Voir Dire in Examination

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I. Voir Dire in Examination: Why It Matters

I have often heard it said that when given the opportunity to read a new book, suppress it and read a classic instead. With that adage in mind, as I turn to preparing this paper for voir dire examination, I assembled articles published by various legal organizations, judges, and attorneys. One that I have kept in my voir dire file for over 30 years is a paper that was prepared by Texas lawyer and former DRI Director, William R. Moss of Lubbock, Texas. He made a presentation to the Oklahoma Association of Defense Counsel in June of 1985 and structured his paper around a mock scenario involving a defective product. Whenever I am confronted with a trial, I read Mr. Moss's paper on voir dire first. It is attached as Appendix 1 to this paper. You may find it of benefit. The papers available on line, including those from jury consultants, offer all kinds of advice and ways to assist the practitioner in selecting a jury for a particular case. Products cases are no different, and voir dire is one of the few times in a products liability case that we lawyers have an opportunity to peel back juror facades to see if those jurors in the box are those we want to have decide our client's fate.

In crafting voir dire for state cases (and in those federal jurisdictions where voir dire is tolerated) there are certain areas that any practitioner will want to address. Set forth in no particular order are some areas for inquiry that provide an excellent way to “ease into” the case and its issues.

A. Personal Information Regarding a Prospective Juror

Personal information from a prospective juror as to his or her general education, work experiences, past and present is in addition information with respect to the jurors, family and relationships. Assert to determine a juror’s educational level of interest, to understand the case, to pay attention and hopefully to identify with your client's position.

Many writers of trial tactics state that when a case arrives in your office, the first thing you should do, following a review of the pleadings, is to craft instructions, closing arguments and then work backwards. I have no empirical data to challenge the theory, but it can also be advanced that voir dire should be commenced upon arrival of the suit and modified as the case progresses. Referring to jury questionnaires used in the past will help in the present matter and also with the jury to be selected. Two jury questionnaires in a federal court action (they were filed of record and therefore public) are attached. One is from a plaintiff's attorney in a products matter, and the other is from the defendant. They are appendices 2 and 3. With this personal information that is gathered either from questionnaires, or from the voir dire itself, you can proceed to the next area of inquiry.

B. Voir Dire Issues Regarding the Judicial Process

When I speak of the judicial process, it is to seek information from the jury as to perceived biases or prejudices with respect to lawsuits in general, and your case in particular. It also allows you to determine attitudes with respect to individuals versus corporations and empathy over procedure. Some jurors have real or perceived lifetime biases. Voir dire allows the products trial lawyer to confront biases in a way that is not generally available in a routine automobile accident because it is “us vs. them” or “a big corporation” or a product that they may have absolutely no familiarity (with which lead to my next area).

C. The Products Involved

While there are many categories I am sure, I suggest there are at least four. Simple tools and household goods, power tools, complex tools, and component parts. In crafting your voir dire, it allows the practitioner to learn from the venire of working familiarity of a household product such as a detergent of bug...
repellant, simple tools such as hammers, ladders and the like, power tools including but not limited to drills, sanders, grinders, and the like, complex tools including big machinery, i.e. automobiles, and component parts for whatever product is involved, be it a motor, an extension cord, a brake assembly system, a tire—well you get the idea! As many jurors have experience with everyday products they may also believe that they possess experience with all products a skilled lawyer will want to deliver if a juror has been injured by a product.

D. Exhibits and Demonstrative Exhibits

Once the product has been discussed, you can turn your attention to exhibits approved for admission by stipulation by the parties or order of the court and duly designated in a pretrial conference order and demonstrative exhibits. If that is in fact the case, take advantage of showing exhibits that you know will be brought into the case before the jury is selected. Sometimes the photograph of the accident, the product or the injury is such as to evince a juror’s response as to bias, prejudice and ability to serve.

E. Experts

Do not forget to engage the jurors by introducing your experts. Voir dire allows you to characterize your opponent’s expert as nothing more than a paid consultant, particularly if your expert is in-house and has had a life-time career working with the product involved.

F. Group Dynamic

We see a shift in the way juries deliberate. Juries are more inclusive an even solicitous of the opinions and inclinations of jurors that in the past would be silent. Also, we see that jurors are responsive to different leadership styles than in the past. Because of this the personality and leadership style of your jurors are very important. We used to select jurors in positions of authority in an organization that had a clear chain of command. In 2016, many of our jurors do not like their bosses, they do not like to be told what to do and certainly being a bully can be very polarizing. The implications of this for jury deliberations are as expected. Having a strong voice for the defense who tells people what to do rather than builds a consensus may hang a jury but in many jurisdictions will not win you a verdict.

G. General Considerations

Never waive the reporting of voir dire. You cannot assert error if there is no record. Also, what do you want to show the jury venire before they are seated and sworn? In his book, “My Life in Court” the celebrated lawyer Louis Nizer addressed our need to face the jury. He said

“By speaking individually to each juror, one can get behind the faces’ masks. Sometimes a hard face lights up in a warm smile or a kindly face becomes forbidding as the lips curve during an answer. The voice and diction are always revealing. During personal questioning, one may sense a sympathetic bond or, conversely, resistance. All the psychological arts can be employed to evaluate the juror’s leanings. But when a number of jurors merely shake their collective heads in answer to the judge’s formal questions, observation gives very limited clues.”

You need to carefully consider jury biases and your own. We do not want to “drink the Kool aid.”

H. Flexibility

Listen to what your opponent asks of the venire, whether direct questions or open ended inquiries. The information that your opponent is seeking is uncovered by the inquiries and the responses and is a source for you as well. Finally, be flexible. You never know what you will hear from the mouths of prospective jurors!
II. Appendix 1: Voir Dire Examination

"V O I R  D I R E  E X A M I N A T I O N"
(Knowing the Jury you want; preparing the
panel for your special issues; principles
in selecting and rejecting jurors) - Defendant

OKLAHOMA ASSOCIATION
OF
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June 21, 1985

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This paper was first presented at a seminar as part of the Performance Enhancement Series of the State Bar of Texas and was designed to meet the request of more experienced litigation attorneys for more advanced training in the practical aspects of trial.

To meet the desire for practical courtroom assistance, a factual scenario was prepared as a basis for presenting factual considerations in voir dire. The scenario follows hereafter.

This paper is written primarily for a jurisdiction which allows to the lawyer a broad latitude in jury voir dire. It is recognized that jury examination is greatly limited or nonexistent in other jurisdictions. It is hoped that the principles set forth will be of some help to all trial attorneys.
THE CASE OF JOHN ABERNATHY

John Abernathy, deceased, was a 36 year old Dallas resident at the time of his death. Prior to the accident in question, he was employed as a dispatcher for Quick Haul Trucking Company in Dallas, at an annual salary of $18,500.00.

He graduated from high school in a small town in east Texas. He was a Vietnam combat veteran with a permanent service connected disability, receiving disability benefits of $460.00 per month from the Veterans Administration.

He worked for Quick Haul from the time he got out of the service until his death which was approximately 12 years.

He was married for approximately 10 years (wife's name was Sally), and had three children by that marriage, all boys, aged 9, 7, and 5. Sally is the only wife he ever had. One year after his death Sally remarried. Her present husband owns a furniture store and is quite wealthy. Abernathy's widowed mother, Jane, resides in Dallas also and from time to time Abernathy furnished financial assistance to her and was very good about helping her around the house.

Abernathy was the owner of a 1972 automobile manufactured by Kamikaze Autohaus Co., a French corporation with dealerships throughout the country including one in Dallas from which he had purchased the car, used, 6 months prior to the accident. His Kamikaze was a 6 cylinder, 2 door scatterback with a front wheel drive.

When driving Abernathy was always careful to fasten his seatbelt. As further protection Abernathy purchased and himself installed a roll bar manufactured by Safeway Roll Bar Co. out of Idaho. The Kamikaze did not come equipped with one nor was one offered as optional equipment for that year model car.

On the date in question, Abernathy had been working the midnight shift which was from 5:00 p.m. to 1:00 a.m. After he punched out, the dispatcher who had the early morning shift asked him, and he agreed, to pick up a driver whose truck was disabled. The driver was at a restaurant located on Interstate 20 (a four laned divided highway) about 15 miles east of town.

Abernathy never made it to the restaurant. His automobile was found about 10 miles east of town on the north side of the west bound lanes. It was upright with the left door open. He was comatose when found, lying face down by the driver's side of the car. The roof of the car and the right front side was severely damaged, the rear axle was broken and the left rear tire was flat. (The tires were manufactured by Furgone Tire Company and had about 30,000 miles on them). There were no witnesses to the accident.
Abernathy was taken to Parkland Hospital in Dallas where he remained until his death, approximately 8 months after the accident. During the period of his hospitalization, he was in a semicomatose state. Medical records indicated a skull fracture with probable brain damage and a spinal injury in the cervical area which may have resulted in quadriplegia had he survived. History taken from Abernathy's wife revealed he had a congenital heart disease for which he received regular treatment.

The death certificate indicated death was a result of cardiac arrest. Secondary causes listed were the skull fracture and spinal injuries.
I. INTRODUCTION

This paper has been prepared in accordance with our charge to not concern ourselves with the substantive law, but to place emphasis on the practical and the knowledge gained and techniques developed over some years of trial experience.

By the very nature of such an approach, this discussion must of necessity, be presented in narrative form.

There is a broad bibliography on the subject of voir dire.

There are so many articles, speeches and treatises relating to jury voir dire by distinguished writers and scholars of the Bar, that it is impossible to pen another without unintentionally plagiarizing to some extent or plowing some of the same ground. The hope is that we still afford some novel or different or helpful approach.

Most of the writings are subjective in approach. Even so, it is surprising how similar are the general rules and principles developed for handling voir dire, regardless of the venue of the writer or his time in history.

The general rules for trial lawyers approaching voir dire are well and much said, but they cannot be avoided altogether here.

For recent and broader approaches to voir dire, we specifically recommend the excellent and comprehensive article by Pat Hazel, Jury Voir Dire in Texas Civil Cases, Review of Litigation, Vol. 1, No. 2, p. 147 and the fundamental and most excellently presented paper, How to Avoid Reversible Error and Still be Persuasive in Voir Dire, Opening Statement and Final Jury Arguments (1980 Supplement - Advanced Civil Trial Courses) by Jack Ratliff and Terry Wyrick of El Paso, Texas, prepared for the Texas State Bar Advanced Civil Trial Course, which utilized to some extent the prior work on the same subject for the same course by Mr. Joe Jamail, Mr. Charles Tighe and Mr. T.B. Wright.

