

Atlanta IP Inn of Court

Program Materials for Jury Selection for IP (Halloween Edition)

Presented on October 12, 2011

Special Thanks to Our Host



Program Summary:

This was a familiar jury selection program that taught members of the Inn the ideas behind picking jurors. The fact pattern involved Intellectual Property matters and questions from attorneys explored the panel's thoughts about patents and other general matters.

The twist to this presentation was that the jury was made up of characters from popular fiction or the news. The Inn members dressed up like the character they represented. The Inn worked with a jury consultant, who spoke at the meeting, to determine the types of characters needed (conservative, liberal, know-it-alls, businessmen, people with sketchy past, etc.) and then worked to identify known characters that fit that description. Although each character brought humor to the meeting, it helped shorten the meeting somewhat because each person had a known back story for the audience and so did not need much introduction.

During voir dire there was a challenge to one of the jurors. After the voir dire, the jury consultant discussed each juror and her thoughts about who the attorneys would want to strike.

This was one of the best programs of the year.

Setup:

The program was conducted in a mock courtroom. The jury consultant was a guest speaker that gave a few initial tips before the meeting and introduced the fact pattern for the trial the jury was being picked for. Before the meeting, the mock jurors dressed in costumes of the characters they were to play and filled out jury questionnaires relating to their lives. For example, they answered questions about education, groups they were a part of, who they worked for, etc. When the bailiff called the jury he read from the forms they filled out.

It is good to have a Powerpoint or some other exhibit that lists who the jurors are to be so the audience remembers each character during the skit. However, no major presentations or slides are needed.

Before the meeting each actor knew the general types of subjects to be asked (thoughts on patents, inventions, views on gambling or immigration) but the actors did not know what the specific questions from the attorneys would be. They had to answer each question on the spot as they thought their character would answer it.

Though we did not do this, any Inns doing something in the future may want to have the audience pick who to strike. The jury consultant sort of asked for audience thoughts at the end and gave her thoughts, but it might be interesting to do a more specific poll.



Erin Brockovich

The characters for our jury were:

1. Cliff Clavin (from Cheers) – know-it-all that always raises his hand and wants to be the jury forman
2. James Bond – tough on crime, likes to gamble, pro government
3. Erin Brokovich – liberal, hates big business
4. Catwoman –sketchy criminal past, fairly liberal, hates authority
5. Sarah Palin – conservative, mother, religious
6. Ricky Bobby (from Talladega Nights) – redneck racer, likes to gamble, doesn't like government telling him what to do, not well educated.



James Bond

7. Montgomery Burns (from The Simpsons) – pro big business, against government regulation, pro-immigration to the extent he gets to pay less than minimum wage.
8. Forrest Gump – likes everyone and everything.

For additional information, please contact Chad Pannell at cpannell@kilpatricktownsend.com



Ricky Bobby



Forrest Gump

Atlanta IP Inn of Court: Pupilage Group I
Jury Selection: Stacking the Deck or Evening the Odds
Fact Pattern
October 12, 2011

In 1995, a young stockbroker, Carl “Bud” Fox, Jr. developed a new system through which the trades of customers were tracked and using a complex algorithm, customers were given a discount on their brokerage fee per trade based on the frequency and risk of the trades. The program proved to be extraordinarily successful. Day traders and other frequent traders flocked to Fox’s firm, Blue Horseshoe.

Realizing the value of his proprietary discount and loyalty program, Fox filed a patent application for “A Method of Encouraging Customer Loyalty Through Discounts Based on the Frequency and Risk of Use.” The United States Patent and Trademark Office issued a business method patent in 1999. (Patent No, 6,399,999, or the “999 Patent”). Unfortunately, in 2001 in a widely reported case titled the “Two and A Half Men Scandal,” Fox was indicted, jailed and barred from the securities industry after an insider trading indictment involving Fox, hedge fund tycoon Gordon Gecko and a dwarf named William Edgar “W.E.” Mann.

