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Voir dire is no popularity contest

To protect the Seventh Amendment right to a jury trial in civil cases, trial lawyers must use voir dire to uncover and remove bias, ensuring justice is delivered by an impartial jury – not swayed by corporate influence or public prejudice.

By Rahul Ravipudi

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As John Adams said, "*trial by jury is the heart and lungs of liberty.*" The Founding Fathers drafted the Seventh Amendment to the US Constitution – the right to a jury trial in civil cases – to protect citizens from tyranny at the hands of the government and the elite by allowing uncorrupted citizens to resolve disputes. The Seventh Amendment is not a technicality, but a philosophical stand that separates the United States from virtually every other country in the world: that justice should be delivered by the people, not imposed upon them by the elite. At the core of this philosophy is not just a jury, but an *entirely impartial* jury.

The heart and lungs of liberty has, and continues to be, under relentless attack. The corporate elite over the decades has spent billions on a work around – polluting the jury pool through endless tort reform propaganda. Organizations like the Institute for Legal Reform, American Tort Reform Association, Civil Justice Reform Group, and ALEC – backed by major corporations, Fortune 500 general counsel, and industry giants in pharma, oil, insurance and tech – have pushed a narrative that plaintiffs are greedy, personal injury lawyers are opportunists, and pain and suffering damages are suspect. The harsh reality is that those who have the resources to control the messaging are winning in the court of public opinion.

Today, a significant percentage of Americans harbor skepticism – or outright hostility – toward civil plaintiffs and their attorneys. Many believe lawsuits are frivolous or excessive, especially when non-economic damages are involved. In short, jurors are arriving in court with preloaded biases, whether they admit it or not. That kind of thinking is exactly what the Founders feared – prejudged outcomes delivered not by impartial citizens, but by the influence of power.

In the face of this reality, the mission of every trial lawyer should be clear: ensure that the case is heard by a jury that is entirely impartial. That word – impartial – is the cornerstone of our justice system. The only opportunity to secure an entirely impartial jury is during voir dire. It is your one and only opportunity.

Another reality, it takes time to understand a prospective juror's leaning and allow them to be self-aware and brave enough to share those leanings in front of 50 plus strangers, a judge and potentially intimidating lawyers ready to cross examine them for being honest. The only way to do that is through effective voir dire, adherence to the laws governing voir dire and excusing biased jurors "for cause." The law recognizes this reality and expressly allows ample time for attorney voir dire. As amended in 2017, Code of Civil Procedure § 222.5(b)(1) specifically states, "During any examination conducted by counsel for the parties, the trial judge shall permit liberal and probing examination calculated to discover bias or prejudice with regard to the cir-

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cumstances of the particular case before the court." To that end, trial courts *"shall not impose arbitrary time limits on voir dire by counsel." See* Cal. Code Civ. Proc. §222.5(b)(2). It recognizes that a rushed voir dire isn't just inconvenient – it's dangerous. These aren't casual suggestions; they are statutory commands designed to preserve the integrity of the jury process. Why? Because all it takes is one biased juror to poison the well. One person who views all lawsuits as scams, who is concerned about the impact on the defendant in deciding the amount of compensation, who thinks that the burden of proving non-economic damages should be much higher than the burden of proving economic losses, can derail the deliberations of eleven others. It's like a single cancer cell in an otherwise healthy body. The contamination is quiet, subtle – and ultimately devastating.

The law recognizes people do not abandon long held beliefs easily. Sure, you can bully a prospective juror through questioning that feels adversarial to not share their biases or to shy away from them, but that does not make them go away. It only allows those biases to be revealed through injustice at the time of the verdict. This is why voir dire must be approached with gravity and precision. The question every trial lawyer must ask themselves before stepping into voir dire is: *What is my purpose?* The answer to that question is always case specific. Don't rely on preconceived notions. For example, thinking in generalities of one data point - e.g., is the prospective juror a registered Democrat or Republican – dictating whether you have a "plaintiff" juror or a "defense" juror is playing into your own biases and misses the point. A label does not mean bias. The why behind an opinion relevant to your case is what needs to be explored and identified.

Identify the three to five key issues where you suspect there will be a large undercurrent of bias against your client in the case and craft questions specifically targeted to identify those biases. Work hard to give jurors space to be honest – even if it hurts your case. Reward candor with gratitude, not cross-examination. And when you discover or uncover the bias, strike it. A binary approach to decision making on asserting cause challenges is critical because we all have our biases and prejudices that may want us to do something else in the face of a disclosed bias – e.g., they look nice, everything else on paper seems ok, I think we would be friends outside the courtroom. None of those things matter! For example, I tell people that I would not want my own father on a jury. He is so nice, so friendly, everyone loves him, I love him, and we are the best of friends. All of that is irrelevant because I know he has biases on issues that matter to my clients he could not easily set aside while deliberating even if I was the trial lawyer for the victim.

Frankly, it is not fun to talk about your own biases or ask others about theirs. I imagine it is rare that you, in a social setting, ask your friends a direct question about their biases or prejudices. If it is hard to ask your friend about such things, imagine asking these hard questions to a total stranger while 50-70 other people are listening. Well, like every other aspect of being a trial lawyer, get comfortable being uncomfortable. If you are disciplined in your approach, the panel will appreciate the difficulties in finding a fair jury and you may gain something much better than any aspirational rapport with the jury, you may gain their respect.

Voir dire isn't just a procedural step; it is the most critical safeguard we have to preserve a fair trial. There is a reason that the person holding the scales of justice is blindfolded: it is emblematic of the fact that justice doesn't just depend on the strength of your evidence – it depends on the purity of the minds who judge it. California law gives you the time. The law gives you the tools. Use them well.