

# **The Dark Art of Voir Dire**

ISB Young Lawyers Section

April 16, 2019

Kurt Holzer

## **1) The Overarching Goal (Get Information)**

a) Identify and Remove "Bad" Jurors

i) Cause (IRCP 47(h))

ii) Peremptory

**(This Requires Listening)**

## **2) Lessor Goals (Provide Information)**

a) Establish Rapport With The Panel/Humanize Yourself and Your Client

i) Always be Appreciative of the Juror's openness

ii) If the Answer makes you cringe you are getting info you need

b) Introduce Themes/Teach

**(This Is When You Talk)**

## **3) Not Goals**

a) Convince Jurors of your case's righteousness

b) Change minds

## **4) What is your Judge's Process?**

a) Get in Pretrial Conference

b) How Long-

c) Scope of Judge's initial inquiry (47(h)? more?)

i) Will Judge follow-up

ii) When is lawyer follow-up?

d) Challenges for cause

(1) When Does Judge Expect Them

(2) Can you do it in private? Can you wait until the end?

(3) They tend to be harder than you think

(4) Bias = "prevent or substantially impair the performance of their duties"

(a) Get juror to restate and recommit when they make statement of bias

(5) Judges like to rehabilitate (Can you be fair/Will you do what I say)

**5) Get The List**

- a) Learn about the people-Its an online world (Local Rule 47.2)
- b) Jury Questionnaires-
- c) Figure out your chart or other tool (Lots of Apps out there)
- d) Note-taking Conundrum
- e) + and – system

**6) Who are the jurors? (This is where jury consultants get rich with voodoo)**

- a) What are the values, attitudes, perspectives and Life experiences
  - i) You Want In
  - ii) You Want gone

**7) What Are Your Topics - (Prep prep prep – Think Think Think)**

**a) Strong Topics**

- i) Case Specific
- ii) General
  - (1) Burden of Proof

**b) Areas of Concern**

- i) Case Specific
- ii) General
  - (1) Burden of Proof

**c) Generally, No Nos**

- i) Religion
- ii) Political Persuasion

**d) Insight Queries (Potential Discussion Starters)**

- i) Public or private figures other than family you describe as heros
- ii) Bumper stickers/Radio preferences/
- iii) Where do they get their news?
- iv) “Too many lawsuits” -- “Too much money”
- v) “Any experience in politics, as a candidate or working on a campaign?  
(**Not** are you and R or a D or an I)
- vi) Member of labor Union, HOA Board etc

- vii) Know any other member of the panel
- viii) Friends/family who have expressed criticism of lawyers or court system
- ix) *There are an unlimited number of these*

**8) Introduction (Answer the Why & Create Comfort)**

- a) Who I am-
  - i) Be Human-Talk Like a Human
  - ii) Personal disclosure
- b) Who the client is
- c) What we are doing (no one cares what voir dire means aka-- talk like a human)
- d) Be sensitive to Jurors experience and disruption of their lives

**9) Overview of Case**

- a) Use your case language
- b) Issues of significance
- c) Quick summary-Don't Waste time

**10) Techniques**

- i) Comfortable Language & Body Language
- ii) Reflective Listening
  1. Tune In
  2. Follow-up
  3. Make sure they feel safe & Comfortable
    - a. Nod & Smile
    - b. Express Appreciation
  4. The Note-taking conundrum writ large
- iii) Looping and connecting (and more looping)
  1. Direct Questions To Individual jurors
  2. Then Get reactions to that response/responses
  3. "What do you think about what so and so said"

Let the jurors talk to each other with you as guide =Don't force ideas down throat
- iv) Flesh It out
  1. "Tell me more about that" "What do you mean by that" "What else"

Informal 3-question limit per issue per juror

- v) Wrap It Up and move to next question–
  1. How Many Jurors do you talk to on a Question?
    - i. Depends
  2. When finishing a topic Ask the whole panel if anyone else has a comment
  3. If someone you talk to frame an issue is a particularly good or bad way use it to get more info from others If you agree with Juror Jones raise your hand – follow-up if it seems worthwhile- Why agree? Why not agree? Why not either?
- vi) Use of A/V (Powerpoint and Its analogs)- Does It Help? Really?

