

## MANAGING JURY SELECTION EFFECTIVELY

### Module #3: Judge & Lawyer Collaboration During Jury Selection

[1 hour]

#### Learning Objectives:

After this session, the participants will be able to:

1. Recite the major tools for obtaining relevant background information from prospective jurors;
2. Recite both the common and the differing (sometimes competing) goals held by judges and lawyers during jury selection.
3. Describe common attorney techniques or practices that impede the timely and efficient completion of jury selection;
4. Describe how judicial techniques or practices can stand in the way of the litigants obtaining essential information about prospective jurors; and
5. Describe at least one new jury selection practice that the participant will utilize at least on a trial basis in the future to improve judge and lawyer cooperation during jury selection.

#### Learning Activities:

1. **Opening and mini-lecture:** The lead instructor begins by stating the guiding principles for impaneling a fair and impartial jury. He/she distributes the black letter text of Principle 11 of the ABA *Principles for Juries & Jury Trials* as a suggested model guide. The instructor briefly recites the facts and issues in a criminal or civil case. The case will serve as laboratory model for undertaking demonstrative role play exercises. (5 minutes)
2. **Role-play exercise:** Faculty members play the roles of trial counsel and judge at a hypothetical bench conference between the trial attorneys and judge to review a lawyer's suggested open-court voir dire questions to the venire plus a request that trial counsel be permitted to ask some, if not all, of the open-court questions to the venire panel. (The suggested questions are available to all class participants.) Two, brief and very contrasting role plays will follow. In one, the judge denies the motion and elaborates his/her reasons (efficiency, or a "judge knows best" attitude, etc.) In the sequel role-play, the judge welcomes the motion as an opportunity to collaborate with counsel. The judge recognizes that counsel knows his/her case best. The second judge also seeks to obtain the maximum amount of information from prospective jurors in order to rule intelligently on motions to strike for cause, but cautions the trial attorneys that they must be very efficient, no grandstanding, etc. Thereafter, the instructor requests that the class divide into groups to report back about which questions and questioning methods yielded the most useful information from prospective jurors. After three reports, the instructor asks other groups if they have anything different to add. (30 minutes)

3. **Classic debate:** A faculty panel, evenly divided between judge(s) and trial lawyer(s), debates the pros and cons of the two paradigms demonstrated above: (1) the paradigm of judge as passive umpire wherein the judge controls everything, moves with speed, and minimizes lawyer participation, and (2) the model of judge as interactive manager and judge/lawyer cooperation whereby they work together to obtain useful information about each prospective juror yet mindful of the judge's concern for efficiency and citizen education. (20 minutes).
4. **Closing:** The instructor describes several bench/bar pilot programs designed to increase judge-lawyer cooperation during jury selection. (5 minutes).

## **Materials:**

1. For use during class: case hypothetical, Principle 11 of the ABA *Principles for Juries & Jury Trials*, case-based questions to venire panel, and PowerPoint slides.
2. Reference materials
  - a. Annotated bibliography. Local instructor will add any state-specific reference materials that would be helpful for the participants (e.g., bench books, case law, statutes, court rules, etc.)
  - b. Sample jury management orders.

## **Case Hypothetical**

### *Tennie Pierce v. City of Los Angeles*

Background facts: Tennie Pierce sued the City of Los Angeles after he was tricked into eating dog food at a Westchester fire station. Pierce was the only African-American employed at the fire station. He claims that the trick was perpetrated on him because of his race. Pierce, a 19-year veteran of the department, alleges that Fire Department supervisors purchased the dog food and did nothing to stop him from eating it. He charges that the incident fit an ongoing pattern of harassment against minorities and women. Pierce asserts that the City engaged in a cover-up of the incident and its practices. The firefighter finally contends that for more than a year following the trick feeding he was subjected to verbal slurs, insults and derogatory remarks including his colleagues “barking like dogs ... asking him how dog food tasted.”

The City denies all allegations of discrimination. It further asserts that the dog food feeding was an innocent joke designed to humble the plaintiff after he proclaimed himself “Big Dog” during a Fire Department volleyball game.

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