



# National Legal Research Group, Inc.

## JURY RESEARCH SERVICES DIVISION

The Jury Research Services Division of the National Legal Research Group, Inc., offers quality jury research nationwide to attorneys. Since 1982, we have assisted civil and criminal defendants, plaintiffs, and federal, state, and local prosecutors in hundreds of cases in a wide variety of contexts. The Director of our division, Jeffrey Frederick, Ph.D., nationally renowned trial consultant and author, has been assisting attorneys in jury trials since 1975.

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### How we can help you:

We provide a broad range of services to help our clients meet the challenges of today's jury trials.

#### PRETRIAL ASSISTANCE

**Surveys:** We use juror surveys to help you understand the trial jurisdiction.

- Juror profile surveys
- Change of venue surveys

**Small Group Research:** We evaluate cases through our small group research studies.

- Focus groups
- Trial simulations or mock trials

**Case Preparation:** We assist in case preparation and persuasion.

- Witness preparation
- Physical evidence evaluation
- Opening statement review

#### TRIAL ASSISTANCE

**Jury Selection:** We assist in many aspects of jury selection.

- *Voir dire* development
- Juror questionnaire development
- In-court assistance in evaluating potential jurors' verbal and nonverbal behavior

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#### POST-TRIAL ASSISTANCE

**Post-Trial Interviews:** Interviews of jurors after trial, when allowed, help you bring into focus how the jury made its decision and what can be done to maximize your effectiveness in future trials.

# Effective *Voir Dire*

by Jeffrey T. Frederick

Frederick, J. T., *Effective Voir Dire*, The Compleat Lawyer, 26-30 (Summer 1997)  
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During the questioning of potential jurors in the voir dire process, lawyers strive to achieve four major goals: eliciting information from jurors, developing rapport with jurors, educating jurors on key concepts, and persuading jurors to view the case from their perspective.

## Information Gathering

The most important goal is to understand each juror's mindset. Based on the juror's background, experiences, and opinions, how does he or she view the world and how will he or she view the evidence, arguments, and issues in your case? Certain skills and approaches can help lawyers elicit information from jurors.

***Get jurors talking.*** The key to successful voir dire is to have jurors tell you about themselves. Ask jurors questions that give *them* an opportunity to talk. What do they do at work? What are their interests or spare-time activities? Such questions not only provide important information but also help jurors open up to the voir dire process.

***Ask open-ended questions.*** Give jurors the opportunity to put their answers into their own words. Questions that are open-ended and do not restrict the jurors' answers to a "yes or no" format provide more information about the thought processes and opinions of the jurors. "Tell me about your views on punitive damages," will produce a much fuller understanding of the jurors' true beliefs than "Do you disagree with the law that provides for punitive damages?"

***Avoid questions that encourage jurors to "look good."*** Like everyone, jurors want others to think the best of them. Some questions, simply by the way they are phrased, lead jurors to answer in ways that make them "look good." Asking jurors, "Based on what you have heard about the case, do you believe that you could be a fair and impartial juror?" will lead them to answer in a predictably socially acceptable manner, i.e., "yes." Jurors are very reluctant to admit that they could not be fair. Changing the phrasing to "Based on what you have heard about the case, would you tend to feel that the defendant would need to provide you with evidence that he is innocent?" will lead to more candid and truthful answers.

***Capitalize on the environment.*** Make the most of what your jurisdiction allows. When the jurisdiction allows individual questioning of jurors, take advantage of this fact and ask critical, open-ended questions. Also, develop your voir dire from the perspective of having a conversation with jurors—not conducting a job interview or an interrogation. Jurors are more likely to tell you more about themselves in a supportive conversation than when they feel they are being interrogated.

When the jurisdiction restricts questioning to a group format, use approaches that maximize the participation by jurors in the process. First, ask questions where a majority of jurors will raise their hands. Doing so helps jurors become more comfortable with raising their hands in open court. Second, where appropriate, call upon jurors who do not raise their hands. This strategy quickly lets jurors know they cannot avoid participation by failing to raise their hands. Finally, use jurors' answers for a second bite at the apple. When a juror raises a hand and gives an important answer, particularly a negative one, follow up this answer with the remainder of the jurors. The following is an example of this approach:

*Lawyer:* "How many of you would have any reservations in returning a verdict of no money damages?"

[One juror raises his hand.]

*Mr. Smith:* "Well, I've had to take care of my sick mother for a number of years now. I know how much her medical bills are, and it would be really difficult for me not to provide the plaintiff with something."

*Lawyer:* "Mr. Smith, thank you for your candor. How many of you [referring to the panel] feel like Mr. Smith does and would have reservations in returning a verdict of no money damages?"