## 11) Problem Jurors

- a) Won't Open Their Mouths
  - i) This is one problem with "Does any body...." Technique.
    1. Ask Direct and open-ended questions—Why do you say that tell me more...
- b) Won't Shut Their Mouths
  - i) Regular volunteers
    1. If what they say is a good foundation for looping off of then use'em
- c) Lie to You
  - i) Afraid of being made fun of or being seen as different than the group
  - ii) Topic is uncomfortable
  - iii) Has an Agenda

## 12) Prayer Helps

### Specific Technique Points

**Don't Ask**--Does anybody here have any feelings about...? Or Who thinks ....?

Ask----"Juror X what feelings do you have about...?"

Or Ask----Tell me, Juror X what you think about the idea .....

Or give a "some feel(think) A /others feel (think) B" preface and then ask Where do you fall on that spectrum Juror X. If A is 1 and B is 10 what number are you? Why?

# The Dark Art of Voir Dire

(No One Cares How You Say It)

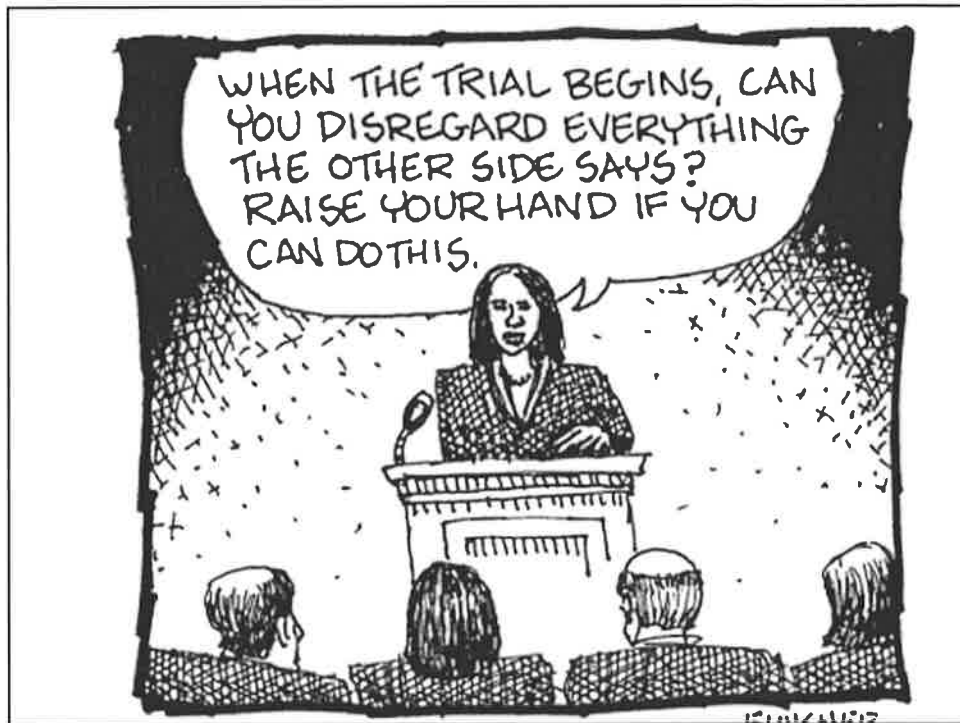
Kurt Holzer

**HEPWORTH·HOLZER**  
LIFE-CHANGING LAW

(208) 343-7510



**KEEP  
CALM  
& ACHIEVE  
YOUR  
GOALS**

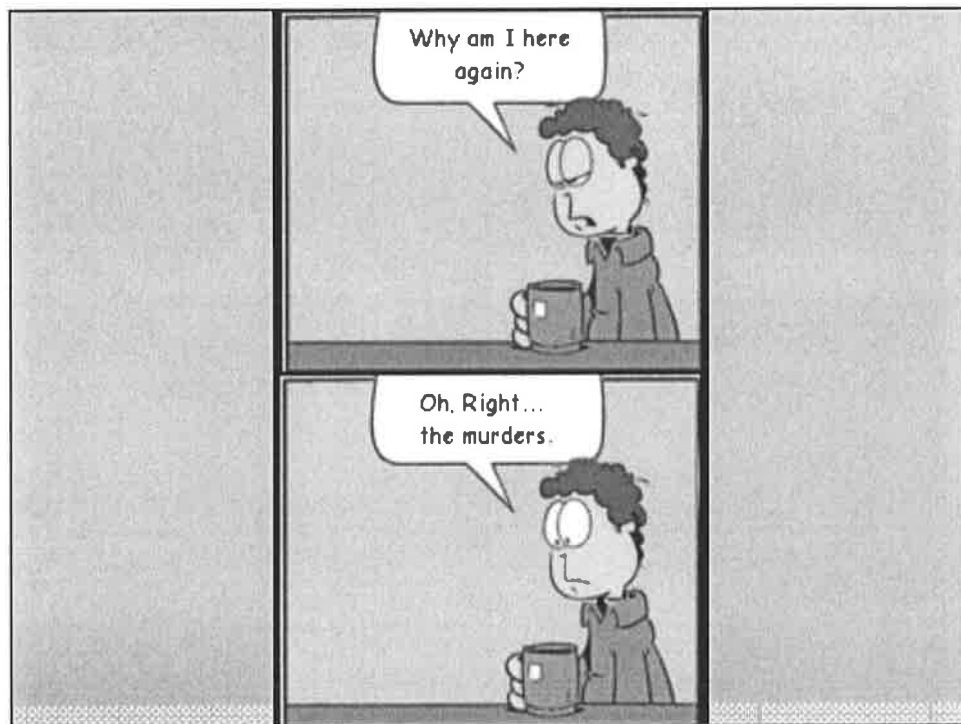
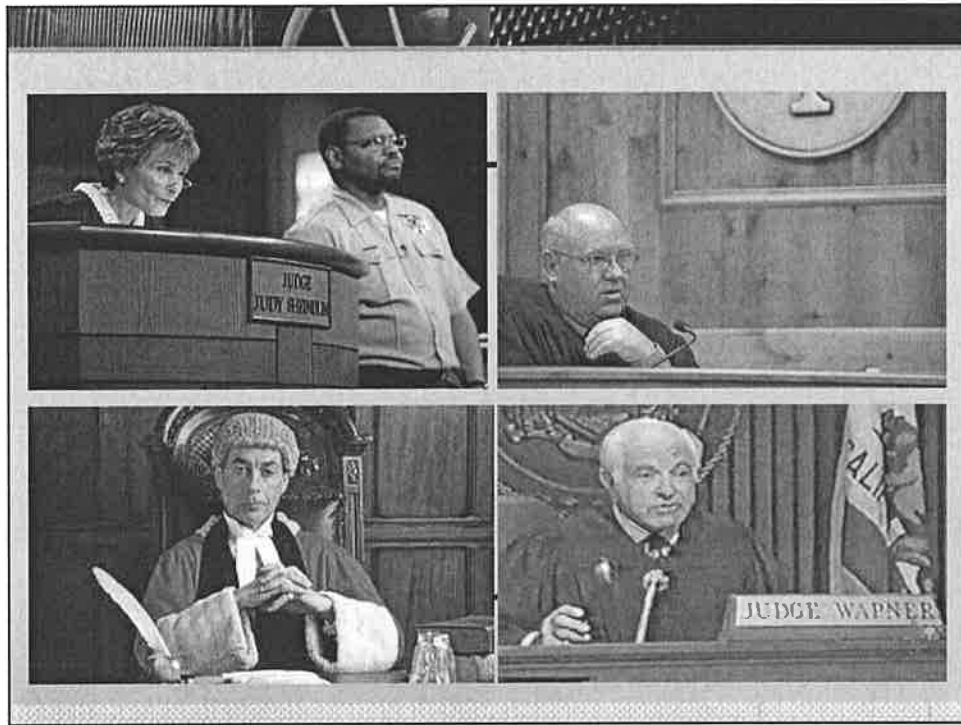


**Jury Selection is  
One Thing  
And One Thing Only  
And Don't Forget This  
It Is  
Juror Deselection**



## The Rules

- Idaho Rules of Civil Procedure 47  
Voir Dire at 47(f)
- Idaho Rules of Crim Procedure 25  
Examination of Jury AT 24(b)
- Fed Rule of Civil Procedure 47  
28 USC 1870  
Local Rule 47.1
- Fed Rule of Crim Procedure 24







## INVESTIGATION

I'm sorry, we can't hire you, but your background check was hilarious.



