

## Jury Selection Logistics: Developing a System

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### ***Introduction***

*Imagine this. You're in jury selection on behalf of a large corporate defendant. You're down to your last peremptory challenge and you know you have to use it on the angry looking man wearing a t-shirt that reads "Workers of the World Unite!" So you write his name on the challenge sheet, hand it to the clerk and breathe a sigh of relief. Feeling good about your choices, you start to gather up your jury selection materials as the Judge thanks the excused jurors and starts to swear the jury. Then, to your horror, you look up and see that Mr. Marxist T-shirt is grinning at you as he completes his oath. What?! You frantically page back through your notes and your stomach sinks. You just excused the wrong juror because you misread your notes. It's going to be a very long trial.*

There are a lot of articles about what to look for during jury selection and how to prepare your *voir dire*. However, there is not a lot of information about one of the most basic issues – how to handle the logistics. This is unfortunate because being prepared and organized can make or break your jury selection. The deselection<sup>1</sup> process happens very quickly, and without an organizational plan, mistakes like the one described above are all too easy to make. Other pitfalls include miscounting the number of peremptory challenges left to the other side or accepting a jury without intending to do so in a pass/strike jurisdiction.

### ***Develop a Good System***

There are a variety of ways to keep track of jurors, but not all of them work well. For example, many attorneys will either draw a seating chart on a piece of paper or list the jurors on a yellow pad. However, neither of these methods is really very efficient. Once jurors are being excused and shifting seats these juror charts and lists quickly become an unwieldy and confusing mess.

Our preferred method is a seating chart using Post-it notes, which can be moved or removed as the jury composition changes. Others use computer software to achieve the same result, and there are even two iPad applications that claim to make jury selection easier. However, the process you choose really depends on what is most comfortable for you, as long as it satisfies a few basic requirements:

1. **It's Visual.** Your preferred system should allow you to see at a glance which jurors are currently "on" the jury and which jurors are coming up.
2. **It's Flexible.** Your system should allow you to quickly change and reconstitute the composition of this "jury" by moving the jurors around.

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<sup>1</sup> As always, we emphasize that "jury selection" is a misnomer. You don't choose which jurors on the jury, rather you deselect or strike jurors who you want to keep *off* the jury.

3. **It's Trackable.** Your system should allow you to record key facts and information about each juror in a manner that will enable you to keep this information linked to that juror.

Whatever method you choose, the important thing is that you be able to use it effortlessly. Your method should free you up to focus on the most important part of the process, which is organizing and analyzing the information so you know which jurors you need to question and which ones you need to strike. Jury selection is not the time to be flipping back and forth between computer screens trying to remember how to create a new file for each juror.

Jury selection also is not the time to start thinking about what information you will note in your chart. Instead, you should decide what information is most important before you walk into the courtroom and have a good, consistent shorthand way of recording it. Naturally, this includes basic demographics such as education, employment and socioeconomic status. In addition, you should devise a system for noting facts and issues that could mean a juror has a potential bias against your client. For example, in a toxic tort case you might use the letter "E" to identify people who are very concerned about the environment or "E-R/C" for a juror who has a relative with cancer. In an employment case the letter "F" might identify jurors who have been fired or had a dispute in the workplace. These symbols are simply examples of a fast, uniform method of flagging jurors to strike or for whom you need more information.

The other thing to consider is keeping a running grade on jurors. The grade may change during the course of questioning, but it helps to have an overview of the current "jury" at any given moment. You also may wish to note with a question mark people you might want to question during *voir dire*. These generally fall into three categories: 1) those you might be able to cause off the jury; 2) those who have issues that need to be further evaluated; and 3) those you want to try and rehab. By highlighting these jurors and their categories, you are better able to quickly make decisions regarding *voir dire*.

### ***Create a Backup System***

For every good system, there is always a duplicate backup system. This is especially important for challenging cause strikes, where recording jurors' exact words is particularly useful. Quoting to the judge the juror's exact words can help undermine opposing counsel's arguments. In conjunction with the Post-it note method, we recommend having a real-time transcript of the *voir dire* or having another team member taking a chronological record of the proceedings. This becomes very helpful when trying to put comments into context, especially when there are challenges for cause or even when Batson challenges are at issue. For example, we were able to remove a juror after a Batson challenge by reciting the exchange the juror had to establish a non-racial reason to excuse her.

### ***Keeping Up Through Peremptory Challenges***

A good system becomes even more important once the peremptory challenges begin and jury selection moves into hyper-drive. Jurors start moving around quickly as some are excused and

the remaining ones, either figuratively or literally, take new chairs. Therefore, we suggest using the jurors' names, not seat numbers, to identify them in your notes, and in making strike recommendations. Whether name or by number, ensure your team members are using the same language when quick decisions need to be made. If everyone on the team is referring to jurors differently, this adds to the confusion and takes away from the time you have to critically reflect on the jurors. Again the Post-it note method comes in handy here for two reasons. First, when strategizing who to strike, the team can remove jurors (via their Post-it) who are anticipated strikes to see the evolving make-up of the jury panel. This can be especially helpful when the decision is between two jurors; the team can envision the jury make-up when removing each. Second, when cause or peremptory strikes are made, removing jurors is easy and keeps the trial team focused on who remains on the panel.

In addition to altering the *composition* of your chart's "jury" so it reflects each challenge, you should have a way to keep track of the number of challenges each party has exercised, as well as what happens every round of challenges (i.e., did a party exercise a challenge or pass?). This can be done easily using the jury roll, noting the passes, numbering the strikes and noting which party struck the juror as the peremptory strikes occur. Once again, there are a variety of ways to do this; the most important thing is ensuring you have simple, consistent procedures.

### ***Conclusion***

At first, the concept of developing the kinds of systems described above may seem overly complicated and formulaic. However, once you establish a system, with a little practice it will become second nature. Then you will be free to concentrate on the real work of jury selection (i.e., evaluating potential jurors) confident that an inefficient organizational method will not undermine your efforts.