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New and young lawyers will definitely receive training on how to conduct voir dire. Unfortunately, training on how to properly conduct a post-trial interview of jurors is far less ubiquitous. Voir dire relies on assumptions about how a juror may respond to the facts and case presented. These assumptions are based on his or her background and other personal attributes. A properly conducted post-trial interview provides insight into the thoughts of a juror and the juror’s analysis of a case. Attorneys use post-trial juror interviews to openly discuss juror opinions. These interviews are especially useful to obtain feedback and analyze the effectiveness of the trial strategy, attorneys, and witnesses.

Attorneys can use post-trial juror interviews to determine where jurors could not agree. For instance, in a recent wrongful death case, the attorneys from both sides briefly interviewed jurors in the hallway after trial. This specific case ended in a hung jury. There was animosity among the jurors because of their inability to reach a verdict. A small group of jurors exited the court room and could not be interviewed. The remaining jurors congregated in small groups outside the courtroom. The attorneys spoke with the jurors, but any chance of effectively interviewing jurors was frustrated because of the attorneys’ inability to speak with jurors individually and away from opposing counsel. Neither side wanted to openly discuss juror opinions for fear of informing opposing counsel as to their theory of why the jury could not agree. However, these attorneys could have taken steps to better manage the post-trial interview process, as discussed below.

The first step to a successful trial interview is to understand local rules regarding communication with a juror. A trial court determines if and when a juror interview may occur. Some courts prohibit post-trial interviews while other courts allow them upon request. The majority of courts thank their jurors for their service and advise them that they may speak with the attorneys about the case, but jurors are also advised that they are not required to do so.

Many attorneys choose not to conduct juror interviews when the verdict is in their favor because attorneys fear the interview will reveal details that could lead to the verdict being overturned. While that may be a legitimate concern, if opposing counsel appears likely to appeal or if the verdict was against your client, then it is worth considering doing a post-trial juror interview.

Assuming a post-trial interview is allowed, the second step is to determine when the interview should take place. Before the trial concludes, decide when and where you will speak to the jurors. It is also helpful to think of the subject for your conversations. It is usually difficult to have any meaningful conversation with jurors immediately following trial because these conversations are often rushed. The conversations are rushed because some jurors may feel overwhelmed with the process and simply want to leave, but there is also the possibility that a juror may be talkative and you will not be able to break to speak to a different juror. It is most
efficient to introduce yourself, thank the individual for jury service, and ask whether you can contact the individual later to discuss the case. Once you receive contact information, make the call within two to three weeks of trial and contact as many jurors as possible.

The third step is deciding who should make the call. Jurors answer questions differently based on the person to whom they are speaking. Jurors may be more willing to go into detail when answering questions for the side they favor. Some jurors may be more willing to speak with someone other than the lawyer from trial. Helpful alternatives include paralegals, staff, or a third-party vendor. It is best that whoever makes the call introduces himself or herself, states the party he or she represents, and explains the purpose of the call. It may be best that the interviewer be someone other than the attorney who conducted trial in order to avoid potential bias in the interview. Any initial reluctance to discuss and share will often go away once a caller establishes rapport with a juror.

Finally, what information should be discussed? Before making the call to jurors, it is best to outline the intended subject matter. Attorneys often think that they know what information is or is not important at trial. The jury may believe differently. Look to determine what facts the jurors considered important and what strengths and weaknesses of the case they saw. Allow jurors to talk about what they considered important and why. This can all be achieved by asking open-ended questions. The following are some example questions: What facts or information was persuasive? Were there facts or information that jurors wanted but did not receive? How did the jurors deliberate? Did any juror strongly advocate for a specific side? What does the juror remember from opening and closing arguments? Which witness was most persuasive? Were trial aids effective? How were damages decided? What did the juror think of each attorney? Most importantly, listen to the jurors and use their comments to lead the conversation.

An attorney should document all information received in a post-trial interview. This information can be extremely helpful for later use and analysis. Ask a juror’s permission to record the interview from the start of the call. This can avoid missing information because it can be difficult to take notes and listen. Whether or not the interview is recorded, make sure the information is summarized in a memo for preparing to try similar cases. In addition, share the information with the critiqued attorneys for their use and reflection.

