



TO THE BAG

WE SEE WHAT YOU'RE TALKING ABOUT

To the *Bag*:

Jeffrey Kahn's article on *voir dire* in Texas brought to mind my own experience in the venire.

The case in which I was questioned involved an offensive practical joke. If memory serves, the defendant worked in the city personnel office and allegedly fabricated a phony personnel record showing that his then-best friend's girlfriend, a city employee, was HIV-positive. When the defendant eventually told his distressed friend that the record was a fabrication, the friend was outraged and a lawsuit ensued.

Being a business lawyer by training, I'm not sure how far Alabama lawyers are permitted to go into the facts of the case during *voir dire*, but this particular case had been won by the time I left--alas, among the unchosen.

First, during the process of asking us whether any of us knew the parties personally, the defendant's lawyer deadpanned: "If [the plaintiff] looks familiar, you may have seen him dressed up like Uncle Sam in XYZ Used Cars' TV commercials."

The coup de grace, however, was the lawyer's question about whether we could be impartial in light of our own personal experience. He asked us to raise our hands if we had ever been the victim of a practical joke we thought wasn't funny. Then, one-by-one, he asked those who raised their hands two questions (again, with mock seriousness and pretending to take careful notes on their answers): (1) "Mr/Ms X, tell me about the joke." The respondents mostly

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enjoyed telling their stories, and the jokes didn't seem as bad in hindsight as they had at the time and were usually amusing to the rest of us. Then, the clincher: "Mr/Ms X, did you file a lawsuit when that happened?" The first time he asked the question, the respondent looked shocked, and everybody in the room laughed. By the third time he asked it, the case was over.

When it was the plaintiff's lawyer's turn, his ice-breaker was "Please raise your hand if you or anyone in your family has been infected with the virus that causes AIDS." This question didn't generate much response from the venire, but it did substantiate something else he had just told us: This was the first case he had ever tried.

William S. Brewbaker III
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FAT LIVER & BEER

To the Bag:

In Professor Kahn's article on *voir dire*, the first footnote indicates that in New York, it is pronounced like "fois gras and beer." I suspect the author meant to say "fat liver and beer" rather than "fat time and beer." Compare www.wordreference.com/fren/foie with www.wordreference.com/fren/fois. Although, given the empty calories from drinking beer, it might indeed be considered "fat time." Or perhaps this is a regional spelling variant – that is, that in Texas French "foie" is spelled "fois."

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