There are so many and varied rules and approaches to the conduct of voir dire, so many and varied factual and legal situations encountered and so many references to be considered, that truly, the research becomes laborious and one almost wishes for a subject with more quantitative limits.

Nevertheless, the subject is intriguing and the preparation of this paper has called for a thorough search and review of years of experience, in the attempt to enlighten and not bore.

We recognize our readers and those attending this Seminar are trial lawyers of greater experience which spurs us to greater
effort. As we write, it is our hope to be of help and interest to our learned colleagues.

As we prepare these thoughts, we once again realize just how much easier it is to extemporize than to write.
II. GENERAL CONSIDERATIONS IN VOIR DIRE

Jury Panel members and Jurors "... by their very inexperience are open to legitimate persuasion." Philip H. Corboy, Litigation News, 1/80, Vol. 5, No. 2, p.5.

Lay jurors bring a fresh approach and represent a cross section of the community which is good. They are not set to a single mind as a Judge might be, who has heard similar fact situations and set a formula or evolved a preferred outcome.

In our view, the American Jury System is the greatest system ever devised for deciding disputes and I tell this to jury panels. It helps their attitude toward jury service and it helps the Judge in his relationship with the panel, which is much appreciated. To extol the virtues of the system also helps the lawyer in his relationship with the panel.

There is no set formula for conducting voir dire. Each case must be approached on its own merits.

Do not expect absolutes in the principles and rules discussed here; there are none. The suggestions are presented with the hope that their use may increase the odds for obtaining a fair jury that is more acceptable to you and your defendant.

Jury selection is a very important segment in the trial of a lawsuit. For you see, you may have the facts, if I have the jury.
II. A. STATEMENT TO THE JURY PANEL

The first approach to the jury on voir dire is the first opportunity to persuade and . . . persuasion is the goal of advocacy." Alston, Jennings, Little Rock, Arkansas; 14 DLJ 639 (1965).

This first statement by the attorney on voir dire is very important. Early, it gives the attorney an initial feel for the jury panel and offers an opportunity to lay a proper foundation for the trial. Good, sound judgment based upon experience, common sense and human nature is the guide.

In this very first statement one has the attention that will probably not again be received in the trial. Take advantage of the opportunity. Our relationship with the jury is a most important consideration during jury trial and the first impression is usually the most important.

There will always be those called for jury duty who are not happy to be with us in court. Their routines are broken. They have been shuffled around the courthouse and made to sit for boring periods of time. They are tired. They are often ready to get on with their work or go home.

However, once actually involved in the court processes, they are usually tolerant and interested and want to be helpful, unless subjected to more delay, or discourtesy, or long oratory or overly complex or technical discussions of law and fact.

At voir dire the jury panel is at a crossroads--ready to become friendly and helpful or conversely, antagonistic and irritable.

It is a great opportunity to influence their future attitudes and deliberations. The reward is there for the skillful, as are the penalties.

What should we do on voir dire to assure a fair trial for our client through rapport with the jury? How should we make our first approach to this jury panel?

Trial lawyers talk of the importance of building such a good working relationship with the jury panel. An answer may be partially found in the following historical reference.

In 1837, a tall lanky and rather plain young man came to the Bar. For some 27 years, he practiced law in Illinois and was well known as a capable trial lawyer.

Abraham Lincoln was one of those down-to-earth, home-spun individuals who had the ability to get along with people and more particularly juries.
He used phrasing that was simple, direct and yet, at times, poetic. This approach was filled with wit and humor, common sense and a heavy dose of truth and sincerity.

His law partner, William Herndon was often asked how Lincoln attained such a firm hold on courts, juries and lawyers. His answer gives an example of courtroom conduct, that is just as valuable today, as it was then:

"When Mr. Lincoln entered court he spoke to all persons in a polite way, calling them by some very familiar name, addressed the Court in his best and kindest manner. When Mr. Lincoln was addressing the Court on a law question only or on facts, he made the instantaneous impression on the Court that he was fair, honest, and would present the case fairly and honestly. The Court felt that there was no falsehood nor trick in his argument. The Court believed him to be a true gentleman, never suspecting that he would deceive or try to gain his point by an evasion or suppression of law or fact, but would meet each fairly and squarely. . . . The jury, good common sense men of the country or the city, patiently listened to Mr. Lincoln's argument before them, and he was just as fair before them and to them as he was to the Court.

"Lincoln's statement of the case, both of law and of fact, was an argument, a plain, short, condensed argument. This impression was stamped on the jury, nor did Lincoln ever seek to take advantage of it; he met all questions fairly and squarely, admitting that he could not deny and making the case plain to be seen by the jury. All rubbish and trash was away and from around the issues that now arose clear to the minds. If the case was a long, dry, tedious one and the jury got tired, showed signs of weariness or of sleepiness, Lincoln would tell one of his fine stories and arouse them up to a renewed attention, then he would take up the thread of his argument and proceed to the end of it." Edward J. Kempf, Abraham Lincoln's Philosophy of Common Sense, An Analytical Biography of a Great Mind, Part I., P. 354.

From time to time in our West Texas country we say that some trial lawyers by their conduct try to "out nice" their opponent. It often works with the jury and is hard to meet.

One of our law partners, is referred to as having an "affidavit" face; the juries like him and tend to believe him. He is most always pleasant, also very capable, and will "nice" you to death.

A Plaintiff's attorney from our country seems to be always accepted and well liked by every jury, so far as I know. We have knocked heads in court on numerous occasions over the years. Even when he came to Court and had to borrow a pencil, a yellow legal pad and my pleadings to read just before voir dire, he was successful in developing a close rapport with the
jury; they like him. He has a certain "gift" for easy rapport with juries.

All this is to say, that in this adversary system, we all must cultivate the jury's best consideration; to "nice" the jury panel, to "nice" the judge, and to "nice" others in the Court may not be the entire answer, but it can be of help, especially if we are not one of those fortunate few with the "gift". The jury panel will sense our courtesy and consideration for them. As we consider herein all phrases of voir dire, keep this in mind.

It is our belief that an honest, sincere and forthright approach on voir dire pays great dividends with the panel members. If we are fair with prospective jurors, they will tend to be fair with us and our clients. Just as important, the converse is also unfortunately true.

This first presentation should be pleasant and rather quietly done. This is the first opportunity to build the panel's trust and confidence in you as a person and as counsel for Defendant. Stand squarely in front of the panel, look them straight in the eye, and speak courteously without notes.

Choice of words before the jury panel is important. Instead of referring to lying or untruthfulness, the jurors might be asked to "test the sincerity" of the other party, a nicer way to suggest one is less than truthful. This is not original, but was learned from an older law paernter, who has always been very successful using this gentler technique. This demeanor of a friendly, pleasant person helps in the courtroom and presents a kinder image. Contemporary juries seem to prefer this less abrasive approach.

Be a fair advocate for Defendant who regrets the Plaintiff has been injured, but in a straightforward manner, explain that even so, Plaintiff can recover only if the Defendant is responsible under the law and that under the facts and the law Plaintiff is not entitled to recovery.

Then in a clear, simple and non-legal statement demonstrate to the jury the opposite of the viewpoint just given by Plaintiff's attorney. Immediately, get it into the minds of the panel that there are two sides to the controversy and the jurors should reserve judgment until all the evidence from both sides has been heard and the Court's charge given. It is important the panel be committed on this point.

You may have the best case in the world, but unless it can be presented in a manner the prospective juror will understand and remember upon reaching the jury room, you have wasted your time and theirs. A lawyer can make it much easier for the jury to learn and understand the important facts of a particular
lawsuit, by a clear, simple, concise and lucid statement of the facts to the jury panel.

Consider the difficulty of the average lay jury in understanding the applicable law as it bears on the facts of any personal injury case and then consider the problems in products liability cases with technical experts or medical malpractice suits with complicated medical testimony or multi-party cases with varied actions over against each other. It follows that some clear and simple explanation is vital and jurors appreciate having it.

After all, a clear explanation from trial counsel is often the only chance a juror has to understand the law as applied to the facts and to understand what is taking place.

Never talk down to the jury. Try to explain the factual and legal points at a level where the average man has comprehension.

U. S. District Judge Patrick Higginbotham of the Northern District of Texas, writing in a recent article, Litigation, told of an opening statement where the attorney told the jury "This case is very complicated. I'll try to state it in a way, that even you can understand."

This lawyer may have been content in his own ignorance. If not, he probably wanted to bite his tongue off when he realized just how condescending he sounded.

Carefully marshal your facts mentally before voir dire so as to present them in an orderly manner. Do not overstate your case. Do not tell the Jury all you expect to prove, as many adverse things happen during the course of trial and the promised proof may not be forthcoming.

Do not throw everything at the jury from the very outset. Always leave something "behind the log" for use at the most opportune moment.

The most important defense principle to set in the prospective juror's mind at voir dire is that the burden is upon the Plaintiff to prove by a preponderance of the evidence, the allegations and the facts alleged in the plaintiff's petition or complaint, and if plaintiff does not so prove, the verdict must be for the defendant. The importance of emphasizing this principle to the jury cannot be overly stressed.

Most jurors approach their service without prior courtroom experience. They are, therefore, most appreciative of an explanation of courtroom systems and procedures and what goes on behind the scenes. We explain and try to simplify, so they will feel knowledgeable. We stress the importance of their work.
We emphasize the importance of the Judge and by placing the jury on that level, its members feel the importance of their work also.

It is explained that the Judge and Jury try the case together—the Judge having the vital and important function of ruling as to the admissibility of evidence.

The jury is likewise shown to have a role just as important in determining the true facts by assessing the credibility and truthfulness of witnesses and determining the proper weight to be given the testimony and evidence. Their role is shown to be highly significant, which adds to their feeling of being a part of the system of justice and adds to their innate desire to be fair and just.

The jury panel members are usually a bit apprehensive and perhaps feel a bit inadequate and nervous as they approach voir dire, due largely to a lack of experience. Therefore, the first goal should be to make them feel comfortable and at ease with the defense counsel. To do this, it is suggested that lawyers start with a rather slow, soft spoken and pleasant approach.