Ultimately, post-trial juror interviews are extremely helpful to gather information on what went right or wrong. Attorneys often do not receive feedback on their performance. A juror’s opinion and feedback are important for future cases. Being open to listening is key. Jurors often have many thoughts and reactions they want to share, and these are likely the concerns they had in their analysis of the case.

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Nine Divine Tips for Trial Attorneys
By Robert K. Dixon

Because trial skills are vital to thrive in our highly competitive profession, we took a moment to meet with current and former trial attorneys. Here, these elite attorneys offer tips based on their frontline experience in countless trials.

Civil Cases Are All about the Benjamins
As R. David Ware explains, “Civil cases are about money, pure and simple. Do not get sidetracked on other issues. Either the jury will award money or they will not. Trying to make the trial about something else—‘coincidence,’ ‘inconsistencies,’ or ‘credibility’—will be lost on the jury. The jury’s unwavering focus will be on whether to award money, and no matter how the trial ebbs and flows, your focus must remain on whether you are making headway on the money issue.”

Preparation, Preparation, Preparation
The Honorable Chisa Putman has seen trial preparation from all sides—plaintiff, defense, as well as from the bench. According to Judge Putman, “There’s a difference between merely preparing and effectively preparing. You can research for weeks or months prior to the trial, depose for months on end, but none of that matters if the judge and/or jury cannot decipher it from your actions. Not only do you have to collect the information; you need to organize the information so that it flows, and this includes witness lineup, questions for the witnesses, and presentation of evidence. It is highly disappointing and distracting to see an attorney fumbling through paperwork because he or she is unorganized.”

Avoid Picking a Jury in the Afternoon
“It’s not good to pick a jury in the afternoon,” according to Alicia Wilson with Sagamore Development Company, because jurors “are tired and they think that they are going home. If you pick in the afternoon, they are not happy to be chosen at that point. If you ultimately have to pick a jury in the afternoon, do whatever you can to delay opening statements until the following day.”

Observing Nonverbals Is the Key to Jury Selections
Alicia Wilson recommends that lawyers should focus on potential jurors’ body language as much as (if not more so than) their actual responses during the voir dire. As Alicia explained, she begins to determine if she wants to strike a potential juror when the jurors stand up and read their numbers. Then she observes their behavior: “Do they want to be there? Do they seem interested? What’s their body language? Are they focused? Do they seem like they want to participate? Examine how they look at your client. Are there any cues that say they are favorable to your client or not?”
Follow the Ten Commandments of Opening and Closing
The “Ten Commandments for Opening and Closings” are broken down into two categories—Thou Shall Not rules and Thou Shall rules—according to David Ware.

The Thou Shall Not rules are the following:

(1) Thou shall not make a promise you cannot keep or say you kept a promise you did not keep.
(2) Thou shall not use words which require any of the jurors to wonder what the word means.
(3) Thou shall not be boring.
(4) Thou shall not apologize for being unable to show them essential evidence. If you start a sentence with “I really wish we could have. . .,” you are headed for a loss. Jurors expect you to know the rules and to know what is and is not coming in. Trying to imply that the old mean judge kept you from making your case will garner no sympathy from jurors.
(5) Thou shall not major on the minors. OK, so a witness made a minor error, which does not change whether money should be awarded. Just because you are so proud of yourself for having your Johnny Cochran moment, do not get so consumed by it that you neglect the other essential proof you produced; learn the difference between a headline and a footnote, and focus on the headlines.

As for the Thou Shall rules, they are as follows:

(6) Thou shall arm your advocates with ammunition. Tell your advocates on the jury the three reasons you win. Your advocates in the jury room will fight for you if you give them ammunition. Without it, they will wilt in the face of adversity in the jury room.
(7) Thou shall acknowledge weaknesses early. Admit where you failed and why. Jurors are experts at reminding each other where you failed, but if you have already done so, it takes the sting out of the issue.
(8) Thou shall compliment your opponent’s presentation while at the same time taking a cheese grater to its meaning. The two are not mutually exclusive. For instance, you can acknowledge that her expert was well educated and articulate but failed to consider essential matters before reaching her conclusion.
(9) Thou shall know when to shut up. Try not to repeat yourself unless you are doing it as a thematic device for the purposes of juror recall.
(10) Thou shall act alive. Do not be a stiff. A jury trial is an action movie. The jurors expect action in every scene. If not, they blame the director—you—not the actors or the
writers. No one is suggesting that you do a magic show or a juggling act, but the last thing a juror wants to do is be faced with how to stay awake.

