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How Jurors View Attorneys - It's the Little Things



VINSON & COMPANY

EXPERTS IN COURTROOM PERSUASION &
JURY SELECTION MODELS SINCE 1976

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Pioneers in the Field

Experts in Courtroom Persuasion & Jury Selection Models Since 1976

2301 Rosecrans Avenue
Suite 4160
El Segundo, CA 90245

Phone: 310.531.8740
Fax: 310.531.8741

Email: clientservices@vinsoncompany.com
Web: www.vinsoncompany.com

How Jurors View Attorneys - It's the Little Things

"YOU DON'T GET A SECOND CHANCE TO MAKE A FIRST IMPRESSION."

No doubt, there is more than a kernel of truth in this old adage.

We know that first impressions are formed quickly, are difficult to change, and have far reaching implications.

But what are the consequences of this for trial counsel.

Jurors begin forming impressions of attorneys from the very moment they begin to interact with them – which, typically, is during voir dire. And the impressions they form tend to be related to a discrete set of factors. Importantly these factors are all within counsel's control. That is, lawyers can create the impression they want jurors to have of them through how they conduct their voir dire. And more importantly, these factors tend to be correlated not just with favorable or unfavorable impressions of the attorney, but also with how jurors decide a dispute.

Over the last decade, we have worked with hundreds of trial lawyers, helping them not only to prepare and execute effective voir dire strategies, but also to understand how they are likely to be perceived by prospective jurors. In the course of our work, we have collected quantitative and qualitative data from over a thousand surrogate jurors who have participated in these sessions. And what the data has shown us, repeatedly and consistently, is that it's often the little things that attorneys do that have far reaching implications for how they are viewed and judged.

WHAT NOT TO DO IN VOIR DIRE

Trial attorneys spend most of their careers advocating for their clients, be that through arguing the merits of their client's position or meticulously deposing and cross-examining adverse witnesses, seeking to expose the weak points and flaws in the opposing party's case. Yet the very traits that are required for the majority of their work are ill-suited for conducting an effective voir dire. There are several reasons for this.

First, the primary goal of voir dire should be to identify prospective jurors who are likely to be antagonistic to one's case. While many believe that this is an opportunity to "seed plant," such efforts will be for naught if your jury is comprised of individuals predisposed to find against you.

Furthermore, the natural inclination to argue one's case is contrary to the key objective of striking from the panel those who will embrace the opposing party's position. Dueling with prospective jurors in order to get them to abandon views that suggest an inclination to favor the other side usually succeeds in obtaining only a superficial commitment from them to put those views aside. In addition, many jurors who find themselves in this position resent the feeling of being cross-examined.

Second, and aside from not wanting to have their views and opinions challenged in front of others, jurors are typically instructed by the Court that the purpose of voir dire is to explore their attitudes, experiences and knowledge for the purpose of determining who can serve as a fair and impartial judge of the facts. When an attorney's questions veer away from this objective and become argumentative rather than probing, jurors naturally become defensive and, thus, less likely to divulge their true feelings.

These actions – aggressively questioning jurors about their beliefs, demanding that they commit to putting aside any negative predispositions they hold, and arguing with them about topics relevant to the dispute – quite obviously lead to feelings of hostility toward the attorney who commits them. But there are other, much more subtle behaviors attorneys engage in that lead jurors to develop equally unfavorable impressions.

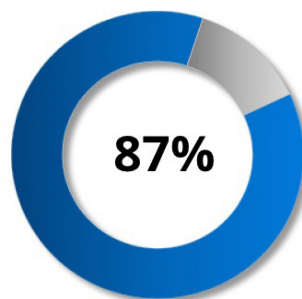
Asking compound questions or changing the wording of a question when a juror asks for a question to be repeated are prime examples. Though each may seem to be innocuous transgressions, one must consider how jurors perceive them. From jurors' perspective, attorneys are always looking for ways to confuse and obfuscate. Jurors are, therefore, highly sensitive to signals – real or imagined – that they are being tricked or manipulated. Questions that are confusing, difficult to interpret, or whose purpose seems to shift as words are used interchangeably, lead to feelings of discomfort and distrust.

