

Improve Your Success in Voir Dire: Understanding Jurors' Personalities

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This third and final article in a series on jury decision making isolates the most meaningful results of research presented in the previous two articles and translates them into practical advice for the trial attorney. It discusses common myths and biases often employed by attorneys in voir dire, provides an overview of key juror personality variables and how they reveal underlying characteristics of jurors, and makes practical recommendations for effective voir dire strategy.

Many lawyers believe they are good at jury selection because it is what they *do*, and in some cases, do *often*. It seems, however, that experience in selecting juries does not necessarily lead to proficiency. Some studies have found that lawyers and laypersons are equally accurate (or inaccurate) in selecting jurors who they believe are favorable to their side.¹ One reason lawyers tend to perform poorly at jury selection is that they rely on myths and biases in forming their opinions about who is or is not a good juror.²

MYTHS AND BIASES IN JURY SELECTION

The most common mistake lawyers make when selecting juries is focusing on demographic information such as gender, race, marital status,

age, number of children, length of residence in the county, area of residence in the county, and so on. Occupation, in and of itself, is also not useful in selecting jurors. Only when occupation is used in conjunction with a series of questions on lifestyle or personality does it provide helpful information about a member of the venire. In general, the only way in which demographics have been found to predict verdict is when they measure key lifestyle experiences that relate to the case at issue.³ For example, you may expect a German engineer to be a pragmatic, defense-prone juror until you ask whether he has been

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affected by a tragedy or situation similar to the one you are about to try.

In our study, we found both race and gender related differently to mock jurors' assessments of liability and damages.⁴ Because our premises case involved sexual assault (of a black or white plaintiff), we expected that there would be differences between men and women in the way they viewed the case facts.⁵ Similarly, because our study varied the race of the plaintiff and involved mock jurors of different races, we expected that racial factors would be influential in jurors' views of the case issues.⁶ Thus, demographic information should be used in jury selection only when it relates to a particular case issue. *Make the most of your voir dire time by narrowing your focus to a few, key variables.*

The reason group factors must be considered in jury selection is that the opinions of an individual juror do not necessarily reflect those of that same juror in a group decision-making task.

A second jury selection bias is exhibited in the focus on the individual juror, as opposed to the jury as a group. The reason focusing on the individual biases jury selection is that it ignores the group aspects of jury decision making. As we discussed in the first article in this series,⁷ group decision making entails all factors common to individual decision making, including life experiences, personality characteristics, attitudes, values, and beliefs. Group decision making also includes social influence factors such as public commitment, conformity, attitude polarization, information pooling, and bargaining and negotiation. These latter, group-related variables are often overlooked by attorneys. The reason group factors must be considered in jury selection is that the opinions of an individual juror do not necessarily reflect those of that same juror in a group decision-making task. The main point to remember is that *interpersonal interaction* is the process by which opinion change occurs in groups. *When selecting a jury, you must focus on how the juror selected will fit in with every other juror in the group. The jury, as a group, is truly greater than the sum of its individual juror parts.*

A third myth in jury selection relates to the foreperson. Many attorneys use valuable time to select a particular juror who they believe will be the foreperson. This time spent on selecting a foreperson appears to be an ineffective practice

because research studies show little or no relationship between foreperson characteristics and verdict.⁸ There are certain characteristics, such as being male, having a high occupational status, and having previous jury experience, which make a juror particularly likely to be chosen as foreperson, but when the final vote is taken, none of this seems to matter.⁹ The general view among legal researchers is that forepersons do not exert more influence on deliberations than other jurors; they act merely as moderators in the deliberations and tend to focus their comments on procedural matters.¹⁰ It is the *opinion leader*, who is not necessarily the foreperson, who exerts the most influence on other jurors during deliberations.¹¹ Thus, in a case involving drunk driving where the distinction between impairment and blood-alcohol level may be crucial, you must decide whether to reject or retain the spouse of an alcoholic, who, in all likelihood, will become the opinion leader.