To break the ice, we suggest an inquiry as to the number that have had prior jury service. Usually, there are only a few. The others feel better when they learn they are in the majority as a first timer.

It is then suggested to the panel that since so many are novices on the jury panel, that perhaps they would like to know how the system works and how this case began and reached the trial stage. It is explained that a civil lawsuit begins with the filing of a document called the Plaintiff's Original Petition and in that document, the Plaintiff (the person bringing the suit) sets out what Plaintiff claims are the true facts. The petition is then served on the Defendant who files an answer.

The next step is quite important. Tell the jury that since anyone may file suit against anyone else under the law, the same law properly requires that the person who sues another has the burden to prove what they have alleged in their complaint or petition. In other words, if one person sues another, and since anyone can do this, the suing Plaintiff must prove the allegations made and the Defendant has no burden to disprove Plaintiff's claims.

This principle is, of course, simple to understand. It sounds reasonable and fair and it is fair, and the panel can see that. There is a bonus in this approach, as it helps to remove the tendency of some to think there is some validity to the Plaintiff's lawsuit, simply because suit has been filed. It also firmly sets the burden of proof.
From this statement, it follows logically to move into further explanation and questioning of the panel.

In criminal cases, some jurors tend to believe that just because a person is charged and indicted, there is a feeling of probable guilt. Similar attitudes must be neutralized in civil cases.

Plaintiffs' attorneys in our area often explain "preponderance of the evidence" to jury panels by using the Scales of Justice illustration, stating that if the scale tips ever so slightly in favor of Plaintiff, the finding must be for Plaintiff. This must be explained by the defense and can often be turned to benefit the defense by showing that plaintiff's illustration tends to omit or play down those vital jury functions of determining truthfulness and credibility of the witnesses and setting the weight to be given testimony.

It is further explained that the primary work of the Jury at trial is to decide truth and credibility and the weight to be given the testimony and evidence, and that the scales of Justice illustration tends to omit or play down those vital functions of the Jury, which point should be emphasized by the defense.

The jury should be told that plaintiff is incorrect and such is not the legal test, that the judge will define the term "preponderance of the evidence" for them as "the greater weight and degree of credible testimony," before the jury.

It is also important for the jury panel to know that if the scales are balanced, the Plaintiff has not sustained the legal burden of proof, and the jury finding under the evidence, must be for the Defendant.

Some defense lawyers feel the term "preponderance of the evidence" has some inherent quality that aids the defense and no attempt should be made to define or explain it. I disagree. In appropriate cases, the "credibility" element of the definition is crucial and should be emphasized and carefully explained.

Some defense lawyers feel that the terms "negligence", "proximate cause", "producing cause" and "new and independent cause" require no explanation of the legal meaning as they have a defense themselves. We believe these terms should be discussed on voir dire, particularly when they are strongly in issue. Intrinsic elements, such as "foreseeability" should also be explained. Contributory negligence should be discussed as it applies to the facts and the percentages of comparative negligence. Qualification of the panel with reference to these terms, allows specific discussion of defensive theories, and correlation with the court's charge. This is important.
It is fundamental that dangerous and damaging evidence should be exposed and explained and the panel qualified concerning it. Be certain, however, your opponent knows of the damning evidence before doing so. From time to time we have all received a gift on voir dire of helpful information unknown to us at the time.

Always set the burden of proof heavily on the Plaintiff. Often Plaintiffs will find it difficult to fully sustain that burden, and will appear in a bad light with the jury if the burden is set and not proven as alleged. This can and does affect plaintiff's entire cause of action on occasion.

The statements made to the panel and the questioning of the panel will of necessity overlap. We have treated them separately here for organizational purposes.
II.B QUESTIONING THE PANEL

Most jurors are generally candid, open and willing to share their thoughts and feelings with an attorney who is courteous and pleasant. In fact, many want to be questioned as it tends to give them a feeling of participating.

Use this willingness and the juror's answers to emphasize again the burden to prove those facts which Plaintiff's attorney has claimed are true. Set that burden immediately.

Most lawyers know the benefit of committing jurors to certain findings during the voir dire. For example, "If the plaintiff does not prove by a preponderance of the evidence that the defendant was negligent, will you bring in a verdict that defendant was not negligent?"

Jurors are basically honest and if they make commitments, they will generally honor them. We all know, of course, that this is not always the case.

Attempts to get commitments should be limited to the two or three major and basic issues in the case.

Also, exact a commitment from the panel early in the voir dire that no one will make up their mind as to the verdict until all of the evidence has been heard.

The reason is obvious. The tenor of the trial can change greatly after the defense has a chance at bat. Jurors need to know this is coming.

As you question the jury panel, study them and their reactions to your major theory. If they do not accept it, or seem to reject it outright, it is time to rethink your case.

Questioning the panel, as such, usually moves well. But what methods should be used to get the desired information and condition a favorable result? There are so many approaches and specific techniques of questioning that they cannot be fully reviewed here, however, we do submit a few.

First, there are general questions that help commit the entire panel. Such questions should be asked of one or two panel members and then related to all. These questions usually relate to the law and its application to the facts.

Suggested questions for the panel (using the facts of the scenario as a basis) are as follows:

(1) The Plaintiff claims that the tire on the car manufactured by Defendant was defective and a producing cause of the injuries and death of Mr. Abernathy.
Before accepting such claim to be true, will you be guided by the law which requires Plaintiff to prove by a preponderance of the evidence, that such tire was unreasonably dangerous and a producing cause of the accident and the injuries and death of Mr. Abernathy?

(2) If the plaintiff does not prove by a preponderance of the evidence that the alleged defect was present when the axle left the hands of the defendant manufacturer, will you find that plaintiff has failed to meet the legal burden of proof and find that the axle had no manufacturing defect?

(3) If the evidence before you shows the deceased, Mr. Abernathy, has suffered a serious heart disease since birth, and further, shows the cause of death to be a cardiac arrest or heart stoppage and further, shows that the stoppage occurred before the accident and rendered the deceased unconscious, will you find under the evidence that the cause of the accident and death was not the vehicle defect, even though a defect is found to be present?

(4) His Honor will charge you that the burden of proof is upon the Plaintiff, and that if he does not prove by a preponderance of the evidence that the defendant was negligent, the verdict must be for the defendant. His Honor will tell you what is meant by the term "negligence". If the plaintiff fails to prove by a preponderance of the evidence that the defendant was negligent, will you bring in a verdict that the defendant was not negligent?

(5) In deciding whether the defendant's vehicle was or was not defective, can we understand that you will not accept plaintiff's claim that the vehicle was defective unless he proves to your satisfaction by a preponderance of the evidence that the vehicle was unreasonably dangerous?

We recommend the checklists prepared by Mr. Ratliff and Mr. Wyrick on this same general subject for the Advanced Civil Trial Course and referred to infra as to areas of questioning. They can be of help.

There are certain "do's" and "don't's" that are important on voir dire and are listed here.

With the foregoing in mind, see the following "do's" and "don't's":

(1) Do try and convince the jury panel of your honesty, integrity and friendliness, regardless of your client's
reputation for such qualities. This is something entirely within your own control.

(2) Do be candid and informal. It relaxes the jury panel.

(3) Don't run down the adverse party or opposing counsel—let the facts do this.

(4) Do tell the jury of the important legal implication of certain favorable facts.

(5) Don't disclose your defense unless you are certain opposing counsel knows about them.

(6) Do pick out your strongest point or points and hammer them home. Repetition is necessary, but do not overdo it.

(7) Don't talk too long. One can get into trouble by overstating.

(8) Don't pontificate or orate.

(9) Don't ramble or talk about too many things.

(10) Don't take for granted that the jury knows as much as you do about the case.

(11) Do observe which panel members (if any) are paying attention to your remarks.

(12) Do make a mental note of any point which seems to impress some of the jury, so it can be stressed in the evidence.

(13) Don't get so mentally involved that you find yourself thinking too much about what you are going to say next and thus miss the opportunity to analyze each prospective juror and the reactions to your statements.

(14) Do, within reason, present your case in the most favorable light.

(15) Do keep an eye on the judge as it may be his first knowledge of the actual facts.

(16) Do be brief and to the point.

(17) Don't state a fact you cannot prove. Even if opposing counsel overlooks it, the jury may wonder about it.

(18) Do have the court reporter take the statements.
(19) Do not ordinarily read the pleadings.

(20) Do not be guilty of misconduct. Be pleasant.

(21) Do make it clear that your questioning is designed only to obtain for your client a fair and impartial jury.

(22) Do question each juror separately, even if briefly.

(23) Do call each juror by name either from memory or by referring to the list.

(24) Do seek a commitment from the jurors that they will decide the case on the facts and the law and not on sympathy or prejudice.

Never be heavily aggressive with a member of a jury panel. It is resented by all the panel unless the panel member has been the instigator, in which situation there should be no more than courteous rejoinder.

There are times, when the jury should be approached directly on the question of sympathy. Panel members will usually have a feeling of sympathy for the Plaintiff, especially where there is a death or the injuries severe. But how do we get the feeling out in the open so we can deal with it? Perhaps, in the attempt to remove some of the emotional appeal, the defense lawyer may admit to the panel that he has much the same feelings of sympathy as the panel, just as most anyone would have under the circumstances. It is well to let the jury panel see the defense lawyer as kind hearted and sympathetic.

Following this, further inquiry is made to determine whether the members of the panel can openly recognize they have this feeling of sympathy, and whether they can lay it aside, in accordance with the court's instructions as they consider their verdict. It might be put in this way: "In other words, as I understand, each of you realize that you feel sympathetic toward the Plaintiff. However, you recognize this feeling of sympathy and will put it aside as the Judge tells you to do, and it will not influence you to any degree in your decision. Just to be clear, you state to the court and to me, that you will render your decision entirely upon the facts that you hear from the witness stand and the instructions given to you by the Court and nothing else, is that correct?"

This must be carefully handled and must not indicate to the jury panel that the defense attorney feels plaintiff should recover. This is a narrow line to walk. In my opinion, this approach is only used where the facts are prejudicial to the defense.

Then why use it at all? It is our feeling that lawyers for the defense especially need to show and present a human side to the
jury may easily become antagonistic if a lawyer seems hard or cold or unfeeling, especially if plaintiff is sitting in their presence with evidence severe injuries, or a family including children is seated in the courtroom and a parent is missing. The hope is that jurors will be able to relate to the defendant through the kindness and sincerity of the attorney and not penalize in their verdict though the facts may weigh heavily for plaintiff.

