

Jury Selection in Alaska: a Qualitative Analysis into the Challenges  
of Voir Dire in Rural Court Trials

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### **Abstract**

In theory, the American legal system provides justice to defendants by impaneling a jury representing the community in which they reside. In practice, however, jury composition can deviate from this ideal of representativeness. Jury selection processes sometimes result in juries that are, at least on their face, not representative of defendants' communities. This raises questions about the justice that juries deliver. In the Alaska context, the composition of juries in cases involving defendants from rural Alaskan communities has been an issue of particular importance. It has been suggested that legally prescribed factors such as distance, transportation and per diem costs, and juror availability have resulted in unrepresentative juries (*Crawford v State of Alaska*, 1965; *Alvarado v State of Alaska*, 1971; *Wyatt v State of Alaska*, 1989). However, previous investigations inquiring into jury representativeness focused jury pool lists. This is only a part of the process. It is through the voir dire process when people transition from being in a jury pool and being impanelled on a trial jury; voir dire is the process by which attorneys and judges question prospective jurors to determine their suitability to serve before impaneling a final jury for trial. This study explores whether these, and other factors of rural Alaska, influence decision-making practices of attorneys and judges during voir dire.

### **Specific Aims**

Transcripts from a sample of twenty voir dire sessions are examined to identify the key issues addressed by attorneys, judges, and prospective jurors during voir dire. This study seeks to address whether the characteristics of rural life, e.g., geographic isolation, small population size, subsistence lifestyle, close relationships to other community members, are salient factors for attorneys and judges to consider. This study will analyze the questions asked by attorneys and judges, along with the time they spend on the topics they address.



### Introduction

Voir dire is the final stage of the jury selection process. During voir dire, attorneys and judges ask prospective jurors personal and biographical questions determining who is “able and willing to evaluate evidence and to reach decisions with an open mind” (Rose & Diamond, 2008). Attorneys and judges are left to decide which questions are salient to ask, and assign a level of importance to each response. The goal is to impanel jurors with different backgrounds and experiences (*Green v State of Alaska*, 1969). Based upon prospective jurors’ responses, attorneys and judges decide who to impanel. Attorneys can seek to exclude prospective jurors through a challenge for cause [excusal for reason] or a peremptory challenge [without justification]. Theoretically, attorneys and judges can rigorously question each prospective juror, excluding whomever they want without concern for the size of the jury pool.

Geographic isolation of rural Alaskan communities limits the size of jury pools. Most rural communities in Alaska are geographically isolated and can be quite distant from another community (Knowles, 2005). Access to many rural communities is weather dependent, expensive, and usually requires a “plane, boat, or snowmachine (sic)” (Alaska Judicial Council, 2000). At times, general transportation between communities is virtually impossible because of harsh weather (King, 1998). Given these conditions, court administrators systematically exclude people residing in isolated rural communities. For instance, Stephen Conn (1995) reported court administrators excluded nearly 10,000 people from the jury pools, primarily Alaska Natives from 128 communities. The Alaska Supreme Court Advisory Committee on Fairness and Access (Committee) later corroborated this finding (1997).

The above factors place constraints on attorneys and judges during voir dire. The pool from which prospective jurors are drawn is limited. The Committee (1997) suggested that this



level of exclusion places a heavier burden on those included by requiring more availability from them. Richert (1977) found that resentment develops when people perceive jury service as a cause for financial and personal hardships. Attorneys and judges have to be concerned with the possible personal hardships of travelling for prospective jurors. This is troublesome for attorneys and judges practicing in rural Alaska because many communities are non-cash economies.

Attorneys and judges face a difficult challenge impanelling a representative jury because it requires them to control for potential hardships jury service can have on prospective jurors and their communities. Rural Alaskan communities are typically underdeveloped (Knowles, 2005), and have small populations, ranging from tens to low thousands (U.S. Census, 2002). It is very common for people within a given rural community to be related through family, or to have other forms of close personal relationships (Knowles, 2005). These close relationships are important to their subsistence-based lifestyles (Bryner, 1995; Huhndorf & Huhndorf, 2011). Subsistence-based economies heavily rely on natural resources for sustenance (Bryner, 1995). Time taken away from harvesting could jeopardize the community's food supply. This is important for attorneys and judges to address. On the one hand, people can be favorable to defendants from their home communities because of close relationships (King, 1998), a situation called "in-group bias" (Brewer, 1979). On the other hand, jury service could cause personal hardships for prospective jurors that affect their community (Bryner, 1995).

Attorneys and judges are challenged with impanelling a representative jury for trial. To accomplish this task in the setting of rural Alaska, attorneys and judges have to control for the limited jury pool size, the geographic isolation of trial sites, and the subsistence-based lifestyles. To better understand the challenges attorneys and judges face, and how those challenges influence their decision-making, it is important to understand how they conduct voir dire.



## **Project Design**

### **Sampling procedure**

This study samples twenty voir dire sessions from twenty jury trials of criminal cases during the years 2007 through 2010. This sample is selected from the State of Alaska Third Judicial District superior court sites located in Cordova, Dillingham, Glennallen, Naknek, and Valdez. The trial site locations are selected using convenience sampling methods. The selected jury trials originated in the *Alaska Court System Annual Statistical Report* (ACSASR); which reports, among other things, the frequency of jury trials within each superior court. The Office of the Administrative Director provided case numbers for the selected jury trials. Using the provided case numbers, the principal investigator requested audio compact discs (CD) recordings of the voir dire sessions. The audio CD recordings require transcription for analysis.