# Rules Again

District Local Rule Civ 47.2 (Civ-0) [Back to Top](#)

## SOCIAL MEDIA JUROR INQUIRIES

(a) Attorneys may use websites available to the public, including social media websites, for juror or prospective juror research, so long as:

- (1) The website or information is available and accessible to the public;
- (2) The attorney does not send an access request to a juror's electronic social media;
- (3) No direct communication or contact occurs between the attorney and a juror or prospective juror as a result of the research, including, but not limited to Facebook "friend" requests, Twitter or Instagram "follow" requests, LinkedIn "connection" requests, or other forms of internet and social media contact;
- (4) Social media research is done anonymously. For example, a search on a social media site must not disclose to the juror who is making the inquiry, and it must only seek information available and accessible to the public and not the result of an attorney's account on said social media site; and
- (5) Deception is not used to gain access to any website or to obtain any information.

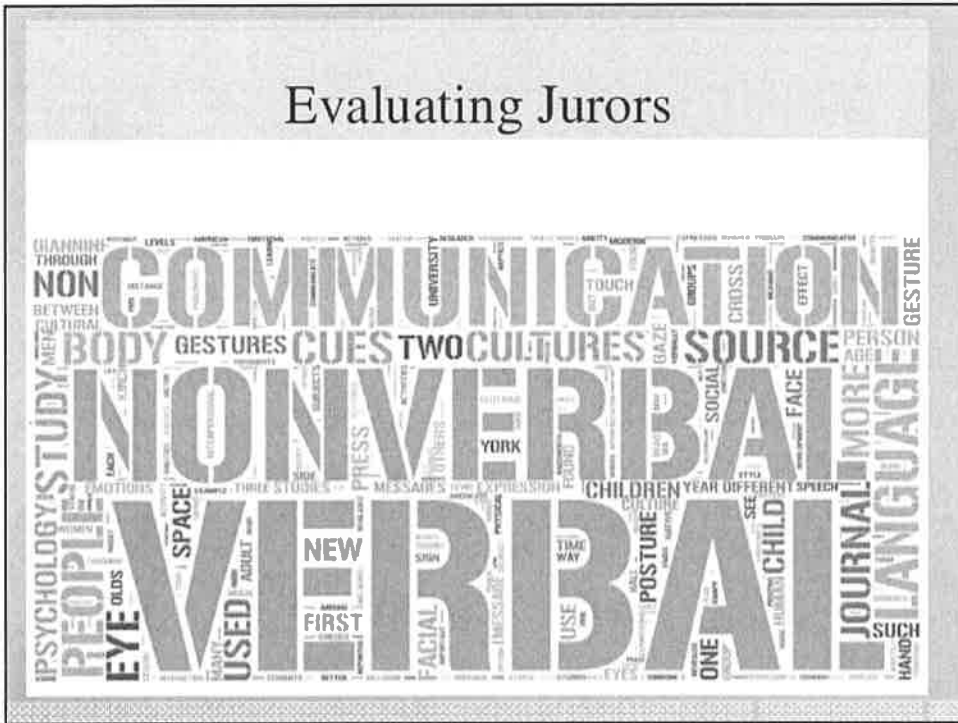
(b) Third parties working for the benefit of or on behalf of any attorney must comply with all the same restrictions as set forth above for attorneys.

(c) If an attorney becomes aware of a juror's or prospective juror's conduct that is criminal or fraudulent, IRPC 3.3(b) requires the attorney to take remedial measures including, if necessary, reporting the matter to the Court.

(d) If an attorney becomes aware of a juror's posting on the internet about the case in which she or he is serving, the attorney shall report the posting to the Court.

# Techniques

## Evaluating Jurors



1. Looping
2. Reflective Listening
3. Flesh It Out
  - A. Tell Me More?
  - B. What Do You Mean?
  - C. What Else?

This is  
my  
thank you  
dance!

