**BETTER LAWYERING SERIES**

**VOIR DIRE**

**WADE: Hello folks, and welcome to another episode of the Good Judge-ment Podcast. I’m your host, Wade Padgett.**

TAIN: And as always, I’m your other host, Tain Kell.

**Wade: Tain, let’s tell everyone about the series we’re starting today.**

Tain: Sure, Wade. As you folks know, this podcast originated as an educational tool for judges. We were teaching a course for new Superior Court judges, and that sort of morphed into a podcast series for judges.

**WADE: Right, but since that time, the podcast has become a favorite of lawyers, students and law nerds everywhere.**

Tain: Right, Wade. So, in recognition of that other audience, we thought it might be a fun idea to go over some of the basics of trial practice for attorneys and students, but from a judge’s perspective. We felt like we might be able to give some good advice for lawyers on some of the basics of trying a case WELL, rather than just going through the motions.

**WADE: Ha! I see what you did there.**

**So what are we calling this series?**

Tain: Well, Wade, for want of a better name, we’re calling it the “Good Lawyer-ing” series.

**WADE: I get it, “Good Judge-ment”, “Good Lawyer-ing”… Nice. Was
Good Lawyer-ment” already taken?**

**So where are we going to start, Tain?**

Tain: Well, we might go back later and cover other pretrial issues, but we thought it would be a good idea to start with jury selection, the good ol’ “*vwar deer”!*

**Wade: Isn’t it *pronounced “Vore Dire”?***

Tain: And the pronunciation battle rages on…

So on to voir dire…

**VD is arguably the most important moment of the trial. Why?**

* **As the lawyer, it’s your only chance to make a good first impression**
* **It’s your first chance to look better than the other lawyer**
* **Most important, it’s your chance to strike the “bad” jurors**

**What is VD and how do we make it successful?**

**YOU MUST:**

* **Be efficient- do not get bogged down**
* **Be friendly (or at least very professional)**
* **Make eye contact**
* **(If allowed) move around**
* **(If allowed) call jurors by their *correct* names**

**DON’T FORGET TO INTRODUCE:**

* **Yourself**
* **Your firm**
* **Your client**
* **Anyone else at counsel table**
* **The case (as much as the judge will allow)**

**RULE OF THUMB: “Never try your case in voir dire”**

**TAIN’S RULE OF THUMB: “Always try your case in voir dire”**

**What does that mean?**

 **See how much of th relevant circumstances of the case (and your theme) you can insert into the voir dire to “educate” the jury abour your case**

**HOW DO YOU DO THAT?**

* **Know the judge**
* **Know how far the judge will let you go**
	+ **(Ask other lawyers in advance)**
* **Read the room**
	+ **(don’t aggravate the judge or jury)**
* **Try the case as far as they will let you**

**HOW DO YOU DO THAT?**

* **Carefully prepare Questions in advance**
* **Think of strategic follow-up questions**
* **Insightful reading of cues from the judge**
* **Attention to jurors’ answers**
* **Knowledge of local jurisdiction**
* **Create relatable scenarios for the jurors**

**PURPOSE**

* **The sole purpose of voir dire is to provide both parties with an opportunity to determine the impartiality of jurors, their ability to treat the cause on the merits with objectivity and freedom from bias and prior inclination.**
* **Sallie v. State, 276 Ga. 506 (2003), cited in Reynolds v. State, 334 Ga. App. 496 (2015).**

**LARGER PURPOSE**

* **The larger purpose of voir dire is to enable counsel to identify those prospective jurors counsel desires to remove from the panel by use of peremptory strikes as opposed to challenges for cause.**
* **Henderson v. State, 251 Ga. 398 (1983)**
* **A defendant must be permitted to ask sufficient questions to determine the fairness and impartiality of the prospective jurors, but the appropriate scope of voir dire in a particular case is left to the sound discretion of the trial judge.**
* **Arrington v. State, 286 Ga. 335 (2009)**

**GENERAL QUESTIONS VS. FOLLOW-UP OR INDIVIDUAL QUESTIONS**

* **PRO TIP: You must smoothly flow from question to question and from juror to juror**
* **Have a CONVERSATION with the jury**

