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# Practitioner's Note, Jury Selection: Whose Job is It, Anyway?

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# PRACTITIONER'S NOTE
# JURY SELECTION: WHOSE JOB IS IT, ANYWAY?

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## INTRODUCTION

In the entire practice of law, for plaintiff's and defense counsel alike, there is perhaps nothing more disappointing than successfully navigating the perils of trial and obtaining a hard-fought jury verdict, only to have that jury verdict vanish on appeal due to technical error that almost certainly had no impact on the actual outcome of the case. Although error can arise at any point in trial, one of the more frequently challenged phases of trial is the process of jury selection, or voir dire. In view of a series of recent decisions from the Court of Appeals of the State of Georgia, voir dire has arguably become an even more hazardous minefield of potential appellate challenges. In fact, your next jury trial might go something like this:

> *You are in a high-stakes case working through a venire panel to seat a jury for your impending trial. During the regular course of questioning, opposing counsel asks the panel if anyone knows your client. Potential juror #5 raises her hand and indicates that she thinks that your client gave her son a foul ball that he caught during a recent Braves baseball game. Opposing counsel moves to strike juror #5 for cause. The judge asks opposing counsel if she wants to ask any further questions of the juror, and opposing counsel declines. The judge then denies the motion to strike, and opposing counsel uses a peremptory strike to remove juror #5.*

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> *Not concerned by the exchange, you proceed to try the case to a verdict in your client's favor. However, opposing counsel promptly appeals based on the trial court's refusal to remove juror #5 for cause. Months later, the verdict is set aside and a new trial is ordered. You read the opinion for an explanation. In the opinion, you discover that the reasoning of the court of appeals is as follows: (i) the trial court had an affirmative duty to investigate the alleged bias of juror #5; (ii) the trial court failed to discharge that duty by asking questions of its own sufficient to "ferret out bias"; and (iii) the required remedy is a new trial.*

Think this is not possible? Think again. As illustrated by a series of recent cases from the court of appeals, each of which relies on well-intended dicta in the Supreme Court of Georgia case of *Kim v. Walls*,[1] scenarios fairly comparable to the foregoing hypothetical have already occurred. Moreover, there presently appears to be no structural barrier to their repetition.

The Supreme Court of Georgia held in *Kim v. Walls* that it is an abuse of discretion for a trial judge to curtail questioning of a potentially biased or impartial juror and subsequently "rehabilitate" that juror through the use of a "talismanic" question, that is, a high-pressure question designed to cure in one fell swoop a prospective juror's prior expression of potential bias or prejudice.[2] Although the court in the example above did not curtail questioning by opposing counsel, it could be argued that the trial court's conduct did not satisfy the standards articulated in a series of recent decisions from the Court of Appeals of the State of Georgia. These decisions have

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1. Kim v. Walls, 275 Ga. 177, 563 S.E.2d 847 (2002).

2. *Id.* at 178-79, 563 S.E.2d at 849-50. For example, the talismanic question employed by the trial court in *Kim* was as follows:

> After all the facts are in and you have the law as given you in charge, can you set aside your personal feelings and make a decision in this case which speaks the truth based upon the evidence that you've heard, setting aside your preconceived notions, and deciding this case solely upon the evidence and the law as given you in charge?

*Id.* at 177, 563 S.E.2d at 848-49.

relied upon certain dicta in *Kim* to impose an affirmative duty on trial courts to conduct their own *sua sponte* questioning and investigation of potential jurors when there is an indication of bias or partiality, *even in the absence of a decision to curtail questioning by counsel.* For the policy reasons reviewed below, it seems quite unlikely that the Supreme Court of Georgia intended this result, but the law of unintended consequences is a powerful force.

Historically, trial courts in Georgia were rarely overturned for refusing to strike a juror for cause. Among other reasons, the Georgia appellate courts have emphasized repeatedly that "trial courts have broad discretion to evaluate and rule upon a potential juror's impartiality, based upon 'the ordinary general rules of human experience.'"[3] The historical difficulty of such challenges has also been buttressed by the fact that "[t]he law presumes that potential jurors are impartial,"[4] and the moving party bears the burden of rebutting that presumption.[5] For all of these reasons, the court of appeals traditionally has been reluctant to disturb the rulings of the trial court regarding juror impartiality.

