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Tips For Understanding and Identifying Juror Bias

by Jeffrey T. Frederick, Ph.D.

Our goal during the jury selection process is to minimize the presence on the trial jury of those jurors who are closed to the contentions of the plaintiff (true bias) or, when the evidence is close, who are more likely to vote against the plaintiff (subtle bias). Bias, of course, is in the eye of the beholder. Of chief concern to plaintiff's attorneys is the identification of potentially anti-plaintiff biases and, as such, we will not address "good" jurors for the plaintiff (e.g., those with potentially anti-defense biases). To identify possible juror bias, we need information from and about the jurors. This information may come from pretrial jury research such as focus groups, trial simulations, and juror profile surveys; pretrial investigation; and voir dire, including juror questionnaires, in-court questioning, and nonverbal communication. This article will focus on the voir dire process in our search for anti-plaintiff juror bias. (1)

Being successful in identifying juror bias during voir dire requires attention to (a) the case analysis, (b) the sources of information, and (c) the questioning techniques used.

Case Analysis

First, you must know what you are looking for. It is important to analyze your case to see where potential areas of bias on the part of jurors may arise. A good way to focus on potential bias in your case is to ask yourself the following questions:

What are the themes that both sides will use in the case? It is important to identify those jurors who react negatively to your theme or, conversely, react positively to your opponent's theme. For example, the following question puts the plaintiff's theme on compensation before jurors: "How many of you would have any reservations awarding sufficient monetary damages to allow Ms. Smith to be able to stay at home rather than being placed in an institution?"

What are the major issues and law in the case? Whether it's a product liability, automobile accident, medical negligence, or patent case, it is important to test jurors' reactions and understanding of the major issues and law in the case. Which jurors have reservations about awarding punitive damages? Which jurors have reservations in finding negligence or in awarding

significant money damages based on the "preponderance of the evidence" standard?

What are the strengths and weaknesses of your case? Jurors' reactions to the strengths and weaknesses of your case also are a source of potential bias. If documentation is a problem or certain witnesses aren't available (e.g., the plaintiff is dead and can't tell his or her side of the story), you must determine which jurors will hold that against you. Be wary of jurors who react negatively to your weaknesses or who are unimpressed with your strengths.

What is the nature and extent of pretrial publicity? When the incident or case has attracted media attention or when other relevant cases (e.g., the McDonald's coffee-spilling case) have been publicized in the trial jurisdiction, jurors' views may be affected by this coverage. Thus, it is necessary to ask about the jurors' exposure to such publicity and to assess what impact this exposure has had on the jurors' views.

How will jurors of differing backgrounds, experiences, and opinions react to the case? Finally, in light of the answers to the above questions, we must determine how to isolate potential bias through the questions we ask during voir dire concerning the jurors' backgrounds, experiences, and opinions.

Sources of Information

To understand and uncover the biases that jurors hold, it is important to examine several sources of information. These sources include information on the jurors' (a) backgrounds, (b) experiences, (c) opinions, beliefs, and values, and (d) nonverbal communication. Before turning to each of these sources, it is necessary to consider how they work together to produce the viewpoints (and biases) jurors bring with them into the courtroom and through which they subsequently "filter" or process the evidence, arguments, and law in arriving at their decisions. Jurors come from a variety of backgrounds (e.g., race and occupation), and these backgrounds often influence the experiences jurors have (e.g., being a victim of discrimination or owning a small business). Whether as the result of their backgrounds or other factors, such as having read about discrimination, or economic hardships faced by certain small businesses because of lawsuits or having been a defendant in a lawsuit, jurors' experiences influence their opinions, beliefs, and values. For example, they may identify with the plaintiff/victim or have anti-plaintiff feelings regarding lawsuits and punitive damages. The most important information to know about jurors is their feelings, opinions, values, and beliefs.⁽²⁾ These are the bases for the jurors' outlooks or viewpoints. It is through these viewpoints that jurors process or, in the case of bias, distort the information they receive and arrive at the decisions they make at trial. The final source of information, nonverbal communication, helps identify the jurors' true feelings, opinions, beliefs, and values.