[Another juror raises her hand.]

In this manner, jurors who were initially reluctant to raise their hands are given a second opportunity to participate. Failure to take advantage of the jurors' answers can lead to some unacceptable jurors passing below the lawyer's radar screen and becoming members of the trial jury.

***Don't settle for demographics.*** Demographics or background information (e.g., occupation, marital status, and educational background) can be useful. However, it is only the first step in understanding the jurors' mindsets. Research shows that demographic information is less predictive of jurors' decisions than information concerning the jurors' experiences and opinions.

***Determine the impact of experiences.*** Information on the relevant experiences that jurors may have had is important also. Again, you must go beyond the mere experience and uncover the impact that this experience has had on the juror's views and beliefs. If

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victimization is important, ask jurors not only whether they have been a victim of a crime, but also (1) what type of crime it was; (2) what the circumstances of the crime were; (3) whether their behavior changed in any way as a result of this experience (e.g., adding security devices to their home); and (4) as a result of this experience, what their views are concerning their personal safety and regarding the criminal justice system.

**Ask about the jurors' opinions.** Delve into the jurors' views on relevant issues. Do they distrust police? Do they have reservations concerning lawsuits against doctors? Do they think that a woman assumes the risk of sexual assault when she accompanies her date to his bedroom? The closer you can get to how the jurors view critical issues in your case, the closer you will be to understanding the jurors' mindsets.

**How to Educate Jurors**  
Uncover jurors' opinions.  
Determine if jurors' beliefs result from misconception or firm bias.  
Discuss jurors' opinion in context of appropriate judicial standard.  
Secure a commitment to apply the appropriate judicial standard.

**Listen to jurors.** Jurors' answers can reflect subtle differences in opinions. As such, careful attention to the jurors' answers is imperative. Jurors know when lawyers are not paying attention to them. When the jurors feel that the lawyer is not paying attention to what they are saying, they often clam up and reciprocate by not making the effort to respond with thoughtful answers.

**Pay attention to "body language."** What jurors say is important, but so is how they say it. Movements of the juror's body, the orientation of the juror's body, gestures, facial expressions, and eye contact are all potentially important clues to the juror's thoughts and feelings. In addition, speech disturbances, the timing of pauses during the juror's answers, pitch, tone of voice, and the willingness of the juror to reveal information to you as compared to opposing counsel help complete the picture of what jurors are thinking and feeling.

There is no single cue that reliably indicates deception on the part of jurors. Gestures and movements can be made for a number of reasons, and need to be placed in the context of the jurors' overall pattern of behavior. A key to understanding the body language of jurors lies in evaluating the changes in behavior in light of what questions are being asked and who is asking the questions.

**Use juror questionnaires.** Some jurisdictions ask jurors to complete supplemental juror questionnaires that provide additional information on the jurors' backgrounds, experiences, and opinions. Such questionnaires can provide valuable information concerning the jurors, particularly in jurisdictions where voir dire questioning is

conducted by the judge and/or in a group questioning format. Under these latter circumstances, jurors are more reluctant to candidly discuss their experiences and opinions and are less likely to fully participate in the questioning process. A juror questionnaire may be your only route to greater disclosure in these situations.

## **Developing a Positive Relationship with Jurors**

Establishing rapport with jurors provides two major benefits. First, jurors are more willing to be open and candid in their answers. Second, the positive impression of the Lawyer fostered by rapport increases the lawyer's persuasiveness at trial.

To develop rapport with jurors:

1. Show an interest in each juror.
2. Treat jurors with respect.
3. Make jurors feel comfortable during the questioning process.
4. Adopt a nonjudgmental attitude.

Rapport results from positive *interaction* with jurors. Thus, there is a need to develop questions that give jurors an opportunity to talk about themselves and their views. As with information gathering, open-ended questions are helpful in developing rapport.

## **Educating Jurors**

Lawyers need to take the opportunity to educate jurors on important issues and decision-making criteria. In essence, we want jurors to understand the issues and decision-making criteria that are important to our case. Jurors often come into court with misconceptions as to what their task as jurors will be and what the law is.

Essential to this goal of education is recognizing how jurors process information. If jurors have misconceptions concerning important issues, they will filter information during the trial through these misconceptions. If these misconceptions are not corrected early, jurors can come to erroneous conclusions or disregard important evidence.

The education process begins by uncovering the jurors' beliefs concerning key issues through information-gathering techniques. When misconceptions are uncovered, lawyers can use open-ended questions to determine whether the jurors' views reflect a true misconception or a firm bias. If the view is a misconception, the jurors are led through a series of questions that discuss the relevant legal issue and address the jurors' willingness to comply with the appropriate judicial standard. The following exchange illustrates this approach:

*Defense:* "Would you expect the defendant to testify?"

