



Advanced Jury Research

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UNCOVER JUROR BIAS

WITH 5 “ACCESSIBILITY” FACTORS

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Although most cases are resolved prior to trial, when matters *do* reach the voir dire stage, efficient and effective questioning of jurors is critical. A single juror’s undisclosed opinion, harbored resentment, or submerged agenda can gravely undermine your evidence, arguments, and experts.

When asked what aspect of voir dire and panel selection we focus on most, we answer, “life experiences with case issues.” We consider this to be the most reliable predictor of the best and worst jurors for each case. These experiences form the basis for jurors’ fixed attitudes, biases and perceptions. Unearthing and investigating these life experiences is a key goal of voir dire.

Once a relevant life experience has been disclosed by a juror, it is imperative to explore its impact on that juror. To do this, first, determine “accessibility.” How quickly and intensely did the juror respond to the question? How many details were provided? Experiences pulled easily and immediately out of memory, with specifics, are among the most important to jurors, and important attitudes are not easily changed.

Second, explore the 5 factors of “accessibility.” There are five main factors that determine the level of accessibility and the strength of biases. They are recency, frequency, duration, extremity and vested interest. Follow-up with questions regarding all five. Rating these from a 1 to 5 in terms of relevancy for each juror helps biases stand out during selection.

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Recency includes incidents that have occurred in the near past, such as within the past few years . Emotions and memories fade over time, so situations that are still recent and “fresh” in jurors’ minds tend to have strong impact. For instance, if a juror suffered from partial paralysis after a surgical procedure six years ago, but recovered fully within eight months, this experience would not have as large an impact as if it had occurred six months ago. Ask the juror if the experience feels “like it happened yesterday.” Are emotions still “raw”?

Frequency refers to the number of similar incidents a juror experiences regarding the same issue. Most jurors at some point have been victims of theft. If, however, a juror has been burglarized repeatedly, it is likely that this juror has developed strong feelings on this issue. Ask the juror how he feels about this occurring “again and again.” Does he think someone should be punished? How bad was his financial loss?

Duration refers to the length of time an incident has continued. Some experiences cover weeks, others exist for decades. For example, if a juror injured his back ten years ago, but fully recovered after a few months, duration of the pain was short. In contrast, if the injury resulted in ongoing back pain for the past ten years, duration will twist the back injury into an important factor for that juror. Ask that juror if he feels he has some expertise in this case because of his own situation. (He is more likely to be an expert on the panel.) Does he relate to the plaintiff? Has he already decided that the plaintiff should get *something* because of long-term pain?

Extremity refers to the intensity or acuteness of an incident. The more extreme an experience, the more potential for bias. For example, if a juror’s mother broke her arm in a car roll-over four years ago, the juror would not likely have formed strong biases regarding vehicle accidents. If the mother had been *killed* in that accident, however, the extremity of the outcome would probably have created strong feelings about vehicle accidents, particularly roll-overs. Ask her if she would be thinking about her mother’s accident while listening to evidence in this case. Would that be tough on her? Would she rather sit on another case? Is she already feeling emotional?

Vested interest refers to the extent that an issue personally affects jurors. For example, a juror who has lost a cousin in a drive-by shooting is going to have more difficulty with a case involving guns than most jurors. Added to his grief was the fact that this cousin was his roommate. Now that juror is responsible for the full rent. This increases vested interest. Ask that juror how his cousin’s death impacted him. Did it hurt him emotionally and financially? Has it changed him? How? Is he afraid of guns?

Let’s look at a situation involving all five of these factors. Consider a juror whose husband is an alcoholic, with a series of prior arrests followed by unsuccessful rehabs over the past eleven years. This husband has just caused an accident resulting in a DUI and manslaughter charge against him. All five elements will exist for this juror in regard to

alcohol issues. The condition has existed for a long time (*duration*), there have been severe consequences including arrests and a manslaughter charge (*extremity*), there were several arrests, rehabs and relapses (*frequency*), the accident and manslaughter just occurred (*recency*), and the man is the woman's husband, the father of her children, and the primary wage earner (*vested interest*). Each of these elements would likely rate a "5" out of "5" for this juror. Her attitude toward alcohol will not be indifferent, especially if she does not drink.

The more factors that jurors exhibit in terms of "accessibility," and the more serious the incidents behind these five factors, the more likely it is that jurors' attitudes will be affected by the incidents. This five-point scale is a good tool for determining the extent of jurors' biases as a result of past experiences.

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