Backgrounds

The jurors' backgrounds consist of a variety of information, including such factors as race, gender, occupation, education, and organizational membership. Background information comes primarily

from voir dire (and in some cases, juror questionnaires), but also may come from jury lists or pretrial investigations of jurors (e.g., searches of public records).(3) Over the years, our research has shown that in some areas and in some cases race, gender, education, occupation, and political party affiliation have surfaced as significant predictors of verdicts, with those who were Caucasian, male, moderately to highly educated, from business-oriented occupations (e.g., accounting and insurance sales), and Republican being less favorable to plaintiffs. However, in most cases, these characteristics produced 10% to 30% differences in verdicts rendered and not the single-minded, unidirectional voting that a "stereotypical" approach to jury selection would imply.(4)

When considering the background of a juror, we must keep our goal in mind: Does this juror have a viewpoint or bias that is disadvantageous to the plaintiff? As such, our focus must be on looking for what inferences about the juror's opinions and beliefs may be drawn from his or her possession of certain background characteristics. Several questions help shed light on developing potential "red flags" for any given case:

Is there any potential for identification on the part of potential jurors with any party, witness(es), or with events based on certain background characteristics? Do jurors have similar backgrounds as a party or witness that would lead them to view the party or witness more or less favorably? Would coming from certain upper socioeconomic status groups lead to possession of more calloused, anti-victim attitudes?

Do any of the background characteristics carry the potential to act as a surrogate for critical experiences or opinions? Recognizing the errors inherent in making generalizations based on gross background characteristics when we are unable to ask jurors directly about certain critical experiences or opinions, what background characteristics serve as indicators of the potentially greater likelihood of certain jurors having had a critical negative experience or holding a critical negative opinion? For example, many small-business owners oppose punitive damages in general. If you are unable to investigate satisfactorily the jurors' views on punitive damages, you would not want to ignore this background characteristic.

Do jurors belong to any organizations that have taken a position relevant to the instant litigation? For example, some business organizations have spoken out against the number of lawsuits and the amounts of damages being awarded by juries. Would jurors belonging to any of these organizations lead them to identify with a business being sued? Or, for example, would membership in, or support for, MADD/SADD (anti-drunk driving groups) lead a potential juror to view the fact that a plaintiff had consumed alcohol before being involved in an accident as reflecting contributory negligence on the plaintiff's part?

Whatever the answers to these and similar questions are, the key to successfully identifying juror bias is to confirm the presence or absence of the important underlying attitudes held by red-flag jurors.

Experiences

Jurors have had a variety of experiences that may have shaped their viewpoints as they pertain to your case. Potential biasing experiences can be divided into several categories: (a) experiences that lead to viewing the defendant and/or defense witnesses more favorably, (b) experiences that lead to viewing the plaintiff and/or the plaintiff's witnesses in a negative light, and (c) experiences that lead to viewing the actions of the plaintiff negatively.

Jurors may have had positive experiences that cause them to favor the defense. For example, in medical negligence cases, some jurors have had positive experiences with nurses, doctors, or hospitals that cause them to give medical professionals/institutions the "benefit of the doubt." In excessive-force cases, some jurors may have had positive contacts with law enforcement (either through friends or family, the workplace, or the help provided by police in a difficult situation) that produces a positive impression of the defendant and a subsequent potential pro-defense bias. Also, some businesses may supply desirable jobs or have made contributions in their community that have had a positive affect on jurors (e.g., supplying needed jobs in the community, the building of parks, or providing financial contributions or scholarships to local residents) and which lead them to favor the defendant. These types of experiences can lead to a bias favoring the defendant and to a credibility bias favoring similarly situated defense witnesses.

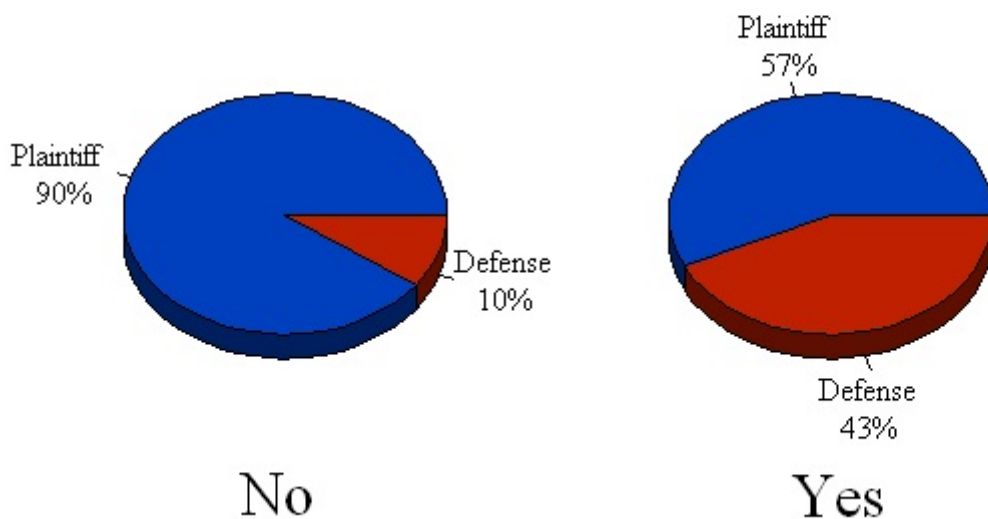
Jurors can have experiences that lead to viewing the plaintiff and the plaintiff's witnesses in a negative light. Just as experiences can lead to a pro-defense bias, they can produce anti-plaintiff bias (irrespective of the defendant). For example, potential jurors who have been defendants in lawsuits often possess anti-plaintiff sentiments. Their experiences as being defendants often lead to identification with the defense and animosity toward plaintiffs in general.

