

SWEAR



ING WITH CROSSED FINGERS

JUROR HONESTY AND VOIR DIRE

WHEN INTERVIEWING JURORS after a verdict in 1976, a researcher found that one third of them had lied under oath. In 1980, another researcher found that although 71 percent of the jurors had a fixed opinion regarding guilt on a criminal case, only 15 percent admitted this during voir dire. In 1983, more research revealed that 18 percent of the jurors interviewed admitted to withholding information during voir dire, often so they would not be excused.

These statistics are striking. If they are representative of juror honesty generally, they suggest that questions put to jurors in certain formats are more likely to elicit a false response. This lack of candor by jurors can have a significant effect in trial strategy and in the verdicts rendered, because juror honesty during open voir dire in the courtroom is now the critical method for exposing juror bias and impartiality.

Extensive research in psychology, sociology, communications and law has examined the issue of nondisclosure by participants in surveys and trials. Again and again, studies have found that people are willing to be more candid and to reveal more personal information regarding sensitive questions on self-administered written questionnaires than they are in verbal, person-to-person interviews and in voir dire. This article reports on some of these studies and refers the reader to excellent articles in which additional sources are listed. This research supports requests and motions made to the courts for supplemental juror questionnaires.

Hiding Facts and Attitudes in Oral Voir Dire

In 1991, researchers Seltzer, Venuti and Lopes conducted posttrial interviews with jurors from 31 criminal trials in Washington, DC. Juror responses during voir dire were compared with their responses to the same questions after the verdict. The study focused largely on two key questions commonly posed in criminal voir dire: First, jurors were asked whether they, friends or relatives ever had been victims of a crime. During oral questioning in open court, only 9 percent of the jurors responded affirmatively. However, when asked the same question after the verdict, 25 percent of the jurors admitted that they, friends or relatives had been crime victims.

In the second question, jurors were asked if they knew anyone who had ever worked for a police department or other law enforcement agency. During voir dire in open court, only 8 percent of the jurors responded affirmatively. In contrast, during their posttrial interviews 30 percent of the jurors admitted having friends or relatives in the field of law enforcement. When combining the responses for both questions, the researchers determined that 39 percent of the jurors interviewed in the study should have come forward with a response to either of these questions during voir dire but did not do so.

The research team also was interested in whether jurors were predisposed to find a defendant guilty. Again, jurors'

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oral responses in voir dire were compared to their posttrial responses. When asked five questions regarding their attitude toward the defendant, none of jurors in any of the 31 trials had any verbal response to these questions. When asked these questions during their posttrial interviews, however, 14 percent of the jurors indicated they would be likely to find the defendant guilty or would feel that the defendant would lose the presumption of innocence if he or she did not testify. No juror admitted this during voir dire. In cases in which the defendant did not testify at trial, 31 percent of the jurors admitted that this had an effect on their verdict. Again, none of these jurors admitted during voir dire that it might affect their verdict.

When asked about their attitude toward the defendant if he or she did not present any witnesses at trial and if the defense attorney only cross-examined the government's witnesses, 58 percent of the jurors admitted in posttrial interviews that they most likely would find the defendant guilty to some extent, although none admitted this during voir dire. Of those jurors interviewed, 47 percent stated, to various extents, that they believed that the defendant had to prove he was innocent if he testified at trial. Again, none admitted this when questioned during voir dire. Although all jurors agreed during voir dire with the statement that the defendant was presumed innocent until proven guilty, 33 percent admitted during posttrial interviews that to various extents they had presumed at the beginning of trial that the defendant probably had committed the crime.

When asked during posttrial interviews why they did not come forward during voir dire, jurors gave numerous reasons. In some cases, jurors stated that the questions were asked too quickly and they did not have time to think or respond. Other jurors admitted not responding because they wanted to stay on the jury panel. Many jurors reported that the questions were too personal to answer in open court. The need to avoid embarrassment or negative feedback and to maintain self-esteem and a positive image was a strong motive for nondisclosure in the courtroom.

Is the Pen More Candid Than the Spoken Word?

