JURY SELECTION

The Often-Overlooked Make-It-or-Break-It Phase of a Trial

By Dick Semerdjian and Janice Mulligan

The jury selection process in the trial of Martin Shkreli, the CEO of Mylan Pharmaceuticals, the company that raised the price of EpiPen, "an emergency allergy injection sold by Mylan," lasted three days.[1] "Shkreli was widely criticized for defending the 400 percent increase in the price of EpiPen. . . . More than two hundred potential jurors were excused from the trial."[2] Here are a few examples of the court's voir dire:

> The Court: The purpose of jury selection is to ensure fairness and impartiality in this case. If you think that you could not be fair and impartial, it is your duty to tell me. All right. Juror Number 1.
> Juror No. 1: I'm aware of the defendant and I hate him.
> Defense Counsel: I'm sorry.
> Juror No. 1: I think he's a greedy little man.
> The Court: Jurors are obligated to decide the case based only on the evidence. Do you agree?
> Juror No. 1: I don't know if I could. I wouldn't want me on this jury.
> . . . . . .
> The Court: Juror Number 40. Come on up, sir.
> Juror No. 40: I'm taking prescription medication. I would be upset if it went up by a thousand percent. I saw the testimony on TV to Congress and I saw his face on the news last night. By the time I came in and sat down and he turned around, I felt immediately I was biased.
> The Court: Sir, we are going to excuse you. Juror Number 47, please come up.
> Juror No. 47: He's the most hated man in America. In my opinion, he equates with Bernie Madoff with the drugs for pregnant women going from $15 to $750. My parents are in their eighties. They're struggling to pay for their medication. My mother was telling me yesterday how my father's cancer drug is $9,000 a month.
> The Court: The case is going to come before you on evidence that you must consider fairly and with an open mind.
> Juror No. 47: I would find that difficult.
> The Court: And that's based on your parents' experience with medication?
> Juror No. 47: It's based on people working very hard for their money. He defrauded his company and his investors, and that's not right.
> The Court: Ma'am, we're going to excuse you.[3]

It is every trial lawyer's worst nightmare to face a venire panel as tough as the defense faced in the Shkreli trial. Clearly, jury selection, also known as *voir dire*, an old French phrase that is translated as "speak the truth," is one of the most important jobs facing the trial lawyer. This article gives you some tools to use when facing the daunting job of voir dire.

Importance of Voir Dire

Although jury selection is not the only trial skill that affects the verdict, there is no question that jury selection can play a huge role in winning or losing. Making a mistake in jury selection is problematic. Determining the qualifications and suitability of the potential jurors is essential to ensure the selection of a fair and impartial jury.

Some say a better name for jury selection would be *jury deselection* because the attorney does not actually select the jurors who will be good for the client's case but rather identifies and deselects the ones who will not be. Said differently, many believe that jury selection is more appropriately an avenue in which to reject certain jurors based on the issues involved in the case and the potential jurors' biases and personality traits that could make it difficult for them to weigh fairly the facts in light of the law.

Jury selection allows the attorney to establish a relationship with the jury. Jurors make judgments immediately from their first impression of the trial attorney. It is important to realize that jurors can be suspicious of trial attorneys and the court system. Some attorneys believe that prospective jurors do not like when the trial lawyer "pretends to be interested in them" by asking them personal questions. The attempt to "bond with the jury" or establish a relationship can be tricky. However, failing to discover the beliefs and biases of the panel is also dangerous.

Jury selection also should bring out issues of expertise, meaning that some jurors may have some extra expertise by virtue of their particular knowledge, training, and background. Jury selection likewise should bring out whether a potential juror has any interests in common with litigants, key witnesses, or counsel.

No matter what strategy you invoke in voir dire, there is no disputing that successful voir dire requires the attorney to learn as much information as possible about each potential juror without unnecessarily offending the panel. This allows the attorney to exercise intelligently both peremptory challenges and challenges for cause in order to select the "perfect" jury to decide the case.

The Basics

Jurisdictional rules. Voir dire rules differ in each state and between state and federal courts. In some federal courts, voir dire is limited and performed by the judge with very little questioning allowed by the attorneys. Some state judges limit the examination by attorneys, while others allow extensive questioning. Make sure that you are familiar with the federal and state court procedures and the local rules of the trial judge in your case.