Finally, jurors can have certain experiences that lead them to blame the plaintiff for his or her injury. This desire to hold the victim responsible for injury can arise for any of several reasons. First, there can be an element of "defending" oneself from a threatening situation. For example, in the tobacco liability cases, a potential juror who smokes may feel the need to blame the plaintiff for any injury because it is threatening for this juror to think that he or she might face the same fate. Second, particularly with activities that involve known risks, potential jurors who voluntarily participate in risky sports or activities may have come to an intellectual acceptance of possible harm and thus impute this acceptance of risk to the plaintiff. Third, a combination of the above forces can arise when similar activities are participated in by both the plaintiff and the juror and the element of risk or harm becomes severe. The combination of acceptance and blame of the victim allows the potential jurors to view their situations as more controllable and continued participation in the activity becomes less threatening.

Consider a ski injury case tried in Virginia where the plaintiff suffered catastrophic injuries while skiing at a ski resort.⁽⁵⁾ Our focus group research in this case showed that two types of experiences were important in determining anti-plaintiff biases--the jurors' participation in "risky" activities, in general, and the jurors' skill level or skiing experience. As shown in Figure 1,

those potential jurors who engaged in risky activities (e.g., sky diving, bungee jumping, and motorcycle riding) were less favorable to the plaintiff, with only 57% returning verdicts for the plaintiff as compared to 90% plaintiff's verdicts from those who had not engaged in risky

Figure 1
Ever Participated in "Risky" Activities?



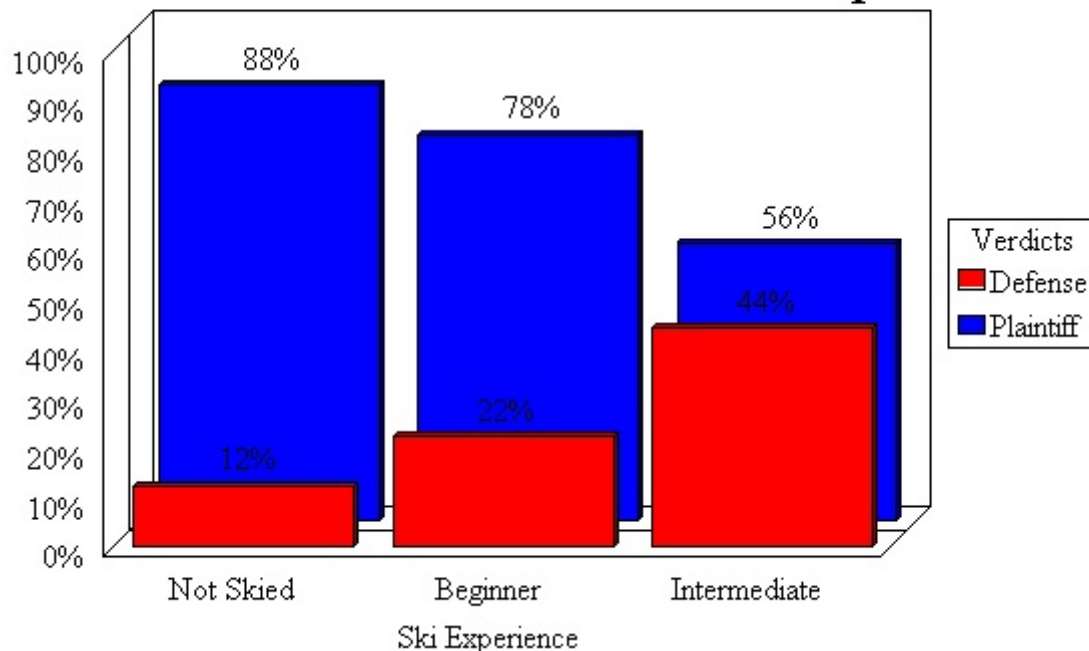
activities. In addition, as shown in Figure 2, the more experience that jurors had with skiing (as reflected in their reported level of expertise) the less favorable they were to the plaintiff. What was of particular interest was the finding that it was not just whether the potential juror had skied before, but his or her having a level of expertise beyond the beginning level that was most important, with verdicts for the plaintiff decreasing from 88% for those without ski experience to 56% for those with an intermediate level of skiing expertise. Both of these factors were important in the jury selection in that case.

