

Stereotype Meets Bias In The Courtroom

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"I am I, plus my circumstances."
Jose Ortega y Gasset, Spanish philosopher
1883-1955

Jurors' spoken commitment to fairness during voir dire does not zap them of their biases, awareness of stereotypes or other beliefs impacting the voir dire process or their deliberations. What prompts jurors to categorize, generalize and believe stereotypes? Webster's Dictionary defines a stereotype as a common belief repeated without variation. Similarly, bias affects juror decision-making because it often is an integral part of one's thinking. Webster's defines bias as being an inclination of temperament or outlook, such as harboring prejudice.

This newsletter provides a discussion of stereotypes and bias as corresponding facets impacting both voir dire and jury deliberations. Quotations from jurors as stated throughout this article are taken from post-trial interviews, responses to survey questions, and statements made in court during voir dire.

The Recurrence of Stereotypes

In their survey responses, jurors maintain that stereotypes develop from differences in appearance (presence, physicality), ethnicity (color of skin, accent), economics (employment, material belongings, geographical area), social status (location of home, circle of friends), religious beliefs (customs, dress) or other conditions (emotion, upbringing).

Jurors acknowledge that stereotypes should be approached with caution even though most jurors admit episodes of relying on them at some point in their lives when making judgments and decisions.

"Stereotypes don't come out of nothing. People use them to simplify a complex world, and can be useful in such a way, but can be overused quite easily. One should always be prepared for exceptions." Santa Clara County male juror

In fact, jurors state that stereotypes have more influence on our society than most of us would care to concede. When asked to list common stereotypes, some jurors admitted feeling embarrassed to list even those seemingly positive, e.g., "The Japanese are humble and respectful." The embarrassment lies in the recall, perception of the generalization, and whether or not it should be believed.

According to jurors, the media appears to be the most culpable for perpetuating and giving prominence to certain stereotypes through repetition. With a broad stroke, the media promotes stereotypes through television sitcoms, comedy shows, commercials, movies, and even with the nightly news focus on crime reported in certain areas. On a more personal level, jurors surmise that stereotypes can be passed down from generation to generation through repetition, family values, or the credibility of a respected family member who either intentionally or unintentionally provides perspective on and opinion about the stereotype. Lastly, observations and life experiences influence jurors' viewpoints, with some people believing a stereotype evolves from some truth while others choose to dispel it altogether.

"We try not to go there, but I think human nature — the way we were raised, experiences, and many other things — economic levels, education, jealousy and fear — color our feelings." Santa Cruz County female juror

Stereotypes Emerge During Voir Dire

Under the scrutiny of voir dire, potential jurors have awareness of what statements are socially acceptable or unacceptable to express in open court. But, for some, a stereotype may take hold with conscious belief that their honesty is free of prejudice.

"The case was domestic violence and the defendant was a large linebacker-size black man. He looked almost like a pro football player. The trial was expected to last [two days]. During the interview phase, I was juror #3 and was ready for that. The defense counsel asked, 'Who would right now vote guilty, innocent or undecided?' I raised my hand and said, 'I'd vote guilty because it looks like a slam-dunk from here.' He looked surprised and when he asked why, I said, 'Well, think about it. It's a short case, it has all the stereotypical components. I'm sorry to say it but that's my very first impression, regardless of what the law says I should think.' I was the first juror excused after their pow-wow in chambers. So I felt kind of bad about what I'd said but I wasn't making anything up." Contra Costa County male juror

In response to this statement, counsel should thank the juror for the opinion and willingness to be so forthcoming, and ask who else in the jury pool would agree with this juror's sentiment. Since the judge instructs prospective jurors to be forthright and honest, jurors seem to rationalize that their blunt opinion fulfills the court's request. In the end, it is better to have true feelings filtered out at this point in the proceedings as compared to such feelings later tainting deliberations.

On the other hand, some prospective jurors would never come forward and publicly agree with the above statement or one of similar type even though they feel some agreement with what was expressed aloud. Jurors state that they feel compelled by social pressure to state politically correct opinions. They feel anxious about how they would be perceived to others, even to a room full of strangers.

By comparison, they lack the confidence and moxie of a stealth juror who also stays silent. But, the stealth juror typifies one with a hidden agenda seeking personal gain, e.g., a book deal in a high profile case, or harbors an interest in manipulating other jurors to achieve a specific outcome.

"The plaintiff was a Vietnamese woman who had been in an automobile accident. We were asked in court, 'Any reason why you can't be fair and impartial?' I wanted to say, 'Asian drivers are bad.' But, I could not be straight-forward because it is politically incorrect. It is okay to say it in the privacy of my own home, but not in public. Then, after the shock of being kept on the jury after the questioning, I told myself that I could be fair." Alameda County female juror

Later, this same juror may have subconsciously examined her own feelings about her belief in and reliance on stereotypes when she described her emotions at the conclusion of trial. Finding fault with the judicial system for failure to achieve a settlement seemed to have masked her feelings of inadequacy and her admission that justice may have eluded this plaintiff from their deliberations.

"We came to our verdict and then we went home. The trial was over. I didn't feel good. I felt that I wanted to be fair to both sides. No one wants to be in an accident and I felt like we weren't entirely generous. But, I can't believe that this case couldn't settle." Alameda County female juror

Bias Intertwined with Stereotypes

The riddle about the chicken or the egg evolving first may apply to bias and stereotype. Some jurors admit that a bias might reveal some conviction in a related stereotype. Also, certain bias, when given heightened attention due to world and economic affairs, might transition into a stereotype.

"Muslims are going to kill everyone." Santa Clara County male juror

Sometimes, counsel's aggressive voir dire style of questioning may inhibit a prospective juror from revealing an honest response during group voir dire regardless of whether it resembles bias or stereotype.

"With the first round of jurors, grilling was extensive if someone gave a slightly off answer." San Francisco male juror

In the end, jurors do not erase their personal characteristics of bias, attitudes and opinions.

"When I was growing up, I remember my father, who was a World War II veteran, talking at the dinner table about the Germans. He never forgave them for the death and destruction that they caused. I married into a German-American family and my in-laws matched the German personality that my father had described. When I was called for jury duty in a criminal case, the defendant was a German immigrant. Defense counsel asked if anyone would find it difficult to serve because he was German and had a heavy accent. I wanted to raise my hand, but I did not have the confidence to tell everyone my background and to be questioned about it. Yes, I have a bias and I attribute it to my upbringing and my experience with my in-laws." Alameda County female juror

Conclusion

Any discussion pertaining to stereotypes and bias in the courtroom cannot end without the argument for use of a juror questionnaire during voir dire. During group voir dire, jurors will not reveal a sensitive life experience or controversial opinion if they can avoid it. Regardless of whether a questionnaire is allowed by the judge, sensitive topics necessitate counsel to engage a prospective juror in a neutral discussion of what the juror from Santa Cruz aptly noted: "...the way we were raised, experiences, and many other things — economic levels, education, jealousy and fear."

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