

JEFFREY T. FREDERICK, *MASTERING VOIR DIRE AND JURY SELECTION* (American Bar Association ed., 4th ed. 2018).

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**Mastering Voir Dire and Jury Selection: Gaining an Edge un Questioning and Selecting Your Jury**

*The internet is both a potentially powerful tool in terms of jury selection and a potential threat to the integrity of jury trials*

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Jeffery Frederick's 2018 *Voir Dire* delves into the critical concerns attorneys must be aware of and the techniques attorneys should implement while selecting a jury for their clients. The book illustrates how attorneys should observe and help conduct jury selection based upon numerous factors. This new edition discusses the growth of the internet and the ways in which attorneys can use this technology to help determine who is the best fit juror for their case. The *Voir Dire* also discusses the challenges and inevitable concerns technology is causing for our legal system.

This book review will focus on a specific section of the *Voir Dire* involving jurors and the potential biases of jurors, specifically the internet. The review will illuminate whether or not the internet is making too big of an impact, to solely be curtailed by the suggestions outlined in Frederick's *Voir Dire*. Additionally, the book review will discuss whether or not the suggestions by Frederick are likely to cause judicial concerns for the courts and the American people.

Jeffrey Frederick is the director at the Jury Research Services Division of the National Legal Research Group.<sup>1</sup> Frederick received his B.A from the Pacific Lutheran University, and his M.S and Ph.D from North Carolina State University.<sup>2</sup> He has spent many years practicing on both sides, prosecution and defense, as well as participated in both, criminal and civil matters.<sup>3</sup> With his extensive legal work and assistance on hundreds of cases, Frederick has written three key pieces of legal writing discussing the extensive and ever-changing process of jury selection.<sup>4</sup> His works include: *Mastering Voir Dire and Jury Selection: Gain an Edge in Questioning and Selecting your Jury*<sup>5</sup>, 4<sup>th</sup> edition (2018), *Mastering Voir Dire and Jury Selection: supplemental juror questionnaires (2018)*<sup>6</sup>, and *The Psychology of the American Jury (1987.)*<sup>7</sup>

The Voir Dire discusses jury empanelment and the best ways to get ahead of particular biases. The book addresses the typical concerns of jury selection, like personal biases due to individual experiences, religion, family structure, education, racial background, and even a juror's overall perception of the law. The Voir Dire looks to give practicing attorney's a variety of things to look for in hope of determining whether or not a juror is likely to be impartial. However, while the book addresses jury empanelment concerns that have existed for many years, the book addresses a new concern, the rapid growth of technology and social media.

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<sup>1</sup> See *About the Speaker: Jeffrey Frederick*, AMERICAN BAR ASSOCIATION (2018), archived at <https://www.americanbar.org/content/dam/aba-cms-dotorg/products/inv/book/305557543/About%20the%20Author.pdf> (discussing how Frederick has been involved with this area of the legal field since 1975)

<sup>2</sup> See *id.* (articulating Frederick's many years of work in various spheres of the legal profession).

<sup>3</sup> See *id.* (commenting on Fredericks work in the Department of Justice, Office of Independent Counsel, US Attorney's Offices, state prosecutors and criminal defense offices).

<sup>4</sup> See *id.* (addressing Fredericks extensive discussions on jury trials and trial advocacy).

<sup>5</sup> JEFFERY T. FREDERICK, *MASTERING VOIR DIRE AND JURY SELECTION* (American Bar Association ed., 4<sup>th</sup> ed. 2018)(explaining indicators to look for in jurors responses to determine bias or impartiality).

<sup>6</sup> JEFFERY T. FREDERICK, *MASTERING VOIR DIRE AND JURY SELECTION: SUPPLEMENTAL JUROR QUESTIONNAIRES* (American Bar Association ed., 2018)( outlining various specific questions to sift through jurors during jury selection).

<sup>7</sup> JEFFERY T. FREDERICK, *THE PSYCHOLOGY OF THE AMERICAN JUROR*, (Lexis, 1987) (explaining the verbal and non-verbal commentary by jurors as indicators of bias).

The Voir Dire is broken up into chapters that span from introductory material on selecting jurors and the style behind it, all the way to analyzing a juror based upon their social media accounts and their tone of voice. Chapter one focuses on the jury selection process as a whole and the role an attorney must play in the process of selection. Attorneys must build rapport with the juror, as well as being able to persuade the juror to their side of the case. Chapters two and three discuss jurors individually and what identifiers to look for based upon the answers given in the questionnaire, as well as the verbal answers given when questioned by the judge. Chapter three specifically touches upon the non-verbal cues jurors may give and how significant these non-verbal communications can be. Frederick discusses the importance of cues like shoulder shrugs, eye contact, vocal hesitancy, word choice that could be good indicators of a juror's anxieties or tendencies they may implement throughout a trial if selected.

Chapters five, six and seven all discuss the best way to pose questions and build rapport with the potential juror during this critical stage of trial. The way these questions are posed will allow for insight into a juror's opinion on a potential key issue. These chapters also discuss the common problems with jurors and how to work around the "difficulty" or "stealthy" juror. Chapter eight is where the Voir Dire addresses the concerns of jury selection and the internet. This chapter discusses ways to use juror's internet activity to determine their fitness to sit on the jury, while also analyzing the possible concerns the internet raises for maintaining an impartial fact finder. The last three chapters of the book, nine, ten and eleven, continue on with the discussion about proper jury selection and preemptory challenges. These last three chapter also give helpful sample questionnaires for practicing attorneys to use.

Frederick looks to create a Voir Dire that focuses on the skills needed to ensure an impartial fact finder is selected. He looks to explain that every jury trial is different and the mechanisms and questions used to select a jury must be done on a case by case basis. Frederick lays a clear foundation for selecting jurors based upon his years and years of experience. Frederick explains avenues attorneys can take during jury selection to protect their clients from possible biased jurors, involving monitoring of social media accounts and signing up for alerts on websites to be notified when a user looks up or posts on the website certain key words, like jury duty. This book is clearly written for any practicing attorney to follow and use. Also, while it could be argued a Voir Dire is more useful to new practicing attorneys, this Voir Dire could benefit all. Older practicing attorneys may benefit from this Voir Dire as it addresses a new issue, the internet and social media, that wasn't of much concern in years prior.

While Frederick explains that these mechanisms suggested to curtail internet influences are usually accepted by the courts, the avenues discussed are unrealistic. Prior to jury empanelment prosecutors and defense attorneys do not have the time nor resources at that moment during jury empanelment to go through a potential juror's entire internet footprint. Attorneys must be present and ready to comment during the empanelment process and cannot be on their phones or computers doing research about what X juror posted last week on Facebook. Frederick's mechanisms may work once a jury has been selected to ensure they are not communicating about the case from that moment on, but to suggest this type of oversight during the empanelment stage would be impractical. Additionally, jury empanelment is already a long tedious process that results in many jurors being disqualified for various reasons, if jurors become aware of the possibility that they are being researched and will be kept under surveillance during the trial, people will be

even more inclined to be “difficult” potential jurors in hopes of getting out of this civic duty.

This Voir Dire was insightful in regard to jury empanelment as a whole. The book extensively explains the process of jury selection, as well as important things to keep in mind when going through the selection. I believe this Voir Dire would be beneficial to practicing attorneys who are going through the process of a jury trial. While the book is quite lengthy and expensive, I believe it would be a beneficial book to have on hand to reference. While the internet section seems to be underdeveloped, the rest of the Voir Dire is clear and cohesive on the mechanisms of jury selection.