Opinions

The third source of information addresses the key element in identifying juror bias, the opinions, beliefs, and values that make up the viewpoints (and possible biases) of jurors. The opinions of jurors can be divided into several useful, but not necessarily mutually exclusive, categories: (a)

Figure 2

Verdicts as a Function of Ski Experience



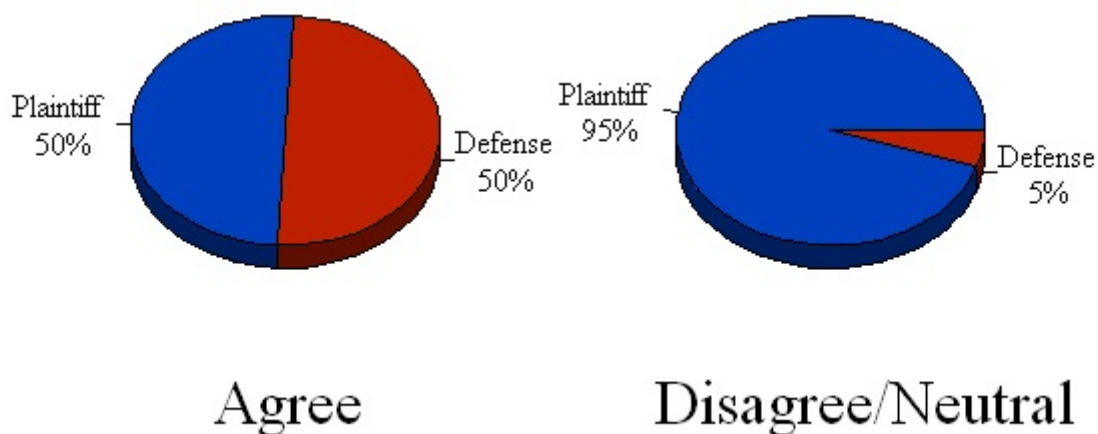
general opinions, (b) case-specific opinions, (c) liability opinions, (d) damages opinions, (e) legal standards opinions, and (f) the ability to discharge their duty. In preparing for voir dire, it is important to consider each of these areas to fashion an informative voir dire that fits the restrictions present in the trial jurisdiction.

General opinions. General opinions refer to the more global views, values, and opinions that jurors hold. These views can reflect personality characteristics or traits of jurors, such as beliefs in distributive justice or perceptions of control over their lives,⁽⁶⁾ or general views that may have an indirect connection to your case (e.g., general views on helping victims or the disadvantaged). While general opinions are usually less accurate than case-specific opinions in identifying bias, they are useful components in the search for bias. For example, in many of our studies jurors' views on the need to help victims has identified many pro-defense jurors. Two relevant questions are: "How many of you believe that victims should be compensated to the fullest extent the law will allow?" and "How many of you feel that people who are well-off have an obligation to help those who are less fortunate?" Those jurors who do not support these statements often tend to be more favorable to the defense. In fact, in the ski case referred to earlier, those who felt that people who are well-off did not have an obligation to help the less fortunate rendered more defense verdicts (40% versus 10%) as compared to those who supported or were neutral concerning the obligations of the well-off to help the less fortunate.

Case-specific opinions. These opinions are directly related to some aspect of the case, such as the theme, circumstances of the case, or bias concerning a party or witness. These opinions have

the potential to be more effective in identifying bias because they are more directly connected to the decisions that jurors will make. For example, in cases where the plaintiffs are injured while involved in "risky activities," it would be important to ask whether jurors feel that those involved in risky activities should not complain if they get hurt. More specifically, as shown in Figure 3, in the ski case described earlier, it was important to know whether the jurors supported the opinion that skiers should not complain if they are hurt when they accidentally run off the ski trail. Fifty percent of the jurors who believed that skiers should not complain under these circumstances rendered verdicts for the defense, while only 5% of the jurors who were either neutral or disagreed with the statement decided the case for the defense.

Figure 3
Skiers Shouldn't Complain if Hurt Off Slope



In addition, our research has, on occasion, found that the jurors' general positive or negative impressions of the parties in the case can influence their views on liability and damage awards. Jurors having a negative impression of a party or its perceived quality of service or product have been more willing to treat that party more adversely than jurors without such negative impressions.