Nevertheless, certain recent decisions from the court of appeals have applied a more aggressive review of the jury selection process. Without fanfare, these decisions have effectively restructured the burden of proof during voir dire and imposed an affirmative duty on trial court judges to investigate impartiality. Because these structural changes are difficult to reconcile with an appropriate conception of our adversarial system, Georgia trial lawyers on both sides of the "v." must be more vigilant than ever.

## I. *KIM V. WALLS* AND THE PROBLEM IT ADDRESSED

It has long been held that when a juror reveals a relationship with one of the parties during voir dire that implies potential bias, counsel

3. *Id.* at 178 (quoting Daniel v. Bi-Lo, Inc., 178 Ga. App. 849, 850, 344 S.E.2d 707, 709 (1986)).
4. Cohen v. Baxter, 267 Ga. 422, 423, 479 S.E.2d 746, 747 (1997).
5. *Kim*, 275 Ga. at 179, 563 S.E.2d at 850.

must be given the "broadest of latitude" in questioning that juror.[6] Over the years, however, many trial judges grew impatient with prolonged questioning about the potential bias of prospective jurors. As a result, certain trial courts in Georgia adopted a practice of curtailing questioning by counsel and asking the panel member a series of rehabilitative or "talismanic" questions. As indicated above, "talismanic" questions are those that tend to pressure jurors into stating that, notwithstanding their indications of potential bias or prejudice, they can set aside their personal feelings and decide the case based solely on the evidence and the law. In *Kim v. Walls*, the Supreme Court of Georgia responded to this widespread (but unfair) practice among trial courts in this State of *curtailing* the inquiries of counsel into a prospective juror's potential bias and of "rehabilitating" that juror through the use of talismanic questioning. Mindful of the broad discretion vested in the trial courts and that the burden of proving partiality rests with the party seeking disqualification, the supreme court articulated an important but limited holding: "[W]hen voir dire questioning is *curtailed* as it was here, the process fails to achieve its purpose of ferreting out bias, and an abuse of discretion results."[7]

However, the *Kim* decision also contains some expansive language in dicta that appears to have led certain panels in the Court of Appeals of the State of Georgia to graft additional law onto this limited holding. In particular, the following statement by the supreme court seems to be a principal source of confusion:

> Thus, when a prospective juror has a relationship with a party to the case that is either close or subordinate, or one that suggests bias, the trial court must do more than "rehabilitate" the juror through the use of any talismanic question. The court is

6. *E.g.*, White v. State, 230 Ga. 327, 336, 196 S.E.2d 849, 856 (1973) (noting that "counsel should not be unduly hampered in the utilization of any aid which he deems will be helpful to him in striking the jury," but holding there was no harmful error where the appellant could not identify jurors it would have moved to strike for cause where judge refused appellant's request to allow appellant's wife to sit at counsel's table during voir dire as a consultant on community relations).

7. *Kim*, 275 Ga. at 179, 563 S.E.2d at 850 (emphasis added).

> statutorily bound to conduct voir dire adequate to the situation, *whether by questions of its own or through those asked by counsel.*[8]

Based upon a review of the cases following *Kim*, it appears that this statement is intermittently being interpreted to impose a new duty on the trial court to conduct its own investigation and ask its own questions to uncover bias during voir dire – even when the questioning of counsel has not been curtailed. Yet, a more careful reading of *Kim* seemingly refutes that construction.

First, under no circumstances does the applicable statute impose an obligation on the trial court to ask its own questions in voir dire. Instead, the statutory duty that the supreme court referenced in *Kim* provides on its face that the trial court's only "duty" is to "hear the competent evidence respecting the challenge *as shall be submitted by either party.*"[9] While the statute provides that the evidence relevant to a motion to strike shall be elicited by the parties, the supreme court in *Kim* recognized a growing trend among trial judges to circumvent a thorough and sifting examination of a potential juror's bias by *curtailing* the inquiries of counsel and "rehabilitating" that juror through the use of talismanic questioning.[10] When the trial court prematurely terminates questioning by counsel, it is impossible for counsel to carry the statutory burden of presenting sufficient evidence of bias in support of a motion to strike. It is the *curtailment* of questioning and the concomitant use of talismanic questions to rehabilitate the juror and expedite voir dire that the supreme court found to be an abuse of discretion in *Kim*.[11]

So long as the trial court does not improperly curtail the voir dire conducted by the parties, a sound construction of *Kim* does not impose an affirmative obligation on the *court* itself to "ferret out bias." Indeed, the supreme court in *Kim* went to great lengths to clarify the limited nature of its ruling, holding explicitly that "the

