

A MEDLEY OF METHODS--THE MOST SUCCESSFUL APPROACH

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Harsh attitudes prevail toward criminal defendants in many parts of the United States, one of the very few Western countries to have the death penalty. Many states in this country still have this practice, reflecting the harsh views of the public; i.e. jurors' views. Although many jurors do not believe in the death penalty and many jurors do feel that the problem with the death penalty is that it should be imposed uniformly and fairly, many jurors still do not see that a problem with the death penalty or the criminal justice system exists. This attitude pervades the entire criminal defense system. This is the unfortunate system in which your client will be tried.

In an effort to exclude jurors who are strongly biased for whatever reason against your client, I recommend a number of methods be used together. No one method should be used to the exclusion of the other methods.

We will quickly go through the methods and point out the difficulties if they are used in isolation.

1. The questionnaire approach. Although this method has been used very successfully, courts are not uniform in the use of this method. Even at this late date, a number of courts do not approve of questionnaires, approve of the use of questions that really measure attitudes regarding race and mitigation. When the questions are constructed properly and the questionnaire is graded correctly, it can be a great benefit.
2. The mock jury approach. Although this method has been endorsed by many civil organizations including ATLA and NITA, the results depend on the ability of the lawyers to anticipate what the opposition will present and to have access to the evidence before the mock jury exercise. This method is particularly beneficial in an effort to prepare the lawyers to develop their case and to get feedback for their presentation style. The mock jurors almost always come up with questions and answers that help the lawyers with the case. Often the mock jury approach provides the client with the reality of the situation.
3. The Colorado Method (which uses a seven point rating scale including attitudes towards the death penalty and mitigation) is another useful method in death penalty cases, but again must not be used in isolation. This method is useful for measuring attitudes, but fails for the "sophisticated" jurors who know what the "right answers" are to both mitigation and death penalty. For example, police officers can easily give the "right" answers and but placed on juries. The questions on the Colorado method are simply not as valid as the questions developed for questionnaires by social scientists.

4. The shadow jury is useful to give feedback on a daily basis. In this method a group of “paid mock jurors” sit in the back of the courtroom and give the lawyers feedback each day. They write down their answers about whether or Not they understand the case. (Did the lawyer seem mean or uncaring, was the lawyer too passive, did the client have an appropriate demeanor, etc.)
5. The survey method is also valuable. This method is one of the more expensive methods. Again, valuable information may be gained from prior studies. Many studies have been done by criminologists on almost all areas of the law—capital punishment, child sexual abuse, police brutality, rape, white-collar crime, alcohol consumption, drugs use and sale, battered wife syndrome, and racial, sexual, and age discrimination. Attitudes about the fairness of the system have been measure systematically.

Because each of these methods have strengths and weaknesses, it is best to use as many as possible, particularly if the stakes are high. Many lawyers have a favorite method, but it is critical to learn more than just one or two methods.

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