

How To Save Your Client While Saving The Court Time

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Trial courts are afforded great latitude and discretion in structuring the method by which voir dire will be conducted. Jury selection plays a critical function in assuring the criminal defendant that his sixth Amendment right to an impartial jury will be honored. Without adequate voir dire, the trial judge's responsibility to remove prospective jurors who will not be able to follow the Court's instructions and evaluate the evidence cannot be fulfilled. The entire voir dire should be directed to determine whether, for any reason, a juror has a bias of mind in favor or against either party such that his impartiality as to guilt would be impaired.

The most cost-effective and timesaving approach to jury selection is the questionnaire. Jury questionnaires are increasingly being used in both civil and criminal cases. Most often, questionnaires have been used successfully in death penalty cases, white-collar cases, child rapes cases, police brutality cases, battered women's cases and drug cases.

The major reasons for using the questionnaire are the following:

1. The questionnaire streamlines the jury selection process. Courts, clients and lawyers save time often wasted in unnecessary repetition of questions. The questionnaire can be distributed to jurors and filled out by them before voir dire is conducted in court. Each juror's questionnaire can be photocopied prior to the trial and copies can be provided to each of the parties and one copy to the judge. These copies are to be used by all parties solely for the purpose of jury selection.
2. The questionnaire allows a greater number of questions to be administered to each juror. This results in greater accuracy in the use of challenges. More potential biases may be uncovered; so more competent voir dire can be conducted.
3. The questionnaire permits jurors to consider their answers more carefully. The jurors do not have to respond immediately to questions. Instead, they can think about their answers. This is critical if they are repressing unpleasant memories, such as being victimized.
4. The questionnaire gives the jurors a sense of privacy, as does individual in-court voir dire. Jurors can answer questions without being required to give their answers in a very public and formal setting. This permits more personal responses to the questions. Jurors will not be required to state that they dislike the prosecution or the defendants in open court. They can do so privately.
5. The questionnaire also permits the lawyers and judge to assess the literacy level of the jurors, because they are required to write the answers. This also is a measure of the ability of the jurors to relate to complex ideas that they are not likely to use in their daily lives. These complexities may arise because of legal issues, complex evidence or complex testimony, particularly from expert witnesses.

6. The questionnaire is useful because written, rather than oral, responses assist the lawyers in recalling the responses of the jurors. Recall of oral materials declines very quickly, particularly over the first twenty-four hours.

7. The questionnaire provides better information for jurors not in the box. In many jurisdictions, most of the jurors are almost ignored. The jurors in the box receive most of the attention of the lawyers. In fact, often jurors are ignored when they raise their hands.

8. The questionnaire pivots a more unbiased finding of the juror's responses than the oral voir dire provides, because the lawyer cannot influence the jurors by the way he or she asks the questions. The personality of the lawyer does not influence the respondents.

9. The questionnaire provides a way to measure each juror's own biases and ideas rather than those of the other jurors. When jurors are questioned in a group, they often give the same responses as the other jurors. Since each juror must fill out the questionnaire without the input of the other jurors and does not hear the responses of the other jurors, he or she cannot give the same response that the other jurors do, but must arrive at his or her own answers, measuring the juror's own opinions and biases.

10. The questionnaire reduces the jurors' opportunity to contrive to be seated or excused. A juror who has reasons for being excused must state them without having seen which excuses have (or have not) worked for other jurors.

11. The questionnaire method does not permit the jurors to hear the responses of the other jurors. Thus, the opinions and biases of the other jurors cannot contaminate the jurors. This is critical if some jurors are not only biased but articulate.

12. The questionnaire can incorporate complex and reliable "lie scale" measures. Historically, questionnaires have incorporated these measures. This is critical for such issues as race, sex and money in particular.[i]

13. The questionnaire can incorporate open-ended questions, multiple choice or forced-choice questions. Generally, it makes the open-ended questions easier to rate and allows for the greater use of multiple-choice questions that are also easier to rate.