8. *Id.* at 178, 563 S.E.2d at 849 (emphasis added).
9. O.C.G.A. § 15-12-134 (2005) (emphasis added).
10. *See* 275 Ga. at 178-79, 563 S.E.2d at 849-50.
11. *See id.*

burden of proving partiality still rests with the party seeking to have the juror disqualified."[12] Additionally, the court emphasized that its decision in no way sought to limit the discretion of the trial court in deciding whether to exclude a juror for cause.[13] In fact, in the absence of the curtailment of questioning by the parties, the supreme court has never imposed an affirmative duty on the trial court to conduct its own investigation of a juror's potential bias—in *Kim* or otherwise. Nevertheless, it can be argued that various panels of the court of appeals have relied upon the above-quoted language to hold that, despite a full and searching inquiry to the satisfaction of counsel, the trial court was charged with a duty to conduct a *sua sponte* investigation of the juror's relationship to ensure the impartiality of that juror.

Other panels of the court of appeals have adhered to the more limited interpretation of *Kim* and refused to impose an affirmative duty on the trial court in the absence of a decision to curtail questioning by counsel.[14] Given the uncertainty resulting from inconsistent interpretations of *Kim*, further guidance from the supreme court would be beneficial to judges and practitioners alike. Nevertheless, the supreme court recently declined an opportunity to resolve these inconsistent interpretations of *Kim* and to clarify the role of the trial court in voir dire.[15] Consequently, although appellate decisions are arguably inconsistent and contradictory on this point, it now appears that any verdict taken up for appeal faces potential reversal if the court of appeals is persuaded that the trial judge (not counsel) failed to exercise sufficient diligence in investigating the potential bias of a juror during voir dire.

12. *Id.* at 179, 563 S.E.2d at 850.

13. *Id.*

14. *E.g.*, Clack-Rylee v. Auffarth, 273 Ga. App. 859, 616 S.E.2d 193 (2005); Hollis v. State, 269 Ga. App. 159, 603 S.E.2d 516 (2004).

15. Brown v. Columbus Doctors Hosp., Inc., 277 Ga. App. 891, 627 S.E.2d 805 (2006), *cert. denied* (Ga. June 12, 2006).

## II. THE COURT OF APPEALS AND VARYING CONSTRUCTIONS OF *KIM V. WALLS*

Trial lawyers in this state need to know whether the duty to conduct effective voir dire rests ultimately with counsel (as the statute provides) or with the trial court (as some recent decisions have held). Similarly, members of Georgia's judiciary must know the scope of their duties in voir dire. Specifically, Georgia trial judges need to know whether they are always subject to an affirmative duty to "ferret out" potential bias themselves, or whether they assume such a duty only when they curtail a thorough and sifting examination by counsel. Although a sound construction of *Kim* imposes no affirmative duty to conduct *sua sponte* questioning in the absence of such curtailment, recent decisions from certain panels at the court of appeals have relied on the supreme court's statements regarding the duty of the trial court to "conduct voir dire adequate to the situation" to impose a duty beyond the factual circumstances present in *Kim*.[16] As a result, the court of appeals is sending inconsistent messages on the duty of trial courts during voir dire.

For example, in *Valentine v. State*, the court of appeals cited *Kim* to support its holding that "[t]he short colloquy between the trial court and the juror simply did not 'achieve its purpose of ferreting out bias, and an abuse of discretion result[ed].'"[17] Although there was no suggestion that the questioning by the parties was curtailed in any fashion, the court of appeals held that the *trial judge* did not elicit sufficient information about the juror's relationship with the victim's mother to make an objective evaluation of her impartiality.[18] In other words, the court of appeals interpreted *Kim* as requiring an affirmative investigation by the trial court into the potential bias of the juror—even when the parties' opportunity to conduct that investigation was apparently unfettered.[19]

16. 275 Ga. at 178, 563 S.E.2d at 849.
17. Valentine v. State, 265 Ga. App. 139, 141, 592 S.E.2d 918, 920 (2004).
18. *See id.*
19. *See id.*

In contrast to *Valentine*, however, the court of appeals held in *Hollis v. State* that no abuse of discretion had occurred in denying a motion to strike, despite alleged bias, because "the court did not *curtail* inquiry of Juror 32," and "both the prosecutor and defense counsel were allowed to question Juror 32 fully . . . ."[20] Likewise, in *Holloway v. State*, the court of appeals held that the trial court conducted an adequate voir dire examination where the trial court "did not cut short the voir dire," counsel "continued to question her," and the trial court did not make a "cursory attempt at rehabilitation through a 'talismanic question.'"[21] Although these opinions clearly embrace a narrower (and seemingly more proper) construction of *Kim*, other more recent decisions from the court of appeals demonstrate continuing confusion about its scope.