### **Data analysis**

This study is a qualitative analysis of the interactions attorneys and judges have with prospective jurors during voir dire. A qualitative data analysis method offers a comprehensive and systematic approach to the “what, how, when, and where of a thing” (Berg, 2004, pp. 2-3). Qualitative methodology is an iterative process of reducing raw data, in this case, transcripts of voir dire, down to conceptual categories. The categories are further analyzed to induce their interrelationships; this is achieved through a coding process.

There are three stages of coding (Richards, 2009). First, descriptive coding identifies the basic attributes of the data. This stage describes the personal and biographical attributes of the attorneys, judges, and prospective jurors. Secondly, topical coding identifies the various subjects of discussion. The purpose of topical coding is to provide contexts. The contexts are presumably the factors that influence decision-making practices of attorneys and judges. Balch



et al. (1976) found, to their surprise, attorneys did not spend much time investigating jurors or investigating how they felt about various topics. Instead, attorneys asked simply if prospective jurors can be impartial. According to Johnson and Haney (1994), the time spent asking deliberate and purposeful questions produce meaningful responses, which inform attorneys and judges, assisting them in the selection of jurors. To highlight the factors that influence decision-making practices, time spent on the topics is important to address. According to Johnson and Haney (1994), voir dire is an effective process when attorneys and judges spend their time investigating prospective jurors rather than explaining procedure and the importance of jury service.

Thirdly, analytical coding is the stage in the analysis when patterns and categories emerge. This stage combines the attributes described in the first stage, with the topics discussed during the second stage, to induce patterns and place them in categories. Analytical coding interprets the questions posed by attorneys and judges, and the responses provided by prospective jurors. The purpose of interpreting the questions and responses is to identify and highlight their meaning. Through analytical coding, this study will provide a conceptual framework on the challenges of impanelling a jury faced by attorneys and judges.



### Anticipated Results

This study will make a contribution to the limited research available on the jury selection process in rural Alaskan courts. This study will not provide definitive answers to questions regarding voir dire in rural Alaska; rather, it will provide an interpretation of the meaning behind the interactions between attorneys, judges, and prospective jurors in courts serving rural Alaska. However, there are important limitations to the data analysis methodology. First, the descriptive coding stage of the analysis is limited to what is addressed during voir dire. Attorneys have questionnaires filled out by prospective jurors before voir dire. It is possible that the information on the questionnaires will not be discussed during voir dire. Secondly, the topical coding stage is subject to prospective jurors requesting *private chambers*. Administrative Rule 15 permits jurors to request private chambers when they are uncomfortable with answering questions publicly. If this occurs, their answers will not be in the analysis. Even with these limitations, this study will provide a foundation for further inquiry into the jury selection process in rural Alaskan communities; it will fill a gap in jury research, and provide important insight into the factors influencing the decision-making practices of attorneys and judges during voir dire.



**Budget**

Table 1.

*Budget for Voir Dire Study*

Item	Estimated Cost (in US dollars)
Compact discs (recordings)	400.00
Envelopes	6.00
Postage	13.00
NVivo 9 software license	650.00
NVivo 9 manuals	180.00
Office supplies (paper, pens, highlighters)	751.00
Total cost of study	2,000.00



### **Budget Justification**

The budget includes the costs associated with data collection and supplies in approximate amounts. This study requires \$400 for the Compact Discs (CDs); the courts charge \$10 per audio CD recording. Based on the 1997 Alaska Supreme Court Advisory Committee on Fairness and Access findings, it is possible that voir dire could take up multiple CDs. With \$400, this study has some flexibility with data collection. This study will also need \$6.00 for envelopes and \$13.00 for postage. The Alaska Court System requires CD requests to be submitted in writing through the United States Postal Service.

This study requires \$650 for the *NVivo 9* license. NVivo 9 is a popular qualitative analysis software package for the social sciences (Chambliss & Schutt, 2010), and will make the analysis more efficient and reliable. This study requires \$180.00 dollars for the NVivo 9 manuals. Lastly, this study requires \$751.00 for editing supplies. Editing supplies include paper, pens, and highlighters.

The report will go through multiple stages of editing and revision. Editing is in two phases. The first phase is to transcribe the audio CD into NVivo 9. Next, the final manuscript requires multiple rounds of editing for clarity and quality. Lastly, this study requires researching of literature and printing of articles and reports.



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**Timeline**

October 31, 2011 to November 30, 2011	Data collection
November 30, 2011 to December 30, 2011	Data analysis and write-up
January 1, 2012 to March 13, 2012	Edit and revision
March 13, 2012 to March 17, 2012	Present project at the Academy of Criminal Justice Sciences conference
March 18, 2012 to Mid-April 2012	Edit and revision
Mid-April 2012	Present project at the Undergraduate Research Symposium
Mid-April 2012 to May 1, 2012	Edit and revision
May 1, 2012	Finish project and defend in front of the University Honors College