The Psychology of Voir Dire

Perhaps there has never been a more difficult time in American Juris Prudence to choose a jury. Countless political, economic, racial, social and cultural factors tug on your potential jurors leaving you with a lack of knowledge on who may or may not be a good juror. This presentation will attempt to educate attorneys of how better to utilize Voir Dire. The following is meant as a supplemental to the presentation:

# Understanding and Defining Your Role to the Jury

Jurors make choices about who they think who are from the moment they walk in. You need to decide how you want to be seen and stay consistent to that role.

Who are you: Attorney, Teacher, Warrior, Advocate, Investigator, Irritated that We Have to Be There, All of the Above – None of the Above?

How we view ourselves in relation to our jury will determine how we speak to them, present evidence and subsequently how they evaluate us and the evidence presented by us. By consciously selecting a role to play we project a degree of confidence and are better able to interact with the jury on a unconscious level.

For Example:

If they see us as a teacher, and we act like a teacher and we present evidence like a teacher (as opposed to what we think an attorney should do) then they will view us as they would view a teacher. (Teachers have a tendency to hold a higher credibility level to some people than attorneys).

# The First Person to Voir Dire – Yourself.

Before we can understand and choose the people we are seeking to judge our clients we should take careful self-evaluation to better understand our own bias, stereotypes, prejudice and how they affect our ability to choose a proper jury.

Just because *you think* the individual juror does not think like you do does not mean you do not share common ground and understanding. Conversely just because you think a certain way does not mean all people think that same way. And finally, just because people think differently than you on one subject does not mean you cannot share common ground on another.

One variable to understand is the concept known as “Transference. Transference is defined as a phenomenon in which there is an unconscious redirection of feelings from one person to another. As we choose a jury we need to understand that we are often superimposing character traits from one person (including ourselves) onto the individual juror/s. This leads us to believe that a given juror may or may not have certain traits because they remind us, on either a conscious or unconscious level, of a different person we have known.

For Example:

Jury 8 has a distinct short brown hair cut. This reminds you of your cousin Jenny who has a similar haircut. You know Jenny has a bad attitude towards the police.

Transference suggests that you will transpose some of Jenny’s traits onto Juror 8 because she reminds you of cousin Jenny. This could include your perception of Jenny’s mistrust for police – even though you have no basis to know this about Juror 8. Hence you leave Juror 8 having disregarded many of the signs that she is not like your cousin Jenny.

# Pre Voir Dire and Understanding Long Held Beliefs

Basic human nature suggests that people have strong tendencies to maintain their personal belief structures according to long held beliefs and stereotypes. They will tend to seek out information that upholds their belief structures and disregard information that contradicts that structure. They do this by ignoring information (both intentionally and unintentionally), by misinterpreting contradictory information in a way that supports their prior beliefs, and/or by recognizing the information is inconsistent but holding onto their original belief system in spite of the new information.

One way to work within the confines of the “Long Held Belief System” is use “Counter Long Held Beliefs” as a way to redefine the belief system which should be used during the trial.

Rare is the juror that when they hear the nature of the charges as read by the Judge does not immediate create a paradigm about the nature of the charges.

However, Voir Dire is the first opportunity to redefine the problems for which they are called upon in this case. This can be accomplished by conversing with them about the underlying issues that bring them here and placing them on notice that this is not a case about the charges but rather the underlying problem to which the counter Long Held Belief System is being challenged.

In order to challenge the Long Held Belief System and to manage a successful Voir Dire, the attorney should give serious consideration to the underlying concern of their case. These concerns should present an honest and fair evaluation of the major problems/points and then be reclassified into concepts which can be discussed during Voir Dire. Examples might include but are not limited to:

1. False testimony
2. Faded Memory
3. Rush to Judgment
4. Motivated Witnesses
5. Police Misconduct
6. Bias Ex-Spouse
7. Custody Battles
8. Vindictiveness
9. Attempts to be Validated
10. Personal Agendas
11. Eye Witness
12. The Truly Innocent Person
13. Missing Pieces of the Story/Evidence (That are material)
14. Why a person may not testify
15. A need to listen to both sides of the story.

These principles can then be addressed to precondition the juror to the underlying problems of a case without actually discussing the facts of the case. Additionally, by presenting the underlying issues early in Voir Dire and presenting those issues as a potential issue in conflict the attorney announces that the case is not necessarily about the charges but rather the need to evaluate the charge through the lens of the underlying issues.