Our study identified several factors descriptive of the foreperson. The foreperson in our research often *was* the opinion leader and tended to be influential in determining the deliberations outcome (as rated by other jurors). In addition, forepersons in our study were more likely than other mock jurors to be antiauthoritarian and to possess an internal locus of control (meaning that they believe they have personal responsibility for events that occur in their lives).¹² The relationship between foreperson and opinion leader is certainly an area where additional research is warranted. *Concentrate your voir dire efforts on identifying likely opinion leaders rather than the likely foreperson.*

The last common mistake made by attorneys in voir dire is, by far, the most problematic. This mistake is using stereotypes of jurors believed to be "bad" for a particular type of case or client. While all of us use stereotypes as a quick and easy way to categorize or evaluate other people, stereotypes can be dangerous because they are conducive to producing judgmental errors. Although stereotypes, by definition, frequently contain a "kernel of truth,"¹³ they necessarily involve overgeneralizations about people based on their membership in a particular category (e.g., race, gender, age, etc.). Remember the engineer, and reconsider whether you may want to keep a nurse or a teacher that you may be tempted to exclude. *The bottom line is that myths, biases, stereotypes, and superstitious behavior do not help in jury selection.*

Stereotypes are dangerous for several reasons. The first reason is that past experience is not *always* a good predictor of future outcomes. Many attorneys

rely too heavily on their past experience in selecting juries—some do so to such an extent that they are actually engaging in “superstitious” behavior. This overreliance on what worked in the past often causes attorneys to fail to acknowledge the uniqueness of their current case. For example, the fact that female jurors on past cases have responded well to your arguments may have nothing to do with the characteristics of females in general or the “lucky navy suit” you always wear on the day of voir dire. Many attorneys become focused on their trial routines to the extent that they fail to take into account the characteristics of the group of jurors whom they have never seen before. War stories of past successes and failures, while interesting, are not extremely helpful in selecting juries. Many attorneys state that they never pick postal workers, or never pick teachers, or never pick women with big handbags, or *whomever*, because they had a negative experience with one of these categories of people many years ago. *Failing to adjust your behavior to the here and now will dramatically reduce your chances of selecting jurors who will vote in the desired direction. Be careful that your instincts or “gut feelings” derived from years of experience do not degenerate into superstitions.*

Overreliance on what worked in the past often causes attorneys to fail to acknowledge the uniqueness of their current case.

The attorney must examine his or her current voir dire strategies in an attempt to eliminate those strategies based on faulty premises. A keen awareness of the uniqueness of each venire, and each potential juror, will increase your chances of selecting open-minded jurors who, at a minimum, will be fair when listening to the case facts. We now **turn** to the use of various personality measures as **an aid in** understanding and selecting jurors.

PERSONALITY AND ITS RELATIONSHIP TO VERDICT

Our study focused on several key personality variables: legal authoritarianism, just-world view, and universal orientation. We found several ways in which these personality measures were useful in predicting mock jurors' liability and damages assessments.¹⁴ We re-examined each of these personality measures to determine which specific

items were *most* predictive of mock jurors' judgments. An understanding of the predictive ability of certain personality-related questions will enable you to ask members of the venire the fewest number of voir dire questions while obtaining the greatest amount of information. The results of our analyses follow.¹⁵

Legal Authoritarianism

Mock jurors' level of authoritarianism was measured via the Legal Authoritarianism Questionnaire (LAQ) developed by Boehm¹⁶ and scored according to Kravitz, Cutler, and Brock.¹⁷ Authoritarian individuals tend to be closed-minded, dogmatic people who endorse traditional, conservative opinions. These individuals, when on a jury, tend to dominate the deliberations and alienate other jurors. We found several ways in which authoritarianism influenced jurors' decision making, specifically in the area of liability assessments.¹⁸ All but one item on the LAQ were significantly related to the total score, meaning that an attorney could ask almost any question on the scale to derive information about a potential juror's level of authoritarianism.

The five items most indicative of jurors with an authoritarian orientation were the following:

1. “Upstanding citizens have nothing to fear from the police”;
2. “All too often, minority group members do not get fair trials” (reversed);¹⁹
3. “Citizens need to be protected against excess police powers as well as against criminals” (reversed);
4. “A society with true freedom and equality for all would have very little crime” (reversed); and
5. “Unfair treatment of underprivileged groups and classes is the chief cause of crime” (reversed).

