Getting the most out of jury selection in criminal and civil trials

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Dr. Cannon is co-founder of Trial Innovations and is based in the Los Angeles area. Dr. Cannon has been the lead trial consultant in cases across the country, ranging from insurance defense and corporate litigation, to capital cases and white collar crime. His principal activities involve witness workshops; focus groups and mock trials; online juror surveys; continuing legal education presentations; voir dire and jury selection consultation; and post-trial juror interviews.

Dr. Cannon earned his Masters’ and Doctorate degrees at the University of Alabama, one of the few institutions in the country that offers a concentration in clinical psychology and law. His academic and applied experiences provide a rare blend of expertise in clinical psychology, communication, research methods, and law. He uses his clinical and communications expertise to prepare witnesses for deposition and trial testimony and has worked with witnesses from various ethnic and cultural groups throughout the country. He also provides psychological snapshots of prospective jurors for jury selection; conducts voir dire training; and has developed a special expertise in the effects of diversity in the courtroom and the effects of lawyer characteristics on juror decision-making.
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Drawing from Experiences

- Academic Research
- Mock trials
- Courtroom observations of actual trials
- Post trial juror interviews
Program Outline

• Shadow Juries
• Focus Groups
• Online Surveys
• Venue Analyses
• Video Surveys
Emphasis is on UNDERSTANDING the jury

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Understanding the Audience

• **Who** they are…
• **What** they think…
• **Why** they think what they think…
• **What** they experience on the other side of the rail…
Understanding the Audience

Only Then Can We Learn

• How to communicate
• How to educate
• How to persuade
“Men & Women From the Community”
Jury Deliberations:
Understanding How Jurors Deliberate
Tasks to Reach a Verdict

- **Assimilate** new information (evidence)
- **Evaluate** the information critically (weigh)
- **Learn** the law (comprehend instructions)
- **Apply** the instructions (law) to solve a problem (reach a verdict)
About 40% of a juror’s pre-deliberation trial story is factually wrong or incomplete.
About 40% of a juror’s pre-deliberation trial story is factually wrong or incomplete.

Likewise, most jurors forget about 70% of the judge’s instructions.
Jurors Spend 50% of their time in deliberations discussing…

Personal Experiences!
“Filters” of Human Perception
What Colors Our Perceptions of New Information?
Conceptual Filters

- Result in selective perceptions of the evidence
- We accept or attend to things that agree with our preconceptions
- We fail to hear or ignore things that disagree with them
How Malleable Are Jurors’ Attitudes and Beliefs?

- Personal Experiences
- Acquired Attitudes
- Acquired Beliefs
Prior Life Experiences…

Predispose jurors to process certain aspects of the case more deeply or more personally than others
The Process of Deliberation

Blends **the facts** of the case we put on, with the **perceptions** and **experiences** of the jury.
Voir Dire
Voir Dire

Remember: During the process of asking for information you are conveying information about...

- Yourself
  - trustworthiness
  - competence
- Your Client
- Your Case
- Your Themes
Voir Dire

Don’t Do It Alone

• Bring a scribe
• Request that the court reporter take down the voir dire
Voir Dire

The Jury Is Always Watching...
Voir Dire

In Listening to Jury Deliberations:

• It is clear that jurors often confuse the source of “testimony”

• They frequently attribute to witnesses statements that were made by the attorneys
Voir Dire

Obtain Information About:

• **Personal experiences** related to the issues
• **Attitudes** toward your client and themes
• **Attitudes & experiences** of those close to the individual
• **Beliefs** about relevant case issues
Voir Dire

The Sphere of Influence Is Large in Our Lives!

Always ask about the experiences of:

• The individual juror
• Their family members
• Their close friends
You Can’t Change Attitudes & Beliefs in a Short Time

• “Can you set aside…?” is a meaningless question
• Don’t be seduced by your desire to keep a juror
Jurors will use PERSONAL LIFE EXPERIENCES to Assert Authority in the Jury Room
De Facto Experts
Jurors will apply the skills they use in their daily activities to ‘SEARCH FOR THE TRUTH’
Voir Dire Preparation

The best tool to use for preparing voir dire questions (and ultimately) your jury profile:

• Your opening statement
Voir Dire Preparation

Undertake a case assessment (inventory) with the jury in mind:

• Direct relationships to the **parties**
  • Indirect relationships

• Direct relationships to the **issues**
  • Indirect relationships
Voir Dire Preparation

• Life experiences related to issues in the case
• ‘Expertise’ with respect to any of the issues in the case
Voir Dire Preparation