If jurors are reluctant to disclose their true feelings during voir dire, is there a better way to discover those feelings? Would a jury questionnaire overcome the reluctance to be candid during voir dire? To answer these questions we turn to social science, because very little empirical research has dealt specifically with jury questionnaires. Many studies have investigated the use of written questionnaires to encourage participants to reveal honest responses to sensitive issues such as sexual preferences and practices, substance use, victimization, mental and emotional dysfunction, attitudes and prejudices.

For example, a number of respected research projects have found a sizable difference in the use of alcohol and illicit drugs reported by participants in written questionnaires as compared with that reported in face-to-face personal interviews (Aquilino, 1994; Aquilino & LoScuito, 1990; Gribble, Miller, Cooley, Catania, Pollack & Turner, 2000; Gribble, Miller, Rogers & Turner, 1999; Midanik, Hines, Barrett, Paul, Crosby & Stall, 1998; Rogers, Miller & Turner, 1998).

Other researchers have agreed that people are more candid regarding their sexual practices and attitudes on written questionnaires than they are in verbal discussions (Acree, Ekstrand, Coates

& Stall, 1999; Catania, McDermott & Pollack, 1986; Siegel, Krauss & Karus, 1994). Similarly, the number of personal sexual experiences tends to be underreported in oral interviews versus written questionnaires. A study by Jones and Forrest (1992) reported that when verbally asked about abortions, only 35 percent of the women who had experienced the procedure acknowledged it; when given the opportunity to report their experiences on paper, the number increased to 71 percent. This finding also was repeated in a study done by Rasinski, Willis, Baldwin, Yeh and Lee (1999). These findings regarding substance use and sexual issues suggest that disclosure in voir dire of juror attitudes, experiences and biases is less likely and that questionnaires are more likely to produce useful and truthful information.

In addition to such sensitive topics as substance use and sexual matters, research has found that participants are more likely to be candid on questionnaires regarding health issues (Rasinski et al., 1999; Robinson & West, 1992); psychological distress, depression and anxiety (Dawson, Schirmer & Beck, 1984; Moum, 1998); personality disorders (Ottoson, Ekselius, Grann, von Knorring, et al., 1998); and aggressiveness and willingness to commit physical assault (Ouimette, Shaw, Drozd & Leader, 2000). The research of Locke and Gilbert (1995) also supported these findings and found that participants completing written questionnaires "endorsed significantly more pathological and deviant items on the [Minnesota Multiphasic Personality Inventory] compared to those in the interview condition" (p. 261). Questionnaires also revealed more than interviews did on the Drinking Habits Questionnaire. These are all important issues when considering juror attitudes and prejudices.

In summary, research has shown that jurors' honesty levels during voir dire are justifiably a cause for concern. Extensive research has validated the use of questionnaires to increase the truthfulness of participants for cases involving sensitive subjects such as substance use, health issues, sexual offenses, psychological disorders, mental disturbances and victimization. Because of the need to create a good impression, the need to maintain self-esteem and self-protection, and the need to maintain privacy and avoid embarrassment, studies have shown that people are willing to disclose more on questionnaires than they are in verbal interviews. This research strongly documents the need for juror questionnaires in the courtroom, even if only a few pages on sensitive case issues are used. ❏

Appendix

The following studies can be used to support motions for the use of supplemental juror questionnaires during the voir dire process.

Acree, M., Ekstrand, M., Coates, T. & Stall, R. (1999). *Mode Effects in Surveys of Gay Men: A Within-Individual Comparison of Responses by Mail and by Telephone*. JOURNAL OF SEX RESEARCH, 36(1), 67-75.

Aquilino, W. (1994). *Interviewer Mode Effects in Surveys of Drug and Alcohol Use: A Field-Experiment*. PUBLIC OPINION QUARTERLY, 58, 210-240.

Aquilino, W. & LoScuito, L. (1990). *Effects of Interview Mode on Self-Reported Drug Use*. PUBLIC OPINION QUARTERLY, 54, 362-395.