In *Brown v. Columbus Doctors Hospital, Inc.*, the court of appeals ordered a new trial after the trial judge refused to strike an allegedly biased juror for cause because the trial judge did not personally undertake sufficient questioning to determine the extent of the alleged bias.[22] Despite extensive and apparently unfettered questioning of the juror by counsel, the court of appeals relied on *Kim* in holding that "[b]ecause the trial court did not ferret out bias, an abuse of discretion resulted, and a new trial is required."[23] As in *Valentine*, the decision in *Brown* reviewed the adequacy of the trial court's own questioning of a potential juror, even in the absence of a decision by the trial court to *curtail* questioning by counsel.

In stark contrast to the decisions in *Brown* and *Valentine*, other panels of the court of appeals have explicitly held that the holding in *Kim* comes into play only when there has been an inappropriate curtailment of questioning by counsel. For example, in *Clack-Rylee v. Auffarth*, the court of appeals found no abuse of discretion by the trial court in conducting voir dire because, "[u]nlike the situation in *Kim v. Walls*, the trial court here did not curtail further inquiry by

20. Hollis v. State, 269 Ga. App. 159, 160, 603 S.E.2d 516, 519 (emphasis added).

21. Holloway v. State, 278 Ga. App. 709, 716-17, 629 S.E.2d 447, 454 (2006).

22. Brown v. Columbus Doctors Hospital, Inc., 277 Ga. App. 891, 627 S.E.2d 805 (2006).

23. *Id.* at 895, 627 S.E.2d at 808 (citing *Valentine*, 265 Ga. App. at 141, 592 S.E.2d at 920; Powell v. Amin, 256 Ga. App. 757, 758-59, 569 S.E.2d 582, 584-85 (2002)).

plaintiffs' counsel regarding juror Conley's responses; instead, plaintiffs' counsel stated he had no further questions."[24]

Likewise, in *Gibson v. State*, the court of appeals examined the decision in *Kim*, but noted that "in *Kim*, the plaintiff's counsel's questioning of a prospective juror who had a professional relationship with the defendant was inappropriately curtailed."[25] The court went on to observe that the supreme court in *Kim* had been careful to limit its holding by stating that its decision did not alter the "'fundamental principle'" that "'the law presumes that potential jurors are impartial, and that the burden of proving partiality still rests with the party seeking to have the juror disqualified.'"[26] These decisions—which clearly confine the holding in *Kim* to circumstances involving curtailment and the consequent use of talismanic questioning—are difficult to reconcile with *Brown*, *Valentine*, and other decisions from the same court that seemingly impose an affirmative duty on the trial court to conduct its own investigation even in the absence of curtailment.

Perhaps most notably, in *Powell v. Amin*, the court of appeals appears to have applied *Kim* in an internally inconsistent fashion with respect to the questioning of two different jurors in the same case.[27] With respect to the first juror at issue on appeal—and with no indication that the questioning by the parties had been curtailed—the court of appeals held that the trial court had abused its discretion by qualifying the juror without conducting further voir dire after discovering a casual relationship between the juror, who was a pharmacist, and the defendant, who was a doctor.[28]

With respect to the second juror, however, the court of appeals held that there was no abuse of discretion arising from the trial court's refusal to strike, despite an absence of any inquiry by the court, because the trial court was "willing to allow [counsel] to conduct further voir dire to establish the basis for his objection, but

24. Clack-Rylee v. Auffarth, 273 Ga. App. 859, 862, 616 S.E.2d 193, 196 (citations omitted).
25. Gibson v. State, 267 Ga. App. 473, 478, 600 S.E.2d 417, 421 (2004).
26. *Id.* (quoting *Kim*, 275 Ga. at 179, 563 S.E.2d at 850).
27. *See* Powell v. Amin, 256 Ga. App. 757, 569 S.E.2d 582.
28. *Id.* at 759, 569 S.E.2d at 585.

the attorney declined."[29] Ostensibly undermining the rationale for its ruling on the first juror, the court of appeals concluded that "it was the attorney's actions, not the trial judge's, that limited the voir dire of this juror. Under these circumstances, we cannot say that the trial court abused its discretion."[30]

The *Powell* court's holding with respect to the second juror is consistent with the supreme court's narrow holding in *Kim*. The *Powell* court's holding with respect to first juror is not, because it implicitly requires trial courts to conduct *sua sponte* questioning of potential jurors, even when there has been no curtailment of the questioning by the parties.

