

A Guide to Analyzing Jury Questionnaires in Civil Cases

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The amount of time you are given to review your jury questionnaires will determine the degree to which you can analyze them. In most cases, you'll have only a few hours to read through a stack of questionnaires and analyze the significance of the panel members' answers. This means you will have to prioritize the goals of your voir dire, so that you start your analysis by focusing on the most important factor and move down your list from there. If you are more concerned about seating a jury that will find the defendant liable, for example, than one that will award high damages, this is where you should focus your analysis.

While we're on the subject of time constraints, we should mention that it's wise not to create a questionnaire that is so long you won't have time to read each panel members' answers thoroughly. This means that, in the majority of cases, a one-page questionnaire is appropriate. You can glean a surprising amount of valuable information from a one-page questionnaire—if you know what to look for.

On the most basic level, you're going to look at the content of the jurors' answers. But if time permits, you should look beyond the content to the way the jurors are answering the questions. One thing that may jump out at you, for example, is a panel member who uses a lot of capital letters and exclamation points when answering certain questions. You should pay attention to what types of questions he feels this strongly about and think about whether his feelings on that issue would benefit or hurt your client. Something less obvious you should look for if time permits are themes that develop in panel members' questionnaires. For instance, one panel member might continuously refer to the importance of family, express strong family values, and list hobbies that are family-centered. This information can be useful in several ways. This juror might be especially good for a loss of companionship claim, for example; or you can use the information as an avenue for helping that juror bond with your client by having your client talk about how important family values are to him.

Because jury questionnaires are useful on so many levels, we've written this article to walk you through a careful analysis of a standard one-page questionnaire. The sample questionnaire we've used is from a personal injury case. We hope this step-by-step analysis will help you learn how to get the most out of jury questionnaires.

Age. The juror's age is important because it tells you what generation he belongs to, which can be a good indication of his belief systems. For example, jurors from Generation Y, which will be everyone on your panel in their mid-

twenties and younger, tend to be holistic. This means they are often more sympathetic to the problems of others and may be good plaintiff's jurors. Jurors from the World War II generation, on the other hand, may not be good jurors for a plaintiff who is looking for a substantial damage award because they tend to be more frugal.

The juror's age is also important because it may effect how he relates to your client. Conventional wisdom held that jurors in the same age group as your client would be more empathetic toward her. We've noticed, however, that jurors in the client's peer group are often more critical of clients. Finding out whether a juror tends to socialize with people his own age—or is more likely to have friends that are younger or older than him—is a good clue as to how he may react to your client.

1. Education. The first thing you're looking for in the juror's educational background is simply his education level. Generally speaking, people with higher education levels have a more sophisticated kind of intelligence. This may be important if your case is particularly complicated or technical. We do not mean to say, however, that the less-educated jurors are unintelligent. There are many reasons intelligent people do not obtain college degrees. The juror's responses to other questions should give you a good idea of his intelligence level.

You also want to look at what the juror studied in school. The juror's area of study or type of degree can indicate what type of "thinker" he is. By this we mean how he processes information. A person with a degree in electrical

engineering, for example, is going to be a more logical juror; whereas, a person with a master's in social work is likely to be more visceral. Knowing how your jurors process information is important when it comes to deciding the most effective way to present your evidence.

2. Work history. Because our jobs occupy so much of our time, what a person does for a living reveals a lot about his belief systems. Of course, the kind of work a person does can give you a good idea of his value system—for example, whether he works for a non-profit organization or a bank—but how long he's been at that job also tells you something important about the juror. Some people experience what we call "the nesting effect." These individuals hold one job for a long period of time (they are also usually married to one spouse for a long time). The nesting effect indicates that a person has strong family values. As with education, work history can also tell you if juror has experience in an area related to your case as well as how he processes information.

3. Training. This question is similar to the education question but is important for jurors who don't have degrees—as well as all those people out there who ended up in jobs completely unrelated to their degrees. If a juror has a particular expertise in an area relevant to your case, you need to know this. Seating a juror like this is like having an additional expert witness. She will consider herself an expert on that subject, and the other jurors may too.

