

A MODERN APPROACH TO JURY SELECTION:  
Revisiting the Myth of the Fair and Impartial Jury

An Interactive Presentation by Chad W. P. Kelliher and the Holloway Inn of Court  
Student Members

Ask many lawyers what they want out of voir dire and they will tell you a fair and unbiased panel. Review a laws school Trial Practice textbook and it is likely to tell you the same thing. Why do we want something that doesn't exist? What kind of lies are we telling ourselves, our clients, and the next generation of lawyers? Even our Oklahoma Uniform Jury Instructions tacitly acknowledge this reality.

If we are lucky, really lucky, we might get a fair panel. That is, a panel that is willing to hear all the testimony and consider all the evidence before making a decision. But unbiased? I would submit never in the history of jury trials has there been a truly unbiased jury panel. That is because there is no such thing as an unbiased juror. That is because there is no such thing as unbiased person. Like or not, try as hard as we might to leave them at the door, we all have biases we carry into a courtroom. Our prospective jurors are no different.

Every human being has biases. Every human being brings those biases and the sum total of their life experience with them into a courtroom. Those biases may help you and your clients or they may hurt you. Either way, they are there and we must deal with them.

Perhaps we should reconsider what we as lawyers want from the jury selection process. Rather than aiming for a target that we'll never hit, perhaps we should seek out a panel that will fairly and honestly discuss their biases.

Perhaps in exploring those biases we should seek to establish a human connection with our jurors by confronting our own biases and facilitating an environment where they can honestly acknowledge and discuss theirs.

Perhaps we should start by accepting a fundamental truth, that as human beings we are not as different as we may seem and we might have more in common than we ever thought possible. As lawyers it is our responsibility to step into that space and explore those connections that exist between us and our jurors, between the jurors and our clients, and to facilitate a process where they might find those connections between each other.

With the help of a few courageous law students we hope to provide an interactive look at a new way of conducting voir dire. Perhaps in doing so we might even find a common connection we never knew existed.