*Juror:* "Yes. I guess, I kinda thought that the defendant was supposed to testify. I mean, it always seemed that way on Matlock."

*Defense:* "How would you feel if the defendant didn't testify?"

*Juror:* "I guess something would be missing for me."

(Additional questioning would further explore this area.)

*Defense:* "Now, we mentioned earlier that the prosecution has the burden of proof in this case. What does that mean to you?"

*Juror:* "Well, it means that it's up to the prosecution to prove its case--that they have to convince us that the defendant is guilty."

*Defense:* "What does that mean for the defense?"

*Juror:* "It means that the prosecution has to prove everything and the defense doesn't."

*Defense:* "That's exactly it. A criminal case is serious. If the government is trying to convict someone and send him to jail, they are the ones who must come forward and prove it. Now, how does this fit in with the defendant testifying in this case?"

*Juror:* "Well, he doesn't have to and he shouldn't have to. It's the government's job."

*Defense:* "Would you tend to hold anything against the defendant if he didn't take the stand?"

*Juror:* "No."

*Defense:* "Is this a position you take lightly?"

*Juror:* "No. I really hadn't thought about it too much before. As a juror, it's my duty to uphold the law, and that's the law."

*Defense:* "Would you have any reservations in doing this?"

*Juror:* "No."

Where possible, avoid using phrases like "According to the law . . ." or "Do you understand that . . ." in the early stages of the education process. While some jurisdictions may require the use of such phrases, these phrases elicit the "looking good," or socially acceptable answers from jurors. Proper education requires that jurors discard prior misconceptions and adopt the legally appropriate position.

## **Persuasion**

The final goal is persuasion. Because voir dire involves an interaction between the lawyer and the jurors, a potential for persuasion exists. Persuasion differs from education in that an attempt, often subtle, is being made to influence how the jurors view the case. Several aspects of persuasion are potentially available.

### **Ten Ways to Get to Know Jurors**

*Set the tone for the case.* Through the questions asked, lawyers can set the tone for the case; that

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is, jurors can be led to view the case from a certain perspective. For example, a plaintiff's lawyer may set the tone for higher compensation for a severely injured plaintiff by asking: "Would you have any reservations in returning a money award sufficient to allow Mrs. Smith to live at home rather than being placed in an institution?"

The above question sets the tone for the case by contrasting an unpopular outcome (i.e., placing someone in an institution) with a more positive outcome (i.e., allowing an injured person to stay in her own home). This contrast also paints the defense in a negative light by implying that it is seeking to place the plaintiff in an institution.

**Win the language war.** The words used to describe events affect how jurors view these events. Lawyers can capitalize on this through the consistent use of desirable words and phrases throughout the questioning process (and the trial itself). For example, consider the difference in impressions formed by the plaintiff's lawyer asking the same question with a simple change in wording:

"This case involves the injury of Mrs. Smith by the defendant, who *crashed into* her vehicle while she sat at a stoplight. Have any of you heard about this?" or:

"This case involves the injury of Mrs. Smith by the defendant, who *struck* her vehicle while she sat at a stoplight. Have any of you heard about this?"

Note that the use of the phrase "crashed into" versus "struck" produces a more violent impression of the impact of the vehicle.

**Win the war of concepts and definitions.** The choice of words not only affects the jurors' general view of the case but also can influence the standards the jurors apply in a given case. Defining a legal standard in terms that make it appear more or less stringent influences how jurors will use this standard. Prosecutors and plaintiffs' lawyers attempt to lower the relevant standard of proof, while defense lawyers seek to raise this standard. The following example highlights this approach concerning the standard of proof in civil trials:

*Plaintiff:* "The plaintiff need *only show* by a preponderance of

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the evidence that the defendant, Dr. Thomas, was negligent in his treatment of Mrs. Jones. 'Preponderance of the evidence' is a legal term that simply means more likely than not, a simple tipping of balancing scales. [*Gesturing with hand movements.*] That is, we need *only show* that it is *more likely than not* that the defendant doctor was negligent in his treatment of Mrs. Jones." [*Again, illustrating the tipping of the scales.*]

*Defendant:* "The plaintiff in this case has the burden of *proving* by the preponderance of the evidence that Dr. Thomas was negligent. That is, the plaintiff *must prove* by the *greater weight* or *clear preponderance* of the evidence that what Dr. Thomas did when he was caring for the plaintiff constituted negligence."

### **Conclusion**

Pay attention to the four major goals of voir dire--information gathering, rapport, education, and persuasion--and take advantage of techniques and strategies for achieving these goals. Lawyers who do so will make the most of the voir dire process and seat the best jury.

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