- Attitudes and/or beliefs that might come into play in punitiveness
- Attitudes and/or beliefs about law enforcement
- Attitudes and/or beliefs about “where there is smoke, there is fire.”
It’s (Almost) Always Best to Ask
Don’t Be Afraid of “Contaminating the Pool”
Voir Dire Checklist

• Opening Statement
• Basic Demographic information:
  • About prospective juror
  • About other adults in his/her household
  • About grown children
  • About his/her parents
Voir Dire Checklist

Description of Work

• Supervise or manage others?
• Satisfaction with job/career?
Voir Dire Checklist

Ask About Previous Occupations:

In one survey in Washington prospective jurors held an average of 3.5 jobs within the prior ten years.
Voir Dire Checklist

Educational Background

Special training (expertise as it might relate to the case)
Voir Dire Checklist

• Reactions to hearing the description of the case?
• Ever had a similar situation?
  • Any friends or family members had such an experience or anything remotely like it?
Voir Dire Checklist

• Ever been involved in litigation as a plaintiff or a defendant?
  • Any close friends or family members?
Guard against allowing natural sympathies to impair objectivity?
• That might take some policing or vigilance – Can you? Will you?
Voir Dire Checklist

• Ever been a juror before?
  • Foreperson?
• Feelings about the experience?
Voir Dire Checklist

Assessing Leadership

- Management/supervisory experience at work
- Membership in social, political or religious organizations
  - Leadership positions
- Military experience
Voir Dire Checklist

• Burden of proof — Hold plaintiff to it. A tie does not go to the runner
• Wait for the defense — it’s human nature to form opinions as information comes in…
• Rooting for the underdog
Voir Dire Tactics

• Set the tone
  • Use self disclosure to elicit reciprocity effect
  • Express empathy
• Individual questions are better than group questions
  • Talk show host style
• ‘Loop back’ - open the discussion to the whole group when it is fitting
Voir Dire Tactics

Educate

Explain your role:

• To be non-judgmental
• To help the juror reflect on his/her life experiences
• To help the juror decide if he/she ought to be a juror on this case
Voir Dire Tactics

Notes to Self…

• Tell me (not us or the court)
• Listen and reinforce — “I admire”
Some questions are **MORE TELLING** than others
Voir Dire Extreme Questions:
Also Known As One-Tailed Questions or Skewed Questions:

“Insurance companies almost always put their financial interests ahead of policy holders”
• 90% Agree
• 10% Disagree
“Product manufacturers *almost always* put their financial interests ahead of concern for public safety”

- 90% Agree
- 10% Disagree
Skewed Damages Questions:

• “Do you feel that the number of lawsuits filed today is too high, about right or too low?”
• “Do you feel that money damages awarded in lawsuits today are generally too high, about right or too low?”
“Is there anything you’d like to mention that hasn’t come up in our conversation thus far?”
Judge — Conducted Voir Dire

- Don’t give up
- Submit your **entire** list of questions
- Sensitize the judge to the issues
- During voir dire, submit follow-up questions
Skill Sets and Deliberations
Jury Selection
Jury Selection

What’s the Best Predictor of Future Behavior?
Jury Selection

What’s the Best Predictor of Future Behavior?

It’s not “Jury Selection”

• It’s a process of elimination
• We “strike jurors”
• We want to remove the five or six worst possible jurors
Jury Selection

Rate Jurors on Two Dimensions:

1. Constellation of attitudes, beliefs and personal experiences

2. Leadership or “Influence Quotient”
The ultimate question you must ask yourself is, in light of the constellation of all relevant information…
The ultimate question you must ask yourself is, in light of the constellation of all relevant information…

Is he/she likely to be predisposed against me?
People DO change their minds, but they would RATHER not
Dimension One: Constellation of Attitudes, Beliefs and Personal Experiences

- Negative
- Neutral
- Positive
Dimension Two:

“Influence Quotient”

1. Non-Participant Persuader
2. Participant
3. Persuader
How to Spot a Potential Foreperson:

What Is the First Question Raised in the Jury Deliberation Room?

Who has done this before?
How to Spot a Potential Foreperson:

• Both male and female forepersons generally come from white collar occupations (50%)
How to Spot a Potential Foreperson:

Demographic Traits of Forepersons:

• Male (7 times out of 10)
• White (95%)
• Age 47
• With 2 ½ years of college
• Politically middle of the road
How to Spot a Potential Foreperson:

If the Foreperson is Female:

- Average age is 33
- Two years of college
- Slightly liberal politically
First Task During Jury Striking?
Identifying the Persuaders!
First Task During Jury Striking?