For Example:

The charges involve sexual molestation of a step daughter.

The Long Held Beliefs are the unacceptable nature of such an act, that step fathers have no biological connection to the child, that the Government does not bring a case without evidence or that a person would not make such a charge unless it was true.

Counter Long Held Beliefs might include: A civil law suit has been brought for money, people lie in a divorce to gain custody of a child, memories fade after long periods, a person completely disagrees with the charges – they never happened.

Whatever the Long Held Belief is it should be countered in Voir Dire by discussing the reasons why this case does not fit into their potentially preconceived notions.

The goal is to inform a Jury that we are not here because of the obvious – those people plead guilty – we are here because this case is unique and needs to be evaluated based upon a different set of Long Held Beliefs

# Similarities Between People Creates Psychological Bonds

People have a strong tendency to emphatically bond with people they see as similar or that they like. While it may not always be possible for a jury to like the client, they can like the lawyer. Studies suggest that jurors prefer lawyers that present themselves as knowledgeable, relatable, organized and communicate in a manner that is easy to understand and relatable.

Creating a connection with a juror begins with how we view the juror because our thought processes creates the basis for how we interact with the jury on a subliminal and non-verbal basis. Empathy towards their problems with being chooses as a juror creates a real and lasting bond. Our goal should be to honestly project a sense of concern for each juror individually.

Our goal should include coming to know things about our jurors in Voir Dire that we can later use to help them relate, individually, to our specific case.

Voir Dire is a chance to learn about the individual characteristics of our jurors and to later formulate arguments that will resonate with them individually. A goal of Voir Dire should then be to find personality traits so that we can later match arguments to their basic understanding of the world around them.

For Example:

Juror 4 is an Engineer. When the time comes to explain a process you can direct you comments to Juror 4 using a systematic and organized approach – Step One, Step Two etc.

Juror 5 is a stay at home mom with kids – during the trial you address the concept that children can lie or say things that are exaggerations or not true to get out of trouble

Juror 1 is a Coach. You may use a sports analogy to explain a concept of law in your closing.

By learning traits of the jurors you can later fashion arguments that will speak directly to that juror/s

# Cheerleader Effect/Group Attractiveness Effect

Studies suggest that people are often visually judged based upon the people they are next to. In short, a person is often given great credibility or deemed more attractive when they are in a group or are seen with other people. The cheerleader effect, also known as the group attractiveness effect, is the cognitive bias which causes people to view an individual as more attractive when seen next to other people or in a group of people.

1. The human visual system takes "ensemble representations" of faces in a group.
2. Perception of individuals is biased towards this average.
3. Average faces are more attractive, perhaps due to "averaging out of unattractive idiosyncrasies".

When all three of these phenomena are taken together, the individual faces will seem more attractive in a group, as they appear more similar to the average group face, which is more attractive than members' individual faces.

Simple point – Your client will be better viewed when seen against a backdrop of people.

I know this feels shallow and that you may not like this concept – but it does not make it any less real.

# How to Attack a Specific Witness in Voir Dire

Often in Voir Dire you can begin to sign post important issues that you will be dealing with during the evidentiary phase of the trial. Voir Dire can be seen as a prequel to coming attractions.

In this sense you can put them on notice that they are here to evaluate the credibility of a few select or even one select witness.

For Example/s:

Q: At a given point in this trial I will be asking some very pointed question to a specific witness. We strongly disagree with the statements of that witness. In many ways this whole case comes down to one person’s ability to tell the truth. I am looking for jurors you are willing to pay close attention to that witness and evaluate their story for honesty.

Q: From our point of view, you are here because we know that a given witness is not being truthful. When that witness gets on the stand you are going to need to judge the credibility of that witness. I know this is a lot to ask of you – but will you feel comfortable in such a stressful role of having to hinge a case on the credibility of a potential witness.

Q: A few witnesses are going to testify in that chair right over there. One really hard job is for you to evaluate their ability to recall the events of more than 15 years ago. I understand I am asking a lot, but will you be able to listen to both sides of a story that took place so many years ago.

Q: I know this is blunt – but we are here to resolve two conflicting stories – And a witness is going to sit in that stand a swear to tell the truth. Do you believe that just because someone swears to tell the truth that they will?