Bush, N. (1976). *The Case for Expansive Voir Dire*. LAW AND PSYCHOLOGY REVIEW, 2, 9-25.

Catania, J., McDermott, L. & Pollack, L. (1986). *Questionnaire*

Response Bias and Face-to-Face Interview Sample Bias in Sexuality Research. JOURNAL OF SEX RESEARCH, 22(1), 52-72.

Dawson, C., Schirmer, M. & Beck, L. (1984). *A Patient Self-Disclosure Instrument.* RESEARCH IN NURSING AND HEALTH, 7(2), 135-147.

Fahringer, H. P. (1980). *In the Valley of the Blind: A Primer on Jury Selection in a Criminal Case.* LAW AND CONTEMPORARY PROBLEMS, 43, 116-136.

Gribble, J., Miller, H., Cooley, P., Catania, J., Pollack, L. & Turner, C. (2000). *The Impact of T-ACASI Interviewing on Reported Drug Use Among Men Who Have Had Sex With Men.* SUBSTANCE USE AND MISUSE, 35, 869-890.

Gribble, J., Miller, H., Rogers, S. & Turner, C. (1999). *Interview Mode and Measurement of Sexual Behaviors: Methodological Issues.* JOURNAL OF SEX RESEARCH, 36(1), 16-24.

Jones, E. & Forrest, J. (1992). *Under-Reporting of Abortion in Surveys of U.S. Women.* DEMOGRAPHY, 29, 113-126.

Locke, S. & Gilbert, B. (1995). *Method of Psychological Assessment, Self-Disclosure, and Experimental Differences: A Study of Computer, Questionnaire, and Interview Assessment Formats.* JOURNAL OF SOCIAL BEHAVIOR AND PERSONALITY, 10, 255-263.

Marshall, L. (1983). *Juror, Judge and Counsel Perceptions of Voir Dire.* Doctoral dissertation, Boston University.

Midanik, L., Hines, A., Barrett, D., Paul, J., Crosby, G. & Stall, R. (1998). *Self-Reports of Alcohol Use, Drug Use and Sexual Behavior.* JOURNAL OF STUDIES ON ALCOHOL, 59, 681-689.

Moum, T. (1998). *Mode of Administration and Interviewer Effects in Self-Reported Symptoms of Anxiety and Depression.* SOCIAL INDICATORS RESEARCH, 45, 279-318.

Ottoson, H., Ekselius, L., Grann, M., von Knorring, L., Kullgren, G., Lindstroem, E. & Soederberg, S. (1998). *DSM-IV and ICD-10 Personality Disorders: A Comparison of a Self-Report Questionnaire (DIP-Q) With a Structured Interview.* EUROPEAN PSYCHIATRY, 13, 246-253.

Ouimette, P., Shaw, J., Drozd, D. & Leader, J. (2000). *Consistency of Reports of Rape Behaviors Among Nonincarcerated Men.* PSYCHOLOGY OF MEN AND MASCULINITY, 1(2), 133-139.

Rasinski, K., Willis, G., Baldwin, A., Yeh, W. & Lee, L. (1999). *Methods of Data Collection, Perceptions of Risks and Losses, and Motivation To Give Truthful Answers to Sensitive Survey Questions.* APPLIED COGNITIVE PSYCHOLOGY, 13, 465-484.

Robinson, R. & West, R. (1992). *A Comparison of Computer and Questionnaire Methods of History-Taking in a Genito-Urinary Clinic.* PSYCHOLOGY AND HEALTH, 6(1-2), 77-84.

Rogers, S., Miller, H. & Turner, C. (1998). *Effects of Interview Mode on Bias in Survey Measurements of Drug Use.* SUBSTANCE USE AND MISUSE, 33, 2179-2200.

Seltzer, R., Venuti, M., & Lopes, G. (1991). *Juror Honesty During the Voir Dire.* JOURNAL OF CRIMINAL JUSTICE, 19, 451-462.

Siegel, K., Krauss, B. & Karus, D. (1994). *Reporting Recent Sexual Practices.* ARCHIVES OF SEXUAL BEHAVIOR, 23, 217-230.

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