TIP
Mastering critical concepts for jury selection will give you an important advantage toward winning your case.

Challenges for cause. Challenges for cause occur when an attorney argues that a prospective juror should be dismissed because there is a factual basis to believe that the person cannot be fair or unbiased or is incapable of serving as a juror. The example above from the Shkreli trial is a classic example of dismissal for cause and the potential of one person to infect the rest of the jury panel with his views of the case or parties.

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Peremptory challenges. Each party also has peremptory challenges, which allow them to object to one or more proposed jurors without providing a reason. The number of allowable peremptory challenges varies by jurisdiction. Typically, attorneys have very limited time during jury selection to learn who is really predisposed against the client's case. The only solution is to probe the personal beliefs and privacy of the panelists. However, intruding into private matters carries the risk of offending, embarrassing, or alienating members of the jury panel. The attorney must carefully evaluate the risk of offending the panel by invading the jurors' privacy versus failing to discover the identity of jurors who may have a bias against one of the parties.

Pre–Voir Dire Written Juror Questionnaires

Potential jurors may be asked to complete written questionnaires in advance of voir dire. While the use of such written questionnaires varies from state to state and even from courtroom to courtroom, there is increasingly a push to allow the use of written juror questionnaires before oral questioning begins. Ideally, counsel should offer a list of questions no more than a page or two in length and should seek a stipulation on all questions with opposing counsel before submitting the questions to the court. If no stipulation is possible, then counsel should file its proposed questionnaire with a motion to the court. The responses to the questionnaires need to be studied before jury selection begins, and the court should be asked to carve out a specified amount of time to allow for such analysis.

Some of the goals of these written questionnaires include protecting privacy, promoting increased candor by potential jurors (especially as it relates to the disclosure of sensitive information), and allowing counsel to hone in on key areas and to question potential jurors on more relevant topics.

In 2008, the American Bar Association (ABA) Seventh Circuit American Jury Project found that an overwhelming majority of the judges and attorneys surveyed concluded that using jury selection questionnaires increased the efficiency of the trial process.[4]

Mini-Openings before Voir Dire

There is a movement in some state courts to permit attorneys to give a mini-opening, a brief opening statement of five minutes or less, before voir dire begins.[5] Attorneys that favor mini-openings believe that they (1) provide context to their venire questioning so that jurors may better understand the context of why they are being questioned and (2) may assist in ferreting out bias or prejudice based on the facts of the case. Those who oppose mini-openings believe that (1) they are redundant because they do not replace the typical opening statements at trial and (2) lawyers may abuse them by arguing their case during that time. Some state courts permit attorneys great latitude in discussing the case, making mini-openings unnecessary.

In 2005, the New York State Jury Trial Project tested the use of mini-openings in 22 trials.[6] Of the 186 jurors who heard mini-openings, 91 percent said that they were very helpful for understanding what the case was about. Seventy-seven percent of judges and attorneys in civil trials believed that mini-openings aided juror understanding of why they were being questioned.[7]

Enacted in 2017, California Code of Civil Procedure § 222.5(d) provides that, upon request, "the trial judge shall allow a brief opening statement by counsel for each party prior to the commencement of the oral questioning phase of the voir dire process."[8] Arizona's laws also favor the use of mini-openings.[9]

Researching Jurors on Social Media

The golden rule traditionally has been that lawyers are prohibited ethically from contacting jurors leading up to trial or during trial. But what does such contact mean in the internet age?

The rules on researching jurors and prospective jurors via the internet vary. Even within a single jurisdiction, judges' views vary from one courtroom to the next. Therefore, an in limine motion is recommended to determine the nature and extent of permissible internet research regarding jurors.

Guidance may be found in the 2014 ABA Standing Committee on Ethics and Professional Responsibility's Formal Opinion 466, "Lawyer Reviewing Jurors' Internet Presence."[10] Formal Opinion 466 addresses three types of data mining—passive anonymous research, passive identifiable research, and active research—and issues varying advice for each one.

