



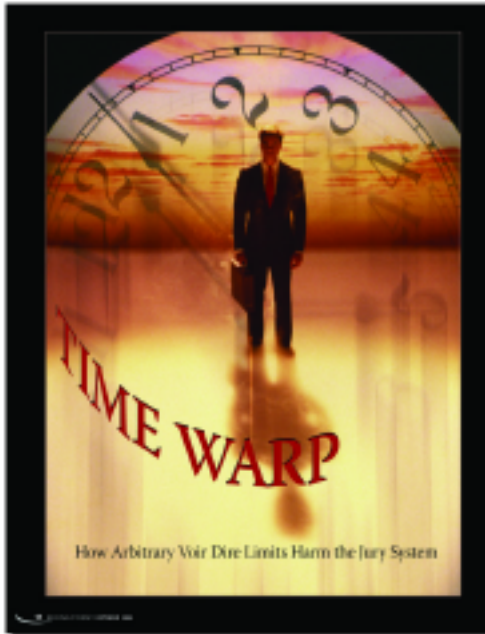
SOUNDOFF

UNPARALLELED

Re: "Parallel Universe," Dianne Post's letter to the editor in November:

I agree with Dianne Post. She lives in a separate universe from the rest of us.

—Gaylen Whatcott



The fundamental purpose of voir dire is to determine whether potential jurors have biased attitudes and biases that would deprive litigants of their right to a fair and impartial jury. Despite that purpose, most and more courts have begun to impose almost draconian limits on this vital trial tool. And these limits are occurring across the nation.

This article discusses how arbitrary time limitations defeat that purpose. Although the examples contained in this article focus on medical malpractice cases, the problems with limited attorney voir dire likely extend to most areas of real practice.

Many national bodies, including the Federal Judicial Center, have issued reports that suggest that the current voir dire process is flawed. The Federal Judicial Center's 1999 report, "Improving the Jury Selection Process," states that the current voir dire process is "flawed" and "needs to be reformed." The report also states that the current voir dire process is "inefficient" and "costly."

Why Attorney Voir Dire Is Important

Attorneys have a duty to ensure that the jury is fair and impartial. This duty is one of the most important duties of an attorney. It is the duty to ensure that the jury is fair and impartial, and that the jury is able to hear the case and make a decision based on the facts and the law.

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ed by the judge alone.

Civil Rule 47(b)(2) was amended in 1991 to assure lawyer voir dire in civil cases. The committee suggests that Criminal Rule 18.5(d) be conformed to its civil counterpart.

The suggested revision also reflects the committee's belief that the initial examination of the panel by the judge ought to be "thorough" rather than merely "preliminary" and that the rules ought to make clear that use of written jury questionnaires is permitted.

Suggested change to Criminal Rule 18.5(d) and Civil Rule 47(b)2:

The court shall conduct a thorough oral examination of prospective jurors. Upon the request of any party, the court shall permit that party a reasonable time to conduct a further oral examination of the prospective jurors. The court may impose reasonable limitations with respect to questions allowed during a party's examination of the prospective jurors, giving due regard to the purpose of such examination. Nothing in this Rule shall preclude the use of written questionnaires to be completed by the prospective jurors, in addition to oral examination.

21. Judges Should Receive Training in Voir Dire

All judges, but especially new judges, should receive mandatory training and education in the conduct of voir dire.

At present, only a few minutes of a new judge's training are devoted to examination of the jury panel.

Given the importance of voir dire to a fair trial, all trial judges, but especially new ones, should be required to attend educational programs devoted to voir dire and the judge's role in it.

—B. Michael Dann

Judge, Superior Court in Maricopa County (Ret.)
Chair, Arizona Supreme Court Committee on the Effective Utilization of Jurors

DEAR OLD VOIR DIRE

I agree with most of what Howard Snyder says regarding the unfortunate and unfair effects of severe and arbitrary limits on attorney voir dire during jury selection. In my experience, judges who prohibit attorney voir dire or impose "draconian limits on this vital trial tool" do so because they do not believe that the typical attorney voir dire is productive and/or do not want to take the time and do the hard work of policing attorneys' questioning of prospective jurors to assure that voir dire remains within proper bounds.

Mr. Snyder could have cited for support the now 12-year-old Report of the Arizona Supreme Court's Committee on the More Effective Utilization of Jurors, *Jurors: The Power of Twelve*. The Committee strongly supported attorney voir dire in civil and criminal trials and recommended additional training for judges regarding voir dire. I quote the brief text of Recommendations 20 and 21, since I cannot improve on them:

20. Assure Lawyers the Right to Voir Dire in All Cases

Lawyers for the parties ought to be entitled to examine prospective jurors in both civil and criminal cases. Trial judges should monitor lawyer voir dire to ensure that interrogation by counsel remains consistent with the purposes of voir dire and to safeguard juror privacy.

After discussing and weighing the advantages and disadvantages of lawyer voir dire, the committee members voted overwhelmingly to recommend that the Supreme Court amend the rules to create the right to lawyer voir dire in criminal cases. The principal reason for the committee's position is that lawyer participation in voir dire is more likely to result in a fair and impartial jury than if voir dire is conducted

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