

The Perils of Voir Dire

It was 1990, my third year as a lawyer. The trial was in Birmingham, Ala. The plaintiff was a scrap-yard owner who had purchased a hydraulic cutting shear from our client to attach to his backhoe in order to cut up old rail cars for scrap.

The cylinder end-cap failed and polluted the hydraulic system of the backhoe. The scrapper sued our client and the cylinder-maker to recover \$100,000 in costs to repair the backhoe. The scrapper's attorney, handling the case on a contingent fee, had also conjured up a concealment claim for millions in punitive damages.

The trial judge believed in wide open voir dire. The scrapper's attorney, wearing a tan seersucker suit and suspenders, proceeded to strut around the courtroom for a good 10 minutes, talking in a thick Southern accent about the "facts" of the case, occasionally pulling on his suspenders. He mentioned five times how the scrapper and his family were lifelong Alabamians. He talked about the grave injustice that had been visited on the scrapper by Northern industrialists. There was so much emotion and righteousness in his voice you would have thought that our

client's shear had exploded and killed the scrapper's family.

He then told the potential jurors that he would now ask them a few questions about their backgrounds. He looked down at his notes and said, "Juror No. 5, Mr. Bulregard, can you raise your hand?" He then walked over to the rail of the jury box where Mr. Bulregard was and looked at him earnestly.

"Mr. Bulregard, the jury questionnaire says you served on a jury before. Is that correct, sir?"

"Yes."

"So you are an expert in trials, are you not, sir?"

"I do not know if I would go that far."

"Well, I trust you know what this here voir dire process is all about, don't you, sir?"

"Yes. This is where you ask us questions to make us like you."

It was like a pin puncturing a balloon. The judge laughed out loud. Several of the jurors snickered. The scrapper's attorney asked three more questions and then sat down.

After two days of trial, the case settled favorably for our client, with the scrapper's attorney explaining, "I am just not getting any heat with this jury."

*Scott Cessar
Pittsburgh*



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We'll choose the best of the best to share with our readers in an upcoming issue of *The Pennsylvania Lawyer* magazine. Email your "war story" to us at editor@pabar.org or mail it to Editorial Director, *The Pennsylvania Lawyer*, P.O. Box 186, Harrisburg, Pa. 17108-0186.