Table of Contents

CHAPTER 1. EXAMINING PROSPECTIVE JURORS
§ 1:1 Scope and purpose of voir dire
§ 1:2 Juror deselection
§ 1:3 Importance of voir dire

CHAPTER 2. CONSTITUTIONAL RIGHTS
§ 2:1 Introduction
§ 2:2 Right to voir dire
§ 2:3 Right to participate in voir dire
§ 2:4 Criminal defendant’s right to appear without prison garb
§ 2:5 Right to jury drawn from fair cross-section of community
§ 2:6 Right to twelve-member jury
§ 2:7 Right to unanimous verdict
§ 2:8 Right to impartial jury
§ 2:9 Right to public trial

CHAPTER 3. ETHICS
§ 3:1 Applicable ethics rules
§ 3:2 Discrimination in jury selection
§ 3:3 Juror privacy
§ 3:4 Trial publicity
§ 3:5 Misrepresentations
§ 3:6 Client consultation and privilege
§ 3:7 Communications with jurors
§ 3:8 Roundtable discussion
§ 3:9 —Contact with jurors
§ 3:10 —Investigating prospective jurors
§ 3:11 —Manipulative questioning
§ 3:12 —Using juror information during trial

CHAPTER 4. ANTICIPATING APPEAL
§ 4:1 Preserving objections for appeal
§ 4:2 Need to exhaust peremptory challenges
§ 4:3 Swearing in panel
§ 4:4 Transcribing voir dire
§ 4:5 Post-trial interviews and conferences
§ 4:6 Post–trial motions

CHAPTER 5. WORKING WITH TRIAL CONSULTANTS
§ 5:1 Role of trial consultants
§ 5:2 Selecting trial consultants
§ 5:3 Backgrounds of trial consultants
§ 5:4 Scientific jury selection
§ 5:5 Using trial consultants to develop case themes
§ 5:6 Limitations on confidentiality
§ 5:7 Former jurors as trial consultants
§ 5:8 Agreements with trial consultants
§ 5:9 Who does the consultant represent?
§ 5:10 Privilege issues
§ 5:11 Trial consultants as advocates
§ 5:12 ASTC’s ethics code
§ 5:13 ASTC certification
§ 5:14 Lawyers and trial consultants

CHAPTER 6. PRETRIAL INVESTIGATION
§ 6:1 Introduction
§ 6:2 Limitations on pretrial investigation
§ 6:3 Client participation in pretrial investigation and preparation
§ 6:4 Working with jury consultants in pretrial investigations
§ 6:5 Involving local counsel
§ 6:6 —Familiarity with community
§ 6:7 —Familiarity with local rules
§ 6:8 —Reviewing juror rolls in preparation for voir dire
§ 6:9 —Familiarity with court personnel
§ 6:10 Community surveys and demographics
§ 6:11 Sample community attitude survey
§ 6:12 Focus groups and mock trials
§ 6:13 Shadow juries
§ 6:14 Criminal backgrounds of prospective jurors

CHAPTER 7. GROUP DYNAMICS
§ 7:1 Importance of group dynamics
§ 7:2 Historical importance of group dynamics
§ 7:3 Social combinations
§ 7:4 Leaders
§ 7:5 Followers
§ 7:6 Fillers
§ 7:7 Hold-outs
§ 7:8 Organizational dynamics in task-oriented groups
§ 7:9 Forepersons
§ 7:10 Alternate jurors
§ 7:11 Stages in group development
§ 7:12 Anticipating group dynamics during trial
§ 7:13 Stereotyping
§ 7:14 Anticipating group dynamics during deliberations
§ 7:15 Open and closed juror polls
§ 7:16 Decision rules
§ 7:17 Deliberations as group negotiations
CHAPTER 8. OBJECTIONS TO ARRAY
§ 8:1 Reasons for challenging array
§ 8:2 Fair cross-section challenges
§ 8:3 Sample hearing on motion contesting array
§ 8:4 Fair cross-section challenges—Issues arising under the Jury Selection and Service Act
§ 8:5 Motions for change of venue
§ 8:6 Motion to empanel anonymous jury
§ 8:7 Motion to close or delay proceedings
§ 8:8 Sample motion for change of venue: Florida v. Casey Anthony

CHAPTER 9. HARDSHIP
§ 9:1 Introduction
§ 9:2 Challenges to the Array
§ 9:3 The fair-cross section requirement and peremptory challenges
§ 9:4 Hardship Decisions: The Loophole Hiding in Plain Sight
§ 9:5 Case study: Walker v. Mississippi