The key to uncovering bias through case-specific opinions (when research is unavailable) comes from breaking down the case into critical issues and investigating jurors' reactions to them. For example, do jurors have any reservations in holding businesses (e.g., manufacturers,

transportation companies, or hospitals) responsible for the actions of their employees, an important consideration in many cases? Also, what level of importance do jurors place on consumer/user safety in product liability cases?

Liability opinions. While a special form of case-specific opinions, liability opinions represent the first of the potentially two basic decisions that jurors will be called upon to make. Since jurors will have to decide the issue of liability or negligence, it is important to specifically assess any bias they may have in this area. Liability opinions can address a general view concerning liability and lawsuits. For example, do jurors believe that there are "simply too many lawsuits today" or that "people today are too eager to file lawsuits?" Liability opinions can also take on a more specific context. For example, in medical negligence cases against doctors, case-specific questions would likely include: "Do you believe that it is unfair to sue doctors?" "Would any of you have any reservations in returning a verdict against a doctor for negligence?" or "Would you have any reservations in returning a verdict in favor of the plaintiff in a case involving the doctor's failure to diagnose a serious illness?" In addition, jurors could be asked, "Would you have any reservations in filing a lawsuit against a doctor if you felt that you were hurt as a result of any negligence on the part of the doctor?" When possible, it is desirable to address issues from several directions to develop a fuller picture of the jurors' opinions and not rely on a one issue/one question approach.

Damages opinions. A second special form of case-specific opinions addresses the decision jurors must make provided the defendant is held liable--the damages to be awarded to the plaintiff. In general, a majority of jurors feel that jury awards are becoming too high, with those who reject this view often being good plaintiff's jurors. However, this majority is not all anti-plaintiff and starts to break apart when you examine potential biases against full compensation in terms of the amount of money to be awarded or the award of money for certain legally defined components of damages. For example, given the bad press often associated with the concept of pain and suffering, asking jurors directly if they feel it is important to compensate someone for pain and suffering is fundamental to identifying juror bias on this issue. In fact, jurors' negative views on the issue of pain and suffering are often associated with lower compensatory damages awards in general. Each element of compensation should be examined. For example, do jurors feel that providing compensation for damages such as pain and suffering is any less important than compensation for such economic damages as lost wages or medical expenses? Do jurors feel that you really cannot compensate someone for the loss of a loved one and, therefore, such compensation should not be given?

Beyond the elements, the overall size of the award should be addressed if the damages are potentially substantial in order to uncover any jurors who have a limit (bias) to the amount of damages they would return. For example, the following question would be useful: "The damages in this case are substantial (or are in excess of \$1 million). Would any of you have any reservations in awarding this total figure (\$1 million) if you found the defendant to be negligent?"

When the case involves the issue of punitive damages, after explaining what punitive damages are, jurors should be asked about their positive or negative views of punitive damages. For example, "How many of you have heard or read anything about punitive damages from the media or discussions with family, friends, or colleagues?" If individual questioning is allowed, "How do you

feel about the awarding of punitive damages?" "How many of you feel that punitive damages should not be used to punish corporations for wrongdoing?" "Does anyone feel that punitive damages do more harm than good?" "Would you have any reservations in awarding potentially substantial punitive damages if the law and the facts supported such a finding?" "Would the fact that the corporation is large and that it would require a substantial amount of money (maybe millions of dollars) to really punish the defendant lead you to hesitate in awarding such a figure?"

Legal standards opinions. In addition to liability and damages, the jurors' views on legal standards need to be investigated. How do jurors feel about the "preponderance of evidence" standard? Would they have any reservations in deciding a case against the defendant if the plaintiff showed that it was more likely than not that the defendant was negligent? Would jurors have any reservations in considering circumstantial evidence? Would jurors feel that given the size of the damages in the case something more than a preponderance of the evidence would be needed in order for them to find in favor of the plaintiff? These types of questions are necessary to uncover bias concerning the legal standards. Failure to address these areas for fear of looking weak in front of the jury is a risky strategy given the potentially disastrous consequences of having a biased juror fly under the radar screen and end up on the jury.

Ability to discharge duty. Finally, when searching for the biased juror, it is important to consider a final broad area of opinions that, while case-specific, often serve as a catch all for general juror bias or partiality. These questions are as follows:

"If you were sitting at either table would there be any reason why you would not want someone like yourself as a juror in this case?"