In sum, the court of appeals has not consistently applied the holding of *Kim* from case to case, nor even within the context of a single opinion. Where, in the absence of curtailed questioning by the parties, the court of appeals has imposed an affirmative obligation on trial courts to conduct their own *sua sponte* questioning of prospective jurors, it has expanded the supreme court's limited holding in *Kim* in a way that has substantial policy consequences. Until the law in this area is clarified, the varying decisions from the court of appeals represent a development that should command the attention of attorneys and judges, as well as litigants, in jury trials held in Georgia.

## III. PRACTICAL IMPLICATIONS FOR THE JUDICIARY AND COUNSEL

One thing is clear from the law in its present state: A judge may not curtail counsel's inquiry into potential bias during voir dire and then proceed to rehabilitate the juror with a cure-all question without conducting an adequate inquiry into potential bias. Nevertheless, the duties and responsibilities of counsel and judges during voir dire are far more difficult to ascertain with certainty in cases where questioning by counsel is not curtailed. To the extent *Valentine*, *Brown*, and *Powell* require trial judges to conduct *sua sponte*

29. *Id.* at 760, 569 S.E.2d at 585.
30. *Id.*

questioning of potential jurors in the absence of curtailment of questioning, these decisions have arguably made the system less clear, less fair, and less workable in actual practice.

Perhaps the most telling way to examine the legal and policy consequences of these recent decisions is to return to the hypothetical example at the beginning of this article. After opposing counsel discovers that one of the panel members was at a baseball game in which your client gave a foul ball he caught to the panel member's son, opposing counsel declines the opportunity to conduct further inquiry. Given the rulings in *Valentine*, *Brown*, and *Powell*, the trial court may have an affirmative obligation to pickup the slack by asking its own questions about the encounter, but the judge declines to do so. When opposing counsel thereafter moves to strike the juror, one of two things could happen: (1) the judge could strike the juror and a potentially desirable panel member will be lost; or (2) the judge could deny the motion and impanel the juror. If the second result happens, opposing counsel will be able to appeal the decision on the grounds that the trial judge did not ask sufficient questions of the potential juror to ferret out bias. In effect, opposing counsel will have taken out an insurance policy against an adverse verdict.

Furthermore, you know that the only way to prevent such a potential appeal of the verdict is to stand up and ask the judge to conduct additional questioning of the juror sufficient to uncover bias *in your client's favor*. In other words, the court of appeals' more expansive interpretation of *Kim* would leave you with the counterintuitive obligation to elicit information from a panel member to substantiate opposing counsel's motion to strike. Otherwise, you are left with the distinct possibility that the juror is impaneled over opposing counsel's objections and any verdict you obtain is at substantial risk on appeal. Conversely, opposing counsel has a practical incentive to ask just enough questions to establish a good faith predicate for her motion to strike, but sufficiently few to permit a reversal on appeal should the trial court seat the panel member without conducting its own investigation of potential bias.

Viewed in this light, the decisions of the court of appeals in *Valentine*, *Brown*, and *Powell* have resulted in several troubling legal

and policy consequences: (1) they have arguably shifted the burden of proof for motions to strike from counsel to the trial court; (2) they have seemingly undermined the broad and long-recognized discretion of the trial court in voir dire; and (3) they have effectively changed the standard of review on motions to strike from a true abuse of discretion standard to what, in practical effect, amounts to a *de novo* standard of review.

First, the decisions in *Valentine*, *Brown*, and *Powell* have arguably shifted the burden of proving impartiality away from the party seeking to disqualify a juror and put that burden on the trial court itself. In Georgia, there is no question that the statutory burden of proving impartiality rests with the party challenging a juror for cause.[31] However, instead of leaving that burden with the moving party, as both *Kim* and the statute require, the rationale applied by the court of appeals in these decisions seemingly shifts to the *trial court* the burden of ensuring that all the proper questions are asked under the circumstances. If the trial court itself ultimately has the affirmative duty to question jurors sufficiently to remove questions of bias, then the moving party really has no burden at all. Instead, a party seeking to disqualify a juror may simply rely on the duty of the trial judge to uncover the relevant facts. This result seems inconsistent with the proper allocation of responsibilities between the court and counsel.

