

**JURY SELECTION -- UNIVERSITY OF MISSOURI -- KANSAS CITY
SUMMER SESSION - JUNE 2005
WANDA and HAL LOWENSTEIN**

ANNOTATED SUGGESTED READINGS

Berman, *Trial Advocacy*, 3rd Ed. pp. 318-332. Heglund, *Trial and Practice Skills*, 2nd Ed. pp. 199-203

These two "in a nutshell" West publications offer brief but excellent examples of how to frame voir dire questions to both elicit deeper information about the members of the venire, and to get across the theme of your case. We will use some of the examples in class.

Curriden, Mark, "Violence Shaping Verdicts," *ABA Journal*, February 2002, p. 36.

An excellent analysis by a *Dallas Morning News* reporter on the effect of the terrorist attacks of September 11th on juror's thinking.

Demitrius, Jo-Ellan, Ph.D., and Mazzarella, Mark, *Reading People*, New York: Random House, 1998.

Demitrius has consulted in more than 600 jury trials, and Mazzarella has been a practicing trial lawyer for 20 years. Together they help the reader learn how to read non-verbal clues in predicting behavior. This book teaches the reader how to evaluate people's complex characteristics and how to see the overall pattern those characteristics form.

Frederick, *Mastering Voir Dire and Jury Selection: Gaining an Edge in Questioning and Selecting a Jury*, General Practice Section, American Bar Association, 1995.

This is considered one of the best books on the subject.

Fulfer, Mac, J.D., *Amazing Face Reading*, 1996.

Fulfer, a practicing attorney, started studying physiognomy to help in jury selection. Because of his success, he published a practical guide for those interested in learning the basics of physiognomy, or "face reading." This book is a practical "how-to" guide, complete with illustrations for each gesture.

Gladwell, Malcolm. *Blink: The Power of Thinking Without Thinking*. New York: Little Brown & Co, 2005.

In this book, Gladwell maps out the "adaptive unconscious,--that facet of our mind that enables us to determine things in the blink of an eye. This book is filled with data to support the validity of intuition.

Gobert, James J. and Jordan, Walter E., *Jury Selection -- The Law, Art and Science of Selecting a Jury*, 2nd Ed., Colorado Springs, CO: Shepards/McGraw Hill, Inc., 1990.

The authors' approach is both practical and theoretical. Covers the history of jury selection; functions of the jury, the law; characteristics of a jury; approaches to jury selection; mock juries; and the challenges of voir dire in both criminal and civil cases.

Guastaferrero, Joseph, "Affecting Jury Selection" the Professional Education Group, Inc. 2005, available through Missouri Bar CLE program.

The author is a jury consultant and has been the dean of DePaul's School of Drama. The style of the notebook is easy and has many practical examples. His examples on pages 2 and 3 about not giving the impression the attorney asking the question is "evaluating" or "judging" the persons but is merely to get at why the person feels or believes as he or she does, are really on the mark.

Hansen, Mark, "Reaching Out to Jurors," *ABA Journal*, February 2002, p. 33.

Looks at current thinking among jury consultants who believe traditional views on juror demographics should be supplanted with new notions that differences in Generation X, Y and D persons now hold sway.

Heglund, *Trial and Practice Skills*, 2nd Ed. pp. 199-203 and

Jeans, Jim, *Trial Advocacy*, 2nd Ed., 1993, pp. 270 to 302.

Jim Jeans is an experienced trial attorney who has also been a law school professor at UMKC. Jeans, at pages 297-302, gives some terrific examples of how to use your questions and the answers of the venire persons to get your case's good points across to the potential jurors as well as to soften the blow of the bad points.

Kressel, Neil J. and Kressel, Dorit F., *Stack and Sway: The New Science of Jury Consulting*, Cambridge, MA: Westview Press, 2002.

This text discusses the pros and cons of the present jury system and the many techniques for selecting a jury, especially the use of jury consultants.

Lempert, "Why Do Juries Get a Bum Rap?" Commentary, *48 DePaul Law Review* 453, 1998.

Like the previous entry, this too is more of a study of juror process rather than of jury selection, but it is one of the best endorsements of the jury system I have seen. In class, we will allude to the famous McDonald's coffee burn case mentioned on pages 459 and 460, in which several jurors on that case said that after hearing only the bare facts on voir dire, they wanted to get on the jury to make a statement against greed by denying plaintiff's recovery.