Likewise, the lawyerly instinct to be thorough, meticulous and detailed conflicts with a more pressing concern counsel should have when conducting voir dire – namely, to be efficient. Nothing frustrates jurors more than to hear that counsel will be brief, only to then be subjected to a seemingly endless set of inquiries. Or to hear that the attorney has just one last question, which is then followed by six or seven more. Such indiscretions feed into the narrative that lawyers can't be trusted. And while such behaviors may be typical *among* lawyers – where it is tolerated, and even expected – during trial those behaviors must be curtailed. Jurors live in a different world, and have different expectations.

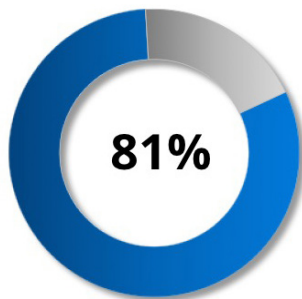
WHAT YOU SHOULD DO IN VOIR DIRE

So what do jurors want and expect? One way to answer the question is to ask. In a recent nationwide survey of 500 jury eligible individuals, we gave respondents 20 different characteristics and asked them how important they felt each was for an attorney to display or possess for the purposes of learning about prospective jurors in order to make a decision as to whether or not they could be fair and impartial. The top five characteristics that were considered *very or somewhat* important were:

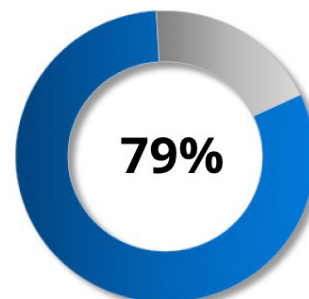
HOW UNDERSTANDABLE THE ATTORNEY'S QUESTIONS WERE



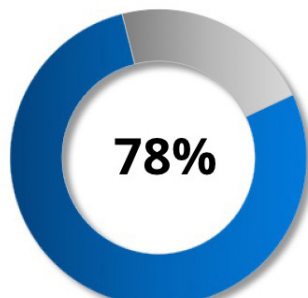
HOW PROFESSIONAL THE ATTORNEY APPEARED TO BE



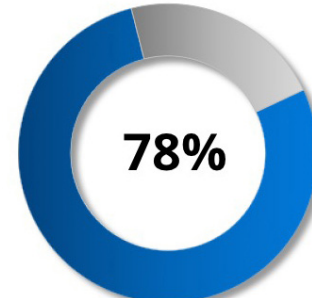
HOW GOOD A LISTENER THE ATTORNEY APPEARED TO BE



HOW TRUSTWORTHY THE ATTORNEY APPEARED TO BE



HOW WELL THE ATTORNEY CONTROLLED THE PROCESS



WHAT DO THESE RESULTS TELL US?

First, it confirms what was discussed earlier. Jurors want to understand what is going on. They want clarity. And they want to feel that they can participate in the process knowing what is being asked of them. An attorney who provides this is more likely to be trusted than one who does not.

Second, they want to be heard. And more importantly, they want to feel as if they have been heard.

Third, they want someone who can take control and guide them through this process. Voir dire is chaotic. It is often the least predictable part of a trial and, therefore, the part that is most difficult to control. But jurors don't know this. They expect counsel – rightly or wrongly – to be able to navigate this part of the process as smoothly as they can deliver an opening statement or handle a hostile witness.

But what jurors claim to value and what they actually value are not always the same thing. A better way to investigate this issue is to look at how surrogate jurors have rated counsel after going through the process of a mock voir dire with them. And then looking at which characteristics were most strongly correlated with favorable ratings of the attorney's voir dire style.

