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Voir dire under time restraints

Following some simple steps will allow you to conduct voir dire effectively, even if you're under strict time limits.

Plaintiff welcomes William Veen as the new author of the Trial Practice & Procedure column. He founded The Veen Firm as a sole practitioner in 1975, gradually developing it into a firm of more than 40 attorneys and staff who represent severely injured workers and consumers. He is a member of the American Board of Trial Advocates and he was honored as the Trial Lawyer of the Year by the San Francisco Trial Lawyers Association in 2003.


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Although "unreasonable or arbitrary time limits" should not be imposed on voir dire, any questioning will still be subject to the discretion of your trial judge. (Code Civ. Proc., § 222.5; Cal. Rules of Court, rule 3.1540.) Efficient voir dire will allow you to evaluate your jury panel within the sometimes strict time limits imposed by the court.

Know what you're up against

The judge is free to limit voir dire as long as counsel's right to conduct a "liberal and probing examination to discover bias and prejudice within the circumstances of each case" is not restricted. (*Bly-Magee v. Budget Rent-A-Car Corp.,* (1994) 24 Cal.App.4th 318, 324.) You should therefore determine exactly how the judge will handle hardship excuses, the seating arrangement for the panel (eight-pack, twelve-pack, etc.), and the amount of time you will be allowed for questioning.

Another important thing to do is to try to get the judge to rule on all of your motions in limine before voir dire takes place, in order to avoid subject areas the judge deems improper. Admonishments from the court will not make your job any easier.

Save time with jury questionnaires

Although California specifically allows jury questionnaires, it is up to the court whether you will be permitted to use them. (Code Civ. Proc., § 222.5(b), (c); Cal. Rules of Court, rule 3.1540(b), (c).) To persuade the judge, you should first see whether opposing counsel will agree on the questions that you want to ask. A judge is more likely to allow a jury questionnaire that is mutually agreeable to both sides. Some courts' local rules even require both sides to meet and confer regarding this process. (*See,* Super.Ct. Alameda County, rule 3.35(k); Super.Ct. Contra Costa County, rule 5(J)(2)(d).)

You should submit your jury questionnaire to the court along with your motions in limine. Be sure to emphasize that the jury questionnaire will streamline jury selection and quickly dispatch issues that would otherwise require lengthy "for cause" questioning.

Use voir dire efficiently

Be prepared for voir dire by knowing the legal standard for both implied and actual bias. The court should know the standard as well. However, skillful questioning will not get you anywhere if the judge misunderstands the law. Before voir dire, be sure to submit a trial brief that succinctly describes the legal grounds for challenging jurors. Doing this can save you time and effort during the actual questioning. You can also tailor your brief to your case by emphasizing any juror biases that the court is particularly likely to encounter, such as pro-doctor sentiment in a medical malpractice case.

Identify defense jurors quickly

If you have limited time for voir dire, you will have to identify defense jurors as quickly as possible. Asking the panel as a whole whether jury verdicts in

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California are excessive will bring out the most fervent pro-defense jurors. Such jurors can also be identified by their knee-jerk opinions about financial compensation for loss of consortium and/or pain and suffering. To challenge these jurors for cause, you need to give them a way to admit their biases without sounding like unfair or unreasonable people. My favorite question is: "If we were running a race, would my client be standing even a little bit behind the starting line?"

Figure out who the fatalist jurors are

Each panel also has its share of fatalists, who believe that everyone must accept a certain amount of random suffering. You can identify these kinds of jurors by their refusal to answer hypotheticals, and instead demand more information. It is easy for someone to avoid apportioning fault to actual people – rather than fate or God or the uncaring universe – if you never have enough information to reach a decision. To challenge these jurors for cause, elicit their reluctance to use a "preponderance of the evidence" standard. You might even want to ask the entire panel whether anyone feels that the plaintiff needs to prove his case beyond a reasonable doubt. Of course, that question has the added benefit of giving you and the court an opportunity to explain the burden of proof.

Don't get sidetracked

As much as you might like to persuade the entire jury pool to spend their weekends picketing the California Legislature for an end to MICRA caps, it's not going to happen. You first need to figure out exactly how much time you have, and in what ways the court will allow you to use it. Then you must concentrate on the task at hand: Identifying and disqualifying the jurors who will be most harmful to your case. Following these steps will allow you to properly conduct voir dire and enable you to be successful at trial.

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