In a serious case, always have the reporter record voir dire. The attorney must do his part to get a proper record. Where group questions are asked the entire panel, ask for a show of hand. If no hand is raised, the lawyer must state: "I see no hands and therefore, I take it that each of you answers, 'no' for the record." This is some evidence, if later needed, as to whether a juror failed to answer a key question and can be very important in relation to later motions or on appeal. Make your record for those purposes. The record is even more important where the jury panel is thought to be hostile.

Many years ago, in Garza County, I was defending a workmen's compensation case. The injuries were terrible. The plaintiff was highly respected in the community. He helped deliver milk to many people in town beginning at age 5, and worked for years in a grocery store where he served most everyone. He was the high school football hero and married the sweetest and prettiest and finest girl in town. He had two very cute small children (who just happened to be in court) and was an upright, hard working, church going and well thought of citizen. Plaintiff's attorney's demand for settlement was "total and permanent." At trial, the jury panel was most hostile and were "snapping back." The panel was questioned through No. 24 on the list and no one disqualified, despite my efforts. All wanted on the jury. I returned to Juror No. 1 for a question. At which time Juror No. 26, a lady most upset that I asked her no questions, suddenly arose and made a speech something like this: "Why don't you pay this poor, crippled man? The churches and the people in the community are taking care of him and his family. He is the finest, hardest working man in this town. You owe the money and it is a disgrace that we are here under the conditions . . ." and so forth, ad infinitum.

The rest of her oratory is not set out. As I had turned to go to the bench to move for mistrial, I heard loud laughter from the panel and learned later that as I walked to the bench, this juror stuck out her tongue at me.

The motion for mistrial was made at the bench. The Court very quietly and politely told me: "You are entitled to the mistrial, but we need to try this case. If we do, the jury will find that this man is totally and permanently disabled and you will not appeal it. If you try it one hundred times, the verdict will be the same. Therefore, let's go ahead and try it and get it out of the way. Motion overruled."
The Judge was most prophetic. The verdict was for total and permanent disability and judgment was so entered; no appeal was taken and payment was made. The record did not help much, but we had it.

There are times when nothing helps and experience tells you to be grateful that the local folk allowed one to safely leave town.

Most defense lawyers think it important to question the jury about prejudices concerning "corporate" or "insurance" defendants. Rarely do I comment upon or qualify the panel on these factors. Years ago this seemed more important to do so. An adverse attitude can usually be learned indirectly.

There are specific times when there must be a qualification of the jury as to prejudice toward such a defendant, but in general, it merely serves to point up the difference and an adverse attitude of bias can usually be learned in a less direct way or on individual questioning. Many would disagree with this approach.

Some years ago, one of my partners was preparing for trial in a county where a defendant had never won in the memory of modern man, so most cases were settled. On this occasion, this "trial tiger" announced vehemently he was tired of paying blood money and would try the case and not settle. He psyched himself up for a week and on the appointed Monday morning was present, mean and resolved.

As he walked up the steps in the courthouse, two men were walking behind him talking to each other as they were present for jury duty. He heard one say to the other, "Well, which one of these insurance companies are we going to get today?" My partner's workmen's compensation case was settled within the hour. Maybe we do need to inquire about "insurance" or "corporate" defendants.

There is a tendency on the part of plaintiff's attorneys to plead rather strong liability facts, allege most severe injuries and pray for massive money damages. Often, these cannot be supported by evidence to the extent alleged and are often grossly exorbitant under the proof.

We often wonder why such strong allegations are made. Experienced attorneys often do this, knowing the pleadings can be used by the defense to cast doubt on the entire cause of action, especially where there is little relationship between proof and allegation. The predicate should be laid at voir dire for this. If plaintiff fails to fulfill the burden of supporting strong allegations with credible proof, it can be made to reflect lack of credibility, a penurious demand for money and a totally unfair lawsuit.
Most any good defense attorney can turn an exorbitant prayer into a strong defensive weapon. While discussing the plaintiff's burden to prove the facts alleged in the petition or complaint, the defense sets the plaintiff's burden to prove that extremely high ad damnum strong in the minds of the panel.

The stage is set for a showing that the defendant is in court only because of the unfair and highly excessive and exorbitant money demands of the plaintiff and his lawyer.

Though lawyers tend to think of pleading allegations as just that, lay people tend to believe that all documents filed in court are rather sacred and feel that allegations should trace the evidence closely. Therefore, disparity between pleading and proof makes a greater impression on the laity. It is the mind of this lay juror we must learn to read. For this reason, the disparity between pleading and proof can be made to be significant to a juror and the approach made to the lawsuit as a whole.

The jury should be queried in this or a similar way:

"Do any of you believe that as a juror in this case you are obligated to award the sum of money sued for by plaintiff? Will you set damages without regard to the amount the plaintiff has sued for, and only in that amount, if any, which you believe from the evidence plaintiff is justly entitled? If you should find from the evidence that a just amount for plaintiff to recover is nothing or only a fraction of what the plaintiff has sued for, would you so find?"

Other approaches could be as follows:

"It is anticipated that the evidence will show, (in our hypothetical) that the injuries and death of the plaintiff in this accident resulted from the deceased's own physical condition or his own contributory negligence and not from any act or omission of defendant. If, in the exercise of your judgment under the evidence and the court's instructions, you are persuaded that a verdict should be rendered in favor of the defendant, could each of you reject the plaintiff's demand for "X" number of dollars and return a verdict in favor of the defendant, that plaintiff take nothing?"

While discussing such things as an exorbitant prayer, observe the jurors closely for signs of surprise, disgust, shaking of the head in disbelief, etc.

Of course, there are those occasions when the ad damnum is high and so are the damages. In such instances, prayer by the defense attorney may be the only help.
Consider striking any juror who does not seem to be affected by the award of a large sum of money.

Through the years, some lawyers have examined jury panels using no notes, displaying an amazing ability to remember names and facts. This is very impressive to a jury panel and in my opinion assists that particular lawyer by drawing the jury to him. They are impressed and feel the lawyer is highly intelligent and something special and they tend to relate that lawyer to the proper side of the lawsuit. It follows, that if this is attempted, the names and facts must be correct or the entire presentation can backfire.

Though this is somewhat of a stunt and though some of my partners do it well, I have only tried it on one occasion. It went all right, but because of the concentration necessary it was hard for me to retain the information garnered from the panel. We concluded that to do this well is impressive to panel members and often establishes that special something between lawyer and potential juror.

Some years ago, in Plainview, Texas, a member of the jury panel came to me after voir dire and reminded me that in the late 1930's he had been on a criminal special venire when our deceased senior partner, Mr. George Dupree, exhibited his skill at this. This man remember it for 40 years and was still highly impressed.

Often during voir dire a juror desired by the defense, may show to be obviously disqualified. In such circumstances, contesting the disqualification of the juror avails little. By openly agreeing to excuse such a juror, we can at least look fair in the eyes of the panel and save our contest until we are more likely to win.

On the other hand, if a juror we want is about to be disqualified, we should have no hesitation in asking the court to allow us to question the juror. The following question or a similar one should be asked:

"Are you stating, Mr. Juror, that you could not and would not take the evidence that you hear from the witness stand under oath in this courtroom and the law that is given to you by the Judge, and decide this case on that and that alone?" Because this tends to make the juror sound unfair and biased, they often recant and state, "Oh, yes, I could do that," and become qualified.

This technique works for and against both parties from time to time.

Sometimes, it is best to have the panel member come to the bench and be questioned out of the presence of the others. Be sure the reporter is there. This may be the only way in which
full and complete answers can be obtained. It is also important to do this when the prospective juror is obviously hostile, so as to prevent prejudicial remarks from being made before the entire panel.

The converse also works. Where a seemingly friendly juror is obviously going to disqualify, there are occasions when answers given before the panel will be helpful and we may not want to go to the bench.

We remember a situation many years ago in Scurry County, when a member of the panel stated there was a question in his mind as to whether he could be fair. In preparing our jury information we learned this man knew the defendant quite well so took a chance and asked him if there was a reason. Whereupon, he stated that he had known the defendant for years, knew him to be a man of great honesty and integrity and would believe him over most anyone in the county, as would most everyone in town.

Of course he was excused, but the support for his credibility had already been placed before the panel. One needs a few breaks along the way.

It is difficult at best to suggest a set method for handling more sensitive areas of prejudice, bias and discrimination on voir dire.

Generally, it is probably best not to totally ignore such areas if it is known such are a factor in the case. However, it is basic that we do not needlessly invade and question in the areas of politics, religion or race, unless absolutely necessary.

Questioning has to be handled diplomatically, with careful choice of words, but also in a direct, straight-forward manner as an integral part of the case. Before questioning on such factors, the relationship to the lawsuit should be carefully explained to the panel, so there is no thought by the panel that the lawyer is actually trying to inject the issues into the trial.

For some years, an attorney in our area usually made his voir dire a rather vicious accusation of community prejudice based on race. It made no difference as to the forum or venue, the same diatribe occurred. Almost the entire voir dire was made to turn on discrimination.

As a result motions in limine were routinely filed, without much early help from the courts. Over a period of time, however, the courts became more concerned as the attacks strengthened and the motions were often granted. Soon, some mistrials were declared. Time limitations were set for examination of the jury and warnings of contempt were made. The statements slowed.
How should this have been handled? After the fact, we have decided that the nature of the comments tended to indict the community itself and thereby, the members of the panel. Some strongly resented the statements. In my view, this ultimately hurt the plaintiff's attorney and his client.

However, such statements cannot go totally unchallenged. Handled properly, they can be turned to the defendant's benefit, by stating something like this to the jury panel:

"You will agree with me that there is no place in this lawsuit and in your verdict, for bias, prejudice or discrimination. The Judge will instruct you that jurors are '...to let bias, prejudice or sympathy play no part in your deliberations.' The defendant agrees with you and the Judge and the law that bias, prejudice and discrimination should play no part in your deliberations and defendant asks you to totally disregard any reference to it. Just be fair under the law and the evidence."

In this manner, the defendant is placed on the same side with the judge, the law and probably the jury. A good place to be.

