Reviews"

**LISTEN LISTEN LISTEN LISTEN LISTEN LISTEN LISTEN LISTEN
LISTEN LISTEN LISTEN LISTEN LISTEN LISTEN LISTEN LISTEN
TO WHAT THE PANELISTS TELL YOU
(AND THEN LISTEN SOME MORE)**