4. Feelings about lawsuits. Pay careful attention to the wording of this question. We ask the jurors to tell us their “feelings or opinions” about personal injury lawsuits. We word the question this way because we’ve found that the visceral jurors tend to give answers like “nothing” when asked what they “think” about personal injury lawsuits, and the cerebral jurors tend to give the “nothing” answer when asked how they “feel” about these kinds of lawsuits. Although the question may seem repetitive, it’s actually been carefully worded to get answers from as many jurors as possible.

Notice also that this is an open-ended question. In light of the fact that tort reform and lawsuit abuse have been hot topics lately, we want to give the jurors the opportunity to express themselves in their own words on this issue. We think this is one of the most important questions to ask in every civil lawsuit. Although the question in our sample questionnaire is about personal injury lawsuits, the question could easily be reworded to read, “What are your feelings or opinions about people who bring civil lawsuits?” A negative answer to this question should always raise a red flag for a plaintiff’s attorney.

5. Would you sue? When asked whether they would sue if injured by someone else’s negligence, many jurors will give answers like, “I’m not sure” or “It depends.” The reasons they give for their uncertainty can tell you the quantity and quality of evidence you will need to present at trial.

As for the jurors who actually give unconditional answers to this question, you should absolutely follow-up with them in voir dire. Start out by making sure

they truly understood the question, explaining that in your hypothetical question the other person really was responsible for a serious injury because of his negligence. People who indicate that they would not sue, even after having the question explained to them, are extremely unfavorable jurors for plaintiffs. This is true because people tend to impose their own belief systems onto others, so they will believe your client shouldn't be suing the defendant. Although this question is valuable to attorneys on both sides in all civil cases, it is the most important question for a plaintiff's lawyer in a personal injury lawsuit.

6. Future and soft damages. Any juror who says she could never award money in these areas can be disqualified in a personal injury case. Before you can disqualify the juror, however, you must follow-up with her to make sure she understands that the law requires her to award these damages if the evidence supports such an award. Even if the juror retracts her position in voir dire (perhaps after being questioned by the judge) and says that she would be willing to listen to all the evidence before making a decision on that issue, you should consider striking her with a peremptory. It's been our experience that the jurors' belief systems will ultimately dictate their decisions, and jurors who answer this question "no" initially rarely change their minds.

7. Punitive damages. First, we want to point out the importance of defining the term "punitive damages" along with the question. Most jurors have heard the term and have some idea what it means, but the majority of them will be unsure of its exact definition. Because punitive damages is another hot-

button issue, we also made this question open-ended to identify which jurors have particularly strong feelings on the subject. If your case truly involves punitive damages, this question is a must.

8. Personal experience with lawsuits. If a juror has been a party to a lawsuit himself, he often starts out empathetic toward the side he was on in his lawsuit. However, the outcome of his case will greatly affect his feelings about your client. We follow up this question by asking the juror what the outcome of his case was and whether he has any negative feelings because of that outcome. If a juror filed a lawsuit and did not get the award he thought he deserved, for example, he may be especially hostile to a defendant. Any time you have a juror who's been a party to a lawsuit, find out what kind of suit it was, what the outcome was, and how he feels about that outcome.

9. Prior jury service. Our research has shown that a juror with previous jury experience is often elected foreperson. This is particularly true if he was the foreperson on the prior jury. Even if that juror is not elected foreperson, other jurors are likely to look to him for leadership in deliberations. It's important to know how these potential leaders will react to your case. We recommend asking the juror what kind of case he sat on, whether he was the foreperson, and what the verdict was. Lawyers are often reluctant to ask the juror the verdict because they feel it is improper. There is no prohibition against asking a juror this question—the verdict is public record. That being said, it is

clearly inappropriate to ask the juror any questions about the deliberative process during his prior service.