Identifying the Persuaders!

- Males tend to speak more than females
- Higher socioeconomic status jurors participate more than lower SES jurors
- People with leadership/management experience tend to lead or manage in new situations
During Deliberations

Identifying the Persuaders!

• On average, 25% of the jurors make 50% of the statements. These jurors are “persuaders”

• About 25% say little or nothing. These are the “non-participants”

• The remaining 50% are opinion generators but not leaders. They are the “participants”
Wish List

• Leaders who have had favorable experiences, or hold favorable attitudes and beliefs
• Participants who have had favorable experiences or hold favorable attitudes
• Participants who have no relevant experiences and have relatively neutral attitudes and beliefs
Strike List

- Leaders who have had unfavorable experiences, or hold unfavorable attitudes and beliefs
- Leaders who have close friends or family members who have had unfavorable experiences or hold unfavorable attitudes
- “Experts” we are unsure about
Develop a Uniform Scoring System
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Final Review of Your Challenge Decisions

• When in doubt, remove de facto experts who are 3’s, 4’s or 5’s on leadership
• Double check for “malcontents”
Getting the Inside Track on the Jury Pool:

- Do jurors complete any type of questionnaire that is returned to the commissioner?
- How can you get copies?
Getting the Inside Track on the Jury Pool:

• Remember, the length of the trial will significantly impact the final pool
Getting the Inside Track on the Judge:

Find out from the Court Clerk or from the Judge (well before the day of trial):
• The Judge’s position on hardships and his/her decision rules for hardships
• How the Judge handles hardship requests
Getting the Inside Track on the Judge:

How extensive is the Judge’s voir dire?
• How much are you allowed to do?
• Are there time limits?
• Has the Judge ever used a jury questionnaire?
Getting the Inside Track on the Judge:

- How are prospective jurors seated – where is seat number one?
- How many are questioned at a time?
  - 12, 18 (six pack), more?
  - Are you allowed to ask individual questions or only group questions?
Getting the Inside Track on the Judge:

How does the Judge want challenges for cause handled?
- As they arise?
- At the end of voir dire?
Getting the Inside Track on the Judge:

- How many peremptory challenges per side will there be?
- How are peremptory challenges handled?
  - One at a time?
  - Both parties submit a list?
    - Risk of double challenges
  - Does pass mean lose a challenge?
Getting the Inside Track on the Judge:

How many alternates will there be?
• Number of challenges per side?
• How will alternates be substituted into the jury if the need arises?
Prospective Juror Questionnaires

The Best Tool in the Arsenal for Making Astute Challenge Decisions:
Prospective Juror Questionnaires

The Best Tool in the Arsenal for Making Astute Challenge Decisions:

- More meaningful and more useful information
- Jurors are more candid about themselves on paper
- Jurors have time to provide thoughtful answers to questions, rather than offering the typical ‘minimal’ replies
- Voir dire is also expedited
Prospective Juror Questionnaires

When To Use a Questionnaire?
Proposing a Jury Questionnaire

- Draft your version
- Submit it to opposing counsel
- Prepare arguments for its use:
  - Protect jurors’ privacy
  - Spare jurors the discomfort of having to speak publicly
Proposing a Jury Questionnaire

Find out which other Courts have allowed them
Developing the Questionnaire

• Length
• Reading level — keep it simple — eighth grade level
• Distinguish between questions that need a yes/no answer and questions that you would like narrative answers
Submitting a Juror Questionnaire to the Court
Logistics of Jury Questionnaires
Scoring Questionnaires
General Guidelines

• Remember all of the other voir dire guidelines. They still apply
• Be prepared with intelligent follow-up questions
Employment; Leadership Potential

6. Current Employment Status:
   __Employed full-time
   __Employed part-time
   __Homemaker
   __Retired
   __Student
   __Disabled
   __Unemployed, looking for work
   __Unemployed, not looking for work

7. Current occupation:________________________________________________________

8. Employer:__________________________________________________________ How long:________________
   Title or position:________________________________________________________
   Please describe your duties at work:________________________________________
   _________________________________________________________________
9. Generally, how would you describe your experiences (or dealings) with your current or most recent employer?
   __ Very satisfactory
   __ Satisfactory
   __ Neutral
   __ Unsatisfactory
   __ Very Unsatisfactory

10. If retired, what was your last occupation? ________________________________
     Your last employer? ________________________________
     What do you do at present? ________________________________

11. Have you ever owned your own business?   Yes___    No___
    If “yes,” what type of business: ________________________________
    Number of Employees: ______    Dates of operation: ________________________________
14. Please list all previous occupations and indicate how many years you worked in each.