These examples are just meant to make the point of how you are putting the jury on notice that you have issue with witness/s - this same principle can apply to any given piece of evidence. The goal is to inform them of a coming specific problem in the prosecution case and talk with them about it. You then will follow up in your Opening Statement outlining this problem, hopefully deliver during the presentation of evidence and summarize in close.

The key element to this is the shifting of their belief system from thinking they are there to decide guilty or innocence to the idea they are there to evaluate the credibility of a witness/s which will directly lead them to a solution.

# Psychological Concepts

1. **First Facts Believed** are the ones people tend to follow - Voir Dire and your Opening should be duel escorts to the presentation of your case. The principle of primacy tells us that the first things people hear, are the things they tend to hold onto. Thus it is essential to place concepts at issue early on that are favorable to our case.
2. **Personality Traits Presented** lead people to assume other personality traits.

For Example:

He is tall, dark and…… (Go ahead you know what goes next) Handsome. She is bright, egger and (What would you think – thin or fat?) Thin.

He is warm and . She is soft and .

By giving our clients or a potential witness a characteristic trait other traits will follow without any supporting information. Those traits will often become lodged in the mind and act as anchors or expectation.

1. **Jurors Try to Understand Their Environment.** Because very few people have any experience as a juror they will look to different stimuli to make sense of the unfamiliar. Voir Dire is the time to define our roles to the jury. (And maybe you should consider passing on just calling yourself the defense attorney – they know that part.) What you want them to know is what that will mean to them during this specific trial.

For Example:

* 1. Well established lawyer at this Courthouse that knows everyone and everyone knows.
  2. The outsider – just like you – still trying to make sense out of how they do things here.
  3. A brand new lawyer – who has never done this before.
  4. The old and heavily experienced lawyer and having done this for years you fear that sometimes we forget this is all new to you the jury (Done as an apology)

# Credibility Creation in Voir Dire

Jury experts have classified credibility factors on several levels including:

* 1. Personal Appearance of the Attorney (Should look approachable)
  2. Personal Appearance of the Client
  3. Visible Havior Patters. This includes the way the atotnrey presents themselves, confidence, warmth, emathy and the projection of trust between the client and the attorney.
  4. The Power of Speech Patterns: Psychologists Mlandro and Smith have suggested

*The use of powerful speech and special language techniques such as repetition, metaphors, similes, analogies, and rhetorical questions all tend to increase credibility. The perception of credibility of attorneys is closely related to expectations that counsel knows where he is headed, knows how to present information, is understandable, is quick and has a moderate to fast rate of speaking. All of these factors together help to add to the perception of credibility. Smith and Malandro, Courtroom Communication Strategies, p. 274 (Kluwer 1985).*

# Announce a Guest Star Attorney - Creation of Instant Credibility

* 1. Bring in and introduce in Voir Dire and then excuse the attorney (Adds interest and scarcity)
  2. Explain the expertise of the individual (briefly – to create expertise)
  3. Ask the Jury to forgive you for excusing this attorney until later – make sure they will not be offended
  4. Make sure your guest star attorney can deliver when the time comes for them to reappear in the case.

1. **Create Urgency**. One way to potential shift the direction of a jurors thinking is to create urgency – give the Jury propose for being there – something different than just to decide guilt or innocence.

For Example:

Q: I want to tell you how absolutely excited and grateful we are to finally meet you. We have waited months to meet the people who will finally listen to our side of the story and (INSERT THEME --- HOW THIS WAS NOTHING BUT MISTAKEN IDENTITY or OUR CHANCE TO FINALLY SHOW THE SINSITER MOTIVES OF THE COMPLAINING WITNESS OR WE ARE HER BECAUSE OF ACIENT MEMORIES AND BAD POLICE JUDGEMENT).

Q: You realize how important a jury trial only after you have been wrongfully accused and have no place else to turn to. So on behalf of my warm and patient client (use name) thank you for being here.

Now let’s get to work meeting each other.

# Three Questions I wish I had the guts to ask every juror:

Q: Do you prefer CNN or Fox. (MSNBC or FOX)

Q: What bumper stickers have you ever had on your car.

Q What is your position on the death penalty. (Asked in a non-death penalty case.

Studies suggest that people who favor the death penalty have a much high propensity to vote guilty)