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❖ The following is a PowerLitigation™ article of Leonard Bucklin.

**#1914 Voir dire preparation worksheet.**

The following form formalizes the mental process that many experienced trial counsel use to decide upon the exact questions they will use with the potential jurors during the voir dire.

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## Voir Dire Preparation Worksheet.

### **ACTUAL KNOWLEDGE QUESTIONS - CASE / WITNESS / LOCATION / EVENT - plus NEWS MEDIA KNOWLEDGE.**

Unless it is sufficiently covered by the judge, a previously questioning attorney, or by the answers to written juror questionnaires, you probably will have to ask some general questions about whether anyone knows the parties, witnesses, locations or event involved in the case. But — *don't waste your time here.*

These questions generally should come first in your voir dire, because you do not want to waste time talking with a potential juror, ferreting out their values and life experiences, when they obviously will be disqualified by actual knowledge of the parties, witnesses, or event.

With just a few words, identify and list here, the actual or medial knowledge that a juror might have about the actual situation involved or about persons involved, that you need to know about. A few words is sufficient to remind you what to quickly ask about. The usual note for you in a civil case needs only to be:

Know the attorneys, event, location, parties, witnesses, case?

Does your short reminder note to ask about actual or medial knowledge in this case vary? If so, what is it?

### **GENERAL DEMOGRAPHIC QUESTIONS.**

List in just a few words, any demographics that would be important to you. A few words is sufficient to remind you.

The usual demographics of importance in a civil case are: Education, Residence, Work (especially corporate, police, medical, insurance), Injury to self or family member. In smaller communities, you need to ask if anyone is related to, or is a neighbor to, or works with, another person in the jury panel.

What is your list of demographic items for this case?

Unless it is sufficiently covered in the juror questionnaires, by the judge, or an earlier questioning attorney, you probably will have to ask some generally significant demographic questions. But again — *don't waste your time here.* It does not matter much in getting the bad jurors off the panel whether the juror is from a place or has a specific background or in a racial or age or education group ---- what matters is what this specific juror believes, what are his/her actual values, and what his/her life experiences have done to his/her standards or beliefs. What you really want to know is summed up

by the following sentences. These sentences are used by many attorneys. You might like to use them yourself to start your discussion with the jurors about their life experiences and their values/beliefs.

There are two areas I'd like to discuss with you: (1) your life experiences that might help you decide this case and (2) your opinions about issues in the case

## **THE "THREE USUAL POINTS"**

The voir dire is the logical place to take care of three usual items. You need to think about them, and decide where you want to insert them in to your voir dire questioning so that they seem to flow naturally as a preliminary to the next major section of your voir dire questions.

Because television dramas have subliminally educated jurors to think proof beyond a reasonable doubt is needed, if you have the affirmative of an issue, you better talk about "preponderance of the evidence."

This case is not a usual criminal trial you might be used to seeing on TV series. Preponderance of the evidence only means more probably true than not.

Whether you are plaintiff or defendant in a civil case, you most often need to deal with the issue of sympathy for the injured, the underdog, or the person in need. On the plaintiff's side you need to educate the jury that you are not going to be what some of them have as mental image of a plaintiff's lawyer trying to get them to decide on an emotional basis. On the defense side you need to fortify the jurors against their own natural feelings. Here are some examples of material you might use.

[Plaintiff] We are not after sympathy, but asking for justice. Justice needs facts, so we will show you the facts you need for your decision.

[Defendant] Everyone is sorry for someone who is hurt. But this is a court of law, so we must do justice. You are here as judges of the facts, and judges need to know the facts, so we will show you the facts for your decision.

The third "usual point" in the voir dire arises because you want to know whether the potential juror has been a juror before, if so what type of case, and what was the verdict in that case. Where in your voir dire are you going to ask about that?

## **WHAT ARE MY LIABILITY ISSUES IN THIS CASE? (THE FACTUAL LIABILITY POINTS THAT FAVOR MY CLIENT AND ON WHICH THERE WILL BE A DISPUTE.)**

Your *primary* need is to find out who are the bad jurors, so you can get them out of the jury that will try your case.