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<th>Employer</th>
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15. In your work, do you have management or supervisory responsibilities?  Yes ___ No ___

   If “yes,” please describe: ________________________________________________

   Number of people supervised: ____________________________________________

16. Have you had management or supervisory responsibilities in the past?  Yes ___ No ___

   If “yes,” please describe: ________________________________________________

   Number of people supervised: ____________________________________________
24. Have you or any members of your family ever belonged to a union?
   ___Yes, self  ___Yes, family member  ___No.
   If “yes,” which one__________________________
   If “yes,” offices held__________________________

25. Have you ever filed a grievance with a union?
   Yes___  No___
   If “yes,” please describe:______________________

26. Have you ever participated in a grievance investigation?
   Yes___  No___
   If “yes,” please describe:______________________
27. Do you own ___ or rent ___ your current residence?
28. Highest grade you completed in school: (Check one)
   ___ High School
   ___ College 1 year
   ___ College 2 years
   ___ College 3 years
   ___ College 4 years
   ___ Post-Graduate

29. Major area of study:__________________________________________

30. What colleges, if any, did you attend?__________________________

31. Other educational programs (vocational schools, night schools, part-time study, correspondence schools, etc.) ____________________________

32. Have you ever taken any courses or had any training in any of the following areas? If so, please describe when and where you studied.
   a. Legal matters generally ____________________________
   b. Personnel or Human Resources ____________________________
   c. Psychology/Psychiatry ____________________________
   d. Auditing/Accounting ____________________________
   e. Labor relations ____________________________
33. What type(s) of volunteer work do you do?

34. Have you ever belonged to any organizations which were designed to promote or protect the rights of different groups or individuals, such as civil rights groups, women's or minority groups, environmental action groups? Yes____ No__

If “yes,” please describe: ___________________________ _____________________________________________________________________
35. How would you describe your political style: (Check one)

___ Very liberal
___ Somewhat liberal
___ Middle of the road
___ Somewhat conservative
___ Very conservative
36. Marital status:
   ___ Single and never married
   ___ Single, but living with non-marital mate for _____ years
   ___ Single, but married in the past for _____ years
   ___ Currently married and have been for _____ years
   ___ Widowed

37. What is your spouse’s occupation? ____________________________
   By whom is he/she employed? ____________________________

38. Other than as indicated above, does any other adult live in your household? Yes___ No___
   If “yes,” please state his/her occupation(s) _______________________
Other Sources of Influence/Information

39. Please list the occupations of your extended family (parents, brothers, sisters, close relatives). (Please do not give their names, but identify their relationship to you.)

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40. If you have children, please list:

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41. Have you ever served in the armed services?  
    Yes____  No____
    If “yes,” what branch(s)_________________________ ____________________________
    Dates:_______________________  Rank:__________________________

42. Would you describe yourself as a leader:
    ____Infrequently  ____Occasionally  ____Frequently
55. Have you or any of your close friends or family members ever filed a lawsuit, or been sued for any other reason?  Yes__  No__

If “yes,” please briefly describe the lawsuit(s) and your involvement: ______________________________

____________________________________________________________________________________

How did you feel about the legal process after the matter was concluded? ____________________

____________________________________________________________________________________
59. Do you have any close friends or family members who are in the legal profession?  
Yes____ No____  
If “yes,” please state the name(s) of the law firms or courts by which they are employed:  
__________________________________________________________________________
Leadership; Potential Foreperson

60. Have you ever served as a juror before? Yes__ No__

If "yes", what court(s)?

What were the cases about?

How would you describe your experience(s) as a juror?

Have you ever served as foreperson of a jury? Yes__ No__
61. Is there anything which you feel should be brought to the court's attention that might affect your ability to be as fair and impartial a juror as you would like to be, or any reason why you may not want to serve as a juror in a case involving an employment dispute?  
   Yes ___ No ___

If “yes,” please explain: __________________________________________________________

_________________________________________  ________________________________

62. Is there any matter you would prefer to discuss privately with the court?  
   Yes ___ No ___

If “yes,” please explain: __________________________________________________________

_________________________________________  ________________________________

63. Is there any information not asked in this questionnaire which you feel the judge or attorneys should know about?  

_________________________________________  ________________________________

_________________________________________  ________________________________
Questions/Contact

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