



How to Talk to Jurors About Race, Ethnicity & Religion in Jury Selection

Marlo P. Cadeddu
Law Office of Marlo P. Cadeddu, P.C.
www.marlocadeddu.com

To talk or not to talk. That is the question.



Lawyers' fears about talking to jurors about race:

- ▶ Desire to avoid uncomfortable topic
- ▶ Not knowing what language to use to avoid giving offense
- ▶ Fear of white lawyers that they lack “standing” to discuss race
- ▶ Fear of non-white lawyers that they will alienate white jurors
- ▶ Fear that bringing up race will embolden racists in the venire
- ▶ Fear that the judge will shut you down

Reasons to talk about it anyway

- ▶ Implicit racial bias exists whether we talk about it or not
 - ▶ Tests of implicit bias (IAT) show that 75% of Americans have implicit bias in favor of whites
 - ▶ 40% of African-Americans have pro-white bias
 - ▶ If we don't talk about it, the bias will still be there
- ▶ Talking about race actually reduces the effects of implicit bias
 - ▶ Studies show that jurors are less likely to convict African-American jurors after race-relevant voir dire
- ▶ The paradox: the more obvious the racial issues in a case, the less important it is to conduct race-relevant voir dire
 - ▶ Studies show race-relevant voir dire is most effective when defendant's race is the only racial issue

Approaches to voir dire

- ▶ The traditional approach:
 - ▶ Bond with jurors
 - ▶ Educate jurors
 - ▶ Identify good jurors and insulate them from challenge
- ▶ The de-selection approach:
 - ▶ Gather information that exposes bias
 - ▶ Identify jurors with a bias against you
 - ▶ Lock them into the bias and challenge for cause



How race-relevant questioning affects choice of voir dire approach

- ▶ Most (but not all) jurors will resist admitting and confirming racial bias
- ▶ De-selection approach assumes racial bias as a fixed characteristic
- ▶ De-selection approach minimizes importance of educating jurors and leaves to end of voir dire
- ▶ If asking about race reduces effect of implicit bias, why not lead with it?
- ▶ **CONCLUSION:** On race, lead with race-relevant questioning to reduce implicit bias and then use de-selection on unrepentant racists



CASE STUDY:

LESSONS FROM THE JOHN WILEY PRICE TRIAL

Issues potentially implicating race

- ▶ Recent history of serial public corruption prosecutions of black politicians in Dallas (Lipscomb, Hill)
- ▶ JWP's history as outspoken advocate of African-American issues
- ▶ Only alleged bribee charged; bribers alleged to have been unknowing participants
- ▶ JWP "flamboyant" in his personal life - clothes, relationships, cars
- ▶ North Dallas versus South Dallas subtext
- ▶ Relentless publicity

Defense Goals

- ▶ Seat a racially representative jury
 - ▶ Studies show that mere presence of a single African-American on a jury reduces racial disparity in conviction rates as between African-American and White defendants
- ▶ Seat educated jurors who could evaluate complex financial transactions
- ▶ Avoid seating jurors with strong preconceived notions about JWP

JWP Seated Jurors & Alternates

- ▶ 8 white
- ▶ 4 African-American
- ▶ 2 Hispanic
- ▶ 1 South Asian
- ▶ Lawyer
- ▶ Accountant
- ▶ Nurse
- ▶ Psychologist
- ▶ 2 Teachers



Most effective jury questionnaire questions for eliciting juror views on race:

- ▶ Who do you most admire
- ▶ Who do you least admire
- ▶ Do you think some groups of people are treated differently by the government than others? Explain.
- ▶ What role, if any, do you think that race plays in our criminal justice system
- ▶ Do you think that African Americans are treated less fairly than white defendants by the criminal justice system? Explain
- ▶ Select the statement that best describes your opinion about the following phrase: “The Black Lives Matter movement is responsible for violence against police officers.” Strongly disagree, Somewhat agree, Somewhat disagree, Strongly agree
- ▶ **One I might consider adding:** If you have a Facebook or other social media accounts, how many nonwhite “friends” do you have?

Least effective jury questionnaire questions for eliciting juror views on race:

- ▶ Select the statement that best describes your opinion about affirmative action. Very negative, Somewhat positive, Somewhat negative, Very positive
- ▶ Have you “liked,” posted, commented, or otherwise engaged with any organization dedicated to Confederate heritage?
- ▶ What do you think of the current state of race relations in the United States?
- ▶ Are there any racial, or ethnic, or religious groups that you do not feel comfortable being around? Explain.
- ▶ Are you a member of, or do you support, share beliefs with, follow on social media, or have you visited the websites of any of the following organizations: the Ku Klux Klan, the Christian Identity Movement (or Christian Identity), or any other white supremacist organization(s)?

Lessons on what not to do from the John Wiley Price trial jury selection

- ▶ A few hints...



A few words about religious bias in jury selection

- ▶ In national security cases, jurors far more likely to admit to religious bias than racial bias
- ▶ Expressing Anti-Muslim sentiment is more socially acceptable than expressing racist views
 - ▶ (with rise of white heritage movements, may be changing)
- ▶ De-selection approach safest
 - ▶ Religious biases are more explicit and less implicit
 - ▶ Impossible to educate jury on entire religion in voir dire