Identifying the bad jurors is based on your own knowledge of what are the key liability issues the jury has to decide. So the first thing you should do (even if it is not going to be the first words out of your mouth on voir dire) — for your own clarity of thinking of the questions to ask — you must make a list of all your key liability issues. Then, look the total list over, and strike out all but three or four that are the most crucial.

What are your “top” liability issues in the case?

### **WHAT IS THE COMMUNITY INTEREST IN THE CASE?**

Whether you are on the plaintiff or defendant side, you need to identify for the jury the social/community importance of deciding your way. First, you need to decide what the social/community interest (or two) your case should be associated with, e.g., safety on the streets, sanctity of contract, fairness, and so forth. What is the social/ community interest your perfect jury would use in deciding the case your way?

### **WHAT ARE THE MOST LIKELY STRONGLY HELD VALUES, OPINIONS AND BELIEFS OF A JUROR THAT COULD IMPACT HIS/HER *LIABILITY* DECISION IN THIS CASE?**

List them here.

Now, jot down key questions you can use to identify strongly held values/opinions? E.g., ‘Some people think everyone has a personal responsibility to use common sense to prevent themselves from being injured’ but some people think the owner of property are responsible to prevent injuries. Mr. Smith, which way do you lean on that? Or, e.g., On a scale of 0 to 5 with 0 being no responsibility and 5 being top responsibility, how careful should a car driver be to always, every minute of every day, always drive his car so he can always stop without hitting a car in front of him? Mr. Smith, which number from 0 to 5, where would you come down?

### **WHAT ARE THE MOST LIKELY SIGNIFICANT LIFE EXPERIENCES OF A JUROR THAT COULD IMPACT HIS/HER *LIABILITY* DECISION IN THIS CASE?**

List them here.

Now, thinking about those life experiences you want to know about, what questions will you use to find how those life experiences will impact the decision.

E.g., Has anyone in your family worked for an insurance company? Tell me about it? On a scale of 0 to 5 with 0 being very bad, and 5 being very good, how good do you think most plaintiffs in law suits are?

Or, e.g., in a premises case: Have you ever rented an apartment or a house from some person or company, or to someone? Was it a good or bad experience? On a scale of 0 to 5 with 0 being very bad, and 5 being very good, how good do you think most landlords are in repairing and maintaining their property?

### **WHAT ARE THE *DAMAGE* ISSUES IN THE CASE?**

The voir dire is not the place for an opening statement on the facts damages. In voir dire you need to identify the life experiences and beliefs/values that will impact the decision on the damages decision. So for your thinking, you need to identify the key issues — repeat, the issues, not the facts — on damages. What are the primary issues of damages? State them here.

How will you state that critical issue to the jury?

Will you tell the jury panel the amounts requested in the pleadings (and will the court in your jurisdiction let you do that), or will you otherwise try to identify the persons who have a belief that verdicts in general are too high?

### **WHAT ARE THE MOST LIKELY STRONGLY HELD VALUES, OPINIONS AND BELIEFS OF A JUROR THAT COULD IMPACT THE *DAMAGES* DECISION IN THIS CASE?**

List them here.

What questions can you ask to find out about those values/opinions. E.g., Do you think jury verdicts are generally for the right amounts? Do you think everyone should get something from an outside source when they are hurt?

**WHAT ARE THE MOST LIKELY SIGNIFICANT LIFE EXPERIENCES OF A JUROR THAT COULD IMPACT THE *DAMAGES* DECISION IN THIS CASE?**

List them here.

What questions should you ask? E.g., Have you or someone you cared deeply about every had a broken hip or him surgery? Ever had someone break a contract with you? Ever had anyone shut you out of a job because they did not like you?

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- Only after you have determined the above are you ready to really answer the next two worksheet questions.

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**WHAT IS MY PERFECT JUROR LIKE?**

List the values and life experiences will he/she have?

**WHAT IS A BAD JUROR LIKE?**

List the values and life experiences will he/she will have?

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- Congratulations, you have finished your worksheet. Now, take a fresh, new, sheet of paper. Using the above worksheet to guide you, you can write out on the new sheet of paper your actual outline of the specific topics and any specific questions you will use as you talk with the jury during voir dire.

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