

A TEACHING RESOURCE FOR PSYCHIATRY RESIDENTS

VIEW FROM THE JURY BOX:

Clark v. Stover

A Psychiatric Malpractice Mock Trial

THE LITIGATION PROCESS

JURY SELECTION - VOIR DIRE EXAMINATION

Voir dire is the process by which a jury is chosen. Juries may range in size from six to twelve people depending upon the jurisdiction. The process begins with a number of people equal to the size of the jury being called to the jury box. Potential jurors are then asked questions about their prior knowledge of the case and whether they have any other experiences, opinions, or connections that might prejudice them against one side or the other.

During voir dire, either attorney may ask that a prospective juror be dismissed if he or she reveals information that might indicate a bias. For example, if someone were a relative of the plaintiff or defendant. This type of dismissal is a dismissal *for cause*. Each side has an unlimited number of challenges for cause and the judge also may determine, on his or her own motion that a prospective juror should be struck for cause.

In addition, each side will be given a specific number of *peremptory challenges* that allow them to dismiss a prospective juror without stating a cause. This is typically done because the attorney believes that the juror – for whatever reason - may not be likely to find in his client's favor. The laws of the jurisdiction determine the number of peremptory challenges available to each party.

VOIR DIRE EXAMPLES

1. Has any potential juror, family members or friends ever brought any suit or claim against any medical healthcare provider or, indeed, against anyone?
2. Has any potential juror, family members or friends had suit or claim brought against them?
3. Is any potential juror, family member or friend a member of the healthcare profession in any way (doctor, nurse, technician, etc.)?
4. Do the jurors believe that, simply because we are in a courtroom, the doctor/therapist/hospital must have done something wrong or do they realize that, anyone can file a suit and that there is no pre-screening process? (NOTE: Pre-suit filing requirements/procedures vary by state).

5. Do the potential jurors understand that the other side must prove the doctor did something wrong and, separately, that such action caused injury?
6. Can each person promise to keep an open mind during the entire trial because the other side goes first and, except for defense opening statement, the jurors might not hear defense witnesses for days or weeks?
7. Does everyone understand that simply because the result was not desired does not automatically mean that someone did something wrong?
8. (If a corporation is involved, the jury would be asked to commit that the corporation would be treated the same as a live person.)
9. Will each juror be able to commit, as far as humanly possible, to place sympathy aside and decide the case on the facts even though they may grieve for the patient, family members, etc.?
10. Do the jurors understand that when attorneys object, it is not to keep information from them but is merely asking the judge to make a legal determination that what is being done is in accordance with the law?
11. Are there any jurors who believe that medicine has all the answers and that a diagnosis and course of treatment should always be made during the first meeting with the patient? Can they accept that care is a continuing process?
12. Can the jurors understand, if the evidence is presented to them, that different doctors can look at the same situation and reasonably come to different conclusions?
13. Can the jurors promise to judge the doctor in accordance with the issues known at the time of interaction with the patient and, while doing that, set aside what ultimately occurred, if there was a result that was not desired?
14. Can the jurors commit to doing no independent research during the course of the trial whether it be on the internet, the family medical guide, discussions with others, etc.?

You are probably familiar with the concept of being tried by “a jury of your peers” but you should be prepared for the fact that the jury will not likely be your peers but rather a cross-section of your community who has little or no medical knowledge. However you may rest assured that your attorney will do his or her best to ensure that the jury picked will be conscientious and will do their best to understand the testimony and render a fair decision.