"Do you have any personal or religious belief or feeling that would cause you to hesitate in sitting in judgment of the defendant?"

"Suppose the law, as given to you by the judge, goes against your personal view of what the decision should be. How many of you would tend to decide the case based on your personal view (and not on the law as given to you by the judge)?"

"Do you feel that either side starts out a little ahead of the other in your own mind at this time?"

These questions can be part of the general closing questions for the voir dire. In addition, some of them can serve as follow-up questions based on previous answers that will help facilitate the establishment of the grounds for a challenge for cause.

Nonverbal communication

The final source of information available during voir dire concerns the jurors' nonverbal communication or "body language." The goal is to identify the nonverbal behaviors that support or contradict what jurors are saying. Of particular concern is the biased juror who is trying to hide his or her true feelings. While there is no single behavior that reveals deception in all situations, the so-called "Pinocchio" effect, attorneys can benefit from identifying when jurors deviate from

their "normal" pattern of behavior or activity. The following pointers should be helpful:(7)

Observe the jurors' initial level of activity. We need a frame of reference from which to evaluate the jurors' nonverbal behavior. At the beginning of voir dire, pay close attention to the general activity or comfort level exhibited by potential jurors. Most jurors will be nervous during the voir dire process, and it is important not to misinterpret this type of nervousness as the anxiety jurors feel when attempting to hide information, opinions, or feelings from the questioner. By knowing the initial level of nervousness, you can more effectively interpret the jurors' subsequent behaviors.

Look for changes in the body. Jurors can reveal anxiety and attempts to deceive the questioner through changes in a variety of aspects of their bodies. First, nervous energy can produce greater body movement (e.g., wringing of hands, twisting of rings on the fingers, or tapping of toes or fingers). Second, nervousness or negative feelings can lead jurors to "protect themselves" by closing off the body from the questioner (e.g., folding arms, leaning away from the speaker, or turning the body slightly with the shoulder oriented toward the questioner). Third, nervousness can cause some jurors to "freeze" their body movements (i.e., holding the body rigid to avoid giving away indications of their true feelings). Fourth, nervousness can cause jurors to break or avoid eye contact during critical exchanges (e.g., glancing to the side during critical parts of an answer or looking down or away when answering). However, it should be noted that with particularly hostile or dominant, biased jurors, these jurors may not feel the need to break eye contact and thus can maintain constant contact. Finally, facial expressions are an important source of information, provided we recognize that this aspect of the body is under the jurors' greatest control. Pay attention to looks of sympathy, concern, animosity, or skepticism directed toward the parties or the attorneys. Be aware that the "smile" of the juror is something to be viewed as a red flag. While genuine positive smiles are good if directed toward you or your client, smiles are also commonly used to hide true feelings. Confusion between the two can have disastrous consequences.

Listen for changes in how jurors speak. Deception and anxiety can be revealed in changes in the normal speech patterns of the jurors. First, nervousness can produce disruptions in the pattern of speech (e.g., use of "uhs" and "ums," pauses before and during answers, or the presence of unfinished sentences). Second, nervousness can cause the juror to speak more rapidly (i.e., to say the answer quickly in order to reduce nervousness). Third, nervousness can cause the pitch of the juror's voice to rise, sometimes with an associated "cracking" of the voice. Fourth, a dominant, biased juror may respond in a cold or condescending tone of voice. Fifth, nervousness can produce tense laughter (e.g., laughter that is inappropriate or too short or too long under the circumstances). Sixth, deception can not only lead jurors to minimize answers (e.g., short "yes" or "no" answers), but it can also produce "irrelevant" speech (i.e., responses that appear to answer the question but are really attempts to avoid doing so). Finally, word choice can provide additional information on the jurors' true feelings. Referring to the plaintiff as "him" or "her" while referring to the defendant by name can reveal anti-plaintiff bias. In addition, using the negation conjunction "but" is a red flag, e.g., "I can be fair but I'm a small businessman and all these lawsuits have driven up the price of my liability insurance." The use of "but" in many cases negates the phrase preceding its use.

Look for changes between questioners. While noting changes in the jurors' behavior during your questioning is important, it is also important to compare how the jurors respond to you and to your opponent. Anti-plaintiff jurors often will display greater comfort and greater participation in the questioning process in response to the defense's questioning.

Observe who the jurors look to for support. On occasion, jurors are faced with a question for which they are unsure of its meaning or unsure how to respond to it. When questioning produces confusion on the jurors' part, it is useful to note where jurors look to for support in uncertain situations. Do they look at you or do they look for help from the defense? It is not a good sign when a juror looks to your opponent for help in uncertain situations.