We suggest voir dire be closed by a very general catch-all question to try to wrap up any omitted area of concern.

"Is there anything, ladies and gentlemen of the panel, whether we have mentioned it or not, which will affect your verdict in this case, outside of the evidence you hear in this courtroom and the law given to you by the Court? Is there anything that would prevent you from being fair and impartial to both plaintiff and defendant alike?"
II.C. STRIKING THE JURY

It is now time to "cut the jury". We have made our speeches and the questions have been asked. It is decision time.

In making these decisions, what are the considerations? If we have done our job properly, we have gathered information on the panel members before trial from our client, various directories, law office jury cards, law partners, local counsel (if used) and perhaps from witnesses. Depending on the size of the lawsuit, many other sources of information would also be utilized.

The panel members have been studied before, during and after voir dire. Their facial expressions, voice inflections, appearance and dress, manner of speech, and general reaction to the voir dire, especially to the trial theories of Plaintiff and Defendant as to liability and damages have been observed.

What were the substantive answers on Jury information sheets and on voir dire? Was the prospective juror honest? Was anything hidden? Was there some subtle bias not revealed? An experienced trial lawyer considers a myriad of factors, both consciously and subconsciously, in making the selections.

We not only consider carefully what type persons to strike but also consider the kind of person we want on the jury for the particular issues to be tried.

The basic general rules of jury selection always plays a part in the selection process. Most of the rules discussed herein have been utilized over and over through the years, and have been found to be of value.

There are as many and varied opinions on voir dire and jury selection as there are trial lawyers. Some of the more eminent lawyers with demonstrated ability and wide respect, have insight that is to be valued.

The renowned trial lawyer, Clarence Darrow, in an excerpt from his book, Selecting a Jury, sets out his basic rules in selecting juries. He wrote as follows:

"Let us assume that we represent one of 'the underdogs' because of injuries received, or because of an indictment brought by what the prosecutors name themselves--'the state.' then what sort of men will we seek? An Irishman is called into the box for examination. There is no reason for asking about his religion; he is Irish; that is enough. We may not agree with his religion, but it matters not; his feelings go deeper than any religion. You should be aware that he is emotional, kindly and sympathetic. If he is chosen as a juror, his imagination will place him in the dock; really, he is trying himself.
You would be guilty of malpractice if you got rid of him, except for the strongest reasons.

An Englishman is not so good as an Irishman, but still, he has come through a long tradition of individual rights, and is not afraid to stand alone; in fact, he is never sure that he is right unless the great majority is against him. The German is not so keen about individual rights except where they concern his own way of life; liberty is not a theory, it is a way of living. Still, he wants to do what is right, and he is not afraid. He has not been among us long, his ways are fixed by his race, his habits are still in the making. We need inquire no further. If he is a Catholic, then he loves music and art; he must be emotional, and will want to help you; give him a chance.

If a Presbyterian enters the jury box, carefully rolls up his umbrella, and clamly and critically sits down, let him go. He is cold as the grave; he knows right from wrong, although he seldom finds anything right. He believes in John Calvin and eternal punishment. Get rid of him with the fewest possible words before he contaminates the others; unless you and your clients are Presbyterians you probably are a bad lot, and even though you may be a Presbyterian, your client most likely is guilty.

If possible, the Baptists are more hopeless than the Presbyterians. They, too, are apt to think that the real home of all outsiders is Sheol, and you do not want them on the jury, and the sooner they leave, the better.

The Methodists are worth considering; they are nearer the soil. Their religious emotions can be transmuted into love and charity. They are not half bad, even though they will not take a drink; they really do not need it so much as some of their competitors for the seat next to the throne. If change sets you down between a Methodist and a Baptist, you will move toward the Methodist to keep warm.

Beware of Lutherans, especially the Scandinavians; they are almost sure to convict. Either a Lutheran or Scandinavian is unsafe, but if both-in-one, plead your client guilty and go down the docket. He learns about sinning and punishing from the preacher, and dares not doubt. A person who disobeys must be sent to Hell; he has God's word for that.

As to Unitarians, Universalists, Congregationalists, Jews and other agnostics, don't ask them too many questions; keep them anyhow; especially Jews and agnostics. It is best to inspect a Unitarian, or a Universalist, or a Congregationalist, with some care, for they may be
prohibitionists; but never the Jews and the real agnostics! And, do not, please, accept a prohibitionist; he is too solemn and holy and dyspeptic. He knows your client would not have been indicted unless he were a drinking man, and anyone who drinks is guilty of something, probably much worse than he is charged with, although it is not set out in the indictment. Neither would he have employed you as his lawyer had he not been guilty.

I have never experimented too much with Christian Scientists; they are too serious for me. Somehow, solemn people seem to think that pleasure is wicked. Only the gloomy and dyspeptic can be trusted to convict. Shakespeare knew; 'Yond' Cassius has a lean and hungry look; he thinks too much; such men are dangerous.' you may defy all the rest of the rules if you can get a man who laughs. A juror who laughs hates to find anyone guilty."

These Darrow rules were not absolute for Darrow, nor are they for us. Some still hold as true now, as then. They do present an interesting study and foster thought, even though for criminal juries.

In my opinion, a defense lawyer in a civil case should first and foremost, look for intelligent jurors, regardless of the type of lawsuit. This does not necessarily mean those of high education. But how do we determine who is intelligent? By using the same means used to learn anything about a jurors, visit with them. They are usually willing to discuss their work or occupation as they are proud of what they do. They also enjoy talking about their hobbies or avocations.

Intelligence can be sensed from use of the language, sentence structure, wording and ability to speak succinctly. Short conversations with each juror usually suffice. The experienced trial lawyer becomes very adept at making such assessments in a very short period of time.

As a defendant, look for people who have no hesitation in saying "No". This includes bank officers, credit people, claims people and the like.

Because of the technical nature of many present day cases, professional people such as engineers, accountants and doctors are appropriate.

A persons' occupation is considered to be very important. In our part of West Texas, we have many farmers. Most are sizeable business men with large investments in land, equipment and operations. For these reasons and their independent nature, they tend to be more conservative. Farm related business people and their employees also tend to be more conservative and acceptable to the Defense.
Governmental employees generally are not good defense jurors. Blue collar workers and union members generally are not chosen unless they are long time, steady employees. Union officials are definitely rejected.

An old adage is that the defense should not take persons whose occupations begin with the letter "p", as they tend to be more liberal and sympathetic. These, of course, are preachers, painters, plumbers and paper hangers. Many defense lawyers follow the rule.

Business executives, self-made and self-employed persons, salesmen and persons who work with figures and credit are favored.

Members of the more fundamental, conservative religions, are probably more acceptable by the defense unless the defense has a problem in the case with drugs, liquor or immoral conduct.

Persons over 40 years of age generally would be considered the better defense jurors, but we are now finding many younger persons who are more conservative. Young people do not like those in authority and in return, suffer from prejudice by the retired and those over 50. Older people do not like single persons or the divorced.

We have observed that while serving on juries, women tend to be hard on other women and often hold against them. The bias of men toward women is by no means as strong. If Plaintiff is a woman (particularly a pretty woman) we want women jurors.

Our jury panels have a lot of women and we find they make very conscientious jurors. Women jurors are much more literal in their assessment of the facts and often seize on less practical evidence and the more emotional testimony to support a verdict. However, they review testimony in much greater detail in making their decision than do men.

Women generally have a greater compassion where children and the elderly are involved and where the appeal is emotional, they tend to find for the Plaintiff. There is no absolute rule, however, see the following example:

In a recent suit by a parent for wrongful death of a son, emotion was very high upon being questioned as to possible bias, two members of the panel came to the bench. The man stated he could not be fair because of a similar situation where he lost a daughter. The woman was weeping. She had a son of the same age as deceased and because of told the court she would be very sympathetic to plaintiff and could not be fair to the defendant. Both were excused. This supports the general view that women would have to be rejected in this type of case.
However, within a few minutes another woman on the same panel stated to plaintiff's attorney that she had some reservations about her ability to serve fairly, because she did not think a parent should try to benefit from the death of a child. The latter lady would, of course, have been an excellent juror for the defendant. She was properly excused also.

This true example demonstrates so clearly, the problems inherent in selecting a jury on the basis of general rules.

Just before making the final strikes, each juror should be considered individually and weighed against the others. Questions are raised about each panel member.

Does this prospective juror seem to blend with our client, our defenses and myself? Does that person seem to think as we do? Is there anything in the background, that would tend to make that juror, if selected, lean one way or another or have a special ability to properly assess our defenses? Has such person reacted favorably to our theories? Are we satisfied this person will be a fair and honest juror? Will this person have some rapport with the defendant?

One must often choose between two or three persons as a final juror without definitive reasons to choose one over the other. In such instance, accept the one who will be less forceful and persuasive in jury deliberations.

There is no exact formula or scientific method for the selection of the jury.

It is a truism that the more often a jury is selected, the more comfortable and the more able the trial attorney becomes at this task. Continued, regular experience in Court, also enables the lawyer to develop a "feel" for what persons to strike and to become more capable in assessing the jury panel. This translates into greater proficiency in selecting jurors.

The trial lawyer cannot be overly bound by rules in the selection of a jury, as the process is too intertwined with personal experience in the trial of lawsuits and selection of juries. It is also heavily based on that nebulous something known as a "knowledge of human nature" garnered through years of contacts with people from all walks of life, which gives insight as to how people react to different situations.

As we strike the jury, the ultimate selection is based on intuition, experience and judgment and that certain feeling, after both a conscious and subconscious evaluation process, which tells us it is right to choose in one direction and wrong to choose another.

Some intuition goes with the experience. It is important to recognize this and give weight to it.
If we have some feeling that a particular panel member should not be taken, regardless of the basis, we try to strike that person.

As a final statement, if the trial lawyer feels comfortable and in rapport with a person on the jury panel, then selection for the jury is probably proper.
III. SPECIFIC VOIR DIRE CONSIDERATIONS
RELATING TO HYPOTHETICAL FACTS

The hypothetical fact situation governing our discussion here, resembles a law school examination question—a mass of factual and legal issues.

We are not advised as to the party defendant we represent, so we shall generalize.

The Kamikaze Autohaus Co., the Furgone Tire Co., the Safeway Roll Bar Co., plus the installers of parts and certain retailers are all potential parties defendant.