Passive anonymous research. Passive anonymous research is a lawyer's passive review of a juror's social media postings where the review is available without an access request and where the juror is unaware of the lawyer's review. Passive review of juror social media without the juror knowing about it is acceptable, and it does not violate the ABA's Model Rules of Professional Responsibility (Model Rules).

Passive identifiable research. Passive identifiable research involves a lawyer's passive review of a juror's information where a social media feature enables the juror to identity the viewing lawyers or their representatives. This occurs, for example, on LinkedIn: the site sends a message telling an individual juror or potential juror who has accessed that person's profile. According to Formal Opinion 466, a lawyer may passively review a juror's social media postings even if the juror can discover that such a review has taken place, and it does not violate Model Rule 3.5(b).

However, being allowed to do this does not mean that it is a prudent thing to do. Each lawyer must proceed at his own peril because a prospective juror likely may feel that his privacy has been violated, especially because most judges will instruct jurors that the jurors themselves are not permitted to do any internet research about the parties or the case.

Passive review of juror social media without the juror knowing about it is acceptable and does not violate the ABA Model Rules.

Furthermore, there is a split in the jurisdictions as to whether such communication is ethical. While it may be ethical under the Model Rules, the New York City Bar has taken the position that even such an inadvertent communication may run afoul of that jurisdiction's rules of professional conduct. New York makes it incumbent on the lawyer to understand the functionality of any social media used for juror research and to proceed with caution, knowing that even an accidental, automated notice to a potential juror possibly can be considered an ethical violation.[11]

Active research. Active research is a lawyer's active review: the lawyer sends an access request to a juror or a potential juror. This type of research is prohibited under Model Rule 3.5(b) and forbidden under Formal Opinion 466. A lawyer or the lawyer's agent may not send an access request to the juror because that qualifies as a prohibited communication.[12]

Peremptory Challenges: To Challenge or Not to Challenge?

A thorough and efficient jury selection exposes the defense-oriented jurors to the plaintiff and the plaintiff-oriented jurors to the defense. The main purpose of the peremptory challenge, as noted above, is to identify and deselect those panel members who, based upon learned information, may be hostile to the client's case.

Exercising peremptory challenges can be tricky. The key to jury selection is to pay attention to what prospective jurors say and do. The attorney may interpret a juror's reactions as an attitude of sympathy or an attitude of hostility toward one of the parties or the attorneys. Attorneys typically avoid aggressive, biased, or hostile panel members or members with leadership qualities or personalities.

When one side exercises few or no challenges, the other side may be strongly tempted to do likewise, even if it is not happy with the panel. Some attorneys believe that exercising few or no peremptory challenges may create a perception within the jury panel that they have a strong case, whereas exercising all available peremptory challenges may create the perception that the lawyer is striking jurors due to a weak case. Keep in mind, though, that in some jurisdictions, the jury does not know which side exercised the peremptory challenges. The key for the trial attorney, therefore, is to avoid aggressive use of peremptory challenges—and, thus, potential alienation of jurors—if the jury will be aware of which party is exercising the challenges.

In addition to the risk of alienating jurors by exercising peremptory challenges, there is another reason that plaintiffs counsel should

consider using challenges sparingly: peremptory challenges may produce more conservative juries. As one study noted,

> [s]pecifically, because liberal jurors are easier to identify from demographic profiling than their conservative counterparts, the peremptory-challenge regime likely produces more conservative juries than would a system without those challenges. That bias disadvantages certain litigants, from tort plaintiffs to criminal defendants.[13]

Even if you elect to use peremptory challenges, do not run out before the other side, or you stand the risk of seating dangerous jurors whom you may not be able to excuse for cause. Who is the most dangerous juror? The most dangerous juror for either party is a potential leader who will seize control during the deliberations and argue unfairly and passionately against your case regardless of the evidence.

