
From: Cohen, Harold G. <hcohen@dilworthlaw.com>
Sent: Thursday, February 4, 2021 12:53 PM
To: Comments Mailbox
Subject: [External]Proposed changes to Voir Dire, text of Judges comments to jurors, instructions, etc.

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Folks:-

Kudos on the significant efforts undertaken to modernize *Voir Dire*, judges' comments & guidance to jurors and instructions in order to enhance impartiality of jurors. A few modest comments and/or suggestions:

1. Jurors are to be initially instructed that everyone (unequivocally and without exception) has inherent biases and preconceptions. That is a starting unassailable assumption. Jurors are subsequently directed to deliberate without implicit bias. The direction cannot be accomplished. Since we are all, apparently, indelibly imbued with bias and preconceptions, all that jurors can reasonably do is (during the trial and subsequent deliberation process) internally ask themselves if anything they hear or see is being filtered or impacted by implicit bias and/or preconceptions and to focus on setting those biases and preconceptions aside. Nothing more can be expected. If more is expected – the new language creates an implicit basis for appeal. Since all jurors are informed that each is, in fact biased and subject to prejudice, the basis for appeal will be that the jurors obviously failed to overcome those inherent biases. The prefatory judicial comments and final jury instructions should be modified to urge jurors to simply do the best that they can to overcome any explicit or implicit biases. They need not be perfect in that regard; simply be internally honest and we will assume that your decision will reflect success in sincere efforts to render an impartial verdict.
2. It's time to speak English and not Latin. Why not change "*voir dire*" to "the inquiry?" The empanelling of the jury is based upon an inquiry of each juror to determine acceptability to serve in this case.
3. The text continuously uses he/she, etc. Each person should be identified by position (i.e. prosecutor, defense counsel) or by John Jones – not defendant or plaintiff, by name without reference to sexual identity.
4. "Ladies and Gentlemen of the Jury" is now also outdated. Perhaps: "Members of the Jury" or, as I like to identify a group of people, "Folks."

Continue with your fine work.

Respectfully,

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