For discussion, it will be assumed plaintiff will claim the accident resulted from some defect in the vehicle, its axle, the roll bar or the tire and will allege product causes of action in negligent design and manufacturing, manufacturing defects, breach of express and implied warranty, possible claims under the Deceptive Trade Practices Act, and will pray for both actual and punitive damages.

Causation (producing, proximate, sole proximate and new and independent) will produce key issues, both as to plaintiff and defendant.

The fact scenario presented gives basis to establish exactly how the accident occurred. The deceased, however, was found unconscious far across the highway from where he would normally be and there has to be some reasonable explanation for that movement.

The autopsy shows cause of death to be cardiac arrest and a pre-existing congenital heart disease of the deceased. The facts strongly support a defensive theory that the cardiac arrest occurred first, and the accident was the result.

It is evident that with the many parties, the myriad of relevant facts, the pertinent law and the large number of issues and instructions to be required in the charge, it is almost impossible, and certainly self defeating, to try to review all on voir dire. It would take so long, it would most likely alienate the potential jurors and it is doubtful interest could be sustained.

It is suggested a shorter and more concise explanation, directed at the more crucial issues would be better. What good to get all the law and facts before the panel and lose all rapport with the prospective jurors? If the jury is not with you, their knowledge of the legal and factual issues avail nothing. If the jury is with you, anything is possible.
In all that is done at voir dire, one object is to build a working relationship with the prospective jurors so they will want to help the defendant.

In our hypothetical case, we have an unusual quirk from the defense viewpoint—the medical is vital in determining liability as well as damages. The congenital heart disease can be presented as the most likely cause of the cardiac arrest and the accident, as opposed to plaintiff's theories of product causation and so the medical testimony takes on tremendous importance.

The exact nature of plaintiff's congenital heart disease is not set out. For discussion, it will be assumed to be of such magnitude that it alone could have caused the cardiac arrest.

This, then becomes the primary defensive issue on both liability and damages, and should be discussed before the jury panel and the panel qualified on the issues. The plaintiff's late night hardworking activities, the nature of the pre-existing congenital heart disease and its pre-disposition to cause a cardiac arrest under the circumstances should be carefully and fully explained and simplified for the panel.

Perhaps such an explanation would go as follows:

"We are using terms such as cardiac arrest and pre-existing congenital heart disease. As the medical evidence comes before you, you will learn that the word 'congenital' means a condition that has existed since birth. In other words, Mr. Abernathy has had heart disease from birth. Cardiac arrest means that the heart stopped suddenly. Medical expert testimony will, therefore, show that the heart disease which he had from birth caused the cardiac arrest which resulted in the accident.

"Now, ladies and gentlemen of the jury panel, if such is the evidence, can you and will you so find that it was a pre-existing disease of Mr. Abernathy that caused the accident and not any defect of the vehicle?

"Members of the panel, you should understand that the plaintiff has the burden to prove by proper evidence what plaintiff has alleged, i.e. that the accident and injuries and the subsequent death, were caused by some act or omission of the defendant or defect of the vehicle and the accident and death were not caused by the pre-existing congenital heart disease and the cardiac arrest.

"Will each of you, if selected as jurors, require the plaintiff to prove each and every one of those facts by a preponderance of the evidence, and if they are not so proven, will you find that neither the defendant nor any defect of the car caused the accident?
"The defendant will expect to present two well known heart specialists, who will both testify that the cardiac arrest occurred as a result of the pre-existing congenital condition and prior to the accident in question. We further anticipate that these specialists will testify that it was simply a matter of time until Mr. Abernathy would have sustained the cardiac arrest which took his life.

"Members of the panel, if the evidence is as we have stated, do any of you have any reservations in finding that the deceased had a congenital heart condition which caused the cardiac arrest, which in turn was the proximate cause of the accident and death? Can you, and will you so find?

A very important commitment to be obtained from the panel might be worded as follows:

"If you find from the evidence that the deceased had the cardiac arrest prior to the accident, will you find that such was the cause of the accident and the death of Mr. Abernathy, even if a defect in defendant's product is also found?"

This might be phrased in several different ways, depending on the evidence. Try to get the prospective jurors committed early on this most important issue.

Plaintiff's theories usually have to be covered in order to clearly present the defenses and to clearly place the burden of proof for the jury panel.

In discussing legal definitions and principles, a good technique is to have at least two jurors answer specifically that they could and would apply those legal standards and burdens of proof in arriving at their verdict. Then have the rest of the panel state whether they also agree.

The Court will often give other instructions important to the defense, i.e. that the defect has to have occurred at the time of manufacture, that the manufacturer is not an insurer, that unfitness of a product is not to be presumed merely because an accident occurred, etc. These should also be reviewed with the panel.

Negligence and unavoidable accident questions should be covered under these facts.

Damages, actual and punitive, and the related law must be covered extensively. Certainly the jury should be qualified on the pre-existing heart condition as the cause of the damages and the plaintiff's burden of proof on producing cause.
IV. NEW METHODS FOR SELECTING JURY IN LARGE, COMPLEX LITIGATION

Litigation becomes much more complex each day and increasingly involves massive amounts of money. In such cases new techniques are being developed and utilized in preparing and trying the largest, most complex litigation. This has included novel methods for determining what jurors to select.

For many years, many law firms have maintained some system for determining the actions of jurors on past verdicts. These include card systems and lists. They have been of help in rural towns and smaller cities, but of less benefit in the large cities and more creative methods had to be developed there for pretrial help on jury selection. Where money is no object and the large city forum is involved, some very sophisticated techniques have developed in the last few years.

Trial consultants, though expensive, are being used to carry out extensive pretrial surveys of attitudes and values in the community from which the trial jury is to be selected. Through research, insights are formulated as to how the Defendant might best communicate its position to a jury, what to emphasize, what issues to play down and what to ignore.

In a recent, large anti-trust suit by MCI Communications Corporation, against American Telephone and Telegraph Company, a profile of potential jurors was developed for MCI. It was suggested to MCI that it choose self-made people, first or second generation Americans, smart enough to understand the industry's complexities.

The attorney for MCI stated that "without that survey, I would not have been looking for the kind of jury I ultimately sought." The consultants also suggested several "jury simulation" exercises to build the strategy. The verdict was quite high against AT&T.

In the criminal action against Angela Davis in Los Angeles, California, her attorney obtained the list of potential jurors and sent a group of volunteer investigators to investigate them, to determine the kind of houses and neighborhoods they lived in, the type of cars in their driveways, the bumper stickers on those cars and what their neighbors and co-workers had to say about them. In short, he set out to obtain all information about their ideologies. He utilized one real asset in the case. A large number of dedicated volunteers to assist. Angela Davis was acquitted.

Other lawyers have been employing psychologists specializing in body language to help assess prospective jurors and social scientists are being brought into large litigation.
Of interest, though not directly within the realm of this talk, is another technique utilized by IBM when sued in a large antitrust case in Los Angeles. After the jury was selected, IBM hired a marketing expert to recruit a "shadow jury" of six people whose background and psychological traits closely matched those of the real jurors. They were paid to attend the trial as spectators and sift through the daily arguments and evidence as if they had been on the jury.

The six "shadow jurors" were sworn to secrecy and were not even told who was paying them. They checked in with one person each night at an appointed hour. Daily memos went to the IBM trial attorneys giving their reactions to the attorneys, the witnesses and the evidence, their perceptions of the people in the courtroom, what they understood, what they did not understand, and what they misunderstood. Their evaluations were reviewed by the IBM lawyers who would then use this information in their strategy.

The IBM attorneys found their most important contribution was their ability to give insight as to whether the evidence was presented too fast or too slow, as to what points were important to the jury and as to what issues they thought were significant. Their conclusions were not always the same as drawn by the attorneys. Their ideas as to which issues were most important varied from the attorneys and were of great help.

Well into the fifty-three day trial, the "shadow jury's" existence became generally known to those involved in the trial and the panel was disbanded. IBM went on to win a directed verdict.

Subsequent interviews with all twelve "jurors" produced a remarkable agreement on key points between the jury and their "shadow counterparts".

Both panels were "... very impressed with IBM's efficiency and commitment to excellence and its concern for its employees ... On the other hand, they were not particularly impressed with the level of prices, they did not really care whether IBM was offering low prices or high prices nearly as much as they cared about whether IBM was coming up with new and better products and treating its employees right."

In assessing litigation, "shadow juries" are now used early to listen to case simulations and report their impressions. What help do they give? In one simulation, it emerged that a female attorney's attire and demeanor came across as threatening to the mock jury. It was strongly suggested that she present herself as more feminine and less as a rigid, liberated woman professional. She was asked to soften her appearance to make her a more middle-stream, American female. It was found later,
that the same problem did not come up with the actual jury at trial.

Litigation specialists bolstered by research, probably bring few perspectives that add to those of an experienced trial lawyer. However, juries and attorneys often do not assess the facts in the same way, and the insight can no doubt be of help.

Some of the above information was obtained while flying on Continental Airlines and reading their January, 1982 flight magazine, containing an article from the Los Angeles Times by Mr. Edwin Chen on "The Law", to which we give credit.
V. CONCLUSION

Regardless of the seriousness of the case and the adverse nature of the facts, hopeless cases have been won. The reasons are not always known, maybe the jury concluded one party seemed right or fair or one lawyer was fair or they just liked one or the other for whatever reason. We do know that if the jurors want to help, they can do so and usually will.

No one knows exactly how to build such an attitude in jurors. Some are more successful at this than others. Some seem to have an innate "gift" for getting along with juries. The rest of us have to work at achieving jury rapport.

Consciously cultivate a strong belief in the defense to be presented, a strong confident feeling of right. If we believe in our client and our case, the jury can tap either. This attitude of confidence can be transposed to the jury panel with the possibility of victory, despite adverse facts.

In all of this the hope is that the Jury, having been treated courteously and having been exposed to a pleasant and fair approach, will reciprocate in their verdict. This can and does happen. The idea is to get the jury to want to help you. If they do, anything is possible.

In our study for this paper and in our experience with voir dire, only one thread is universal. What is successfully done is very individualistic and cannot be taught. It has to be learned and experienced. There is no other way, and we recognize this as basic.

Thorough preparation and prior experience in Court is important to a proper voir dire. It is the feeling of the writer, however, that to be adept there must be added the essential and most important factor in successful voir dire and jury selection—the utilization of a broad knowledge of human nature, garnered from experience in dealing with all kinds of people from all segments of society in many and varied situations.