**The ELMO Is Dead**

Mastering the use of modern technology is key to trying cases in 2018 and beyond. As Reginald Roberts explains, lawyers must “connect with jurors, and hold their attention, through platforms that are familiar to our audience. ELMO is dead. Presenting evidence using iPads and tablets, if done properly, is efficient, visually engaging, and familiar to every juror who uses a mobile device.”

**Effective Story Telling Requires Visual Aids**

According to Ashley J. Heilprin, “demonstratives have an impact on a judge’s or juror’s ability to understand your case in a clear and simple way that a verbal description sometimes loses, particularly with complex or technical issues. Effective visual aids signal to the viewer the key message and should not be overloaded with complex terms or overly detailed diagrams, which will only confuse the audience. If you have a complex diagram or image that you want to show, consider using tools such as color coding or zooming in to highlight the particular portion that you want the audience to pay attention to. Practice using the visual aid and equipment in advance of trial to tweak the flow of the oral presentation and any elements of the demonstrative that might be difficult to comprehend or read. Using the demonstratives while preparing your witnesses will also help to ensure that the witnesses’ testimony comes across naturally with the use of the demonstrative.”

**Take Trial-Ready Depositions**

Alicia Wilson recommends that lawyers should “structure the questions you pose at depositions as if you are asking them at trial.” In fact, in addition to the typical deposition outline, Alicia recommends that attorneys craft questions before the deposition on key points so that “when the same question is asked later at trial, they have the ability to possibly impeach the witness properly at trial.”

**Engage Tech Support Early**

Javier Rivera with Southern California Edison Company recommends that attorneys engage their in-house person or outside vendor that will assist with the trial presentation (e.g., trial director) early—if possible while the case is still in its infancy. In doing so, the person providing you with tech support will be intimately involved with the case and will likely know it backwards and forwards. As a result, the presentation of your demonstratives and evidence will be virtually seamless, as your tech support will know which slides are next and will be able to anticipate your next move. “Having such an effective relationship is difficult to achieve if you wait until the eve of trial to engage your tech support person; the cost differences between retaining that person early or late in the game are minimal, and any additional costs are worth it in the end,” according to Javier.

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Why should law schools have to require LSAT or GRE? Law deans ask the question
By Stephanie Francis Ward

The requirement that ABA-accredited law schools use some sort of entrance exam in the admissions process hampers innovation and does little to guide schools toward the admission of students capable of mastering legal education and passing a bar exam, according to a group of law school deans.

The six deans—who include Erwin Chemerinsky, now at the University of California Berkeley School of Law; Daniel B. Rodriguez of Northwestern University; and Blake Morant of George Washington University—submitted their statement (PDF) focusing on whether the council of the Section of Legal Education and Admissions to the Bar should devise a process to validate non-LSAT entrance exams. The public hearing took place Thursday in Chicago.

“Just because individual schools might continue to require an admissions test,” the statement reads, “why should it be required for accreditation?”

The current version of the accreditation rule, Standard 503, directs law schools using alternate admissions tests to demonstrate that the exams are valid and reliable. Some law schools, including the University of Arizona and Harvard University, recently decided to accept the GRE in lieu of the LSAT. Marc L. Miller, Arizona’s law school dean, was one of six who signed the proposal that argued entrance exam requirements hamper innovation.

John F. Manning, Harvard Law’s dean, submitted a statement (PDF) that claimed accepting the GRE as an entrance exam “lowers barriers to application.” Harvard’s statement was also signed by Martha Minow, a former dean of the law school, and Jessica Soban, its associate dean for strategic initiatives and admissions.

Another statement (PDF) was submitted by Princeton, New Jersey-based Educational Testing Service, which administers the GRE. It argued that ABA standards regarding the validity and reliability of law school admissions tests should apply to the LSAT as well.

“As currently worded, the proposed revisions apply to every test proposed to be used in law school admissions except for the LSAT,” reads the statement submitted by David G. Payne, ETS’ vice president and chief operating officer.

The Newton, Pennsylvania-based Law School Admission Council, which administers the LSAT, also submitted a statement (PDF) ahead of the hearing. Law schools have relied on the test for more than 50 years to set a common standard for candidate evaluation, according to the LSAC, and the test is based on solid research and evaluated on a continuing basis. The statement was signed by Christina B. Whitman, chair of its board of trustees, and Kellye Y. Testy, its president and chief executive officer.