We also recommend that you ask the juror whether he has any negative feelings about his previous experience on a jury. If there was anything that bothered him about his prior service that you can avoid in your case, you need to know that. Jurors often tell us, for example, that they were annoyed by lawyers who kept repeating themselves. This is an annoyance you certainly want to avoid. When space permits, we recommend adding the following two questions to your questionnaire: 1) "Did your prior jury service cause you to have any favorable or unfavorable views of the justice system?" and 2) "Would any of your feelings about your prior jury service carry over into your service on this case?"

10. Television and newspapers. You can learn a lot about a person by what TV shows she watches. A juror's regular viewing choices give you an insight into her personality. Similarly, what a juror chooses to read, if anything, also says a lot about her. For example, many cities have alternative weekly papers that are much more liberal than their mainstream counterparts. A woman who regularly reads Atlanta's weekly alternative, Creative Loafing, will probably be driven by a different value system than one who sticks to the more conservative Atlanta Daily Constitution.

11. Organizations. The answer to this question provides a snapshot into the juror's life. It tells you what he values and what anchors him in the

community. Does he belong to a charitable organization or a country club? A union? A political organization? A juror's social affiliations often reveal how he might react to the issues in your case.

12. People they admire most and least. Besides gaining information from this question, you also gain insight into the juror's thought process. Some jurors list all family members as the people they admire most, while other jurors put no family members on their lists. The former indicates people who are going to be receptive, for example, to evidence about loss of companionship. A juror who lists all businesspeople and politicians, on the other hand, is likely to be more analytical, which means a different kind of evidence will appeal to him.

We usually see public figures on the least-admired list, such as the current President or Sadaam Hussein. Jurors whose least-admired list is more personal, naming perhaps an ex-spouse or former friend, are telling you that they've had some dramatic negative experiences that are still influencing them. Don't overlook the unconscious clues either. For example, if a male juror lists his three least-admired people as the Devil, Osama Bin Laden, and Hillary Clinton, he has some serious issues with strong women. Besides looking at each name on the lists, look at the lists as a whole to see if they're telling you anything else about the juror.

13. Adjectives. This is one of the "must have" questions. How the jurors view themselves reveals a tremendous amount about their value systems and life experiences. We've provided a sample adjective question, but be sure to

tailor your adjectives to your case. If your main goal as a defendant, for example, is to keep the damage award to a minimum, it's important for you to find out which jurors consider themselves generous—and keep them off your jury.

14. Hobbies and interests. Learning what the jurors do with their time will tell you what motivates them. Reading the answer to this question is like looking through a window into their homes. Their personal priorities and values will greatly affect how they perceive the issues in your case.

Politics. Many people's answers to the political question will mirror how they feel about the current President. Jurors who like the President are going to align themselves with him politically, and conversely, jurors who dislike the President are going to identify themselves with the contrary view. The greatest value in this question is that it identifies jurors who are more inclined to go against popular opinion.

Financial decisions. The purpose of this question is to find out which jurors are comfortable dealing with financial issues in general. When you're asking the jurors to make a financial decision that will have a significant impact on your client, you want to know which will be instrumental in the decision and which are more likely to sit quietly while the numbers are being crunched in deliberations.

15. The hardship and catch-all questions. The last two questions are strategically placed at the end of the questionnaire. The first question allows

the jurors to discuss any hardships that would prevent them from sitting on the jury. We put this questionnaire at the end because we don't want jurors to start out thinking, "I'm not going to be on this jury anyway," and then not take the rest of the questionnaire seriously.

The very last question we ask gives the jurors an opportunity to vent. They can say anything that's on their minds. This catch-all question is sometimes referred to as a Rorschach question because it allows the jurors to "blurt out" whatever they're thinking. We also call it an "oyster" question, because you have to shuck a lot of oyster to get a pearl. By that we mean most of the answers to this questions are run-of-the-mill, but when you get a good one, it can be the most important answer on the questionnaire. When a juror has a strong opinion about an issue in your case, the justice system in general, or anything remotely relevant, you will see it in this answer. We think this powerful question should be at the end of every questionnaire because it often answers the question you never thought to ask.