Stereotyping Jurors

Stereotyping is a problem in terms of jury selection. For example, individuals in many of the helping professions (such as a nurse) are stereotypically viewed by the defense as "bad" jurors, likely to be overly sympathetic to an injury and/or the damage claims of the plaintiff. Plaintiff trial lawyers typically worry about engineer or scientist jurors, who may hold them to a higher burden of proof due to their science- or logic-oriented thought processes. Women are often stereotyped as being more compassionate than men, while men are assumed to be harder on plaintiffs. Relying on such stereotypes is dangerous. Although stereotypes can be a good starting place during voir dire, trial lawyers should never depend exclusively on them when considering which jurors would be favorable or unfavorable to the case. The prospective juror's answers and reactions to questions during the voir dire process are more revealing.

Rather than depending on standard stereotypes, the better practice is for the trial attorney to analyze demographics, personality types, attitudes, values, and life experiences. In terms of demographics, trial lawyers must look at age, ethnic background, occupation, social class, lifestyle, and politics. Personality types that should be considered include whether a prospective juror is an authoritarian, a conformist or nonconformist, a liberal or conservative, detail-oriented, calm or rigid, or personable or unfriendly.[14]

Motions for Bias

The equal protection clause of the U.S. Constitution forbids a trial lawyer to exclude potential jurors on account of their race, religion, or ethnic background. Trial judges pay very close attention to peremptory challenges to help prevent such discriminatory or biased challenges.

In California, to protest a peremptory challenge on the basis of bias, a party can file a *Batson/Wheeler* motion with the court. Under both federal and state constitutions, there is a three-step inquiry whenever a *Batson/Wheeler* challenge is made. Under the first step, the party objecting to the peremptory challenge has the burden of establishing a preemptive case of discrimination. This is done by showing that the totality of the relevant facts gives rise to an inference of discriminatory purpose. The second step occurs after a finding of a discriminatory purpose. The burden then shifts to the party that originally challenged the juror to explain and offer permissible neutral justifications for the strike. In the third step, if a neutral explanation is tendered, the trial court must then decide whether the opponent of the strike has proved purposeful racial discrimination. If the court denies the challenge, the record should show that the court considered the reasons for the peremptory challenges at issue and found them to be race-test neutral.

Jury Consultants

The use of professional jury consultants has become commonplace now in jury selection. Most jury consultants have backgrounds in law, psychology, or social sociology. The primary purpose of hiring jury consultants is to help uncover hidden biases of potential jurors. Because peremptory challenges are limited, lawyers may be unsure about whether to challenge jurors based upon their responses. The job of the jury consultants is to give the attorneys the criteria necessary for the "ideal juror" for their clients and to assist in determining what biases do not fit those criteria.

During jury selection, the jury consultant often will be present at the counsel table with the trial attorney. The consultant observes the facial expressions and posture of those being considered for the jury. These unconscious reactions may indicate whether the responses to the trial lawyer's questions are sincere or misleading. Likewise, jury consultants will observe the jury panel during the court breaks to determine what alliances they have formed and how that could impact the jury deliberation once the case is given to them. They also may use social media (such as Facebook) to do some online investigation of the potential juror. The use of jury consultants allows the trial lawyer to focus on detailed questioning while the jury consultant observes and digests the responses.

Grounds for Objections to Improper Questions

In jurisdictions that allow attorneys to directly question a jury, attorneys generally are allowed to conduct a liberal and probing exam reasonably calculated to uncover juror bias or prejudice as it relates to the circumstances of the particular case.

While the rules on specific questions vary from one jurisdiction to another, the limits to voir dire generally include counsel asking "improper questions," which

include any question that, as its dominant purpose, attempts to:

1. Precondition the prospective jurors on the evidence or ask them to prejudge the evidence.
2. Indoctrinate the jury, or question the prospective jurors concerning the pleadings or the applicable law.
3. Question or comment on the personal lives of the parties *or their attorneys*.[15]

Improper voir direct questions do not rise to the level of misconduct if asked in good faith. But how do you establish that opposing counsel did not act in good faith? The answer is by anticipating the types of objectionable questions that should not be asked, raising the issue in limine with the court, and obtaining a court order limiting such questioning. If the opposing attorney then engages in improper questioning, you must object when the question is asked in order to avoid waiver. The objection likely will be sustained in the face of defiance of a court order.

Tips: Uncovering Bias and Inspiring Confidence in Potential Jurors

Both sides are striving to accomplish the same goals: to ferret out bias and to gain the confidence and trust of the jury. How they go about doing so is surprisingly similar.