14. The questionnaire approach makes it difficult for the jurors to figure out whether it is the defense attorney or the prosecution who wants to know the answers to the questions. Therefore, they do not know with whom to be upset when they do not like some of the more personal questions such as those related to sex or finances. This is important because some of the most critical questions are sensitive questions and may evoke such feeling and bias among the jurors.

15. The questionnaire approach is less expensive than other jury selection approaches such as surveys and mock juries. Therefore, more criminal defendants will be able to use the method. In situations where courts allocate funds for jury selection, the more expensive methods should be used with this approach.

16. The questionnaire reduces the time and tedium involved in asking questions repeatedly.

17. The questionnaire is helpful in arranging a better plea bargain since the prosecutors are aware the defense attorneys are prepared.

18. Finally, the questionnaire approach is fair to both the defense and the prosecutors. Both have access to the information generated by the instrument.

I do not recommend this procedure for every criminal case. It is critical in cases that involve very high penalties, cases that involve extensive pretrial publicity, cases that are located in areas that are noted for discrimination or volatile ethnic relations or cases involving sensitive issues that may easily evoke prejudice in jurors.

The questionnaire is only one tool to measure attitudes and does not resolve all jury selection problems. It does provide a cost-effective approach to ensure that jurors who will be seated are competent.

[i] There are a number of different kinds of lie scales. One type is social acquiescence. For example, the judge says, "Will you be fair?" and the jurors say, "Yes." To avoid this situation, a questionnaire is constructed to ask specific questions about given topic. A second way to determine if a person is lying is to add words like "always" and "never." Answers like, "I never lie or I always obey the law are suspect." A third way to check for juror's consistency is to simply ask a question two different ways. The use of the questionnaire should reduce lying although not entirely eliminate it.

Examples of cases in which juror questionnaires affected the outcome:

- A Black Muslim was indicted for kidnapping and killing a prison guard during a prison riot. The trial resulted in a hung jury. Six other prisoners, similarly charged, received death sentences.
- An expelled member of the Hell's Angels was facing the death penalty in a murder case. His father, a man equally notorious in the community, had previously received the death penalty in a separate incident. In the courtroom, the client presented a grotesque and threatening appearance because of tattoos on his face. To further exacerbate the situation, the small town in which the case was tried had experienced a number of murders, predisposing the jurors to give severe penalties. In this case, they returned a life sentence.
- A youth was charged with a thrill-killing in a public park. He was one of three youths who allegedly shot two men. In exchange for life sentences, the other two defendants testified against him. The prosecutor sought the death penalty, but the young man received life imprisonment.
- A Church of Christ minister's wife was charged with shooting her husband in the back while he slept. She received a six month sentence, some of which was served in a mental health facility. A battered wife

defense was used.

- A fifteen-year-old Hispanic girl was bound over to adult court for killing her mother and step-sister with a baseball bat. There was a change of venue and a “not guilty” verdict.
- An African American male was charged with aggravated arson and burglary. He was acquitted by an all-White jury despite extensive publicity and his having served time for rape in an earlier case.
- An Italian-American prosecuting attorney was indicted for taking bribes in a series of cases involving judges, insurance company executives, and the chief prosecutor who were found guilty. He was acquitted.
- A never-married accountant was charged with the rape of three young males. Despite the Bible-Belt atmosphere, the client was found not-guilty.
- A police officer was accused of police brutality against a college student. The officer was acquitted despite the fact that the incident was in front of a crowd of college students leaving bars.
- A traditional healer (medicine man) was accused of child sexual abuse in at a “sweat.” He was found not guilty by jurors from another tribe.
- A working-class male was accused of being part of an illegal conspiracy to import and distribute some 4000 kilos of hashish. He was acquitted in forty-five minutes.

This jury questionnaire is one of the most cost-effective methods. If more resources are available, other methods such as the mock jury or focus group should accompany that method. If the judge will not permit the use of the questionnaire, then other methods should be employed. If you would like a copy of “A Medley of Methods” please get in touch with me.

Please let me know if I can be of service to you or if you would like more information.

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