Having identified the indicators of legal authoritarianism, we then examined which items were related to verdict.²⁰ Two of the items on the LAQ were predictive of liability assessments of mock jurors:

1. “A lot of recent Supreme Court decisions sound suspiciously communistic”; and
2. “Defendants in a criminal case should be required to take the witness stand.”

Both of these items were *negatively* related to judgments of the defendant's responsibility, meaning that mock jurors who endorsed the statement attributed less responsibility to the defendant and, thus, more responsibility to the plaintiff. In other words, jurors who agreed with these statements were good defense jurors.

Two items on the LAQ were predictive of damages assessments of mock jurors:

1. "The Supreme Court is, by and large, an effective guardian of the constitution"; and
2. "Persons who testify in court against under-world characters should be allowed to do so anonymously to protect themselves from retaliation."

Both of these items were positively related to the amount of damages awarded, meaning that mock jurors who agreed with the statements gave higher awards, and were, as a result, better plaintiff's jurors.

Just-World View

People usually like to believe that the world is a just place. Belief in a just world is challenged when something bad happens to someone who is good. People vary in their degree of blaming the victims of wrongdoing for their fate, depending on their just-world view and, in cases like ours involving sexual assault, whether they identify and/or empathize with the victim. In our study, just-world view combined with jurors' race and gender in affecting damages awarded to the plaintiff.²¹ Every item on the Just-World Scale (JWS)²² was significantly related to the total score, meaning that all questions were highly indicative of a potential juror's just-world view.

The five items most indicative of a just-world view were:

1. "Students almost always deserve the grades they receive in school";
2. "It is rare for an innocent man to be wrongly sent to jail";
3. "By and large, people deserve what they get";
4. "Although evil men may hold political powers for a while, in the general course of history good wins out"; and
5. "In almost any business or profession, people who do their job will rise to the top."

Upon identification of the indicators of just-world view among jurors, we next examined the items in relationship to verdict. Three items on the JWS were predictive of mock jurors' liability assessments:

1. "American parents tend to overlook the things most to be admired in their children" (reversed);
2. "Basically, the world is a just place"; and
3. "Many people suffer through absolutely no fault of their own" (reversed).

The first and second items were negatively related to assessments of the defendant's responsibility, meaning that mock jurors who agreed with the statement assigned less responsibility to the defendant, and therefore, were good jurors for the defendant. The last item was positively associated with judgments of the defendant's responsibility. Thus, mock jurors who agreed with this statement were plaintiff oriented in their liability assessments.

Two items on the JWS were predictive of mock jurors' damages awards:

1. "People who get 'lucky breaks' have usually earned their good fortune"; and
2. "It is rare for an innocent man to be wrongly sent to jail."

Both of these items were positively related to damages awards of mock jurors, meaning that mock jurors who agreed with the statements tended to award more damages to the plaintiff than other mock jurors.

Universal Orientation

The Universal Orientation Scale (UOS) measures jurors' degree of nonprejudice—that is, the degree to which they focus on the similarities between themselves and others.²³ In our study, universal orientation interacted with jurors' gender in affecting liability judgments and with jurors' race and gender in affecting damages awards.²⁴ Every item on the UOS was significantly related to the total score, meaning that all questions revealed potential jurors' degree of universal orientation.

The five items most indicative of a juror's universal orientation were:

1. "The same spirit dwells in everyone";

2. "When I meet someone I tend to notice similarities between myself and the other person";
3. "I can see myself fitting into many groups";
4. "When I look into the eyes of others I see myself"; and
5. "I could never get accustomed to living in another country" (reversed).

After identifying items that were the clearest indicators of universal orientation, we examined them in relationship to verdict. One item was predictive of mock jurors' assessments of liability:

"When I meet someone I tend to notice similarities between myself and the other person".

This item was positively associated with liability judgments, meaning that jurors who agreed with this statement were more likely to favor the defendant.

Two items were predictive of damages assessments:

1. "When I look into the eyes of others I see myself"; and
2. "I can relate better to persons of my own sex" (reversed).

The first item was positively associated with damages awards, indicating that mock jurors who agreed with the statement awarded more damages to the plaintiff. The second statement was negatively associated with damages awards, meaning that jurors who agreed with it awarded less damages to the plaintiff.