Across numerous such studies, spanning almost a decade, with a wide variety of trial attorneys and hundreds of surrogate jurors, we've found the same thing over and over. Jurors react most favorably, and rate most highly, counsel who: 1) exhibit competence; 2) provide clarity; 3) are engaging; and 4) can develop a rapport with the panel. Let's take a look at each.

Competence

Jurors appreciate an attorney who displays confidence, intelligence and professionalism. But how does one do that in the context of a voir dire? According to jurors, it is the result of two characteristics that are interrelated – being organized and being able to control the voir dire process. While jurors may expect an attorney to be able to handle the process effortlessly, they also recognize the effort it takes to manage a large group of people – and to do so efficiently. For example, jurors recognize when one of their own attempts to or is allowed to dominate the conversation. Much like children who quietly calculate how their siblings' machinations lead to more attention from mommy and daddy, jurors similarly recognize those among their number who seek the spotlight. How counsel handles such individuals – whether it be by indulging them, dismissing them, or diplomatically handling them – weighs heavily in jurors' estimation of how well the attorney can control the process and effectively complete his or her duties.

Clarity

As noted previously, jurors want to know what's going on and be put at ease. Not surprisingly then, two similar concepts were highly correlated with how jurors assessed attorney's performance during voir dire. Those were:

- How understandable the attorney's questions were
- How easy it was to answer the attorney's questions

Thinking through – in advance – how you will phrase your questions, the wording that you will use, the structure and order of topics that you will address, the manner in which you will cover these (addressing them to the panel as a whole or only select individuals) and the overall flow of your voir dire – go a long way in helping jurors to understand what you would like to know about them.

Engagement

Interestingly, when asked in the abstract what characteristics were most important for an attorney to display or possess for the purposes of learning about prospective jurors – and restricted in the number of selections they could make – some of the most *infrequently* noted were:

- How energetic the attorney appeared to be (2%)
- How charismatic the attorney appeared to be (3%)
- How outgoing the attorney the attorney appeared to be (6%)

Yet when actually evaluating attorneys with whom they had just gone through the voir dire process, these very same characteristics were highly correlated with how jurors evaluated the attorney's performance. That is, the more energetic, charismatic and outgoing the attorneys were, the more favorable were juror reactions to those attorneys.

How do we explain this discrepancy? From a rational perspective, such characteristics should not matter in terms of how well an attorney communicated with and was able to learn about prospective jurors. But a rational perspective, which is easier to assume in the context of a survey – removed from the actual environment of a voir dire setting – is not necessarily a comprehensive perspective, only a cerebral one. It cannot capture the *feel* of a voir dire or the emotions associated with sitting through the process. Feelings of boredom or interest; engagement or apathy. And indeed, when those emotions are replicated in the process of participating in a simulated context, the importance of certain characteristics takes on an added significance that must be appreciated.

This is not to say that jurors want attorneys to play the role of court jester. As noted earlier, they expect a level of professionalism given the nature and seriousness of the proceedings. But an attorney who can achieve their objectives in voir dire while keeping jurors' interest, engagement and attention elevated, will be viewed more favorably than one who falls short in this regard.

Rapport

Developing a relationship with a panel of prospective jurors is, as many seasoned trial attorneys already know, a critical component in building favorable impressions. One factor that is always strongly correlated with impressions of attorneys is jurors' assessment as to how well the attorneys connected with them personally. But how does one accomplish that? According to jurors, it is by establishing that the attorney is both sincere and trustworthy. And factors that are associated with these traits include:

- How appreciative the attorney appeared to be
- How patient the attorney appeared to be
- How sympathetic the attorney appeared to be
- How good of a listener the attorney appeared to be

Showing appreciation and sympathy can be tricky to exhibit – the last thing counsel wants is to be seen as disingenuous. But one does not need to be fawning in showing their thanks or exhibiting compassion. Rather, these traits can be demonstrated indirectly – by taking the time to hear jurors out, repeating what they've said, and asking relevant follow-up questions which reflect an understanding as to what they have revealed and an interest in what they have told you.