CHAPTER 10. STRATEGIES FOR PRE-TRIAL CONFERENCES
§ 10:1 Introduction
§ 10:2 Importance of trial themes
§ 10:3 Establishing rapport
§ 10:4 Preparing for the pre-trial conference

CHAPTER 11. MOTIONS IN LIMINE
§ 11:1 Introduction
§ 11:2 To reserve time for voir dire
§ 11:3 To register challenges outside juror presence
§ 11:4 To allow jurors to take notes during trial
§ 11:5 To make an opening or key statement
§ 11:6 To use demonstrative aides during voir dire
§ 11:7 To set ground rules for voir dire
§ 11:8 To allow particular areas of inquiry
§ 11:9 Other motions in limine

CHAPTER 12. PROCEDURAL INNOVATIONS
§ 12:1 Introduction
§ 12:2 Jury innovation studies
§ 12:3 Questioning of witnesses by jurors
§ 12:4 Juror notebooks
§ 12:5 Interim summations
§ 12:6 Timing and simplification of jury instructions

CHAPTER 13. SUPPLEMENTAL JUROR QUESTIONNAIRES
§ 13:1 Importance of juror questionnaires
CHAPTER 14. QUESTIONING BY COURT OR COUNSEL

§ 14:1 Judge conducted voir dire
§ 14:2 Judge's participation in voir dire
§ 14:3 Magistrate’s role in federal cases
§ 14:4 Sample questions for use in judge-conducted voir dire
§ 14:5 Judge conducted voir dire in United States v. Manafort
§ 14:6 Common use of judge-conducted voir dire
§ 14:7 The reciprocity effect on jurors during judge conducted voir dire
§ 14:8 Effect of judge as authority figure
§ 14:9 Time is necessary for attorney-conducted voir dire
§ 14:10 Importance to the parties of attorney-conducted voir dire
§ 14:11 Attorney-conducted voir dire encourages juror candor
§ 14:12 Institutional support for attorney-conducted voir dire
§ 14:13 Controversy surrounding attorney-conducted voir dire
§ 14:14 Importance of self-restraint in attorney-conducted voir dire

CHAPTER 15. GROUP QUESTIONING AND INDIVIDUALIZED VOIR DIRE

§ 15:1 Anticipating prospective jurors' roles as group participants
§ 15:2 Sample analysis
§ 15:3 Case sample: Court’s examination of prospective juror
§ 15:4 Case sample: Prosecution’s examination of prospective juror
§ 15:5 Case sample: Defense counsel’s examination of prospective juror
§ 15:6 Case sample: Analysis
§ 15:7 Motions for leave to conduct individualized voir dire

CHAPTER 16. THE RULES OF EVIDENCE IN VOIR DIRE

§ 16:1 Introduction
§ 16:2 Relevance standards in jury selection
§ 16:3 Educational and advisory questions
§ 16:4 Hypothetical questions
§ 16:5 Distinguishing case-specific from hypothetical questions
§ 16:6 Non-Verbal Communication
§ 16:7 Evaluating significance of non-verbal communication
§ 16:8 Evaluating verbal behavior
§ 16:9 Balancing the Equities

CHAPTER 17. JUROR PRIVACY

§ 17:1 Introduction
§ 17:2 Protecting jurors from each other
§ 17:3 Protecting jurors from the parties and their counsel
§ 17:4 Questioning jurors under HIPAA
§ 17:5 Criminal background checks
§ 17:6 Protecting jurors from the public
§ 17:7 Anonymous juries
§ 17:8 Cameras in the courtroom
§ 17:9 Motion for limited closure of voir dire
§ 17:10 Thoughts on privacy from *Florida v. Casey Anthony*

**CHAPTER 18. DISCOVERY QUESTIONS**

§ 18:1 Introduction
§ 18:2 Open-ended questions
§ 18:3 Follow-up questions
§ 18:4 Case Study: *Michigan v. Tyburski*
§ 18:5 Roundtable Discussion: *Michigan v. Tyburski*
§ 18:6 Crafting appropriate discovery questions
§ 18:7 Revealing generic and idiosyncratic biases
§ 18:8 Distinguishing situational from normative conduct
§ 18:9 Importance of memory and participation
§ 18:10 Questioning down correlated lines

**CHAPTER 19. DESELECTION AND REHABILITATION**

§ 19:1 Introduction
§ 19:2 Rehabilitation of prospective jurors
§ 19:3 Relationship between rehabilitation and deselection questioning
§ 19:4 Use of leading questions in rehabilitation and deselection
§ 19:5 Case study: *Ray v. Gream*
§ 19:6 Roundtable Discussion: *Ray v. Gream*
§ 19:7 Case study: *Louisiana v. Holmes*
§ 19:8 Roundtable Discussion: *Louisiana v. Holmes*

