

Preparing for Voir Dire

by Jeffrey D. Boyd

Preparing for Voir Dire, by Lisa Blue and Robert B. Hirschhorn, edited by Janice Robinson Pennington, published by Trial Guides, L.L.C, 2014. 92 pages, plus a companion CD.

Lisa Blue, the current president of The American Association for Justice, and Robert B. Hirschhorn, her long-term professional colleague, have put together a concise, readable, useful, and practical guide to the crucial job of getting your head ready for the challenges of picking a jury.

This book is a companion to *Conducting Voir Dire*, ably reviewed in this issue of *Trial News* by Samuel Page. It is written from the perspective of a plaintiff's lawyer; although I suppose some of these principals apply to civil defense lawyers, I hope none of them read this!

The text consists of eight chapters:

(1) Psychology and Voir Dire Preparation (2) Issues to Cover in Voir Dire (3) Juror Questionnaires (4) Planning the Length of Voir Dire (5) Crafting Effective Open-Ended, Closed-Ended, and Scaled Questions (6) Preparing Props and Visual Aids (7) Researching Potential Jurors Outside the Courtroom, and (8) What to Wear. It has a very useful companion CD, consisting of 6 chapters: (1) "Jury Questionnaires," consisting of multiple sample written questionnaires and sample cover and instruction sheets to go with them; (2) "Outline," an outline of a full voir dire in a bus crash case; (3) "Challenge for Cause Charts," to keep track of your thoughts about who you may try to excuse, and why; (4) "PowerPoint Sample Slides," a

plethora of presentations and sample slides that you can use in voir dire; (5) "Scaled Questions Chart," to record juror responses to the "on a scale of 1 - 10" types of questions that the authors advocate; (6) "Index Cards," which will be the prepared notes to yourself from which you will conduct your voir dire.

I believe that "simple = strong" when you are planning and presenting any aspect of trial. There is no part of a plaintiff's case that causes us more stress and fear than voir dire. These materials calm that fear by both getting you thinking about your plan, and by giving you guides and samples that will help you convert your thoughts into action.

Dr. Blue begins: "Start preparing for voir dire the day your client comes into the office, because the day you take a case is the time you're seeing the case the way your ultimate jurors are going to see the case." To that, I would add that the day you first hear about and evaluate a case is the only time you are seeing the case as a neutral, and even then, you are already advocating the positives and devaluing the negatives in a way that a "cold" jury never will. "You never get a second chance to make a first impression." I recently heard of a study that says that we form our initial impressions of people in seven seconds. Seven seconds! Are you ready for that? If you are aware of that, if you embrace

the importance of first impressions, you will understand why preparation is so important, because, as the authors tells us: “When it comes to jury selection, it is not about you or your client. It’s all about the jurors, their life experiences, and their fundamental beliefs. It’s about whether you can demonstrate that your client’s case is firmly rooted in the panel member’s view of morality or core beliefs, in addition to being legally correct.” Further, “The goal in voir dire is to have jurors open up to you and tell you how they honestly feel.”

You will notice that none of this is about changing the jurors to see things your way. In fact, the author tells us that “the point of voir dire is never to change someone’s mind or sell your case.” There are several reasons this is true. I believe our ability to change any juror’s fundamental beliefs is much less than we think. You won’t get far by trying to drag the jury across to your side of the line; you will never change a conservative into a liberal by clever voir dire questions. You are much better off building your case where the majority of jurors live, and a good voir dire is an essential part of that process. You can’t know where to build your ground floor until you understand the foundation upon which you are trying to build. Next, “to ‘deselect’ a jury, you have to understand the deficiencies in your own case... acknowledging your case’s deficiencies allow you to incorporate them into your story and introduce them to the jury panel in a way that best serves your client.”

How, then, do you make your case work? “Develop a power statement. Create a short, targeted juror questionnaire that is fair to all parties¹. Know your judge and learn the rules governing voir dire that will apply in your case. Turn your ideas into concise questions for the prospective jurors. Practice your voir dire

questions until the time you have and the time you need are the same. Prepare a PowerPoint presentation to help the panel understand and answer your questions. As soon as you know who your panel members are, use the Internet to learn everything you can about them. Use all of this information to identify the unfavorable jurors, inoculate the favorable jurors, and educate the remaining jurors.”

The authors also have some practical tips for one of the great challenges of modern voir dire – extreme time limitations. “If you have a strong case, voir dire should take less than sixty minutes. . . during one hour of voir dire you can effectively cover between four and six broad topics. . . [in that hour] we suggest two to four open-ended questions, six to eight closed-ended yes-or-no questions, and three to four scaled questions.” Since that is the time limit we often have to work with, this is very helpful advice. They do allow, however, that “. . . if your case has several issues or weak spots, then you may need more than an hour to develop your challenges for cause.”

Plaintiffs’ voir dire is hard. This book makes it easier. I can think of no higher recommendation.

Jeff Boyd, *WSAJ EAGLE Member and Editor-In-Chief of the WSAJ Trial News, has been a trial lawyer for 32 years, and for the last 17 years has assisted plaintiff’s lawyers across the country with a wide spectrum of trial issues. He is a long-time AAJ member, a member of the Washington and Ohio bars, and a principal of the law firm of Nelson Boyd, PLLC, and of Boyd Trial Consulting, PLLC, in Seattle.*

¹ It is my belief that a good voir dire is good for both sides. There is nothing that the defense would want to bring out in voir dire, that you (as plaintiff) don’t want to bring out, too.