Much study and reflection has gone into this commentary. Despite that and many years experience selecting juries, there is still for me, and for most of us, a great mystery as to exactly why juries often behave as they do. Even with in depth preparation, excellent evidence and logical presentation, there are still illogical and unfair verdicts. Sometimes the verdict is right, but for a reason not considered. We shall never fully understand why the human mind reacts as it does. But we will keep trying as the fascination and challenge of the courtroom never fades.
For myself and other trial lawyers, having our papers graded regularly by juries, is a humbling experience, which is good for us all.

These suggestions and thoughts are not presented as any panacea. There is still no certainty, but perhaps the ideas presented will be of some assistance in shifting the odds. We hope so.

Thank you.
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IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

DAVID LOOS, Plaintiff,

v.

SAINT-GOBAIN ABRASIVES, INC., d/b/a NORTON SAINT-GOBAIN (a/k/a NORTON ABRASIVES); and NORTON SAINT GOBAIN a/k/a NORTON ABRASIVES, Defendants.

Case No. CIV-15-411-R

PLAINTIFF’S PROPOSED VOIR DIRE QUESTIONS

The plaintiff, David Loos, respectfully proposes that, in addition to the Court’s normal questions to the jury on voir dire, the following additional voir dire questions be considered:

1. State your name.
2. What is your address?
3. Tell us your age.
4. Are you married? If so please give your spouse’s name, age and current employment.
5. Are you employed? If so, please state the name of your employer, the type of work that you perform, and the number of years you have worked there. If not, please state when you were last employed and what type of job it was.
6. Do you have any children? If so, please state their names and ages, and the type of employment they have.
7. Are you self-employed? If so, what is the type of business?

8. Do you own or rent the premises where you live?

9. Do any members of the jury panel know David Van Meter or any other member of the Van Meter Law Firm?


11. Have any members of those firms and/or their associates ever represented any members of the jury or their families and/or friends?

12. State whether any members of the jury are personally acquainted with the following listed person or any members of their family:

   a. David Loos
   b. Jessica Brewer
   c. Lisa Fields
   d. Cathy Popa
   e. John Popa
   f. William Munsell
   g. Tom Service
   h. Dr. Steven R. Sarkisian, Jr., MD
i. Nancy A. Lambert, BCO
j. Steve McNutt
k. Monte Cagle
l. Ryan McClintock, M.D.
m. Adam de la Garza, M.D.
n. Dr. Hans Grossniklas
o. Dr. Sherrita C. Wilson, M.D.

13. Have any members of the jury panel, family members or friends ever worked for St. Gobain Abrasives or Norton Abrasives?

14. Have you or any members of your immediate family, close family or friends held a position in a manufacturing company? If so, who and what type of work?

15. Have you or any members of your immediate family had any training or course or experience using power tools, and also specifically using cutting or grinding wheels?

16. Have you or any member of your immediate family, close family or friends suffered a serious personal injury that resulted from the negligent actions of another person?

17. Have you or any member of your immediate family, close family or friends suffered a serious personal injury that resulted from a product that failed?

18. Do you currently, or have you at any time previously, operated a business which employed others in addition to yourself?
19. State whether you now or at any time have held any type of professional license and, if so, please describe.

20. Do you have any lawyers, doctors, medical personnel, or safety management level personnel, in your family or among your close friends? If so, please identify the individuals and describe generally the nature of their work.

21. Has any member of the jury panel ever been a party to a lawsuit? If so, state the following:

   (a) Whether you were a plaintiff or defendant; and,

   (b) Briefly, the nature of the case.

22. Have you or one of your family members ever suffered property damages as a result of someone else's actions? If so, please state the type of damages and how it occurred.

23. Are there any of you who believe that a lawsuit should never be brought?

24. Have you served on a jury before? If so, please state the type of case that was involved, whether civil or criminal, whether a verdict was reached, and who the verdict was for, whether plaintiff, defendant, etc.

25. Have you ever been a witness in a trial or hearing? If so, please state the type of case that was involved, whether civil or criminal, and the designation of the party on whose behalf you testified.
26. Have you or anyone you know well ever been in a position where you could have sued, but decided not to? If yes, why not?

27. Do you believe that an individual who has been damaged as result of the acts of another has a right to have his claim decided by a jury of his peers?

28. A company acts through agents, servants and employees. Does any member of the jury panel have any hesitation, if the evidence supports it, in rendering a verdict against the defendant(s), even though it is determined it was defendant's employees' or agents' negligence that caused Plaintiff's damages?

29. Are any members of the jury panel opposed to awarding money for actual damages of the plaintiff, provided the evidence supports such an award?

30. In this case, at the close, plaintiff will be requesting you to award monetary damages. In the regard, is there any one of you who feels that a certain amount of money is just too much regardless of the extent of injuries?

31. Does any member of the jury panel know any reason why he or she cannot serve impartially as a juror in the trial of this case?

Respectfully submitted,

/s/ David W. Van Meter
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ATTORNEY FOR PLAINTIFF,
DAVID LOOS
CERTIFICATE OF SERVICE

I certify that on the 1st day of October, 2016, a true and correct copy of the foregoing was electronically transmitted to the Clerk of the Court of the Western District of Oklahoma using the ECF system for filing to the following ECF registrants:

Patrick C. Lamb, [PA Bar#70817], plamb@postshcell.com
Robert P. Coffey, Jr., OBA#14628, robert@csmlawgroup.com
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James R. Woodard, III, John@csmlawgroup.com

By: /s/ David W. Van Meter
    VAN METER LAW FIRM

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

DAVID LOOS,  
Plaintiff,  
v.  
SAINT-GOBAIN ABRASIVES, INC., et al.,  
Defendants,  

CIVIL ACTION  
No. 5:15-c-00411

DEFENDANT, SAINT-GOBAIN ABRASIVES, INC.'S VOIR DIRE AND SUPPLEMENTAL JURY QUESTIONNAIRE

Defendant, Saint-Gobain Abrasives, Inc. submits the following suggested voir dire and supplemental jury questionnaire (Ex. 1).

JUROR DEMOGRAPHIC INFORMATION

1. Full name.
2. Where do you live?
3. Where do you work and what is your job?
4. If unemployed/retired, what and where was your last job?
5. What are your main job responsibilities?
6. What jobs have you held in the past?
7. Have you ever been responsible for hiring, firing or supervising employees? If yes, please tell us more about that.
8. Have you ever owned your own business? If yes, please name the company or companies you have owned and the nature of their business.
9. How far did you go in school? If college, name school(s) and any degree(s) received.

10. What is your current marital status? If married, for how long? Have you ever been married?

11. Where does your spouse/partner work and what is his/her job? If unemployed/retired, what and where was the person's last job?

12. What jobs has your spouse/partner held in the past?

13. Please state the sex, age and occupation for each of your children and stepchildren.

14. Please tell us the civic, fraternal, social, political, union, professional, charitable, volunteer or religious organizations to which you belong.

15. Please list the newspapers, magazines, professional journals, blogs, websites that you regularly read.

16. Please tell us all of the social media accounts you have (Facebook, MySpace, Twitter, blog, website)

17. What do you enjoy doing in your spare time?

18. Do you have a medical condition or take any medication that might affect your ability to hear the evidence, pay attention, concentrate or participate in juror deliberations with the rest of the jurors? (If any juror answers in the affirmative, the Plaintiffs request the Court to individually voir dire that juror so that they do not have to discuss their protected health information in the presence of other jurors).

**JUROR EXPERIENCE WITH CUT-OFF WHEELS/GRINDING TOOLS**

19. Have you, any family members, or anyone close to you ever worked for or done business with Saint-Gobain Abrasives, Inc.? How about any other company manufacturing
cutting wheels? If yes, who was that person, what company was it and what was the person's job or what was the nature of business done with Saint-Gobain Abrasives or any other abrasives company?

20. Do you have a certification for work with equipment such as grinding and cutting tools? How long have you had it? Has your license ever been suspended or revoked? If so, why?

21. Have you ever been a member of a trade union? Which union? How long were you a member?

22. Have you, any member of your family or anyone close to you ever held a job regularly requiring use of cutting wheels and/or grinding tools? If so, what company or companies did you work for? How long did you work there?

23. Have you ever operated a cutting wheel or grinding tool? If so, how many times or how often? Would you describe yourself as familiar with operating of such a tool?

24. Have you, or any member of your family, ever been involved in an incident involving a grinding tool or cutting wheel? Please tell us about those incidents? Was anyone injured? Was a lawsuit brought? What was the result?

25. Have you ever mounted or installed a cut-off wheel onto a grinding tool? How often have you done this? Did you consult with instructions or warnings?

26. Have you, any family member or anyone you know ever been involved in an accident involving a cutting wheel fracturing or shattering? Please tell us as much as you can about that.

27. What is your general opinion of manufacturers of cut-off wheels?

28. If evidence shows that an incident involving a cut-off wheel was caused by misuse of the product, will you have any problem finding in favor of the defendant?
JUROR EMPLOYMENT/EXPERIENCE IN OTHER FIELDS

29. Have you ever worked in any of the following areas: insurance, medical, law enforcement, or military? If yes, please explain.

30. Have you, any family members or close friends ever worked for an insurance company? If yes, please explain.

31. Have you, any family member or close friend ever worked as a claims adjuster or claims agent for an insurance company? If yes, who was the person, what company was it and what was the person's job?

32. Have you, any family members or anyone you know worked for or applied for work for any attorneys or law firms? If yes, who was the person and what was the attorney or law firm?

33. Do you know any attorneys? If yes, whom do you know, what kind of law do they practice, and what is their relationship to you?

34. Does anyone here have education, experience or training in accident reconstruction?

35. Does anyone here have education, experience or training in forensic investigation?

36. Does anyone here have education, experience or training in the field of material failure analysis?

37. Does anyone here have education, experience or training in the field of mechanical engineering?
38. Does anyone here have education, experience or training in the field of human factors analysis?

39. Has anyone here served as an expert witness in a civil or criminal case? If so, explain in detail your role as an expert and the field of expertise in which you provided expert opinion.

JUROR EXPERIENCE IN PERSONAL INJURY CLAIMS

40. Have you ever been involved in an incident with a cut-off wheel, grinding tool, or powered saw? If so, please describe how the incident happened and what injuries were sustained.