While the primary purpose of voir dire is to root out bias, it is also the time of first impressions. As the attorneys question potential jurors to uncover bias, these same potential jurors are sizing up the attorneys. Having heard about frivolous lawsuits and greedy lawyers, many may be particularly suspicious about the plaintiffs attorney standing before them. What are potential jurors looking for? Credibility, trust, and an intelligent and compassionate lawyer who is prepared and efficient.

Below are some tips, from both the plaintiff and defense perspectives, on what to do and what not to do in voir dire.

Best practices. There are a number of practices for both plaintiffs attorneys and defense attorneys that assist in discovering biases and effectively and affectively demonstrating the types of qualities that jurors admire.

Be authentic. Whether your favorite all-time lawyer is Clarence Darrow or the protagonist from the movie *My Cousin Vinny*, the odds are you cannot successfully copy someone else's style or delivery. To thine own self be true—and stick with it!

Be natural and normal. Be friendly and open-minded and speak in everyday language, not legalese. Make eye contact; call the jurors by their names, if permitted; and be interested in their responses. Pretend that you are talking to people you know, like friends at a bar. This will allow you to be natural and real.

Engage the entire panel. Voir dire is supposed to be a dialogue, not a monologue. Use open-ended questions, and encourage people to talk. Begin broadly with questions to the entire group before focusing on individual jurors.

It is easy to get engrossed in a conversation with one or more prospective jurors at the expense of talking to the rest of the panel. However, you often have the most to fear from the juror who never speaks. As difficult as it is, it is important to keep track of who has not spoken during the questioning and try to get those people engaged. If the judge will allow it, it is often helpful near the end of voir dire to ask which of the prospective jurors have not given a spoken answer and then spend some time probing the opinions of those people.

Use active listening skills. The more the attorney is talking (or, almost as bad, taking notes), the less the attorney is listening and respecting the prospective jurors. In addition, talking instead of listening may cause the attorney to miss body language or even verbal cues that could reveal bias.

Respecting jurors enough to let them participate and express their own views not only makes them feel more involved but also gives them confidence that you care both as an attorney and as a person.

Follow the jurors instead of trying to lead them. Rather than trying to twist jurors' words or redirect them to suit your own worldview, try to accept their answers without judgment.

Respecting the jurors enough to let them participate and express their own views not only makes them feel more involved and thus vested in the case but also gives them confidence that you care both as an attorney and as a person. Demonstrating tolerance for other viewpoints thus serves to benefit your case by humanizing you in the eyes of future jury members. Remember, potential jurors come from all walks of life, and, for some, this may be their first interaction with an attorney.

Demonstrating tolerance for other viewpoints also benefits your case by allowing potential jurors to feel comfortable enough to reveal their biases. If you do not encourage jurors to express themselves openly during voir dire, you may be shocked and saddened by the consequences of the jurors' views

during deliberations. One of the biggest problems observed with attorneys during voir dire is the use of leading questions such as "Can you assure me you can keep an open mind and judge the case based on the evidence?" or "Can you assure me you can be fair and impartial?" These leading questions encourage the panel members to agree with you even when the agreement is disingenuous. You will never learn important information about a juror by asking leading questions. Let the jurors talk; have them reveal attitudes that may help you get information about whether they will have a propensity for or against your client. Do not cut them off by asking another question before they have answered the first question thoroughly. And do not allow silence.

Follow up. Traditional theory holds that if you go too far into uncharted waters with a potential juror, either you will ensure that the other side will "bounce" that juror with a challenge, or you will risk poisoning the entire pool of jurors. However, that school of thought should be tempered depending on the intelligence of the opposing attorneys and the jury pool.

Prepare your questions. It is a good idea to prepare voir dire questions before voir dire so that you cover all important matters and do not overlook questions that should be asked. This frees the attorneys to study and evaluate the jurors in more detail. If you are going to retain a jury consultant, utilize the jury consultant to assist you in the preparation of the questions.

