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Guidelines For Developing Effective Cause Challenges

Judges typically do not like to grant cause challenges. This fact, coupled with the burden of uncovering juror bias, makes it increasingly difficult for attorneys to have jurors excused for cause. There are numerous techniques that attorneys can utilize to assist them with this endeavor.

Jurors who admit to bias usually will only do so if they are speaking with someone who appears to understand them. Bias is almost never admitted under conditions approximating cross examination. The key is to speak slowly with the juror and to use pauses. This demeanor is highly effective at getting jurors to confirm their prejudices.

As a corollary to observations about demeanor, it is also true that it is easier to get challenges granted for feelings of sympathy or compassion, rather than for feelings of anger or hostility.

Judges appear more understanding and less aggressive about rehabilitating a juror who feels sorry for an individual than for a juror who simply dislikes a particular individual or company. For example, instead of focusing on a juror's generic bias toward large corporations, the attorney should focus on the jurors related feelings of sympathy for a worker who has been mistreated by management.

Some judges do a good job of informing jurors of the "purpose of voir dire" at the beginning of voir dire, while others do not. If all else fails, and no one has clarified the purpose of voir dire, attorneys must be prepared to instruct the panel. When doing so, it is most important to establish the following points with the jury panel:

- ▶ Not every juror should sit on every case.
- ▶ We all have attitudes, opinions and life experiences we bring to this courtroom. It is important for the attorneys in this case to explore those attitudes and opinions to see if they might affect how you view the evidence and how you would think about this trial.

After the jurors have an understanding of the purpose of voir dire, they will be more at ease to answer questions relevant to their attitudes. The answers to these attitude questions are vital in determining cause challenges.



A common problem in proposing cause challenges is that the attorneys do not establish grounds for excusing a panelist for cause. Judges may not be as eager to dismiss a juror if the juror's bias is not clearly exposed. Establishing grounds may be done by referring back to either the questionnaire responses, if a questionnaire was used, or to what the prospective juror said during oral voir dire. For example, "You said you didn't trust big business. You also said corporations always put money before safety. Can you tell us a little more about your views?" In this way the basis for the cause challenge is evident to everyone, even the potential juror.

Typically jurors do not like to admit that they cannot be fair. Attorneys should not inundate jurors with the notion of being fair. Prospective jurors are often offended by the suggestion that they might be anything but fair. Because potential jurors seldom admit they cannot be fair, the attorney needs to provide a socially acceptable way for jurors to talk about their biases. Generally, after the grounds for bias have been established, one strategy is to use some type of metaphor to probe further. Here are some examples:

- ▶ "Given what you said before (or, what was on your questionnaire), would the defense start out with a bit of an edge?"
- ▶ "Would the defense have a little steeper hill to climb in order to prove its case?" (Use hand motions to show the steepness of the grade.)
- ▶ "Would the plaintiffs be starting off a little bit behind the defendant?"
- ▶ "If this trial was a race, would we be starting out one step behind?"
- ▶ "If you were in my shoes, representing my client, would you want to have a person with your attitudes sitting as a juror?"
- ▶ "Do you tend to side with the underdog? Do you see the plaintiff as the underdog in this case?"

Knowing when to stop is a valuable skill in developing a cause challenge. A problem may arise after cause has been established if counsel continues questioning. Occasionally, after an attorney goes back over the same territory, the juror says the "wrong thing." This problem is most likely to occur when co-counsel does follow-up questioning. A brief discussion on this point among all co-counsel before oral voir dire (or a note to stop questioning a particular juror) will usually suffice to minimize the problem.

Uncovering juror biases that may be potentially damaging to a case is a critical aspect in developing cause challenges. The motivation and ability of attorneys to obtain cause challenges vary widely. However, attorneys who adopt specific strategies and techniques have a much better chance of compelling jurors to admit their biases and having their cause challenges granted.