

# Picking Unbiased Jurors Isn't So Black and White

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In a personal injury case, the risk of having a personally affected and biased juror is high. We have all been there, in the halls of the courthouse after jury selection. You run into a colleague and he or she asks, "What does your jury look like?" Implicit in that question is, "What is the racial makeup of your jury?" By asking that question, our colleagues are attempting to evaluate whether the jury will be biased against our clients. We can attribute this question to the long-held belief that people tend to empathize more with those who look like them. Statistics show that the population of Philadelphia, and therefore its jury pool, is becoming more diverse and better educated. Due to the fact that the jury pool is becoming more diverse, it is increasingly difficult to identify an unbiased juror based solely on race.

As we attempt to identify jurors who are not racially and ethnically biased, we should consider education. Education level can be a reliable indicator of how "open to otherness" a juror may be.

When picking a jury, the goal is to identify jurors capable of considering the facts presented to them, and the law as instructed by the judge. It is our job in jury selection to identify and evaluate potential jurors to determine if they have the capacity to put biases against our clients aside. The same race-based analysis that occurs in the halls of the courthouse also takes place inside the courtroom during the voir dire process. However, attorneys on both sides of the bar do themselves and their clients a disservice if they only focus on race. Race matters, but the

analysis of potential jury bias should not end with race. This is especially true now that the demographics of the city have changed so much over the last 20 years.

The most recent decennial census data shows that the demographics of Philadelphia are changing dramatically. It is no longer safe to assume that the jury venire will be composed only of black and white residents. As it stood in 2010, this city of 1.5 million people was 42.2 percent black, 36.9 percent white, 12.3 percent Hispanic, 6.3 percent Asian and 2.4 percent multirace or other. In June 2011, the Philadelphia Research Initiative of the Pew Charitable Trusts released a report titled "A City Transformed: The Racial and Ethnic Changes in Philadelphia Over the Last 20 Years." The researchers looked at the changes in the ethnic population of the city by comparing the 1990 census to the 2010 census.

"In 1990, Philadelphia was a city understood largely in terms of white and black. At the time, it was a majority-white city with a large black minority and small groups of Hispanics and Asians. Two decades later, it is a plurality-black city with a large but dwindling white minority and rapidly expanding contingents of Hispanics and Asians."

Even though the ethnic makeup of the city and, therefore, the jury pool has changed so much over the last 20 years, we still need to identify unbiased jurors. As racial barriers are broken down, many attorneys may be at a loss for how to do this. We should consider a juror's

attainment of higher education. There is a long-held belief in sociology that as a person attains higher education, his or her negative stereotypes of other cultures decrease. This is known as enlightenment theory.

As Geoffrey T. Wodtke wrote in "The Impact of Education on Intergroup Attitudes: A Multiracial Analysis," "Enlightenment theory is premised on the notion that negative intergroup attitudes arise from narrow-minded, poorly informed and undemocratic world outlooks; ethnic prejudice is seen as 'an antipathy based upon a faulty and inflexible generalization,'" according to social psychologist Gordon Allport. Wodtke continued, "An advanced education attenuates prejudice and fosters a real commitment to racial equality by providing knowledge about the historical, social and economic forces responsible for inequality; teaching the dangers of prejudice; neutralizing fear of the unknown; promoting democratic norms of equality and civil rights; and facilitating contact between racial groups."

In the last half of the 20th century, sociologists conducted several studies to test the enlightenment theory. The studies supported the concept that the theory is accurate.

As Wodtke wrote, "Highly educated whites are more likely ... to reject negative racial stereotypes ... attribute racial inequalities to structural causes, be more perceptive of racial discrimination, and support democratic norms of equality (Apostle et al. 1983; Farley et al. 1994; Schuman et al. 1997). In addition, several recent studies link more progressive racial attitudes to specific mechanisms within post-secondary institutions, such as enrollment in multicultural classes and contact with minority students and faculty (McClelland and Linnader 2006; van Laar, Sidanius and Levin 2008)."

Most, if not all, of the studies focused on how higher education affected the negative views of whites toward African-Americans. Wodtke expanded on the earlier studies by focusing on how higher education affected the negative

views of African-Americans, Hispanics and Asians toward each other. Wodtke's study found that many racial groups' negative beliefs about other ethnicities' work ethic and intelligence decreased as education increased. It showed that the long-held beliefs regarding enlightenment theory for whites were also true for minorities, particularly African-Americans and Hispanics. "The results of this analysis indicate that education is associated with rejection of racial stereotypes among whites, Hispanics and blacks."

When I spoke with some of my colleagues about Wodtke's findings and how they may help us identify unbiased jurors in Philadelphia, I was greeted with sneers and jeers. "Good luck. You know about the brain drain right? College-educated people have been leaving this city for years," the

Several recent surveys have shown that Philadelphia's brain drain has been plugged. Philadelphia is retaining more of the people who attend college and graduate from schools within the Greater Philadelphia area. In 2010, Campus Philly released its report on the 2010 Student Retention Survey. The survey found that 79 percent of native Philadelphians and 48 percent of non-native Philadelphian college graduates chose to stay in the region after graduation. Philadelphia is also attracting college-educated people from beyond its borders. Geographer James Russell of Urban Strategic Solutions studies migration data for cities across the country, including Philadelphia. I spoke with him about his research. By analyzing yearly data compiled by the American Community Survey from approximately 2000 to 2011, he found that among people 25 years and older with a bachelor's degree, Philadelphia gained almost 300,000 college-educated workers.

Since the college-educated population is increasing, now is the perfect time to start employing enlightenment theory in jury selection. For personal injury and other cases, we need to focus on how to find jurors who will

be receptive to our message. It is important that we, as zealous advocates, pick the best jurors we can during jury selection. As jury pools become more diverse, it is becoming more difficult to identify an unbiased juror based solely on race. Instead of trying to find people whom you think will definitely empathize with your client, you may have more success if you find jurors who are less likely to be biased against your client. Thanks to the hard work of statisticians and sociologists, we can attempt to identify unbiased

jurors based on more than just their physical appearance in the gallery.



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