**CHAPTER 20. BIAS**

§ 20:1 Traditional definition of bias
§ 20:2 Actual bias
§ 20:3 Implied bias
§ 20:4 Inferable bias
§ 20:5 Rethinking the importance of bias
§ 20:6 Explicit and implicit bias
§ 20:7 Implicit bias in the Courts
§ 20:8 Implicit bias among the attorneys
§ 20:9 Stereotypes and implicit bias
§ 20:10 Washington state's approach to implicit bias in the courts

**CHAPTER 21. CHALLENGES FOR CAUSE**

§ 21:1 Introduction
§ 21:2 Implied bias and statutory bases for cause challenges
§ 21:3 Burden of proving bias
§ 21:4 Standards for determining “actual bias”
§ 21:5 Determining when a juror can “set aside” a particular bias

CHAPTER 22. ABILITY TO FOLLOW THE LAW
§ 22:1 Importance of jurors’ ability to follow the law
§ 22:2 Distinguishing case-specific from hypothetical questions
§ 22:3 Case Study: North Carolina v. Hightower
§ 22:4 Roundtable Discussion: North Carolina v. Hightower

CHAPTER 23. ABILITY TO FAIRLY WEIGH THE EVIDENCE
§ 23:1 Introduction
§ 23:2 Weighing Competing Testimony
§ 23:3 Expert Jurors

CHAPTER 24. ABILITY TO FAIRLY DELIBERATE WITH OTHER JURORS
§ 24:1 Participating in Deliberations
§ 24:2 Juror expertise
§ 24:3 Effect of Expertise on Deliberations
§ 24:4 Significance of questions concerning juror expertise
§ 24:5 Legal bases for excluding “expert” jurors
§ 24:6 Bias and Ability to Follow the Law; An Inherent Conflict in the Framing of Questions on Voir Dire

CHAPTER 25. PEREMPTORY CHALLENGES
§ 25:1 General considerations
§ 25:2 Response to criticism of peremptory challenges
§ 25:3 Backstriking
§ 25:4 Number of peremptory challenges
§ 25:5 Non-Verbal Communication
§ 25:6 Role of non-verbal communication in voir dire
§ 25:7 Evaluating significance of non-verbal communication
§ 25:8 Evaluating verbal behavior

CHAPTER 26. DISCRIMINATORY USE OF PEREMPTORY CHALLENGES
§ 26:1 Allowable use of peremptory challenges
§ 26:2 Mixed-motive analyses
§ 26:3 Excluding Jurors on Account of Race
§ 26:4 Excluding Jurors on Account of Gender
§ 26:5 Excluding Jurors on Account of Disability
§ 26:6 Excluding Jurors on Account of Religion
§ 26:7 Excluding Jurors as Members of Other Protected Groups
§ 26:8 Burden of proving improper use of peremptory challenges
<table>
<thead>
<tr>
<th>Section</th>
<th>Content</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 31:4</td>
<td>Case study: Lawyers as jurors</td>
</tr>
<tr>
<td>§ 31:5</td>
<td>Roundtable discussion: Lawyers as jurors</td>
</tr>
<tr>
<td>§ 31:6</td>
<td>Sample voir dire: Victims of crimes</td>
</tr>
<tr>
<td>§ 31:7</td>
<td>Roundtable discussion: Victims of crimes</td>
</tr>
<tr>
<td>§ 32:1</td>
<td>Significance of questions concerning racial bias</td>
</tr>
<tr>
<td>§ 32:2</td>
<td>Questioning about Gender Bias</td>
</tr>
<tr>
<td>§ 32:3</td>
<td>Sample voir dire: Racial bias</td>
</tr>
<tr>
<td>§ 32:4</td>
<td>Roundtable discussion: Racial bias</td>
</tr>
<tr>
<td>§ 33:1</td>
<td>Significance of questions about religious and political beliefs</td>
</tr>
<tr>
<td>§ 33:2</td>
<td>Sample voir dire: Religious beliefs</td>
</tr>
<tr>
<td>§ 33:3</td>
<td>Roundtable discussion: Religious beliefs</td>
</tr>
<tr>
<td>§ 34:1</td>
<td>Introduction</td>
</tr>
<tr>
<td>§ 34:2</td>
<td>The “CSI Effect”: Questioning About Media Habits</td>
</tr>
<tr>
<td>§ 34:3</td>
<td>The Inconclusive State of Empirical Evidence</td>
</tr>
<tr>
<td>§ 34:4</td>
<td>Relevance of questioning on CSI effect</td>
</tr>
<tr>
<td>§ 34:5</td>
<td>Balancing the Equities</td>
</tr>
<tr>
<td>§ 34:6</td>
<td>High Profile Cases</td>
</tr>
<tr>
<td>§ 34:7</td>
<td>Effect of pretrial publicity on prospective jurors' self-perception</td>
</tr>
<tr>
<td>§ 34:8</td>
<td>Effect of pretrial publicity on jurors' ability to decide a case on the merits</td>
</tr>
<tr>
<td>§ 34:9</td>
<td>Controlling publicity during voir dire and trial</td>
</tr>
<tr>
<td>§ 34:10</td>
<td>Celebrity jurors</td>
</tr>
<tr>
<td>§ 35:1</td>
<td>Introduction</td>
</tr>
<tr>
<td>§ 35:2</td>
<td>Right to trial by jury in civil cases</td>
</tr>
<tr>
<td>§ 35:3</td>
<td>Cases involving claims for equitable relief</td>
</tr>
<tr>
<td>§ 35:4</td>
<td>Cases involving claims for punitive damages</td>
</tr>
<tr>
<td>§ 35:5</td>
<td>Cases involving arbitration agreements</td>
</tr>
<tr>
<td>§ 36:1</td>
<td>General considerations</td>
</tr>
<tr>
<td>§ 36:2</td>
<td>Right to trial by jury in criminal actions</td>
</tr>
<tr>
<td>§ 36:3</td>
<td>Habeas review of state criminal cases</td>
</tr>
<tr>
<td>§ 36:4</td>
<td>Double jeopardy</td>
</tr>
<tr>
<td>§ 36:5</td>
<td>Case study: Bias against defendants in criminal cases</td>
</tr>
<tr>
<td>§ 36:6</td>
<td>Roundtable discussion: Bias against defendants in criminal cases</td>
</tr>
<tr>
<td>§ 36:7</td>
<td>Sample voir dire: Burden of proof</td>
</tr>
<tr>
<td>§ 36:8</td>
<td>Roundtable discussion: Burden of proof</td>
</tr>
<tr>
<td>§ 37:1</td>
<td>Death qualification of prospective jurors</td>
</tr>
</tbody>
</table>