41. Have you ever made a claim for money damages of any kind as a result of injuries in an accident or incident of any kind? If so, how was the claim handled? How satisfied with the results were you?

42. Have you ever been a Plaintiff (the person suing) or a Defendant (the person being sued) in a lawsuit? If yes, please explain.

43. Have you ever tried to hire a lawyer to represent you but were not able to find anyone to take your case? If yes, tell us about that.

44. Have you, a family member or anyone you know been seriously injured? If so, please describe what happened. How are you/they getting along now? Did you/they seek compensation for their injuries? What was the result? Where you/they satisfied with the result?

JUROR EXPERIENCE WITH INJURIES

45. Have you, any family members or anyone you know ever suffered a medical condition or an injury to an eye? If yes, who is the person and what was the problem? (If one of the jurors has had such a problem, Defendants request the Court to conduct an individual voir dire of that juror so they do not have to discuss their protected health information in the presence of other jurors).
46. Have you, any family member or anyone you know suffered an incident that resulted in scarring on the face? If yes, who is the person, how did the incident occur, and what injuries did they sustain? (If one of the jurors has had such a problem, Defendants request the Court to conduct an individual voir dire of that juror so they do not have to discuss their protected health information in the presence of other jurors).

47. Have you, any family member or anyone you know suffered injuries from an incident with a power tool? If yes, who is the person, how did the incident occur, and what injuries did they sustain? (If one of the jurors has had such a problem, Defendants request the Court to conduct an individual voir dire of that juror so they do not have to discuss their protected health information in the presence of other jurors).

**JUROR KNOWLEDGE OF THE PARTIES/WITNESSES**

48. One party in this case is David Loos, who is the Plaintiff. Are any of you acquainted with David Loos?

49. David Loos is being represented by David Van Meter, Esquire. Are any of you acquainted with David Van Meter, or have you or any family member or friend or company for whom you work ever been represented in a legal matter by David Van Meter?

50. One party in this case is Saint-Gobain Abrasives, Inc., who is a Defendant. Are any of you acquainted or familiar with Saint-Gobain Abrasives or the brand-name Norton?

51. Saint-Gobain Abrasives is being represented by Patrick Lamb, Esquire and John Woodard, Esquire. Are any of you acquainted with Patrick Lamb or John Woodard, or have you or any family member or friend or company for whom you work ever been represented in a legal matter by Patrick Lamb or John Woodard?

52. Additional entities in the case who you will hear about are the Estate of Carl Loos, individually and doing business as Carl Loos Rentals, as well as Jacqueline Loos,
individually and doing business as Carl Loos Rentals and doing business as Mid America Investment Properties. Are any of you acquainted or familiar with Carl Loos, Jacqueline Loos, Carl Loos Rentals or Mid America Investment Properties?

53. Do you think you would have a tendency to judge Saint-Gobain Abrasives in a different light than you would David Loos, the Estate of Carl Loos, Carl Loos Rentals and Jacqueline Loos?

54. Certain witnesses may include:

   David Loos
   John Popa
   Katherine Popa
   Jessica Brewer
   Lisa Fields
   William Munsell, P.E., Munsell Consulting Services
   Thomas Service, Ph.D., P.E., Saint-Gobain Abrasives, Inc.

   Does anyone here know any of the individuals that I have just mentioned?

55. Do you, your family or anyone known to you know any doctors who work at Dean McGee Eye Institute? If so, who is the person and how are they familiar with Dean McGee Eye Institute? (If one of the jurors knew such doctors, Defendant requests the Court to conduct an individual voir dire of that juror so they do not have to discuss their protected health information in the presence of other jurors).

56. Do you, your family or anyone known to you know Dr. Steven R. Sarkisian, Jr., M.D.? If so, who is the person and how are they familiar with Dr. Steven R. Sarkisian, Jr., M.D.? (If one of the jurors knew Dr. Steven R. Sarkisian, Jr., M.D., Defendant requests the
Court to conduct an individual voir dire of that juror so they do not have to discuss their protected health information in the presence of other jurors).

57. Do you, your family or anyone known to you know Nancy A. Lambert, BCO? If so, who is the person and how are they familiar with Nancy A. Lambert, BCO? (If one of the jurors knew Nancy A. Lambert, BCO, Defendant requests the Court to conduct an individual voir dire of that juror so they do not have to discuss their protected health information in the presence of other jurors).

58. Do you, your family or anyone known to you know Ocular Prosthetic Services? If so, who is the person and how are they familiar with Ocular Prosthetic Services? (If one of the jurors knew Ocular Prosthetic Services, Defendant requests the Court to conduct an individual voir dire of that juror so they do not have to discuss their protected health information in the presence of other jurors).

PRIOR JURY SERVICE

59. How many times have you served as a juror in a criminal case? Civil case? Grand jury?

60. What type of civil case?

61. What was the verdict?

62. Were you the foreperson?

JUROR ATTITUDES ABOUT PERSONAL INJURY LAWSUITS

63. In general, what are your feelings or opinions about people who bring lawsuits?

64. In general, what are your feelings or opinions about people or companies who have been sued in a lawsuit?

65. Do you understand that the mere fact that a lawsuit has been brought does not mean that claims are necessarily correct or have validity?
66. The law requires that, if the evidence is in favor of Saint-Gobain Abrasives, you, the jury, should render a verdict in favor of Saint-Gobain Abrasives even though it means that David Loos will not receive any award. Is there anyone here who feels that they could not render a verdict in favor of Saint-Gobain Abrasives if the evidence required it?

67. Sympathy and compassion for the plaintiff are emotions which could be aroused in all of us, but under the law sympathy and compassion can play no part in a jury’s decision. Do any of you feel that you would be unable to put aside sympathy and decide this case solely on the evidence and the law which the court provides?

68. Will you be able to listen to all the facts of this case as they are presented to you without prejudice for or against any party?

69. Do you feel you can render a fair verdict based upon all of the evidence that you see and hear?

70. Do any of you feel that there is anything in your background or experience in any of your encounters which might in any way affect your ability to be a completely fair and impartial juror for all sides to this lawsuit?

71. Is there any one of you who would start off the trial of this case with the slightest leaning for one side or the other before you hear any evidence at all?

72. Is there any one of you, who for any reason, believes before hearing the evidence in this case that any party is probably responsible for paying damages in this case?

73. In this case, one party will put on their evidence first and the other party does not put on their evidence until the first party is finished. However, both parties are plaintiffs against one another. You will be required to remain impartial and to not make your decision until you
have heard all of the evidence in the case, from both sides. Is there anyone here who believes
that they could not remain impartial until you have heard all of the evidence?

74. Is there anyone in this room who does not feel that they can give the same
impartial consideration to the defendants in hearing the evidence and rendering a verdict as they
can to the plaintiff?

75. Do you feel an injured person is entitled to compensation without regard to a
finding of liability against a defendant? Please explain why.

76. In this case, Saint-Gobain asserts that Mr. Loos incident occurred during misuse
of a cut-off wheel in a fashion inconsistent with the warning labels provided with the wheel. If
you find that the misuse of the cut-off wheel by David Loos was the cause of the accident, is
there any reason you cannot enter a verdict in favor of the defendants? Please explain why.

77. What reservations would you have about entering a verdict in favor of a
defendant?

78. Who among you believes the jury verdict in this case might have some impact on
you personally? If you so believe, how do you believe an award in this case might impact you
personally?

**JUROR ATTITUDES ABOUT OUT OF STATE COUNSEL**

79. Do you feel you cannot trust or credit an attorney that is not from Oklahoma?
Please explain why.

80. Do you feel you cannot trust or credit an attorney from the northeast of the United
States because that attorney is from the northeast? Please explain why.
Respectfully submitted,

BY: [Signature]

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SUPPLEMENTAL JURY QUESTIONNAIRE NAME: ________________________________

1. What was the highest grade you completed in school? __________________________

2. List any college degrees received. _____________________________________________

3. What jobs have you held in the past? __________________________________________

4. What jobs has your spouse held in the past? _________________________________

5. Circle any of the following in which you have received training or education:
   Accounting  Law  Health/Medicine  Engineering  Use of Grind/ing/Cutting Tools

6. Which of the following would you use to describe yourself? [Check all that apply]:
   [ ] Analytical  [ ] Impulsive  [ ] Careful  [ ] Judgmental  [ ] Old-fashioned  [ ] Detail Oriented
   [ ] Open-minded  [ ] Emotional  [ ] Outspoken  [ ] Frugal  [ ] Sensitive  [ ] Generous  [ ] Visual

7. What do you enjoy doing in your spare time? ________________________________

8. Please list the civic, social, political, professional, volunteer or religious organization to which
   you belong: _________________________________________________________________

9. Please list your three favorite TV shows: ______________________________________

10. Please list all your social media accounts: [ ] Facebook [ ] Twitter [ ] Website [ ] Blog [ ] Other

11. Please list your main sources of news: _______________________________________

12. Please list your three favorite websites/blogs: _________________________________

13. Please list three people you admire the most: ________________________________

14. Please list three people you admire the least: ________________________________

15. Which of the following best describes you? Check all that apply: [ ] Republican  [ ] Democrat  [ ]
   Independent  [ ] Conservative  [ ] Moderate  [ ] Liberal

16. Which of the following best describes your opinion of corporations? [ ] Very positive  [ ] Positive
   [ ] Somewhat positive  [ ] Very negative  [ ] Negative  [ ] Somewhat negative

17. Do you believe that because a person or company has been sued in court, that person or
    company must be guilty of some wrongdoing? Explain: ____________________________

18. The Plaintiff will be the first party to present evidence to you and the Defendants will then
    present their evidence. Are you able to keep an open mind until all evidence has been presented?
    Explain: ________________________________________________________________

19. Can you render a fair verdict based upon all of the evidence that you see and hear? Explain:
    ________________________________________________________________

20. Do you feel that, because a person has sustained an injury, he or she has to be awarded money
    or compensation without proof of liability of some other person or entity? Explain:
    ________________________________________________________________

21. Do you understand that the mere fact that a lawsuit has been brought does not mean that
    claims are necessarily correct or have validity? Explain:
    ________________________________________________________________

22. Do you believe you would be unable to put aside sympathy and decide this case solely on the
    evidence and the law which the court provides? Explain:
    ________________________________________________________________