

MANAGING JURY SELECTION EFFECTIVELY

Module #6: Promoting Judge-as-Educator Role During Jury Selection

[1 hour]

Learning Objectives:

After this session, the participants will be able to:

1. List the major opportunities during jury selection for the judge to promote citizen education about the courts and legal processes;
2. Differentiate between the qualities of the judge-as-passive umpire and the judge-as-active-educator; and
3. Describe several effective ways to educate, perhaps inspire, citizens during jury selection with respect to the courts and legal processes.

Learning Activities:

1. **Opening and mini-lecture:** The lead instructor begins by stating the guiding principles for impaneling a fair and impartial jury. The instructor briefly recites the facts and issues in an actual case. The case will serve as laboratory model for undertaking demonstrative role play exercises. (5-7 minutes)
2. **Role-play exercise:** With the class members being asked to play the role of prospective jurors, two instructors take turns presiding over the introductory stage of jury selection and, then, the peremptory strike portion of jury selection. The audience is the venire. In one role-play, the judge places a premium on efficiency and avoidance of delay. He/she does not say much to the venire beyond explaining the basic steps in the upcoming jury selection portion of the trial. During the peremptory strikes, nothing is explained to the quietly observant venire panel. In the other role play, the judge gives a information-filled introduction to the venire, highlighting the honors associated with jury service, the purpose of “voir dire,” the importance of telling the truth in response to questions, and procedural steps soon to be completed in jury selection. Before the exercise of peremptory strikes, the judge explains the purpose of this part of the trial. Upon completion of the role-plays, the instructor requests that the class divide into groups to report back about the advantages and disadvantages of each judicial approach to the venire during jury selection. After three reports, the instructor asks other groups if they have anything different to add. (30-35 minutes).
3. **Discussion:** The instructor asks questions of the participants about the following issues: (1) what are the challenges facing a trial judge in pursuing a judge-as-educator paradigm? (2) should trial lawyers be called upon to assist the court’s juror-educator role?, (3) to what degree should “voter appeal” inform the content of the judge-as-educator’s communications?, (4) how can a judge respect juror expectations of privacy and comfort during questioning? (15 minutes)

4. **Closing:** The instructor highlights available resources to assist a judge-as-educator. (2 minutes).

Materials

1. For use during class: case hypothetical; Principles 6, 7, 11, 13 & 14 of the ABA *Principles for Juries & Jury Trials*; the American Judges Association [“AJA”] *White Paper - Procedural Fairness: A Key Ingredient in Public Satisfaction* 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
 - c. Sample judicial opening statements for jury selection
 - d. Checklists

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.

Bibliography

Core Documents

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http://www.abanet.org/jury/pdf/final%20commentary_july_1205.pdf.
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Journals/Periodicals

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- John M. Conley et al., *The Power of Language: Presentational Style in the Courtroom*, 78 Duke L.J. at 1375-1399 (1978).
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- Gerald T. Wetherington et al., *Preparing for the High Profiles Case: An Omnibus Treatment for Judges and Lawyers*, 51 Fla. L. Rev. at 425-488 (1999).
- Kimba M. Wood, *The 1995 Justice Lester W. Roth Lecture: Reexamining the Access Doctrine*, 69 S. CAL. L. REV. 1105, 1118-20 (1996).
- Marvin Zalman & Olga Tsoudis, *Plucking Weeds from the Garden: Lawyers Speak about Voir Dire*, 51 Wayne L. Rev. at 163-441 (2005).

Books and Other Works

Lee Epstein & Jack Knight, *The Blackwell Companion to Law and Society at 170 – 194 (Courts and Judges)*, Blackwell Publishing (2004).

G.Thomas Munsterman, Paula L. Hannaford-Agor & G.Marc Whitehead, **Jury Trial Innovations, 2nd Edition**, 22-24, 37-40, 170-171, NATIONAL CENTER FOR STATE COURTS (2006).

William M. O’Barr, **Linguistic Evidence: Language, Power, and Strategy in the Courtroom**, Academic Press (1982).

Neil Vidmar & Valerie P. Hans, **American Juries**, Prometheus Books (2007).