Second, if the more expansive construction of *Kim* prevails, the court of appeals will necessarily and routinely be required to conduct a detailed review of the adequacy and sufficiency of the trial judge's questioning—instead of conducting such a review only when questioning by the parties has been curtailed. The routine imposition of this sort of review cannot be reconciled with the wide discretion afforded to trial courts in qualifying jurors. This is particularly true in that the extent of questioning required to "ferret out" bias in any given case will necessarily depend in substantial part on the credibility and demeanor of the juror—factors which the court of appeals will not be able to discern from the paper record.

31. O.C.G.A. §§ 15-12-133, -134, -163 (2005).

"A conclusion on an issue of juror bias is based on findings of demeanor and credibility which are peculiarly in the trial court's province, and those findings are to be given deference."[32] While a judge's decision to curtail further questioning may demonstrate an inadequate voir dire under *Kim*, the imposition of an affirmative duty on the trial court to conduct *sua sponte* questioning in the absence of such curtailment, and the concomitant appellate inquiry into the sufficiency of that *sua sponte* questioning, significantly undermines the discretion of the trial judge in evaluating the credibility and demeanor of potential jurors.

Finally, through the intermittent application of an expansive reading of *Kim*, the court of appeals has effectively altered the standard of review for motions to strike. In *Valentine*, *Brown*, and *Powell*, the court of appeals did not show any deference to the trial court's evaluation of the juror's credibility and demeanor. Instead, the court of appeals conducted what, in substance, amounted to a *de novo* review of the adequacy of the trial court's investigation. If the supreme court endorses the approach followed by the court of appeals in these cases, the "manifest abuse of discretion" standard of review will be eroded in favor of a virtual *de novo* review of the adequacy of the trial court's questioning in any given case. This surely was not the result intended by the supreme court in *Kim*.

## IV. BROADER IMPLICATIONS FOR OUR JUDICIAL SYSTEM AND ITS LITIGANTS

The potential implications of this issue can be surmised in a single statement about the current state of the law in this area: *In every civil and criminal trial in which a motion to strike a juror on the basis of bias or partiality is denied, the outcome is subject to appellate challenge under* Kim, *and a new trial may be ordered if the trial court's own questioning of the prospective juror was inadequate,*

32. Corza v. State, 273 Ga. 164, 167, 539 S.E.2d 149, 153 (2000); *see also* Elliott v. Home Depot U.S.A., Inc., 275 Ga. App. 865, 867-68, 622 S.E.2d 77, 79 (2005); Clark v. State, 265 Ga. App. 112, 113, 593 S.E.2d 28, 29 (2003).

*even if the questioning by counsel was not curtailed.* This state of the law provides trial lawyers with an incentive to present motions to strike members of the venire panel at even the slightest hint of bias or partiality. Each time an attorney unsuccessfully moves to strike a juror on this basis, that attorney has created an opportunity to appeal a potentially adverse verdict. It is for this precise reason that the Georgia courts have historically placed the burden of proof on the attorneys themselves and left substantial discretion in the hands of the trial judge. In the wake of *Valentine*, *Brown*, and *Powell*, however, voir dire gamesmanship and abusive appellate practice could become more commonplace in this area of the law.

## CONCLUSION

In any legal dispute, there is value to finality and the termination of litigation that would otherwise take multiple turns through the door of the local courthouse. The process of trying a case is a massive undertaking that is expensive for the parties, taxing for the judiciary, and fraught with risk and uncertainty. The reasoned deliberation of a jury should not lightly be displaced through review of matters that should fall within the sound discretion of the trial court, particularly when counsel have been afforded a full opportunity (whether taken or not) to develop the record on a given issue. The process of jury selection is no exception to this general principle.

By routinely examining the adequacy and sufficiency of the trial court's *sua sponte* investigation of bias – instead of conducting such a review only when questioning by the parties has been *curtailed* – the court of appeals has opened the voir dire process to a heightened degree of scrutiny, and it has done so in a way that arguably shifts the burden of proof and undermines the discretion of the trial judge. Yielding to the law of unintended consequences, the standard of review properly applicable to voir dire appears to be in jeopardy. Until a uniform approach is adopted by the courts, appellate challenges may continue to result in inconsistent and irreconcilable decisions on the duties of counsel and trial judges in voir dire.