Observe jurors when not "on stage." Finally, when jurors are not "on stage" by being directly asked questions, they are less likely to engage in the effort necessary to control any outward displays of their feelings. Therefore, where possible, observe jurors when they are in the spectators' section and when they are in the jury box but not being questioned. Particularly, concerning the spectators' section, a great deal of information can be gained in these less-threatening situations.

Questioning Techniques

The final component in being successful in identifying juror bias focuses on the questioning techniques used during voir dire. The key to uncovering juror bias through questioning is promoting juror candor. The following are 10 tips for increasing juror candor and thus identifying juror bias.(8)

1 ***Explain the process in nonjudgmental terms.*** It is important that jurors are encouraged to answer candidly and participate fully in the voir dire. Jurors should be encouraged to do so by both the attorneys and the judge by telling them that there are no "right" or "wrong" answers and that the only appropriate answers are truthful and candid ones.

2 **Use open-ended questions judiciously.** Open-ended questions are the "How do you feel" and "What do you think about" type questions. These questions force jurors to think about their answers and tell you their thoughts and feelings in their own words. As such, they are more informative than the traditional closed-ended question (i.e., questions requiring a "yes" or "no" type response). While most voir dire is conducted using closed-ended questions, open-ended questions are useful when conducting individual voir dire, when addressing sensitive issues, or when following up answers with individuals in a group voir dire format.

3 **Foster participation early and often.** Given the importance of having jurors be candid and truthful in their answers, we need to keep jurors involved and participating in the voir dire process, particularly when questioning is conducted in group format. We can do this in several ways. First, we need to break the tendency for jurors to be reluctant to participate in the process by getting all jurors involved early. We can achieve this through the "breaking the ice" technique which has all jurors raise their hands at the start of voir dire. We can also achieve this by asking

questions that all jurors are required to answer affirmatively (e.g., asking how many jurors have lived in the area for the past two years). Once jurors are participating, we need to keep them doing so. We can do this by occasionally phrasing questions so that a majority of jurors must respond by raising their hands instead of phrasing questions so that only a minority will respond (e.g., How many of you have not been involved in a lawsuit?). In addition, use verbal reinforcement (e.g., "thank you" and "I appreciate your candor") to foster continued participation by jurors in the future.

4 Don't let jurors hide. Be sure to ask questions of jurors who do not raise their hands. Particularly when using questions where lack of hand raising is important, call on jurors who have not raised their hands. In this way, potential jurors learn very quickly that failure to raise their hands will not enable them to avoid speaking in court.

5 Take a second bite at the apple. When jurors give undesirable answers (indicating a potential bias), ask the remaining jurors if they have had similar experiences or have similar opinions. Taking a second bite at the apple reduces the chances that biased jurors will "fly under the radar screen" and become part of the trial jury.

6 Approach sensitive issues carefully. It is important when addressing sensitive or critical issues that jurors are led up to the question and not asked for an answer "out of the blue." Taking the time to ask about relevant experiences, positive contacts with relevant entities, and general opinions related to the critical issue allows jurors to be more in touch with their feelings on the matter and hence to be better able to honestly and candidly answer the ultimate question.

7 Capitalize on side bars. When the judge allows questioning of the juror at the bench (or out of the presence of other jurors), it is important to phrase the appropriate questions to increase the number of jurors who will qualify for examination at the bench. This is critical because the judge is more likely to allow open-ended questions at the bench and jurors are more likely to be candid out of the presence of the other jurors.

8 Avoid questions with multiple components. Crucial information can be lost when a single question covers several important pieces of information, e.g., "How many of you have read or seen anything about jury awards providing money for pain and suffering and as a result feel that such awards are not appropriate?" This type of question can prevent important information from coming to light. In the above question, several types of jurors unfortunately are lumped together: (a) those who have not been exposed to information about pain and suffering; (b) those who have been exposed to this information and have not been biased; and (c) those who have been exposed to this information resulting in a bias against such awards as a result, and are unable to recognize and/or unwilling to admit to this bias. Of course, the original question also fails to address any pro-plaintiff bias concerning jury awards for pain and suffering.

9 Avoid the socially desirable response bias. Jurors are sensitive to the "job interview" nature of voir dire. As such, jurors are reluctant to admit any partiality or bias on their parts in view of the understood role of jurors as fair and impartial decisionmakers. Questions that use phrases such as "fair and impartial," "bias or prejudice," or "understand the law that says" feed into desires to give

socially acceptable answers and thus should be avoided where possible.