Pose sensitive questions carefully. While there are many questions that *could* be asked, the real issue is whether they *should* be asked. If sensitive questions need to be asked, it is better to leave that task to the judge, use a written juror questionnaire, or request that the questions be asked in private (outside the presence of the other jurors). Even then, another equally sensitive follow-up question may have to be posed—if so, it should be asked with finesse.

Address money issues. Some courts will not allow specific dollar amounts to be discussed in voir dire. If so, the global issue still must be addressed. Many plaintiffs lawyers are uncomfortable talking about money so early in the case. The countervailing arguments are that (1) it is important to know jurors' views on monetary compensation for loss, and (2) it is important to know how the jurors value money.

Any jurors who say that they could never award money for pain and suffering or for a wrongful death potentially can be disqualified for cause in a civil case where this is at issue. However, before seeking a challenge for cause, the lawyer must ensure that the juror understands that the law requires an award of such damages if the evidence supports it, and the juror must assert that he will be unable to do this. If a challenge for cause is not granted, lawyers should strongly consider exercising a peremptory challenge.

Worst practices. Just as the above techniques can uncover biases and inspire jurors to view an attorney in a positive light, there are also behaviors to avoid—behaviors that are antithetical to the goals of voir dire.

Do not lecture. The McDonald's coffee case is a story routinely told by counsel in voir dire, but it is a mistake to tell it. Contrary to popular belief, voir dire is not the time to let the prospective jury know the real facts behind sensationalized news stories. It is highly doubtful that beliefs and values long held by prospective jurors will be changed during voir dire.

Do not embarrass. Sensitive questions can be embarrassing. Request in advance that the judge ask these questions; and when you follow up during your own line of questioning, gently work your way up with other questions first, and then ask permission of the juror to broach a sensitive area.

Do not condescend. Talking down to the jury will only hurt you and reinforce any negative stereotypes about lawyers that a person may have held prior to the start of jury duty.

Do not take notes. Have someone else in the courtroom take notes while interacting with jurors, particularly when they are answering your questions. Try not to read questions; when preparing for voir dire, reduce the questions to a short list of topics that you want to cover, and prepare the initial open-ended question for each topic. What you lose in the precision of language without scripted questions, you will more than make up for in your ability to listen to and connect with the prospective jurors.

Do not bore the jury. Many voir dire examinations are long and boring. Do not let yourself get too nervous. Voir dire can be nerve-racking and at times frightening, causing the trial attorney to become monotone and robotic.

Do not avoid the bad issues and facts. Presenting some of the negative facts of your case will allow you to see how jurors react. Furthermore, onfronting and tackling the bad facts will bring you credibility.

Do not invoke too much humor into the process. Jurors want to feel at ease and do not appreciate a stodgy trial lawyer. However, be careful and do not overdo it and become a comedian. Popularity in getting the jurors to like you through humor is not the same as credibility. A good mix of being yourself and invoking some humor will humanize you, making the jurors feel more at ease.

Do not allow stereotypes to prevent proper probing. Do not assume that an engineer will not award damages for pain and suffering—ask the engineer directly. Do not assume that a

doctor will not believe an injury—ask the doctor directly. Once you know the occupation of a potential juror, probe that juror directly on the issues that concern you regarding demographics or stereotypes.

Conclusion

The uncomfortable silence that may follow a question can be almost unbearable. A hostile potential juror is almost inevitable. The lack of control over the situation is unsettling. Many seasoned attorneys believe that voir dire is the most difficult part of the trial. And there is no magic potion to assist in handling all of the potential issues encountered in voir dire.

The solution is to accept the challenge. Challenge yourself on a regular basis to talk to strangers standing in line at a grocery store. Not kidding—this is great practice for voir dire.

Look for opportunities to speak with people from different walks of life, and/or those with disparate beliefs, and have discussions—not arguments—with them. Practice active listening. Repeat their answers back to them and ask even more open-ended questions. Rather than be defensive, try to identify and share common core values universally held. For example, everyone believes in accountability.

Consider conducting informal focus groups to discuss questions and topics that you plan to raise in voir dire, and use focus groups as forums to practice voir dire. Question the groups afterward about what questions were favorably received, what made them uneasy, and what they would have liked to explore more fully in voir dire. Practice may not make perfect, but it certainly should make you more comfortable.

