

September 2016 Jury Tip: “How to know when a juror is lying in voir dire?”

Because I’m a jury consultant, I get asked a lot of questions by regular people... and the one question I get asked most often is “how do I get off jury duty?” The phenomenon that most people don’t want to serve on a jury isn’t a surprise to most lawyers, but it’s a challenging one for trial lawyers, because we need attentive, focused jurors to try cases in court. But what about the jurors who do want to serve; is that a good thing? Some lawyers actually worry more about jurors who want to serve than those who don’t.

So because I’m a jury consultant, I get asked a lot of questions by lawyers... and one question that I get asked a lot involves some variation of “how can I identify stealth jurors?” In other words, some lawyers worry about the possibility that some jurors have a sinister motivation for wanting to be on a jury... and will say anything they can to seem fair and hide their biases to get on your next jury. It seems possible; every lawyer has seen a handful of jurors make up excuses and lies to get off a jury, so why couldn’t a juror lie about being fair to stay on the jury?

The point of this month’s tip isn’t to debate if stealth jurors exist, or how common they are. Because even if you don’t believe in “stealth jurors” sneaking their way onto your jury, you probably do worry about the possibility of jurors keeping silent about their biases because they’re shy or underplaying (or lying about) their biases because they don’t want to sound controversial or be candid in open court, for any number of reasons. Studies do confirm that this happens often, and my observation has been that the worse the voir dire, the more likely that jurors will keep quiet about their attitudes.

So let’s discuss how you can identify stealth jurors, how you can prevent jurors from lying to you in voir dire about their biases, and while we’re at it, the best method of interviewing your jurors in voir dire. The answer: it’s much easier to prevent jurors from lying by forcing them to explain themselves than to detect a lie in a short answer.

The solution to circumventing juror lies and omissions is simple: ask open-ended questions. When you ask a question like “do you have any negative feelings about trucking companies?” or “do you have any concerns about awarding money for pain?”, it’s very easy for a juror to lie by simply saying “no.” It’s much more difficult—and impossible for 99% of people—to convincingly lie when one has to explain themselves with an open-ended response. So when it comes to your most important voir dire questions searching for the most dangerous juror attitudes, make sure to ask questions in the “how do you feel about...” format. Open-ended questions not only encourage honest answers, but they make it much easier for an untrained eye to detect lies and the circumstantial evidence of lies: the hesitations, the evasively vague responses, and the unconvincing tone of someone who doesn’t seem to have conviction in what they’re saying. But asking open-ended questions is only half the battle; you’ll then need to battle a little more to make sure your jurors give you open-ended answers.

Don't be satisfied with short or vague or safe answers. When you get a curt or evasive answer, politely force the juror to "tell me more." Or better yet, ask a new "how do you feel about..." question with an added nuance. Let's say you ask a juror "how do you feel about companies deciding to lay off employees?" and your juror says something like "it happens" or "sometimes it's necessary." Don't let them off the hook until you get a good insight into how they really feel; ask a tougher question like "well, how do you feel when a company chooses to lay off employees when the company isn't losing money, but could make more by cutting back?"

Any time a juror gives you a curt response, it's a red flag they're hiding something; keep finding new ways to make them explain how they feel, "in your own words." Sometimes jurors try to dodge questions by insisting the question isn't answerable; they might say "depends on the circumstances" or "I can't answer that without more information." That's another red flag that tells me they're hiding a potential bias. Don't argue with them, just change your question and ask something like "what kind of circumstances would be important to know, to answer that question?" Or "what kind of information would you need to know to better answer that question?" Keep searching for ways to make them explain how they feel about the issue.

Another trap to look out for is to never ask voir dire questions that have obvious "right" answers, where the socially-acceptable or politically-correct answer is obvious to the juror. And if you do, be sure they believe what they're saying by making them explain "what makes you feel that way?" or "why is that important to you?"

For those of you who practice in courtrooms that give you plenty of time to voir dire your jury, following my advice is fairly easy. But for those of you who are given limited voir dire, I understand that it's not possible to ask only open-ended voir dire questions and to discuss each question one-on-one with each juror. What I would suggest is to make sure to select your 2 or 3 most important issues and to make sure you ask every juror at least ONE open-ended question. Get at least ONE in-depth glimpse into how every one of your jurors think. Never rest during voir dire if there are jurors you haven't heard explain themselves on at least one important issue.

So what's the best way to voir dire a jury? Should you do an individual voir dire, start with juror #1, ask all your questions, then move onto juror #2? Should you ask only group questions and talk only to the jurors who raise their hands? Over my many years of jury consulting, I have found the best way to be this: direct each open-ended voir dire question to a single juror to start. Ask him or her how she feels about the issue. If they give you a "good" answer that tells you they're a good juror for you, ask the others "America is a great country because we are free to disagree, and I'm sure there are some of you who feel a little differently; who politely disagrees with how juror #8 feels?" If they give you a "bad" answer, take advantage of the fact that he/she just broke the ice for you by asking "who feels the same way? Tell me about how you feel, in your own words." Jump around for a while, until you move onto a new question. Don't move on if no one raises their hand to a group question; just pick on someone and ask "how do you feel about it?" Keep jurors on their toes and thinking you might call on them next.