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If another admissions test is as good as the LSAT, the statement reads, the LSAC has no objection to law schools using it, and the organization “does not seek a monopoly” in legal education.

“Today, many law schools are experiencing economic stress as they adjust to changes in the admission and employment markets stemming from structural change in the profession as well as from continuing challenges to the rule of law in society,” the statement reads. “It is tempting during such times of stress to seek to reduce standards of quality, and often these reductions in standards come forward as arguments for innovation and deregulation.”

“Like the council, and I think everyone in this room, we support equality and fairness in legal education,” Joan E. Van Tol, the LSAC’s general counsel, said at the hearing. “If other tests meet those goals, we support those as well, but we urge the council to set high standards for both validity and reliability.”

David Yassky, the law school dean at Pace University, is opposed to the proposed revision to Standard 503. “Serious law school applicants,” he wrote in his statement (PDF), will likely continue taking the LSAT, and most if not all law schools will continue to accept it as an entrance exam.

An LSAT score alone does not provide enough information to accurately assess a candidate, according to Yassky, but it provides valuable information about applicants.

“At worst, current Standard 503 permits the entry into law schools of students who are less likely to succeed in school than other students—but there is no risk that leaving current Standard 503 in place will allow unqualified individuals into the profession, and thus the proposed revision offers no benefit in terms of the quality of legal practitioners.”

Meanwhile, law school admissions officers had varied opinions about the entrance exam standard, according to a survey of 119 law schools conducted in April and May by Kaplan Test Prep.

Of the schools polled, “61 percent say the ABA should make a statement saying that law schools are either permitted or not permitted to allow applicants to submit GRE scores as an alternative to scores from the LSAT, long the only sanctioned law school admissions exam. Twenty-seven percent say it should not; and 13 percent are unsure,” a press release states.

Public comments for a proposed revision to Standard 403, which would modify the rule to require that only the first-third of law school courses be delivered by full-time faculty, were also taken at Thursday’s hearing. Currently, the standard requires that full-time faculty teach more than half of all credit hours offered or two-thirds of student contact hours generated by student enrollment at the law school.
“A law school faced with financial problems will take this proposed revision and run with it. Law schools will slow down or stop their tenure-line hiring. Tenured faculty members who retire or die will not be replaced. Freed from the constraints imposed by current Standard 403, deans at financially beleaguered law schools will hire part-time faculty members, who cost less, to teach many courses now taught by full-time faculty members,” read a statement (PDF) from Dan Barnhizer, Adam Candeub, Mae Kuykendall and Anne Lawton, all of whom are professors at Michigan State University College of Law

“The change will not happen overnight, of course. But within a decade or two, this revision will fundamentally change the way law school faculties look, in particular in the bottom tiers, where the struggle to survive financially is most acute,” the statement reads.

To meet requirements listed in Standard 404, which deals with the responsibilities of full-time faculty, they should be available to first-, second- and third-year law students, according to a statement (PDF) submitted by the Clinical Legal Education Association. The group opposes the proposed revision to Standard 403.

“Part-time faculty have no specific obligations under the ABA Standards. While adjunct faculty may add value to a law school’s curriculum, they are often engaged in full-time employment outside the law school and their responsibilities are limited to teaching individual courses,” the statement reads. “Adjunct faculty members do not participate in law school governance; many are poorly compensated for their teaching and none have job security.

“To maintain the quality of legal education, full-time faculty with the responsibilities outlined in Standard 404 should be teaching and available to students in all years of law school.”

Denise Roy, a co-president with the Society of American Law School Teachers, testified that her group would welcome more rigorous standards that ensured high-quality teaching. If law schools are allowed to decrease the size of full-time faculty, she said, it’s likely that the quality of legal education would suffer.

“The size of full-time faculty already has been shrinking, and it’s harder and harder to do a good job with educational programming, because of the need for training, advising, and so on,” said Roy, a professor at Mitchell Hamline School of Law, in St. Paul, Minnesota.
Plan to drop law school entry exam requirement withdrawn before ABA House vote
By Stephanie Francis Ward

The ABA Section of Legal Education and Admissions to the Bar withdrew a resolution before the ABA House of Delegates on Monday that called for cutting Standard 503, which requires an exam for law school admission, and beefing up Standard 501 to include the use of admission credentials and academic attrition when determining accreditation compliance.

