

JURY SELECTION

The Civil Perspective



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Find them and persuade them.

- There are two main objectives to *voir dire*:
 - Distinguishing among potentially favorable and unfavorable jurors; and
 - Persuading them toward your client's cause through engagement.

Persuasion through engagement



Persuade them.

- *Voir dire* presents the only opportunity to converse directly with the potential jurors. It is the optimal time to:
 - introduce them to your case;
 - develop your themes;
 - tell them about your client;
 - pique their interest about the upcoming trial.

Finding them.



Conduct jury selection in and out of the empaneling room.

- Know the rules of the court where you are (White's, Struck, Strike & replace.)
- Give advance thought to the jurors you would favor for the case.
- Do not create issues by your attire or appearance.
- When near the courthouse, in the hallways and elevators, while at lunch, conduct yourself as if the jurors are in earshot – they may well be.

Use questionnaires wisely

- The information on the questionnaires is useful and allows you to focus in on certain areas with each prospective juror.
- Read them before approaching the podium and do not ask the same questions again. Be alert to titles e.g. “Dr.” “Rev.” Request pronunciation guidance. Tailor questions to each juror’s information.
- Pre-emptively invite questioning about sensitive matters outside the room (e.g. crime questions).

Watch them closely.

- Jurors sometimes give important information about themselves by the way they interact with others and by the way they react to questioning.
- Look at the reading materials they have brought with them.
- Body language can be informative.
- Assess their apparent reception of you and the other attorneys.

Avoid repetition. Avoid repetition.

- Resist the temptation to ask each juror the same question in the same way. Be creative.
- Build on prior exchanges.
- Avoid the throw out question followed by “do you agree with that?”
- As the process goes on, ask at the outset if the juror wants to offer anything based upon what they have heard.
- Be respectful of their time and intelligence.

Inquire with interest. Assume nothing.

- Be positive and interested. Many, especially first-time jurors are intimidated.
- Never assume anything regardless of how obvious it may seem. If a juror has to correct your incorrect assumption, you won't like it and the group probably won't either.
- If a juror is embarrassed by a question, the whole group will be uncomfortable too.

Tread softly with the toxic juror.

- If there is a juror who is obviously unqualified, be careful not to allow him or her to taint the group.
- Applications to disband an entire panel for something untoward said by a prospective juror are difficult to win.

Develop the cause challenge.

- Unless a prospective juror is obviously unsuitable, the juror you want to remove for cause is likely appealing to your adversary.
- With subtlety, try to bring the person into agreement that it will be difficult or impossible for her to be impartial in the case.
- Take careful notes as to the responses given, verbatim to the extent possible. Aim to eliminate equivocation.
- Be familiar with CPLR §4110.

Understand Batson

- Peremptory challenges generally do not need to be justified. The exception is when it is perceived that such a challenge violates the law established by Batson v. Kentucky, 476 U.S. 79 [1986] and its state and federal progeny.
- Batson prohibits the prosecutor in a criminal case from exercising a peremptory challenge based upon the juror's race.
- The Batson rule has since been applied in civil as well as criminal trials and the prohibitions have broadened to include certain “cognizable groups.”
- Be familiar with CPLR §4109.