Another way of exhibiting these traits is by showing respect for opinions that the panel recognizes are contrary to the position you will be taking. Jurors may expect you to argue against those views, but they also intuit that *voir dire* is not the time for that and that it is jurors with whom you should be arguing. And when they see counsel trying to gain more insight into views that are antagonistic to their position – rather than simply refuting them or trying to downplay them – jurors are likely to develop a measure of respect in turn for counsel's willingness to hear conflicting views.¹

BROADER IMPLICATIONS OF THE IMPRESSIONS YOU CREATE

The value of creating a favorable impression is much more significant than simply whether or not jurors like counsel. In fact, we have seen many instances in which jurors have told us that they like an attorney or trial team, but have found against them. Nonetheless, the data we have collected over the years – not surprisingly – reveals that it is better to be liked than disliked.

Specifically, what we have found is that the traits most strongly correlated with favorable impressions of attorneys – demonstrating competence and clarity, being engaging and interpersonal – also tend to be correlated with how jurors are inclined to decide a dispute. That is, they are more likely to favor the party whose attorney displays these characteristics.² They are also more likely to be inclined to switch their verdict leanings from one party to another based on their impressions of counsel.

¹ Of course, experienced trial counsel will recognize that by allowing jurors to fully express antagonistic or potentially antagonistic thoughts or feelings is an opportunity to either a.) develop a cause challenge or b.) gain insight that will be useful in exercising peremptory challenges.

² This was true of their verdict inclinations not only after going through the *voir dire* process but also after hearing arguments pertaining to the dispute.

Additionally, we have also observed a differential effect. One need not achieve the absolutely highest evaluations on all relevant measures to gain an advantage. One need only be seen as better than their counterpart.

To put it differently, imagine that you and opposing counsel are being chased by a bear.

It's not the bear you have to outrun.

CONCLUSION

Almost all of us want others to view us favorably. For trial counsel, though, there is added significance in that the consequences of being viewed unfavorably by jurors could impact how the client's case is decided. But often times, it is the little things that attorneys do that have the greatest impact on how jurors react to and evaluate them. Importantly, almost all the behaviors that attorneys engage in which create unfavorable impressions can be mitigated with awareness and preparation. And almost all behaviors that result in favorable impressions can be learned, practiced or enhanced. And as we have seen, the advantages of minimizing unfavorable perceptions and enhancing favorable views may translate into the ultimate judgments jurors are asked to make – about counsel's client and the matter in dispute.



About THE COMPANY



VINSON & COMPANY

PIONEERS IN THE FIELD

Experts in Courtroom Persuasion and Jury Persuasion since 1976

Vinson & Company is a jury research and trial strategy consulting firm that corporations, law firms, and government entities retain when the stakes are high and the consequences of losing are unacceptable. We are experts at identifying and testing effective trial themes, predicting juror behavior, and assisting with visual presentation strategies for the courtroom. We have been retained to assist clients with civil and criminal jury trials in both Federal and State courts throughout the United States, U.S. territories, and in some foreign jurisdictions. With over 35 years of experience, we have been involved in virtually every type of litigation. Our record for helping clients achieve successful results is well recognized by the law firms and corporations with whom we have worked over the years.

Vinson & Company maintains a full-time professional staff trained at the country's leading schools and universities. Our Ph.D. specialists offer expertise in Psychology, Sociology, Social Psychology, Developmental Psychology, Psychometrics, Statistics, Mathematics, Communication Sciences, and Research Design.

Our jury research programs are based upon sophisticated social science research methodologies and decades of practical courtroom experience. We pioneered the field of jury research and have advanced the field with proprietary tools and unique research designs.

2301 Rosecrans Avenue, Suite 4160 | El Segundo, California 90245 | www.vinsoncompany.com





VINSON & COMPANY

Get in touch

310.531.8740

clientservices@vinsoncompany.com

www.vinsoncompany.com