USING JURORS' PERSONALITY CHARACTERISTICS AS AN AID IN JURY SELECTION

The results of our in-depth analyses regarding the predictive ability of several personality scales on verdict demonstrate that there are underlying characteristics of jurors which make some jurors particularly likely to render a plaintiff's verdict and others more likely to render a defense verdict. These results, in combination with those reported earlier in this journal,²⁵ demonstrate that certain personality "types" are key in verdict determination. The fact that a relatively small number of items from each of the three personality scales

were highly predictive of verdict makes the adoption of personality-based voir dire an efficient strategy for the trial attorney who has limited time to select favorably predisposed jurors. *Use one or two items from each of the personality measures to identify both good and bad jurors for your case.*

Universal orientation appears to be an unobtrusive and effective way in which to identify potential jurors who will be unbiased in their view of the case, confident in their decision making ability, and influential in persuading other jurors to see the case their way.

An understanding of personality theory is essential to the trial attorney faced with considerable court-imposed constraints on jury selection. Because many judges expect juries to be chosen in record-breaking time, the most effective attorneys are capable of asking a few questions of the venire to discover favorably and unfavorably predisposed jurors. The use of selected items from the LAQ, JWS, and UOS, for example, will allow the attorney to derive a great deal of information about jurors' underlying characteristics while avoiding noninformative questions such as, "What schools do your children attend?" The fact that our research revealed strong associations between levels of authoritarianism, just-world view, universal orientation, and verdict indicates that there are relatively straightforward methods for improving jury selection techniques. *Trade your frequently asked, demographically based questions for questions that reveal jurors' underlying, unchanging, personality characteristics. You must respond with flexibility to the inflexibility of jurors.*

The first article in this series discussed jurors' confidence and influence on other jurors as key variables affecting the outcome of deliberations.²⁶ It is crucial to identify those potential jurors who will influence other jurors and/or be confident in the accuracy of their judgment. Early recognition of these jurors is an important aid to the attorney. In our study, jurors' confidence in their decision accuracy was a stable characteristic; confidence level was not affected by deliberations. In addition, confident jurors were rated by other jurors as being more influential in verdict determination. Apparently, highly confident jurors exhibit their self-assuredness in a way that is recognized, and utilized, by others on the jury. *Capitalize on the*

interrelationship among these three key juror traits by asking members of the venire about their usual degree of confidence in the accuracy of their decisions.

Refocusing voir dire in a more positive way will eliminate the types of questions that can alienate a juror even before the trial begins.

The other key finding relating to confidence was that it was positively related to universal orientation. Thus, jurors who were confident in their decisions tended to be the least prejudiced jurors. The end result of the analysis regarding confidence, influence, and universal orientation, then, is that universal orientation appears to be an unobtrusive and effective way in which to identify potential jurors who will be unbiased in their view of the case, confident in their decision making ability, and influential in persuading other jurors to see the case their way. Obviously, because our study is the first scientific assessment of these interrelationships, additional research is needed before more definitive conclusions can be drawn. We turn now to an overview of using the Universal Orientation Scale during jury selection.

Changing Jury Deselection Strategies to Jury Selection Strategies

Universal orientation is defined as a nonprejudicial view of others in which the perceiver attends to similarities between the self and others rather than the differences between the self and others.²⁷ The Universal Orientation Scale (UOS) measures responses that are inclusive rather than exclusive. It is a positive approach to the study of interpersonal relations and does not contain the built-in biases that impact the study of prejudice. One interesting aspect of the UOS is that it does not contain items that directly refer to race or ethnicity; thus, respondents cannot identify exactly what it measures. This is a positive quality of the UOS in that people often attempt to provide socially desirable answers, regardless of what they really believe. Social desirability is especially problematic in the courtroom, given the strong pressures to "do the right thing" in the presence of the judge and other authority figures, the lack of anonymity, and the need to make public statements about private issues. *Questioning potential jurors about their degree of universal orientation will elicit honest, as opposed to socially desirable, answers.*