**CHAPTER 32. RACE AND GENDER BIAS**

**CHAPTER 33. RELIGIOUS AND POLITICAL BELIEFS**

**CHAPTER 34. EFFECT OF CURRENT EVENTS AND MEDIA**

**CHAPTER 35. CONCERNS UNIQUE TO CIVIL TRIALS**

**CHAPTER 36. CONCERNS UNIQUE TO CRIMINAL TRIALS**

**CHAPTER 37. DEATH PENALTY CASES**
§ 37:2 Supreme Court cases regarding death qualification of prospective jurors
§ 37:3 Problems from use of questionnaires in examinations regarding death penalty
§ 37:4 First case study: New Jersey v. DiFrisco
§ 37:5 Second case study: Arthur v. Alabama
§ 37:6 Third case study: North Carolina v. Conaway
§ 37:7 Roundtable discussion: Death penalty qualification
§ 37:8 Limitations on Habeas review in death penalty cases

CHAPTER 38. CONCERNS UNIQUE TO GRAND JURY PROCEEDINGS
§ 38:1 Introduction
§ 38:2 Bias Among Grand Jurors
§ 38:3 Fair Cross Section Requirements
§ 38:4 Peremptory Challenges

CHAPTER 39. MILITARY TRIBUNALS
§ 39:1 General considerations
§ 39:2 Who may serve on courts-martial
§ 39:3 Fair cross-section requirements in military juries
§ 39:4 Jury Selection for Military Panels
§ 39:5 Use of Volunteer Jurists
§ 39:6 Fair and Impartial Court Martials

CHAPTER 40. JUROR MISCONDUCT
§ 40:1 Introduction
§ 40:2 Juror's duty to participate
§ 40:3 Discussing the case before deliberations
§ 40:4 Independent investigations by jurors
§ 40:5 Communications with outsiders regarding the case
§ 40:6 Jury nullification
§ 40:7 Considering excluded evidence
§ 40:8 Participation of alternate jurors
§ 40:9 Standard for exclusion of jurors
§ 40:10 Post-trial juror interviews
§ 40:11 Restrictions on post-trial interviews and juror impeachment

APPENDIX
Appendix A. Sampling of Laws on Hardship
Appendix B. Sampling of Laws on Attorney Conducted Voir Dire
Appendix C. Sample Motions in Limine
Appendix D. Sample Jury Questionnaires
Appendix E. Sampling of Laws for Challenges for Cause

Table of Laws and Rules
Table of Cases