Exiting prison after five years, Fox was virtually penniless having paid millions in fines to the SEC and legal fees to his legal defense team. At the same time, a 27 year old Albanian-born, Stanford University educated computer programmer named Kaiser Soze was launching the on-line poker site, “The Usual Suspects.” Unlike other on-line poker sites, “The Usual Suspects” provided credits and discount electronic chips to players based on their gambling frequency and the risk associated with a player’s bets. The

Usual Suspects” amended its answer to bring a counterclaim for violation of the Digital Millennium Copyright Act (“DMCA”) as a result of Shear’s evasion of The Usual Suspect’s security protocol during his investigation of their website. Following a denial of both parties’ cross motions for summary judgment, the case stands ready for a jury trial on Gollum’s claims for infringement of the ‘999 patent and The Usual Suspect’s claims that Fox violated the DMCA.

Atlanta IP Inn of Court: Pupilage Group I
Jury Selection: Stacking the Deck or Evening the Odds
Tips for IP Voir Dire

IP Specific Advice

Explore the jurors' attitudes toward advancing technology. Ask jurors about monopolies, the relevant IP system, and competition among businesses in the same field. Simple questions—like whether a juror owns a computer and what software he or she uses—may give an idea of how receptive the juror is to new technologies and how quickly he or she picks up new information. The more difficult the technology presented in a case, the more likely it is that jurors will be influenced by their attitudes and beliefs.

Joint Voir Dire in Patent Cases:

A joint voir dire will usually address the following:

- Brief statement of the case
- General knowledge of parties, witnesses, attorneys
- Familiarity with technology at issue
- Familiarity with patents
- Education and experience

Example Supplemental Voir Dire Questions- Patent

Have you or a member of your family had dealings with the United States Patent and Trademark Office?

Have you ever felt someone copied or stole one of your ideas?

Are you opposed to any type of research and development because of religious or philosophical reasons?

Have you/immediate family member ever invented something?

Joint Voir Dire in Trademark or Copyright Cases:

A joint voir dire will usually address the following:

- Brief statement of the case
- General knowledge of parties, witnesses, attorneys
- Experience with business and marketing
- Familiarity with copyright and trademark, or with innovation or sales
- Education and experience

Example Supplemental Voir Dire Questions- Trademark

Have you ever been involved in making logos or branding a product?

Have you ever felt someone copied something you developed?

Sources: § 12:2.1 Juror Profile, Information, and Voir Dire, PLIREF-PATLIT s 12:2.1; Trial Behavior consulting: Adjusting for Attitude -; § 11:12 Jury Selection: The Law, Art and Science of Selecting a Jury

Motions In Limine

Before we begin our proceedings today, the Court will address two Motions in Limine filed by the Plaintiff in this action.

- 1) The first Motion in Limine seeks to exclude evidence of a prior felony conviction of the inventor of the Patent-In-Suit. The Court rules that such evidence is probative of issues to be raised at trial and therefore denies Plaintiff's motion.

- 2) The second Motion in Limine seeks to prevent defense counsel from referring to Plaintiff as a "Non-practicing Entity" or the pejorative term "Patent Troll." The Court sees no reason why this would prejudice Plaintiff and therefore denies Plaintiff's motion.

Clerk, please call the jury panel to the jury box at this time.

ATLANTA IP INN OF COURT
PUPILAGE GROUP 1
OCTOBER 12, 2011

Jury Questions: OUTLINE

I. Gambling

Jurors: Bond, Gump, Palin, Ricky Bobby, Clavin

Questions:

1. Does anyone feel strongly for or against gambling?
2. Do you gamble?
3. Has anyone been negatively affected by gambling? Has anyone had a family member or close friend negatively affected by gambling?
4. Some people don't believe in gambling, period – whether it is buying a lottery ticket or gambling in Vegas – does anyone here feel that way?
5. Does anyone feel that certain types of gambling are okay and others are not?