As previously noted, while the results on the relationship between universal orientation and jury behavior are somewhat inconclusive at this early stage in the research, it appears that judgments of men and, to a lesser extent, blacks, are more affected by their level of universal orientation than judgments of women and whites. We will continue to investigate these results to determine whether they hold true in other cases. In general, however, we believe that the assessment of nonprejudice is a useful addition to litigators' trial notebooks. It is a positively oriented approach to understanding people and, as such, does not contain the limiting view of jurors that measures of prejudice contain. Further, it will be far simpler, if the research is fruitful in this regard, to get potential jurors to admit the areas in which they are similar to a client than to admit the prejudices they hold. *Jurors' admission of similarities between themselves and your client will serve to reduce the tendency to attack the client's weaknesses during deliberations.*

Given that the voir dire process seems to be working rather well in most courtrooms, you may wonder why we are suggesting a change in strategy. There is one major reason why a change may be warranted, and that reason is *time*. The identification and selection of "good" jurors, if performed systematically, will consume considerably less of the court's time than the screening out of "bad" jurors. In addition, refocusing voir dire in a more positive way will eliminate the types of questions that can alienate a juror even before the trial begins. For example, questions designed to condition jurors to the attorney's point of view are obvious in their intent—if not to the attorney, then to all members of the venire! If you can, ask only a few questions, forget demographics, and craft questions that frame the issues in your case (for example, "What do you think about . . .?"). By asking a few questions that measure nonprejudice, the attorney can choose six or twelve people who will be open-minded when hearing about the case and who will be influential in the outcome of the case. *An understanding of how universal orientation impacts decision making may increase your efficiency, as well as your result.*

THE "SCIENCE" OF JURY SELECTION: ANOTHER LOOK

We have attempted through this series of articles to provide the trial attorney with a background in psychological theory and research and

the knowledge of how to apply research findings to the courtroom situation. While we are not suggesting that voir dire strategies be reduced to asking the same few questions again and again, we certainly advocate focusing jury selection efforts on selecting jurors who are open-minded while eliminating potential jurors with a biased point of view. The common practices of using "conditioning" questions in an attempt to rehabilitate prejudiced jurors and "grandstanding" techniques of selecting the first six or twelve venire members (because "anyone will do") are far from being accurate jury-selection techniques. *Remember: Stay away from stereotypes and other habitual ways of selecting juries. Ask questions, listen carefully to the answers you receive, and identify those potential jurors who, because of their universal orientation, are accepting of all people. View the personality characteristics of potential jurors as more likely indicators of their behavior than demographic information. Incorporate scientific knowledge into your next voir dire. Your knowledge of some of the psychological aspects of jury selection should improve your results.*

It is essential that change be present in science; otherwise, the end users of scientific knowledge are subject to tired dictums based on outdated research.

We believe there is truly a science involved in jury selection, but we caution that the word *science* is often misused by some jury consultants who perform their research with less than scientific rigor. Science is a slow, deliberate process that represents an ongoing effort to test and retest hypotheses and other ideas. It is essential that change be present in science; otherwise, the end users of scientific knowledge are subject to tired dictums based on outdated research. The attorney, and his or her client, as the consumers of an expanding and often confusing array of jury-selection techniques, must be certain that the limitations of jury research are revealed. We are continuing our program of research and will be sharing our findings with trial attorneys so that you will be informed consumers regarding what does and does not work in voir dire.²⁸

ENDNOTES

¹E. Tate, E. Hawrish, & S. Clark, *Communication Variables in Jury Selection*, 24 J. Comm. 130 (1974).

²Good is defined differently by different attorneys. Some attorneys believe a good juror is a fair, open-minded person who will listen to all of the facts before making a decision; others believe a good juror is one who is favorably predisposed to the attorney's case.

³H.S. Feild, *Juror Background Characteristics and Attitudes Toward Rape*, 2 L. & Hum. Behav. 135, 146 (1978); J.A. Weir & L.S. Wrightsman, *The Determinants of Mock Jurors' Verdicts in a Rape Case*, 20 J. Applied Soc. Psychol. 909 (1990).

⁴M.A. Pigott & L.A. Foley, *The Impact of Personality and Demographics on Verdict in a Civil Rape Case*, 18 Trial Dipl. J. 145 (1995).