The proposal was part of a packet of resolutions involving the section and its council.

The current version of Standard 503 requires that law schools using alternate admissions tests to the LSAT demonstrate that the alternate exams are valid and reliable in determining whether a candidate can successfully complete the school’s legal education program.

According to a September 2017 Kaplan Test Prep survey of 128 law schools, 25 percent of schools indicated that they plan to implement using the GRE test in admissions, while other law schools have said they also will consider GMAT scores.

On Friday, the Young Lawyers Division Assembly voted against changing the test requirement. And as Monday’s House session began, a March 2018 letter was circulated on the House floor from the Minority Network, a group of law school admissions professionals, saying the LSAT is better than any other admissions test in predicting whether a candidate will succeed in law school.

“We agree outcomes are important,” the letter said, “but if the outcomes include removing objective measures of student potential for success, and if outcomes include the potential for students who do gain access to law school to amass life-changing debt before they discover they may not succeed in passing the bar, gain employment or vet a sincere interest in the law, then we believe a departure from Standard 503 could cause great harm to students in general.”

It was signed by 36 people, including admissions personnel from law schools at Howard University, the University of California at Irvine and Boston College.

“We are withdrawing that resolution today after consultation with leadership of our section,” said U.S. District Judge Solomon Oliver Jr., a legal education council member in Cleveland’s Northern District of Ohio, “in light of concerns we’ve heard from members of the House over the last two days.”

And Barry Currier, managing director of accreditation and legal education, said in a statement: “The concerns that our delegates heard from other members of the House will be reported to the council, and the council will determine how it wishes to proceed.”
The Educational Testing Service designs and administers the GRE, and a broad range of schools have participated in its national validity study, David G. Payne, ETS’ vice president and chief operating officer of global education, wrote in a statement.

“Schools can still use that information as part of their evaluation regarding whether the GRE test is a reliable and valid tool for their use. ETS is happy to speak with those interested in learning more about the available data, and we will continue to stand behind our mission to help advance access, quality and equity in education,” he wrote.

It was reported in 2017 that ETS began the study in 2015, with the University of Arizona’s James E. Rogers College of Law.

Kellye Y. Testy, president and CEO of the Law School Admission Council, which administers the LSAT, said: “Today’s decision gives us all time to work together to consider how to proceed in the best interests of applicants and law schools to promote access and equity in law school admission. While law school applications are on the upswing, LSAC is eager to partner with our member schools to provide greater flexibility and creativity in admissions while ensuring fairness, access and transparency for all candidates. Likewise, we look forward to continuing to work collaboratively with the section on legal education to provide the clarity and guidance our member schools seek with respect to admission practices.”

Under ABA rules, standards revisions go to the House of Delegates. The House can send a proposed rule back to the council twice for review with or without recommendations. But the council has the final decision on matters related to law school accreditation.

The House also voted to accept a reorganization plan for the legal education section in which its council will absorb the accreditation committee and the standards review committee. And the House concurred with the following proposed standards revisions:

- Change language in Standard 303, which focuses on curriculum, and Standard 304, which addresses experiential courses, to make clear that the classes be “primarily experiential in nature,” and that direct supervision from faculty is required for simulation and clinic courses, as well as field placements.

- Delete language in Standard 601, which addresses law school libraries, that requires written assessments of the facilities during the accreditation process.

- Change language in Standard 306 to allow up to one-third of credits to be obtained through distance education, and the option of giving 10 online credits for first-year curriculum. The current version limits online credits to 15 unless the section gives a law school leeway for more.
Concern was expressed about the distance education proposal, and a motion to break up the resolution to separate votes on proposed standards was introduced by House member Estelle H. Rogers, a delegate for the Section of Civil Rights and Social Justice. Her motion failed 194-188.

“There’s a concern [whether] loosening the standards on distance learning is a good thing for legal education and students,” she said, while recognizing that for some people it could be easier to attend law school through a distance education program. “Just because it’s easier doesn’t make it good.”

Stephen Saltzburg, a George Washington University law professor who represents the criminal justice section in the House, spoke in favor of loosening distance education rules.

“This is a good thing, and it’s about time that the bar was innovative when it came to legal education,” he said.