II. Patent/Technology

Jurors: Burns, Clavin, Ricky Bobby, Brockovich

Questions:

The Patent Office issues patents to inventors to protect their inventions.

1. Do you have any experience with patents?
2. What kind of experience?
3. Have you or someone close to you ever been awarded a patent?
4. Have you ever read a patent?
5. What is the subject matter of the patents?
6. Do any of you disagree with the notion that a person should be awarded a patent on their inventions?
7. Or that inventors should be allowed to sell their patents to others?
8. Do any of you disagree with the notion that companies should be allowed to buy patents from inventors?
9. My client manages patents for inventors and purchased rights in the patent in this case from the inventor.
10. Do any of you object to a company purchasing patents and enforcing them in court?

The Patent Office is a specialized agency that decides whether an inventor is entitled to a patent to protect his/her invention.

1. Do any of you have any experience with any specialized Federal agency, such as FDA, PTO,
2. Have you ever worked at such an agency?

3. Have you ever had a dispute with an agency? Or the government?
4. Does anyone here have doubts about the expertise of these agencies?
5. Any experience with PTO? Worked there?
6. Some people question whether the PTO allows “bad patents” to issue. Do any of you hold that view?
7. Do any of you believe that patents stifle innovation? Or that there are too many patents?

III. Felony

Questions:

Jurors: Bond, Catwoman, Palin, Gump, Clavin

1. Have any of you, or anyone close to you, been victims of crime?
2. [Fully vet.]
3. Have any of you, or anyone close to you, been witnesses to a crime?
4. [Fully vet.]
5. Have any of you, or someone close to you, had experience, training or employment in law enforcement or the criminal justice system?
6. Have any of you, or anyone close to you, ever been accused or convicted of a crime?

You will be hearing from a number of witnesses who will give testimony under oath.

1. Some of these witnesses may have a criminal history. Would any of you doubt the truthfulness of such a witness because of their criminal history?
2. What if you were to learn that the crime was a felony?
3. What if you were to learn that the felony involved dishonesty?
4. What if you were to learn that the felony involved “insider trading”?
5. [Consider challenges for cause.]

For those who raised their hands to indicate they would doubt the truthfulness of a witness with a felony conviction:

1. Would it make a difference if you learned the conviction was 10 years ago?
2. And that the witness had paid his debt to society?
3. Would it make a difference if the witness had not been in trouble again?

IV. Immigration

Jurors: Clavin, Ricky Bobby, Palin, Bond, Burns

Questions:

1. In general, do you think our society treats people of all races and ethnicities equally? [Please explain]
2. Have you ever been afraid of someone of another race or ethnicity? [Please explain]
3. Are you or any of your close friends or relatives Muslim?
4. How serious a problem do you think discrimination against Muslims is in this country?
5. Have you been exposed to persons who exhibit, or who have exhibited racial, sexual, religious, and/or other ethnic prejudice? [If yes, please explain]
6. Would the religion, race, color, sex, or ethnic background of a witness influence whether you believe his or her testimony?
7. Does anyone have any opinions, religious beliefs, philosophies, or prejudices which might make you unable to come to a fair and impartial verdict in this case?
8. Have you ever made a contribution to or financially supported the State of Israel or any Arab state? [Please explain]

V. **Wallstreet**

Jurors: Brockovich, Burns, Palin, Gump, Clavin

Questions:

1. Have you ever owned or invested in a business? [Please explain]
2. Have you ever served on the board of directors or in the capacity of president, CEO, CFO, or other official position within a company?
3. Have you or anyone close to you been affected by the financial problems of a company where there has been allegations of corporate wrongdoing by the executives?
4. Do you or have you ever owned publicly-traded stocks, mutual funds, or bonds?
5. Have you, or has anyone close to you, ever lost a significant amount of money on an investment?
6. How do you feel about the Occupy Wall Street protests?