⁵A.C. Acock & N.K. Ireland, *Attribution of Blame in Rape Cases. The Impact of Norm Violation, Gender, and Sex-Role Attitude*, 9 Sex Roles 190, 192 (1983); L.G. Calhoun et al., *The Effects of Victim Physical Attractiveness and Sex of Respondent on Social Reaction to Victims of Rape*, 20 Brit. J. Soc. Psychol. 20 (1981); J.E. Krulowitz, *Sex Differences in Evaluations of Female and Male Victims' Responses to Assault*, 11 J. Applied Soc. Psychol. 470 (1981); K. McLendon et al., *Male and Female Perceptions of Date Rape*, 9 J. Soc. Behav. & Personality 425 (1994).

⁶L.A. Foley & C.E. Rasche, *The Effect of Race on Sentence, Actual Time Served, and Final Disposition of Female Offenders*, in *Theory and Research in Criminal Justice: Current Perspectives* (J.A. Conley ed., 1979); J.E. Pfeifer, *Reviewing the Empirical Evidence on Jury Racism: Findings of Discrimination or Discriminatory Findings?*, 69 Neb. L. Rev. 233 (1990); J.E. Pfeifer & R.P. Ogloff, Jr., *Ambiguity and Guilt Determination: A Modern Racism Perspective*, 21 J. Applied Soc. Psychol. 718 (1991); D.C.E. Ugwuegbu, *Racial and Evidential Factors in Juror Attribution of Legal Responsibility*, 15 J. Experimental Soc. Psychol. 140 (1979).

⁷M.A. Pigott & L.A. Foley, *Social Influence in Jury Decision Making*, 18 Trial Dipl. J. 101 (1995).

⁸J. Baldwin & M. McConville, *Juries, Foremen and Verdicts*, 20 Brit. J. Criminology 40 (1980).

⁹C. Nemeth et al., *From the '50's to the '70's: Women in Jury Deliberations*, 39 Sociometry 297 (1976).

¹⁰R. Hastie et al., *Inside the Jury* (1983).

¹¹D.E. Vinson, *Jury Persuasion: Psychological Strategies and Trial Techniques* (1993).

¹²Pigott & Foley, *supra* note 7.

¹³G.W. Allport, *The Nature of Prejudice* (1954).

¹⁴Pigott & Foley, *supra* note 4.

¹⁵All reported results are significant at the .05 level. In addition, most of the results reported in this article are highly significant—that is, at or near the .001 level. Additional details about the analyses or results may be obtained from either author.

¹⁶V.R. Boehm, *Mr. Prejudice, Miss Sympathy, and the Authoritarian Personality: An Application of the Psychological Measuring Techniques to the Problem of Jury Bias*, Wis. L. Rev. 740 (1968).

¹⁷D.A. Kravitz et al., *Reliability and Validity of the Original and Revised Legal Attitudes Questionnaire*, 17 L. & Hum. Behav. 666 (1993).

¹⁸Pigott & Foley, *supra* note 4.

¹⁹The word *reversed* indicates that, for research purposes, the particular item was "reverse scored." This means that the item was indicative of the opposite of the personality characteristic measured on the scale. Using the item "All too often, minority group members do not get fair trials" as an example,

an indication of agreement on this item is a reflection of a nonauthoritarian view.

²⁰Predictability of a particular item was determined by subjecting each item (question) on the various personality scales to a statistical analysis. Through this analysis, we were able to derive the items with the most relationship to mock jurors' assessments of liability and damages. A complete report of this analysis is available from either author.

²¹Pigott & Foley, *supra* note 4.

²²Z. Rubin & A. Peplau, *Who Believes in a Just World?*, 31 *J Soc Issues* 69 (1975).

²³S.T. Phillips et al., *The Nature of Non-Prejudice* 3 (1995) (unpublished manuscript, on file at the Department of Psychology, University of Florida, Gainesville, Florida).

²⁴Pigott & Foley, *supra* note 4.

²⁵*Id.*; Pigott & Foley, *supra* note 7.

²⁶Pigott & Foley, *supra* note 7.

²⁷Phillips et al., *supra* note 23.

²⁸We would like to thank David H. Fauss, S. Edward Groot, and Michael Wasserman for their suggestions on previous drafts of this article.