**PAY ATTENTION TO THE JURORS’ ANSWERS!!!**

* **Don’t be so focused on the next question that you miss subtle cues**
* **You can’t read facial expressions or body language if you’re not looking**
* **NOTES: Someone needs to note the jurors’ expressions, demeanor and body language for use in both strikes of cause and responding to *Batson/Edmonson* challenges**
* **Train a specific paralegal in your firm or practice group on voir dire**

**MAKING A CHART:**

 **CIVIL: 6 peremptory strikes (24 jurors)**

 **CRIMINAL: 9 peremptory strikes (30 jurors)**

**Ask judge about seating at pretrial conference**

**Judge’s discretion as to alternate or alternates**

**PRO TIP:**

 **CIVIL CASES**

 **Rank strikes to achieve the “bonus strike” possibility**

**SO WHAT DO YOU ASK?**

* **What does he/she allow?**
* **What is their procedure?**
* **How flexible are they?**
* **How do I know what the judge will allow?**

**PROPER AND IMPROPER QUESTIONS**

1. **If juror has an opinion of who should win**
2. **Relationships with parties or counsel**
3. **Inclination, leaning or bias**
4. **Religious, fraternal or social connections of jurors**

**O.C.G.A. §15-12-133**

* **"...In the examination, the counsel for either party shall have the right to inquire of the individual jurors examined touching any matter or thing which would illustrate any interest of the juror in the case, …"**
* **"...including any opinion as to which party ought to prevail, the relationship or acquaintance of the juror with the parties or counsel therefor, any fact or circumstance indicating any inclination, leaning, or bias which the juror might have respecting the subject matter of the action or the counsel or parties thereto, ..."**
* **"... and the religious, social, and fraternal connections of the juror."**

**WHAT ARE IMPROPER QUESTIONS?**

* **Hypothetical questions are often discouraged but may be allowed in the discretion of the court.**

**It is usually improper to ask how a juror would act in certain contingencies or on a certain hypothetical state of facts.**

* **No question shall be framed so as to require a response from a juror which might amount to a prejudgment of the action.**
* **Questions calling for an opinion by a juror on matters of law are usually improper.**
* **The court will exclude questions which have been answered in substance previously by the same juror.**

**OBJECTIONS**

**Objections to the mode and conduct of voir dire must be raised promptly or they will be regarded as waived.**

**STRIKES FOR CAUSE**

1. **Principal cause**
	* 1. **Disability**
		2. **Partiality/relationship to party**
		3. **Criminal conviction**
2. **Favor -expressed or obvious**

**PRO TIP:**

* **Relate to expressions of “partiality”, “lack of objectivity”, “bias” and/or “prior inclination”**
* **Should incorporate quotes from juror if possible**
* **Should make a record of things not recorded**
	+ **Facial expressions**
	+ **Body language**
	+ **Emotions**

**NO REASON FOR STRIKE FOR CAUSE:**

1. **Doubt as to impartiality; or**
2. **Expression of reservations about ability to put aside personal experiences**

**JUROR REHABILITATION**

* **“But Mrs. Jones, even in light of that, do you believe that you can listen to the evidence and the instructions on the law the Judge gives you in this case and render a fair and impartial verdict to the best of your ability?”**

**OTHER INFORMATION**

**The chief superior court judge has the power to require prospective jurors to answer questionnaires concerning their qualifications.  Like a failure to appear for jury duty, a failure to answer the questionnaire is punishable through contempt of court powers.**

**O.C.G.A. §15-12-10 ; O.C.G.A. §15-12-12.**

***BATSON V. KENTUCKY*,**

**476 U.S. 79 (1986) CRIMINAL**

***Edmonson v. Leesville Concrete Co.***

**500 U.S. 614 (1991) CIVIL**

**Timeliness of Challenge for Discrimination**

**“In time to cure”**

***Calhoun v. Purvis***

**206 Ga. App. 565, 425 S.E.2d 901 (1992)**