10 ***Don't forget the catch-all questions.*** Finally, near the end of the voir dire, take the advantage of asking the "ability to discharge their duty" questions mentioned above. This is the last chance to detect juror bias and, as such, these questions should always be included as the last line of defense against biased jurors. Large numbers of jurors may not respond to these questions, but the occasional few who are identified in this manner will more than make up for the effort.

Conclusion

The most important goal of jury selection for plaintiff's attorneys is the identification of anti-plaintiff juror bias. Success in understanding and identifying juror bias during voir dire relies on careful attention to the case analysis, the sources of information available (i.e., backgrounds, experiences, opinions, and nonverbal communication of jurors), and the questioning techniques you employ during voir dire. By taking this systematic approach to identifying anti-plaintiff juror bias, plaintiffs' attorneys will be more successful in meeting the challenges of jury selection in today's litigation environment.

Endnotes

1. For a more comprehensive discussion of jury research and jury selection issues, see Frederick, *Mastering Voir Dire and Jury Selection: Gaining an Edge in Questioning and Selecting a Jury*, (ABA Press 1995) and Frederick, *The Psychology of the American Jury*, (Michie 1987). While there are many important goals of voir dire, such as education, persuasion, and rapport, our attention will focus on information gathering, which is paramount in identifying juror bias.

2. See Frederick, *op cit.*

3. The importance of investigating jurors through public records should not be minimized. For example, in a recent case where prior involvement in lawsuits was of importance, we found several potential jurors who had had significant involvement in prior lawsuits yet who failed to raise their hands in response to the appropriate question during voir dire. Also, sometimes judges may not allow certain questions to be asked, e.g., political party affiliation. In some of our research projects, political party affiliation has proven to be an important, but not exclusive, predictor of verdicts. In one such case, we were able to examine voter registration records of one-party primaries in the trial jurisdiction to determine if any potential jurors had voted (but not who they voted for) in that primary and, hence, for those who had voted, an inference could be made concerning the potential juror's identification with that party.

4. These results support the dictates of Batson and its progeny. See *Batson v. Kentucky*, 106 S. Ct. 1712 (1986); *J.E.B. v. Alabama ex rel. T.B.*, 62 U.S.L.W. 4219 (U.S. 1994). Treating jurors with similar backgrounds, e.g., race or occupation, as having a singular viewpoint is dangerous. Jurors are simply more complex than that. Those who operate solely on these stereotypes are doomed to the errors inherent in applying broad generalizations to specific individuals.

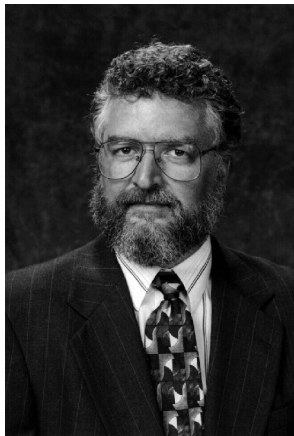
5. This case was *Hoar v. Great Northern Management Co.* for which Bruce Rasmussen of Michie, Hamlet, Lowry, Rasmussen & Tweel and Patrick Regan of Regan, Halperin & Long ably represented the plaintiff. It has been attributed to be the first case in Virginia where a ski resort has been held liable for injuries sustained while the plaintiff was skiing.

6. Beliefs in equity or distributive justice and internal-external locus of control can be related to jurors decisions in civil cases. See Frederick (1987), *supra*, note 1.

7. For a more in-depth discussion of this topic, see Frederick , "Body Language: What Attorneys Should Look for During Jury Selection," *The Journal of Virginia Trials Lawyers Association*, April 1990, at 18-21; Frederick (1987) and (1995), *supra*, note 1.

8. For a further discussion of this topic, see Frederick , "How to Increase Juror Participation and Candor in Restricted Voir Dire Settings," *The Journal of Virginia Trials Lawyers Association*, Summer 1996, 8-13; Frederick (1995), *supra*, note 1.

About the author:



Dr. Jeffrey Frederick is the Director of the Jury Research Services Division of the National Legal Research Group in Charlottesville . He is one of the nation's most experienced jury research service providers, with more than 24 years of experience in providing assistance in hundreds of civil and criminal cases for plaintiff and defense attorneys, federal and state prosecutors, and criminal defense attorneys. He is a nationally recognized consultant, speaker, and author in the area of jury trials. He has written extensively on the topic of jury trials and trial advocacy, including the books, *The Psychology of the American Jury* (LEXIS Law Publishing, 1987), and *Mastering Voir Dire: Gaining an Edge in Questioning and Selecting a Jury* (ABA , 1995).