And remember: If you are nervous, just imagine how the prospective jurors must feel. ■

Bibliography

ABA Standing Committee on Ethics and Professional Responsibility. *Formal Opinion 466* (April 24, 2014). www.americanbar.org/content/dam/aba/administrative/professional_responsibility/formal_opinion_466_final_04_23_14.authcheckdam.pdf.

Arizona Rules of Civil Procedure §§ 47(b), 51(a) (2016).

California Civil Procedure Code § 222.5(d) (1988).

Civil Jury Project at NYU School of Law. *Fact Sheet: Mini-Openings Before Voir Dire* (2016). https://civiljuryproject.law.nyu.edu/wp-content/uploads/2016/10/Exh.-2-Mini-Vior-Dire-Openings-Fact-Sheet-4.10.16.pdf.

New York City Bar Association. *Formal Opinion 2012-2* (2012). www2.nycbar.org/pdf/report/uploads/20072303-FormalOpinion2012-02JuryResearchandSocialMedia.pdf.

New York State Unified Court System. *Final Report of the Committees of the Jury Trial Project* (2005). www.nycourts.gov/publications/jury-materials/Final_Report_of_the_Committees_of_the_Jury_Trial_Project.pdf.

"Public Enemy." *Harper's Magazine* (Sept. 2017). https://harpers.org/archive/2017/09/public-enemy/.

Revesz, Joshua. "Ideological Imbalance and the Peremptory Challenge." *Yale L.J.* 125, no. 8 (June 2016): 2535–49.

Seventh Circuit Bar Association American Jury Project Commission. *Seventh Circuit American Jury Project: Final Report* (September 2008). www.uscourts.gov/sites/default/files/seventh_circuit_american_jury_project_final_report_0.pdf.

Notes

1. *Public Enemy*, Harper's Mag. (Sept. 2017), https://harpers.org/archive/2017/09/public-enemy/.
2. *Id.*
3. *Id.*
4. Seventh Circuit Bar Ass'n Am. Jury Project Comm'n, Seventh Circuit American Jury Project: Final Report (Sept. 2008), www.uscourts.gov/sites/default/files/seventh_circuit_american_jury_project_final_report_0.pdf.
5. Civil Jury Project at NYU School of Law, Fact Sheet: Mini-Openings Before Voir Dire (2016), https://civiljuryproject.law.nyu.edu/wp-content/uploads/2016/10/Exh.-2-Mini-Vior-Dire-Openings-Fact-Sheet-4.10.16.pdf.
6. N.Y. State Unified Court Sys., Final Report of the Committees of the Jury Trial Project 5 (2005), www.nycourts.gov/publications/jury-materials/Final_Report_of_the_Committees_of_the_Jury_Trial_Project.pdf.
7. *Id.* at 23, 25.
8. Cal. Civ. Proc. Code § 222.5(d) (1988).
9. Ariz. Rules of Civ. Proc. §§ 47(b), 51(a) (2016).
10. ABA Standing Comm. on Ethics & Prof'l Responsibility, Formal Op. 466 (Apr. 24, 2014) (discussing lawyers reviewing jurors' internet presence), www.americanbar.org/content/dam/aba/administrative/professional_responsibility/formal_opinion_466_final_04_23_14.authcheckdam.pdf.
11. N.Y.C. Bar Ass'n, Formal Op. 2012-2 (2012) (discussing jury research and social media), www2.nycbar.org/pdf/report/uploads/20072303-FormalOpinion2012-02JuryResearchandSocialMedia.pdf.
12. ABA Standing Comm. on Ethics & Prof'l Responsibility, Formal Op. 466 (Apr. 24, 2014) (discussing lawyers reviewing jurors' internet presence), www.americanbar.org/content/dam/aba/administrative/professional_responsibility/formal_opinion_466_final_04_23_14.authcheckdam.pdf.
13. Joshua Revesz, *Ideological Imbalance and the Peremptory Challenge*, 125 Yale L.J. 2535, 2537 (June 2016).
14. *Id.* at 2535–41.
15. California Trial Objections, at ch. 6 (Continuing Educ. of the Bar, Cal. 2018) (emphasis in original).