MacCoun, Robert, *Inside the Black Box: What Empirical Research Tells Us about Decisionmaking by Civil Juries, Verdict: Assessing the Civil Jury System*, The Brookings Institution, 1993.

As the title implies, this is primarily about the dynamics of deliberation of a selected jury, but contains interesting research showing that, contrary to the movie *Twelve Angry Men*, "the verdict favored by a majority of the jury at the onset of deliberation usually prevails."

Monahan & Walker, *Social Science and the Law*, 4th Ed., Foundation Press, 1998, pp. 569 to 584.

A collection of studies of non-lawyers, primarily psychologists and social scientists. Also contains writings of Clarence Darrow and Melvin Belli that will be mentioned in a section on stereotypes.

Monahan, John and Walker, Laurens, *Choosing a Jury*, Social Science in Law, Cases and Materials, 4th Ed., University Casebook Series, Section II, Chapter 6.

Moore, Bergman and Binder, *Trial Advocacy*, American Casebook Series, 1996, pp. 311 to 330.

If you choose to read only one publication in this list, this is the one. It is concise and outlines the purposes of voir dire with good examples of how to frame questions. If you remember nothing from this class other than the following quote, you will understand the process from the perspective of the citizen before you, who has been summoned to the courthouse: "Answering voir dire questions would not be most people's first activity of choice. Few people would say, 'I think I'd like to go down to the courthouse and have lawyers probe my feelings and attitudes about all sorts of private matters in front of a bunch of people I hardly know. Since jurors often resent voir dire questioning, you can enhance rapport by empathizing with their possible discomfort and explaining the purpose of particularly personal or embarrassing inquiries."

Morgan, Nick, "When Body Language Lies", Harvard Business School, *Working Knowledge*, Vol. 5, No. 8, August 2002.

This excerpt challenges some of the commonly-held myths surrounding the interpretation of body language. They present convincing reasons for moving with caution when attempting to interpret body language.

Nance, Jef, *Conquering Deception*, Irvin-Benham, LLC, 2004

Mr. Nance, a former undercover agent and interrogator for the Missouri Highway Patrol, now works as a corporate fraud investigator and speaks on the subject of "Deception." His folksy writing style offers a practical approach to spotting deception filled with useful tips.

Nation, Howard, "Positive Jury Arguments," <http://www.howardnations.com>.

Long, but a must read: observes that jurors are most sympathetic to parties or lawyers who share similar hobbies, interests and beliefs; explores importance of developing case themes and of telling potential jurors in voir dire of their power in deciding this case.

Pizzi & Hoffman, "Jury Selection Errors on Appeal," 38 *American Criminal Law Review*, 1391, 2001.

Although we do not have time to hear an in-depth study of the law about errors in selecting a criminal jury, this is a good, general examination of current cases.

Roscoe Pound Institute, "The Jury as Fact Finder and Community Presence in Civil Justice," Report from a 2001 Forum of State Judges and Legal Scholars.

Law professors and judges at a conference agreed that juries generally reach the same conclusions as a trial judge would have; they probably enter higher amounts in punitive damages; juries understand and assess expert witnesses far better than imagined; and, very importantly, the system creates better citizen understanding of legal system, and jurors often extol about the great experience they have had by serving on a jury.

Stapleton Milford, Lee, "Nonverbal Communication," *American Bar Association, Journal of the Section of Litigation*, Vol. 27 No. 4, Summer 2001.

Starr, V. Hale and McCormick, Mark, *Jury Selection* 3rd Ed., New York: Aspen Law and Business, 2001.

This text is written from a research perspective. It covers research done on all aspects of jury selection with actual research studies to support text.

Waites, "Courtroom Psychology and Trial Advocacy," No. 10, 2003, pp. 273 to 311.

This presents a unification of law and psychology to jury selection. The author explains how the use of open-ended questions and a concise explanation of the case to persons who know nothing about the case can ferret out preconceived notions of potential jurors. Also stressed is the added value of establishing the attorney as one who can be trusted, polite person who will listen to the venireperson.

Walters, Stan B. *The Truth About Lying: How to Spot a Lie and Protect Yourself from Deception*. Naperville, Ill: SourceBooks, Inc. 2000.

Website: Jury Research Institute, <http://www.jri-inc.com>

Wenke, Robert, *The Art of Selecting A Jury*, Charles C. Thomas, Publisher, 1988.

This book expounds on the title that jury selection is an art, as well as educated guesswork. He explains why he believes that "juries are extremely resistant to rational selection, even by the best trial lawyer."